

The Advocate

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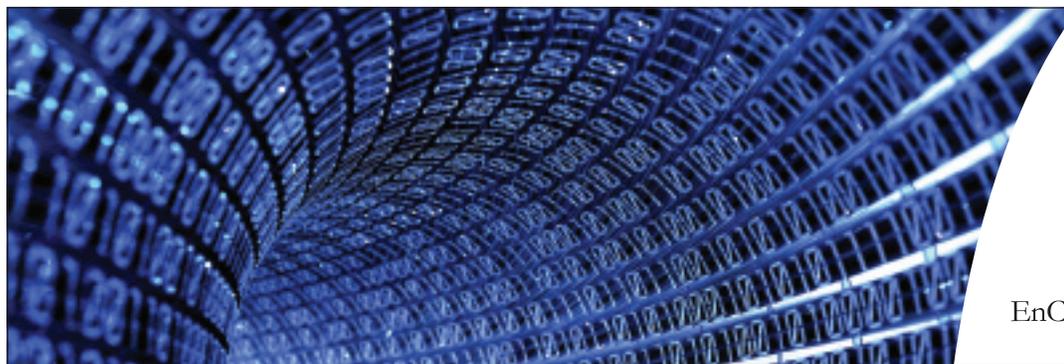
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ON THE COVER

"Hush" was photographed by Assistant U.S. Attorney Monte Stiles. "This is one of my favorite images. It was taken shortly after a heavy fog lifted in the valley near New Meadows." Monte is an avid photographer who specializes in wildlife and landscape photography. You can view more of his images at www.montestilesphotography.com.

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The

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ADVOCATE STAFF

Jeanne S. Barker

Managing Editor

jbarker@isb.idaho.gov

Robert W. Strauser

Advertising Coordinator

Senior Production Editor

rstrauser@isb.idaho.gov

Amber R. B. Kenoyer

Communications Assistant

akenoyer@isb.idaho.gov

www.idaho.gov/isb

(208) 334-4500



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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."

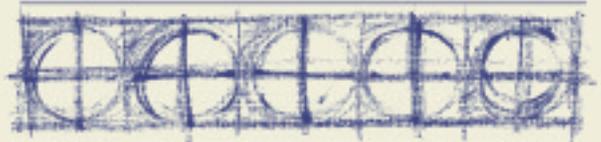
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PRESIDENT'S MESSAGE

ANDREW E. HAWES

A YEAR IN REVIEW



January is always a meaningful month for me. I was married on January 1st, and my oldest daughter, Audrey, was born on January 1st. For me, January represents a time to

reflect upon the events of the past year and to start thinking about what needs to be accomplished in the New Year and beyond. Throughout the year Diane Minnich has given you updates about what is going on at the Idaho State Bar. However, I want to take a moment to outline some of the significant events in 2007.

THE UNIVERSITY OF IDAHO COLLEGE OF LAW: A CALL TO CHANGE THE DELIVERY OF PUBLIC LEGAL EDUCATION IN THE STATE OF IDAHO

This summer, the University of Idaho College of Law and the Idaho State Bar held a "Conclave on Idaho Legal Education in the 21st Century." This Bench/Bar/Academic conclave consisted of 108 participants. The mission: to engage in an in-depth discussion concerning statewide needs in legal education and also examine long-range planning at the College of Law. Participants also had a chance to discuss three potential options the law school was considering to pursue to enhance legal education opportunities at the University of Idaho College of Law:

1. Moscow-Plus (expand the facility and curriculum in Moscow only),
2. The Treasure Valley Approach (a total relocation of the law school to Boise) and
3. A Phased, Two- Location Approach (the eventual opening of a law school in Boise, while at the same time maintaining a law school in Moscow).

You can review the materials presented at the conclave at www.law.uidaho.edu.

In October, the College received a recommendation from the College of Law Advisory Council and from consultant Richard J. Morgan (chair of the American Bar Association accreditations standards committee and immediate past dean of the William S. Boyd School of Law at the University of Nevada, Las Vegas) that a phased two-location approach would best facilitate the statewide mission of the College of Law, assuming sufficient resources could be obtained. Under this approach the College would continue to provide J.D. education at Moscow while also developing a second J.D. location at Boise as resources and the quality of the student applicant pool permit. The two locations would comprise an integrated statewide law school under administration by the University of Idaho, and would provide distinctive upper-division specialties at each place. Ultimately, this approach was endorsed by the University of Idaho Administration. Recently a "second century" committee has been formed to develop a proposal for consideration by the State Board, which has the ultimate power of decision. Further information about the strategic planning process is available from Dean Burnett at dburnett@uidaho.edu and at the College of Law website at www.law.uidaho.edu.

In my Presidential Message appearing in the August/September *Advocate*, I made a case that we should support the University of Idaho's efforts to improve legal education. It was my stated opinion that any of the options (including the phased two location approach) would best serve the mission and the goals of the Idaho State Bar. I also identified this as one of those once-in-a-lifetime opportunities that would enable the College, the Bar and the Idaho Judiciary to work together and leverage resources in order to achieve goals. For these reasons, I believe that as lawyers we have a duty to provide the leadership necessary to improve public legal education, including assisting the University of Idaho's vision to change delivery of public legal education.

RESOLUTION OF THE UNIVERSITY PLACE DISCIPLINARY MATTERS

In 2007, the Idaho State Bar reached a resolution with Roy Eiguren and L. Edward Miller regarding professional misconduct issues involving the related University Place litigation. Under the stipulated resolution, Mr. Eiguren admitted that he violated Rule 1.7 (Conflict of Interest) and 1.10 (Imputation of Disqualification). Miller admitted that he violated Rule 1.7. Under the stipulation, other alleged violations of the rules were dismissed. The background facts concerning Mr. Eiguren and Mr. Miller's misconduct and the stipulated resolution were outlined in a Public Censure which appeared in the October 2007 *Advocate*. It is my opinion that these disciplinary matters have resulted in attorneys having a higher sense of awareness and appreciation concerning conflict issues in the practice of law in the State of Idaho.

BOARD OF COMMISSIONERS 2007 FALL RETREAT: AN IN-DEPTH DISCUSSION ON THE ROLE OF THE IDAHO STATE BAR

This fall, the Idaho State Bar Board of Commissioners held a "retreat" in order to focus on long-term planning for the Idaho State Bar and to discuss generally the role of the Idaho State Bar as we move into the 21st century. Discussion items included a review of the state bar's mission statement, goals and objectives, the role and effectiveness of Bar Sections, the status of the Idaho State Bar's relationship with the University of Idaho College of Law, issues relating to judicial independence and selection and the effectiveness of resolution and annual meetings. One of the items discussed included an in-depth discussion about the function and state of local District Bar Associations and how the Board could create a better working relationship with the district bars and its members. During the RoadShow, we continued this discussion with the district bar officers and other leaders, brainstorming ideas on how the Board and the Districts might work more effectively together. The Board agreed to schedule this type of "retreat" on

an annual basis in order to keep focus on long-term issues affecting the Idaho State Bar.

PLANTING THE SEED FOR GROUP HEALTH CARE INSURANCE COVERAGE FOR ATTORNEYS

During the RoadShow Commissioner Terry White presented a status report on the development of group health insurance for lawyers. This involves the formation of what is called a "MEWA." This basically means that there will be trustees of the plan with the goal of providing affordable and quality health care insurance for members of the Idaho State Bar. The goal is to implement the plan in 2008. Terry has been instrumental in facilitating the formation of this plan and he will be giving you a status report in the next few months.

RESOLUTION 07-1 PASSES

In September 9, 2005, the Idaho Bar Commission Rules Committee was appointed by the Board of Commissioners to review and revise, if necessary, the procedural rules for attorney discipline matters. This Committee was comprised of Karen Gowland, Justice Linda Copple Trout, Robert D. Lewis, Ron Stephenson, Brad Andrews and Julia Crossland. This Committee met sixteen times from May of 2006 to August of 2007 for approximately four to five hours each meeting which resulted in a number of proposed changes to Section V of the Idaho Bar Commission Rules relating to rules for review of profes-

sional conduct. In 2007 the Bar passed Resolution 07-1 which recommends the Idaho Supreme Court accept the Committee's proposed amendments to Section V.

If adopted by the Supreme Court I believe that the amendments will greatly enhance Bar Counsel's effectiveness in dealing with attorney disciplinary issues.

CONTINUED CHANGES IN THE LEGAL PROFESSION LANDSCAPE

As the state of Idaho continues to change, so does the legal profession in Idaho. In 2007, the Idaho State Bar released a survey which revealed some significant changes regarding the landscape of the legal profession since the 1990s. There is more diversity in terms of women and racial/ethnic membership. The Diversity Section was formed in 2007, as the 19th section of the ISB. Fifty percent of the lawyers are now from the 4th judicial district (compared to 43% in 1994). Attorneys who are in the 50-plus category showed the largest increase. Since 1999, the number of attorneys practicing in ADR, intellectual property, Elder Law and international law has increased. The number of out-of state admitted attorneys has increased and reciprocal membership now represents 10% of Idaho State Bar membership. The number of new attorneys admitted to practice law in this state also continues to grow. In 2007, we admitted 240 new attorneys to the Bar.

The Bench has also experienced changes in 2007. Justice Warren Jones and Justice Joel Horton were appointed to the Idaho Supreme Court to fill in the vacancies created by Justice Gerald Schroeder and Justice Copple-Trout. In November, Chief United States District Judge B. Lynn Winmill announced the appointments of Boise attorney Candy W. Dale and Pocatello state District Judge Ronald E. Bush to fill the vacancies created by the retirements of United States Magistrate Judges Mikel H. Williams and Larry M. Boyle in 2008. In 2007 Judge N. Randy Smith was appointed to the 9th Circuit Court of Appeals.

Andrew E. Hawes, is an in-house attorney for Western Pacific Timber, LLC and Yellowstone Club World, LLC. He is serving a six-month term as President of the Idaho State Bar Board of Commissioners. He was elected as Commissioner to represent the Fourth Judicial District in 2005. He grew up in Boise, and is a graduate of Boise High School and the University of Denver. He obtained his law degree from the University of Idaho College of Law. He and his wife Gretchen live in Boise and have two daughters, Audrey and Greta.

COMING EVENTS 1/1/2008 - 2/29/2008

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)

JANUARY

- 1 New Year's Day, Law Center Closed**
- 2 *The Advocate* Deadline
- 9 Public Information Committee Meeting
- 16 *The Advocate* Editorial Advisory Board Committee Meeting
- 18 Idaho State Bar Board of Commissioners Meeting
- 21 Martin Luther King Jr. Day, Law Center Closed**
- 25 Idaho Law Foundation Board of Directors Meeting

FEBRUARY

- 1 *The Advocate* Deadline
- 1 Idaho State Bar Licensing Deadline
- 18 Presidents Day, Law Center Closed**
- 20 *The Advocate* Editorial Advisory Board Committee Meeting
- 25 – 27 Idaho State Bar Exam, Boise
- 29 Idaho State Bar Board of Commissioners Meeting

NEWS BRIEFS

4th District Magistrate Judge—Daniel L. Steckel, Boise has been appointed as a magistrate judge in for the Fourth Judicial District in Ada County. He will begin his new commission in January 2008. At that time he will handle Ada County misdemeanor criminal calendars and juvenile calendars.

Dan has worked at the Idaho Attorney General's office since 1991, with the exception of 1999 when he worked for Micron as an Employee Relations Specialist. While at the Attorney General's office he worked in the Department of Water Resources, Human Rights Commission, and Division of Human Resources. Currently, he works in the Contracts and Administrative Division where he provides representation to the state Division of Human Resources, the Idaho Human Rights Commission, and other various commissions and boards.

Dan has a B.A. in Psychology from the University of Wisconsin, Madison, and a J.D. from the University of Colorado School of Law. He is a past member and chair of the Bar's Editorial Advisory Board (1994-1999), has been a Bar Fee Arbitration panelist since 1994, served as Chair of the Bar's Conditional Admissions Committee since 1998, and has been a member of Character and Fitness since 2003. Since 2006, he has served as President of the Board, Land Trust of the Treasure Valley.

Dan, and his wife Amy, have two daughters and make their home in Boise.

Preliminary Draft of Proposed Amendments to the Federal Rules of Practice and Procedure. The Judicial Conference's Advisory Committees on Appellate Rules, Bankruptcy Rules, Civil Rules, and Criminal Rules have published proposed amendments to various rules and forms and seek public comment on the proposed changes. The Judicial

Conference Committee on Rules of Practice and Procedure (Standing Committee) **has not approved these proposals** but submits them for public comment. The proposal has not been presented to the Judicial Conference or the Supreme Court. The full text of the proposed rules amendments and explanatory Committee Notes is set out in the Request for Comment pamphlet, which is posted at www.uscourts.gov/rules and available in hard copy on request to the Secretary to the Standing Committee. The rules committees welcome all comments, whether favorable or adverse.

In accordance with established procedures all comments submitted on the proposed amendments are available for public inspection. The text of the proposed rule amendments and the accompanying Committee Notes can be found at the United States Federal Courts' Web site at www.uscourts.gov/rules.

Comments sent electronically or in hard copy must be received by the Secretary to the Standing Committee no later than February 15, 2008. Comments may be sent electronically to Rules_Comments@ao.uscourts.gov or by mail to John K. Rabiej, Chief, Rules Committee Support Office. You can also contact his office for further information, copies of this brochure, the Request for Comment pamphlets, and other materials, contact: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, Washington, D.C. 20544, (202) 502-1820, Rules_Support@ao.uscourts.gov. Under the proposed schedule, any approved changes would take effect on December 1, 2009, unless altered by Congress.

DISCIPLINE

AMENDED NOTICE TO MICHAEL L. SCHINDELE OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to *Idaho Bar Commission Rule* 614(a), the Idaho State Bar hereby gives notice to Michael L. Schindele that a Client Assistance Fund claim has been filed against him by former client Dynamic Strategies, Inc. in the amount of \$44,567.98. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

SAVE THE DATE
Addressing Energy, Growth and Development
in Idaho and the West

Sponsored by the Environment and Natural
Resources Section of the Idaho State Bar

Thursday, January 30, 2008
Crystal Ballroom, Boise
9:00 a.m. - 1:00 p.m.



EXECUTIVE DIRECTOR'S REPORT

Diane K. Minnich

2007 RESOLUTION — THE RESULTS



The report on the 2007 resolution process is brief; there was one resolution and it passed. Resolution 07-01 was approved by the membership with 94% in favor of the resolution.

The voting and attendance results are reported below. The resolution, *Amendments to Section V of the Idaho Bar Commission Rules, Rules for Review of Professional Conduct*, requests that the Idaho State Bar recommend to the Idaho Supreme Court changes to Section V of the Idaho Bar Commission Rules. The proposed rules have been submitted to the Idaho Supreme Court for its consideration.

If the Supreme Court approves the rules, notice, including the effective date, will be in *The Advocate* and on the ISB website.

On behalf of the Commissioners and staff, I extend our thanks to those members that attended the resolution meeting in your district. A couple of the districts had an excellent turnout. Although there was only one resolution, the meetings included the opportunity to honor colleagues for their service to the bar, the profession and the public, as well as obtain valuable updates. UI College of Law Dean Burnett reported on recent decisions regarding the future direction of the College of Law and ISB President-Elect Terry White reported on the progress of establishing a group health plan for Idaho

lawyers, their employees, spouses and dependents.

Information about the strategic planning efforts of the UI College of Law is highlighted in President Hawes' column on page seven, and is available on the law school's website: <http://www.uidaho.edu/law/>.

More information about the status of the group health plan for Idaho lawyers will be available in the next few months. Watch *The Advocate* and the ISB website for updates.

IDAHO STATE BAR — 2007 RESOLUTION RESULTS

DISTRICT	1st	2nd	3rd	4th	5th	6th	7th	OAS*	Totals	Percent Voting for or Against Resolution
Members eligible to vote	408	214	223	1,765	299	196	339	758	4,202	
Percent of Total Membership	10%	5%	5%	42%	7%	5%	8%	18%	100%	
Members Voting	50	57	31	247	54	77	59	2	577	
Percent of Members Voting	12%	27%	14%	14%	18%	39%	17%	0%	14%	
Number in Attendance at Meeting	25	41	22	125	24	70	45	0	352	
Percent in Attendance	6%	19%	10%	7%	8%	36%	13%	0%	8%	
IBCR Section V Voting For	49	51	29	227	54	71	59	2	542	94%
IBCR Section V Voting Against	1	6	2	20	0	6	0	0	35	6%
IBCR Section V Total	50	57	31	247	54	77	59	2	577	

*Out of state active.

BUSINESS AND CORPORATE LAW SECTION—MESSAGE FROM THE CHAIR

Nicole C. Snyder
Holland & Hart LLP

Happy New Year! The Business and Corporate Law Section welcomes you to the first 2008 issue of *The Advocate*.

We are grateful to the talented members of our section who have contributed articles to our issue this year. The articles are as diverse as the expertise of the business attorneys in our section. They provide a wealth of information and practical instruction.

Our issue starts with an update on three important areas of law. First, John Simmons writes about deferred compensation and recent IRS developments since the enactment of IRS Code Section 409A. He gives instruction for identifying different types of deferred compensation, as well as steps to comply with Section 409A. Second, Emile Loza provides a roadmap for identifying legal issues on websites, which is an issue relevant to almost all our clients and organizations. Third, Hilary Bradbury provides a guide for analyzing and drafting indemnification provisions. She also reviews Idaho case law regarding the force and limitations of these important provisions.

Clear communication is the center of Russell Case's article. It reminds all of us of the importance of clear communication with our own clients and our profession's need to avoid "lawyer-speak."

The final article will appeal to attorneys who have ever contemplated—even briefly—a legal career far beyond the borders of our state. Everett Wohlers, has taken his experience as an Idaho business attorney and launched a new career as an international development consultant. His article is a colorful description of his work, and it also provides a guide for anyone interested in following in his footsteps.

Our Governing Council invites you to become involved in the Business and Corporate Law Section this year. Following is a list of activities that might interest you:

- Contributing to our new Business and Corporate Law Section form bank;
- Interacting with members of our section on the discussion forum of our website at www.idahobizlaw.com;
- Helping plan or speak at our May 2008 CLE; serving on our legislative subcommittee; or
- Attending our Governing Council meetings at noon on the second Wednesday of each month at the Idaho State Bar.

If you are interested in joining our section or getting involved in our activities, please contact me at (208) 342-5000. We hope you enjoy this issue, and we wish you all the good fortune 2008 has to offer.

ABOUT THE SECTION CHAIR

Nicole C. Snyder is the Chair of the Business and Corporate Law Section. She is an attorney at Holland & Hart LLP. Her practice focuses on business and corporate law, mergers and acquisitions, and employment law. She received her B.A. from the University of San Diego, and her J.D. from the University of Michigan Law School.

BUSINESS AND CORPORATE LAW SECTION OFFICERS

Chairperson

Nicole C. Snyder
Holland & Hart, LLP
(208) 342-5000
ncsnyder@hollandhart.com

Secretary

David S. Jensen
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
(208) 385-5486
dvj@moffatt.com

Treasurer

Molly O'Leary
Richardson & O'Leary, PLLC
(208) 938-7900
molly@richardsonandoleary.com

Past Chairperson

Stephen C. Hardesty
Hawley Troxell Ennis & Hawley, LLP
(208) 344-6000
sch@hteh.com

Webmaster

Herbert B. Williams
Avoture Business & Property Law, PLLC
(208) 344-0613
brent.williams@avoture.com

ISSUE-SPOTTING FOR WEB SITES

Emile Loza
Technology Law Group

Web sites are an essential part of the operational and marketing activities of virtually every business or organization.¹ These Web sites present an abundance of legal issues for consideration by business attorneys and their clients. Some, such as the issues raised by linking policies, are wholly unique to the Internet. Other issues are more traditional in nature, but emerge in new and thought-provoking ways in application to Web sites. This article presents an overview of some of the legal issues associated with Web sites and hopefully serves as a useful guide to Idaho business attorneys and their clients.

OWNERSHIP AND CONTROL

Internet domain names may be viewed as contractual rights and, more commonly, as a form of intellectual property, that is, an intangible property right belonging exclusively to the owner of that right. One establishes the property right by registration with a domain name registrar, such as NSI (formerly Network Solutions, Inc.), or by purchasing the domain name from an intermediary or auction sites, such as SnapNames.com. As strange as it may seem in dealing with a property right, the ownership and control of Web sites are common problems faced by many businesses.

For example, individuals may purchase an existing business, believing that the domain name by which that business is promoted online was part of the acquired business. They may later discover that title to the domain name, *i.e.*, the registration, did not rest with the seller, but rather with the business's former Web site developer, who decides to try to usurp the value of the business for his own aims or to leverage his control of the essential domain name to extract exorbitant Web hosting or other fees from the new owners.

Other businesses may hire a marketing or Web development company to acquire one or more domains and to build a Web site for it. Conflicts arise over payment, quality, or other issues, and the business now finds itself having invested thousands of dollars into an e-commerce site tied to a crucial domain name owned and controlled by its vendor.

Just as issues arise as to domain name ownership, there can be issues as to the ownership of the source code that makes up the Web site. Many smaller businesses may contract out for the development of their Web sites and may rely upon oral contracts or contracts comprised of oral and electronic mail exchanges. These informal agreements leave much to be desired and are rife with ambiguity. Businesses may assume that they own the Web site's source code when indeed that title remains with the Web developer. This ownership issue can create problems where the ongoing maintenance of the Web site remains tied to the Web developer, perhaps at an inappropriate price for the client business. Even where formal Web development contracts are executed between the parties, these may be drafted to the Web developer's advantage, and ownership rights may not transfer under those agreements.

Many Web site developers now use Open Source tools for their development activities. There are many different Open Source license agreements governing what can be done with the Web sites and other products that result from the use of various Open Source components. These agreements may permit some ownership rights to be transferred to the business purchasing the Web site development services. More frequently, however, these agreements prohibit or severely restrict the transfer of ownership rights. This means that a business may pay a Web developer to create a certain look-and-feel or special navigational aids for the Web site, but may not have any ownership rights therein. In such an instance, the client business may have no ability to legally prohibit the Web developer's use of that customization for subsequent clients.

INTELLECTUAL PROPERTY LIABILITY

Business owners may select corporate names and purchase domain names for their businesses without considering the effect that selection may have on their risk profiles. For example, the selection of a corporate or domain name may infringe upon existing trademark rights. If it does not infringe an existing mark outright, the company may still face liability on the basis of claims that the domain name dilutes the value of a famous trademark.

Copyright infringement is another concern principally involving the content of a Web site. Here, there are issues as to whether the textual content of the site was copied from another source. The right to use images and other graphical or visual content on the Web pages may be acquired through Web sites like BigStockImages.com. Because the license agreements that govern those purchases are generally very one-sided to favor the purveyor of that content, one must exercise care to understand and retain a record of the agreement and to ensure that the content is being used in accordance with the terms of the agreement. For example, the inbound license agreement may permit the use of the purchased images online, but not in printed collateral marketing materials.

TERMS OF USE

Many businesses fail to set forth on their Web sites the terms of use that govern Web visitors' use of those sites. Others may incorporate some terms of use in the text of some Web pages, but may not set forth a single contract encompassing all use of the site. Still others may have terms of use that deal with more traditional aspects of a brick-and-mortar business, such as return policies, but may not consider the intellectual property and related aspects of the business' online presence. As an example, the Web site may set forth an invitation to call a contact person to license the business' trademarks. However, such vague language can give rise to the position that a mere phone call to the named individual is sufficient for the caller to obtain a royalty-free, inbound license to the logos contained in, and often easily copied from, the Web site.

Linking policies are another contractual control that businesses often fail to include in their Web sites. These policies set

forth the terms under which other Web sites can link to the business' Web site. Absent these policies, linking may occur that associates the business with Web sites offering questionable health remedies and other products or services not to the business' liking.

PRIVACY MATTERS

Web sites may collect information about visitors, whether through an online registration or order form or through the secret capture of the visitor's Internet protocol, or IP, address. Businesses often fail to put consumers on notice of this data gathering or the uses to which the data will be put. This opens the door for disclosures of consumer information that can lead to unsolicited email complaints and even identity theft. Further, in situations where a Web site may attract youthful visitors, federal law requires parental consent and other important measures to protect children and their privacy.²

ADVERTISING CLAIMS

Just as in the real world, consumer protection laws govern claims made in advertising, testimonials, comparisons with competitive products, and other statements. The Internet places this activity in a global arena, therefore, international, federal, foreign domestic, and a variety of state laws may apply. Businesses and their attorneys must carefully weigh the costs and the benefits in the form of risk avoidance presented by the potentially applicable patchwork of laws. Fortunately, federal and state consumer protection laws in the United States are harmonized to a significant degree. However, this harmonization is not complete.

CONCLUSION

Every business attorney has clients with Web sites. By spotting and understanding the legal considerations associated with Web sites, Idaho business attorneys can better counsel their clients.

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ABOUT THE AUTHOR

Emile Loza is Founder and Managing Attorney of Technology Law Group, LLC, an Internet, intellectual property, and international law practice in Boise. She is immediate past chair of the Intellectual Property Law Section of the Idaho State Bar and past chair of the Licensing Executives Society's Internet and eCommerce Committee. Formerly, she served as a federal investigator in Washington, D.C. for the Federal Trade Commission on Internet fraud and deception matters. She holds a law degree from The George Washington University Law School, a masters of business administration, and a bachelor's degree in science and technology. She can be contacted at (208) 939-4472 or eloza@technologylawgroup.com.

ENDNOTES

¹ Although numerical precision is a challenge, a respected resource found 142,805,398 sites on the World Wide Web in October 2007, up by more than 36 million from the beginning of that year. Netcraft, *October 2007 Web Server Survey*, <http://news.netcraft.com/archives/web_server_survey.html> (visited Nov. 7, 2007); Netcraft, *New York Internet and ThePlanet Most Reliable Hosting Companies in December 2006*, <<http://news.netcraft.com/archives/2007/01/index.html>> (visited Nov. 7, 2007).

² See generally Federal Trade Commission, *Implementing the Children's Online Privacy Protection Act: A Report to Congress* (Feb. 2007).

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BEYOND BOILERPLATE: DRAFTING AND UNDERSTANDING INDEMNIFICATION CLAUSES

Hilary Bradbury
Holland & Hart LLP

Indemnification provisions are applicable to a wide variety of transactions—including consulting agreements, mergers and acquisitions, real estate contracts, product sales agreements, construction agreements, and shareholder or operating agreements—and should be considered when drafting any agreement. These provisions allocate the risk of loss between the parties to the agreement and define your client's exposure to claims and losses if the transaction goes awry. Given the potentially significant impact on your client, these provisions should be carefully drafted. While there are as many ways to draft an indemnification provision as there are lawyers to draft them, in drafting and negotiating *any* form of indemnity, the following issues should be considered.

INDEMNIFY, DEFEND, AND HOLD HARMLESS?

Most indemnification provisions start with some variant of the following language: "Party A shall indemnify, defend, and hold Party B harmless from...". Indemnify, defend, and hold harmless present three distinct and entirely different duties. Depending on the transaction, you may not need or want to include each of these concepts. An "indemnity" addresses only the indemnifying party's (the "Indemnitor") obligation to reimburse the indemnified party (the "Indemnitee") for any losses sustained by the Indemnitee due to the wrongful conduct of the Indemnitor.¹ It should be noted that indemnification provisions are intended to protect the Indemnitee from claims by a *third party* due to the acts of the Indemnitor.² An action by one party to the contract against the other for breach of that contract or other wrongful conduct in the course of the transaction gives the aggrieved party a direct action in contract and/or tort for damages, not a suit under the indemnification clause of the agreement.

If the Indemnitor agrees to "defend" the Indemnitee, the Indemnitor is agreeing to assume the defense of the Indemnitee in the event Indemnitee is sued for the Indemnitor's wrongdoing. Without including "defend", the presumption is that the Indemnitee will launch its own defense and look to the Indemnitor to cover its losses upon resolution of the dispute, with the Indemnitor having no role in the defense of the suit. While agreeing to defend gives the Indemnitor more control over the course and resolution of the litigation, be aware that it also creates an obligation on the part of the Indemnitor to defend the Indemnitee. As an alternative, if the Indemnitor shies away from an express obligation to defend, but nonetheless wants to retain some say in the proceedings, the agreement can provide for a joint defense.

Whether an agreement should include the additional obligation to defend or the option for a joint defense depends on the relative size and sophistication of the parties to the transaction, the Indemnitor's ability to defend potential suits, and the extent of the Indemnitor's potential exposure (for example, the greater the

potential damages, the greater the likelihood that the Indemnitor will want to be involved in the litigation). In the event that the Indemnitor agrees to defend the Indemnitee or pursue a joint defense, the agreement should clearly designate which party shall select or have the right to approve counsel, whether each party has the right to its own counsel, and which party will control the litigation. The agreement should also include a duty on the part of both parties to reasonably cooperate in the litigation (especially if a joint defense is contemplated).

The agreement to "hold Party B harmless" is akin to a release. The Indemnitor agrees not to hold the Indemnitee liable for, or off-set any losses caused by any wrongful actions on the part of the Indemnitee. In effect, by including the "hold harmless" language, the Indemnitor is agreeing to indemnify the Indemnitee for the *Indemnitee's* negligence.³ Without this express extension, an indemnification provision will not be construed to create a duty on the part of the Indemnitor to reimburse the Indemnitee for any losses incurred by the Indemnitee's negligence.⁴

It may be that one, none, or any combination of the promises to indemnify, defend and hold harmless is appropriate in a given transaction. It is important to understand the distinction between these concepts in order to avoid, for example, unintentionally releasing an Indemnitee from (or reimbursing an Indemnitee for) its part in the wrongdoing giving rise to the indemnification obligation, or obligating your client to provide a defense for the Indemnitee when it has neither the will nor the means to do so.

SCOPE OF INDEMNIFICATION

The appropriate scope of the indemnification clause will depend on the type of transaction or provision under which it comes into play. In any case, particular attention should be paid to the appropriate parties obligated under or covered by the indemnification clause, the type of activities giving rise to the indemnification obligation, the types of losses to be covered by the Indemnitor, and the applicable legal backdrop governing the transaction. When drafting and negotiating these provisions, keep in mind that in Idaho, the Indemnitor is "entitled to have his undertaking strictly construed, particularly in those cases in which the agreement was prepared by the [I]ndemnitee."⁵

Generally, where the Indemnitor is an entity, only the entity should be agreeing to indemnify the Indemnitee. The officers, directors, members, shareholders, etc. of the indemnifying entity should not be additionally on the hook to indemnify or defend the Indemnitee *unless* they are either parties to the contract or (in the context of an acquisition or a merger) those parties are jointly or severally making representations and warranties to the Indemnitee. On the other hand, the indemnity obligation *should* extend to the officers, directors, employees, agents, or personal representatives of the Indemnitee if their liability derives from their relationship to the Indemnitee. The parties to be indemni-

fied should be expressly set forth in the contract; if they are not, it is highly unlikely (given the principle of strict construction set forth above) that a court would extend the Indemnitor's obligation to indemnify additional third parties not otherwise named as beneficiaries of the agreement.⁶

The description of the type of activities for which the Indemnitor will be liable should be tailored to the type of claims that would logically arise from the parties' conduct under the contract. For example, in an asset sale, the indemnification provision should cover breaches of any representations and warranties, while in a construction contract, it should include claims due to personal injury or destruction of property, including an agreement to indemnify a party for any claims for personal injury. Because these provisions are strictly construed in favor of the Indemnitor, drafting these provisions too broadly could, in the event of a dispute, cause the court charged with interpreting the contract to significantly narrow the scope of the provision. This could result in the unintended effect of excluding claims you or your client expected the indemnification provision to cover.

In addition to circumscribing the type of claims for which the Indemnitor will be liable, the Indemnitor should also consider limiting the type of conduct on the part of the Indemnitor that will trigger liability. Particularly in situations where the potential damages could be astronomical or unquantifiable, an Indemnitor may try to limit its indemnification obligation to claims arising from the Indemnitor's gross negligence or willful, intentional, or reckless conduct, as opposed to simple negligence.

One of the most effective ways for an Indemnitor to limit its liability under an indemnification provision is through careful delineation of the types and amount of losses the Indemnitor is obligated to cover. In addition to the damages allegedly sustained by the third party, the agreement should address whether the Indemnitee's litigation costs, attorneys' fees, or other witness, professional, or consulting costs will be covered by the Indemnitor. Also, in order to limit its potential exposure, the Indemnitor will often seek to carve out any liability for incidental, indirect, special, consequential, punitive or exemplary damages, or lost profits⁷ claimed by the third party. Especially in the context of mergers and acquisitions, the Indemnitor will usually seek to include a cap—and/or a basket [a maximum dollar amount on the Indemnitor's liability for losses] a threshold amount at which the Indemnitor's obligation kicks in, respectively. With respect to monetary limits on liability, in order to fully examine the extent of the Indemnitor's exposure, the application and extent of the parties' respective insurance policies should be reviewed and considered when negotiating the scope of the indemnification.

On occasion, the body of law governing the transaction or contract will disallow indemnification terms. For example, in Idaho, any indemnification provision purporting to indemnify a promisee to an agreement relating to "the construction, alteration, repair or maintenance of a building, structure, highway, appurtenance and appliance, including moving, demolition and excavating connected therewith" against claims for personal injury or property damage resulting from the sole negligence of the promisee is void as against public policy (meaning, you can't

hold the promisee harmless from damages due to its own act of negligence).⁸ To avoid completely invalidating an otherwise well-thought-out indemnification clause, indemnity clause drafters should always refer to the applicable body of law—statutory, regulatory, and case law—in the jurisdiction in which the contract will be construed to determine any limitations on indemnification provisions.

PROCEDURE FOR CLAIMS

Because an indemnification clause protects against claims made by third parties against the Indemnitee, a good indemnification clause should include a specific procedure for handling potential claims. A well-drafted procedure provision addresses both the manner of notice that must be provided to the Indemnitor and the procedure for handling such claims once proper notice is given. Defining a clear procedure enables the parties to the contract to resolve claims made under the indemnification clause without added conflict or expense.

When representing an Indemnitor, a good notice provision should make proper notice an absolute prerequisite to the Indemnitor's obligation. Notice of a third-party claim is not only a practical necessity (clearly, an Indemnitor should know about the claim if it's obligated to indemnify), but is also another way for the Indemnitor to limit the duration of its exposure to potential third-party claims. An Indemnitor can use such a provision to limit its obligation by including set time periods within which a claim must be made or within which the Indemnitor must be notified of a covered claim asserted against the Indemnitee. The notice provision can also provide the Indemnitor with a specific time period to allow the Indemnitor to cure before its indemnification obligation is triggered, limiting the Indemnitor's exposure to claims at the outset.

CONCLUSION

This article does not present an exhaustive list of potential issues when drafting indemnification clauses, but is intended to identify the basic issues common to the vast majority of indemnification provisions and highlight points for special consideration. Drafting and negotiating an effective indemnification clause can be a complex and detailed process, and there is no single clause that will fit every transaction (or even most of them). In crafting an indemnification that adequately protects your client's interests, you must analyze every word in the context of the transaction and understand the potential impact on your client.

ABOUT THE AUTHOR

Hilary Bradbury is an associate in the Real Estate and Business Entities & Transactions practice groups at Holland & Hart LLP. Before joining Holland & Hart Ms. Bradbury served as a judicial clerk for the Honorable Michael McLaughlin in Idaho's Fourth Judicial District.

ENDNOTES

¹ *Black's Law Dictionary* 772 (7th ed. 1999).

² See *Chenery v. Agri-Lines Corp.*, 115 Idaho 281, 284, 766 P.2d 751, 754 (1988) (stating that the *prima facie* elements of indemnity are an indemnity relationship, actual liability of an indemnitee to a third party, and a reasonable settlement amount).

³ *Bonner County v. Panhandle Rodeo Ass'n, Inc.*, 101 Idaho 772, 620 P.2d 1102, 1105 (Ct. App. 1980) (including "hold harmless"

language is “indicative of a specific intent to encompass indemnification for the indemnitee’s negligence”).

⁴ *Id.*; see also *United States v. Seckinger*, 397 U.S. 203, 212 (1970).

⁵ *R.W. Beck and Assoc., Inc. v. Job Line Constr., Inc.*, 122 Idaho 92, 96, 831 P.2d 560, 564 (1992).

⁶ *Id.*

⁷ In some contexts, lost profits may be considered a measure of a plaintiff’s direct damages (as opposed to consequential damages); therefore, if an Indemnitor seeks to disclaim any liability for lost profits, this should be specifically set forth in the indemnification provision.

⁸ IDAHO CODE § 29-114.



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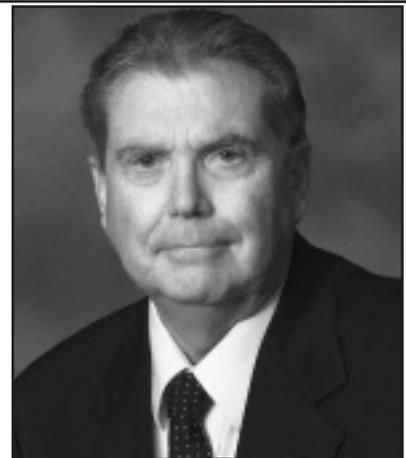
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UPDATE ON INTERNAL REVENUE CODE SECTION 409A

John Simmons

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When are earnings subject to income tax? For most of us, it's simple: in the year we earned it. Company executives and other employees, however, often try to postpone the income tax on part of their compensation to a later year. Maybe tax rates will be lower. Maybe the worker will be in lower brackets then. Maybe just the time value of money is the reason.

Whatever the motive, having control over the timing of payment creates the opportunity for manipulation, and untimely impacts on the company's cash flow. That happened with Enron in 2001. When the executives raided the cash reserves for their deferred compensation arrangements, Enron stock plummeted further. Congress reacted—or perhaps overreacted—by adding section 409A to the Internal Revenue Code as part of the American Jobs Creation Act of 2004. If the requirements of Code § 409A are not followed, income taxes apply with interest from an earlier year when the employee's rights to eventual payment become vested (i.e., he or she no longer faces any substantial risk of forfeiting those amounts). Worse, a 20% extra tax also applies.

To avoid these Code § 409A taxes, all compensation arrangements should be reviewed, deferred compensation situations identified, and steps taken to bring them into compliance to the extent possible. A business, and its attorneys, should take such an inventory of compensation arrangements in October and November each year, to take advantage of transition relief in effect until 2009 and the new, ongoing voluntary correction program recently set forth in IRS Notice 2007-100.

Timing is critical. Certain corrective steps must be taken before the year that payment is already scheduled to be made. Some problems may only be corrected in the year the violation occurs, while others can be corrected as late as December 31, 2008.

THE FAR REACH OF CODE §409A

Deferred compensation is quite common. Compensation is deferred for Code § 409A purposes whenever it is earned in one year but it is possible under the arrangement that it will not be paid until after March 15 of the next year. For example, compensation that is earned in 2009 but might not be payable until after March 15, 2010 is deferred compensation subject to Code § 409A. This is so even if it actually is paid on or before March 15, 2010. It is the possibility of later payment that makes it problematic under Code § 409A.

If the plan document specifies payment is to be made by a date that is no later than that March 15, then there is no violation of Code § 409A provided payment is actually made by the end of the year of that March 15. If no plan document specifies payment by that March 15, then Code § 409A is violated unless the worker can prove constructive receipt as of March 15. That means the worker would need to prove, in the absence of specification in a plan document, that he or she had the legal right to cause the employer to make payment no later than March 15. That could be a difficult proof problem.

Every form of pay or perk for workers should be considered in deciding whether steps need to be taken to comply with Code § 409A. How far does this concept go? Consider the choice school teachers might be given by a district to be paid over 9 or 12 months for working a 9-month school year. Part of what would be earned in September-December of one calendar year would not be paid until the summer months of the next calendar year. For school years beginning after 2007, the IRS is requiring these school teachers make an *irrevocable* written election before the school year begins to avoid Code § 409A taxation.

Examples of other possible arrangements where application of Code § 409A might not seem obvious include:

- Bonuses, commissions and performance pay as to which it is possible that payment might not be made with 2½ months after the end of the year in which earned
- 457f plans of governmental and non-profit employer
- Nonstatutory stock options, phantom stock, stock appreciation rights, dividend equivalence, and restrictions on stock sales
- Change-in-control payments, parachute payments and noncompete clauses
- Severance pay, post-employment liability indemnification and insurance, structured settlements of disputes with a former worker, and most anything of value to be provided after employment ends (other than certain tax-free benefits)
- Certain split-dollar arrangements
- Foreign compensation

Every employment contract and every memo to employees about bonuses or extra pay should be reviewed to determine if it provides for compensation deferral, and thus what steps might need to be taken.

The final regulations categorize different types of deferred compensation plans. Account balance plans, non-account balance plans, perks-and-use plans (like membership fees and use of vehicles and airplanes), severance pay plans, split-dollar life insurance plans, foreign deferred compensation plans, stock right plans and as a final category, all other plans. The significance of these categories is that if a worker benefits under two or more plans of the same category and a Code § 409A violation occurs as to one, the Code § 409A taxes apply to all that worker's benefits in that category of plans.

If violation of Code § 409A results from a worker's exercise of a right under the plan, the plan may yet be considered to be operated in good faith compliance with respect to other participants of that same plan.

Fortunately Code § 409A does not apply to qualified retirement plans such as 401k, 403b annuity, 415m (government excess), and 457b plans, nor to SEPs and SIMPLEs. Also excluded are *bona fide* vacation leave, sick leave, comp time, disabili-

ty pay and death benefit plans. But what is a *bona fide* plan? Suppose a worker earns paid time off in one year, but has the option in that or any later year to cash out unused hours. Is the cash-out option a feature of a *bona fide* vacation or sick leave plan? The IRS regs do not define this terminology and so the safer course is to restrict those pre-termination cash-outs just to four hardship scenarios identified in the IRS regs for hardship payouts.

How far back in time does Code § 409A go? Generally, Code § 409A applies to compensation earned on or since January 1, 2005 and was deferred. But Code § 409A will also apply to amounts earned before but not paid as of January 1, 2005 if the arrangement has been or is materially modified after October 3, 2004. Amendments to a plan that existed before 2005 should therefore only be made if it is understood that the grandfathering exception might be lost and the Code § 409A taxes ('early' income tax, 20% additional tax, and interest) triggered by that amendment. For this reason, the ramifications of any document affecting deferred compensation should be carefully vetted against Code § 409A and the regulator guidance in advance of signing.

WHAT CODE §409A REQUIRES AND WHEN

To avoid Code § 409A taxation, the future dates of payment must be irrevocably specified or keyed to certain permitted events before the year begins in which the compensation is earned. The employer (or other service recipient) must also adopt a written plan document that sets forth the material terms of the plan, such as the amount of deferred compensation or the method or formula for determining that amount. The plan document must also include rules about the time and form of payout.

Until regulations could be proposed and then finalized, the IRS sketched out some preliminary guidance in IRS Notice 2005-1, and provided transition relief for plans operated per a good faith, reasonable interpretation of that guidance and Code § 409A. This initially included making certain initial deferral elections by March 15, 2005 for deferrals of compensation earned in 2005, or opting out of such a plan by the end of 2005. The plan document requirement of Code § 409A was postponed until required by final regulations.

As the IRS has been preparing regulations, the interim transition relief has been further defined and expanded. Links to many of the IRS issuances may be found at <http://www.409A.net/>.

Later in 2005 the IRS proposed comprehensive Code § 409A regulations, which were modified and finalized on April 9, 2007. These 397 pages of final regulations call for conforming documents by December 31, 2007, followed immediately by full operational compliance beginning January 1, 2008. Practically speaking, most corporations could not make a reasonable assessment of the requirements and opportunities in those lengthy, new regulations and make all those decisions by the end of 2007.

In the face of pushback from the legal community nationwide, the IRS relented somewhat on the deadlines. By Notice 2007-78, the IRS extended the deadline for document compliance to the end of 2008. (This includes the requirement that plan documentation reflect those initial deferral elections that were

required by March 15, 2005, which the IRS may require be shown to comport with plan terms in effect on or before December 31, 2005.) Of course, from the time a plan document is so adopted the plan must be operated as outlined in plan document, to the extent consistent with the applicable regulations or guidance.

The December 31, 2007 deadline yet applied to all decisions as to setting the future dates of payment and to the operation of deferred compensation plans per the final regulations. Again, the IRS faced industry pushback; this time it included the ABA Tax Section.

Then the IRS issued Notice 2007-86 on October 22, 2007. It gives employers and their lawyers until the end of 2008 to make those payment timing decisions and bring their arrangements into full compliance with the final regulations. Thus, most deferred compensation arrangements may be operated throughout 2007 pursuant to (a) a good faith, reasonable interpretation of the Notice 2005-1 and other interim guidance, (b) the 2007 final regulations or (c) the 2005 proposed regulations. For 2008, operation may be per either (1) a good faith, reasonable interpretation of the Notice 2005-1 and other interim guidance, or (2) the 2007 final regulations, but not the 2005 proposed regulations. Then beginning on January 1, 2009, all plans must be operated per the 2007 final regulations.

Also, until further guidance is issued, deferred compensation plans between partners and partnerships may continue to operate in a reasonable, good faith interpretation of the 2005 proposed regulations.

MORE CODE §409A DETAILS

Generally the date for future payment must be initially set before the plan year in which the compensation is to be earned. The future payment may be a specified date or it may be keyed to separation from service, death, disability, occurrence of an unforeseeable emergency or change in control of the employer. For 'specified employees' of companies whose stock is traded publicly, payment by reason of separation from service must be delayed for 6 months following separation. For more on specified employees, see below.

Payment of deferred compensation contingent on any other event, such as when the worker's child begins college, violates Code § 409A and triggers those Code § 409A taxes.

Once the payment dates are so 'set in stone', the plan must generally not allow a worker (or other service provider) to accelerate payment or postpone it further. There are numerous exceptions. Briefly, the plan may not allow acceleration by more than 30 days after the payment dates are 'set in stone'. Also, the worker may however make subsequent deferral elections that (a) do not apply to any payment otherwise scheduled to be made in the next year, and (b) postpone the previously set payout date by at least five years.

In light of Notice 2007-86 extending the transition period, plans may nevertheless be amended and permit workers to elect during 2008 to change the payment dates for certain deferred amounts. An election may be made in 2008 to accelerate payment, but not into 2008 itself. For example, an election made in 2008 may accelerate a payment previously set for the year 2012

to be paid on any date in 2009-2011, but not to any date in 2008. If the plan is amended in 2008 to allow payout on the occurrence of an event (see two paragraphs below), then the amendment will need to specify that if such event occurs during the year the amendment is made payout will not take place until the next year. Otherwise, this will violate Code § 409A.

Also, a 2008 election may only defer a payment previously set to be made for a year after 2008. Thus, if the payment has previously been set to be made in 2008, it cannot now be deferred to a later year.

If payment of deferred compensation is linked to when the worker might withdraw benefits from a tax-qualified retirement plan, the nonqualified plan needs to be de-linked by amendment before 2009. Otherwise the worker will have too much discretion for Code § 409A compliance over the timing of the nonqualified deferred compensation, albeit indirectly through an election of when to withdraw benefits from the tax-qualified plan.

For deferred compensation plans linked to tax-qualified plan withdrawals as of October 3, 2004 and which have not yet been materially modified, it might be better to wait until the last minute to de-link them. If the worker takes a withdrawal from the tax-qualified plan before 2009, the linked payouts from such a deferred compensation plan will not violate Code § 409A. By postponing this conforming amendment to late December 2008, the linked feature is preserved until then without triggering Code § 409A taxes.

Performance-based compensation and bonuses, such as for reaching a certain level of sales in a year, are treated a bit differently under Code § 409A. If under the plan, it is possible payment will not be due until after March 15, after the end of that year on which the performance pay is based, the worker must make his or her irrevocable specification of the dates of payment anytime before the last six months of that year. For those who reasonably and in good faith thought they had a performance-based compensation plan set up before April 10, 2007, but it does not meet the definition in the 2007 final regulations, initial deferral elections for such pay for 2008 may be made by the deadline set in that plan. However, for such pay for 2009 and later years, the initial deferral election must be made at least 6 months before the end of the earnings year.

Supplemental executive retirement plans (SERPs) give executives deferred compensation beyond the maximum benefit accrual allowed in a tax-qualified plan. Under Code § 409A, the initial deferral election must be made no later than the year after the worker first accrues benefits under the SERP. But that is only if it is a pure excess plan. If the SERP is not pure, then the initial deferral election must be made before the year begins in which compensation deferral rights accrue.

Stock rights are subject to Code § 409A if the exercise price is other than the fair market value as defined in the regulations (FMV) of the underlying stock when the stock rights are granted. This is so whether in the form of stock options or stock appreciation rights. If the non-FMV stock rights are exercised in 2008, that will violate Code § 409A. If the stock right is reasonably expected to be exercisable in a later year, these non-FMV stock rights may be amended in 2008 to provide for fixed payment terms consistent with Code § 409A.

Alternatively, non-FMV stock rights may be replaced by December 31, 2008 with stock rights with an exercise price equal to the FMV of the stock as of the date the stock right was initially granted. For such exchanges, the employer may also reward the worker for the value of any lost discount, provided the reward is not cash or vested property payable in 2008. It could, for example, be stock shares of value equal to the lost discount payable after 2008.

Note, however, these transition relief options do not apply if (i) the rights are to stock in a public corporation (ii) the individual holding the rights is subject to section 16 of the Securities Exchange Act of 1934 and (iii) the stock rights were not properly reported.

Another problem with stock rights is valuation when stock of a non-public company is involved. There is guidance in the regulations, but no clear cut 'safe harbor' for placing a value on the stock for purposes of Code § 409A.

The IRS will not be issuing a model plan document. The reason cited, Code § 409A is too complicated. Plan documents need to specify clearly the dates of payment and/or the allowable events that will trigger payout and limit the discretion of both the worker and the employer to affect the timing. Plan documents may not have a 'savings clause' that would provide that the provisions of Code § 409A or the regulations win out over any conflicting provisions in the plan document. The IRS wants the applicable rules spelled out in each plan document, which can use definitions of key terminology from the regulations.

Publicly-traded companies must include in their plan documents rules for determining 'specified employees', those that meet a slightly modified definition of key employee under Code § 416(i) (the top-heavy rules applied to qualified retirement plans). This includes specifying the identification date for determining who is and is not a specified employee. Many publicly-traded companies are opting to impose the six-month delay rule on all employees for whom separation from service is deferred compensation payout trigger. In this way, they avoid the complications that go with identifying the 'specified employees'.

The IRS also will not have an advance determination letter program for deferred compensation plans or their documentation, but has recently delineated a voluntary correction program for problems that taxpayers discover on their own. See IRS Notice 2007-100.

Code § 409A and the regulations will require the employer to "information" report properly deferred amounts when and as they become vested. For tax year 2007, however, employers were not required to report amounts properly deferred under Code § 409A. IRS Notice 2007-89 (October 23, 2007). Employers were required to report and tax withhold regarding vested amounts to which the Code § 409A taxes apply in 2007. Withholding for 2007 was at the normal income tax rates; extra withholding by reason of the 20% additional tax or interest is not required in 2007.

CONCLUSION

Code § 409A tightens the rules on deferring the payment of compensation. It also imposes punitive taxes for failing to observe those rules. Those rules require by December 31, 2008

written plan documents and written elections specifying when future payment will be made. It is unlikely that the transition period will be extended further.

Employers should in 2008 conduct an extensive review of their compensation arrangements so that they may identify those that may defer compensation as contemplated by Code § 409A and take steps by the end of the year to document and perhaps correct them.

Then, around the beginning of October 2009, and each year after that, employers should again review their compensation arrangements and employee benefits in an effort to identify any possible Code § 409A violations occurring during that year and voluntarily correct them by the end of that year under IRS Notice 2007-100.

ABOUT THE AUTHOR

John Simmons practices ERISA, estate planning and business law in Idaho Falls, Idaho. His practice includes designing and drafting retirement, health and other employee benefit plans, as well as deferred compensation plans of the type addressed in this article. Mr. Simmons advises a wide range of clients regarding ERISA and tax compliance issues. He has been a member of the Idaho State Bar since 1984.

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ALTERNATIVE DISPUTE RESOLUTION

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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ADAPTIVE ANALOGIES: GETTING BEYOND LAWYER-SPEAK

Russell L. Case

Hawley Troxell Ennis & Hawley, LLP

Well into my legal career, I realized I was speaking a foreign language taught only to other lawyers. It was not just a foreign language, but an alien language; and, one that nobody from the “real world” would ever learn to translate.

When I started my legal career back east at a large law firm, I sat in my thirtieth floor window office as pedigreed attorneys wandered our corridors pontificating about Palsgraffian jurisprudence and spouting Latin phrases like *pes ipsus loquitur*. Alongside fellow graduates, I applied my learned education to real life facts, hoping, no certain, that I would later impart, like my mentors, delectable tidbits of legal wisdom to clients who would nod with appreciation and clarity of understanding, thankful that they now knew what to do.

I was a corporate and securities lawyer. At least, that’s what I deduced from my assignment to the firm’s corporate and securities group and their public identification of me as a member of the business entity and corporate governance team, the public and private offerings team, the mergers and acquisitions team and the softball team. My team memberships, license to practice law and parental willingness to introduce me as their lawyer son announced to the world that I could advise clients on the intricacies of raising capital, acquiring companies, getting rich, doing good and operating business in a legally compliant fashion.

I, of course, knew different. Sure, I could analyze complex securities and fiduciary duty law questions, conduct in-depth fifty state “blue sky” laws research, read and discern stated and predictive meanings of SEC “no action” letters and Delaware Supreme Court “business judgment” decisions. But all I could do then was write legal memoranda, talk about my findings with other lawyers and hope the firm partners would take my results and actually explain their applied meaning to our clients.

This, I discovered early on and the hard way, was the true failure of my expensive liberal arts and legal education. Most lawyers I know have learned how to identify issues, outline facts, state conclusions up front and discuss the analysis and background research necessary to reach those conclusions. The problem I found was that I could only explain things, really and deeply explain things and provide useable answers, to other lawyers. And the longer I practiced, delving further into the complicated and ambiguous nature of the law, the harder it was to explain that complexity and ambiguity in a way that helped my clients make educated decisions.

I suspect many lawyers believe, with certainty, in their ability to get clients to understand the nuances of applied facts and analytical synapses that in turn justify the specific legal conclusions. If you are one of those believers, I suggest the following self-graded test. Find another lawyer, someone who does not practice the type of law that you do, or better yet a doctor, a research chemist, a Ph.D candidate, an accountant, a stock broker, an architect or a general contractor. Ask that person to explain what they are working on, the relevant issues, the analy-

sis they are conducting, and the conclusions they are reaching. As you listen, just nod every thirty seconds or so, like our clients usually do, ask a couple of basic questions, leave, walk back to your office, call someone you report to, like your spouse, and explain what you were just told. If you are like me, you will find it difficult to really and truly explain what you were just told.

That is what our clients go through. And it is hugely frustrating. I’ve been there. They ask for advice. They pay for advice. They get advice. And, indeed, they often apply that advice. But, in reality, that is all most clients are doing. They are not “using” the advice in the sense of truly understanding how fact A is connected to issue B and how choosing option C instead of option D could lead to conclusion E and possibly, in certain situations, to conclusion F. Instead of “using” the advice, they are “applying” that advice. Not because of a deep and profound respect for their lawyer, earned after years of battling side by side. No, they are doing so because we, their attorneys, make our advice far too complicated, filled with legal terms, too much explanation and too much rationalization, trying it seems to justify our legal fees and our status as attorneys at law, counselors and officers of the court.

Before I go on, provide a bit of background, and explain the title to this exposé, I want to clarify something important. I am not saying our clients are anything but highly intelligent people, or that they don’t “get it.” Indeed, I am often humbled by the responsibilities, abilities and smarts of my clients. They can make decisions with significant economic and personal impact on employees, suppliers, shareholders and families, strategic decisions based on inputs from a variety of sources, choosing amongst seemingly endless courses of action. They struggle to manage their time efficiently, usually applying their individual attention to those problems they are best suited to solve, relying on others to bring their expertise to bear on other matters and constantly working to remain fully informed on everything.

I can look back, over the past twenty-some years upon hundreds of corporate and securities matters, and identify quite easily the three events that made me cognizant of the problems of “lawyer-speak.” I can remember, with great clarity, the settings, the people and the looks on the faces of those around the rooms—the blank stares of people trying to decide whether or not to ask that very simple question, “what **are** you saying?”

The first time I remember really seeing those blank stares was when I first went in-house in the 1990s. As division counsel with a Fortune 500 company, my clients were also my colleagues as we brought innovative products to the market. There were a hundred things to do at all times. I had a big outside counsel budget and my own personal five-minute time-slot at the weekly lunches where all division executives reported and made recommendations on all open matters.

After several meetings of blank stares from the chief financial officer and the senior vice-presidents for sales, marketing,

engineering, international manufacturing, component sourcing and human resources, at which I provided descriptive analyses replete with damage exposure and causal connectivity theories, always running out of time, I found myself equating the legal issues to the related business concerns, listening to how others on the management team of this half billion dollar venture described their problems, options and recommended solutions. Basically, I found myself speaking two different languages – one when I was speaking with my well-paid outside lawyers and another when I was talking with my clients. Multi-million dollar consequential damages warranty and indemnification analyses soon were discussed by reference to what guarantees my colleagues would be willing to give to a buyer of their own used car or their house.

My second memorable blank stare was observed in response to a well-known southern colloquialism used by my client in business negotiations. I had recently moved to my next in-house position, responsible for the legal side of multi-national, multi-party joint ventures. All discussions with partners, government regulators, bankers and the like were conducted in English, but mostly with people for whom English was a second language. Working with the French, Peruvian, Chilean, Venezuelan, Nicaraguan, Israeli, Egyptian, German, Italian and even the English, I found the most success by describing issues of concern, proposed structure and comparative law by way of analogy, instead of just speaking American jurisprudence and presuming it to be understood by my civil, shari'a and military law colleagues.

I remember the meeting quite well. My client that day was Joel, one of BellSouth's internal investment bankers. He had asked me the day before to join him in Santiago to structure and negotiate the acquisition of an operational cellular license in Chile. In the midst of our discussions with the other side, as they presented one of their requirements, my international traveling companion opened his mouth and said, and I am not kidding, "That dawg won't hunt."

If you have spent any time in the southern states, you will know this to be a very precise statement roughly translated as "you are out of your mind if you think we will ever agree to that." But can you imagine someone in Latin America hearing these words, translating them into their native Spanish, realizing the phrase makes no sense to them and responding with anything other than a blank stare?

Now think about how we lawyers describe our views on what will and won't fly, and you may quickly realize that our clients are in an even worse position than this well-respected, politically connected, highly-educated Chilean businessman. At least he could understand the literal meaning of the words. He just missed the intended meaning of the statement. Compare that to our clients who often do not understand the words themselves, let alone the meaning.

What do I think Joel should have said? He should have said, and I knew him well enough that I was able to follow that "dawg" with my own analogy: "Jaime, if you were trying to buy a hotel in Senegal, would you ever agree to pay for the entire hotel in advance, without an escrow, before you had government permission to own it and without any guarantee that at least one

customer had stayed there and paid for a room?" Maybe then I could have said, "I suspect that dog wouldn't hunt."

The last experience I offer, and the one that drives me to try always to explain things to my clients in a down-to-earth, no legal terms fashion, comes from my years on the "other side." In a move my former law colleagues suggested illuminated the Peter Principle, I took a job running international M&A projects for a global joint venture. To my outside lawyers, I had progressed from in-house lawyer as client to businessman as client. That transition proved very illuminating.

Like most lawyers that go to the business side, I both knew the importance of legal analyses and had the least patience for it. It was my job to make sure my lawyers not only understood what I was trying to accomplish, but also the business, financial, outside political and inside political parameters I was operating under. At the same time, I knew I had the ultimate responsibility for presenting, again the five minute time slot, but now to the board of directors, the essential issues of a transaction – investment level, discount rate, operational controls, business restrictions and legal risks.

What I wanted from my lawyers was their help in identifying the legal and business issues and risks and in suggesting appropriate modifications to address those risks. I wanted, actually needed, their help in collapsing all of their work and conclusions, as well as the other parameters of the deal, into a maximum of four PowerPoint slides, the first of which was always the mandatory "logo" slide. What I did not need, and this is the third blank stare event, was some lawyer in Palo Alto wanting to prove his value to the deal by cornering me in his office and explaining the intricacies of liquidation preferences.

I remember thinking to myself, with a blank stare on my face this time, "I wonder what clients usually do when they encounter this pompous ass." I understood what he was saying well enough to tell him that I was making, as his client and the payer of his bills, an informed decision to decline to take his advice (to which he replied that it was just not done that way in Silicon Valley).

I had no doubt at the time that he usually got his way. Not because he was such a brilliant lawyer or seer, but because most of his clients had no idea what he was saying and, as a result, were not using his advice, merely applying it. Undoubtedly, his advice would be much more useful, and truly used more, if he merely explained that liquidation preferences allow you, as an investor, to get your money out first if something goes wrong or if the company changes direction, and while they can take a hundred permutations, the first question to answer is whether you want that kind of a preference. If he had said that to me at the outset, I would have politely explained to him that I did not care because we were either going to sink or swim with this company, side by side and without the sole life preserver. I would have also saved a few thousand dollars and a lot of aggravation.

I still get blank stares when I talk with clients, particularly when I am dealing with my specialty. The stares almost always come when I am asked to help multiple parties – individuals or companies – come together in a joint venture. I love joint ventures. They are my legal passion, like pennies. There are so many business and legal issues that arise, so many different options available to address concerns and so many things that the joint

venture partners can decide to just skip over and not deal with because they are so excited about getting together, moving forward and getting to the point where they can, as the founding team, standing together on the balcony overlooking the stock exchange, ring that bell opening trading day, the day on which the stock of their venture will trade for the first time and they can finally buy that cabin in the mountains, go on that round-the-world trip and make that large donation to their alma mater, church or chosen charity.

As a lawyer, I feel like a doomsdayer. I have to remind them of the issues they need to address now: What happens if something doesn't go according to plan? Will they have to put more money in or mortgage their houses? What if one of them wants to go in a different direction? What happens if one of them dies or divorces? What if? What if?

After many years, the closest analogy I have found is the progression from dating to engagement to marriage to children to retirement, which I can relay from personal experience, does not always go as expected. Things happen along the way. Something may come along that breaks up the marriage. Should you plan for it now? There may or may not be kids. Should you plan for it now? How much do you want to leave to chance? How much do

you want to plan for now? That is my analogy for joint ventures. It works for me. It seems to work for my clients.

I like to think, after these years, that I have learned to recognize the blank stares and to react to them before they become glazed eyes, before my client's mind turns to thoughts about the Broncos bowl game prospects, before my client realizes she is paying big bucks to hear an alien language-lawyer-speak, but most importantly, before my client decides to just apply my conclusions because, after all, I am part of the corporate and securities group at my firm, certified as a lawyer by the supreme court of the state, pronounced a lawyer-son by my parents—and publicized on the world wide web as a member of the softball team.

Si tu haec verba legere potes, tibi nimium eruditio est.

ABOUT THE AUTHOR

Russell L. Case is an attorney with *Hawley Troxell Ennis & Hawley, LLP, Boise*. His corporate practice focuses on mergers and acquisitions; securities; private placements and public offerings; and technology and telecommunications law. He holds a B.A. from Williams College, Williamstown, Massachusetts; and a J.D. from Cornell Law School, Ithaca, New York. He is admitted to the bars of Georgia, Hawaii, and Idaho.



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WELCOME TO THE WORLD OF INTERNATIONAL DEVELOPMENT CONSULTING

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Does dealing with the tedium of business and commercial laws ever get too boring or predictable for you? Are you looking for a little fun, travel and adventure? No, this is not an advertisement for the U.S. Army. It is an introduction to a way to travel to remote and undeveloped parts of the world that you would never see as a tourist, and to do some good at the same time. Welcome to the world of international development assistance.

LEGAL SYSTEMS AROUND THE WORLD

We tend to take for granted our modern and effective laws that enable us to do just about any kind of deal our clients need. We assume that a rancher can use his herd to secure his annual operating line, or that a retailer can finance his operation with his accounts and inventory. We assume anyone can run down to her friendly Secretary of State's office and file articles for a corporation or an LLC, and have it done in an hour. However, it is not like that in most of the world, particularly the developing world.

Most of the world has some variant of a European civil code or, if the country is a little more fortunate, it may have inherited colonial-era British law from its former masters. There are also some places that still use Majella law left over from the Ottoman Empire. Under those sets of laws, one cannot do many of the things we assume are just part of the natural legal order. This explains, in large measure, why the third world is still the third world – they do not have our legal tool kit, so businesses are not formed and deals are not done. Their business and commercial laws simply do not work well. In general, they are prescriptive, restrictive, paternalistic, punitive, unnecessarily complicated, and laden with legal jargon that makes them unusable by anyone but lawyers. By comparison, our laws are relatively permissive, simple, readable and reliant on the autonomy of parties to a transaction to shape their own deal and remedies.

INTERNATIONAL ORGANIZATIONS

There are a number of international organizations that provide assistance to developing economies in adopting modern laws that will help those countries grow and break into the greater world economy. The largest of those organizations is the World Bank Group, which operates through a number of constituent entities, including the World Bank itself, the International Finance Corporation (IFC) and the Foreign Investment Advisory Service (FIAS). Similar development services are provided through the regional development banks, including the Asian Development Bank (ADB), African Development Bank (AfDB), Inter-American Development Bank (IDB) and the European Bank for Reconstruction and Development (EBRD). Much development assistance is also delivered through the U.S. government by the U.S. Agency for International Development (USAID) and the U.S. Department of Commerce. In addition, many other developed countries have their own counterparts to USAID.

The one thing these development organizations generally lack is a significant amount of real subject matter expertise, particularly in business and commercial law. Consequently, they need to retain consultants, either directly or through development consulting companies. That is why this article may be relevant to you.

CERTAIN SKILLS IN DEMAND

I did not get into international consulting by any great design. Rather, it was a matter of finding, after over two decades in the Idaho Secretary of State's office and five and a half years with a technology company doing specification and design work for UCC and Corporation technology systems, that I had accidentally acquired a skill set that was in heavy demand and short supply in the international development assistance business.

One of the greatest demands among third world businesses is for access to capital. European-style Civil Codes and colonial-era British law do not permit the effective use of personal property as collateral for business financing. Consequently, would-be entrepreneurs cannot find start-up financing unless they have either alienable land or family that is willing and able to finance them. Likewise, established businesses cannot use their existing assets to secure financing for growth. These same limitations extend to agriculture – crops and livestock cannot be effectively used as collateral.

When the international assistance organizations realized this problem and began to act on it in the late 1990's, there were virtually no consultants available to them who understood modern secured transactions law and filing office operations. I learned of the new niche from people whom I knew in the consulting business, and made the leap into it in 2003. For most of the time since then, I have stayed very busy with secured transaction law and filing office development. In the past year, however, I discovered that most of the countries that need help in these areas also need help with making their companies laws and registries work. Therefore, I added some of that work to my portfolio as well. So far, I have worked in eighteen countries, ranging in size from the Republic of the Marshall Islands, with 56,000 people, to the Peoples' Republic of China, with over 1.3 billion.

NATURE OF THE WORK

The type of work varies from situation to situation. In the most common case, a project starts with an assessment of the environment, including the type of legal system, existing laws, judicial system capacity, sociological factors, economic factors and the country's technology capacity. It is generally advisable to establish a working group consisting of members of the major stakeholder groups in the subject matter to build awareness and consensus on the need for reform of laws and systems. The shape of the reforms usually becomes clear from the assessment results and the working group input.

The needs almost always include law reform, sometimes consisting of drafting from whole cloth, and in other cases consisting of amending existing laws. For example, I have drafted secured transactions laws where none existed in Palestine, Azerbaijan, the Marshall Islands, and the Solomon Islands, and I have reworked existing laws that did not adequately meet the needs of business in Vanuatu and Vietnam. I wrote a new companies law for Lesotho, and made recommendations for companies law reform in Palestine.

There is usually a need to develop the subordinate levels of law that are necessary for implementation of the reformed statutory law, whether in the form of decrees, regulations, rules or circulars. Though lawyer consultants generally do not deal with technology matters, I usually develop the design and specifications for the registry or filing office that accompanies the law reform, and I sometimes manage the procurement process and the installation and testing of the technology system upon implementation. Finally, there is always a need to train end users and government managers, both on the law and on the use or operation of the registry or filing office.

Most of the work in development consulting is not quite so diverse in the kinds of work and skills required, but nearly every job includes a mix of law, business and economic analysis, consensus building and education.

AREAS WITH SIGNIFICANT NEEDS

Several observations may be of interest to members of the Idaho State Bar. There is a large demand in international development consulting for expertise in many areas of business and commercial law, as well as other areas of the law – and many members of our bar have the level of experience needed in emerging economies. In addition to the areas in which I work, there are substantial needs in areas such as securities law and regulation, banking regulation, insurance law and regulation, credit information, bankruptcy, real property, sale of goods, international trade, leasing, customs and immigration, water law, human rights, judicial training, court administration, legislative drafting and administration, and a host of others. Most of the consultants in these areas are not recent law school graduates, but are older people with some wrinkles and gray hair. The assistance organizations are looking for people with practical experience who understand how things work in the real world, not how they work in the halls of academe.

GETTING OVER THE INITIAL HURDLE

The biggest obstacle for those who may want to try this life is getting the first international job. Until you have that first international credential, it is difficult to find work.

The best way to break into the field is to identify the consulting companies that do work in the niches in which you want to work, and then get to know them. Most of those companies are located, or at least have offices, inside the Washington, D.C. beltway. You can register with bulletin boards such as developmentex.com, for which the basic service is free. On such sites, you can find information about companies and jobs, and also post your profile where it will be seen by companies and aid agencies looking for experts.

Thereafter, there are two ways to go about getting that first job. If you are retired or financially secure, there are many volunteer agencies, including an arm of the American Bar Association, that recruit lawyers with special expertise in needed subject matters. By serving as a volunteer, you will at least obtain the first international experience that you need to get future work as a paid consultant.

The second way to get your first job is to invest in a trip to the D.C. area to visit and get to know the international development agencies and those companies that work in your niches. In some cases, you may be asked to do a short training session or presentation for their staffs to familiarize them with your area of expertise. This approach worked well for me, and I believe it will work for others as well.

SOME WORDS OF ADVICE

If you desire to get into international development consulting, there are a few bits of advice that I would pass along.

First—do whatever you can to stay in good health, because health care in many areas where you will work is far from the standard to which you are accustomed.

Second—be aware that you will be away from home for extended periods, so be sure that your family and other affairs are in order.

Third—it is helpful to have a supportive and independent spouse who can either accompany you or maintain the home front in your absence. (If you are fortunate, as I am, your spouse may also double as your business manager, a much-needed role.)

Fourth—be aware that third world countries have little safety regulation and no counterparts to OSHA, so you must watch for safety hazards that you would never worry about in the United States.

Fifth—traffic is far more chaotic than we see in the U.S., and crossing a street can be hazardous to your health.

Finally—before you go anywhere, check the State Department and other travel advisories for the areas you will be visiting. The advisories are often overstated, but it helps to know what to watch out for.

CONCLUSION

International development consulting can be rewarding, both professionally and economically. You may not get rich, but you can do a great deal of good while enjoying the intangible rewards of working in different cultures and legal environments.

ABOUT THE AUTHOR

Everett Wohlers is an affiliate member of the Idaho Bar and a former Deputy Secretary of State for Commercial Affairs for the State of Idaho. He has served on three generations of Law Foundation drafting committees for the Idaho Business Corporation Act, two generations of Article 9 drafting committees, and other drafting committees for business and commercial laws. He has worked as an international consultant for the past four and a half years, and has just accepted an appointment from the Foreign Investment Advisory Service to do secured transactions development, primarily in Asia and sub-Saharan Africa.

IDAHO STATE BAR LAWYER REFERRAL SERVICE

The Idaho State Bar has operated their Lawyer Referral Service (LRS) since 1972. There have been lawyer referral services in the United States since the late 1950s. These services came about as a response to middle income people (clients) who needed assistance obtaining legal counsel. The lawyer referral services (LRS) were designed to assist clients who needed help in determining what their legal problems entailed. If a non-profit organization or government agency could not help them with their problems, the LRS would provide these clients with referrals to a lawyer with the appropriate expertise in the area of law required to resolve their legal problems. These clients were able to pay normal attorney fees, but had limited ability to locate appropriate legal representation because of a lack of experience with the legal system, a lack of understanding about the type of service needed, or concern for the cost of seeing a lawyer. In 1989, recognizing there was a need for standardization; the American Bar Association adopted Model Rules (www.abanet.org) for the operation of public service lawyer referral programs. The overriding concern of the model Rules is consumer protection. As such, the LRS offers two important services to the public. First, they help the client determine if the problem is truly of a legal nature by screening inquiries and referring the client to other service agencies when appropriate. Secondly, the LRS provides the client with an unbiased referral to an attorney who has experience in the area of law appropriate to the client's needs. As a result, the public has come to think of LRS

Family law attorney Dena Winfield says the LRS program works out really well for her firm. She says, "At least seventy-five to eighty percent turn out to be good cases" and the referrals are really accurate.

programs as consumer-oriented assistance. This creates a feeling of loyalty by the client to a program that is primarily looking out for their best interests. The ABA encourages the state to examine its rules, decisions and opinions in order to utilize the model Rules in a manner consistent with its own law. Rule 7.2 specifies that only qualified referral services are ethically permitted, defining "qualified" as "approved by an appropriate regulatory authority as affording adequate protections for prospective clients."

On a practical level, consumers can locate traditional lawyer referral services by looking in their local telephone directory or by contacting their state or local bar association. Telephone directories usually list private as well as non-profit referral services, while a bar association will have its own service. When the client contacts the referral service they are given contact information for an attorney practicing in their area. The client can then set up an initial meeting with that attorney for a nominal fee.

Attorneys join the referral service by paying an annual fee. They are responsible for accepting a meeting with a referred client within a reasonable time, and may not charge more than the service's published fee for the initial consultation. In Idaho that fee is \$35.00 for the first half-hour, except for personal injury and work-mens compensation which receive the first half-hour free. After that the client and the attorney work out a fee agreement for any further time. Attorneys are assigned on a rotating business, based on practice area.

Every year, over 9,000 people contact the Idaho State Bar's LRS. While not all contacts result in referrals, those contacts that do can result in new clients for the attorney. This year your Lawyer Referral Service (LRS) membership gives you an open cafeteria-style plan. You can select

any number of law practice areas all for the flat fee of \$100. And, because the Idaho State Bar has simplified the process for consumers through the bar's website (Lawyer Referral Service Online) referrals are targeted to particular areas of law. More accurate referrals mean you have a greater ability to find the good cases, those that will benefit your client and your practice. If you are interested in registering as a LRS attorney, or have questions please contact the LRS staff. (208) 334-4500, jbarker@isb.idaho.gov or rstrauser@isb.idaho.gov

The 2008 roster will be launched on February 1, 2008. Registration forms were mailed with the licensing packet, but can also be found at www.idaho.gov/isb.

Whether your business is established and expanding into new practice areas or you are beginning your practice, LRS needs to be a part of your law practice development strategy. Put the power of the LRS to work for you.

Another solo civil practitioner, Donald Gadda, says ten percent of the cases "can be very good." Don says "LRS allows people to speak to a lawyer—someone to listen to them and get advice." Don remembered a couple of good cases, one where his efforts resulted in a client getting a new engine and attorney fees in a dispute with Volkswagen of America, Inc. and another, prompted by a failure of a local irrigation canal causing flooding of his clients homes, which was subsequently settled.

Solo practitioner, Peter Desler's practice covers a large number of areas of law, except criminal law and trademark. Using LRS, Peter gets between four and six cases a year. In Peter's experience, the majority of people only need a half hour in which to get some direction. This is a "wonderful service of the client," Peter explains; the "service really works."

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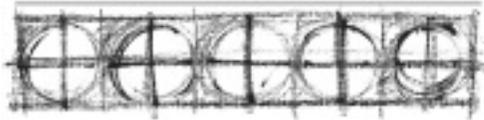
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**Interest on Lawyers Trust Accounts Program
2008 IOLTA Grant Awards**

<p>Idaho YMCA Youth Government Program</p> <p>For scholarship and travel funds to the annual statewide model legislative and judicial session for high school students in outlying areas, who could not otherwise participate.</p>	<p>\$1,000</p>	<p>BSU Foundation Idaho Innocence Project</p> <p>To support a full-time director who will help the Idaho program to exonerate wrongfully convicted people through DNA testing and legal assistance.</p>	<p>\$25,000</p>
<p>Idaho Women's Commission Legal Resource Booklets</p> <p>To edit, publish, and distribute a legal resource booklet for Idaho women and families. This booklet is published in both English and Spanish.</p>	<p>\$3,000</p>	<p>Catholic Charities Immigrant Legal Assistance</p> <p>For legal assistance for new immigrants seeking immigration and citizenship support services in Southeast and Southwest Idaho. Funds will be used primarily for caseworker salaries and staff training.</p>	<p>\$40,000</p>
<p>Fifth Judicial District CASA Volunteer Support</p> <p>To reimburse mileage expenses for volunteer Guardian ad Litem who advocate for neglected and abused children in child protection cases.</p>	<p>\$4,370</p>	<p>Idaho Law Foundation, Inc. Law Related Education Program</p> <p>For support of democracy education program for young people. Program components include a statewide mock trial competition, teacher training, resource materials relating to the justice system, and support of the Lawyers in the Classroom project.</p>	<p>\$45,000</p>
<p>Idaho CASA Volunteer Recruitment</p> <p>To conduct a statewide volunteer recruitment campaign to provide every child in need with a trained CASA volunteer.</p>	<p>\$5,000</p>	<p>Idaho Law Foundation, Inc. Idaho Volunteer Lawyers Program</p> <p>For general support of the Idaho Volunteer Lawyers Program, which provides legal services to Idaho's poor through referral of appropriate civil cases to volunteer attorneys statewide.</p>	<p>\$115,000</p>
<p>Idaho Law Foundation, Inc. Legal Resource Line</p> <p>For expenses of the Legal Resource Line, which offers a limited consultation with a lawyer by telephone to Idaho residents, supplementing the services provided by Court Assistance Offices.</p>	<p>\$5,000</p>	<p>Idaho Law Foundation, Inc. Idaho Volunteer Lawyers Program</p> <p>For general support of the Idaho Volunteer Lawyers Program, which provides legal services to Idaho's poor through referral of appropriate civil cases to volunteer attorneys statewide.</p>	<p>\$115,000</p>
<p>The Advocates Immigrant Domestic Violence Support</p> <p>For support of a part-time English/Spanish bilingual attorney to provide legal services to victims of domestic violence and sexual assault. The attorney will provide legal counsel for protection orders and other appropriate case support.</p>	<p>\$7,500</p>	<p>Idaho Legal Aid Services, Inc. Domestic Violence Project</p> <p>For general support of Idaho Legal Aid attorneys representing victims of domestic violence and elder abuse cases.</p>	<p>\$190,130</p>
<p>University of Idaho College of Law Scholarship Program</p> <p>For scholarships to be awarded to law students with demonstrated financial need and to support students' participation in public service related to their legal education. Recipients are to be designated by the Dean's office.</p>	<p>\$9,000</p>		

SAVE THE DATE

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Idaho Law Foundation**

**Friday, February 8, 2008
Boise Centre on the Grove**

**8:30 a.m. - 3:30 p.m.
6.0 CLE Credits**

OUR TRADITION OF GIVING

As Idaho's only organization tailored to enhance the services you provide, the Idaho Law Foundation extends the reach of your commitment to improve the lives of Idahoans. Because of attorneys like you, we are able to enhance public understanding of the legal system to Idaho students at all grade levels through **Law Related Education Programs**. We are able to provide increased access to legal services through **Idaho Volunteer Lawyers Program**.

Please consider a donation to the Idaho Law Foundation. When you give at a level meaningful to you, we are able to utilize your funds to give back to Idaho citizens on behalf of the legal profession. You can include your donation when you send in your licensing form or return the donor form mailed to you in December.

We thank you for your support! If you need further information, please contact Carey Shoufler, Development Director, at (208) 334-4500.

THE FOURTH DISTRICT 2008 6.1 CHALLENGE



The Fourth
District Bar
Association

6.1
Challenge

Law Day
2008

Law Day 2008 will mark the culmination of the Fourth District Bar's second **6.1 Challenge**. The **6.1 Challenge**, based on Idaho Rule of Professional Conduct 6.1 concerning lawyers' responsibility to provide *pro bono* service, represents a friendly competition between "law offices." The Fourth District initiated this project to recognize and encourage *pro bono* and public service. Participating law offices range from solo practitioners, to small, medium and large law firms, corporate law departments, and groups of government agency lawyers. In fact, it is probably fair to assume any group of Fourth District Bar members can enter the Challenge.

Vicky Gowler, Idaho Statesman Editor and Vice President, Boise Mayor **Dave Bieter**, Chief U.S. District **Judge B. Lynn Winmill**, Fourth District **Judge Ronald Wilper** and Idaho Supreme Court **Justice Roger Burdick** have volunteered to act as the "Blue Ribbon Panel" to review the law office submissions and select the recipient(s) of the 2008 award. The purpose of the competition is to both encourage lawyer participation in *pro bono* and public service activities and highlight and recognize those contributions in the community.

Last year fourteen law offices in the Fourth District submitted entries to the **6.1 Challenge** detailing the activities and hours each firm committed to *pro bono* and public service between May 1, 2006 and April 15, 2007. Ultimately two winners: **Robert Aldridge**, a sole practitioner and **Perkins Coie LLP**, a regional law firm were chosen. The Panel selecting these winners noted their contribution to *pro bono* and public service was "outstanding," and "if anything, an understatement." In addition to these winners, the Panel also recognized the *pro bono* service of the **Ada County Prosecutor's Office** because of the extra care government attorneys must take to avoid conflicts of interest when providing *pro bono* service.

Many law offices in the Fourth District are already hard at work preparing for the 2008 **6.1 Challenge**. More information about 6.1, The Challenge is available at www.idaho.gov/isb/distbars/4th/61challenge.pdf. Forms for submission of your law office's contribution may be found at www.idaho.gov/isb/distbars/4th/61ChallengeForm.doc Forms must be received by April 11, 2008 to allow the Panel to consider them. Anyone needing additional information or suggestions about *pro bono* activities that may be suitable for your office may contact Mary Hobson, Idaho Volunteer Lawyers Program Legal Director at (208) 334-4510 or mhobson@isb.idaho.gov.

DENISE O'DONNELL DAY SCHOLARSHIP

The Paralegal Studies Program of Boise State University has named a scholarship in honor of the late Denise O'Donnell-Day, who died in 1996, at the age of 39, following a valiant fight with cancer. A graduate of Georgetown University and Marquette Law School, she was the director of the Idaho Law Foundation's Idaho Volunteer Lawyers Program. Through her work at IVLP, she worked successfully to pair disadvantaged persons needing legal services with those willing and able to provide those services on a *pro bono* basis.

Denise was also a champion of the paralegal profession. As one of the first instructors in the Paralegal Studies Program at BSU, she taught her students the basics of the law. Beyond that, she shared her passions for providing quality legal services to the poor, and encouraged her students to volunteer their time in that endeavor. Her commitment to the educational process was unflagging. The scholarship is named in her honor with the pledge to carry forward the commitment to quality legal services she inspired in so many and that she worked for throughout her life.

For more information on the Denise O'Donnell Day Scholarship please contact the BSU Foundation at (208) 426-3276.

JUDGES NEEDED—2008 MOCK TRIAL COMPETITION

The Law Related Education Mock Trial Program needs judges for the 2008 High School Mock Trial competition. Our competition staff is currently recruiting judges and attorneys to judge for regional and state competitions. Competition dates and times are as follows:

- Friday, February 1, 2008: Regional Competition in Pocatello
- Saturday, February 2, 2008: Regional Competition in Boise
- Friday, February 8, 2008: Regional Competition in Coeur d'Alene
- Saturday, February 9, 2008: Regional Competition in Twin Falls
- Thursday and Friday, March 13 and 14, 2008: State Competition in Boise

Please consider volunteering your time to help make this year's mock trial competition successful for our Idaho students. If you are interested in volunteering contact Carey Shoufler at (208) 334-4500 or cshoufler@isb.idaho.gov

IVLP Special Thanks

IVLP extends special thanks to **Danny R. Smith, DRS Investigations**, for his donated services working with IVLP volunteers. Although filing fees in IVLP cases are automatically waived and IVLP volunteer attorneys donate their services, occasionally there are other expenses involved in the successful resolution of a case that cannot be managed by the *pro bono* client. Recently, Danny Smith worked with volunteer attorney **Lois Fletcher** to attempt to serve an adverse party who was "hiding" in Mexico. DRS Investigations is the first and only private investigations firm to offer *pro bono* services in conjunction with IVLP. Danny Smith is a former homicide detective from Los Angeles and founder of DRS Investigations in Idaho. Mr. Smith has pledged up to 100 hours *per year* to IVLP for services to assist *pro bono* attorneys including interviews, skip-tracing, process serving, crime scene investigation and more. Mr. Smith said he admires the efforts of IVLP and is proud to be a participant. Danny R. Smith can be contacted at (208) 740-0871 or drs187pc@msn.com. His web site can be found at www.drsinvestigations.com.

Special Thanks to IVLP Policy Council Members and Liaisons

The Idaho Volunteer Lawyers Program is a program of the Idaho Law Foundation Inc. (ILF) and is directed through the actions of the IVLP Policy Council, an advisory committee appointed by the ILF Board of Directors. There are 16 attorney and non-attorney members of the Policy Council, representing each of the state's seven judicial districts. The Policy Council meets quarterly to discuss budget, policy, and program issues and make recommendations to the Foundation Board of Directors. IVLP extends special thanks to its Policy Council members, for the support and guidance they have provided the program over the last year.

IVLP POLICY COUNCIL CHAIR

Anthony M. Valdez—*Benoit, Alexander, Harwood, High & Valdez, LLP*,—Twin Falls

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Kindra L. Hansen—*OfficeMax Incorporated*—Boise

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Hon. John T. Mitchell—*First District Court*—Coeur d'Alene

J. David Navarro—*Clerk of the District Court, Ada County Auditor*, Boise

Kirsten Ocker—*Huntley Park*—Boise

Vic A. Pearson—*Bannock County Prosecutor's Office*—Pocatello

Russell Spain—Executive Director, *Eastern Idaho Community Action Partnership (EICAP)*—Idaho Falls

Carole D. Wells—*Carole Wells Law Office*—Moscow.

IVLP POLICY COUNCIL MEMBERS "RETIRED"

IVLP also wishes to thank the following IVLP Policy Council members who "retired" from the Council in 2007.

M. Adelle Franklin Doty—*Huntley Park, LLP*—Boise,

Paul L. Clark—*Kirsch & Clark, PLLC*—Moscow, and

Colette F. Wolf, *Panza, Maurer & Maynard, PA*,—Ft. Lauderdale, FL.



IDAHO VOLUNTEER LAWYERS PROGRAM LIAISONS

The idea of recruiting liaisons for IVLP originated with the program's Policy Council as a means to better integrate Idaho's larger firms and corporate law departments into the Foundation's *pro bono* vision. In addition, having contacts in this segment of the private bar serves to improve IVLP's understanding of office- and community-specific conditions affecting volunteerism. IVLP has observed that the commitment to providing legal services to those who are unable to pay varies between judicial districts and between firms and offices. Similarly the ease with which IVLP is able to match volunteer attorneys with persons in need of services often depends on county in which the case is pending. IVLP seeks to understand the dynamics of these differences with hope of making it easier and more rewarding for attorneys to provide *pro bono* service throughout the state. IVLP's liaisons promote that understanding. Liaisons support the work of IVLP in numerous ways:

1. Liaisons inform IVLP about *pro bono* services that members of their firms or office groups are already providing—work not initiated through IVLP. This helps IVLP understand attorneys' interests, the needs in local communities, and ways that IVLP can partner with attorneys to better serve their area.
2. Liaisons let IVLP know about those volunteers willing to serve in specific kinds of projects. Some offices, working through their liaisons, have taken on *pro bono* work as a firm project. Where there is interest, IVLP works with liaisons and law offices to find an office project and provide training to attorneys to carry out the work they decide they would like to contribute.
3. Liaisons have helped recruit lawyers to assist applicants in IVLP's *pro se* clinics and other advice and counsel opportunities. These projects help lawyers understand that no matter what their specialty or expertise they have many skills that make them valuable resources to persons who are otherwise attempting to navigate the judicial system *pro se*.
4. As members of a legal community, liaisons are in touch with what their colleagues in the Bar are doing and thinking. Liaisons can and have been of great assistance locating volunteers in their community both inside their own firms and in the larger legal community.

IVLP is grateful for the time liaisons take to discuss the need for *pro bono* services with lawyers in their firms and communities. If you are interested in working as a liaison please contact Mary Hobson, mhobson@isb.idaho.gov or (208) 334-4500.

Dave Alexander—*Racine, Olson, Nye, Budge & Bailey, Chtd*—Pocatello

Carla Behrens—*White Peterson, PA*—Nampa

Denise Baird—*Hewlett Packard Company*—Boise

Jeffery Brunson—*Beard St. Clair Gaffney McNamara Calder, PA*—Idaho Falls

Laura Burri—*Ringert Clark, Chtd.*—Boise

Glenna Christensen—*Moffatt, Thomas, Barrett, Rock & Fields, Chtd.*—Boise

Mike Creamer—*Givens Pursley LLP*—Boise

Jim Dale—*Stoel Rives, LLP*—Boise

Dennis Davis—*Witherspoon, Kelley, Davenport & Toole, PS*—Coeur d'Alene

Peter Erbland—*Paine, Hamblen, Coffin, Brooke & Miller, LLP*—Coeur d'Alene

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Charles Graham—*Landeck, Westberg, Judge & Graham, PA*—Moscow

Linda Jones—*Holland & Hart, LLP*—Boise

Bart Kline—*Idaho Power Company*—Boise

Jenifer Marcus—*Albertson's Inc.*—Boise

Ryan McFarland—*Hawley Troxell Ennis & Hawley, LLP*—Boise

Neil McFeeley—*Eberle, Berlin, Kading, Turnbow, McKlveen & Jones, Chtd.*—Boise

Hans Mitchell—*Quane Smith, LLP*—Biuse

Doug Nelson—*Anderson Nelson Hall Smith, PA*—Idaho Falls

Paul Rippel—*Hopkins Roden Crockett Hansen & Hoopes, PLLC*—Idaho Falls

Christine Salmi—*Perkins Coie, LLP*—Boise

Peter Scott—*Preston Gates & Ellis, LLP*

Wes Scrivner—*J.R. Simplot Company*—Boise

Karen Sheehan—*Hall, Farley, Oberrecht & Blanton, PA*—Boise

Ron Shepherd—*Hamilton, Michaelson & Hilty, LLP*—Nampa

Amelia Sheets—*Holden, Kidwell, Hahn & Crapo, PLLC*—Pocatello

R. Wayne Sweney—*Lukins & Annis, PS*—Coeur d'Alene

Jeff Sykes—*Meuleman Mollerup, LLP*—Boise

Jeff Thomson—*Elam & Burke, PA*—Boise

Connie Taylor—*Clark & Feeney*—Lewiston

Yvonne Vaughan—*Greener Burke Shoemaker, PA*—Boise

Michael J. Whyte—*Thomsen Stephens Law Offices, PLLC*—Idaho Falls

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OFFICIAL NOTICE SUPREME COURT OF IDAHO

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Justices
Roger S. Burdick
Jim Jones
Warren E. Jones
Joel D. Horton

1st AMENDED Regular Spring Terms for 2008

Boise January 2, 4, 7, 9, and 11
Boise February 1, 4, 6, and 8
***Lewiston/Moscow**..... *March 6 and 7
Boise March 10, 12, and 14
Idaho Falls/Pocatello..... April 2 and 3
Boise April 7, 9, and 11
Twin Falls May 1 and 2
Boise May 5, 7, and 9

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2008 Spring Terms of the Idaho Supreme Court, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

**Please note: The University of Idaho's Spring Break is scheduled for the week of March 10, 2008, therefore, the need to move the Lewiston/Moscow dates up one week.*

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
Darrel R. Perry

Judges
Karen L. Lansing
Sergio A. Gutierrez

1st AMENDED Regular Spring Terms for 2008

Boise January 8, 10, 15, and 17
Boise February 5, 7, and 12 ~~13~~
Eastern Idaho..... March 10, 11, 12, 13, and 14
Northern Idaho (Moscow)..... April 14, 15, 16, 17, and 18
Boise May 6, 8, 13, and 15
Boise..... June 10, 12, 17, and 19

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2008 Spring Terms of the Court of Appeals, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

IDAHO SUPREME COURT ORAL ARGUMENT DATES

As of December 3, 2007

Wednesday, January 2, 2008 – BOISE

8:50 a.m.	State v. Arthur (Petition for Review)	#34172
10:00 a.m.	Spencer v. Kootenai County	#33060
11:10 a.m.	Safe Air for Everyone v. Dept. of Agriculture	#33729

Friday, January 4, 2008 – BOISE

8:50 a.m.	ACHD v. Total Success Investments	#32726
10:00 a.m.	USA v. Sharp	#34092
11:10 a.m.	Barmore v. Perrone	#34253

Monday, January 7, 2008 – BOISE

8:50 a.m.	Baccus v. Ameripride Services	#33528
10:00 a.m.	State v. Castro	#33452
11:10 a.m.	Mackay v. Four Rivers Packing Co.	#33829

Wednesday, January 9, 2008 – BOISE

8:50 a.m.	Losser v. Bradstreet	#33932
10:00 a.m.	Harrison v. State Board of Medicine	#33862
11:10 a.m.	City of Pocatello v. State	#33669

Friday, January 11, 2008 – BOISE

8:50 a.m.	Stafford v. Dept. of Health and Welfare	#33242
10:00 a.m.	Costa v. Borges	#33752
11:10 a.m.	McAtee v. Potlatch Corp.	#33342

Idaho Court of Appeals Oral Argument Dates

As of December 3, 2007

Tuesday, January 8, 2008 – BOISE

9:00 a.m.	State v. Purdum	#33073
10:30 a.m.	State v. Perez	#33003/33004
1:30 p.m.	State v. Loomis	#33978

Thursday, January 10, 2008 – BOISE

9:00 a.m.	State v. Morales	#33547
10:30 a.m.	Cook v. State	#33534/33594
1:30 p.m.	Schwartz v. State	#33326

Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(UPDATE 12/01/07)

CIVIL APPEALS
PROCEDURE

1. Did the court err in refusing to allow the plaintiff to amend her complaint?

Winn v. Campbell
S.Ct. No. 34142
Supreme Court

ATTORNEY FEES AND COSTS

1. Did the court err in awarding fees and costs to Harper on the basis the plaintiff pursued his amended complaint against Harper frivolously and without foundation?

Partout v. Harper
S.Ct. No. 33979
Supreme Court

SUBSTANTIVE LAW

1. Whether Ada County and the Board of Commissioners erred as a matter of law in concluding that the patient who filed the application for medical indigency benefits cannot be a resident of Ada County because the applicant is not a United States citizen and is not legally present in the United States.

Mercy Medical Center v. Ada County
S.Ct. No. 34155
Supreme Court

SUMMARY JUDGEMENT

1. Whether the court committed reversible error by granting summary judgment in favor of J-U-B Engineers on the issue of intentional interference with contract.

BECO Construction v. J-U-B Engineers
S.Ct. No. 33378
Supreme Court

2. Did the court err in granting summary judgment in favor of Ada County based on application of the "fireman's rule"?

Ruffing v. Ada County Paramedics
S.Ct. No. 33514
Supreme Court

3. Did the court err in granting summary judgment to defendants, Bunce and Welsh?

Rae v. Bunce
S.Ct. No. 33996
Supreme Court

4. Whether the court correctly dismissed the complaint, finding Lochsa Falls, L.L.C. was required to exhaust its administrative remedies prior to filing suit in district court.

*Lochsa Falls, LLC v.
Idaho Transportation Department*
S.Ct. No. 34039
Supreme Court

POST-CONVICTION RELIEF

1. Did the court properly dismiss all the claims in Lint's post-conviction petition?

State v. Lint
S.Ct. No. 33702
Court of Appeals

CONTRACT

1. Did the trial court err in concluding that a covenant in a partnership/joint venture buyout agreement that required the buyer to pay the selling partner/venturer a fee for the privilege of doing business in an ambiguous geographic area as long as the buyer remained in business was not a disguised, overbroad, and unenforceable covenant not to compete?

Jorgensen v. Coppedge
S.Ct. No. 33964
Supreme Court

CRIMINAL APPEALS
PLEAS

1. Did the court err in denying the motion to withdraw the guilty plea to grand theft and enter a plea to petit larceny when there was no showing the stolen calf exceeded the value of \$150?

State v. Salazar-Garcia
S.Ct. No. 33893
Court of Appeals

2. Did the court correctly conclude that it had no jurisdiction to consider Ybarra's motion to withdraw his guilty pleas sixteen years after his convictions were final?

State v. Ybarra
S.Ct. No. 33513
Court of Appeals

SEARCH AND SEIZURE – SUPPRESSION OF EVIDENCE

1. Whether a trespasser/squatter in a temporary shelter on state owned or private land for whom law enforcement has an arrest warrant has a subjective expectation of privacy that society will recognize as objectively reasonable such that a search warrant is required to enter the squatter's shelter, or whether state authorities may inventory and remove the unauthorized, possibly booby-trapped, shelter and its contents as occurred in this case.

State v. Pruss
S.Ct. No. 33617/33618
Supreme Court

2. Did the court err in granting Stewart's motion to suppress and in concluding the traffic stop was unconstitutionally "intense" such that it rendered Stewart's consent to search involuntary?

State v. Stewart
S.Ct. No. 33410
Court of Appeals

3. Did the district court err in denying Frederick's motion to suppress and in finding his constitutional rights were not violated when his vehicle was searched incident to his arrest?

State v. Frederick
S.Ct. No. 33575
Court of Appeals

4. Did the court correctly determine that there were specific, articulable facts justifying the investigatory stop of Jarzabek's vehicle on suspicion the vehicle had been involved in a hit and run?

State v. Jarzabek
S.Ct. No. 33941
Court of Appeals

SUBSTANTIVE LAW

1. Did the court err in giving Taylor credit for time served that Taylor spent at liberty while on probation after being released from imprisonment?

Taylor v. State
S.Ct. No. 33222
Court of Appeals

2. Did the court err by denying Eisenberg's second motion for credit for time served?

State v. Eisenberg
S.Ct. No. 32853
Court of Appeals

SENTENCE REVIEW

1. Is Weed's unified life sentence, with forty-five years fixed, cruel and unusual and therefore in violation of the United States and Idaho Constitutions?

State v. Weed
S.Ct. No. 33058
Court of Appeals

2. Did the court err by imposing restitution in an amount far exceeding Izaguirre's present ability to pay?

State v. Izaguirre
S.Ct. No. 33519
Court of Appeals

EVIDENCE

1. Did the prosecutor and the state's "footprint expert" violate the pretrial order by providing inadmissible evidence?

State v. Parkinson
S.Ct. No. 32651
Court of Appeals

2. Did the court abuse its discretion in admitting evidence under I.R.E. 404(b) that on July 8, 2005, Gamble possessed more than \$8,500, an address book with the co-defendant's name and number and a drug ledger with the co-defendant's nickname and amount owed?

State v. Gamble
S.Ct. No. 33240
Court of Appeals

3. Whether the district court erred by denying the motions to dismiss and exclude evidence because the police destroyed the physical evidence in this case.

State v. Edney
S.Ct. No. 33919
Court of Appeals

4. Was there substantial, competent evidence presented at trial upon which the jury could find beyond a reasonable doubt that Mitchell was guilty of aggravated battery?

State v. Mitchell
S.Ct. No. 32857
Court of Appeals

JURY INSTRUCTIONS

1. Did the court err in failing to instruct the jury, as requested by defense counsel, that the investigating officer's failure to record Jones' alleged confession could be considered in assessing the officer's credibility regarding Jones' statements?

State v. Jones
S.Ct. No. 33850
Court of Appeals

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

Mediator/Arbitrator

W. Anthony (Tony) Park

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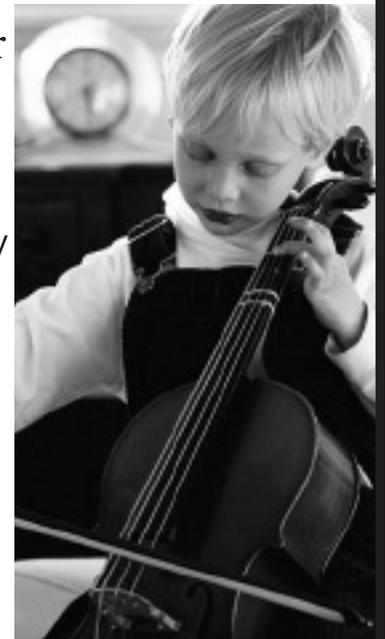
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February 2008 Idaho State Bar Examination Applicants
(as of December 12, 2007)

Listed below are the applicants who have applied to sit for the February 2008 Bar Examination. The Board of Commissioners publishes the names of these applicants for your review and requests any information of a material nature concerning moral character and fitness of an applicant be brought to the attention of the Board of Commissioners in a signed letter by February 15, 2008. Direct correspondence to: Admissions Director, Idaho State Bar, P.O. Box 895, Boise, ID, 83701.

Melissa Kay Aston Rupert, ID <i>Willamette University</i>	Bryant Edward Bushling Coeur d'Alene, ID <i>University of the Pacific, McGeorge School of Law</i>	Justin Munro Fredin New Lenox, IL <i>University of Iowa</i>	Mary Lucy Kellogg aka Mary Lucy Estepa Tan Boise, ID <i>Loyola Marymount University-Los Angeles</i>	Scott Allan Magnuson San Diego, CA <i>University of San Diego</i>
Nikki Rae Austin aka Nikki Rae Crose aka Nikki Rae Hylton aka Nikki Rae Hylton-Geib Meridian, ID <i>Arizona State University</i>	Amanda Christine Campbell Boise, ID <i>University of Denver</i>	G. David Getzin Panama City, FL <i>Florida State University</i>	Shasta J. Kilminster-Hadley aka Shasta Joy Ferraro aka Shasta Joy Kilminster aka Shasta Joy Collins Boise, ID <i>University of Arizona</i>	Corina S. Mallory Donnelly, ID <i>University of Chicago</i>
Matthew R. Aylworth Eugene, OR <i>Willamette University</i>	Phu Hung Chau aka Steven Chau Mammoth Lakes, CA <i>University of Idaho</i>	Ryan Kent Godfrey Pocatello, ID <i>Valparaiso University</i>	Amy J. Kingston Moscow, ID <i>University of Idaho</i>	Julie Ann Manning Boise, ID <i>University of Illinois</i>
Mary Arvilla Barez aka Mary Anne Day aka Mary Anne Brown Meridian, ID <i>University of Colorado School of Law</i>	Stephen M. Craig Lindon, UT <i>University of Arizona</i>	Kimberly D. Halbig-Sparks aka Kimberly Halbig Boise, ID <i>Georgetown University</i>	Angela A. Levesque aka Angela Andrea Zambrano Kuna, ID <i>American University</i>	Maja Markovic-Wolter aka Maja Markovic Boise, ID <i>University of Idaho</i>
Ruel Melvin Barrus Meridian, ID <i>Arizona State University</i>	Amanda Rae Davenport Billings, MT <i>Gonzaga University</i>	Brady James Hall Boise, ID <i>University of Idaho</i>	Elizabeth Ann Liebig Pocatello, ID <i>Florida Coastal School of Law</i>	Lisa M. McGrath Meridian, ID <i>American University</i>
Kathryn Deann Billing aka Kathryn Deann Northam Moscow, ID <i>University of Idaho</i>	Michael D Davidson Caldwell, ID <i>Gonzaga University</i>	John Spencer Hall Provo, UT <i>Brigham Young University</i>	Angela A. Levesque aka Angela Andrea Zambrano Kuna, ID <i>American University</i>	Cherese De'Dominique McLain Pocatello, ID <i>Arizona State University</i>
Joy M. Bingham Crookston, MN <i>University of North Dakota</i>	Kendra S. Dean aka Kendra Sue Dean Meridian, ID <i>University of Idaho</i>	Rachel M. Hamilton Boise, ID <i>University of Cincinnati</i>	Kade Eldon Lindquist Nampa, ID <i>University of Wisconsin</i>	Thomas Peter McLennon Hayden, ID <i>Northern Illinois University</i>
Lindsey Anne Blake Saint Anthony, ID <i>University of Utah</i>	Brian Keith Eggleston Idaho Falls, ID <i>Western State University</i>	Debra Kay Hanson aka Debra Kay Bremner Nampa, ID <i>University of the Pacific, McGeorge School of Law</i>	Kate Lunger aka Katherine G. Lunger Sandpoint, ID <i>University of Texas at Austin</i>	W. Scott McNees Pennington, NJ <i>Rutgers University-Newark</i>
Amy Nichole Borgman Sandpoint, ID <i>University of South Dakota</i>	Meagan Mackenzie Eiden Boise, ID <i>Thomas M. Cooley Law School</i>	Jeanne Michelle Howe Omaha, NE <i>Creighton University</i>	Melanie Alexandrine Madsen Thatcher aka Melanie Alexandrine Madsen aka Melanie Madsen aka Melanie M. Starnes Rexburg, ID <i>Northern Illinois University</i>	Jaime Mendoza Boise, ID <i>University of Idaho</i>
Joseph F Brown Salt Lake City, UT <i>University of Utah</i>	Kyle Christopher Fabitz Boise, ID <i>John Marshall Law School</i>	Jared William Johnson Chubbuck, ID <i>University of Idaho</i>		Daniel Charles Meyer Boise, ID <i>University of San Diego</i>
	Steven Fisher Baker City, OR <i>University of Idaho</i>	Tomasz Jan Kaczmarek Arlington Heights, IL <i>Loyola University-Chicago</i>		Peter D. Mills East Lansing, MI <i>Thomas M. Cooley Law School</i>

R. Aaron Morriss
aka Richard Aaron
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Nampa, ID
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Travis Lee Morrow
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Kelsey Jae Nunez
Boise, ID
Pepperdine University

**Stephanie Ellen Beck
Nyman**
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Taylor**
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Pacific, McGeorge
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**Sarah Elizabeth
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CARE PROJECT AND WEBSITE

The District of Idaho will be joining efforts with the Commercial Law and Bankruptcy Section of the Idaho State Bar and others in a national project known as CARE (Credit Abuse Resistance Education), a program designed to educate and enlighten high school and college-age students about the importance of wise financial decisions and the pitfalls of credit card debt. Developed initially and still spearheaded by Bankruptcy Judge John C. Ninfo of the Western District of New York, the CARE program has now spread to almost all 50 states.

We are in the process of creating a local, Idaho-CARE (“I-CARE”) website, which will provide a tool for matching judges, lawyers, trustees and other volunteers who are available to present programs with interested schools, teachers, youth and civic groups and others throughout Idaho. The site will include or contain links to presentation materials, additional educational materials and resources, and other relevant information. It is anticipated that I-CARE and its website (housed on the Court’s website) will be functional by the end of January. I-CARE will be one of the topics discussed by Chief Bankruptcy Judge Myers during the upcoming annual Commercial Law and Bankruptcy Section Bar conference in February.

MOSCOW DIVISIONAL OFFICE

We would like to dispel a rumor which is circulating regarding our Moscow divisional office. Please be assured that the U.S. District & Bankruptcy Court will continue its operations in Moscow. As part of obtaining approval for the construction of a new Courthouse in Coeur d’Alene, the District of Idaho agreed to release a portion of its space in the Moscow office. However, the smaller courtroom, the Clerk’s Office and the Probation & Pretrial Office will remain open, and both District and Bankruptcy court proceedings will continue to be held in Moscow.

APPOINTMENT OF TWO NEW U.S. MAGISTRATE JUDGES

Chief District Judge B. Lynn Winmill announced the appointments of Boise attorney Candy W. Dale and Idaho State Court Judge Ronald E. Bush to fill the vacancies created by the retirements of U.S. Magistrate Judges Mikel H. Williams and Larry M. Boyle. Ms. Dale will succeed Judge Williams and begin her term on March 30, 2008, while Bush will succeed Judge Boyle and be sworn-in on September 30, 2008. However, the District of Idaho will not lose the services nor combined 46 years of judicial experience of Judge Williams and Judge Boyle, as they will both continue to serve on a Recall status.

NEW LAWYER REPRESENTATIVE

Steven B. Anderson was appointed to a three-year term as the new lawyer representative, replacing outgoing lawyer representative Keith Roark. Steve will join current lawyer representatives Deb Kristensen and Barry McHugh.

Mr. Anderson earned his B.A. degree from Brigham Young University in 1977, graduating *summa cum laude* and also earned his J.D. degree from BYU in 1980, with honors. He has been in private practice since 1982 and a partner in the law firm of Holland & Hart since 1987. Mr. Andersen is a member of the ABA, ATLA and a past president of the Idaho Trial Lawyers Association. He has argued numerous cases before the Idaho State Appellate Courts and the U.S. Ninth Circuit Court of Appeals. Mr. Andersen has lectured statewide the topics of trial preparation and advocacy and has published materials and articles on legal ethics, discovery techniques and trials, including the book, *How to Prepare for, Take and Use a Deposition*.

Typical duties of a lawyer representative include: serving as the representative of the bar to advance opinions and suggestions for improvement; assisting the Court in the implementation of new programs or procedures; serving on Court committees;

and developing curriculum for training programs. There is a summary on our website under “Attorney Resources/Lawyer Representative” which explains in detail the various duties & responsibilities of a lawyer representative, as well as a list of the distinguished attorneys who have previously served in this capacity dating back to 1963.

NEW BANKRUPTCY LOCAL RULES EFFECTIVE JANUARY 1, 2008

The Bankruptcy Local Rules Committee has revised a number of the Local Bankruptcy Rules as well as the Model Chapter 13 Plan which, after a 30-day comment period for the Bar, will become effective on January 1, 2008. The following **Bankruptcy Local Rules** were amended: Rule 1007.4—Payment Advices; Rule 2002.5—Filing and Confirmation of Chapter 13 Plan; Rule 2003.1—Section 341(a) Meeting of Creditors; Rule 2016.—Chapter 13 Representation and Compensation; Rule 4001.1—Use of Cash Collateral and Obtaining Post Petition Credit; Rule 5005.2—Documents for Filing or Administering; and Rule 7003.1—Commencement of Adversary Proceedings. New rules include: Rule 1007.5—Statement of Domestic Support Obligations; Rule 7037.1—Discovery Motions; and Rule 9037.1—Privacy Protection for Filings made with the Court (which replaces Rule 5005.3).

EDUCATIONAL MATERIALS AVAILABLE FROM NINTH CIRCUIT PICO COMMITTEE

Across the country, judges and attorneys are working with educators and civic leaders to help improve public understanding of and confidence in the courts and judicial system. They are often making use of educational and community outreach programs developed by the courts, bar associations, academic institutions and civic foundations. Many of these resources are free, available online or by request, and relatively easy to prepare for and implement. The **Ninth Circuit’s**

Public Information and Community Outreach (PICO) Committee, which advises and assists federal courts in the western states, offers numerous ideas for community outreach. Please explore them at their web site located at: www.ce9.uscourts.gov/pico.

The Administrative Office of the U.S. Courts, has a rich variety of programs available online and by request. These include simulations for courtrooms and classrooms based on cases decided by the Supreme Court in its most recent term, and basic educational materials on the judicial system. "Children at Risk," available through the Ninth Circuit Office of the Circuit is a video-based educational program intended to introduce younger students to the basics of the American judicial system. "Children at Risk" is designed for use by judges, attorneys, and teachers to explain legal concepts and trial procedures to elementary school students, primarily fourth- and fifth-graders. Program materials, which include a DVD or videotape and written manual with suggestions on how to make effective classroom presentations, are available free through the Ninth Circuit Office of the Circuit Executive. Call or email David Madden at (415) 355-8930, dmadden@ce9.uscourts.gov.



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

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— IN MEMORIAM —

Hon. Ralph William Hadfield
1921 – 2007

Ralph William Hadfield passed away at his home in American Fork, Utah, on Tuesday, November 27, 2007. He was born on December 4, 1921, in Malad, Idaho, son of William and Mary Hawkes Hadfield. He was the youngest of six children.

He was raised on the family farm and attended Malad schools. Ralph graduated from Malad High School, where he was active in the Photography Club. He attended Idaho State University in Pocatello, majoring in engineering.

He married Louaine Lowry on April 5, 1942. They were the parents of two sons, Larry William and Lynn James Hadfield. The Peck Place, west of Malad, was their first home, where they lived and farmed with his parents until the war was over.

A business opportunity opened up in Lava Hot Springs, Idaho, and they moved there in the spring of 1946. Ralph managed the local UTOCO service station. He was ahead of his time because he set up his service station like a modern convenience store. He offered, snacks, soft drinks, sporting goods, and other items.

Eleven years later, in 1957, they returned to Malad, where Ralph managed the Ford automobile and New Holland farm implement dealership in partnership with his brother, Art. After Art's death his wife, Eve, returned to Canada to be with family and decided to sell the business. This necessitated a change of career for Ralph. The position of justice of the peace opened in Malad and was offered to him. He accepted and it wasn't long before Malad needed a new city magistrate. Ralph was up to the challenge and moved on to the new job. In 1971, the state of Idaho changed its judicial system, and the magistrates were made judges. Ralph served as a judge in the 6th District until his retirement in 1985.

Ralph was an avid sportsman and loved the outdoors. He was an outstanding marksman and won numerous trophies for trap-shooting. Ralph spent many hours hunting, fishing, riding his motorcycles and exploring the mountains around Malad in his jeep. He loved to scour the forests for firewood and build fires in his fire pit, cooking hamburgers and hot dogs for family, friends and neighbors. They would sit around the fire spinning yarns and sharing memories of past adventures till the fire was reduced to embers and the stars blanketed the dark, Idaho sky.

He was preceded in death by his wife, Louaine Lowry, parents, William and Mary Hawkes Hadfield, two brothers, Art Hadfield and Rex Hadfield, three sisters, Eva Hadfield, Edith Simmons and Afton Mc-Daniel and a grandson, Jason Hadfield. He is survived by his two sons, Larry (Gloria) Hadfield, Saratoga Springs, Utah, and Lynn (Dawn) Hadfield, Pleasant Grove, Utah; 11 grandchildren and 17 great-grandchildren.

C. Robert Yost
1920-2007

C. Robert Yost, 87, long-time Canyon County Prosecuting attorney, died Monday, Nov. 26, 2007 at Nampa Care Center. Robert was born in Notus, Idaho to Carl A. and Mable Reinemer Yost on Jan. 11, 1920. He lived with his mother and grandparents, Will and Lillie Reinemer, on the family farm and attended grade and high school in Notus. He received a B.A. in political science from the College of Idaho. During his senior year he taught history at Marsing High School. Upon graduation Marsing offered him a permanent position for the fall term.

However, because he had joined the U.S. Navy Officers' training program he was called to war duty. He graduated as an ensign in 1943 from the Navy Midshipman's School at Notre Dame University, South Bend, Indiana. The day of his graduation was also the day he married Ina Frosig who had traveled by train from Homedale, Idaho. He took special radar training at MIT, and the young couple spent that year at various naval bases until he left for overseas duty. Bob spent 27 months in the Pacific as a control boat operator in the Amphibious Forces. He was appointed Captain of a boat which saw action in six different operations, including Saipan and Tinian. He received a citation for his work as Officer in charge when his boat was one of the guides during the assault at Saipan, and for its performance during the ship-to-shore movement of troops and cargo. At Tinian his boat was the flagship for the assault Barge Unit there. During both these landings his craft was frequently in active operation for a number of consecutive days without relief. He finished active duty in Dec. 1945 and returned to Idaho.

In 1946, Robert became a science teacher at Parma High School. During the summer he decided to pursue a legal career. He moved to Moscow with Ina and their infant daughter, Connie, to enter the College of Law at the University of Idaho. He was awarded his law degree in 1950 and moved to Caldwell to open a law office. In the fall of 1950 he was elected to the office of Prosecuting Attorney of Canyon County. In 1956, he was elected to the Idaho House of Representatives for two terms and served on the State Affairs Committee. He decided to return to the Canyon County Prosecutor's Office where he felt he could best serve the citizens of Canyon County. From 1960 through 1974 he served as prosecuting attorney. In 1974, he was defeated in the election and retired from politics.

In 1974 he began his career as a defense attorney. He was a scholar of constitutional law, and dedicated to serving his clients with integrity and justice. As such he was a firm believer in advocating law and order as it should be used to advance the cause of freedom in this country. His favorite phrase was, "There is no freedom nor liberty outside of law and order."

Bob had been a track man in college, and enjoyed sports, especially football with his sons, Bill and Dale. He was active in the Boy Scout program in town and led a Scout Troop for a number of years. He served on the Salvation Army Board. He was a member and served as a trustee of the United Methodist Church. He had a fine baritone voice and sang in the Chapel Choir for

over 30 years. His family loved to travel. Bob enjoyed a trip with Ina and Dale to West Africa to visit Bill where he dug wells in the Peace Corps program. Bob liked working on the family acreage in Sunny Slope.

He is survived by his wife, Ina of 64 years; his daughter, Connie (Nick) Platt of Vancouver, Washington; his sisters, Evelyn (Joe) McCollum of Twin Falls; Nina (Dick) Staiger of Cherry Hill, New Jersey; Miriam Iverson of Phoenix, Arizona; and his brothers Hubert and Howard Iverson, both of Notus; several grandchildren and great-grandchildren. He was preceded in death by his two sons, William Martin "Bill" Yost and Dale Robert Yost; his father Carl A. Yost; his mother Mable Iverson; and a brother, Donnie Iverson.

—ON THE MOVE—

Richard H. Greener, Christopher Burke, and Fredric V. Shoemaker, have changed the name of their law firm to Greener Burke Shoemaker P.A. (GBS). Richard Greener specializes as a trial lawyer and is a fellow of the American College of Trial Lawyers and the American Board of Trial Advocates. Christopher Burke specializes in commercial, products liability, and personal injury. He is a trained mediator and arbitrator. Fredric Shoemaker is the managing partner of GBS. His litigation experience is in real estate, land use, construction, condemnation, and transportation. He has served as a hearing officer for the state of Idaho, and is a member of the American Trial Lawyers Association.

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LICENSING DEADLINE IS FEBRUARY 1, 2008

The 2008 licensing deadline is February 1, 2008. Your payment and forms must be physically received in the Idaho State Bar office by deadline to avoid the late fee. Postmark dates do not qualify. If your licensing is going to be late, be sure to include the appropriate late fee: Active, Out of State Active and House Counsel - \$50; Affiliate and Emeritus - \$25. The final licensing deadline is March 1, 2008.

Contact the Membership Department at (208) 334-4500 or astrauser@isb.idaho.gov if you have any questions.

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LETTERS FROM NUREMBERG: MY FATHER'S NARRATIVE OF A QUEST FOR JUSTICE

By Christopher Dodd with Larry Blom
(Crown Publishing, 373 pages, ©2007)

*"Be ashamed to die until you have won some victory for humanity."
~Horace Mann*

I heard a piece on NPR (September 15, 2007) about the book *Letters from Nuremberg*, while driving home from work one afternoon, and made a mental note to read it; it sounded compelling on a number of levels—as a story of the fortitude and endurance required to bring the inhumane to justice, of the legal acumen required to put on a trial of this magnitude, and of the personal insight of someone both taking part in the trial and living his own life. My mother-in-law heard the same piece, thought of me and sent me a copy of *Letters from Nuremberg*.

The book is a collection of letters that Thomas Dodd, whose official title was Executive Trial Counsel for the Office of the United States Chief of Counsel for the Prosecution of Axis Criminality, wrote home to his wife, Grace. These letters have been collected and published by Dodd's son, U.S. Senator Christopher Dodd, a Democratic presidential candidate.

The challenge of bringing war criminals to justice is one of the more interesting themes woven throughout the book. One of Thomas Dodd's first assignments was to interview the Nazis in order to prepare the indictments later used in the case in chief against them. Dodd conducted a series of interviews with numerous Nazi officials, and demonstrated humanity toward them despite the charges with which they were faced. For example, Dodd went to the extraordinary length of tracking down Field Marshall Wilhelm Keitel's wife to deliver a message that Keitel was well and that his wife should return to their home in Hanover. Dodd noted the oddity of this request but fulfilled it with the rationalization that even the accused are human, and we are supposed to be civilized.

The legal insights of the Nuremberg trial were not what I had hoped within the book. A great deal of the letters criticized the handling of the case and the fact that, in Dodd's estimation, the trial was unnecessarily long. Dodd also railed against the emphasis on documents rather than demonstrative evidence, such as the shrunken head of a prisoner that the Commandant of Buchenwald kept on his desk as a paperweight. Dodd ultimately struck a balance between introducing physical evidence of the Nazis' inhumanity and of the meticulously-kept records of the Nazis' statistics, experiments, and sheer magnitude of the atrocities that they committed.

In the timeless lawyerly tradition of critiquing others' trial technique, Dodd lamented the lack of skilled cross-examination by the other attorneys, criticized Supreme Court Justice Robert Jackson's cross-examination of Hermann Goering, commander of the Luftwaffe, and expressed his belief that most of the cross-examinations tended to go on for too long. Certainly, this criti-

cism still echoes through courthouses today in lesser cases than the Nuremberg trial.

One of the most interesting aspects of the book was the cultural divide between the attorneys from four countries—the U.S., France, Britain, and Russia. Dodd lamented the abilities of the French and Russian attorneys and blamed much of the delay on the Russians. The Russians form an interesting backdrop throughout Dodd's letters—namely the irony of the Russians prosecuting the war crimes of the Nazis, when their crimes were as egregious, if not worse, than those of the Nazis. This point was not lost on Dodd, and he consistently treated the Russians with skepticism and suspicion. This skepticism should also not be lost on the readers: that generally, the victors write the history books.

Letters from Nuremberg offers an intimate insight into a marriage that had been interrupted by the requirement that Dodd live for 15 months in Nuremberg, while his wife remained home in Connecticut with their six children. Dodd was originally supposed to assist with the trial for three months, but through a series of promotions, he wound up staying on for 15 months. These letters were, in fact, so intimate that the more that I read, the less I felt as if I should be reading them. These letters were a collection of the deepest thoughts that a husband shares only with his wife—things such as thoughts on his boss, co-workers, ambitions, and the day to day trivialities of a family. Reading these letters, it struck me that Dodd had written these letters never intending for them to be read by anyone but his wife Grace. When I thought about this aspect, I was a bit surprised that his son opted to publish them.

Even with these reservations, however, *Letters from Nuremberg* offers a compelling first person account of one of the participants within the Nuremberg trial. Although you might not want to move it to the top of your reading list, it's a quick read that's worth putting into your "to read" pile. If for nothing else, it is fascinating to see the parallels between the arguments provided in the course of the historic Nuremberg trial and current events.

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The licensing deadline is still February 1, 2008. The licensing form and fees must be physically received in the Idaho State Bar office by February 1, 2008 if you want to avoid the late fee. Courses taken to complete your MCLE requirements will be counted on previous reporting period. The final licensing deadline is March 1, 2008. Your MCLE requirements must be completed by that date. Please contact the Membership Department at (208) 334-4500 or astrouser@isb.idaho.gov if you have any questions.

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To apply, please send resume and letter of interest to the attention of Elaine H. Lee, Associate Attorney, at P.O. Box 2837, Boise, Idaho, 83701 or via email to elee@g-g.com. Telephone inquiries are also welcome and can be directed to Ms. Lee at (208) 336-9777.

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Sponsored by the Idaho Law Foundation
12:00 noon - 1:00 p.m. at the Law Center, Boise.
Each session is 1.0 Ethics CLE Credits.

January 15: Maintaining an Ethical Law Practice

January 22: An Ounce of Prevention is Worth a Pound of Cure (Pt. 1)

January 29: An Ounce of Prevention is Worth a Pound of Cure (Pt. 2)

January 16: Settlement Ethics

Sponsored by the Idaho Law Foundation
8:30 - 9:30 a.m., 1.0 Ethics Credit
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January 24: Young Lawyers Section-

CLE Series—Session 1
12:00 noon - 1:00 p.m.
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January 30: Addressing Energy, Growth and Development in Idaho and the West

Sponsored by the Environment and Natural Resources Section
Crystal Ballroom, Boise

FEBRUARY 2008

February 8: Seven Keys to Winning Performance in the Courtroom

Sponsored by the Idaho Law Foundation
6.0 CLE Credits
Boise Centre on the Grove

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)
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February 28 to March 1: Annual Commercial Law and Bankruptcy Seminar. 13.5 CLE Credits

Best Western University Inn, Moscow, Idaho

February 28: Young Lawyers Section-

CLE Series Session 2
12:00 noon - 1:00 p.m.
Law Center, Boise

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March 7, 2008

Workers Compensation Section Annual Seminar
Sun Valley, Idaho

April 25, 2008

Idaho Practical Skills Training Boise
Centre on the Grove Boise, Idaho

May 16, 2008

Business and Corporate Law Section Annual Seminar
Boise Centre on the Grove

June 19-20, 2008

Litigation Section Seminar
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Check our website to make sure the 2008 dates are current:
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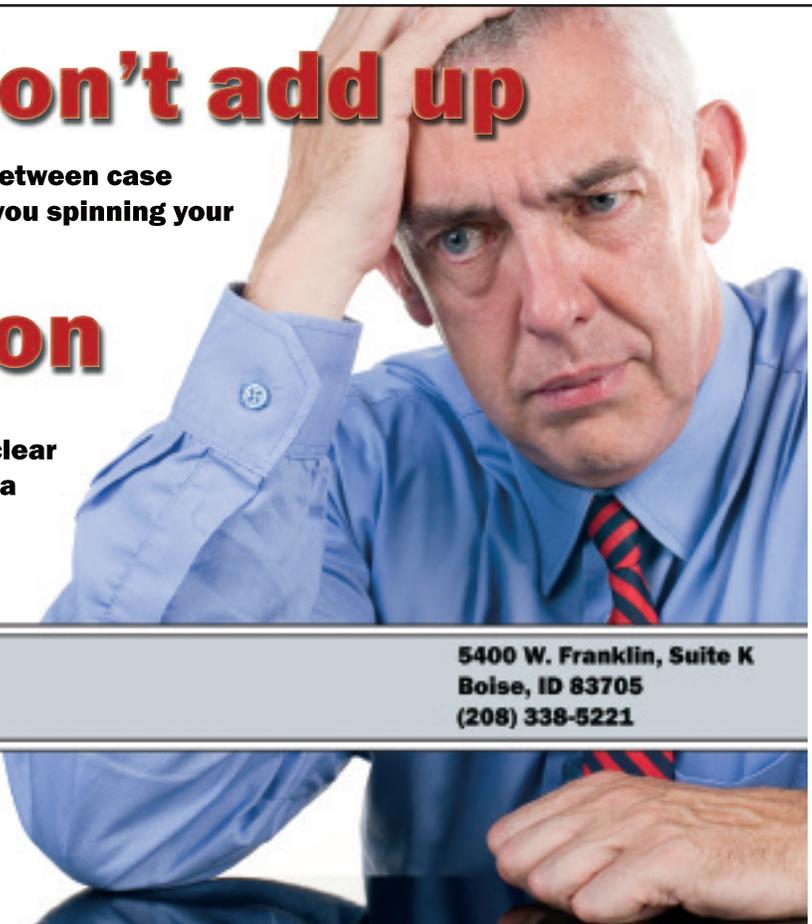
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