

The Advocate

Official Publication of the Idaho State Bar

Volume 51, No. 9

September 2008



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The Advocate

The Official Publication of the Idaho State Bar
51(9), September 2008

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On the Cover—this month's cover artwork is an original drawing by problem-solving court graduate Ross Lintner. He said, "The barbwire represents the fact that even though I'm sober, it's still part of me, part of who I am. But I have the power to control it. I know I'm an alcoholic. The broken chains symbolize addiction and that you can break through the restraints and control of addiction."

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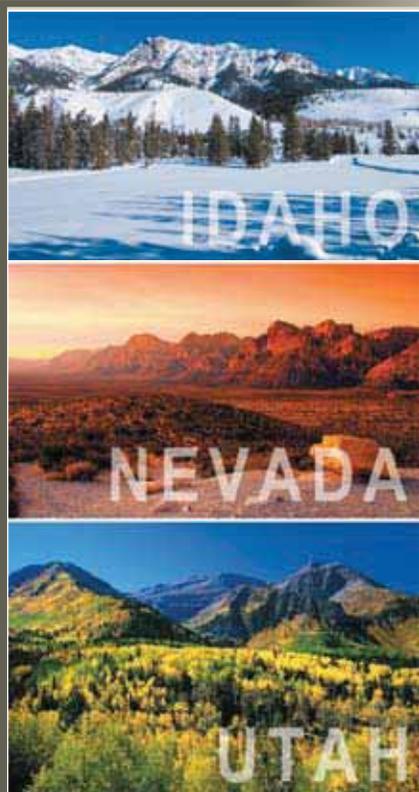
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COLLEGIALITY REDUCES STRESS

Dwight E. Baker



We inherited a legacy from those who preceded us, just as we will leave a legacy for those who follow. One of the bequests we should consider is

that of collegiality.

The friendships and deep respect for our classmates formed in law school was driven in part by the common adversity — fear of failure and worry about money. While we continue to cherish those friendships, we knew those relationships probably would not continue when our professional paths diverged. We all hoped and expected to be successful, but fearing the unknown, anticipated a somewhat contentious future.

What a pleasant surprise for those of us lucky enough to find employers and associates wanting us, and encouraging us to do well. We found adversaries with whom we disagreed with, not to be disagreeable, but rather to be straightforward and candid. If there were confidences which could not be disclosed, we were told so directly. If there were strategies which had to be concealed, we understood the necessity. If there was a need for some out-of-the-ordinary consideration, whether personal or professional, the consideration was extended if at all possible. We found older lawyers who were genuinely interested in our lives, both professional and personal.

At times we found judges to be considerate of our inexperience, taking the time to lay out ground rules which were reminders of what we had been exposed to academically, but did not appreciate practically. We found clerks who were honored and pleased to take the time to teach us how courthouse files were organized, who was responsible for what, and importantly, how and why courthouse papers moved to their destination. In summary, unlike the practice of law in

many areas of our country, the practice of law in Idaho has been a pleasure to most of us; in part due to the never-ending, always changing intellectual challenges; in part due to the associations and friendships built by helping our clients; but, perhaps most importantly, because of the association with our fellow attorneys. This is a legacy which we did not create, but it is a legacy we must preserve, and it is a legacy we should actively transfer to those who follow.

Collegiality reduces stress. If our relationship with opposing counsel is built on a collegial foundation, our relationship with our clients can take on a different aura. We can begin to approach our clients about issues on a problem-solving basis, rather than as a win/lose contest. We can interface with opposing parties with an attitude of cooperation rather than contention, whether in a settlement conference or in a deposition. We can approach the courts with the philosophy of resolving disputes expeditiously and economically by “cutting to the chase,” instead of posturing for some perceived advantage. And, we can diminish the ever present barrier between our profession and the public. While criticism of attorneys seems at times to be a national pastime, if we are to protect the legacy entrusted to us, we must be circumspect about directly or indirectly criticizing other lawyers, regardless of the setting. After all, one of the great attractions of the law is that each of us can and should do things our own way. It is critical we recognize that because someone else’s approach is different than our own, those other approaches nevertheless should be respected.

In order to preserve collegiality, we must be ever aware of the conduct which erodes collegiality ... the too-demanding letter, the curt reply, the unreturned phone call, the motion to compel or for sanctions without prior candid discussions, and the disrespectful cross examination

erode collegiality’s foundation. Our responsibility requires us to identify those actions and attitudes which make our lives unnecessarily difficult and stressful. It requires us to consider changes in our practices and in our lives which allow us to act timely, fairly, and thoroughly. It requires us to respect confidences when necessary, and respect our adversaries. For those interested in pursuing this topic, Steven Keeva’s book *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*, is highly recommended.

Every contact we have as attorneys can and should have an underlying tone of respect and courtesy. We all recognize that we can and must disagree, that we can and must represent our clients zealously, that we can and must protect our clients’ interests, including legitimate confidences and secrets, and that we can and must do our best to “win” when called upon to do so. The legacy from the great attorneys who preceded us establishes not only the possibility, but also the reality, that our practices can be conducted with respect and courtesy. Protecting that legacy should be everyone’s goal.

The learning process is not always easy or pleasant, and yet we sometimes treat young attorneys with a condescending disrespect. We indirectly demand respect for ourselves and our profession by being respectful of others, including the inexperienced. Why not utilize these opportunities to inculcate a mentorship mentality? And this is not an issue of young versus old. My own experience proves that thirty-five plus years in the Bar does not mean that one can’t ask for and receive very real help and education from those relatively new to the practice, particularly in specialized areas. We can tactfully offer assistance to those without experience in a professional manner, even if not specifically requested to do so. When we are confronted with a new issue or area of the law, beyond arming ourselves

with the necessary legal research, we can observe, we can ask, we can seek assistance, we can seek constructive criticism, we can self-evaluate, and in doing so, we raise the bar for ourselves and everyone with whom we come in contact.

As informal groups, we can take advantage of opportunities to schmooze with our other attorneys and “talk law,” whether after a meeting in our offices, at the courthouse on law and motion days, during informal lunches, drink breaks, or recreational activities.

In more formal settings, participation in organized activities, whether the plaintiff’s bar, the defense bar, the Federal bar association, Inns of Court, J. Reuben Clark Law Society, or Idaho State Bar functions can be important parts of our professional lives. During the coming year the Bar Commissioners are making a special effort to support our District Bar groups. Ten percent of our dues are dedicated to the support of our districts, but we recognize that in six of the seven districts, time and distance are impediments to participation by everyone. The Sixth District recently addressed this problem by having a monthly meeting in Preston rather than

Pocatello. The report of the meeting was highly positive, including the observation that the 25 or so attorneys attending may have been the largest number of lawyers in Franklin County at one time in history. We might encourage similar meetings in places such as Sandpoint, Orofino, Weiser, Hailey, Driggs, and Salmon. We have a beautiful state! The extra time for such trips need not be burdensome, but should be enjoyable and productive.

In addition to being the focal point of collegiality, our sections have become the Bar’s greatest source of professional education and competence. Recently the Real Property Section donated \$10,000 to the Idaho Law Foundation to be distributed to organizations that provide legal aid to the poor. Idaho Legal Aid and the Idaho Volunteer Lawyers Program each received \$5,000. The section also offered a \$2,000 scholarship to the University of Idaho College of Law student who received the highest grade in their first-year Real Property Law course. This example is a credit to the people giving of their time and abilities to make our professional and personal lives more meaningful. It’s obvious the individuals involved have a

respect for each other, and for their work, which should be an example for us all.

In summary, collegiality provides an opportunity for each of us to our jobs better and more economically, while adding a human side to the practice of law which is at times inconsistent with our training, a training which focuses on “facts” and the law applicable to those facts, while looking past or through the emotional, human side of ourselves and our clients. Increasing collegiality will lead us to a less stressful, more satisfying professional life. We should cherish, protect, and pass on this legacy.

Dwight E. Baker *has been engaged in private practice since 1971, and is a founding partner is the Blackfoot law firm of Baker and Harris. He is a 1963 graduate of the University of Wisconsin/Madison, and a 1971 graduate of the law school at the University of Idaho. He represents the Sixth and Seventh Districts, and is currently serving a one-year term as President of the Idaho State Bar Board of Commissioners.*

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NEWSBRIEFS

Amendment to Idaho Code of Judicial Conduct—The Supreme Court issued an order on August 4, 2008, effective immediately, amending the Idaho Code of Judicial Conduct to allow ex parte communications at drug court staffings and written ex parte communications with problem-solving court team members, provided the written communications are circulated to all members of the team. The new provisions also state that a judge who has received such ex parte communications shall not preside over termination proceedings, probation violation proceedings or sentencing in that same case. A full explanation of this order is available at <http://www.isc.idaho.gov/links/Order%20Explanation.pdf>.

Retirement reception—for the **Hon. Don Harding** is scheduled for October 2, at 1:30 p.m., in Courtroom 301, Caribou County Courthouse in Soda Springs. For more information contact Suzanne Johnson, (208) 236-7071.

Retirement—the **Hon. Eugene Albert Marano**, Kootenai County Magistrate Court will be retiring as Magistrate Judge effective Jan. 1, 2009. He has served as a First Judicial Magistrate for over 23 years.

Retirement —the **Hon. Kathryn A. Sticklen**, will be retiring as District Judge of the 4th Judicial District effective January 2, 2009.

Appointed—**John Judge**, Landeck, Westberg, Judge & Graham, PA, has been appointed the new magistrate judge in

Latah County. He will replace Magistrate William Hamlett who is retiring September 30, 2008. To contact John Judge call (208) 883-1505.

Appointed—**Mitchell W. Brown**, Pocatello, was appointed by District Governor C.L. “Butch” Otter to fill the Sixth Judicial District vacancy left by the recent retirement of Judge Don Harding. His chambers will be in Soda Springs. He has been with Racine Olson Nye Budge & Bailey, Chartered since 1990, and a partner since 1998. His practice focus has been both civil and criminal law. He is a Wyoming native, and received a bachelor’s degree from Utah State University and his law degree from the University of Idaho College of Law. He and his wife Tricia, have four children. His investiture ceremony will be September 26, 3:00 p.m. in the Caribou County Courthouse in Soda Springs. For more information contact Suzanne Johnson, (208) 236-7071.

Idaho State Bar Member Benefit—A 20% American Bar Association (ABA) Book Discount is now available to ISB Members—Bar members will receive a 20% discount on books purchased from the ABA’s on-line bookstore. Their online bookstore has hundreds of cutting-edge publications available to benefit the management of your practice and keep you current in your practice area. See page 79 for more details.

DISTRICT BAR ASSOCIATION RESOLUTION MEETING CALENDAR

- 1st District, Coeur d’Alene Noon, Tuesday, November 4
- 2nd District, Lewiston Evening, Wednesday, November 5
- 3rd District, Nampa Evening, Thursday, November 13
- 4th District, Boise Noon, Friday, November 14
- 5th District, Twin Falls Evening, Wednesday, November 19
- 6th District, Pocatello Noon, Thursday, November 20
- 7th District, Idaho Falls Noon, Friday, November 21

DISCIPLINE

NOTICE TO KATE DONNELLY OF FORMAL CHARGE COMPLAINT

Pursuant to I.B.C.R. 523(c), the Idaho State Bar hereby gives notice to Kate Donnelly that it has filed a formal charge discipline Complaint against her alleging professional misconduct. Please be advised that service of the Complaint is deemed complete fourteen (14) days after publication of this issue of *The Advocate*.

The Young Lawyers Section held their annual Summer Associates Reception on July 17th at the Law Center in Boise. Over 50 attorneys, judges, and summer associates attended the event.

Special thanks to the event sponsors:
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EXECUTIVE DIRECTOR'S REPORT

2008 ANNUAL CONFERENCE – OCTOBER 8-10 IN SUN VALLEY

Diane K. Minnich



This year's Annual Conference (yes, this is the same as the 3-day Annual Meeting we generally have in the summer!) will be held October 8-10 in Sun Valley.

Join us to enjoy Sun Valley in the fall, socialize with your friends and colleagues, honor this year's award recipients, and obtain a few CLE credits.

The meeting is being held in October to take advantage of the opportunity to

coordinate programs and events with the Idaho Judicial Conference. On Wednesday, October 8, the Bar and Judiciary are offering a joint program: U.S. Supreme Court Update featuring Duke Law Professor Neil Siegel. Lunch on Wednesday is co-hosted by the Judicial Conference and the Idaho Legal Historical Society. The Wednesday afternoon CLE program is the popular "Lessons from the Masters", featuring Ray Rigby, David Leroy and Allyn Dingel. The evening dinner event will honor this year's distinguished lawyers: David Nevin, Boise and Bill Olson, Pocatello. The conference, which concludes Friday at noon, also

includes two ethics programs – Ethics Rock and legal ethics humorist Sean Carter.

Following is the schedule for the conference. The complete agenda, general information, and registration form was mailed to you in mid-August and is available on the Bar website: isb.idaho.gov. If you have any questions about the conference contact Terri Muse at tmuse@isb.idaho.gov or (208) 334-4500.

We hope you to see you in Sun Valley next month.

WEDNESDAY - OCTOBER 8, 2008

8:00 a.m. – 5:00 p.m.	Registration - Sun Valley Inn (Continental Room)
10:00 a.m. – 12:30 p.m.	U.S. Supreme Court Update presented by Duke Law Professor Neil Siegel 2.5 CLE Credits
12:30 p.m. – 2:00 p.m.	Bench/Bar lunch with the Idaho Judicial Conference "Diamondfield Jack" presentation by Idaho Legal History Society's Dave Metcalf
2:30 p.m. – 5:30 p.m.	Lessons from the Masters - 3.0 CLE Credits
5:30 p.m. – 7:00 p.m.	President's Reception - Recognition of the 100th Anniversary of the Canons of Ethics Sponsored by the University of Idaho College of Law and Wells Fargo Private Client Services
7:00 p.m.	Distinguished Lawyers Dinner

THURSDAY - OCTOBER 9, 2008

7:30 a.m. – 5:00 p.m.	Registration - Sun Valley Inn (Continental Room)
7:30 a.m. – 8:30 a.m.	District Bar Presidents Breakfast (By Invitation)
8:45 a.m. – 10:00 a.m.	Plenary Session <ul style="list-style-type: none"> * President's Welcome * Sean Carter – "Sue Unto Others" -1.0 Ethics CLE
9:00 a.m. – 12:00 p.m.	Idaho Law Foundation Board of Directors Meeting
10:30 a.m. – 12:00 p.m.	CLE Session – 1.5 CLE Credits <ul style="list-style-type: none"> * The Art and Ethics of Oral Argument * Developing the Gift of Gab - Sean Carter * New Uniform Mediation Act
12:15 p.m. – 1:30 p.m.	Service Awards and 50/60 Year Attorneys Recognition Lunch - Sponsored by Moreton & Company
1:45 p.m. – 3:15 p.m.	CLE Session – 1.5 CLE Credits <ul style="list-style-type: none"> * New Revised LLC Act * Uniform Powers of Attorney Act * Public Financing in Idaho: Taking it to the People, the Judges and the Financiers
4:00 p.m. – 6:00 p.m.	"Ethics Rock!" a musical CLE - 2.0 Ethics Credits
6:00 p.m. – 7:00 p.m.	Idaho Law Foundation Reception
7:00 p.m.	Dinner on Your Own

FRIDAY - OCTOBER 10, 2008

8:00 a.m. – 12:00 p.m.	Registration - Sun Valley Inn (Continental Room)
8:30 a.m. – 12:00 p.m.	Board of Commissioners Meeting
8:30 a.m. – 11:45 a.m.	CLE Session - 3.0 CLE Credits <ul style="list-style-type: none"> * The In-Between Children: Grandparents, Relatives and other Custodial Relationships * Employment Law Update * 60 Law Practice Tips in 60 Minutes/Law Practice Management Innovation Strategies for Success
12:00 p.m.	Conference Adjourns

PROBLEM-SOLVING COURTS IN IDAHO

Norma Jaeger

Statewide Drug Court and Mental Health Court Coordinator

Like many states, Idaho's justice system has struggled with increases in cases that are strongly influenced by the twin issues of addiction and mental illness. In the late 1990s these cases were placing a tremendous burden on our court system, and something needed to be done to alleviate the burden. The individuals appearing before the courts needed help to address their legal needs, and help to keep them active and productive in their communities and families. The courts, the state, and many dedicated people in the justice system have joined together to create special courts to address these legal needs, while at the same time extending real help and hope to the individuals going through the system. This new system would allow selected individuals the opportunity to become productive members of the community by providing connecting treatment to the accountability of the judicial system. As a solution to these problems Idaho started its first drug court in Kootenai County in September 1998, under Judges James Judd and Eugene Marano. It was quickly followed in March 1999, by the Ada County Drug Court, under Judge Daniel Eismann (presently Chief Justice of the Idaho Supreme Court). These two early drug courts established solid operational foundations and demonstrated successful retention of clients in treatment and achievement of several positive outcomes. Currently, there are 43 adult and juvenile drug courts in operation.

In this issue of *The Advocate* we will explore the development and current status of problem-solving courts, focusing on how they are being used today in Idaho. Team members of these courts, as well as a nationally-renowned drug court researcher, will describe these courts and the positive impact they have had in Idaho's communities.

Chief Justice Daniel Eismann's article provides an overview of the Idaho problem-solving court system and examines how these courts fit in our overall justice system. Chief Justice Eismann is frequently called upon to provide input on the development, operation and sustaining of drug courts nationally, and can still occasionally be found "filling in" by presiding over the Ada County Drug Court. In fact, three of our current sitting justices, Chief Justice Eismann, Justice Burdick, and Justice Horton come from the trial bench and have all presided over Idaho drug courts. Dr. Douglas Marlowe, is a leading national criminal justice researcher, with degrees both in psychology and the law. He serves as the Chief of Science, Policy, and Law, for the National Association of Drug Court Professionals (NADCP), Alexandria, Virginia. Dr. Marlowe cites the evidence for their effectiveness as he lays out the case for problem-solving courts. Norma Jaeger, Statewide Coordinator for Idaho problem-solving courts with the Idaho Supreme Court, offers a look at the broad picture of problem-solving courts in Idaho—what they are, where they came from, and where they may be going. She is a member of the Board of Directors for NADCP and frequent conference lecturer. Two of the articles are unedited, first-person accounts of direct experience by a current and former drug court participants.

A former problem-solving court participant contributed the cover art for this issue. Several of the articles examine specific variations on the problem-solving court theme; juvenile drug courts, mental health courts, DUI courts, and child protection drug courts, including a public defender's perspective of his service with the Child Protection Drug Court in Pocatello.

Underpinning all of these articles is the reality of Idaho's strong and somewhat exceptional, three-branch collaboration to support and expand these courts, and an equally strong national reputation for excellence. Idaho is clearly seen as providing cutting-edge operations in problem-solving courts, based on evidence-based practices and passionate commitment of a wide range of professionals from the bench and the bar as well as from probation and the treatment community. For example, Idaho's enabling statute is built upon the research findings on effective criminal justice programs and has served as a model for other states seeking to enact similar statutes. The 7th District mental health courts were chosen as one of five national learning sites for mental health courts by the Council of State Governments and the U.S. Department of Justice. Idaho's Child Protection Drug Courts are among those chosen to demonstrate the effectiveness of this particular model for improving permanency outcomes for children in the child welfare system, through a national project of the Department of Health and Human Services. Judge Brent Moss was the first judge to receive the Robert Wood Johnson Community Health Leadership Award for his advocacy and leadership in securing mental health services, through the 7th District Mental Health Courts.

Many professionals in Idaho's justice system have devoted countless hours in this effort to marry justice and compassion for individuals caught in the seemingly unbreakable web of addiction or mental illness. We hope this issue of *The Advocate* will illuminate the Idaho experience with "therapeutic jurisprudence" and perhaps entice readers to become more personally involved in this movement in their own community (we even tell you how).

ABOUT THE AUTHOR

Norma Jaeger received her Master of Science Degree from Whitworth College in Health Services Administration. She has spent over 25 years managing public behavioral health programs in North Idaho, Portland and Seattle. She managed offender programs and developed quality assurance efforts for the Idaho Department of Correction and has been the Statewide Coordinator for the Idaho problem solving courts since 2002, and currently serves as member of the Board of Directors of the National Association of Drug Court Professionals. She is adjunct faculty in the Department of Criminal Justice at Boise State University and national consultant for Policy Research Associates, Delmar, New York.

Hon. Gerald L. Weston
1936-2008

The Hon. Gerald L. Weston passed away August 20, 2008. Judge Weston was instrumental to the success of the Canyon County Drug Court. His leadership and dedication was a driving force behind its creation. His family has established the Canyon County Drug Court Gerald L. Weston Memorial Fund and suggests that donations made in his honor be sent to Trial Court Administrator Dan Kessler, Canyon County Courthouse, 1115 Albany Street-Room 336, Caldwell, ID 83605.

**Attorney Volunteer Efforts in
Problem Solving Courts**

In addition to their official duties as team members with Idaho problem solving courts, members of the Idaho Bar have come forward to support these courts in a wide variety of ways. They have paid for Thanksgiving turkeys and picnic barbecues for participants and their families. They have conducted book clubs and tutored people for their GED. They have furnished items for rewards such as boxes of candy bars and gift cards. They have assisted individual participants with legal issues such as regaining driver's licenses, resolving child support issues, and advising on credit problems and landlord-tenant issues. They have helped graduates get jobs and have even hired graduates. In short, Idaho attorneys have seen what needed doing and have "just done it".



Drug Court participants giving back to their community.



THREE BRANCHES OF GOVERNMENT WORKING TOGETHER EFFECTIVELY HAVE MADE IDAHO A LEADER

Chief Justice Daniel T. Eismann
Idaho Supreme Court
Chair, Statewide Drug Court
and Mental Health Court Coordinating Committee

Idaho began her experiment regarding problem-solving courts in late 1998 and early 1999 with two adult felony drug courts—one in Kootenai County and one in Ada County. The early successes of these courts convinced others in our government of the merit of such courts. In 2001, the legislature enacted the Idaho Drug Court Act to provide a statutory framework for implementing drug courts throughout the state. The Supreme Court appointed a drug court coordinating committee to oversee drug court programs. The membership of the committee has consisted of about forty people and has included judges, legislators, a representative from the governor's office, representatives from the administrative office of the courts, trial court administrators, drug court coordinators, a prosecuting attorney, a public defender, state and county probation officers, treatment providers; and, representatives from the departments of correction, education, health and welfare, and adult and juvenile corrections. The committee approved guidelines for the operation of all drug courts in the state, and it recommends the allocation of treatment dollars among the various problem-solving courts throughout the state. It must also approve the creation of any new problem-solving court. In 2005, the Drug Court Act was amended to add mental health courts, and the name of the committee was changed to the "Drug Court and Mental Health Court Coordinating Committee."

Treatment for the drug court participants is provided through the Department of Health and Welfare (DHW). In 2001, a representative from DHW and several of us from the judiciary met to review DHW's regulations governing substance abuse treatment. DHW modified the regulations as necessary to make them consistent with the operation of drug courts. Initially, DHW's treatment providers offered substance abuse treatment, but not cognitive behavioral therapy. The latter is a necessary component of any treatment intended to reduce criminal behavior. At the Court's request, DHW began requiring its providers to include cognitive behavioral therapy in addition to substance abuse treatment.

The Department of Correction (DOC) also worked with the Court to provide services to participants in drug courts. A drug court should only admit addicts who are assessed at medium to high risk to re-offend. The outcomes for low-risk offenders can worsen if they are put through an intensive correctional program. DOC agreed to assess drug court applicants using the Level of Service Inventory, Revised, (LSI-R); a risk assessment tool that measures ten areas related to the risk of re-offending and provides an overall risk score (see LSI-R definition at end of this article). DOC has also assigned probation officers to drug courts. Not only do they provide valuable supervision by visiting the homes of drug court participants, but they also contribute to the drug court by giving their insights at staff meetings when the progress of participants is discussed.

The addition of mental health courts again required a partnership between the judiciary and DHW, with the Department providing



Justice Eismann presenting a drug court and mental health court leadership award to former Rep. Kathy Skippen and Senator Joe Stegner.

the necessary mental health services. The Bonneville County mental health court, presided over by Judge Brent Moss, is one of five in the nation recognized as a training center for other jurisdictions wanting to start mental health courts.

In July 2006, Governor James Risch appointed Idaho's first "drug czar." In 2007, the legislature created the Office of Drug Policy in the office of the governor. Its administrator, Debbie Field, is the official in the state designated to oversee and execute the coordination of all drug and substance abuse programs within the state of Idaho. In 2007 the legislature also made the director of the Office of Drug Policy the chair of the Interagency Committee on Substance Abuse Prevention and Treatment (ICSA). This Committee is charged with the responsibility of improving the coordination and effectiveness of substance abuse services across state agencies and the Judiciary. It includes representatives from the Departments of Health and Welfare, Correction, and Juvenile Corrections, the Superintendent of Public Instruction, the Idaho State Police, the Idaho Transportation Department, the Administrative Director of the Courts, the state boards of health and welfare, corrections, and juvenile corrections, the drug court and mental health court coordinating committee, the senate and house health and welfare committees, the senate judiciary and rules committee, the house judiciary, rules and administration committee, the regional advisory committees, the Governor's office, and any other state agency that expends funds to address substance abuse. At the request of the legislature, ICSA has, during the last few years presented a combined substance abuse treatment budget that includes funding for the Supreme Court, DHW, and DOC for their substance abuse-related programs.

In 2007, Director Field chaired a group to select a single substance abuse assessment tool to be used for all publically-financed substance abuse treatment throughout the state. Idaho is the first state in the nation to embark on the use of one standard assessment tool for substance use disorder. With all agencies and providers using a common assessment, everyone will be speaking the same language, utilizing the same reports, and collecting the same data.

The Court also created the position of statewide drug court and mental health court coordinator. Norma Jaeger is the current statewide coordinator. One of the essential tasks she performs is organizing an annual training institute for everyone involved in

problem-solving courts. In January of this year, about 400 people attended the training. Problem-solving courts require that judges and others learn new skills, such as the effective use of rewards and sanctions and motivational interviewing, which is a set of strategies to reduce resistance to change. As a testament to her leadership, Norma is currently serving on the board of the National Association of Drug Court Professionals (NADCP).

During the last ten years, Idaho's problem-solving courts have grown from two adult felony drug courts to fifty-four problem-solving courts including twenty adult felony drug courts, seven juvenile drug courts, ten adult mental health courts, one juvenile mental health court, four child protection drug courts, and twelve DUI or misdemeanor DUI courts. During the last fiscal year, those courts served 1,817 offenders.

I was invited to attend a roundtable hosted by the Office of Justice Programs, United States Department of Justice, held in Washington D.C. in April of this year. Eighteen people attended from around the country. We spent the day discussing various issues relating to substance abuse, mental health, and problem-solving courts. At the conclusion of the meeting, I was struck by how far Idaho has advanced in implementing and improving problem-solving courts. In terms of sustainable funding, statewide coordination and oversight, and regular training, Idaho is far ahead of many states that have had drug courts much longer. A friend of mine who is a drug court judge in Philadelphia and a past president of NADCP told me that Idaho is among the top ten states in the nation in addressing substance abuse and mental health issues in the court system. That could not have happened without all three branches of government working together.

There are some who view problem-solving courts as an aberration, and that they are not really part of the court system. When I started the Ada County drug court, some in law enforcement called it a "hug court." The Supreme Court of Wyoming recently questioned whether drug courts are even courts. It stated, "Indeed, calling it a 'court' may be a misnomer, because it is not an 'organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice.'" [Wyoming's organizational structure for their drug courts is quite different than Idaho's structure.] Although problem-solving courts require that judges handle cases in a different manner than would be traditional,

they are clearly courts. As our Supreme Court recently held, the due process protections applicable to revoking probation also apply to termination from a drug court.²

Problem-solving courts require that judges assume a different role, learn new skills, and work longer hours. They simply represent, however, the court system modifying how it handles certain classes of cases in order to be more effective in serving the citizens of Idaho. They have also had a significant influence on other areas in the criminal justice system. The drug epidemic in our country has prompted much research, particularly regarding drug courts. As a result, we have learned much about the best practices in handling offenders in such courts, based upon the research. For example, high risk offenders do much better if they appear before a judge every other week than if they appear before a judge less frequently. Rewards are more effective in changing behavior than sanctions, but both rewards and sanctions must be used appropriately for best results. The successes of using evidence-based practices in drug courts have shown that similar practices can be used in other areas of the criminal justice system where rehabilitation is a primary objective. It has also shown that in many cases, coerced treatment at a person's initial criminal involvement can prevent or significantly reduce future involvement in the criminal justice system.

ABOUT THE AUTHOR

Chief Justice Daniel Eismann worked to start the Ada County drug court when he was a district judge in the Fourth Judicial District. He presided over that court for two years prior to becoming a justice with the Idaho Supreme Court, where he now serves as Chief Justice. He is the Chair of the statutory Statewide Drug Court and Mental Health Court Coordinating Committee and was recently appointed to the American Bar Association standing committee on substance abuse. He is a member of the national Judges Criminal Justice/Mental Health Leadership Initiative, organized under the auspices of the Council of State Governments (CSG) to address the issues of the mentally ill, and persons with co-occurring mental and substance use disorders, in the criminal justice system. He will chair a special, year-long CSG project, the Chief Justices Leadership Initiative, to examine and improve Idaho responses to the mentally ill in the criminal justice system.

ENDNOTES

¹ *Blanton v. State*, 178 P.3d 410, 414 (Wyo. 2008) (quoting from *Black's Law Dictionary* 352 (6th ed. 1990)).

² *State v. Rogers*, 144 Idaho 738, 170 P.3d 881 (2007).

LSI-R (LEVEL OF SERVICES INVENTORY – REVISED)

The LSI-R is what is called an "actuarial" risk assessment instrument. An actuarial instrument is based, like life insurance tables, on a very large volume of data about many detailed characteristics about individuals which are then correlated with certain outcomes. In the case of life insurance tables, such details as age, gender, marital status, employment, height and weight are correlated with deaths. These data allow assessment of the relative probability of a person, for whom the same characteristics are known, dying. In the case of the LSI-R, a set of known risk factors are correlated with committing a future criminal offense. These are referred to as "criminogenic risks" There are eight major risk factors that are significantly correlated with future criminal offenses. Anti social attitudes, values and beliefs is the number one such risk factor, followed by criminal associates and isolation from prosocial people. Other risk factors from the list of eight include certain psychological characteristics, problems in the family of origin (such as abuse or severe neglect), poor self regulation or problem-solving skills, and substance abuse or dependence. The LSI-R is a rating tool that collects numerous pieces of information about the individual and then provides a composite risk score as well as identifies the areas in which the person's risk factors lie. These risk factors are then the appropriate target areas for rehabilitation efforts. If the risk areas can be modified, the overall risk for reoffense is statistically shown to be reduced. In problem-solving courts efforts are made to use the information provided by the LSI-R to identify appropriate candidates for participation. The composite score can be correlated with the probability of reoffense. Persons with fairly low risk scores do better with general probation, as an intense program, such as a drug court, has been found to actually increase recidivism. Individuals with a score that is too high are also not likely to benefit from a problem-solving court approach.

THE VERDICT ON ADULT DRUG COURTS

Douglas B. Marlowe, J.D., Ph.D.
National Association of Drug Court Professionals

DRUG COURTS DESCRIBED

Drug courts are special criminal dockets that provide community-based supervision and substance abuse treatment to nonviolent, drug-involved offenders in lieu of prosecution or incarceration. Participants attend frequent status hearings in court, complete mandatory substance abuse treatment and other relevant services, undergo random urine testing, and receive progressively escalating punitive sanctions for infractions and rewards for achievements.¹ In pre-adjudication drug courts, graduates have their charges dropped and may be eligible for record expungement, whereas in post-adjudication programs graduates may avoid incarceration or reduce their probationary obligations.² Currently, there are approximately 1,200 adult criminal drug courts in the United States with an additional 1,000 other problem-solving courts, including juvenile drug courts, family dependency drug courts, driving while impaired (DWI) courts, and reentry drug courts.³

STANDARDS OF PROOF

An important question is whether the efficacy of drug courts has been sufficiently proven to justify further growth. Unfortunately, scientists employ different standards of proof than justice professionals, and it is often difficult to elicit a definitive scientific “verdict” about whether a program works. However, judges, attorneys and legislators require concrete answers to such questions to make rational decisions about whether to establish or expand programs. This requires scientific standards of proof to be translated into language that policymakers and criminal justice professionals can understand.

The highest level of legal proof—often defined as greater than 95% certainty—is *beyond a reasonable doubt*.⁴ To reach this level of certainty, scientists require experimental studies involving random assignment to comparable control conditions.⁵ This eliminates bias from the research and ensures the study is comparing apples to apples. What’s more, the experimental studies must be replicated in different settings to be certain the results were not produced simply by chance or emerge only under narrow circumstances.⁶ Subsequently, independent researchers (those not involved with the original experiments) need to perform meta-analyses on all of the available studies. Meta-analyses involve systematically reviewing the research literature to select-out only those studies that used scientifically rigorous methodology, and then statistically averaging

the effects of the program across all of those high-quality studies.⁷ This yields the most conservative estimate of the effect of any program.

Finally, scientists look to dismantling studies and matching studies to determine not only whether a program works, but how it works and for whom. Dismantling studies isolate specific ingredients or components of a program to determine whether they contribute to improved outcomes. For example, as will be discussed, studies have investigated whether some of the defining ingredients of drug courts, including judicial status hearings and escalating sanctions and rewards, are essential to the success of these programs.⁸ Matching studies determine which types of clients are best suited to a particular program and which ones might perform as well, or better, in different regimens. For example, studies have investigated whether all drug-involved offenders need to be in drug courts or whether some drug offenders might perform just as well in less intensive and less costly programs.⁹ Determining how a program works and for which types of clients constitutes the highest level of scientific proof.¹⁰

RESEARCH ON ADULT DRUG COURTS

Five meta-analyses encompassing dozens of experimental and quasi-experimental¹¹ studies have been conducted on adult criminal drug courts.¹² Few, if any, other criminal justice programs have been put to this level of scientific scrutiny. The meta-analyses all concluded that drug courts significantly reduce crime by an average of approximately 8% to 26%, with most estimates falling around 14%.¹³ Importantly, because these figures represent averages, they include programs that were poorly implemented, targeted to the wrong types of offenders, or had only recently begun operations. Well-functioning drug courts were found to reduce crime by as much as 35%.¹⁴ Moreover, the effects have been shown to last at least 3 years post-entry¹⁵ and one study reported reductions in crime lasting an astounding 14 years.¹⁶

There have also been numerous dismantling studies demonstrating that specific ingredients of drug courts are critical to their success, including judicial status hearings,¹⁷ escalating sanctions and rewards,¹⁸ coercive leverage (i.e., substantial legal consequences for failure to complete the program),¹⁹ and planned durations of treatment lasting 12 to 18 months.²⁰ In short, drug courts are more than simply treatment or simply punishment. They employ unique



Participants in the conference on drug courts.

mechanisms of action that make them different from and often superior to other types of criminal justice programs for drug-abusing offenders.²¹

Finally, matching studies have clearly demonstrated that drug courts work best for high-risk and high-needs individuals characterized by relatively more severe substance abuse problems, more serious criminal backgrounds, and/or histories of having failed in standard treatment.²² Such individuals generally do poorly on standard probation, pre-trial supervision or in prison and require the full complement of drug court services to succeed.²³

No discussion would be complete without considering cost. Several rigorous cost evaluations have concluded that every \$1.00 invested in adult drug courts reaps an average of approximately \$2.00 to \$4.00 in benefits, totaling approximately \$3,000 to \$12,000 in net benefits per individual.²⁴ The ranges in estimated cost savings reflect, in part, different approaches by the investigators to computing cost-offsets. Lower dollar figures typically represent direct cost savings to the criminal justice system, such as from reduced arrests, court hearings, and incarceration. Higher dollar figures typically also include more distal savings from reduced victimization and reduced utilization of high-cost healthcare resources.

FUTURE DIRECTIONS

More scientifically rigorous research has been conducted on the effects of adult drug courts than on virtually all other criminal justice programs combined. The results confirm beyond a reasonable doubt that drug courts significantly reduce crime and save communities considerable money. Unfortunately, this verdict goes largely unheeded. A recent nationwide study by the Pew Center on the States concluded that one out of every 100 U.S. citizens is now behind bars with the burden borne disproportionately by minorities and lower-income communities.²⁵ Yet, meta-analyses reveal the average effect of prison on crime and drug abuse is close to zero.²⁶ That is, prison has been shown beyond a reasonable doubt to be ineffective. If drug courts are demonstrably more effective and cost-effective—not to mention more humane—than current practices, then failing to advocate for drug courts is unconscionable. It is time to take drug courts to scale and ensure that every community or judicial district in the U.S. has the capacity to offer drug court services to all of its eligible and needy citizens. Anything less, flies in the face of common sense and the sheer weight of scientific evidence.

In addition, we need greater resources and a concerted effort to garner comparable scientific evidence for other types of problem-solving court programs, including juvenile drug courts, family dependency drug courts, reentry drug courts, and DWI courts. At this juncture, there is promising evidence to support many of these programs and the efficacy of some programs could, perhaps, be characterized as proven by a lesser evidentiary standard of *preponderance of the evidence*, or *clear and convincing evidence*. However, considerably more information is needed to understand how these programs work and for whom, so as to contribute to more rational, effective and humane drug policies. We know that what we're doing is not working. We can and must do better.

ABOUT THE AUTHOR



Douglas B. Marlowe is the Chief of Science, Policy & Law for the National Association of Drug Court Professionals, headquartered in Alexandria Virginia. He also serves as Senior Scientific Consultant for the Treatment Research Institute and is Adjunct Associate Professor of Psychiatry at the University of Pennsylvania School of Medicine. He received a B.A. in Psychology from Brandeis University, J.D. (Magna Cum Laude) from Villanova

University School of Law, and Ph.D. (with Honors) in Clinical Psychology from Habnemann University, and completed internship and fellowship training in Clinical Psychology and Neuropsychology at the Albert Einstein College of Medicine. Dr. Marlowe is a frequent national lecturer and has received numerous research grants to study coercion in drug abuse treatment, the effects of drug courts and other diversion programs for drug-abusing offenders, and behavioral treatments for drug abusers and criminal offenders.

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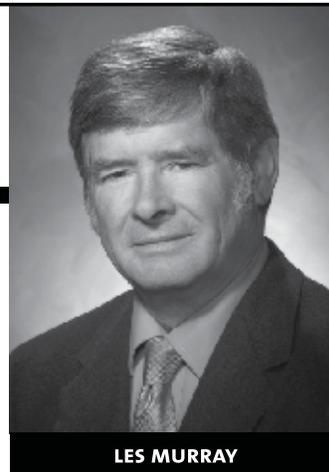
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ZARIAN MIDGLEY WELCOMES TWO NEW ATTORNEYS

Zarian Midgley & Johnson, PLLC, a Boise-based firm specializing in intellectual property matters and litigation, is proud to welcome **Les Murray** as Special Counsel and **Jeff Parry** as an Associate with the firm.

Les Murray is a registered patent attorney and highly experienced corporate lawyer. He holds a Bachelor of Science degree in Physics from the University of Idaho, Master of Science degrees in Aeronautics Engineering and Management Science from the Naval Postgraduate School, and a Juris Doctor from the University of Idaho. Murray spent 14 years as a Senior Corporate Counsel for Intellectual Property with Hewlett-Packard Company.

Jeff Parry, a registered patent attorney, holds a Bachelor of Science degree in Chemical Engineering from Brigham Young University and a Juris Doctor from Brigham Young University. He is enrolled at Boise State University and scheduled to complete the requirements for a second Bachelor of Science degree in Electrical Engineering in 2010.



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DRUG COURT PARTICIPANT APPLICATION TO ADVANCE IN THE PROGRAM

Natalie Swaner

Drug courts provide a four-phase program with progressively more demanding expectations as participants progress. Many drug courts require a participant to “apply” to move from one phase to the next and to describe the reasons they believe they are prepared to move to the next phase. On average, drug court participants who complete the program spend 15 months in drug court. Occasionally, someone may complete in just over 12 months and some participants are in the program over 24 months. Graduation is based on accomplishing necessary tasks, demonstrating required competencies, and maintaining abstinence from drugs or alcohol for a minimum of six consecutive months. (See figure 1.) Some of the graduation expectations are employment or perhaps school, stable living arrangements, living a recovery lifestyle with some sort of ongoing recovery support program in the community. While not an explicit requirement, it is common for participants to reconnect with long-estranged family members as an outcome of drug court participation.

Following is a narrative of a participant’s application for advancement from phase one, which is an orientation and engagement phase in which basic recovery skills are introduced, to phase two, where more challenging activities and skill development is emphasized. This participant was charged with forging a prescription for a controlled substance. She was clinically assessed as having a substance dependency disorder. Her recidivism risk was determined to be very high, according to an assessment instrument called the Level of Service Inventory – Revised (LSI-R, see page 13). Her raw score was a 34. This translates to a risk/needs score of over 96%, which translates to a 96% probability of reoffending, which is what the risk/need score equates to.

1.) WHAT DO YOU FEEL YOUR ACCOMPLISHMENTS HAVE BEEN IN PHASE 1?

I have accomplished many things in Phase 1. First of all I have been clean from all forms of drugs and alcohol for almost 5 months. I have been on time to all appointments, classes and court dates. I have been present every time my color has been called for a UA. I have completed the entire Matrix Client handbook and all of my required homework for my education class with BJ. I have also discontinued any old friendships with anyone who drinks or does any form of drugs. I have developed and maintained a budget and daily schedule. I have attended all required treatment sessions as well as all required twelve step meetings. I have remained current on all of my drug court fees and I have been compliant with the mentorship program and all required paperwork. I am also a full time student at Boise State University and I ended the semester with 3 A's and one B. I have a sponsor that I call at least once a week. I attended and completed the AA Back to Basic's class and I am currently working on step 4.

2.) WHAT HAVE YOU LEARNED IN PHASE 1 AND WHY DO YOU FEEL YOU SHOULD BE PROMOTED TO PHASE 2.

The list of things that I have learned in phase 1 of this program is almost endless. I am so appreciative for the knowledge that drug court has given me thus far. I could truly never repay drug court for the things I have learned while only in phase one.

Prior to being arrested I had tried a variety of things to stop using. But each time I would give in to my cravings. I knew that I needed help and couldn't do it on my own. I truly thank god that I was arrested and given the opportunity to participate in drug court. Every one participating in drug court knows that it is a very difficult program but we all also know that drug court has saved our lives.

In the past almost 5 months I have learned so much about addiction and drug court has given me the tools to help me fight my disease.

- 1. I have learned the importance of scheduling, prior to entering drug court there were many times that I would forget about important dates or appointments because I did not keep a daily schedule. I know this may seem like a trivial thing to some people but for me writing things down in a daily planner has made a world of difference to me.*
- 2. I also had difficulty managing my finances prior to drug court. Developing and sticking to a budget has made a huge difference in that area of my life as well which is also requirement for phase one.*

- 3. I have also learned about triggers external, internal and emotional. It is very important to my recovery to know what those triggers are so that I can try to avoid them. But if I can't avoid the triggers I have been taught how to use thought stopping techniques to turn off the cravings as best as possible. Because allowing the thoughts to develop into a craving is making a choice to remain dependent on substances which is not what I want in my life.*
- 4. I have also learned about mooring lines. Mooring lines are behaviors that keep recovery steady. Examples of mooring lines are drug court classes, counseling sessions, 12-step meetings and being around friends that are also sober. It is important to keep an eye on the strength of your mooring lines. If the mooring lines loose strength, it can be an indication of a possible relapse.*
- 5. Another indication of a possible relapse is addictive behavior. If an addict notices that they are reverting back to addictive behavior such as lying, stealing, being unreliable, or acting compulsively they should check their recovery mooring lines to make sure they are anticipating and preventing relapse.*
- 6. In our education class BJ has taught us a lot about the different areas of the brain. We have learned about the limbic system which is the area of the brain that is responsible for “fight or flight”. When we were living our addictive life we were centered in the fight or flight. Once our bodies were given a drug or alcohol our brains and bodies believed that we needed that drug or alcohol to survive. Because we were constantly living in the fight or flight we were not using our frontal cortex which is the area of the brain responsible for rational thought and will power.*
- 7. BJ has taught me that if something is upsetting me I should try to score the anger/frustration on a scale of 1-5 with 5 being the highest. If my anger is 3 or higher then what I am really mad about is “old stuff”. If the anger is old stuff that is bubbling up then I should take the time to write it down and process it so that I know how to better deal with it.*
- 8. BJ has taught us a lot about the dysfunctional family dynamics. It was really interesting to look at the roles that I played in order to try to make my dysfunctional family appear functional to the world around me. I played the role of both “enabler” and “hero” to try and cope with everything that was crumbling around me. These roles and my dysfunctional family contributed to my using as an adult.*
- 9. Along with teaching us about the different areas of the brain BJ has also taught us that even though we have done major damage to our*

brains with drugs and alcohol we can do things to heal those areas and techniques to grow new neural pathways. If you tap your knees while saying the new information you can implement new information into your brain in a new manner.

10. BJ has also taught us to use positive thinking. We came up with a mantra about something we wanted to change about ourselves. Once the mantra was chosen we wrote it out creatively and placed it where we would see it every day. Then for two weeks we would say the mantra every morning and act "as if" it were true. My mantra was "If I don't do it someone else will and that's ok". Saying this every day helped me to see that I don't have to take care of every thing. Which was something that I believe contributed to my using.
11. The thing that touched me the most was the information that I learned about anger. Previous to this section I never saw myself as an angry person. But the truth was that I was carrying around a huge suitcase of resentments and anger. I truly believe that I started using in order to numb away the pain of those resentments. I hung on to those resentments like my life depended on it. I believed that if I let go of

those resentments that I would be letting the people that caused them off the hook. But because of the anger section of our education class I learned that forgiveness is a gift that I give myself not the other person. Because I am the one that is lugging around the suitcase of burts not the people that caused them. And by carrying it around with me day after day I am the one being punished not them. I learned so much about myself during that section and I think I have grown and changed as a direct result.

I could go on and on about the things that I have learned in this first phase of drug court. I am so grateful to have this year to learn and examine myself. My counselor has said many times that this is the chance of a lifetime. There are not very many other people in the world that have the opportunity to examine and focus on themselves for an entire year. People tend to maintain their possessions better than they do their own mental health. I know that I did and instead of doing the maintenance I tried to numb it all away. But now that I have these tools, which I learned in phase one I am ready and very excited for the next phase of drug court.

Figure 1.

Participant's Name: Natalie Swaner
Please Print

PHASE I

COMPLETION CHECK-OFF LIST/PROMOTION PETITION

<u>Counselor Initials</u> <u>Upon Completion</u>	<u>Date</u> <u>Completed</u>	
<u>JSU</u>	<u>1/30/08</u>	New participant orientation quiz (passed)
<u>JSU</u>	<u>6/9/08</u>	Diagnostic criteria
<u>JSU</u>	<u>6/8/08</u>	All Matrix worksheets
<u>JSU</u>	<u>5/28/08</u>	Budget-Developed and maintained
<u>JSU</u>	<u>3/1/08</u>	Daily Schedule-Developed and maintained
<u>JSU</u>	<u>6/8/08</u>	Attended required Individual treatment sessions
<u>JSU</u>	<u>6/8/08</u>	Attended min. of 3 12-step support groups per week
<u>JSU</u>	<u>2/20/08</u>	Obtained a 12-step sponsor
<u>JSU</u>	<u>4/26/08</u>	Completed Step 1 with sponsor
<u>JSU</u>	<u>6/8/08</u>	Has completed all homework assignments
<u>JSU</u>	<u>6/11/08</u>	Drug Court fees are current
<u>JSU</u>	<u>6/8/08</u>	In compliance with all program requirements
<u>JSU</u>	<u>6/8/08</u>	Current employed full time or is a full-time student
<u>JSU</u>	<u>N/A</u>	Has attended orientation for G.E.D. if applicable

Natalie Swaner
 Participant Signature 6/9/08
Date

I have reviewed and verified that Natalie Swaner has completed the requirements of Phase I
Stuart Winton B.A. CADCC
 Counselor Signature 6/9/08
Date

TO THE OUTSIDE WORLD MY LIFE MUST HAVE SEEMED PERFECT

A GRADUATE'S PERSPECTIVE

Anonymous

Before I ever got into drug court, I had an amazing husband who I loved with my whole heart and soul. We had an incredible daughter and a beautiful home we had bought together. I had a great job with a promising future. I was well liked by coworkers and friends. To the outside world, my life must have seemed perfect. The thing no one knew was that I was a meth addict, actively using and hating myself. Every morning when I awoke, I felt only shame and self-loathing. I knew that I was worthless. I wanted to ask for help, but I didn't know how. I knew that if anyone was to find out what I was really like, no one would want to have anything to do with me, and I would lose everything that I had ever cared about.

I hit rock bottom when I found out that we were going to have a baby and I couldn't stop using. The night before I was arrested, I begged to God to please help me stop because I didn't want to hurt our baby. No matter how badly I wanted to quit using, and no matter how badly I wanted and loved the child inside me, I didn't have the strength. I was completely powerless over my addiction. The very next day I was arrested, and that is when I was introduced to drug court.

When I was first accepted into drug court, I made myself a deal. All I had to do was make it the five months until my baby was born, and then I could end it all. I was so tired of living with the guilt and shame of what I had done to the people I loved the most, that I was ready to kill myself. I knew my children would be better off without someone like me as a mother, and I wanted my husband to find someone worthy of his love. I was sure that I had never brought anything but pain to anyone I had ever come in contact with. For the first month I was in drug court, this was my plan, and I thought about it every day.

However, drug court had other plans for me. For the first time in a long time, I was made to feel and to deal with these feelings. I was finally surrounded by people just like me, who understood exactly what I was going through. I was given a counselor and made to attend weekly groups. I was required to see the judge on a regular basis and there were lots and lots of homework assignments. Gradually, before I even knew it was happening, things began to turn around for me.

I began to feel hope. I began to dream about a future without fear and self-loathing. For the first time in a long time, I wanted to live.

I am not the same person I was three years ago. I received the most amazing gifts in drug court—things like insight to my fears, understanding of my disease, confidence, and self-esteem. From my weakness has come my strength.

Drug court does amazing things with very limited resources. As I have told my mentees on the numerous occasions they have called to tell me how much they hate their counselor, or the judge, or the drug court coordinator, no one involved in

drug court wants to see you fail. They don't do it for the money, or for the hours, or for the weekends off. They don't do it for the glamour and prestige that comes from working with a bunch of addicts. They do it because they truly care. To them, we are not bad people trying to get good, but, rather, sick people trying to get well.

We lie to them, we fight them, and, I am willing to bet, we sometimes even break their hearts, and yet, they are still there. They acknowledge our failures, and they are still there. They acknowledge our shortcomings, and they are still there. They make us confront our weaknesses, and they are still there.

They know, in our pasts, we have almost destroyed the lives of those who love us more than anything in the world, and done things so horrific we can hardly bear to speak of them, and, the damndest thing is, they are STILL there. Well, I am here today as a testament to what becomes of a person when drug court is always "there." And as long as I live, I will be grateful to drug court for being there. Thank you.

This story was reprinted from the National Drug Court Institute Magazine, Volume II, No. 1, pg 14-15, May 2008



Alec was born while his mother was in drug court, and he was born drug free. His mother says, "Alec is a testament to the power and good of drug court."


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PROBLEM-SOLVING COURTS IN IDAHO: PAST—PRESENT—FUTURE

Norma Jaeger, M.S.

Statewide Drug Court and Mental Health Court Coordinator Idaho Supreme Court

EARLY PROBLEM-SOLVING COURTS IN IDAHO

In late 1998, ten years after the first U.S. Drug Court was established in Dade County (Miami) Florida, Idaho began its problem-solving court effort with a modest start of two drug courts. With steady growth statewide, Idaho has become an acknowledged leader in the problem-solving court movement nationally, and is well on the way to a system-wide implementation of problem-solving courts throughout the state. Today, Idaho has fifty-four problem-solving courts including twenty adult felony drug courts, ten mental health courts, four child Protection Drug Courts and twelve misdemeanor/DUI courts, seven juvenile drug courts, and one juvenile mental health court.

PROBLEM-SOLVING COURT DEFINED

In order to consistently analyze and evaluate problem-solving court efforts across the country it has been important to develop some uniform parameters to define such courts. The following definition comes from Resolution 4, adopted by the Conference of Chief Justices and Conference of State Court Administrators on August 3, 2000:

Problem-solving courts incorporate integration of treatment with judicial case processing, ongoing judicial intervention, close monitoring and immediate response to behavior, multidisciplinary involvement, and collaboration with community-based and government organizations.

ADULT DRUG COURTS LED THE WAY

The problem-solving court model began with drug courts. These courts were initially established to respond to the overwhelming influx of drug-related criminal cases in the mid-eighties, as state after state adopted the “get tough on drug crime” statutes and policies of the *War on Drugs*. Whether it was eastern and mid-western urban crack cocaine, northeastern heroin or western methamphetamine, addiction-fueled crime was the common denominator. The earliest efforts focused primarily on docket management and expedited processing. However, without an emphasis on treatment and rehabilitation, these early drug courts generally just spun the revolving door faster and did not significantly reduce crime or addiction. Once courts began to integrate treatment with justice system case processing, results began to improve, demonstrating reduced recidivism and impressive rehabilitation.

PRINCIPLES OF OPERATION

The drug court model is based on principles referred to as the “Ten Key Components” that was originally published by the federal Drug Court Program Office, in the Department of Justice. Some of these components are listed in the definition cited above. In addition, drug courts include use of a non-adversarial (perhaps better described as a “less-adversarial”) approach, early identification of eligible participants and prompt placement in the drug court, abstinence monitored through frequent drug testing, and overall program monitoring and evaluation efforts. In addition to adherence to these principles, drug courts clearly utilize a behavioral therapeutic approach with desired behavior rewarded in a variety of ways and proscribed behavior sanctioned or punished as quickly as possible.

While originally seen as an option for the first time offender, as the courts have developed, efforts have shifted to position these courts as an alternative to prison rather than an alternative to probation. To accomplish this, problem-solving courts use a standardized risk assessment to consider the risk for further reoffense and to focus efforts on higher risk offenders.

KEY COMPONENTS OF DRUG COURT

- Component #1:** Drug courts integrate alcohol and other drug treatment services with justice system case processing
- Component #2:** Using a non-adversarial approach, prosecution and defense counsel promote public safety while protecting participant’s due process rights
- Component #3:** Eligible participants are identified early and promptly placed in the drug court program
- Component #4:** Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services
- Component #5:** Abstinence is monitored by frequent alcohol and other drug testing
- Component #6:** A coordinated strategy governs drug court responses to participants’ compliance
- Component #7:** Ongoing judicial interaction with each drug court participant is essential
- Component #8:** Monitoring and evaluation measure the achievement of program goals and gauge effectiveness
- Component #9:** Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations
- Component #10:** Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness

IDAHO PROBLEM-SOLVING COURT DEVELOPMENT AND EXPANSION

Efforts to expand the reach of problem-solving courts to all judicial districts were given significant impetus through a historic three-branch effort in the legislative session of 2001. Both Governor Kempthorne and then Chief Justice Linda Trout voiced high priority for expansion of drug courts to all judicial districts. The Legislature responded positively with the passage of the Idaho Drug Court Act. Title 19 Chapter 56 provides a structure for drug courts in Idaho, including oversight by a statewide Coordinating Committee. An innovative funding strategy was developed, drawing upon a two-percent (2%) surcharge on the products sold through the State Liquor Dispensary, to be deposited into a dedicated fund to support drug courts and family court services. Additional state general funds were earmarked for the necessary substance abuse treatment. In addition to serving adult felony offenders, Idaho adult drug courts also serve misdemeanor offenders including a significant number of DUI offenders, including four DUI-only courts.

EVALUATING OUTCOMES OF IDAHO DRUG COURTS

A statewide outcome evaluation was commissioned from a team of independent criminal justice researchers from the University of Cincinnati and Kent State University. Initial results of this evaluation, completed in 2003, first examined the outcomes of the two oldest

drug courts, operating in Ada and Kootenai Counties, and clearly demonstrated that Idaho drug courts were effective in reducing recidivism, based on Idaho arrests.

This evaluation was then extended to assess outcomes in eleven adult felony drug courts throughout Idaho. This second outcome evaluation, completed in 2007, shows the following, still positive results in terms of recidivism to new criminal court filings:

Eleven Drug Courts Statewide	Recidivism of all Participants	Recidivism of Graduates	Recidivism of Comparison Group
All Drug Courts	29.5%	19.0%	37.3%

While recidivism is one of the most important measures of drug court effectiveness, there are other ways of looking at the benefits of drug court operations. One of the most compelling indicators of success is found in data on drug-free births to women participating in Idaho drug courts. Twenty-two (22) drug-free babies were born in fiscal year 2007. This brings the total reported drug-free births in drug courts to 121. The economic benefits of avoiding a drug-affected birth are substantial; the physical and social benefits are potentially even greater.

Another measure of effectiveness was found in data collected in the Ada County Drug Court which found that only forty-three percent (43%) of participants were employed at the time they entered the drug court, while at graduation, ninety-six percent (96%) were employed. The average overall wage increase was found to be \$6.15 per hour or \$12,792 per year. This reflects their shift from “tax user” to “tax payer”.

Prison impacts of drug courts are also significant. In Fiscal Year 2007 1,103 adult felony offenders supervised by drug (and mental health) courts faced potential prison sentences. Of these, 928 (84%) either remained engaged in the drug or mental health court or successfully completed all requirements and graduated. Idaho Drug Courts have graduated over 2,000 individuals since the courts began ten years ago.

JUVENILE DRUG COURTS

Juvenile courts in Idaho began to use the drug court model to enhance outcomes in juvenile court. Building upon the same ten key components, juvenile drug courts began as early as 2000. In 2002, Idaho received three federal juvenile drug court grants to assist in early development and operations. Today, there are seven juvenile drug courts in Idaho serving 230 participants in fiscal year 2007. Juvenile drug courts face additional challenges beyond those which must be addressed in adult drug court. Engaging parents and strengthening the family as a support structure is critical. Encouragement and support of youth in their school performance is essential. Determining how to address peer pressure and to connect youth to positive peer associates is a key element and addressing the role of gang involvement has become an increasing concern. Finally, dealing with co-occurring substance-use and mental disorders is a very common concern in the juvenile drug courts across the state.

MENTAL HEALTH COURTS IN IDAHO

In the summer of 2002, the 7th Judicial District began planning for a mental health court. This court was developed to address the challenge of certain offenders in drug court that could not adequately comply because of their mental illnesses. Judge Brent Moss, a felony

drug court judge, began to work with the Regional Health and Welfare leadership to define and develop a new court that would link mental health services with continued judicial interactions. Unlike most mental health courts operating at that time, this court focused on felony offenders. It relied upon a specialized form of mental health treatment, known as Assertive Community Treatment, which provides intensive services delivered by a team of professionals, most taking place in the participant’s home or elsewhere in the community, rather than in the mental health clinic. With the direct intervention of the judge to enforce program requirements and participation, including attention to co-occurring substance-use disorders, drug testing and a treatment intervention to specifically address anti-social attitudes, values and beliefs, this model quickly began to achieve significant outcomes. The mental health court demonstrated over 90% reductions in both jail days and hospital days for participants. This success led to amendment of the drug court act to incorporate mental health courts as well.

CHILD PROTECTION DRUG COURTS

One of the most recent developments in the problem-solving court expansion effort has been the establishment and expansion of Child Protection Drug Courts. These courts focus upon families in which addiction has exposed children to neglect or abuse resulting from parental addiction. These courts rely upon collaboration with the Department of Health and Welfare which is responsible for case management of children under child protective statutes and who must resolve the case within very tight timelines imposed by the Adoption and Safe Families Act. A recent multi-site national evaluation of such courts found positive impacts on permanent reunification of families and found that families completed treatment at double the rates of families without drug court involvement. Four such courts currently operate in Idaho.

LOOKING AHEAD

While the development of a system of drug courts throughout Idaho has been very successful, there remain challenges and further opportunities. It is important to continue to apply what has been learned from the outcome evaluations in order to further the effectiveness of these courts. Strengthening local coordination of problem-solving courts to assure continued community support and fidelity to those evidence-based practices shown to impact outcomes is a high priority. Another priority will be taking problem-solving courts “to scale” so that they become integral to the justice system rather than only interesting and successful demonstration projects. This will meet the goal of providing the opportunity for all eligible and willing offenders to participate in a problem-solving court.

ABOUT THE AUTHOR

Norma Jaeger received her M.S. from Whitworth College in Health Services Administration and spent over 25 years managing public behavioral health programs in North Idaho, Portland and Seattle. She managed offender programs and developed quality assurance efforts for the Idaho Department of Correction. She has been the Statewide Coordinator for the Idaho problem-solving courts since 2002 and currently serves as member of the Board of Directors of the National Association of Drug Court Professionals. She is adjunct faculty in the Department of Criminal Justice at Boise State University and national consultant for Policy Research Associates, Delmar, New York.

HEADACHES, DIZZINESS, AND RINGING IN THE EARS

Matthew English

Coordinator, Bannock County Family Treatment Court, Sixth Judicial District

Johnathon Ogden, a wealthy investment banker from Las Vegas, suffered from *headaches, dizziness, and ringing in his ears*. He began traveling from doctor to doctor in search of a solution, eventually quitting his job to pursue a solution. He aggressively experimented with different forms of traditional and non-traditional medicine. He tried hypnosis, acupuncture, herbal remedies, and even several experimental prescriptions that were not available in the U.S. Ultimately, the doctors came to the conclusion that he had less than a year to live. He decided to enjoy the last bit of his life, traveling the world. He sold his home and the majority of his possessions, purchased a Lear jet, hired a full-time pilot and a personal assistant, and left for New York City. As he entered Bermini Custom Tailors in Midtown Manhattan he said to the manager, "I want twenty of the finest double-breasted Armani suits, individually-fitted dress shirts, and hand-sewn Italian leather shoes." The manager promptly focused all his efforts on catering to Johnathon. As the whirlwind of measurements swirled around him, Johnathon heard the tailor say, "I will be back in just a minute with your size 18-1/2 shirt." To which Johnathon countered "I wear a size 17, always have ... always will."

Now, how does a tailor's shop in New York City and a terminally ill investment banker suffering from headaches, dizziness, and ringing in his ears relate to an article about Idaho Child Protection Drug Courts? Making this connection requires a considerable amount of background information, and understanding that a correct diagnosis can become lost in the way the symptoms are processed.

A TAILORED APPROACH TO PROBLEM-SOLVING FOR CHILD WELFARE CASES

It is important to understand the correlation between several different social issues that are coming together nationally, and in Idaho, causing great mental, emotional, and physical suffering for families. A recent publication from the Administration on Children, Youth and Families ([ACYF], 2006) states:

Each year in the United States, *nearly 1 million cases of child abuse and neglect* are filed and substantiated. Of those cases, 1,490 cases involved the deaths of children.... The number of children in out-of-home placement has nearly doubled in the last two decades. Currently more than half a million children live in foster care (ACYF).

More and more children are spending increasing and lengthy periods of time in foster care. This increase in time brings with it a myriad of challenges ranging from finding and training foster parents to a lack of stability in the lives of these children.

In 1997, Congress responded to this growing problem by passing the Adoption and Safe Families Act (ASFA). ASFA's primary goal is to provide for the safety, permanent placement, and well-being of children and families. (1997) ASFA requires that courts finalize child placement (permanency) within 12 months of entering foster care. In the majority of cases, the court is required

to begin the termination of parental rights if the child has been out of the home for 15 of the previous 22 months (Office of the Federal Register, 2000). The intention of ASFA is to increase the speed and efficacy of permanency for children and families. Yet, at the same time, it places an increasing strain on the system and the families involved, particularly when addiction and substance abuse issues are involved.

Research demonstrates that there is a significant correlation between the maltreatment of children and the abuse of alcohol and/or other drugs. "In 80% of confirmed child abuse and neglect cases, experts identify parental substance abuse as a precipitating factor" (The Child Welfare League of America, 2001). Coinciding problems of substance and child abuse further emphasize the need for specialized and adaptable case management services. Meeting the ASFA guidelines can be particularly difficult when waiting lists for treatment services is prevalent. Fortunately, recent actions of the Idaho Legislature coupled with a recent federal grant have virtually eliminated this problem in Idaho for these families.

It is clear that the complex issues of child maltreatment and substance abuse, when combined with the more stringent ASFA requirements, are a considerable challenge for child protective services, the family court and justice system, and treatment providers. To say that these problems are causing *headaches, dizziness, and ringing in the ears* on both local and national levels is an understatement.

CHILD PROTECTION DRUG COURTS IN IDAHO

To better address this growing population and its specific needs Idaho has been pilot-testing Child Protection Drug Courts in Nez Perce and Bonneville Counties. With a federal demonstration grant and state funding, two additional courts are being implemented in Twin Falls and Bannock Counties. These courts will be operational by July 2008.

These "problem-solving" courts begin with the model of traditional drug courts, but differ somewhat in terms of structure, focus, goals and range of services. The mission statement of the 6th Judicial District Family Treatment Court (the working title in Bannock County) reads:

The Idaho Sixth Judicial District Family Treatment Court serves the best interests of children, attempts to reunify families, reduces time and costs of children in foster homes, and assists parents with a serious alcohol/drug problem whose children are at risk and subject to Child Protection Services (CPS) or where parents are ordered to probation. Parents achieve these goals by completing a minimum of one year's treatment for their alcohol/drug problems, a child protection case plan, if applicable, and a probation order; resolving neglect or abuse of their children, and improving parenting and life skills. (2008)

Child Protection Drug Courts (CPDC) focus specifically on the needs of families that are in the child protection system and

have serious substance abuse and treatment needs. Typically, Idaho CPDCs hold a weekly team staffing meeting made up of the following participants or representatives:

- Presiding Judge
- Public Defender and Prosecutor
- Department of Health and Welfare (Child Protective Services)
- Treatment Providers (Substance Abuse, Mental Health, and others as needed)
- Guardian Ad Litem / CASA representative
- Adult Felony Probation
- Child Protection / Treatment Liaison
- Court Coordinator

The direct communication of each of these differing organizations is critical to the success of these programs, as the expertise and experience of each individual may be called upon to assist participants throughout the process. Each member of the team has unique professional and ethical standards that must be met, but at the same time they must learn to work collaboratively to meet the goals of their CPDC and its participants.

The data for 6th District Family Treatment Court participants is consistent with other programs throughout the state, in that the typical participants are meth-addicted women with young children. Out of the eight current participants seven are female. For six of the seven women, meth is their drug of choice. Additionally there is a high rate of “co-occurring” mental health concerns among participating families. To meet the specific needs of this group, Idaho has adopted and designed a model of “gender specific” treatment, including both parenting and family treatment components within the operational structure of their programs. Parents receive individual and group counseling, life skills training, and intensive case management. The program arranges transportation and child care and in many cases prenatal care. Because the children in these families often have significant developmental and social issues, individual plans are created for the children as well as the parent.

Child Protection Drug Courts throughout Idaho are built on a four-phase structure that attempts to accommodate the 12-month ASFA guidelines and are integrated with substance abuse and child protection case plans. Regular and random drug and alcohol testing is also a standard component of these programs, as participants are expected to maintain a drug and alcohol-free lifestyle. Frequent court appearances and accountability before the CPDC judge and the entire team are an integral part of this process. The National Drug Court Institute (2006) emphasizes the importance of these characteristics, and summarizes the process by saying:

[These courts provide] an elaborate support network for families to ensure the safety of children, while simultaneously assisting the parent in making significant life changes. In [a CPDC] child protective services and treatment providers join forces to identify, assess, and provide immediate access to substance abuse treatment and other services for substance-abusing parents. (2006)

Additionally, in order to help identify and coordinate individualized services and case plans, each participant receives a “Level of Service Inventory-Revised” (LSI-R) criminogenic

risk assessment and uses the recently state-mandated Global Appraisal of Individual Needs (GAIN) assessment. Fortunately, there is considerable flexibility in the Idaho CPDC structure, which facilitates individualization to provide almost any necessary service or address unique participant needs.

THE RIGHT FIT?

National research has shown child protection drug courts to be effective. NPC Research, Inc., of Portland Oregon, was commissioned to conduct a comprehensive evaluation of such courts with the following conclusions:

- CPDC parents spent significantly more time in treatment than did non-CPDC parents.
- CPDC parents were significantly more likely to complete at least one treatment episode than non CPDC parents.
- CPDC children spent significantly less time in out of home care.
- CPDC children were significantly more likely to be reunified with their parents...reunification rates were up to 50% higher than the rates for comparison children. (NPC Research, 2007)

Now to briefly return to Johnathon ... you will recall the tailor said, “I’ll be back in just a minute with a size 18 and a half shirt” to which Johnathon responded, “I wear a size 17, always have... always will.” After this conversation was repeated three times, a frustrated tailor walked away and muttering, “Don’t blame me then if you suffer from *headaches, dizziness, and ringing in your ears from wearing the wrong size shirt.*”

It is not the claim of this article that CPDC will ever be a one-size fits all solution, but for Idaho and Idaho families it is an effective solution that can be “custom tailored” to their needs.



A family reunited thanks to the work of the Drug Courts.

ABOUT THE AUTHOR

Matthew English is the Coordinator of the Sixth Judicial District Child Protection Drug Court. In addition to his other community service work, he is a member of the Region VI Department of Health and Welfare Regional Advisory Committee and will be serving as the chair for the Drug Endangered Children Committee. Prior to his current position he worked as the Juvenile Drug Court Coordinator for Bannock County.

Raised in Salt Lake City, Utah, Matt now lives with his wife (Muriel) and their four children in Pocatello, Idaho. He also teaches Composition as an adjunct instructor of English at Idaho State University.

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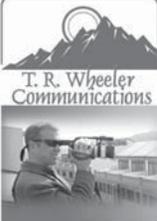
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adj.

Accorded a great deal of respect, especially because of age, wisdom, or character.

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CHILD PROTECTION DRUG COURT: A PUBLIC DEFENDERS PERSPECTIVE

Randy W. Smith

Deputy Public Defender Bannock County Public Defender's Office

As a public defender with nearly five years experience working child protection cases, I believe participation in Child Protection Drug Court (which we call Family Treatment Drug Court in Bannock County) has significant benefits for my clients, their families, and the community at large. Drug abuse is a common factor in most child protection act (CPA) cases. I can recall only two or three cases I've handled that proceeded to termination of parental rights in which the main issue was not my clients' drug abuse. I should note that even in those cases where the deciding factor was not drug abuse, my clients still had at least experimented with drugs.

Because my CPA clients, however well-meaning, have a tendency to act in a positive manner only when judicial pressure is applied, I was pleased when I found out our district had joined in a federal grant program to start a drug court for CPA cases. Traditionally, a drug-using client delays their drug evaluation as much as possible. Usually at the six-month review they come to court and tell me they have an appointment for an evaluation in a week or two. No matter how much they want their parental rights fully restored that is usually, other than visitation, the first effort they have put forth on their case plan. Naturally, I figure if they are going to do something because they have to appear in front of the judge, we just need to get them in front of the judge sooner and more often. The Family Treatment Drug Court does that, and more.

Judicial oversight alone does not achieve the results needed for a child protection case to be successful. Our Family Treatment Drug Court also provides a real opportunity for all parties to the CPA case to sit together and coordinate activities, and find solutions to problems. As a result, my clients are better able to take the steps necessary to resolve their cases. They find assistance with transportation, daycare, job search and recovery. Finally, in addition to this coordination, the validation my clients receive weekly from the judge, the treatment team, and other participants leads to phenomenal results.

In the twelve weeks since our program began, we have grown from three court participants to eight, with three more pending approval. Of the original three participants, one dropped out, but the other two progressed to Phase II of the program and have never received a sanction. Both have acquired jobs; and both are looking at potentially having better jobs soon. This is something they have never had in the past. One was accepted to college and has enrolled to start this fall. Another is working on her GED. Both have acquired safe housing. More importantly, their visits with their kids have been increased, they are having overnight visits, and their cases are moving quickly toward reunification.

The remainder of our drug court group is also doing well. We have only had to sanction people on three or four occasions; and, so far, never more than once. The sanctions consequently have been mild, but have brought about the needed results.

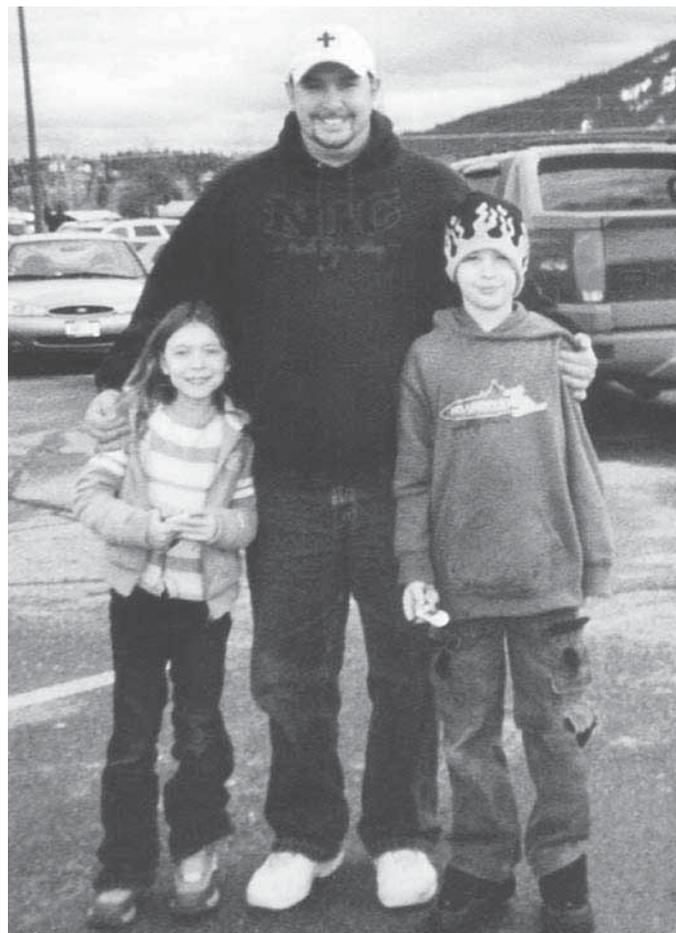
One critical aspect of this court's success has been the buy-in by all parties, including my office and the deputy prosecutor for

Juvenile Court. Having been an active participant in the planning and development of the court, I was able to help move things in way that I felt I could ethically work within and help my clients. Additionally, the help of State Appellate Defender Molly Husky has proved invaluable in identifying problems I had not seen and helping with the wording of our documents.

I have worked for five years, in two different states, with child protection work. This is the first time I actually feel there is hope for my drug-addicted clients: hope that they can become—for perhaps the first time—the kind of parents they always wanted to be. More importantly, and thanks in large part to the Family Treatment Drug Court, these people will be able to become the kind of parents that their children, and society, need them to be.

ABOUT THE AUTHOR

Randy W. Smith, graduated from Drake University Law School with Honors in December 1999. He practiced as a public defender in Washington from 2000-2005. At the time he wrote the article he was in the Bannock County Public Defenders Office assigned to Juvenile Court. He recently took a position with Keith Barton and Assoc., P.C., in Blackfoot, Idaho.



A recent Drug Court graduate back with his family.

MENTAL HEALTH COURTS IN IDAHO

Honorable Brent Moss, *Presiding Judge*

Eric Olson, *Coordinator*

Paul Meigio, *Probation Officer District 7 Mental Health Courts*

A TRUE STORY

Approximately fifteen years ago, a man (let's call him James) pleads guilty to two counts of grand theft in the Seventh Judicial District. When the plea was taken there was some concern the defendant was suffering from some type of a mental illness (paranoid schizophrenia was his tentative diagnosis), but an evaluation had found him competent to proceed. The presentence investigation report confirmed the court's concern regarding the existence of a mental illness James was given a sentence of not less than one year, followed by an indeterminate period of seven years. He was placed on probation for five years with the expectation that while on probation, with supervision and treatment; he would be able to safely remain in the community. During the next year, James had difficulty following the terms and requirements of probation. This resulted in a number of probation violations being filed and hearings conducted. At each hearing it was more and more evident the defendant's mental state was deteriorating, until even his parents were becoming fearful of him. Eventually, finding no reasonable alternative, his probation was terminated. He was then placed with the Idaho Department of Correction to begin the remaining term of his sentence. It was hoped he would receive much needed treatment, while incarcerated, and then be eligible to return to the community on parole.

In fact, James, still no better able to follow prison behavioral requirements than the requirements of probation, received little if any treatment and ultimately served the full term of his sentence. As his final release date approached, James sent letters to the sentencing judge telling him that "God was not pleased" with the judge and that "God would be visiting [him] soon". The defendant's parents also wrote the judge and local law enforcement advising that they were fearful for their own safety if their son returned home. When James returned home he was soon arrested on a misdemeanor offense, threatened the magistrate involved in his case, and was once again on his way through the system that had already failed him. However, by this

time, the Mental Health Court was in operation and he was given the option to participate rather than face another felony charge. Reluctantly, he agreed to participate.

Through the mental health court experience, this story has a perhaps surprising and happy ending. James completed the requirements of mental health court. He has, in fact, graduated from the program, continues to take his medication as prescribed, maintains contact with the treatment team, is re-united with his family, and has maintained mental stability for a longer period than at any time in the last twenty years.

DEVELOPMENT OF MENTAL HEALTH COURTS

In response to the overcrowding throughout the criminal justice system, problem-solving courts have been created to deal with this burdensome issue. One relatively new problem-solving court is known as Mental Health Court. In Idaho, these courts are designed to address the needs of criminal offenders with severe and persistent mental illnesses (SPMI)¹. SPMI includes schizophrenia, schizoaffective disorder, bipolar disorder, and any other manifestation of psychosis². This problem-solving court is designed to intercede in the traditional approach of simply imprisoning individuals who most likely commit crimes due to their mental illness. It is not a didactic platform for exoneration or an insanity defense, but rather a practical and accountable approach based on the premise that if these individuals would take appropriate medication and effectively manage their mental illness, such crimes or future crimes would not take place. Proper medication and behavioral management means the individual can comply with conditions of probation and can productively coexist in the community.

The first mental health court in Idaho was established as a pilot project in Bonneville County where a felony-level Mental Health Court was established in August of 2002. This was relatively rare at that time as most of the country's mental health courts were in large urban areas and dealt with misdemeanor level offenses. The Court was established under the leadership of the Honorable Brent Moss to fulfill a need initially identified in his drug court, where many participants were failing due to significant mental health issues that were not being addressed. The Court was established with broad community support and leadership and has been a pioneer among mental health courts in providing *integrated* treatment for mental health, substance abuse, and criminogenic risk elements. As a testimony to its unique and comprehensive program design, and its efforts to bring what had previously been primarily an urban model to a more rural setting, the Bonneville County Mental Health Court was selected as one of five National Learning Sites for Mental Health Courts, by the Council of State Governments and the Bureau of Justice Assistance in 2006.

THE MENTAL HEALTH COURT MODEL

The Mental Health Court Program consists of a multidisciplinary team of professionals who oversee the court operations, case management, community supervision, and



Linda Hatzenbuehler, Ph.D. Dean of the College of Health Professionals, Idaho State University, speaks at mental health court graduation as presiding Judge Ronald Bush listens.

mental health treatment of the individual, who continues to live in the community. The team develops, monitors, and implements the case management plan for each participant focused on helping him or her to become a self-sufficient, law abiding, and mentally stable citizen. Mental Health Courts, like most problem solving courts, hold a unique stature that yields a juxtaposition of two conflicting philosophical roles, one of judicial accountability versus the other of rehabilitation. Treatment for mental health courts is based on a model referred to as Assertive Community Treatment or a “hospital without walls”, due to the intensive nature of the contact and services provided each participant. In addition, most participants receive specialized treatment to address substance abuse or dependence and to confront their antisocial characteristics. Finding stable housing is always a challenge but is a critical aspect of services. Also important are vocational or educational services, even though some participants may remain on social security disability support, permanently.

A TEAM STRUCTURE AND APPROACH IS CRITICAL

The Bonneville County Mental Health Court team consists of the judge, a mental health court coordinator, social workers and others from the mental health treatment team, a probation officer, a mental health advocate, a prosecutor, a public defender, a vocational rehabilitation specialist, a substance abuse counselor, and a child support caseworker. (Unresolved child support issues can drastically undermine the effects of an otherwise solid treatment plan.) This team meets weekly to review participant progress and recommend the appropriate expectations and guidelines to successfully complete the 12-month minimum program. The meeting addresses medication adjustments, employment, rehabilitation, and any disciplinary or recognition actions for each participant. Overall, while the judge is the final arbiter on the team, the court works best when each individual sets aside their parochial interests and works to develop a consensus decision. Diversity on the team provides a benefit in gaining differing perspectives and insights, but the diversity can also generate conflict, especially when the judicial and the treatment system must discuss participant non-compliance and resulting consequences. Problem-solving takes place best when team members keep the focus on what is in the best interest and needs of the participant.³ This win-win strategy can only apply when the participant is able to function at a level of safety, health, and compliance within society. When this happens, all of the team members will satisfy the obligations and commitments each has from their respective discipline.

CHALLENGING CASES

Mental Health Courts must respond to the complexity of a participant who has not only a mental illness; but also, usually, a substance abuse problem and a well established criminal component to their thinking and behaviors. When a client is found to have used drugs or alcohol, which is proscribed during their participation in mental health court, there is always much discussion regarding the most beneficial and appropriate response i.e., some jail time and/or an increased treatment responses. This particular scenario plays out weekly as each team member discusses the various participant issues from their particular perspective and knowledge of each individual, who, while mentally competent, may not always be cognitively culpable for

their actions. Often a complication is that an individual may be suffering from their psychosis while waiting for their medications to make an impact. It is important to realize that pharmacological methods may not completely eliminate the psychotic episodes but only ameliorate the impairment enough to allow the individual to remain in the community; thus avoiding the deterioration that otherwise would result in hospitalization and/or incarceration.

PROMISING RESULTS/COURT EXPANSION STATEWIDE

Although mental health courts are still in their infancy there are promising early indicators supporting their efficacy in reducing recidivism, incarceration and hospitalizations.⁴ The Bonneville County Mental Health Court has seen a dramatic drop in the number of psychiatric hospitalizations (98%) and incarcerations (90%) among the program participants. These are promising numbers and generate significant cost savings to State and County systems. Though the Court is still relatively new, recidivism rates for graduates has been measured and to this point there has been only a 24% recidivism rate among program graduates. This number continues to decrease with more graduates and the increased maturity of the program. It should also be noted that graduates are not the only success stories of these courts. Many program participants who did not graduate were still able to be placed in a more appropriate community treatment program, able to meet their needs and have remained stable and have not reoffended.

One such example of this was a young lady participating in the court with a diagnosis of Bipolar Disorder and Borderline Personality Disorder. It was determined, over time that her Borderline Personality Disorder was unstable and she would benefit from a specialized evidence-based practice for treating Borderline Personality Disorder while remaining on her medications for the Bipolar Disorder. This young lady was better able to get this treatment outside the Mental Health Court, so she was allowed to transfer from the court to community probation. She successfully completed probation and has since gone on a cruise with her family. Family reunification has been one of the more common positive outcomes from mental health court participation. When the mental illness is managed more effectively, participants have frequently been able to become stable in the community and reengage in meaningful family relationships.

VIEW FROM THE BENCH

For Idaho judges, mental health court has been a welcome alternative to incarceration of those whose mental illnesses previously provided little hope of any lasting recovery. The participant stories previously mentioned are merely illustrative of the hope and promise of recovery while at the same time being a cost-effective approach to meaningful justice. Due to the success experienced in the Bonneville County Mental Health Court, each judicial district of Idaho now has an adult mental health court, able to serve a total of 225 individuals, statewide.⁵

ABOUT THE AUTHORS

The Hon. Brent Moss is the presiding mental health court judge in Bonneville and in Madison/Jefferson/Fremont counties and serves as the Administrative District judge in the 7th Judicial District. He was the first judge in the U.S. to receive

the prestigious Robert Wood Johnson Foundation Community Health Leadership Award for his work in promoting access to mental health services through a mental health court for persons with severe and persistent mental illness in the criminal justice system. He was also the recipient of the Kramer Award in 2004 for excellence in judicial administration.

Eric Olson has a master's degree from Idaho State University and is a licensed clinical professional counselor. He served for seven years as the Assertive Community Treatment Team (ACT) team supervisor for Region VII Mental Health Services, and is the current Mental Health Courts Coordinator for these courts through the 7th Judicial District.

Paul Meigio is an adult probation officer for Bonneville County and has worked in problem-solving courts for the past five years. He previously co-founded a men's homeless shelter and is working on his bachelor's degree in business administration.

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ENDNOTES

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I FOUND MYSELF WANDERING THE STREETS FOR MONTHS

Leslie

Someone asked me to write my story, and I thought, just what the world needs - another drug addict life story. A couple of weeks after that someone asked me again if I would write my story about Mental Health Court. Well, I can do that.

My story starts with me being a drug addict. But now I can say a drug addict that is in recovery. I know that I would not have been able to say that without the Mental Health Court program. This program has saved my life in more ways than one. Let me tell you a little bit about my life before the program.

I went through something very tragic in November 1981 when I was eighteen. I lost my triplets. I had no family to lean on for support. The babies' father couldn't handle the idea of caring for triplets, so he had left. I had just moved to the San Francisco area six months before and I found myself wandering the streets for months. That is when I was introduced to methamphetamine.

I have battled my addiction since then. I could not quit no matter how I tried. The pain of life was too much for me to bear. I was able to stay clean for a couple of months at a time but had no control of my mood swings and depression. I would lie on the floor for weeks at a time or not sleep for days. I felt the only way I could stay alive is to use. I just gave up. I knew my life would never change.

Sometime in the late-'90s I was arrested on a possession charge and was sentenced to Drug Court. I completed the program without quitting my addiction. While in that program I went to see a doctor who diagnosed me with bipolar disorder. He explained that it was a mental illness and that it could be treated with medication. When he told me I became angry and embarrassed. I knew what I was - not a mental case - just an addict. My husband was no support for me. He kept telling me that it was just an excuse. Then he would say a drug is a drug and that all I would be doing is switching my drug to one of theirs and it was all in my head. So after that I gave up trying the medication. After we divorced, I had a new chance at life, and I wanted it. But no matter how hard I tried, I could not quit the drugs. I tried to take my life several times. I did not want to live if this was the way I had to live it.

Then on February 15, 2006 I was arrested on another possession charge, this time in another county. In a way I felt relieved because it was an escape from what my life had become. I no longer had control of my life and maybe if I was forced to, I could quit.

The first thing the doctor did that night was put me on meds. He knew I needed help to detox. He put me on Prozac and it helped some. Five months later my mind was clean of the illegal drugs and I had time to move forward. I met a lady in the jail who was trying to become a participant in the Mental Health Court program that was starting in March 2007. She let me read her participant handbook explaining everything about the program and how they could help people with a mental illness and a drug addiction. For the first time I felt like I had a chance. I felt like if I could get in this program I could learn about having a mental illness and how it could be affecting my life and if it had anything to do with my addiction or inability to quit. And no one would be discouraging me. I have never wanted anything in my life more than that program! Anything! I have never worked harder for anything, and it was and has been the best thing to come into my life. Like I said earlier - this program has saved my life twice. Now, that doesn't mean that my life is perfect - it's not. But I have learned about my

mental illness and how to control my symptoms, and with that, I am learning how to live drug free.

Now to get to the second part of my story. My classes started in health and wellness and nutrition. In phase one we are required to have a primary doctor. Having been caught up in my addiction, I had neglected my body. I hadn't been to a doctor in at least ten years and I was afraid to go for a check up. The nurse on the ACT team who teaches the Health and Wellness class was someone I truly felt cared. I trusted her and she went with me to my first appointment. She was there for my support, helping me through it. After I was checked out I was told everything was fine, but I had a feeling that everything was not okay. I just felt it. When I was getting dressed I noticed a flyer on the back of the door. It was a women's health check program and if you qualified you could have a mammogram and a pap smear for free.

Well, my mother died from breast cancer and that qualified me for this program. That is when I was told that I had breast cancer and that I needed a bilateral mastectomy. I was also told that if I had waited six more months it would've been too late for the treatment. So now you can see why I feel that the Mental Health Court program has saved my life twice. With the help of the Mental Health Court team and my group members, I now have a life and I am truly grateful to the Mental Health Court program because I am now cancer free and drug free.

Thank you,

Leslie



Treatment counselor, Greg Kane, at the annual Drug Court Christmas Party.

THE UNIQUE PROBLEMS OF JUVENILE PROBLEM-SOLVING COURTS

Senior Judge John F. Varin

Juvenile Court Director Administrative Office of the Supreme Court

Since the start of the juvenile court movement in 1899¹, it has been recognized that children are not little adults. Consequentially, juvenile courts treat their offenders differently than otherwise similarly-situated adults might be treated in criminal court. Although the underlying purpose of both adult and juvenile courts is the same—to protect the community—juvenile courts were designed to secure this goal by addressing the underlying causes of their subjects' behavior. Juvenile courts are thus often thought to be the first problem-solving courts.

JUVENILES ARE DIFFERENT THAN ADULTS

Justice Kennedy, in *Roper v. Simmons*, wrote as follows:

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” (“Even the normal 16-year-old customarily lacks the maturity of an adult”)

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. (“[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage”). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. (citations omitted)¹

THE THEORY OF JUVENILE COURT

Based on the understanding, eloquently expressed by Justice Kennedy, that juveniles are different from adults, a different theoretical concept has historically been applied in juvenile cases. The underlying theory of juvenile courts might be best summarized by the concept of *parens patriae*. This term literally means “parent of the country” and refers traditionally to the role of state as sovereign and guardian of persons under legal disability. It originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants, idiots and lunatics. In the United States, the *parens patriae* function belongs with the states.²

Early reformers envisioned the juvenile court as essentially a super-parent. This theory is much different than the retributive theory generally associated with the criminal court. Though the theories of the two courts are different, the procedural

requirements are the same. Due process is required for juvenile offenders just as it is for adult offenders.³

The difference in theories becomes most apparent at the sentencing and subsequent phases of a juvenile case. Though community safety remains a primary concern, notions of accountability and competency development become equally important for juvenile offenders.⁴

JUVENILE PROBLEM-SOLVING COURTS HAVE UNIQUE CONSIDERATIONS

Juvenile problem-solving courts, such as drug courts and mental health courts, though similar in concept to the adult models, must address different issues than their adult equivalents. The interrelationships and complexities regarding juvenile delinquent behavior, victimization, trauma, neglect, substance abuse, mental health and dysfunctional family systems emphasize the need for a separate delinquency problem solving court staffed with judges and other professionals trained to understand and address the dynamics of these relationships and complexities.

The relationship dynamics of an adolescent can be daunting to even catalogue let alone evaluate. Besides family members both immediate and extended, adolescents have many other adults in their lives that influence them such as teachers, clergy, coaches, counselors, probation officers, case worker, club leaders, bus drivers and many others. While we can hope that these adults model positive behaviors, adolescents also have regular contact, through television and the internet, with adults whose behaviors are extremely negative.

In addition to adult influence, peer pressure to act in certain ways is rampant. “Peer influence increases in late childhood and early adolescence, as parental influence begins to decline, peaks around age fourteen and gradually diminishes with development of self-identity and autonomy.”⁵ In our current culture adolescents have more access to each other than ever before through cell phones, text messaging and the internet. This connectivity can have tragic repercussions, as horrific tales of a teens committing suicide as a result of anonymous peer insinuations made on internet sites have been reported.

Technological developments also have beneficial application, as scientists are now able to document how our brains develop. Initial research seems to suggest that during adolescence several areas of the brain go through their final development stages and develop greater complexity, which in turn affects thinking, behavior and potential for learning and rehabilitation. Research suggests the prefrontal cortex, that portion of the brain that governs a person's executive functions of reasoning, advance thought, and impulse control is the very last area of the human brain to develop. In addition, other parts of the adolescent brain that influence response to stimuli are developmentally different from those of adults.⁶ In this case, cutting edge science might just confirm what any parent could conclude: childrens' brains are different than adults'.

TREATMENT AND PROCESS IN JUVENILE PROBLEM-SOLVING COURTS

As with adult problem-solving courts, the treatment component is an essential part of the juvenile court's concern. The design and implementation of a treatment plan for a juvenile offender must take into consideration the relationship and developmental complexities noted above. In addition, the juvenile's family's amenability to treatment must also be evaluated, and family treatment plans designed and implemented accordingly. One can easily conclude that any juvenile problem-solving court is in essence a family problem-solving court.

Once a juvenile and their family become engaged in the problem-solving court, the process is the same as the adult version. Team staffings and court hearings are used, but the complexities noted above result in different team compositions, different emphases, and other differences than the adult versions. The teams frequently are larger as a result of the number of adults from different agencies who may have a role in the life of a juvenile or juvenile's family. This factor can result in coordination and time difficulties for team staffing and court hearings.

A juvenile's motivation for completing a problem-solving court is different than that of an adult. As noted, an adolescent's thinking ability is different. Deferred gratification is an abstract thought process that may not be fully developed in a teen offender. Thus, having a case dismissed or not going to prison may not carry the same motivating urgency as they might for an adult. A juvenile is more concrete and present-focused. As all parents learn, punishment must be swiftly administered to have significant impact. Incentives are critical to the success of problem-solving courts, but incentives for a juvenile are much different than for adults. Incentives must be concrete and delivered quickly after a successful effort.

The offender's family must also be motivated to participate and be engaged if the juvenile is to be successful. Finding what motivates a family is very difficult, yet must be considered and implemented for a juvenile problem solving court to be successful.

Because peer pressure is so prevalent for an adolescent, plans must be made to address this issue. The peers who negatively pressure the juvenile will continue to be available to the juvenile during their tenure in the problem-solving court; and, efforts have to be instituted to block this access. It may be necessary to ban or limit cell phone use or access to the internet. At the same time, new positive peer associations have to be developed. This task alone can be extremely difficult and requires the problem-solving team to really work together in finding solutions.

THE IMPORTANCE OF COMMUNITY

Community collaboration must occur if juvenile problem-solving courts are to be successful. These courts need to be designed to reflect community concerns and priorities, access community organizations in policy making decisions, and seek general community participation and support.⁷ The issue of developing positive peer associations illustrates this requirement most vividly. Juveniles who find themselves in juvenile problem-solving courts have been seen as a threat to the community and have been accordingly shunned by the community. Their closest

friends are often similarly situated. Yet, to really make a change for a juvenile engaged in a problem-solving court, new positive peer associations must be found.

IDAHO'S JUVENILE PROBLEM-SOLVING COURTS

Idaho can be proud of the effort made by the many communities that have taken on the challenging task of supporting a juvenile problem-solving court. Currently, there are juvenile drug courts in Ada, Twin Falls, Minidoka-Cassia, Bannock, Bingham, Bonneville and Madison-Jefferson Counties. These courts served 230 participants in Fiscal Year 2007. In addition to the juvenile drug courts, Idaho has a current pilot project to determine the effectiveness of a juvenile mental health court. This court, located in the Seventh Judicial District, takes cases from several of that District's counties. Some communities are also using the problem-solving court model in cases involving truancy.

With the commitment shown by those involved with these courts, Idaho's communities will be safer. Truly Idaho's juvenile problem solving courts are fulfilling the role of *parens patriae*.

ABOUT THE AUTHOR

Hon. John F. Varin is a Senior Magistrate Judge with 22 years of judicial experience, the last 13 years as a juvenile court judge serving six south-central Idaho counties. He established and presided over the first Idaho Juvenile Methamphetamine Court in Twin Falls County, to address the issues of juveniles using or dependent upon meth. He graduated from the University of Idaho Business College in 1968 and the University of Idaho Law School in 1971. Since 1995 he has been the chair of the Idaho Supreme Court Juvenile Justice Advisory Team, composed of a judge doing juvenile work from each of Idaho's seven judicial districts. He is currently the chair of the Idaho Supreme Court Juvenile Rules Committee and was appointed by Idaho's Governor as Chair of the State of Idaho Juvenile Justice Commission. He is currently the Juvenile Court Director for the Administrative Office of the Supreme Court.

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⁷*Juvenile Drug Courts: Strategies in Practice*.5 (BJA 7 Monograph, 2003)

DUI COURTS IN IDAHO

Jamie C. Shropshire
Assistant City Attorney, City of Lewiston, Idaho

WHAT IF ...?

What if we could reduce the rate of recidivism for drug or alcohol-impaired drivers in Idaho by fifty percent? What would it be worth to save even one of the victims of an impaired driver from death or serious injury? These are the kinds of questions that Driving under the Influence (DUI) Courts in Idaho have been answering since their official inception in January of 2001.

IDAHO DEVELOPS DUI COURTS

The first DUI Court in Idaho was established in Kootenai County in January 2001. There are now twelve DUI Courts in Idaho managing DUI cases under the drug court model, with at least one DUI Court in five of the seven judicial districts. Idaho has two basic types of DUI Courts: courts primarily accepting misdemeanor repeat offenders or first-time offenders with a breath or blood alcohol test result of .20 or higher; and courts accepting other misdemeanor offenses involving alcohol or drugs.

TARGET POPULATION

DUI Courts have always primarily targeted repeat offenders and now there is empirical justification for that approach. A National Highway Traffic Safety Administration study completed in March 2008 on alcohol-impaired driving found that impaired drivers who were involved in fatal crashes were four to eight times more likely to have a prior DUI conviction. In 2006, fatal crashes involving 57,695 drivers were examined. Of the 12,491 who had an alcohol concentration (BAC) of .08 or higher at the time of the crash, eight percent (8%) had a prior DUI conviction as opposed to one percent (1%) of drivers who had a BAC of zero.¹

The primary goal of DUI Courts is public safety, but they also help ease the overwhelming caseload carried by traditional courts. Furthermore, by providing intensive treatment, support group participation, regular court hearings with the DUI Court judge, regular testing for alcohol and drug use, and intensified monitoring by probation and law enforcement the DUI Courts offer an alternative to simply warehousing offenders.

A TEAM EFFORT

DUI Courts provide a coordinated response to serious and repeatedly impaired drivers by involving all branches of the court system in a "common vision".² The typical staffing for a DUI Court includes a judge, prosecutor, law enforcement officer, treatment provider(s), misdemeanor probation officer, court clerk, the DUI Court coordinator, and the participant's defense attorney.

This collaborative approach fosters a sense of teamwork that is one of the particular strengths of problem solving courts. As the Hon. Kent Merica, Magistrate Judge in Nez Perce County, 2nd Judicial District, says:

As the team leader for the Nez Perce County DUI Court, I have the final say in what happens. However, I have come to appreciate the process used by the team during staffing sessions, just prior to court sessions with the participants. Each team

member has a unique perspective on the participants and the collective decision always moves us towards finding what will maximize the participant's success. The prosecutor and probation officer often argue for giving the participant a second or third chance to make the behavioral changes that will move the client towards graduation.

GUIDING PRINCIPLES TIMES TEN

All DUI Courts in the United States are expected to operate in accordance with the Ten Guiding Principles of DUI Courts³ which are:

1. **Target Population.** DUI Court should have a clearly identified target population. In Idaho, DUI Courts target repeat offenders or those whose alcohol concentration test was statutorily excessive (above a .20).
2. **Clinical Assessment.** A DUI Court should have clear admission policies that systematically assess a potential client's criminality, nature and degree of substance use disorder, and other objectively measurable variables to determine whether admission of that offender is appropriate.
3. **Treatment Plan.** Treatment is provided to facilitate the greatest likelihood of recovery from addiction. The treatment plan encompasses regular treatment group meetings, individual sessions, accountability to the DUI Court, and twelve-step or other mutual support program involvement. The intensity of treatment is staged throughout the DUI Court program to adjust to the progress and changing needs of the participant.
4. **Community Supervision.** DUI Court participants are closely monitored at work, home, and in the community. This intensive supervision enables the court to identify and encourage successful habits and discourage or sanction activities that might detract from the client's success. Community contact also provides the DUI Court team with a base of information to detect behaviors that indicate impending alcohol or drug use. Any use or even presence of alcohol in the home or workplace of DUI Court participant is strictly prohibited, and frequent random alcohol and drug testing is a key part of the program. While sanctions are an integral part of DUI Court, positive reinforcement has proven to be the most effective motivation for many DUI Court participants.
5. **Agency, Organization, and Community Partnerships.** As noted above, the DUI Court model is dependent upon a strong team approach. This approach extends beyond the confines of the courtroom, as the team also solicits the cooperation of various government agencies and community organizations. The involvement of these groups has the added benefit of establishing and increasing the DUI Court's credibility within the community as a proactive solution to a critical public health and safety problem.

6. Judicial Leadership. The selection of the judge to lead the DUI Court team is perhaps the most important initial decision to be made in setting up a DUI Court. As the team leader, the judge must be committed to this role and willing to recognize and understand the complex and often troubled lives of those who stand before the bench. In addition to the legal expertise and commitment to justice all judges must possess, a DUI Court judge must also hold a strong personal belief in the effectiveness of intensive treatment and continuous accountability as tools to prevent impaired driving.

7. Case Management. Prior to each team staffing, the DUI Court Coordinator collects information from probation, the treatment provider, and other team members and provides a staffing report on each client's progress. The team can then fashion the appropriate incentives, or sanctions, necessary to meet the needs of each participant.

8. Transportation Issues. A unique aspect of DUI Court is the emphasis necessarily placed on transportation problems. Since a driver's license suspension comes with a DUI arrest, transportation is frequently the single most significant issue for participants in deciding whether to enter DUI Court. Offenders are often faced with lengthy suspensions that impact their employment, the care of their family, and their ability to get to treatment. Although the experience of the Nez Perce County DUI Court has been that participants who do have a valid driver's license will often provide their fellow clients with transportation to court, treatment, and twelve-step programs, the issue is far from resolved. Congress recently approved allowing the states the discretion to set standards for DUI Court participants to obtain a limited license, subject to imposition of interlock devices, after an initial forty-five (45) day absolute suspension. The Idaho Legislature will probably be asked to consider legislation to facilitate that process soon.

9. Evaluation. Credible evaluation is the only means of mapping the success or failure of DUI Courts. Evaluation must include documenting behavioral changes, tracking recidivism, and must also provide a comparison group. Credible program evaluation is the foundation for obtaining and maintaining community and legislative support for future DUI Courts.

10. Sustainability. Strategic planning for long-term funding and strong community partnerships assure that DUI Courts will continue to offer an effective solution to the devastating consequences of impaired driving.

WHAT IS THE BOTTOM LINE?

Do DUI Courts truly reduce the number of impaired drivers on our roads? Judging by repeated evaluations and studies across the country, the answer is ... yes. For example, a 2007 Michigan study analyzed data from three DUI Courts and found that significantly more comparison offenders were re-arrested than DUI Court offenders in a two-year period.⁴ Traditional probation offenders in the comparison group were three times more likely to be re-arrested for any charge than DUI Court participants and nineteen times more likely to be re-arrested on a DUI charge than

DUI Court participants.

Closer to home, the 2007 Drug and Mental Court Report to Governor Butch Otter and the 59th Idaho Legislature reported similar results.⁵ Data from four of Idaho's DUI Courts compared their participants to a group of offenders who were eligible but did not participate in DUI Court. Twenty-three percent (23%) of the DUI Court participants committed new offenses as opposed to thirty-seven percent (37%) of the comparison group. Among DUI Court graduates, only eighteen percent (18%) committed new offenses.

SAVING DOLLARS, SAVING LIVES

The number of DUI Courts in Idaho continues to grow, as does the number of people who want the opportunity to change their lives by participating in a DUI Court. In 2008, the Idaho Legislature approved [does this mean they approved funding] an additional 150 misdemeanor and DUI Court participants. While treatment and related DUI Court expenses are estimated at approximately \$6500 per year per participant, one alcohol-related fatality can cost as much \$1.1 million, and an alcohol-related serious injury can cost as much as \$900,000 to the community.⁶ The potential savings in lives and dollars demands the continuation of DUI Courts as a cost-effective method of addressing the many problems that result from impaired driving.

ABOUT THE AUTHOR

Jamie C. Shropshire, is the Assistant City Attorney for the City of Lewiston, Idaho. She is also an Adjunct Professor at the University of Idaho College of Law and on the Lawyer Assistance Program Committee for the State Bar.

ENDNOTES

¹DUI Courts were created by the Idaho Legislature in the Idaho Drug Court Act of 2001.

²National Highway Traffic Administration, "Alcohol-Impaired Driving", Traffic Safety Facts 2006 Data, March 2008.

³Padden, supra.

⁴NPC Research, "Michigan DUI Courts Outcome Evaluation" October 2007.

⁵Idaho Supreme Court, Drug Courts and Mental Health Courts 2007, "Report to Governor Butch Otter and the Second Regular Session of the 59th Idaho Legislature.

⁶Idaho Department of Transportation, Kootenai County Prosecuting Attorney's Office, "An Analysis of Idaho's Kootenai County DUI Court, 2001-2003.



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IDAHO DRUG COURT ACT

The Idaho Drug and Mental Health Court Act sets forth the Legislature's findings and sets clear goals for drug courts in Idaho.

TITLE 19—CRIMINAL PROCEDURE

CHAPTER 56—IDAHO DRUG COURT AND MENTAL HEALTH COURT ACT 19-5602

STATEMENT OF POLICY

THE LEGISLATURE FINDS THAT:

- (1) Substance abuse is a contributing cause for much of the crime in Idaho, costs millions of dollars in productivity, contributes to the ever increasing jail and prison populations and adversely impacts Idaho children;
- (2) Drug courts which closely supervise, monitor, test and treat substance abusers have proven effective in certain judicial districts in Idaho and in other states in reducing the incidence of drug use, drug addiction, and crimes committed as a result of drug use and drug addiction. Successful drug courts are based on partnerships among the courts, law enforcement, corrections and social welfare agencies;
- (3) Mental illness is a substantial contributing cause to crime in Idaho. Crimes committed by persons suffering from mental illness cause substantial losses to persons and business throughout the state and endanger public safety. In addition, millions of dollars are spent each year on the incarceration, supervision and treatment of mentally ill offenders;
- (4) Mental health courts in Idaho and other jurisdictions that closely supervise and monitor mentally ill adult and juvenile offenders and oversee their treatment are an innovative alternative to incarceration for certain offenders. Such courts, which can be operated in conjunction with drug courts, have provided a cost-effective approach to addressing the mental health needs of offenders, reducing recidivism, providing community protection, easing the caseload of the courts, and alleviating the problem of increasing prison, jail and detention populations; and
- (5) It is in the best interests of the citizens of this state to expand the use of drug courts and mental health courts in Idaho.

The goals of the drug courts and mental health courts created by this chapter are to reduce the overcrowding of jails and prisons, to reduce alcohol and drug abuse and dependency among criminal and juvenile offenders, to hold offenders accountable, to reduce recidivism, and to promote effective interaction and use of resources among the courts, justice system personnel and community agencies.

DEVELOPMENT OF IDAHO'S DRUG COURTS

The United States drug court movement is young. It began in Miami Florida, with the Dade County Drug Court, in 1989. This burgeoning movement first developed in response to the growing number of drug cases overcrowding America's criminal court calendars. The drug court offers mostly drug offenders the choice of participating in an intensive court-monitored treatment program as an alternative to the usual court adjudication process.

Drug court treatment includes several days during each week of participation in group and individual counseling, educational sessions, attendance at self-help support groups such as Alcoholics or Narcotics Anonymous, reading and writing assignments, community service, drug-use testing, and regular appearances in front of the drug court judge. Failure to adhere to the treatment requirements and expectations results in the assessment of sanctions including additional educational assignments, work details, community service, and even jail times. Participants move from more to less intensive phases of treatment during their drug court participation. Graduation comes when the participant has lived alcohol / drug and crime-free for a significant

period of time and has reestablished a productive and contributing lifestyle. According to James Nolan, author of *Reinventing Justice*, the "innovative adjudication model draws heavily on the American therapeutic idiom to give direction and meaning to its philosophy, forms and procedures" (Nolan, 1998). The model has received almost uniformly positive media coverage and overwhelming public support at both the national and local levels. Judges celebrate the drug court as an exciting movement, a new way of justice, even revolution in American jurisprudence. (Nolan, 2001).

HISTORY OF IDAHO DRUG COURTS

To address the growing court dockets of drug related cases, and to slow, or stop, the revolving door of drug dependent defendants entering Idaho courts, the Idaho Judiciary made expansion of drug courts its number one priority, in the 2000 legislative session. Concurrently, the Governor, faced with requests from the Idaho Department of Correction for major funding for new prison construction, developed a programmatic and budget package to carry out a major statewide substance abuse treatment initiative. This initiative included funds to expand treatment for drug court participants.

Against this backdrop of converging public policy from the executive and judicial branches, the 56th Idaho Legislature took historic action and enacted Senate Bills 1171, 1257, and 1267, a coordinated set of bills enabling both parallel and integrated activity by the Supreme Court, the Department of Correction, and the Department of Health and Welfare. Senate Bill 1171 established a statutory framework for the expansion of drug courts to all judicial districts and addressed eligibility, evaluation, implementation, funding, and participant fees. Senate Bill 1257 provided \$576,000 to the Department of Health and Welfare to support the treatment needs of the drug courts while Senate Bill 1267 appropriated \$991,000 to address critical operating expenses of drug courts. Through this carefully orchestrated action, all three branches of government articulated a common vision and initiated a strategic investment clearly designed to reduce the devastating and degrading impact of drugs on individuals, families, and communities, across Idaho.

This funding became available July 1, 2001 and by December 31, 2001 there were 17 drug courts in operation. 11 more drug courts began operating between January 1, 2002 and March 31, 2002. Two additional drug courts began operations during fiscal year 2003, and two more began in FY2004. As of December 31, 2003 32 drug courts were in operation serving all Judicial Districts in the State. In addition, following the drug court model, two mental health courts and one child protection / parent drug court have been established.

IDAHO'S EARLY DRUG COURTS

Drug courts began in Idaho in September 1998, starting with the Kootenai County Drug Court under Judges James Judd and Eugene Marano followed soon, thereafter, by the Ada County Drug Court, under Judge Daniel Eismann, in March 1999. These two early drug courts established solid operational foundations and demonstrated successful retention of clients in treatment and achievement of several positive outcomes. The Phase I Idaho Drug Court Evaluation, discussed in a separate section, provides further detail on the evaluation of these two early Idaho drug courts.

Other Judicial Districts also began drug courts prior to the passage of SB 1171. In 2000, drug courts began in Bonneville, Bannock, Jefferson, Fremont, Madison, Power, Teton, and Twin Falls Counties.

Just before the new law began, Bingham County started two drug courts, in early 2001. The early Idaho drug courts, through the vision and personal commitment of their judges, the collective efforts of their teams, including prosecutors, public defenders, treatment providers, and drug court coordinators, and the funding acumen of their trial court administrators, built a solid foundation of operational success and public support, paving the way to statewide drug court development and the passage of the Idaho Drug Court Act.

CHARACTERISTICS OF DRUG COURT/MENTAL HEALTH PARTICIPANTS

The Idaho Drug Court Evaluation will provide detailed data on the participants in drug courts. Currently, available data from selected drug courts gives us an initial picture of the population being served. The most complete data comes from the Ada County Drug Court and reflects the participant population as of July 2003.

In addition, a "snapshot" analysis of cases in Twin Falls County gives us data on the criminogenic risk scores of the felony drug court participants in that county as of October 2002. This data is important because it clearly shows that these drug court participants represent the target population of medium to high-risk participants. These participants are the individuals that the drug court is most likely to have an effect on, with respect to a reduction of criminal recidivism and commensurate return on the funding investment in the program.

CHARACTERISTICS OF DRUG COURT PARTICIPANTS

EDUCATION

- 39% lack high school diplomas or a GED
- 27% have some college level education, including Associate or Bachelors Degree
- 25% of graduates from drug court have returned to school (GED or college)

DRUG USE AND DRUG CHARGES

- 15.37 years is the average number of years of drug use
- \$129.47 per day is the average daily street value of drugs used
- \$5.00 - \$1,800.00 was the recorded range of daily street value of drugs used
- 73.5% of participants were charged with possession of amphetamine / methamphetamine
- 5 % of participants were charged with possession of heroin

GRADUATION AND CRIMINAL RECIDIVISM FROM DRUG COURT

- 53% of the Ada County participants who left the program, graduated from the program
- 11% of graduates have been convicted of new crimes

AGE AND GENDER

- 31.51 is the average age of participants
- 56 years of age is the oldest participant
- 55% of drug court participants are male
- 45% of drug court participants are female

CRIMINALITY MEASURED BY RISK SCORE

- 89 % of drug court cases from Twin Falls County were assessed using the LSI-R as medium to high risk for their overall criminality and risk of future recidivism

EMPLOYMENT

- 58% of participants were unemployed at the time of entering drug court
- 87% of participants gained and maintained employment during drug court
- \$5.12 per hour represents the average hourly **wage rate increase** of graduates
- \$12,433.70 per year average **annual wage increase** for graduates



Court and community involvement combined create successful graduates.

IDAHO CODE AND ADMINISTRATIVE RULES

RULE 55. DRUG COURTS AND MENTAL HEALTH COURTS

(a) The Idaho Drug Court and Mental Health Court Act specifies the goals, purposes, policies for acceptance and related operating guidance for the operation of drug courts and mental health courts in Idaho. In addition, the Act establishes a statewide Drug Court and Mental Health Court Coordinating Committee and vests it with the responsibility for establishing standards and guidelines and providing ongoing oversight of the operation of drug courts and mental health courts in Idaho. This rule provides additional direction for the development, establishment, operations, and termination of drug courts and mental health courts. The provisions of this rule apply to all drug courts and mental health courts, including those addressing adult felony or misdemeanor cases, juvenile cases, or child protection cases.

(b) Judicial districts planning to establish a new drug court and/or mental health court must submit a letter of intent to the Statewide Drug and Mental Health Coordinator, signed by the Administrative District Judge and the Trial Court Administrator, no less than six months in advance of a proposed starting date. The Statewide Drug Court Coordinator will advise the Drug Court and Mental Health Court Coordinating Committee and shall offer assistance in planning, coordination, identifying available funds, and providing training. The Coordinating Committee will advise the judicial district as to available funding and a feasible starting date, within thirty (30) days of receiving the letter of intent.

(c) Any judicial district planning to apply for training to assist in the development or ongoing operation of a drug court and/or mental health court, through an application to the Department of Justice for the Drug Court Planning Initiative, must notify the Drug and Mental Health Court Coordinator, through the Administrative District Judge and Trial Court Administrator, prior to the submission of their training application. The Statewide Drug and Mental Health Coordinator will schedule a pre-training briefing with the team, in advance of their participation in the national training, to orient the team to Idaho statute, guidelines, and available resources. Acknowledgement of or participation in the national training will not guarantee that the Drug Court and Mental Health Court Coordinating Committee will approve the subsequent proposal for the new drug court and/or mental health court.

(d) The judicial district must submit an operations application, on a form to be prescribed by the Drug Court and Mental Health Court Coordinating Committee, prior to beginning operations of a new drug court and/or mental health court. This application shall be signed by the Administrative District Judge and the Trial Court Administrator and shall

be submitted to the Drug Court and Mental Health Court Coordinating Committee no less than sixty days in advance of a proposed starting date. The Drug Court and Mental Health Court Coordinating Committee shall approve or disapprove the application and may adjust the proposed starting date, consistent with available resources. The operations application shall include the following:

(1) A memorandum of agreement (MOA) signed by the Administrative District Judge, Trial Court Administrator, one or more proposed presiding judges, the prosecuting attorney(s) and city attorneys for the participating jurisdictions, the public defender(s) for the participating jurisdictions, the community supervision agency, and other community entities such as the Regional Substance Abuse Authority and / or Regional Mental Health Council. This MOA will describe each agency or organization's participation and specific commitments to the drug or mental health court.

(2) Documentation of training of the core team for the drug court and/or mental health court either through the National Drug Court Planning Initiative or by the Statewide Drug and Mental Health Court Coordinator.

(3) Assurance of understanding and a plan for addressing the applicable Statewide Guidelines for Effectiveness and Evaluation.

(4) Assurance of understanding and plan for collecting and reporting required data, including utilization of the ISTARs Drug Court system.

(e) Any district court operating a drug court and/or mental health court shall annually review and report back to the Statewide Drug Court and Mental Health Coordinating Committee, through the Administrative District Judge and Trial Court Administrator, as to how the court is operating in accordance with the Guidelines, the approved participant capacity, and any directions from the Drug Court and Mental Health Court Coordinating Committee.

(f) A judicial district planning to terminate a drug court and/or mental health court must submit a letter of planned termination, to the Statewide Drug and Mental Health Court Coordinator for communication to the Drug Court and Mental Health Court Coordinating Committee, signed by the Administrative District Judge and Trial Court Administrator, as soon as reasonably possible and prior to the proposed ending date. The Drug Court and Mental Health Court Coordinating Committee shall approve or disapprove the planned termination and may adjust the proposed termination date.

(Adopted August 5, 2005, effective August 15, 2005.)



Bannock County Commissioner and former state senator, Lin Whitworth, spoke at Caribou County graduation. Judge Hart and Judge Harding presided.

PROBLEM-SOLVING COURT LOCATIONS AND JUDGES IN IDAHO

FIRST DISTRICT

KOOTENAI COUNTY

Judge Penny Friedlander – Felony Drug
Judge John Mitchell – Mental Health Drug
Judge Joel Hazel – DUI (Judge Scott Nass, backup)

BONNER COUNTY

Judge Debra Heise – Felony Drug
Judge Barbara Buchanan – Felony Drug
Judge Steve Verby – Felony Drug

BENEWAH COUNTY

Judge Patrick McFadden – Felony Drug

SECOND DISTRICT

NEZ PERCE COUNTY

Judge Jeff Brudie – Felony Drug
Judge Carl Kerrick – (backup for Felony Drug)
Judge Greg Kalbfleisch – Mental Health
(backup for Family Reunification)
Judge Jay Gaskill – Family Reunification
(backup for Mental Health)

LATAH COUNTY

Judge John R. Stegner – Felony Drug Court, Mental Health
CLEARWATER AND IDAHO (AND SERVING LEWIS)
Judge John Bradbury – Felony Drug Court, Mental Health

THIRD DISTRICT

CANYON COUNTY

Judge George A. Southworth – Felony Drug
Judge Renae Hoff – Mental Health
Judge Frank P. Kotyk – Mental Health

ADAMS, WASHINGTON, PAYETTE AND GEM COUNTIES

Judge Lynn Krogh – Quad County Felony Drug

FOURTH DISTRICT

ADA COUNTY

Judge Ronald Wilper – Felony Drug
Judge Cheri C. Copsy – Felony Drug
Judge J. William Harrigfeld - Juvenile Drug
Judge Michael McLaughlin - Mental Health

FIFTH DISTRICT

ENTIRE DISTRICT

Judge John K. Butler – Felony Drug

BLAINE COUNTY

Judge Robert Elgee - Felony Drug
Mark Ingram – (substitute for Judge Robert Elgee)

MINI/CASSIA COUNTY

Judge Larry Duff – Juvenile Drug

TWIN FALLS COUNTY

Judge Mark Ingram – Juvenile Meth
Judge Richard Bevan – Mental Health
Judge Howard Smyser – DUI

SIXTH DISTRICT

BANNOCK COUNTY

Judge Bryan Murray – Juvenile Drug Court
Judge Robert Naftz (as of December 4)– Misdemeanor/DUI Drug
Judge David C. Nye – (as of December 5, 2007) Felony Drug
Judge Ronald Bush – Felony Mental Health Court

CARIBOU COUNTY

Judge Ronald Hart – Misdemeanor/DUI Drug
Judge Don Harding – Felony Drug

ONEIDA COUNTY

Judge David Evans – Misdemeanor/DUI Drug

POWER COUNTY

Judge Mark Beebe – Misdemeanor/DUI Drug

FRANKLIN COUNTY

Judge Eric S. Hunn – Felony Drug

SEVENTH DISTRICT

BINGHAM COUNTY

Judge Jon Shindurling – Felony Drug
Judge Scott Hansen – Misdemeanor/DUI Drug
Judge Darren Simpson – Juvenile Drug
Judge Ryan Boyer – Mental Health

BONNEVILLE

Judge Gregory Anderson – Felony Drug
Judge Penny Stanford – Misdemeanor/DUI Drug
Judge Stephen Clark – Misdemeanor/DUI Drug
Judge Mark Riddoch – Child Protection
Judge Ralph Savage – Juvenile Drug
Judge Joel Tingey – Mental Health
Judge Brent Moss – Mental Health
Judge Michael Kennedy – Juvenile Mental Health
Judge Linda Cook – Diversion

BUTTE

Judge Ralph Savage – Felony/Misdemeanor/DUI Drug

CUSTER

Judge Ralph Savage – Felony/Misdemeanor Drug

FREMONT

Judge Brent Moss – Felony Drug
Judge Keith Walker – Misdemeanor/DUI Drug
Judge Michael Kennedy – Juvenile Drug
Judge Brent Moss – Mental Health

JEFFERSON

Judge Brent Moss – Felony Drug
Judge Keith Walker – Misdemeanor/DUI Drug
Judge Michael Kennedy – Juvenile Drug
Judge Brent Moss – Mental Health

LEMHI/CUSTER

Judge Stephen Clark – Adult Felony/Misdemeanor/DUI Drug

MADISON

Judge Brent Moss – Felony Drug
Judge Keith Walker – Misdemeanor/DUI Drug
Judge Michael Kennedy – Juvenile Drug
Judge Brent Moss – Mental Health

JEFFERSON/MADISON/FREMONT (UPPER VALLEY)

Judge Michael Kennedy – Juvenile Mental Health

TETON

Judge Colin Luke – Felony Drug Court, Misdemeanor DUI Drug

THE CATALYST IDAHO DRUG COURT JUDGES

Drug Court is not an alternative to probation, but an alternative to prison. It is for criminal offenders who are at high risk to recidivate, and not for low-risk offenders.

Hon. Ronald J. Wilper
Fourth District Court
Felony Drug Court

Drug Courts really do work!!!

Two years ago if you had taken a snapshot of our family it would have looked similar to this but there would have been differences that you may not have noticed.

The happiness may have appeared to be there but there would have been misery behind our now happy eyes. The face of Father and husband was more drawn, dark, lonesome and unhappy.

There would have been drug addiction hiding in the shadows of all our faces. If it hadn't been for Drug Courts, our family would still be torn, broken and hurting. Instead of having both parents, our children would still wonder why their father couldn't be there for them. Why he would run away, hide from them because he was ashamed for them to see him that way. If Drug Courts didn't work, father would be in jail or worse, as this family would not be looking at you now...instead of four, there would be three faces looking back at you now or worse: NONE. Because if drug courts didn't work, this picture would not be here and we would not be telling you our story.

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 7. Besides the U.S., only one other country in the world has a commercial bail system – what country is it? (*Come find out!*)
 6. You are concerned about the impact of GATS and the WTO on the American system of Federalism, and the impact of trade negotiations / concessions on state sovereignty.
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Problem Solving Drug Court team members.

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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ABA DELEGATE REPORT FROM ABA ANNUAL MEETING

ENCOURAGING LAWYERS TO MAKE A DIFFERENCE

Larry Hunter

Idaho ABA State Bar Delegate

According to the seemingly well-informed tour guide, Manhattan Island is the smallest county, geographically, in the country: 22 square miles. Of course, it greatly increases that square mileage by growing up and down: skyscrapers of enormous variety and an underground labyrinth of subway tunnels. That vertical growth aside, it is nonetheless amazing that so many people in such a small space function as well as the borough of Manhattan functions (recognizing that it has its problems). There are reminders everywhere of the fact that New York City continues to be the epitome of the American “melting pot.” One afternoon while walking on Broadway, I heard four different languages being spoken in a span of 10 feet and none of them were English. Clearly, many, if not all, of the people speaking those languages were tourists, but New York has more speakers of the (fill in the blank) national language than any other city in the world except for and sometimes including the capital city of that country.

Into that richly diverse, always dynamic and sometimes frustrating environment, the American Bar Association (ABA) held its annual meeting. Thousands of lawyers met for CLE courses, committee and section meetings and seminars. On the last two days of the meeting, the House of Delegates met to consider various reports, recommendations and policies and to hear from such diverse speakers as the Vice Secretary General of the United Nations to Michael Mukasey, the Attorney General of the United States. There was also an informative presentation on the subpoena power as it relates to compelling reporters to

reveal their sources.

The outgoing President of the ABA, Bill Neukom of Seattle, has emphasized the World Justice Project which had as its goal to integrate practitioners of many disciplines, including the law, to emphasize the importance of the Rule of Law in their professional lives. (We had a program incorporating those ideals in Idaho in late April which was a great success.) As part of the program in New York and in conjunction with the Rule of Law luncheon, the ABA honored the chief judge of the Pakistani Supreme Court and President of the Pakistani Lawyers Association. The latter attended the luncheon and was the featured speaker. He spoke eloquently of the difficult position he, his fellow practitioners and the sitting judges were placed in when given ultimatums by now ex-President Musharraf. He emphasized that he did not want foreign intervention to restore the Rule of Law in Pakistan, but appreciated the support shown by American lawyers and the ABA in particular.

However, as always, the most interesting aspect of the meeting was the consideration of the various reports and recommendations that came before the House of Delegates. There were almost 50 reports considered during the two days the House was in session. Many of them were adopted unanimously, but there was significant debate on a few. Those which might have the most impact on practitioners in Idaho are the following:

1. Report 112A – This report adopts 480 the “Model Rule for Registration of In-House Counsel.” Some states already have provisions for special admission as registration of in-house counsel.

Idaho has a provision for a house counsel license (Bar Rule 220). The purpose of the Model Rule would be to make such rules uniform.

2. There were reports related to the judiciary. One of the two that generated the most comment was related to the Federal judiciary and the other to the state judiciary. The Federal initiative was supported by a large number of committees, sections and coalitions. It calls for senators in each state to establish bipartisan commissions to evaluate qualifications of prospective candidates for appointment to the Federal court. Washington has had such commissions for a number of years, as have other states who uniformly report a much smoother process in suggesting names for the President’s consideration.

The second report was introduced by the Missouri Bar Association and urged state judiciaries in association with the state and local bar associations to undertake assessments of their judicial systems using the State Court Assessment Project as the assessment tool. Both reports passed but will require further action by states for them to be effective.

3. Screening. The most debated and, indeed, the most controversial report was presented by the Standing Committee on Ethics and Professional Responsibility and co-sponsored by other committees, sections and local bars. It amended Model Rule of Professional Conduct 1.10 to permit “screening” within a law firm to allow other lawyers within the firm to undertake or continue representation that would

be prohibited to another lawyer in the firm because of a conflict of interest from a prior employment. Screening is permitted for former and current government officers and employees, judges, mediators, and other third-party neutrals. (Idaho has adopted these model rules and those rules are number 1.10, 1.11, and 1.12 in the Idaho Rules of Professional Conduct.) Approximately 23 states, including all of our neighboring states except Wyoming, have adopted some form of screening related to private attorneys who change employment. The debate was extensive in emails prior to the meeting and centered on whether the screening rule puts the interests of attorneys before the interests of clients. Those who were worried about public perception of attorneys opposed the change. Delegates from states where screening had been adopted attested to its effectiveness and to

the fact that there was no apparent negative public reaction. A motion was made to table the report until the next meeting in order to consider proffered changes to the amended rule. The motion to postpone passed 192-191 and thus, we know one of the reports that will be considered at the mid-year meeting.

With regard to officers: Tommy Wells of Birmingham, Alabama succeeds Bill Neukom as President of the ABA. Carolyn Lamm of Washington D.C. becomes President-elect. William Hubbard of South Carolina succeeds Laurel Bellows of Illinois as Chairman of the House of Delegates. President Wells' calling card may be the statement he made in his inaugural address, "As attorneys we are pretty good at making a dollar, but we are at our dead-level best when we make a difference." Ignoring the pecuniary aspect of the aphorism, I trust as attorneys, we recognize the

importance of making a difference in our communities, our families and our society, both as individuals and as a profession.



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

partner with Moffatt, Thomas, Barrett, Rock and Fields in Boise. His practice includes general and commercial litigation, administrative law, and alternative dispute resolution. He is a past president of the Idaho State Bar. He received his J.D. from Northwestern University School of Law. He has an A.B. from Harvard University (cum laude). Contact information for Larry is: (208) 345-2000, or lch@moffatt.com.

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FEDERAL COURT CORNER

ANNUAL DISTRICT CONFERENCE/ FEDERAL PRACTICE PROGRAM

Tom Murawski
United States District and Bankruptcy Courts

The Annual District Conference and Federal Practice Program will be presented at the Centre on the Grove in Boise on Friday, November 7th. This year's theme is "Celebrating our Constitution." The agenda contains many great presenters, including Erwin Chemerinsky, the Honorable Stephen S. Trott of the Ninth Circuit Court of Appeals and noted defense counsel David Z. Nevin. A panel of esteemed legal minds will discuss what "Judicial Independence" really means. A Federal Judge's Panel will address today's hot topics in the Idaho Courts. In addition, the Honorable Candy Wagahoff Dale will share her thoughts about insights gained - some new and some reinforced - about "lawyering", as well as perspectives about her new role as a jurist.

The featured speaker will be Erwin Chemerinsky, a nationally renowned professor of constitutional law and federal civil procedure, who is the founding dean of the new University of California -Irvine School of Law. Chemerinsky has authored four books, more than 100 articles and regularly serves as a commentator on legal issues for local and national media. In 2005, he was named by *Legal Affairs* as one of the "top 20 legal thinkers in America." Registration materials will be available in late September. Please check the Court's website at www.id.uscourts.gov for further information.

BANKRUPTCY – ELECTRONIC CASE FILING UPCOMING RELEASE

A new version of Bankruptcy CM/ ECF is expected to be released sometime before October. The enhancements will include: public-access to court transcripts; hyperlinking between documents; and enhanced screen navigation features. Stay tuned for more information. It is anticipated that some "Best Practice Forums" will be conducted for Bankruptcy e-filers at various locations in connection with the new release.

BANKRUPTCY – ELECTRONIC CASE FILING TIP

When filing a new case under the current Bankruptcy CM/ECF system, users are asked to complete *every* screen. It seems that, while the current release will allow a filer to skip certain screens where the proper entry might be a zero, not entering any numerical value will result in either the e-filer having to go back and re-do the entire procedure prior to completion, or the statistical information which the system is designed to automatically collect, will be compromised or distorted.

ADR TRAINING FOR FEDERAL COURT MEDIATORS

Over the past several years, Alternative Dispute Resolution has played an increasing role in the case flow management for the District of Idaho. In addition to Arbitration, Early Neutral Evaluation, Settlement Week, Judicially conducted Settlement Conferences and the Pro Se - Pro Bono Program, Mediation has been a cornerstone of the District's ADR Program. The Court-authorized list of approved federal mediators currently numbers about sixty. James Holbrook, Professor at the University of Utah, College of Law, will be conducting a 4-hour advanced Mediation training session for Idaho U.S. Courts Mediators on Monday, October 20th at 12 noon. Lunch will be provided and CLE credits will be

awarded. Location and detailed information will be available shortly. If you have any questions please contact Denise Asper, ADR Director at 334-9067 or Suzi Butler, Training Coordinator at 334-9208.

PILOT DRUG COURT PROGRAM

The District of Idaho will shortly begin the implementation of a Pilot Drug Court Program known as "START" (Success through Assisted Recovery & Treatment), aimed at assisting selected participants in Probation & Pretrial Services Supervised Release Program. Individuals who successfully complete this program could have the term of their supervision reduced by as much as a year. Magistrate Judge Mikel H. Williams has spearheaded the initiative. The Program name captures the idea that its graduates will have a fresh start in life, while recognizing that, although the Court re-entry team is there to assist in their recovery with treatment and supervision, ultimately, it is their responsibility if they want to succeed. This Pilot Program will begin in Boise and later be implemented at divisional locations.



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

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

2nd AMENDED Regular Fall Terms for 2008

Boise. June 2, 4, 6, 9, and 11
Pocatello. September 10
Idaho Falls. September 10 and 11
Rexburg. September 12
Boise. September 15 and 17
Twin Falls. November 6 and 7
Boise. November 10, 12, and 14
Boise. December 1, 3, 5, 8, and 10

By Order of the Court
Stephen W. Kenyon, Clerk

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

Idaho Supreme Court

Oral Argument Dates
As of August 20, 2008

Wednesday, September 10, 2008 – POCATELLO IDAHO FALLS

8:50 a.m. Porter v. Bassett	#33828
10:00 a.m. Dept. of Health and Welfare v. Hudelson	#34495
11:10 a.m. Teton Peaks Investment v. Ohme	#34642

Thursday, September 11, 2008 – IDAHO FALLS

8:50 a.m. Johannsen v. Utterbeck	#34023
10:00 a.m. Carter v. Zollinger	#34377
11:10 a.m. Johnson v. Blaine County	#34524

Friday, September 12, 2008 – REXBURG

8:50 a.m. Mendenhall v. Aldous	#34700
10:00 a.m. Burns Holding LLC v. Madison County	#33753
11:10 a.m. Cherry v. Coregis Insurance Co.	#34404

Monday, September 15, 2008 – BOISE

8:50 a.m. Rhino Metals, Inc. v. Craft	#34380
10:00 a.m. Bartosz v. Jones	#34185

Wednesday, September 17, 2008 – BOISE

8:50 a.m. U of I Foundation v. Civic Partners	#34461
10:00 a.m. Ray v. Frasure	#34311
11:10 a.m. State v. Perry (Petition for Review)	#34846

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
Sergio A. Gutierrez

Judges
Karen L. Lansing
Darrel R. Perry

2nd AMENDED Regular Fall Terms for 2008

Boise. August 12 and 21
Coeur d'Alene
 (Northern Idaho). September ~~15, 16 17, 18 and 19~~
Hailey October 9 and 10
Boise. October 14 and 16
Boise. November 6 and 7
Boise. December 2, 4, 9, and 11

By Order of the Court
Stephen W. Kenyon, Clerk

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

Idaho Court of Appeals

Oral Argument Dates
As of August 20, 2008

Tuesday, September 16, 2008

9:00 a.m.	State v. Jane Doe II	#33997/34008
10:30 a.m.	State v. DeBoer	#34512
1:30 p.m.	Nelson v. Construction Backhoe Services	#34476
3:00 p.m.	State v. Grantham	#32657

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

CIVIL APPEALS

Attorney Fees and Costs

1. Did the court err in awarding the Bates their attorney fees and costs based upon the jury's finding of unjust enrichment against Seldin?

Bates v. Seldin
S.Ct. No. 34856
Supreme Court

Post-Conviction Relief

1. Was Odle entitled to an evidentiary hearing on his claim that trial counsel's failure to seek an order for a psychological examination resulted in his mental condition not being factored at sentencing?

Odle v. State

S.Ct. No. 33573
Court of Appeals

2. Are the court's factual findings that counsel adequately reviewed the case and discussed possible defenses supported by substantial evidence?

Mejia v. State
S.Ct. No. 34237
Court of Appeals

3. Did the district court err when it dismissed Warren's amended petition for post-conviction relief?

Warren v. State
S.Ct. No. 33474
Court of Appeals

Procedure

1. Whether the district court erred in dismissing Scotty's Duro Bilt Generator, Inc. as a defendant.

*Goodman Oil Co. v. Scotty's Duro-Bilt
Generator, Inc.*
S.Ct. No. 34284
Supreme Court

Property

1. Whether the district court erred in denying the Harrises just compensation for the Department's taking of their sand and gravel rights from 1985-2007.

Harris v. State
S.Ct. No. 34570
Supreme Court

Standing

1. Whether the district court erred in finding St. Luke's Regional Medical Center had no standing to pursue judicial review of a county medical indigency decision issued by the Ada County Board of Commissioners.

*St. Luke's Regional Medical Center v.
Ada County Board of Commissioners*
S.Ct. No. 34953
Supreme Court

Substantive Law

1. Whether the court erred in prohibiting the Department from recovering medical expenses paid by Medicaid from that part of a settlement that represents, or can reasonably be construed as representing, medical expenses.

Department of Health & Welfare
S.Ct. No. 34484
Supreme Court

Summary Judgment

1. Did the court err in granting summary judgment in favor of Bonneville County?

Caudle v. Bonneville County
S.Ct. No. 34678
Court of Appeals

2. Whether there are questions of fact that preclude the dismissal of Boise Tower Associates' taking claim by summary judgment.

Boise Tower Associates, LLC v. Hogland
S.Ct. No. 34333
Supreme Court

3. Did the court err in finding Peterson's claim was barred by the statute of frauds when the defendants admitted the contract and its essential terms?

Peterson v. Shore
S.Ct. No. 34568
Court of Appeals

CRIMINAL APPEALS

Due Process

1. Did the court abuse its discretion in the way it limited cross-examination of two witnesses?

State v. Bassett
S.Ct. No. 34417
Court of Appeals

Evidence

1. Was there substantial competent evidence presented at trial from which the jury reasonably concluded that Gerardo was guilty of the burglary and attempted robbery of the Lotus Garden restaurant?

State v. Gerardo
S.Ct. No. 33450
Court of Appeals

2. Whether the court abused its discretion by admitting evidence of vulgar statements made by Precht to an officer after he was arrested for driving under the influence that Precht contends were irrelevant and highly prejudicial.

State v. Precht
S.Ct. No. 34864
Court of Appeals

3. Did the district court abuse its discretion by admitting into evidence photographs of the crime scene, the victim's dead body and autopsy pictures?

State v. Brink
S.Ct. No. 34391
Court of Appeals

Instructions

1. Did the district court err by granting the state's motion to amend the indictment prior to trial to add "and/or by suffocation" to the first degree murder allegation?

State v. Severson
S.Ct. No. 32128
Supreme Court

2. Did the court deny Lapine his right to a unanimous jury verdict when it failed to give the jury a special verdict form that would have required the jury to unanimously agree to all of the elements of felony DUI?

State v. Lapine
S.Ct. No. 34256
Court of Appeals

Pleas

1. Did the court abuse its discretion when it denied Smalley's post-sentence motion to withdraw his guilty pleas?

State v. Smalley
S.Ct. Nos. 32187/32188
Court of Appeals

2. Did the state violate the plea agreement such that Patterson is entitled to a new sentencing hearing in front of a different judge and specific performance by the state?

State v. Patterson
S.Ct. Nos. 34413/34474/34475
Court of Appeals

Search and Seizure – Suppression of Evidence

1. Is Coeur d’Alene’s municipal code criminalizing possession of an open container of alcohol by a passenger unconstitutional because it conflicts with I.C. § 23-505?

State v. Reyes
S.Ct. No. 34815
Court of Appeals

2. Did the district court err in denying Hedgecock’s motion to suppress in light of his waiver to be free from unreasonable searches as a condition of his probation?

State v. Hedgecock
S.Ct. No. 33950
Court of Appeals

3. Did the court err in denying Armstrong’s motion to suppress and in finding the stop of his vehicle was supported by probable cause he committed the offense of littering?

State v. Armstrong
S.Ct. No. 34420
Court of Appeals

4. Did the district court err in denying Beasley’s motion to dismiss and/or suppress where he was arrested on the Fort Hall Indian Reservation and then transported off the Reservation by the Idaho State Police without following the tribal extradition process?

State v. Beaseley
S.Ct. No. 34698
Court of Appeals

5. Did the district court err in affirming the magistrate court’s decision to deny Hudson’s motion to suppress?

State v. Hudson
S.Ct. No. 34685
Court of Appeals

Sentence Review

1. Did the court abuse its discretion when it ordered Schultz to pay for the financial losses incurred as a result of forged checks and unauthorized transactions charged against the victim’s credit card?

State v. Schultz
S.Ct. No. 32111
Court of Appeals

2. Did the court err by imposing a sentence without adequate information in light of its failure to order a PSI following Kerr’s burglary conviction or affirmatively showing why such an investigation was not ordered?

State v. Kerr
S. Ct. No. 33369
Court of Appeals

3. Did the court correctly deny Jones’ Rule 35 motion because it is not appropriate vehicle for challenging a statute and because there was no merit to his claim?

State v. Jones
S.Ct. No. 34828
Court of Appeals

Substantive Law

1. Did the court err by instructing the jury on the offense of delivery of cocaine as a lesser included of the charged offense of conspiracy to deliver cocaine?

State v. Oernelas-Perez
S.Ct. No. 33284
Court of Appeals

Summarized by:

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

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IDAHO COURTS

EX PARTE COMMUNICATIONS-ADAPTING AN ADVERSARIAL RULE TO THE PROBLEM-SOLVING SETTING

Michael Henderson
Legal Counsel, Idaho Supreme Court

The Supreme Court recently addressed an issue that highlights the special nature of problem-solving courts. The prohibition on ex parte communications with judges is essential to the fairness of adversarial proceedings. Canon 3(b)(7) of the Idaho Code of Judicial Conduct states that a “judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding,” with certain specified exceptions. In drug courts, however, judges sometimes attend staffings where the prosecutor, defense counsel, or both are absent. Staffings are informal meetings, usually occurring before a regular drug court session, in which a participant’s progress and treatment are reviewed and discussed. The presence of both counsel is preferred; the guidelines adopted by Idaho’s Drug Court and Mental Health Court Coordinating Committee identify the participation of the prosecution and defense counsel as one of the “10 Key Components” of successful drug court programs. But in some cases, the prosecutor or defense counsel may choose not to attend the staffing. Can a judge then participate in the staffing without violating the Canons?

The issue was addressed in an opinion issued by the Idaho Judicial Council on March 18, 2008. The opinion stated that “e-mails, telephone calls or written communications from counselors, drug court coordinators, [or] prosecutors done in an ex parte matter are all prohibited except for those limited situations permitted by the Canons.” Further, it said, “If the judge attends the staffing, all parties must be represented at the

staffing.”

So Idaho was confronted with a problem that has arisen in other states as well: If counsel does not attend all court sessions and staffings, how can judges participate as part of the problem-solving court team, while adhering to the requirements of the Canons? The ABA Model Code of Judicial Conduct has recognized this issue by adding the following comment to the rule on ex parte communications:

A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

ABA Model Code of Judicial Conduct, Rule 2.9, Comment [4].

An added element of concern was possible infringement of a defendant’s rights when a judge who had been exposed to ex parte communications presides over subsequent proceedings involving the termination of the defendant from a problem-solving court, a probation revocation proceeding, or sentencing. This was of particular relevance in view of the recent decision in *State v. Rogers*, 144 Idaho 738, 170 P.3d 881 (2007), holding that a participant in a drug court who had not yet been sentenced, and whose plea of guilty was a condition of his acceptance to drug court, was entitled to a hearing on the issue of termination from the drug court program, at which he would have essentially the same due process protections afforded in parole and probation revocation hearings

under *Morrissey v. Brewer*, 408 U.S. 471 (1972), and *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

The Idaho Supreme Court sought a wide range of views on how to address this problem. The Drug Court and Mental Health Court Coordinating Committee, judges throughout the state, trial court administrators, prosecuting attorneys, defense lawyers, and many others directly involved in problem-solving courts were consulted. On May 5, 2008, the Court issued an order permitting drug court judges to initiate, permit or consider ex parte communications with members of the drug court team at drug court appearances or staffings. The order was to be in effect for 90 days while the Court gave further consideration to the issue.

On August 4, 2008, the Court issued an order amending Canon 3(B)(7) by adding two new provisions. The first provision clarifies the ex parte prohibition by stating that during a scheduled court proceeding, a judge may initiate, permit, or consider communications dealing with substantive matters or issues in the absence of a party who had notice of the proceeding and did not appear. (This is essentially consistent with the Judicial Council’s opinion of March 18, which stated, “If a matter is regularly scheduled for hearing and the party’s attorney does not appear, then the Court should follow its usual procedures in determining whether to proceed or reschedule the matter.”)

The second provision states that a judge presiding over a criminal or juvenile problem-solving court may initiate, permit or consider ex parte communications with members of the problem-solving court team at staffings, as well as written documents that are

provided to all members of the problem-solving court team. It goes on to state, however, that a judge who has received ex parte communications regarding a defendant or juvenile while presiding over a problem-solving court shall not preside over termination proceedings, probation violation proceedings or sentencing in that case.

The Court has resolved to continue to encourage and seek ways to insure the participation of counsel for all parties

in problem-solving court staffings and proceedings. But in those instances where this does not occur, the new provisions will provide guidance to the courts. The entire process by which this issue has been addressed—a difficulty arising from a rule intended for adversarial proceedings, the soliciting and consideration of views from all involved, and the fashioning of a solution that will be tested in practice—reflects the evolving nature of problem-solving courts.



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

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- Is the plan operating under presumptions that while seemingly logical, may be completely wrong (for example, regarding government plan approval)?

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UNIVERSITY OF IDAHO COLLEGE OF LAW

GPO ACCESS—EXPANDING ELECTRONIC LEGAL RESEARCH

John Hasko

University of Idaho College of Law

Since 1861, the Government Printing Office (GPO) has been responsible for getting out to the public information generated by the Federal Government. During the course of time, in attempts to cut down the costs of disseminating that information, different formats have been employed. Among them have been microfiche and CDs. But, since the mid 1990s a major vehicle for distributing government information has been the Internet, and GPO Access <http://www.gpoaccess.gov> has become a means for that distribution.

Created by the Government Printing Office Electronic Information Enforcement Act of 1993 (Pub. L. No. 103-40; 107 Stat. 112; 44 U.S.C. 4101 et seq.), GPO Access has changed significantly the way the public at large gets government information. Before GPO Access was created, researchers had two options for getting this information. They could either own it personally by buying it from GPO, or they could access it at a GPO Depository Library. Now, with GPO Access, recent Federal Government information can be freely accessed through the Internet.

The bulk of the information on GPO Access of interest to attorneys is collected in three libraries: Legislative Resources, Executive Resources, and Judicial Resources. The Legislative Resources library contains the text of Congressional bills (including the status of new bills), Congressional Reports, Documents, and Hearings, GAO Reports, Public and Private Laws, and the *United States Code*.

The Executive Resources library includes Presidential Proclamations and Executive Orders, *Public Papers of the Presidents*, State of the Union and Inaugural Addresses, and the *Weekly Compilation of Presidential Documents* (Public Law signings, news conferences, speeches). Also collected under the

Executive Resources are administrative materials (*Code of Federal Regulations (CFR)*, the *Federal Register*, and the *List of CFR Sections Affected (LSA)*). Reports, investigations, and findings of various Federal agencies are also gathered there. Another nice addition is access to MEDLINE, the national medical database. Web development and hosting services are also provided for a number of Federal agencies; e.g., the U.S. Commission on Civil Rights, the Federal Mine Safety and Health Review Commission, and the Equal Employment Opportunities Commission (reports, statistics, order forms for publications).

The Judicial Resources library consists primarily of U. S. Supreme Court opinions.

In most cases, the coverage of the materials in these three libraries begins in the mid-1990s, but the Judicial Resources collection also has a database of U. S. Supreme Court opinions, 1937-1975 (FLITE) produced by the Air Force; these, however, are not official versions of those opinions.

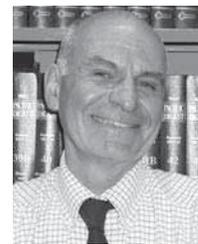
Because GPO Access is the official website of the GPO, you are able to review their publications, and order them directly through the U. S. Government

Online Bookstore.

A full range of alphabetical subjects allows for choosing individual titles, and you can register to receive email notification for new titles in your chosen subjects.

As an aside, for those of you who have kid-type people in your world, Ben's Guide to U. S. Government has databases available for grades K-12, parents, and educators. These provide information on how the United States is governed, have games and activities on citizenship for discrete age groups, and provide links to various agency websites for kids.

If you have not had occasion to visit and use GPO Access, you should give it a try. Chances are, it may change the way you deal with doing Federal legal research.



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

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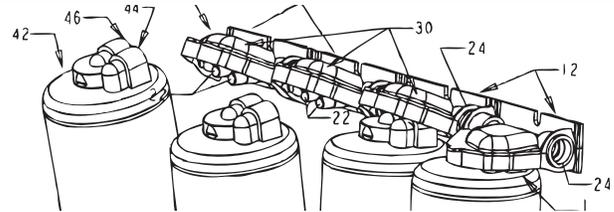


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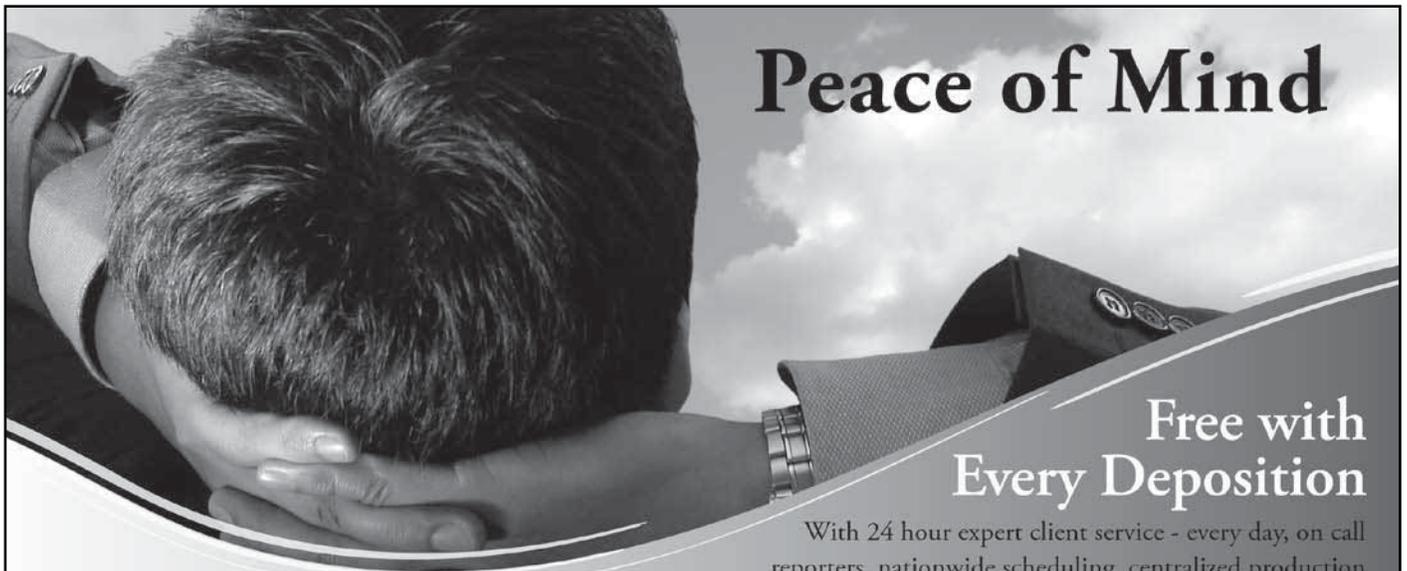
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LESSONS FROM THE MASTERS—2008

ISB Annual Conference – Sun Valley – Wednesday, October 8, 2008

The Continuing Legal Education Committee of the Idaho Law Foundation is pleased to announce that the highly acclaimed Lessons from the Masters program will once again be offered at the Idaho State Bar's annual conference. This year, our featured speakers will be M. Allyn Dingel, Jr., Boise; David H. Leroy, Boise; and Ray W. Rigby, Rexburg.

A native of Twin Falls, Idaho, Allyn Dingel is one of the best known and most highly regarded attorneys in Idaho. He received his undergraduate degree from the University of Idaho and an LL.B. from New York University. In recognition of Allyn's outstanding service to the judiciary, the bar, and the larger community, the judges of the Fourth Judicial District recently held an inspiring ceremony announcing that a courtroom in the Ada County Courthouse would be named in Allyn's honor. In 2004, Allyn received the Distinguished Lawyer of the Year Award presented by the Idaho State Bar.

A former Idaho Lieutenant Governor and Attorney General, David H. Leroy has had a long and distinguished career in both the public and private sectors. He received his B.S. and J.D. degrees from the University of Idaho and a Master of Laws in Trial Practice and Procedure from New York University. David has served the Idaho State Bar and the greater community in many roles. A nationally-recognized authority on President Abraham Lincoln, David presently chairs the Idaho Abraham Lincoln Bicentennial Commission and the Governors' Council, United States Abraham Lincoln Bicentennial Commission.

Legendary attorney Ray W. Rigby is the descendant of Snake River Valley pioneers. He received both his B.S. and J.D. from the University of Idaho and has practiced law in Rexburg, Idaho, for 55 years. Ray served in the Idaho State Senate and has received numerous awards for his dedicated public service and exemplary contributions to the private sector, most notably Rotary International. The Idaho State Bar has presented Ray with its Pro Bono Award, Professionalism Award, and Distinguished Lawyer Award. Ray is one of the most prominent water law attorneys in the nation and has authored several articles on water law in the west.

Previous speakers at Lessons from the Masters programs have been: Scott W. Reed, Coeur d'Alene; Allen R. Derr, Boise; Fred W. Hoopes, Idaho Falls; Justice Byron Johnson, Boise; Raymond C. Givens, Coeur d'Alene; and Paul L. (Larry) Westberg, Boise. Their presentations are available for rental on videotape.

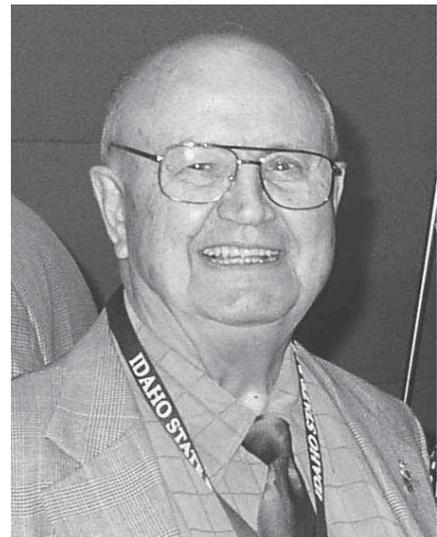
Please plan on joining your colleagues at the annual meeting on Wednesday, October 8th, for what promises to be another memorable and inspiring "Lessons from the Masters" program.



David H. Leroy



M. Allyn Dingel



Ray W. Rigby

HOW ATTORNEYS CAN GET THE MOST FROM THEIR BANKS

Tonya Westenskow
Bank of the Cascades

Attorneys provide valuable counsel to clients on critical business decisions. So where do attorneys go when they need expert advice? It is often the firm's banker who steps in to advise lawyers on issues related to both the firm's and the client's business. Banks have a lot to offer to today's law firms—by asking yourself a few simple questions, you can determine if your firm is getting the most from your bank:

- 1. Does your bank understand your firm and business goals?** Whether you have an established practice or new partnership, your bank should understand your business plan. They should also understand the special services or sub-specialties of your firm. The more conversant they are with your firm's practice areas, the better they can serve your special needs.
- 2. Does your bank understand the specialized financial needs of law firms?** Your banker should be knowledgeable about the legal profession and state bar rules to ensure they can provide you with sound banking advice. Your bank must understand the process of establishing special accounts unique to lawyers and be able to counsel you on client-trust account policies, uncollected funds, holds on funds, IOLTA accounts and more. They should be able to help you establish these accounts as needed on short notice with reasonable or no fees.
- 3. Does your bank want your business?** Your banker shouldn't be waiting for you to call them – they should be checking in with you regularly. Your banker should have genuine interest in your firm's needs and issues, and should be ready to discuss your challenges and offer solutions.
- 4. Does your bank create networking opportunities for you?** If your banker understands your business and specialties, they can be thinking of ways to help you build your practice or streamline operations by creating networking opportunities, offering introductions to potential clients and suggesting new business ideas.
- 5. Is your bank committed to supporting the Interest on Lawyers' Trust Accounts (IOLTA) program as a Leadership Bank?** Banks play an important role in the success of the IOLTA program. Banks that commit to paying a preferred interest rate with no additional fees are identified as "Leadership Banks" by the Idaho Law Foundation. Does your

bank fall in this category? Leadership Banks are committed to ensuring the success of the IOLTA program and are committed to providing this access to your community.

- 6. Is your bank local, regional or national?** Bank mergers and acquisitions can transform a once-local community bank into the local outpost of a national enterprise. You should know who is in charge, where the headquarters is located, and how decision-making is organized to determine if this bank fits your needs.
- 7. Does your bank share your firm's values?** Whether your bank is active in the community, in legal organizations, or is a public supporter of a specific community cause or issue, their public activities and decisions can have an impact on you. Choose a bank that reflects the values of your firm and can enhance your own reputation.

In today's world, banking is an integral part of your firm's business. Work with a bank that customizes solutions based on your needs rather than try to fit you into a one-size-fits-all process. Take the time to evaluate your current banking relationship to be sure you're getting the most from what can be a successful and rewarding partnership.



Tonya Westenskow is Assistant Vice President, Professional Banking Officer at Bank of the Cascades, an IOLTA Leadership Bank, and a member of the Idaho Law Foundation's IOLTA Revenue Enhancement Committee.

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VETERANS STANDDOWN

Idaho Legal Aid Services (ILAS) and the Idaho Volunteer Laweysr Program (IVLP) are seeking volunteer attorneys to provide legal services to veterans and persons who are homeless or very low-income at the Veterans StandDown on Saturday, September, 27, 2008 from 10:00 a.m. to 1:30 p.m.

Volunteer attorneys who can donate two hours to provide legal advice/services in the following areas are needed:

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VOLUNTEERS STAFF CLINICS FOR PRO SE LITIGANTS

Idaho's Court Assistance Offices and the Supreme Court's "Self Help Center" website provide excellent forms for basic family law pleadings as well as written instructions for filing a family law case pro se. Nevertheless, there are many who cannot afford an attorney but need legal guidance and other assistance to file their cases. The Idaho Volunteer Lawyers Program's (IVLP) **Pro Se Family Law Clinics** fill this need.

Roughly once each month volunteer attorneys and paralegals come together with pre-screened persons who wish to file a family law case pro se. The Clinics offer volunteers and participants a chance to work one-on-one to prepare the needed pleadings and assure the pro se litigants have all the tools they will need to file and serve their case. Lawyers of all backgrounds, law students and paralegals are supported by a family law attorneys and IVLP Staff who calculate child support, notarize documents and offer practical guidance.

IVLP wishes to offer **special thanks** to the following volunteers who have participated in the clinics since November 2007

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We need your help! IVLP needs Boise volunteers for clinics in 2009, and for clinics that will be starting in Canyon County and other part of Idaho soon. If you are an attorney, paralegal or law student, and regardless of your family law expertise or knowledge, you can donate two to three hours and provide an invaluable service to someone in need. Call or email Mary S. Hobson, IVLP Legal Director, (208) 334-4510; mhobson@isb.idaho.gov.

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OF INTEREST

—IN MEMORIAM—

HON. GERALD L. WESTON **Past Bar President** **1936-2008**

Gerald L. Weston, Caldwell died at home on Aug. 20, 2008, surrounded by his family after a courageous two year battle with pancreatic cancer. Gerald was the third son born to Darrell and Hester Weston of Boise on Sept. 28, 1936. He joined brothers Bob and Loren to create a lively family that enjoyed camping, fishing, hunting, and horses in their growing years. Jerry attended Boise schools graduating from Boise High School in 1955, Boise Junior College in 1957 and the University of Idaho and its Law School in 1961. He was a member of the Sigma Chi Fraternity.

Gerald began his law practice with Donart & Donart in Weiser, Idaho in 1961, later becoming Donart & Weston. He moved to Caldwell with Smith & Miller in 1965, and enjoyed the practice of law with his mentor and friend Dean Miller. Gerald ended his general law practice at Gigray, Miller, Downen & Weston in 1988 when he was appointed to the District Bench by Governor Cecil Andrus. He served as a district judge until his retirement in 2001. Gerald was privileged to serve on the Board of Commissioners of the Idaho State Bar between 1981 and 1984, serving as its president in 1984.

Gerald married Coralie Davis of Boise in August 1959. They had three children; Darby, Susan and Julie. The family enjoyed the Idaho outdoors, sailing, golfing, skiing, hiking, and backpacking. Jerry helped organize the Southern Idaho Sailing Association to promote sailboat races for landlocked sailors and serving as commodore. He was active with the Boy Scouts at the Elks Lodge, became Exalted Ruler of the Elks, and participated in the Masonic and Shrine organizations. Gerald was instrumental in helping to arrange the cooperative efforts necessary for the building of the Caldwell Public Library. He also put his full support behind the YMCA effort as it came to Caldwell.

Gerald is survived by Coralie, his wife of 49 years; children Darby (Amy) Weston - Courtney, Jared, Christian, and

Kira; Sue (Byrne) Sanford - Jessica and Chelsey; and Julie (Ben) Wolff - Courtney and Stephanie; his brother Loren and uncle Harvey (Carma) Ragan, as well as numerous nieces and nephews and extended family. He was preceded in death by his parents, brother Bob, and nephew Mark.

In lieu of flowers, the Weston family suggests gifts to the Canyon County Drug Court Gerald L. Weston Memorial Fund (established to honor the leadership and dedication of Judge Weston as the driving force behind the creation of the Canyon County Drug Court), Trial Court Administrator Dan Kessler, Canyon County Courthouse, 1115 Albany Street-Room 336, Caldwell, ID 83605.

AL LYONS **1928-2008**

Al Lyons passed away August 21, 2008. He was born on November 9, 1928, the middle of three children, to Alonzo and Shirley (Felton) Lyons. He was raised in Lewiston, Idaho, where he spent his boyhood hunting, and fishing with his friends, and his yellow lab Berry.

He worked various jobs selling the Saturday Evening Post, and delivering newspapers for the Lewiston Morning Tribune. His summers were spent harvesting wheat and hay for nearby farmers and ranchers.

Al started his track career at Lewiston High School. He won state titles in the mile, two mile, and cross country. Upon graduation he attended Stanford University on a track scholarship where he lettered in track and cross country all four years. He won the PAC-10 Championships in the mile, by out-leaning his USC competitor. While at Stanford, he was a member of the Sigma Chi fraternity, and graduated in 1950 with a degree in Political Science.

After graduation, he spent three years in the U.S. Air Force during the Korean War. When discharged from the Air Force, he returned to Stanford as a law student and was awarded a J.D. in 1956. He remained active in the Stanford Club of Idaho and the Buck Club for all of his adult life. After graduation, Al passed the California bar exam on his first try! He worked in a private law firm in Modesto,

California, and taught at Modesto Junior College in the evening.

In 1957, he married the love of his life, Phyllis Loudon, after being introduced to her on a blind date in Palo Alto. They moved to Boise in 1959, where Al was one of only five people who passed the Idaho bar exam that year; again, Al did it in style, passing it on his first try. He caught the eye of his soon to be friends and mentors, Joe Albertson and Jim Berlin. He was hired by Joe to work for Albertsons as their general counsel until 1969 when he resigned to enter private practice in Boise. Al was the senior partner in the law firm he founded - 'Lyons, Bohner, Chasan, and Walton' for many years.

In 1976, he decided to pursue his lifelong interest in art. He had been introduced to painting as a child by his grandmother, Gertrude Hall Lyons, and had always wanted to be an artist. His love of art and painting led him to take many art classes, often in McCall, from his friend, Gaye Hoopes where he produced some of his most beautiful paintings. With a keen eye for color, he has painted many nature scenes - all in watercolor - his favorite medium. He taught watercolor painting and cartooning at the community education center, and cartooning for kids at Fort Boise.

Al loved the outdoors, often taking his large family on vacations to out of the way places in Idaho; wanting to share with his wife and children the beauty and the history of the state he loved so much. The family has many fond memories of these vacations, particularly their time spent with extended family in McCall, Redfish Lake, and Sun Valley. Al also loved to hunt and fish. In fact, those who hunted with him remember his 'slamwiches', often put together late at night, packed with every available sandwich item; which surprisingly did not cause an instant heart attack to those who ate them.

Although Al had many passions, his true love was his family. He would do anything for them in trying to support their various interests. Whether it was quietly donating the cinder to the Bishop Kelly track, or sponsoring his daughter's softball team; he wanted to make sure that

those he loved were able to pursue their passions. Al was a punster and a wordsmith and always loved a good joke—especially ‘shaggy dog’ stories.

Al is survived by his wife, Phyllis, his daughters: Shirley (Tom) O’Neil, Ellen (Jay) Santiago, Annie (Mike) Hickerson, Katie (Shawn) Lyonsmith, and his son Lonny Lyons. He is also survived by ten grandchildren including Katie, Chris, Megan, Victoria and Patrick O’Neil; Matt, Michelle, and Mary Hickerson; Wyatt and Dane Lyonsmith.

GLENN LAMARR KOFOED 1940 –2008

Glenn LaMarr Kofoed, 68, passed away from cancer. He was born July 9, 1940, in Lava Hot Springs, Idaho, to Glen and Verla Kofoed. He was the second of nine children. At age five he moved with his family to Wilder and then New Plymouth. He graduated from New Plymouth high school in 1958.

He attended the University of Idaho for two years, before leaving school to serve a church mission in New England. He attended BYU from 1962 to 1966, where he worked his way through school before graduating with his B.S. Education degree. At BYU, he met and married the love of his life, Daleen Walker of Weiser. Daleen was the sister of long-time Weiser attorney Lary Walker, who was married to LaMarr’s sister, making all of their children were double cousins.

LaMarr attended the University of Idaho law school from 1971 to 1974. He passed the bar and established his solo law practice in Fruitland, Idaho. He and Glenn Lee had a partnership “Kofoed and Lee”, for a few years during the late ‘70s and early ‘80s, before separating and practicing in separate offices in Fruitland.

LaMarr served one term as prosecuting attorney for Payette, County, then built his general law practice and did public Defender work for many years, working for 33 years until he retired due to health reasons in the fall of 2007. During the last four years he worked as Deputy Prosecutor for Washington County, under Charles R. Kroll, after the death of Ira Burton. He received the 3rd District Pro-Bono Public award in 1995. He was always there to help clients in need.

LaMarr and Daleen have nine grown children. He was very proud of his children

that include Karvel (Sonja) Kofoed, Dr. LaVar (Kimberly) Kofoed, Doreen (Tawn) Wheeler, Reed (Amber) Kofoed, Lane (Tammy) Kofoed, Spencer (Erin) Kofoed, Kelli (Dr. Bryan) Medaris, Kerri (Cory) Costley, and Traci (Mike) Walsh. They have a total of 43 grandchildren.

—ON THE MOVE—

Nicole Hancock, Boise has returned to the Stoels Rives, LLP, Boise office. Previously, She recently served as corporate counsel for Syngenta Seeds, Inc., as manager of the legal department for its NAFTA vegetable seeds business. She graduated with a B.S. in American Sign Language/English Interpretation from Western Oregon University. After graduating *magna cum laude* from the Willamette University College of Law, Nicole clerked for the Honorable T.G. Nelson on the U.S. Court of Appeals for the Ninth Circuit. She is on the Idaho Women Lawyers Board of Directors and is on the Fourth District Bar Association’s Law Day committee. She is admitted to the state bars of Idaho and Oregon, the U.S. District Court for the District of Idaho and the U.S. Court of Appeals for the Ninth Circuit. She can be reached at (208) 389-9000.

Christopher P. Graham, has become a shareholder in Trout Jones Gledhill Fuhrman, PA. His practice focus is on civil and commercial litigation, employment law, products liability, personal injury, professional malpractice, Indian law, and insurance matters, including coverage and defense. He can be reached at (208) 331-1170.

Les Murray, a registered patent attorney, has joined Zarian Midgley as Special Counsel. He spent 14 years as Hewlett-Packard’s (HP) Senior Corporate Counsel for Intellectual Property. He previously worked as Senior Corporate Patent Counsel with IBM Corporation, and also practiced with the law firm of Schroeder, Davis and Orless in Monterey, California. He received his J.D. from the University of Idaho. He holds an M.S. in Aeronautical Engineering from the Naval Post Graduate School, and a B.S. in Physics from University of Idaho. His areas of law practice include preparation

and prosecution of foreign and domestic patent applications, patent licensing, business transactions and contracts, product planning matters, and intellectual property litigation. He can be reached at (208) 562-4900.

Jeff Parry, a registered patent attorney has joined Zarian Midgely as an associate. He previously worked as a patent agent for Cardinal Intellectual Property in Evanston, Illinois. He earned both his J.D. and a B.S. in Chemical Engineering from Brigham Young University. He recently completed one year of studies at the University of Washington as a candidate for the degree of B.S. in Electrical Engineering, and is enrolled to complete the requirements for that degree in 2010 at Boise State University. His areas of practice include patent prosecution, patent litigation support, patents, trademarks and copyrights. He can be reached at (208) 562-4900.

Richard R. Hall, Stoel Rives LLP, has transferred to the Boise office from the firm’s Salt Lake City office. Hall counsels clients on matters pertaining to real estate and resource development, land use, water rights and public lands. He has experience in negotiation and drafting purchase and sale agreements for real property, water rights and mineral interests; conducting due diligence for property acquisitions; drafting oil, gas and mineral title opinions; and representing clients before federal, state and local agencies. He can be reached at (208) 389-9000.

—RECOGNITION—

Robert A. Anderson, Anderson Julian & Hull LLP was selected for inclusion in the publication *Mountain States Super Lawyers 2008*. He is licensed to practice in Idaho and Oregon and is a founding partner of Anderson Julian & Hull LLP, He can be reached at (208) 344-5800.

Sandra L. Clapp, an attorney in Eagle, Idaho, was selected as a trusts and estates attorney for inclusion in the publication *Mountain States Super Lawyers 2008*. She can be reached at (208) 938-2660.

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UPCOMING FALL CLEs

SEPTEMBER

September 11-13

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Sun Valley Resort

10.5 CLE Credits 1.5 RAC Approved

September 19

Election Law

Sponsored by the Idaho Law Foundation

8:30 - Noon

Doubletree Riverside Hotel, Boise

3.5 CLE Credits RAC Approved

OCTOBER

October 1

Idaho Practical Skills Training

Sponsored by the Idaho Law Foundation

The Grove Hotel Boise, Idaho

6.5 CLE Credits of which 2.0 is Ethics RAC Approved

October 8 to 10

Idaho State Bar Annual Meeting

Sun Valley Resort

- Sean Carter—Legal Humorist
- Ethics Rock!—A Musical Ethics CLE

NOVEMBER

November 7

Litigation Ethics

Sponsored by the Litigation Section

Idaho Falls

RAC Approved

November 14

Litigation Ethics

Sponsored by the Litigation Section

Boise

RAC Approved

November 21

Annual Headline News-Year in Review

Sponsored by the Idaho Law Foundation

Coeur d'Alene

5.0 CLE Credits (pending) RAC Approved

DECEMBER

December 5

Annual Headline News-Year in Review

Sponsored by the Idaho Law Foundation

Idaho Falls

5.0 CLE Credits (pending) RAC Approved

December 12

Annual Headline News-Year in Review

Sponsored by the Idaho Law Foundation

Boise

5.0 CLE Credits (pending) RAC Approved

Coming Events

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

SEPTEMBER

- | | |
|----|--|
| 1 | Labor Day, Law Center Closed |
| 2 | <i>The Advocate</i> Deadline |
| 5 | ISB Board of Commissioners Meeting |
| 11 | July Bar Exam Results Released |
| 17 | <i>The Advocate</i> Editorial Advisory Board Committee |
| 30 | Idaho State Bar Admission Ceremony,
Boise Center on the Grove |

OCTOBER

- | | |
|------|--|
| 1 | <i>The Advocate</i> Deadline |
| 1 | Practical Skills |
| 1 | Initial February Bar Exam Deadline |
| 1 | Public Information Committee |
| 8-10 | ISB Annual Conference, Sun Valley |
| 9 | ILF Board of Directors Meeting, Sun Valley |
| 10 | ISB Board of Commissioners Meeting, Sun Valley |
|
 | |
| 13 | Columbus Day, Law Center Closed |
| 15 | The Advocate Editorial Advisory Board |

NOVEMBER

- | | |
|----|--|
| 3 | <i>The Advocate</i> Deadline |
| 19 | <i>The Advocate</i> Editorial Advisory Board Committee |
| 21 | ISB of Commissioners, Idaho Falls |
| 27 | Thanksgiving Day, Law Center Closed |
| 28 | Law Center Closed |

DECEMBER

- | | |
|----|--|
| 1 | <i>The Advocate</i> Deadline |
| 1 | Final February Bar Exam Deadline |
| 5 | Idaho State Bar Board of Commissioners |
| 17 | <i>The Advocate</i> Editorial Advisory Board Committee |
| 25 | Christmas Day, Law Center Closed |

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—Jonathan Swift

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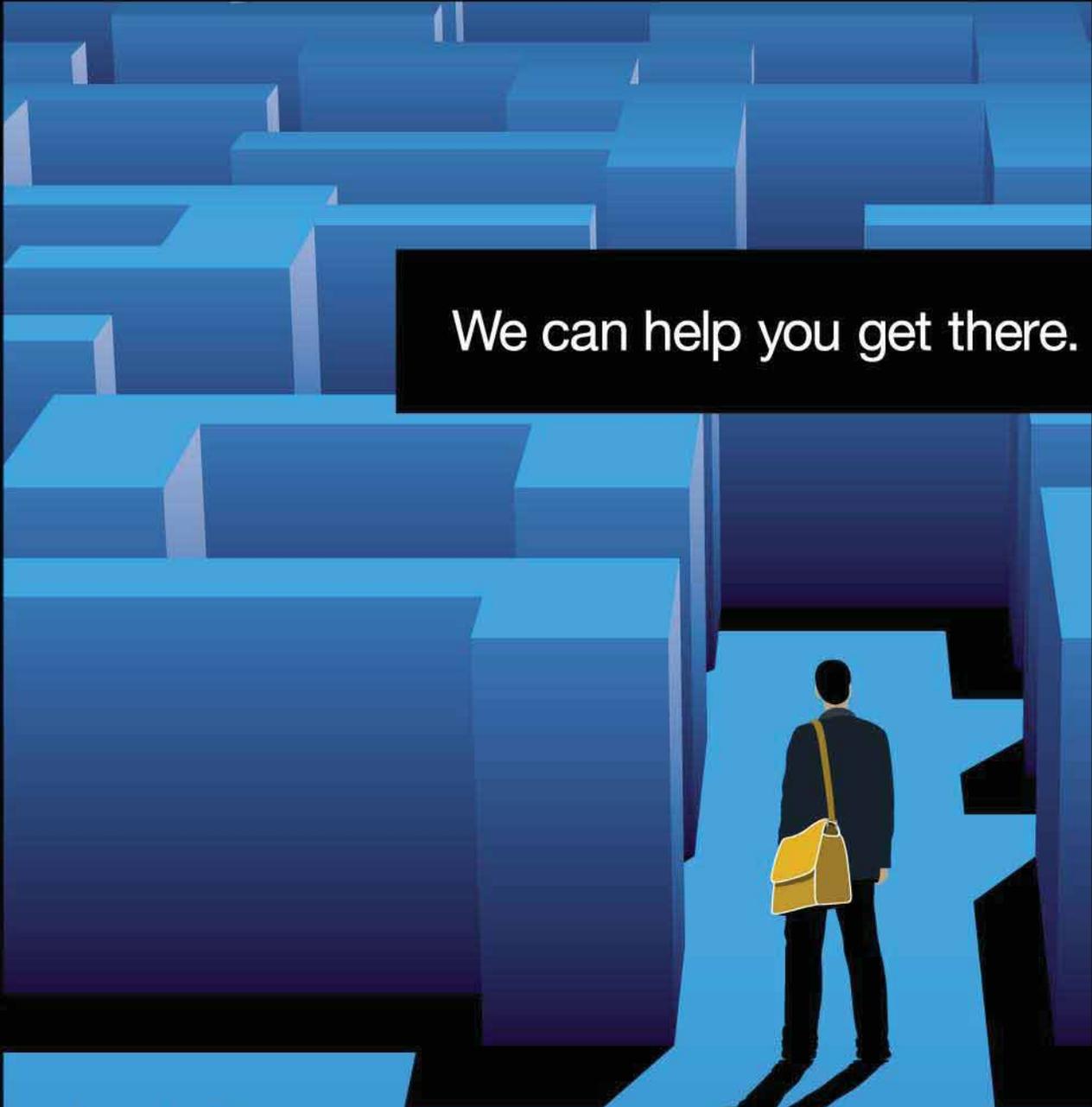
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