

The Advocate

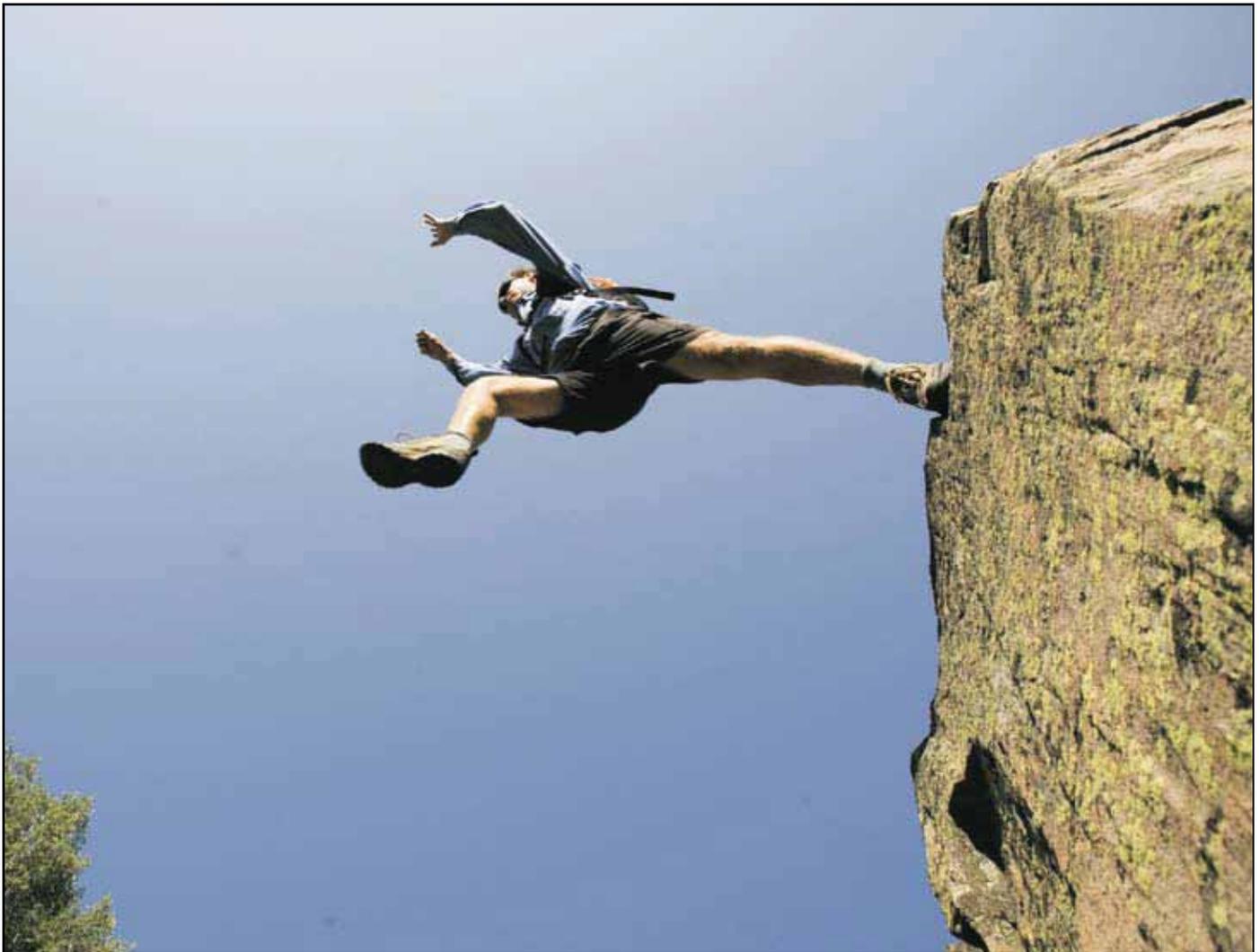
Official Publication
of the Idaho State Bar
Volume 53, No. 3
March/April 2010



Now and Then:

Young Lawyers
Compare Notes
with Seasoned Veterans

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Young Lawyers Section



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The Advocate

The Official Publication of the Idaho State Bar
53 (3), March/April 2010

Feature Articles

- 16 **Now and Then: A Young Lawyer's Perspective Compared with that of a Seasoned Veteran**
Christian Carl Christensen II
- 17 **Idaho Fails to Meet the Emergency Needs of Low-Income Residents**
Howard Belodoff
- 19 **The Emergency Room Lawyer**
Ritchie Eppink
- 21 **Passing the Torch, Preserving the Practice**
Hugh Vaughan Mossman and Taylor Lynn Mossman
- 22 **XLV Perspective: We Have Just Started to See the Impact of the Digital Age**
John L. Runft
- 24 **From the Concrete Canyons to the Granite Peaks: A Young Sole Practitioner's Perspective**
Jacob Kahle Becker
- 26 **Law Clerking: "My Favorite Year"**
Dean Donald L. Burnett Jr.
- 29 **The Perfect Transition**
Christian Carl Christensen II
- 31 **Making Something of Themselves: How Lawyers Entering the Practice in the Late 70s Did It**
Dennis S. Voorhees
- 33 **Social Media, the Biggest Cocktail Party on the Planet**
Lisa M. McGrath
- 42 **Managing E-mail Overload: Reducing Volume by Being Mindful of Others**
Stephen M. Nipper
- 44 **Nouniness and Such: Make Your Key Words Count**
Mark T. Peters, Sr.
- 47 **Walking Away from the American Dream: How Attorneys are Counseling Clients with Underwater Mortgages**
Laurie Reynoldson

Columns

- 9 President's Message, *Douglas L. Mushlitz*
13 Executive Director's Report, *Diane K. Minnich*
35 State of the Judiciary Address, *Chief Justice Daniel T. Eismann*
41 Federal Court Corner, *Tom Murawski*

News and Notices

- 10 Discipline
11 News Briefs
38 Idaho Court of Appeals and Idaho Supreme Court
39 Cases Pending
49 In Memoriam
51 Of Interest
53 Classifieds
54 Law Day
57 Idaho Law Foundation
61 Idaho Supreme Court Memorial Ceremony
62 Continuing Legal Education Information (CLE)



On the Cover

"A Bird in the Hand" was taken by Assistant United States Attorney Monte Stiles while on the campus of The University of California, San Diego. A statue near the School of Medicine was attracting hummingbirds at the time. Monte is an avid outdoor photographer. His work is profiled at www.montestilesphotography.com.

Section Sponsor

This issue of *The Advocate* is sponsored by the Young Lawyers Section.

Editors

Special thanks to the March/April *The Advocate* editorial team: Scott Randolph and Brian Kane.

Letters to the Editor

The Advocate welcomes letters to the editor or article submissions on topics important to the Bar. Send your ideas to Managing Editor Dan Black at dblack@isb.idaho.gov.



ENERGY INDEPENDENCE IDAHO LAW REVIEW SYMPOSIUM 2010

IDAHO LAW REVIEW SYMPOSIUM 2010 ENERGY INDEPENDENCE: CHALLENGES FACING THE WEST IN ADOPTING ALTERNATIVE AND RENEWABLE ENERGY RESOURCES

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The Idaho Law Review Symposium 2010 will bring together an interdisciplinary panel of legal, scientific, and business experts to discuss issues related to the sustainable development of alternative and renewable energy sources in the West. Topics will include: (1) the impacts that energy regulation and environmental laws have on the development of alternative energy sources, (2) the challenges faced in the transmission and transportation of renewable energy, and (3) how new energy sources can be used to create sustainable communities.

For more information about this event, including registration information, CLE credits, and sponsorship opportunities please visit: www.lawreview.uidaho.edu/advisory.html

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Throughout the year, live seminars on a variety of legal topics are sponsored by the Idaho State Bar practice sections and by the Continuing Legal Education program of the Idaho Law Foundation. The seminars range from one hour to multi-day events. Upcoming seminar information and registration forms are posted on the ISB website at: isb.idaho.gov.

Webcast Seminars

Many of our one to three hour seminars are also available to view as a live webcast. Pre-registration is required. These seminars can be viewed from your computer and the option to email in your questions during the program is available. Watch the ISB website and other announcements for upcoming webcast seminars.

On-line On-demand Seminars

Pre-recorded seminars are available on-demand through our on-line CLE program. You can view these seminars at your convenience. To check out the catalog or sign up for a program go to <http://www.legalspan.com/isb/catalog.asp>.

Recorded Program Rentals

Pre-recorded seminars are also available for rent in DVD, VCR and audio CD formats. To visit a listing of the programs available for rent, go to isb.idaho.gov.

Idaho Law Foundation 2010 CLE Schedule

MARCH

March 12

Handling Your First or Next Employment Law Case
Law Center, Boise
2.0 CLE Credits
(RAC) Webcast statewide

APRIL

April 28

Idaho Practical Skills
Boise Centre, Boise
Credits TBD (5-6 credits anticipated)

*RAC—These programs are approved for Reciprocal Admission Credit pursuant to Idaho Bar Commissions Rule 204A(e).

SAVE THE DATE

July 14-16

Idaho State Bar Annual Conference
Idaho Falls, Idaho

October 1

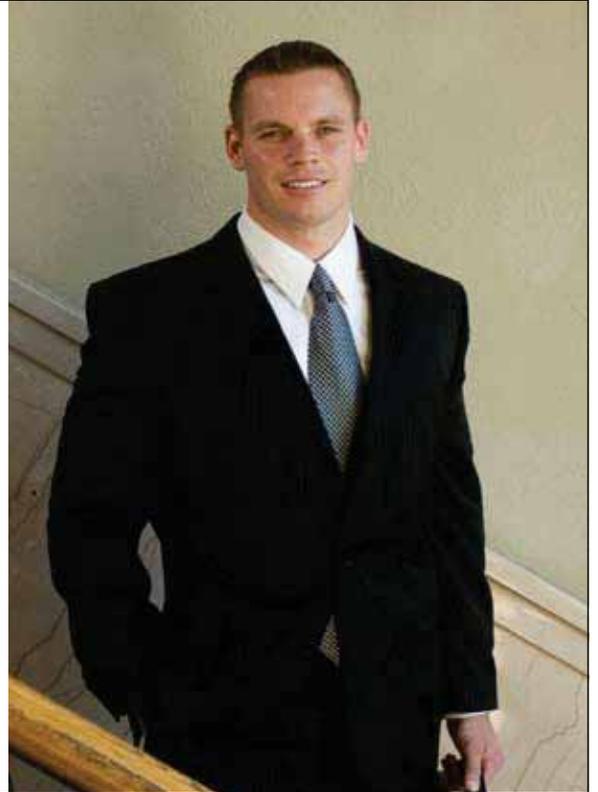
Idaho Practical Skills
Boise Centre, Boise
Credits TBD (5-6 credits anticipated)

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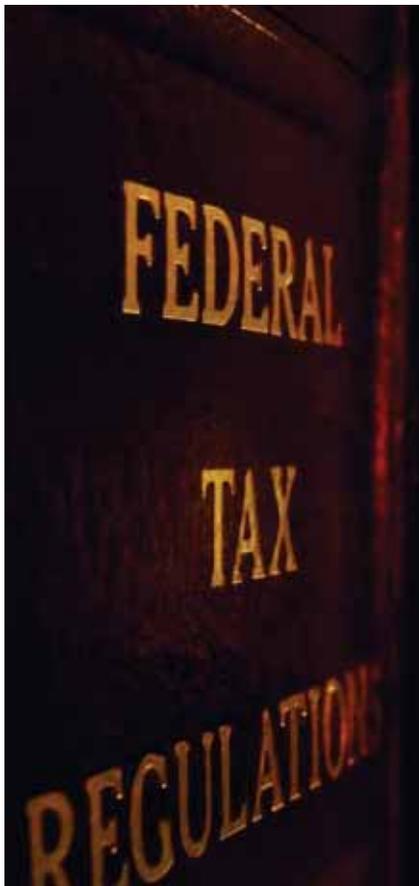
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- ◆ Federal income tax update with Professor Marty McMahon, *University of Florida*
- ◆ Tax controversies with Marc Sellers, *Schwabe Williamson & Wyatt PC*
- ◆ TICs and real estate workouts with Kevin Thomason, *Thompson & Knight LLP*
- ◆ Status of domestic guidance with Jeffrey Van Hove, *U.S. Department of the Treasury, Washington, DC*
- ◆ Real estate and partnerships with Andrea Macintosh Whiteway, *McDermott Will & Emery*
- ◆ State and local tax with Prentiss Willson, *Ernst & Young LLP*

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Thursday, June 3 & Friday, June 4, 2010

13 General CLE credits (pending)

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Questions? Contact the OSB CLE Service Center at (503) 431-6413 or toll-free in Oregon (800) 452-8260, ext. 413.



OUR BEST PUBLIC RELATIONS PEOPLE

I know a guy who works down the street from my office. He's a good lawyer, but more importantly, he's a good person. He isn't famous, he isn't rich, and he isn't even famous (or rich) from his reputation as a good person. His name isn't one that surfaces frequently on boards or committees, and the newspaper hasn't caught his good deeds in their flashes or feature articles. As another attorney in my office phrased it, he's "one of the 'meat and potato guys' who works hard, is respected, and who helps quietly without asking recognition." He's just a good guy. Another attorney in my of-

fice related a story about being overwhelmed with her public interest caseload, and asking him to take a case in which a conflict had arisen; it wouldn't pay, and it could take some time. He immediately accepted the case without hesitating or flinching. She tears up when she remembers that; and she's no cryer. I bet if I asked everyone in the local bar to tell a story about him, I would hear many more like this. This place is full of watching eyes and long memories, and they would all agree that he's just a good guy.

Why do I mention this? It's no secret that the reputation of lawyers, and the legal system is under attack in our society, whether that attack be direct or subtle. Some explain this by pointing out that intellectual pursuits in general are under attack, and others point to the behavior of rogue lawyers, who, unfortunately, are in a position to convince the participants watching their every move, that their behavior exemplifies the legal system at work, and the character of lawyers in general. Various efforts are in place to counteract both ignorance and mis-perception; Law Day, Mock Trial, Citizens Law Academy, and similar programs are examples of worthy programs

that educate the public about the law, the legal system, and our profession.

I believe the good guys do more for all of our reputations. There is nothing that can help the public perception of our profession more than being a good and fair lawyer and person in your day-to-day life and work. While there are many philosophical, religious and psychological explanations for why we act the way we do, to a large degree, when I wake up in the morning, I have some choices, and I have some control. I can be a jerk, or I can be kind. I can do the hard, right thing, or the easy, dishonest thing. When the analysis over what is right or wrong gets more complicated, I can be lazy, or I can really think about it, until I come to some resolution that comports with my conscience.

While I have my own, private answers to the following questions, perhaps you can answer them for yourself.

1. What is it that makes you someone that your friends want to go fishing with, or out to lunch with? Are you?
2. What is it that makes your friends and family members trust you? Do they?
3. What is it that causes one lawyer to misrepresent important facts in rebuttal appellate argument, while a different lawyer tells it straight, even if it means a possible loss? Which camp are you in? Which camp could you be in tomorrow?
4. What is it that drives you to provide quality representation when at work? Is it respect for the law and a sincere desire to do a great job for the client within the confines of the law, or is it only about money, or getting home as quickly as possible to unwind and watch football or "American Idol?"
5. What is it that causes you to smile in admiration when you think of a departed lawyer who whipped you long ago? Would you be smiling in admiration if he hadn't done so fairly and graciously?

While I'm thinking about those questions, let me stop to say Thank You to the good guys: Those of you busting your

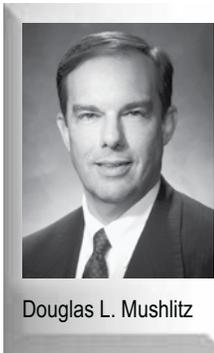
gut in small-town Idaho, in a cubicle in the city, and down the street from me, who do the right thing because it's the right thing, not because it will get you noticed. Thank you, to those of you who choose to develop skill, fairness, kindness and honesty in your lives. On the inside, you are an inspiration to us, and on the outside, you are a credit to your profession.

About the Author

Douglas L. Mushlitz is a partner in the Lewiston Law Firm of Clark & Feeney. In 1982 he received a Bachelor's Degree in Accounting & Business Administration from Idaho State University. He attended the University of Idaho College of Law, where he received his Juris Doctor Degree in 1985. He was admitted to practice before the state and federal Courts in Idaho in 1985; and was subsequently admitted to practice before the U. S. Ninth Circuit Court of Appeals in 1990, and the U. S. Supreme Court in 1995.

Doug and his wife, Anne, reside in Lewiston. Anne is Health Manager for ATK. He has two daughters, Morgan and Allison. Doug is a member of the Board of Directors of Potlatch No. 1 Federal Credit Union, is a member of the Board of Directors for the Lewiston Roundup Association, and is a founding member of the Board of Directors for the Gina Quesenberry Breast Cancer Foundation, Inc.

Doug is a former President of the Second Judicial District Bar Association, and is a member of the Idaho Trial Lawyers Association.



Douglas L. Mushlitz

RONALD D. CHRISTIAN (Withheld Suspension/ Public Reprimand)

On January 14, 2010, the Idaho Supreme Court issued a Disciplinary Order suspending Boise attorney Ronald D. Christian from the practice of law for a period of two years, with all two years withheld, placing him on Bar Counsel probation and imposing a public reprimand.

The Idaho Supreme Court found that Mr. Christian violated Idaho Rules of Professional Conduct 1.3 [Diligence] and 1.4 [Communication] with respect to his representation of one client. With respect to a second client, the Idaho Supreme Court found that Mr. Christian violated Idaho Rules of Professional Conduct 1.2(c) [Scope of representation], 1.3 [Diligence], and 1.4 [Communication]. With respect to a third client, the Idaho Supreme Court found that Mr. Christian's conduct constituted two violations of Idaho Rules of Professional Conduct 1.7(a)(2) [Conflict of interest] and 8.4(d) [Conduct prejudicial to the administration of justice].

The Idaho Supreme Court's Disciplinary Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Christian admitted that he violated the Idaho Rules of Professional Conduct set forth above. The misconduct related to Mr. Christian's representation of three different clients. In the first matter, Mr. Christian represented a client in a child custody modification case. Consistent with the client's direction, the case originally proceeded in a fashion that would result in a stipulation to modify custody. However, the client's objectives changed as a result of the change of circumstances pertaining to the client's ex-spouse. However, Mr. Christian did not diligently pursue the client's case or change in the scope of representation after the client's objectives changed and failed to respond to his client's reasonable request for information, constituting violations of I.R.P.C. 1.3 and 1.4. Following termination of Mr. Christian's services, the client hired substitute counsel and the case was completed. Mr. Christian agreed to pay \$300 restitution to his client, an amount reflecting the fees and expenses

substitute counsel incurred in reviewing Mr. Christian's work so the that case could be completed.

In a second matter, the client was originally represented by Mr. Christian's former associate. The associate left the practice and Mr. Christian agreed to handle the client's case. After taking over the case, Mr. Christian failed to diligently pursue the child custody modification case and failed to respond to his client's reasonable request for information. Mr. Christian also declined to respond to the client's ex-spouse's motion for attorney's fees, partially as a result of a dispute about payment for his services, without consulting with his client and unreasonably limited the scope of his representation without the client's informed consent. That conduct violated I.R.P.C. 1.2(c), 1.3 and 1.4.

The third matter related to Mr. Christian's representation of a defendant in a criminal case. On the date that the jury trial was scheduled to commence, the trial court determine that Mr. Christian was under the influence of alcohol and unable to proceed to trial. Shortly after that incident, Mr. Christian advised his client that we would be attending inpatient substance treatment through March 2007. Mr. Christian offered to withdraw from the representation, refund all advance payment of fees and costs that had been paid, and assist any new counsel to prepare for trial without charge. Mr. Christian's client instead decided to retain Mr. Christian as his counsel and a new trial date was scheduled. Prior to the trial, Mr. Christian invited his client and some family members that were trial witnesses to stay in his home to prepare for trial because they had no reasonable residence or means to stay in Boise. That situation resulted in a situation rendering Mr. Christian unable to exercise his independent professional judgment in his representation of his client. That conduct violated I.R.P.C. 1.7(a)(2) and 8.4(d). However, Mr. Christian completed the trial and the prosecutor and trial judge indicated his representation was professional, exemplary, and consistent with his professional obligations.

Following his criminal client's conviction, when his client was incarcerated at Ada County Jail and not allowed to receive family visitors, Mr. Christian and his client's wife went to

the Ada County Jail and he introduced her as his legal assistant but she was not allowed to accompany Mr. Christian. The client's wife had been acting as a legal assistant, but Mr. Christian did not employ her. Mr. Christian's statements were made because his personal relationship with his client and his client's family materially limited his professional independent judgment. This conduct violated I.R.P.C. 1.7(a)(2) and 8.4(d).

During the times that Mr. Christian was representing those clients, he was suffering a substance abuse problem. With the encouragement of Bar Counsel and the Lawyers Assistance Program, in January 2007, Mr. Christian sought treatment for his substance abuse problem. He spent five weeks in inpatient treatment and since has been under a monitoring contract with Southworth Associates Monitoring Program. Following completion of that treatment and return to practice, Mr. Christian has not received any meritorious disciplinary grievances and has remained abstinent.

The Disciplinary Order provides that Mr. Christian's two-year suspension is withheld subject to the terms and conditions of a two-year probation, which include: avoidance of any alcohol or drug related criminal acts or alcohol or drug related traffic violations; compliance with the Southworth Associates Monitoring Program, which includes a program of random urinalysis; provision that if Mr. Christian tests positive for alcohol or other tested substances or misses a random urinalysis test, without prior approval, the entire withheld suspension shall be immediately imposed; and if Mr. Christian admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct during his period of probation, regardless whether that admission or determination occurs after the expiration of the probationary period, the entire withheld suspension shall be imposed.

The withheld suspension and this public reprimand do not limit Mr. Christian's eligibility to practice law.

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

NEWS BRIEFS

2010 Nominations for ISB Commissioners Due April 6

Attorneys in the 1st, 2nd and 4th districts will be electing new representatives to the Idaho State Bar Board of Commissioners this spring. The new commissioners will replace Doug Mushlitz of Lewiston and Newal Squyres of Boise.

Pursuant to Idaho Bar Commission Rule 900, the new commissioner representing the 1st and 2nd districts must reside or maintain an office in the 1st district.

Commissioners of the Idaho State Bar, the elected governing body of the Bar, serve for three years, beginning on the last day of the ISB annual meeting following their elections. The Board of Commissioners is charged with regulat-

ing the legal profession in Idaho, which includes the admission and licensing of attorneys, overseeing disciplinary functions and administering mandatory continuing legal education requirements.

Nominations must be in writing and signed by at least five members of the ISB in good standing, and eligible to vote in the districts. The executive director must receive nominations no later than the close of business on April 6, 2010. The nominating petition is available on the Idaho State Bar website or a petition may be obtained by calling the office of the executive director at (208) 334-4500.

Ballots will be mailed to all members eligible to vote in the 1st, 2nd and 4th districts on April 19, 2010. All ballots properly cast and returned to the executive director will be counted by a board

of canvassers at the close of business on May 4, 2010.

Submit Nominations for 2010 Award Recipients

Each year, the commissioners select individuals to receive awards for their commitment and service to the profession and the public. The awards acknowledge those who have given of themselves to improve the legal profession, provide pro bono legal services, and exemplify the highest standards of professionalism. On page 14 is the description of the awards given and a nomination form. We encourage you to nominate individuals that you feel deserve recognition for their efforts and contributions. Please submit your nominations by March 26, 2010.

The Idaho State Bar thanks the following CLE presenters for helping to make the 2009 Annual Conference a tremendous success. It was the best attended annual conference since 1998. Don't miss the 2010 Annual Conference: July 14-16 in Idaho Falls, which will feature another group of distinguished presenters. For more information about the Annual Conference, contact Terri Muse or Dayna Ferrero at 334-4500.

2009 Annual Conference Speakers

Frederic S. Ury
Thomas Lyons
Dean James R. Rasband
John A. Miller
John S. McGown
Peter Sisson
Erika Birch
Alan Herzfeld
Forrest Hunter
Gerald Husch
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James Dale

Evangelina Fierro Hernandez
Monica Schurtman
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Honorable Darrel R. Perry
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Kelsey Nunez
Honorable Lowell Castleton
C. Timothy Hopkins

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2009 – THE IDAHO LAW FOUNDATION YEAR IN REVIEW

Diane K. Minnich

The Idaho Law Foundation's programs and activities are designed to improve the public's access to and understanding of the legal system and enhance the competency of practicing lawyers and judges through ongoing educational programs. The financial and volunteer support provided by Idaho lawyers and judges helps the Foundation meet its financial and educational goals. The following are highlights of the past year's achievements.



Diane K. Minnich

Law Related Education (LRE)

Law Related Education (LRE) is a civic learning program, primarily for K-12 students, which empowers young people to become effective, knowledgeable citizens who understand both their rights and responsibilities as citizens. The LRE program staff and volunteers coordinate an extensive teacher outreach and training program, the High School Mock Trial Competition, Lawyers in the Classroom, Citizens Law Academy, and assist with Law Day activities.

In 2009, nearly 350 educators and other community members participated in programs and classes offered by LRE, 32 teams from 20 schools participated in the High School Mock Trial Competitions and 48 teaching teams of lawyers and classroom teachers worked together to teach over 2,500 students about law, government and citizenship.

Idaho Volunteer Lawyers Program (IVLP)

IVLP continues to provide legal services to low-income individuals, families and groups. Through case representation by volunteer attorneys, brief services, advice and consultation, clinics and workshops, IVLP served over 1,000 individuals last year. The program works with Idaho Legal Aid Services, and the statewide Court Assistance Offices to assist those with legal needs and limited resources.

Mission Statement

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

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

IVLP continues to expand initiatives to create more opportunities for attorneys to provide pro bono services. The Idaho Pro Bono Commission, chaired by Idaho Supreme Court Justice Jim Jones, is developing strategies to encourage law firms, corporate law departments, and government agencies to maximize the involvement of attorneys in pro bono service and to explore the development of means and incentives to support attorneys in providing pro bono services.

To accurately convey the commitment of Idaho lawyers to pro bono, the Commission has asked lawyers to report their pro bono hours to IVLP, those hours are included in the donated hours listed below.

Idaho Volunteer Lawyers Program		
	2009	2008
Calls received	4,908	4,341
Cases referred to volunteer attorneys	756	267
Donated hours	16,791	13,862
Donated services value	\$2,518,650	\$2,079,300
Assisted by legal resource line	1,055	606

Interest on Lawyers Trust Accounts (IOLTA)

Over the past 24 years, the IOLTA program has granted nearly \$5.5 million to law related programs and services throughout Idaho. The organizations funded in 2009 were: Idaho Legal Aid Services, Idaho Volunteer Lawyers Program, ILF Law Related Education, ILF Legal Resource Line, 2nd District CASA Program, Idaho YMCA Youth Government, Idaho State 4-H Know Your Government Conference, DBA Agency for New Americans, Catholic Charities Immigration Legal Assistance, The Advocates Immigration Domestic Violence Support, and law school scholarships. Funds granted for 2009 decreased 20% from 2008 grants funded.

Continuing Legal Education (CLE)

The Idaho Law Foundation and the Idaho State Bar Sections offer legal education programs throughout the state.

ISB/ILF Continuing Legal Education		
	2009	2008
Live seminars	46	56
Total live program attendance	1,915	2,199
Tape/DVD rentals	725	859
Online transactions	604	610
Webcast attendance	201	277

Fund Development

Donations		
	2009	2008
General Fund, IVLP, LRE	\$42,815	\$48,805
Endowment Fund	\$1,450	\$3,100
Total	\$44,265	\$51,905

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



Idaho State Bar
2010 Professional Award Nominations

The Idaho State Bar Board of Commissioners is now soliciting nominations for the 2010 professional awards. These awards were initiated by the Board of Commissioners to highlight members who demonstrate exemplary leadership, direction and commitment in their profession.

- **Distinguished Lawyer** - This award is given to an attorney (or attorneys) each year who has distinguished the profession through exemplary conduct and many years of dedicated service to the profession and to Idaho citizens.
- **Professionalism Awards** - The awards are given to at least one attorney in each of Idaho's seven judicial districts who has engaged in extraordinary activity in his or her community, in the state, or in the profession, which reflects the highest standards of professionalism.
- **Pro Bono Awards** - Pro bono awards are presented to the person(s) from each of the judicial districts that have donated extraordinary time and effort to help clients who are unable to pay for services.
- **Service Awards** - Service awards are given each year to lawyers and non-lawyers for exemplary service to the Bar and/or Idaho Law Foundation.

Recipients of the awards will be announced in May. The Distinguished Lawyer and Service Awards will be presented at the annual conference. Professionalism and Pro Bono Awards will be presented during each district's annual resolutions meeting in the fall.

Award nominations should include the following:

- Name of the award
 - Name, address, phone, and email of the person(s) you are nominating
 - A short description of the nominee's activity in your community or in the state, which you believe brings credit to the legal profession and qualifies him or her for the award you have indicated
 - Any supporting documents or letters you want included with the nomination
 - Your name, along with your address, phone, and email
- You can nominate a person for more than one award.

The nomination deadline is March 25, 2010. Submit nominations to: *Executive Director, Idaho State Bar, PO Box 895, Boise ID 83701, fax (208) 334-4515, dminnich@isb.idaho.gov.*

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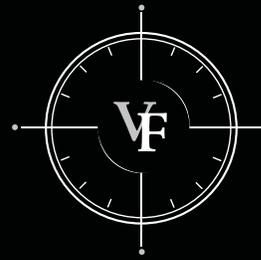
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NOW AND THEN: A YOUNG LAWYER'S PERSPECTIVE COMPARED WITH THAT OF A SEASONED VETERAN

Christian Carl Christensen II
Andrade Law Office, Inc.

The Young Lawyers Section historically has been one of the most active sections of the Idaho State Bar and this past year is no different. Since sponsoring an issue of *The Advocate* in 2009, the young lawyers held monthly meetings and offered CLE credit to attending members at two of those meetings. We provided panelists for several pre-law society events at Boise State University where our members spoke on a variety of topics including: preparation for law school, the LSAT, choosing a law school, and jobs in the legal profession. We sent several young lawyers to a similar event on the College of Idaho's campus. We organized a prestigious panel of the judiciary to speak about effective writing at the annual Idaho State Bar Conference in Boise last summer.

Members of the Young Lawyers Section tend to be very social and we have held several happy hours in addition to our traditional new admittee receptions in both the spring and fall. Attorneys Against Hunger is taking place this March, the Section's annual fundraiser for the Idaho Food Bank. We also have an all-star cast of Idaho practitioners and jurists to present at our annual CLE series, which provides the Section's primary source of funds. The Section will present one CLE per month from January to June, this year on the fourth Wednesday morning of each month. The Young Lawyers Sec-



Christian Carl Christensen II

The Young Lawyers Section is alive and thriving and continues to provide an avenue for young attorneys (under age 37) and attorneys who are new to Idaho (3 or fewer years of practice in Idaho) to make connections, meet mentors, and develop friendships.

tion is alive and thriving and continues to provide an avenue for young attorneys (under age 37) and attorneys who are new to Idaho (3 or fewer years of practice in Idaho) to make connections, meet mentors, and develop friendships.

Unlike almost all other sections of the Bar, the Young Lawyers Section does not pull its members from a specific area of practice. Consequently, choosing a topic for *The Advocate* presented a challenge. This year the young lawyers met that challenge by presenting articles that discuss a variety of different legal subjects from the perspectives of a young lawyer and a seasoned veteran.

Howard Belodoff and Ritchie Eppink describe the need for, and the efforts to provide, legal services and access to the courts for Idaho's less fortunate population. Hugh and Taylor Mossman share their long family history in the law and offer their thoughts on the profession and maintaining balance between work and personal life. John Runft and Kahle Becker share about their experiences starting their own firms. Dean Burnett and I extol the virtues of the judicial clerkship. Finally, Dennis Voorhees and Lisa McGrath discuss developing a practice with or without the modern conveniences of social media. I would like to thank all of our authors for their excellent contributions and the Young Law-

yers Section officers and members who worked so hard to make this possible. I would also like to thank all the members of the Idaho State Bar who have been so welcoming to new lawyers eager to join the practice and learn the ropes. Idaho truly is an amazing state and a wonderful place to practice law.

About the Author

Christian Carl Christensen II graduated from the University of Idaho College of Law magna cum laude in 2007, and before that he earned a triple major at Willamette University. During law school, Chris participated in the Immigration Clinic, student government, National Moot Court, and he was involved in several committees composed of both students and professors. After graduation, Chris clerked for the Honorable Darrel Perry on the Idaho Court of Appeals for twenty-seven months. Chris loves his current job at Andrade Law Office, Inc., where he specializes in family-based immigration. Chris has been involved in various aspects of the Idaho State Bar, including: grading bar exams, serving as the chair of the Young Lawyers Section, working with the Idaho Immigration Law Pro Bono Network, volunteering for Family Law Clinics, helping craft the Idaho State High School Mock Trial problem for 2009 and 2010, and participating in Law Day.

Young Lawyers Section

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IDAHO FAILS TO MEET THE EMERGENCY NEEDS OF LOW-INCOME RESIDENTS

Howard Belodoff
Idaho Legal Aid Services Inc.

After graduating from the University of Idaho, College of Law in 1978, I was employed by Idaho Legal Aid Services (ILAS) under a Reginald Heber Smith Fellowship that paid my salary for two years.¹ The purpose of my fellowship project was to represent adults and children in public institutions such as jails, prisons and state hospitals. ILAS offered me a position after my fellowship ended in 1980.

As I reflect back over the last 31 years, I am proud to say that I have had the opportunity to represent many persons who otherwise would not have access to the judicial system because they lack the resources to hire counsel to challenge the violation of their most basic rights.



Howard Belodoff

These persons included inmates challenging conditions of confinement, inadequate medical care, lack of religious freedom and insufficient access to the courts. I represented women who were not receiving equal access to prison medical, rehabilitative, educational, and vocational programs. I also had the opportunity to advocate for mentally-ill children, as young as 12, for failure to provide treatment and educational services while unnecessarily confined in State Hospital South with adult sex offenders instead of being provided community based mental health services. This also gave me the chance to represent juveniles warehoused in state institutions without rehabilitative and treatment programs; persons with a mental illness who, after suffering a crisis, would be taken into “protected custody” and confined in barbaric jail cells for days without treatment or medication pending their commitment hearings.

My practice extended to farm worker families who had to work in the fields without being paid the minimum wage, without access to toilets and no worker’s compensation coverage if injured. I also represented Native Americans whose only source of income was reservation trust lands that were being mismanaged

With the rudimentary tools of a simple typewriter and copier, my colleagues were able to provide low-income clients with legal representation in family, housing, social security, public benefits, Medicaid, consumer, guardianships and many other matters.

Today, some progress has been made and I have found that there are many more attorneys who see it as their ethical obligation and moral responsibility to provide a small contribution to ensuring that “Equal Justice Under Law” is not just some aspirational phrase chiseled into the marble above the United States Supreme Court.

by the United States and leased for less than half of the fair market rent while they lived in poverty. The scope of my practice also encompassed social security recipients and veterans who had their disability benefits garnished without notice or an opportunity to claim an exemption. I have represented HIV positive persons who objected to the unnecessary and invasive intrusion by government auditors into their private medical and psychological records and persons who were denied access to housing because of their color, national origin, gender, religion and familial status. I have also represented homeless persons displaced by imposition of discriminatory housing restrictions or issued citations and incarcerated because they had to sleep outside when shelters had no beds available.²

While in law school, there was no clinical program or professors compared to what exist today, no courses that explored the numerous civil rights laws that protect individual rights and dispossessed, displaced and disabled persons, no public interest student groups and no mandatory pro bono requirements for law students. Few, if any, attorneys were willing to undertake civil rights cases on behalf of these persons. Idaho courts and

judges had little experience with these types of cases.

Today, some progress has been made and I have found that there are many more attorneys who see it as their ethical obligation and moral responsibility to provide a small contribution to ensuring that “Equal Justice Under Law” is not just some aspirational phrase chiseled into the marble above the United States Supreme Court.

Chief United States District Judge B. Lynn Winmill has a designated court staff to encourage the private bar to undertake some of these cases and makes court funds available to pay for out-of-pocket costs. The state and federal judiciary, the University of Idaho College of Law, the Idaho Law Foundation and the private bar, have joined to establish a Pro Bono Commission to encourage private law firms and government agencies to allow their attorneys to undertake pro bono representation. Dean Don Burnett has required students to perform 40 hours of pro bono service as part of their graduation requirements. New and retired attorneys have volunteered thousands of pro bono hours in legal aid offices statewide assisting clients with their legal needs.

These efforts are commendable. Yet too there continues to be too few attorneys available to meet the legal needs of the many that seek simple justice and access to the courts to secure their rights but cannot pay for counsel. When I began with ILAS, Idaho's population was not quite one million people and there were approximately 40 full-time legal aid attorneys spread across the state in seven offices. With the rudimentary tools of a simple typewriter and copier, my colleagues were able to provide low-income clients with legal representation in family, housing, social security, public benefits, Medicaid, consumer, guardianships and many other matters. Today, even with the advanced technological tools available, ILAS has less than twenty full-time attorneys to meet the needs of the low income persons. My colleague Richie Eppink's article, "*The Emergency Room Lawyer*," describes his current caseload and the chosen few who can be served by ILAS attorneys.

Many of my colleagues spent their careers devoted to providing legal services to ILAS's clients. This is not a small sacrifice, because their salaries do not compare favorably to other attorneys who choose public service and there is no PERSI retirement package that awaits them. Neither financial rewards nor bar recognition drives what they do on a daily basis. However, I am thankful that in the past few years the Idaho State Bar has recognized their selfless contributions to not only the legal profession but also their communities. I am also constantly amazed at the bright and talented newly-minted members of the Bar who seek employment with ILAS.

It is estimated that approximately 280,000 low-income Idahoans out of the 1.5 million Idaho residents would qualify

Despite the tireless efforts of ILAS attorneys, 80 percent of the persons seeking legal assistance are turned away and ILAS has to limit the type of cases their attorneys undertake.

for legal services. Despite the tireless efforts of ILAS attorneys, 80 percent of the persons seeking legal assistance are turned away and ILAS has to limit the type of cases their attorneys undertake. In 1980, ILAS received a grant of \$1.1 million from the Congressional appropriation to the Legal Services Corporation (LSC) to provide civil legal services. In 2009, ILAS received a grant of \$1.4 million. If the LSC grant had kept up with the Consumer Price Index between 1980 and today, the grant would be more than double the 2009 grant amount. Idaho and Wyoming are the only two states that do not provide either a state appropriation or a filing fee surcharge to support civil legal representation. Very soon Idaho will be standing alone with this less than distinguishable distinction. My "hope" is that the new and older members of the Idaho State Bar, its Commissioners, and the judiciary can work together to secure a stable source of state financial assistance to secure justice for a substantial number of Idahoans who are in need of their assistance.³

About the Author

Howard Belodoff is the Associate Director of Idaho Legal Aid Services, Inc.

and has a private office where he primarily focuses on public interest cases. For the last 14 years he served on the Board of the Idaho Law Foundation.

Endnotes

¹ The Office of Economic Opportunity created the fellowship program in 1967 to offer recent law school graduates the opportunity to provide up to two years of services to low income communities around the United States. The Fellowship was named after Reginald Heber Smith who's 1919 book, *Justice and the Poor*, challenged the legal profession to consider it an obligation to ensure that access to justice was available to those without the ability to pay. He wrote: "We can end the existing denial of justice to the poor if we can secure an administration of justice which shall be accessible to every person no matter how humble." *Id.* at 257.

² I am guided by the words of United States Supreme Court Justice John Harlan's dissent in *Plessey v Ferguson*, 163 U.S. 537, 559-560 (1896), when he wrote "In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful."

³ "Each time a man stands up for an ideal or act to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope." Robert Kennedy, available at <http://www.famous-quotes.com/author.php?aid=4003> (last visited January 25, 2010).

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THE EMERGENCY ROOM LAWYER

Ritchie Eppink
Idaho Legal Aid Services, Inc.

I accepted over \$33,000 in government handouts during the 1990s. The cost of undergraduate education at a public university is so heavily subsidized that when I was finishing college at the University of Virginia a decade ago, a federal commission reported that the true cost of educating a public undergraduate student exceeded the per-student sticker price by over 316%.¹ Thanks to those deep subsidies, I made off with a degree from a top school for only a fraction of its cost.

The cost to the taxpayer and society of educating a lawyer is no different. In the year I graduated from the University of Idaho College of Law, students there paid an average of only \$9,928 each for a single year of education that it cost the University well over twice as much—\$24,324 per student—to provide us.² In other words, over three years of law school I enjoyed tens of thousands of dollars worth of “socialist” welfare.

“A lot will be expected from everyone who has been given a lot,”³ I remembered as I waited patiently for my law school commencement ceremony to wind down. Two months later, while studying for the bar exam, this passage from Luke’s Gospel again came to my mind when a mentor passed down to me a law review article written by a young welfare rights attorney during the War on Poverty. It admonished: a lawyer “must realize that what make him a lawyer are accidents of birth and interest, and those accidents have not made him something special; they have only given him the opportunity to help someone else. Being in the position to help, rather than of needing help, is a privilege.”⁴

Civil Legal Aid in Our State and Nation

Fortunately, having been homeless before I started law school, neither of



Ritchie Eppink

As a new legal aid lawyer, I was joining a noble group of lawyers who have toiled to protect the most vulnerable among us in their times of crisis.

those reminders—nor the oath I took on September 28, 2006, “never [to] reject, for any consideration personal to myself, the cause of the defenseless or oppressed . . . SO HELP ME GOD”⁵—were lost on me. After a year as a Fulbright Fellow in Canada, I signed up for what is probably the lowest-paid full-time attorney position in Idaho, a staff attorney job at Idaho Legal Aid Services.⁶

As a new legal aid lawyer, I was joining a noble group of lawyers who have toiled to protect the most vulnerable among us in their times of crisis. Although there is still no mandate in Idaho that the state ensure a shot at equal justice for the poor in civil actions—no so-called “civil *Gideon*”⁷—small cadres of the bar⁸ have taken it upon themselves to represent the indigent and oppressed in non-criminal matters. Notwithstanding the ancient Roman maxim “*turpe reos empti miseris defendere lingua*”⁹ (roughly, “it’s disgraceful to defend the unfortunate with a purchased tongue”), not until the 1870s did American lawyers begin to organize in groups to provide *civil* legal services to the poor. As late as 1963, despite that 50 million people lived in poverty across the country that year, there were only about 400 civil legal aid lawyers, nationwide, available to help them.¹⁰

Learning the Practice in the Emergency Room

Still today, even if you lump all civil legal aid attorneys together with their public defender counterparts, they together make up only 1% of all lawyers practicing in the U.S.¹¹ This means that while there are 429 people in the general population for each lawyer in private practice, there are over 6,400 individuals in poverty for each legal aid lawyer.¹² In Idaho and throughout the nation, legal aid organizations consistently find they must turn away 80% of the legal needs

of the poor presented to their offices.¹³

I am, therefore, an emergency room lawyer. The impossibility of meeting such an inundating demand forces us to triage prospective clients, prioritizing only the most urgent legal problems. My caseload, as a result, is made up of blood, stress, stitches, and fear, along with sickness, safehouses, children waking up outside on their first day of school, and weeping and gnashing of teeth.

Although I have been trained to specialize in areas of law traditionally labeled as “landlord-tenant” and “family” law, a legal aid lawyer’s practice in these fields is wildly different than it is for most attorneys. This is because “[p]oor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms. Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things.”¹⁴

So I do not practice “family law.” Rather, accepting referrals only from domestic violence victim support programs, I practice a collaborative advocacy alongside shelters, police, prosecutors, social workers, counselors, schoolteachers, administrative agencies, and courts—a holistic effort meant to clear paths that survivors of family violence and their children can tread in escaping their abusers.

Likewise, I do not practice “landlord-tenant law,” but instead must simultaneously tend individual cases of eviction, tenancy application, and discrimination while pursuing community-wide strategies to preserve our limited supply of affordable housing and stifle the scourge of homelessness. Neither the courts, the government, industry, the media, charitable nonprofits, nor the public alone can deliver justice to my clients; my role as a legal aid lawyer is necessarily a holistic and multidimensional one.

Daunting Circumstances, Getting Worse

Though my first years in the emergency room have been hectic, those years could not have prepared me for our economy's dramatic downturn at the end of 2008. While staff size here has not grown, more than 70,000 more individuals have found themselves in poverty in Idaho since 2007, a 3.8% increase in one year.¹⁵ Our already thinly-spread resources are giving out, and my own confidence that I am helping maintain some semblance of equal access to justice is waning.

Surely these times are not like those 90 years ago, described in the groundbreaking study *Justice and the Poor*, when "the majority of our judges and lawyers view the situation with indifference. . . . [and] fail to see behind the denial of justice the suffering and tragedy which it causes."¹⁶

About the Author

Ritchie Eppink has been a staff attorney with Idaho Legal Aid Services, Inc., since 2007.

Endnotes

¹ NAT'L COMM'N ON THE COST OF HIGHER EDUCATION, STRAIGHT TALK ABOUT COLLEGE COSTS AND PRICES (Jan. 21, 1998), available at <http://www.nyu.edu/classes/jepsen/costreport.html>.

² E-mail from Donald Burnett, Dean, University of Idaho College of Law, to Richard Alan Eppink, Staff Attorney, Idaho Legal Aid Services (Nov. 25, 2009, 14:48:19 PST) (on file with author).

³ Luke 12:48 (God's Word Translation).

⁴ Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L. J. 1049, 1063 (1970).

⁵ Rule 214, Idaho Bar Commission Rules Governing Admission to Practice and Membership in the Idaho State Bar.

The impossibility of meeting such an inundating demand forces us to triage prospective clients, prioritizing only the most urgent legal problems.

⁶ I don't know for sure that entry-level attorneys at Idaho Legal Aid Services are paid less than any other full-time attorney in the state. But, for the sake of my peers in the Idaho State Bar, I sure hope we are. In my first year here, I made \$34,500.00 in gross pay and logged the equivalent of about 1,700 billable hours. Some ILAS staff live below 125% of federal poverty levels and could be eligible for the firm's services themselves.

⁷ A right to counsel in certain critical civil matters was established last year in California by statute. 2009 Cal. Stat. ch. 457 at § 68651(a) (AB 590, enacted Oct. 11, 2009) ("Legal counsel shall be appointed to represent low-income parties in civil matters involving critical issues affecting basic human needs[.]"); see also Andrew Scherer et al., *Panel Discussion: International, National, and Local Perspectives on Civil Right to Counsel*, 25 Touro L. Rev. 81 (2009).

⁸ At the end of 2009, there were 23 attorneys working for Idaho Legal Aid Services, yet resources only allowed 14 of them to work full time. All 23 together still only made up 0.7% of in-state, active, non-judge members of the Idaho State Bar. In 2008, when there were approximately 3,100 in-state, active, non-judge members of the Idaho State Bar, only 392 attorneys—less than 13% of the active, in-state bar—accepted or completed *pro bono* referrals from the Idaho Volunteer Lawyers Program. *Idaho Volunteer Lawyers Program Special Thanks for 2008, The Advocate*, Feb. 2009, at 35.

⁹ OVID, AMOR. I, 10.39-40; see also WILLIAM FOR-

SYTH, HORTENSIIUS: AN HISTORICAL ESSAY ON THE OFFICE AND DUTIES OF AN ADVOCATE 362 (3d ed. 1879).

¹⁰ DEBORAH L. RHODE, ACCESS TO JUSTICE 61 (2004).

¹¹ American Bar Association, *Lawyer Demographics* (2008), available at <http://new.abanet.org/marketresearch/Pages/StatisticalResources.aspx> (last visited January 24, 2010).

¹² LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 21 tbl.6 (2009), available at http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf (last visited January 24, 2010).

¹³ See, e.g. ALAN W. HOUSEMAN, CENTER FOR LAW AND SOCIAL POLICY, THE FUTURE OF CIVIL LEGAL AID IN THE UNITED STATES 11 (2005), available at http://www.clasp.org/admin/site/publications_archive/files/0188.pdf (last visited January 24, 2010).

¹⁴ Wexler, 79 YALE L. J. at 1049.

¹⁵ Compare U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT: POVERTY 46: POVERTY STATUS BY STATE 2008 (2009), http://www.census.gov/hhes/www/cpstables/032009/pov/new46_100125_01.htm with U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY ANNUAL SOCIAL AND ECONOMIC SUPPLEMENT: POVERTY 46: POVERTY STATUS BY STATE 2007 (2008), http://pubdb3.census.gov/macro/032008/pov/new46_100125_01.htm (last visited on January 24, 2010).

¹⁶ REGINALD HEBER SMITH, JUSTICE AND THE POOR 9 (1919).

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PASSING THE TORCH, PRESERVING THE PRACTICE

Hugh Vaughan Mossman
Mossman Law Office

Taylor Lynn Mossman
Comstock & Bush

I am now in my 38th year of practicing law. To my daughter Taylor, now in her third year of practice, this must seem like an eternity. I remind her, however, that my dad is still practicing law in Iowa, at age 89. His father, also an attorney, practiced well into his eighties. My father and grandfather would probably say that I am just getting started.

My practice now is limited primarily to Social Security Disability, worker's compensation, and a few personal injury cases. In many respects, my practice is more enjoyable now than at any other time. In years past, I have worked as a public defender, prosecutor, city attorney, and general practitioner. As a younger attorney, my primary objectives were to earn a living and to gain experience. I was rarely in a position to dictate the terms and conditions of my employment.

My perspective now on the practice of law is much different. I now work primarily because I enjoy it. As a sole practitioner, I decide what cases to take and how many hours to work. It is on my terms. I do not have the pressure that young attorneys do to build resumes, fill billing quotas, or support a growing family. I can balance my practice with other interests outside the office. I am rewarded by helping clients that I have chosen to represent. Early in my legal career, I did not have these choices. I do not plan to practice law as long as my dad and grandfather, but I can now understand why they chose to do so.

My perspective has changed over the years, but some things have remained constant. I am still learning, enjoying the process and the interaction with clients (at least most of them), and helping people in need. My daughter has chosen an honorable profession, and I am very pleased and proud that she continues the family tradition, even if she does not work until she is 80 years old.

-Hugh Mossman



Not surprisingly, my infancy in this profession and as a trial lawyer in particular, leaves me with far more questions than conclusions about the practice of law. There is perhaps only one trait about being a lawyer that I am certain



Photo courtesy of Taylor Mossman

Hugh Mossman and his daughter, Taylor, stand on the top of Mount Church in the Lost River Range in Central Idaho.

of. As my friend and constant source of inspiration Ritchie Eppink recently reminded me, the practice of law is a privilege. A lawyer's purpose is to help a person or entity in one way or another, and as a lawyer, I am in a privileged position to be doing just that.

I am very grateful to my family for grooming me, in a sense, to be a part of that privilege and it is my belief that the practice of law in Idaho is a unique and great one. I am reminded of that daily as I work with, against, and for Idaho attorneys who are incredibly intelligent, yet equally as humble.

Growing up, I envisioned my dad and the lawyers of my lineage living in the courtroom and engaging in a particularly piquant practice. I saw them standing proudly in court, and with all of their conviction, arguing the constitutionality of a controversial issue; fists pounding, voices rising. When I coupled that image with what I learned from Denny Crane's persuasive statements on Boston Legal, such as, "that cannot pass Constitutional mustard!" I expected the practice of law to be a bit spicier. Although my expectations were not entirely met, there is certainly some relief that comes with the lack of drama and sensationalism that I envisioned before entering law school.

Like Dad says, or perhaps as Dad has taught me, balancing the practice with the other fundamental joys in life seems to be crucial. I am fortunate to work for

a firm that allows me to enjoy that sacred time in the mountains, and especially important time with my family and friends. I feel honored to be a part of this profession and am grateful for what it allows me to do for my clients. If, like dad, the driving force of being in a position to help someone else will undoubtedly continue to keep me in the practice of law well into the future. My only hope is that I can earn a sliver of the respect and success that he has gained.

-Taylor Mossman

About the Authors

Hugh Mossman is currently a sole practitioner in Boise doing primarily workman's comp and social security work. He obtained his undergraduate degree and J.D. from the University of Iowa. While Hugh has gained great admiration as a lawyer, he is also nationally and locally recognized for his watercolor paintings, which can be seen scattered throughout offices and homes in the state.

Taylor Mossman grew up in Boise and obtained her B.S. from the University of Colorado and J.D. from the University of Idaho College of Law. Taylor clerked for the Honorable Judge Ronald Bush in Pocatello before he became the "Best Hockey Player from Idaho Falls Ever to Become a Federal Judge." She currently works as an associate at Comstock and Bush in Boise.

XLV PERSPECTIVE:

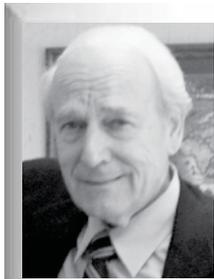
WE HAVE JUST STARTED TO SEE THE IMPACT OF THE DIGITAL AGE

John L. Runft

Runft & Steele Law Offices, PLLC

A few words about one's view of the profession after many years of practice implicates the ever difficult exercise of being brief. Brevity must preclude any historical rendition, anecdotes, and war stories. Keeping these diversions under good regulation and hoping to provoke as little umbrage as possible, I will focus on what, in my view, are some of the less visible impacts of the electronic transformation of the practice of law.

This electronic transformation, while gradual, has occurred with such speed that there is no one not acutely aware of it. Our awareness readily comprehends the access to and efficiencies in electronically handling and processing of information undreamed of just a few years ago. But withal this swift and potent evolution, what else has been wrought in the practice of law? I will suggest a few changes that I see as being significant.



John L. Runft

The electronic access to information and the efficiency of its handling have, I suggest, contributed substantially to a "leveling" effect in the practice and, hence, in the legal system itself. Information of every sort is easily available to all; little exclusivity or monopoly over information remains. It can be organized and processed immediately in presentable form. These factors strongly foster settlement of lawsuits and are manifested in the legal system by the huge growth in alternative dispute resolution and fewer trials.

Concurrently, however, the benefits of this electronic evolution are to a major degree offset by its other inherent characteristic – the sheer volume, variety, and detail of electronically transmitted and stored information ("ESI"). These factors, along with the rapid increase in the number of regulatory agencies and the consequent explosion of statutes, rules and regulations (perhaps also enabled by ESI) has resulted in an accelerating Balk-

It seems that lawyers flood their briefs with electronically derived authorities covering (smothering) the legal issue at hand instead of presenting one or two cases on point of law and fact.

kanization of the practice of law and of the legal system itself.

One aspect of this has been the growth of professional "specialization." The general practitioner is a dinosaur. What non-specialist practitioner dares even to go into bankruptcy court? Or handle a complex divorce under the complexities of Rule 6 IRCP? A negative perspective would hold that the "specialists" jealously guard their turf and find succor and security with the passage of each new regulation and subpart thereto. A positive perspective would opine that specialization is simply necessary, given the circumstances, in order to provide competent legal services. Whether a misguided praxis or not, the bar enthusiastically supports giving sectional standing to each Balkanization of the practice.

Specialization has manifested itself in the legal system as well as in the practice. The evolution of a separate federal bar association has resulted in large part from the adoption of the electronic filing system ("ECF") by the federal courts. The numbers associated with the ECF system suggest that practice in the federal court system is itself becoming a specialty. Admission to the bar of the Federal District Court for the District of Idaho notwithstanding, out of 3,333 active members of the Idaho bar practicing in Idaho, only 1,738 (52%) have registered in the ECF system to practice in federal court, and only 814 (24%) have logged in since January 1, 2009. Moreover, a relatively new federal bar association, strongly supported by the federal judiciary, is quickly becoming an elite manifestation of this specialization. Gone are the days when any member of the Idaho bar could simply go to federal court and file his papers on behalf of his client. None, on the other hand, can

gainsay the very significant efficiencies that the ECF system has brought to the federal court and to those who practice before the federal courts.

The mixed blessings of the electronic transformation of the legal system and practice has also impacted the bench-bar relationship. It is difficult with any precision to allocate the degree of change in that relationship attributable to ESI as distinguished from judicial reform and development of the professional code of conduct. First, it seems to me that simultaneous with the electronic evolution the courts have become more open and fair. There is less "home towning." The result has been a "leveling" whereby one can anticipate the same quality of fairness and professionalism from just about any court now. I do not believe one can attribute the increase of general fairness and less local bias to the electronic evolution alone. There has been an increasing emphasis on professionalism in the bar and judicial training, including ethics and conflict of interest. I believe over time it has had a significant impact.

On the other hand, there has been a sort of "mechanization" of the process of adjudication. Rules of procedure and of administration proliferate. It seems that lawyers flood their briefs with electronically derived authorities covering (smothering) the legal issue at hand instead of presenting one or two cases on point of law and fact. A number of judges have told me that with the electronic acceleration they do not have the contemplative time to deeply consider cases. One feels there is more "functioning" and less adjudicative justice (grappling with the legal issues), while at the same time there is greater general fairness and less bias.

I conclude with a concern that there may be too many members of the Idaho



One feels there is more “functioning” and less adjudicative justice (grappling with the legal issues), while at the same time there is greater general fairness and less bias.

bar who are “disconnected” from the general profession of law. They may be buried in some corner of a specialty, burnt out and unable to get out. They may have no specialty and no general practice experience and are practicing only part time, uninsured and alone. There seems to be far less mentoring occurring outside of the law firms. One seldom sees

members of group practices (or “firms”) in trouble before the bar. I am aware that this is a serious concern of the bar association, and rightly so. Maybe for starters we should reinstitute the old practice of the gathering of the bar for “calendar call” – a fondly remembered event among those of a certain vintage.¹

About the Author

John L. Runft engages in civil trial practice with an emphasis on business litigation and constitutional law. He carries on an active transactional and contract practice and works with SCORE to assist medium and small businesses. He is a member, inter alia, of the Idaho

Bar, the American Bar Association, the Federal Bar Association, and the Mountain States Legal Foundation. He has argued cases before Idaho State District Courts, the Idaho Supreme Court, Federal District Courts in Idaho and neighboring states, the Ninth Circuit Court of Appeals, the Federal Claims Court, the Court of Appeals of the Federal Circuit, and the United States Supreme Court. A veteran, Mr. Runft is a graduate of the College of Idaho and of the University of Chicago Law School. He has been a member of the Idaho Bar since 1965.

Endnotes

¹ Sir Francis Bacon summed it as: “Knowledge is power.” *Religious Meditations, Of Heresies*, 1597.



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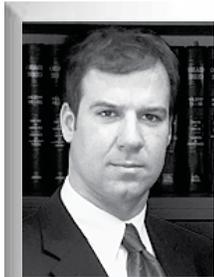
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FROM THE CONCRETE CANYONS TO THE GRANITE PEAKS: A YOUNG SOLE PRACTITIONER'S PERSPECTIVE

Jacob Kahle Becker
J. Kahle Becker Attorney At Law

I moved to Idaho in 2006 without knowing a soul. On the flight into Boise for an interview, I saw sagebrush and foothills where I thought I'd see pine forests and jagged peaks. After meeting with my prospective supervisor, I put over 400 miles on my rental car driving to Bogus Basin, Mores Creek Summit, Horseshoe Bend, Ontario, Oregon, and much to my dismay, discovered there were no mountains in Mountain Home. I strolled around downtown and managed to get invited to a Southwest Airlines holiday party by some stewardesses staying at my hotel.



Jacob Kahle Becker

Skiing close to town, check; great hunting, check; great fishing, check and the nightlife sealed the deal. I was moving to Boise. Everything was falling into place. Someday I would open my own firm and spend my days rowing clients down beautiful western rivers casting dry flies to big uneducated rainbows while discussing litigation strategies. A retainer and handsome hourly rate would surely follow.

An Optimal Start

I had passed two bar exams in one year and had a decent amount of legal experience under my belt, having represented Wal-Mart as a products liability litigator back in Pittsburgh, Pennsylvania. I figured taking a third bar exam was a small price to pay for the chance to live in the Wild West. I spent my first three years in Boise at the Office of the Attorney General representing the Idaho Department of Lands on a variety of administrative and transactional matters as well as litigating forest fire cost recovery actions. The state job gave me the opportunity to explore my new home, practice with a variety of lawyers from my newest bar, and experience the excellent fishing or skiing that could be had after arguing a case in a small town courthouse. I also took to the Monday to Friday, 8 to 5 schedule of government employment,

In early 2009, I felt I had laid the groundwork and it was time to put my dream into action. I had money in the bank, elk in the freezer, and no student loans. It was time to make the move to solo practice.

a pleasant break from the 2100 billable hours I had previously known, and set out to get involved in my community.

I found Idaho's Bar to be extremely collegial and quickly became chair of the Young Lawyers Section. I also contacted the local Chamber of Commerce and got in at the ground floor of creating Boise Young Professionals. Through my involvement in both of those organizations, my list of Idaho acquaintances quickly grew from zero to a network of several hundred. I have made some pretty good friends along the way too.

Out On My Own

In early 2009, I felt I had laid the groundwork and it was time to put my dream into action. I had money in the bank, elk in the freezer, and no student loans. It was time to make the move to solo practice. Not having a wife or children to worry about going hungry also made the decision seem a little more rational. I phoned a friend who had recently made the jump and scheduled lunch. Over a Reuben and hash browns at Goldy's Diner, we talked about the cost of renting office space, staff time, malpractice insurance, choice of business forms, accounting, and marketing. I had tossed around the idea of starting out from a home office but quickly realized a 31-year old attorney needed to look as legitimate as possible and meeting with clients at the kitchen table just wouldn't cut it.

I looked at the classifieds sections in past issues of *The Advocate* and interviewed a few firms to discuss office space sharing arrangements. One major consideration was the amount and type of referral work that would come from whomever I selected. I'd need something to pay the bills as I built up my own caseload. Another consideration was experience and reputation since I

would undoubtedly be in need of someone to bounce ideas off of from time to time. Just as I began my search, a good friend decided to move to California. His father's firm, which he left, had some space to rent and a few cases they needed some help with.¹ After a few meetings with him and his partner, we came to an agreement on a monthly lease and billable rate for in-house assignments.

I applied for malpractice insurance, an IOLTA account, and with some assistance from the Bar I completed all the legal requirements of owning my own shop. I next met with a friend who had recently opened a web design and branding business. He helped me create my logo and website to match the style of practice I hoped to build. With the click of a mouse to purchase my domain name, kahlebeckerlaw.com, I hung out the modern version of my shingle.

The first weeks involved a few research assignments, lunch meetings with prospective clients, learning new areas of the law, writing letters, and anxiously awaiting responses. I'd love to tell you that from day one I was making eloquent arguments, impressing both judge and jury with my legal prowess. However, many a day was spent playing internet chess, updating my Facebook status, and reading the latest news on MSNBC. Gradually, the clients came through a referral from another firm, another from a friend of a friend, and still others from contacts back east. I also did, and still do, quite a bit of *pro bono* work to sharpen my skills, help those less fortunate, and just maybe assist in marketing my blossoming business venture. Additionally, I looked for new ways to get involved and increase my visibility in the community. I spoke at a national seminar on endowment lands, volunteered for the "Scales of Justice" fishing tournament, and was

asked to join the board of directors of the Idaho Conservation League as well as the Land Trust of the Treasure Valley. I have continued to stay active with the Bar and sat on the board of Boise Young Professionals through December of 2009.

Inquiry And Autonomy

As this article heads to print, I am happy to report that my business is one year old and humming along quite well. I am in court regularly; have clients ranging from personal injury plaintiffs and small businesses with contract disputes to other small firms and even some multinational corporations. But that doesn't mean there are not still constant questions as I evaluate my practice. What's next? How can I grow my client base and increase profits? Are my fees at the right level? Should I partner up? Would I be better off at a firm? Should I focus on a few specific practice areas or become more of a generalist? These questions run through my head constantly.

Solo practice certainly isn't for the faint of heart or those with a mountain of bills to pay. One must balance rent, which is due monthly, insurance and bar

One major consideration was the amount and type of referral work that would come from whomever I selected.

dues that must be paid annually, with clients who may not pay a bill until 60 days after it is due. However, if you've got the entrepreneurial spirit, can live frugally for a bit, and have laid the groundwork with a solid network, I encourage you to consider making the jump. As for my own dreams of having a book of clients ready to meet on trout-filled rivers, for the moment I'm content to make my own schedule of billable time and duck out of the office here and there with a friend on a bluebird powder day or when the hatch is just right.

About the Author

Kahle Becker is the Immediate Past Chair of the Young Lawyers Section. He

left the Office of the Attorney General in March of 2009 to open his own firm. His practice focuses on general business litigation, real estate, personal injury, administrative, and natural resource law. A graduate of the University of Pittsburgh School of Law and the Pennsylvania State University, he moved to Idaho in 2006 to enjoy the great outdoor activities this area has to offer.

Endnotes

¹ You can read about this distinguished counselor's own adventures in creating his practice in the adjoining article.

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 Rosters of Commercial Arbitrators and Mediators and the Employment 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 has 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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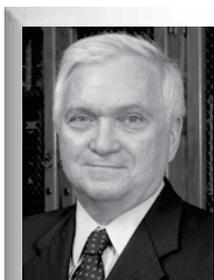
LAW CLERKING: 'MY FAVORITE YEAR'

Dean Donald L. Burnett Jr.
University of Idaho

In the 1982 comedy film “My Favorite Year,” Peter O’Toole plays a washed-up movie actor, long accustomed to the luxury of many “takes” in getting his lines right. After improvidently agreeing to give a live performance, he lives in dread that an audience will discover what he regards as the painfully obvious limits of his talent. Ultimately, the performance does in fact go awry, but – this is a comedy, after all – unexpected events make the production a rollicking success.

I suspect that all of us, at one time or another, have feared the exposure of our limits when confronted by challenges for which we felt ill-prepared. Law is, after all, a public and demanding profession. Our capabilities are tested in front of audiences ranging from clients and colleagues to judges and professionals in other disciplines. Our live performances are always under review, whether in offices, courtrooms, boardrooms, or a host of other venues filled with discerning observers. We seldom have the luxury of many “takes” as we strive to perform our duties correctly. We sometimes make mistakes. Yet we find that even when events go awry, our training and professionalism sustain us; they shepherd us toward eventual success and fulfillment.

As members of my generation in the law grow a bit long in the tooth, we occasionally look back at our formative experiences and feel afresh the wonder and excitement of the early days in our careers. For many of us, regardless of how our professional pathways later diverged, the common point of beginning – and the most memorable experience – was the first job right out of law school: the judicial clerkship (aka the “law clerkship”). It was both a heady and humbling time, filled with wise mentoring by seasoned jurists and solemnized by the sense of public responsibility that pervaded the judges’ chambers. It was a time when



Dean Donald L.
Burnett Jr.

We sometimes make mistakes. Yet we find that even when events go awry, our training and professionalism sustain us; they shepherd us toward eventual success and fulfillment.

the rule of law, the imperative of judicial impartiality, the promise of equal opportunity, and the obligation to provide access to justice became more than phrases; they became compass points for our future journeys as lawyers. It was a time of intellectual growth, as the cases presented fact-framed issues beyond the familiar boundaries of courses in the law school curriculum. It was a time of (judge-constrained) hubris, as we tried nobly to draft opinions better than those we had dissected in the classroom – and learned much about the discipline of clear expression. It was a time of training and professionalism that prepared us for the live performances lying ahead. We were challenged and nourished. It was our favorite year.

Some of these clerkships, of course, lasted more than a single year. Indeed, two-year clerkships (or clerkships for one year plus a second year if mutually agreeable) are common and, most recently, “career clerkships” of indefinite duration have become widespread. Such long-term clerkships offer obvious advantages to young lawyers in economically distressed times, as well as to judges who prefer to retain productive relationships while minimizing the investments of time, and the risks of uncertainty, attendant to annual or biennial law clerk turnover. But I would offer a gentle dissent against these long-term clerkships insofar as they diminish opportunities for new generations of law school graduates. The judicial clerkship is a gateway experience. It inculcates professional values, reinforces a sense of professional identity, and enhances professional skills in research, writing, and analysis. For the sake of our profession and the administration of justice, I respectfully submit that the judiciary should keep the clerkship gateway open wide, making this

unique experience as broadly available as possible.

A Law Clerk’s Memories

My own gateway was a clerkship for approximately a year in the chambers of the Hon. Henry F. McQuade, then Chief Justice of the Idaho Supreme Court. While waiting for working space to open up in the Chief Justice’s chambers, I also worked for approximately two months in the chambers of Justice Charles R. Donaldson, a kind and collegial member of the Court. Chief Justice McQuade was very thoughtful and supportive toward me. Perhaps it had something to do with the fact that the Chief Justice came from Pocatello, as did I, or with the fact that he, like my parents, had attended the University of Idaho during the Great Depression, when students worked hard and lived meagerly in order to stay in school. Perhaps the Chief Justice hoped that I would exhibit some of the habits and dedication he had seen earlier in my mother and father. I hope he was satisfied in that regard; in any event, I know that I was honored to serve in his chambers.

The Chief Justice allowed his clerks broad discretion in drafting opinions, although he was a stickler for correct procedure and terminology (*e.g.*, appeals in criminal cases must be taken from “judgments of conviction,” not from “convictions”). Moreover, he was careful in each case to provide the law clerks his hand-written notes synthesizing the reasoning of the Court as he had gleaned it during the justices’ post-argument conference. He watched carefully to make sure the draft opinions followed that guidance. After working on an opinion, if I thought the law pointed in a direction different from the Court’s consensus, the Chief Justice would listen carefully to my

views; the final determination, however, remained his. When an issue was vexing, he would ask for copies of all authorities my research had disclosed, and he would (re)read them, along with pertinent parts of the record. He had an uncanny ability to identify cases that counsel had not cited or that my research (unaided in those days by Lexis and Westlaw) had not revealed. He kept at his desk an informal binder labeled "Hidden Authority," containing cases that had not been digested completely or correctly by the editorial writers for the West Publishing Company. If a lawyer relied on headnotes alone in citing any of those cases, the Chief Justice knew it!

One of my duties as a law clerk was to read the advance sheets, looking for any publication anomalies. One of the most memorable occurred in the important case of *State v. Tinno*.¹ There, the Court upheld a district court judgment acquitting a member of the Shoshone-Bannock Tribes of a crime allegedly committed by exercising a treaty fishing right in violation of state law. The opinion of the Court was written by Justice Joseph J. McFadden. Chief Justice McQuade added a special concurrence focusing on the supremacy clause of the United States Constitution and underscoring the modern importance of treaty rights. The concurring opinion referred at one point to fishing streams that had been "dammed, depleted or polluted." West Publishing Company printed the word "dammed" as "damned,"² producing no small amount of consternation when the advance sheets arrived in the Chief Justice's office! We asked West to correct the error in the bound versions of the Idaho Reports and Pacific Second Reports, but we were unsuccessful. Type-set products in those days were not easily changed. Technology may seem like a mixed blessing today, but I wish word processing had arrived in time for that case!

The Supreme Court's law clerks also prepared pre-argument memoranda, and the Chief Justice's clerks occasionally provided assistance on matters of judicial administration. At the Chief Justice's request, I worked on matters relating to the Idaho Judicial Council, chaired by the Chief Justice. Under Idaho Code § 1-2102, one of the functions of the Judicial Council – in addition to its well-known responsibilities for judicial merit selection and for judicial discipline – was, and is, to conduct studies

I was grateful for the quality of my colleagues but, at the same time, keenly aware of my personal limits. I needed top-quality help, and I began looking at the judge-clerk relationship from a new perspective.

on improvement in the administration of justice. At the Chief Justice's direction, I organized statewide hearings on implementation of Idaho's judicial reform that had created the Magistrate Division of the District Court, superseding all of the police courts, probate courts, and justice of the peace courts in Idaho's 44 counties. The Judicial Council project, culminating in a report entitled *Idaho Justice at the Grass Roots* (December, 1972),³ provided a unique introduction to the Idaho judicial system for a young law graduate from Pocatello.

Several justices of the Supreme Court, including Chief Justice McQuade, enlisted the help of their law clerks in reviewing law clerk applications and in making recommendations for hiring the next set of law clerks. When I undertook this task for the Chief Justice, it appeared to me that the Court had not yet hired a woman as a law clerk. I suggested that the law clerk applications, which contained full names and photographs of the applicants, might be made gender-neutral, at least at the outset of the selection process, by substituting initials for first and middle names, and by deleting the photographs. Although the Court as a whole did not adopt this practice, Chief Justice McQuade allowed me to apply this practice on the applications that came to him. The Chief Justice selected two new law clerks, one man and one woman, in the next hiring cycle.

Clerking from the Appellate Judge's Point of View

In 1981, I was appointed by Governor John V. Evans to join the Hon. Jesse Walters and Hon. Roger Swanstrom as judges of the newly created Idaho Court of Appeals, effective in January, 1982. Like the public performance in Peter O'Toole's motion picture, this judicial service would prove to be a daunting experience in which I was grateful for the quality of my colleagues but, at the same

time, keenly aware of my personal limits. I needed top-quality help, and I began looking at the judge-clerk relationship from a new perspective. The judges of the Court of Appeals were authorized one law clerk each; the number later was increased to two. During my work at the Court from 1982 to mid-1990, I hired ten law clerks, nine of whom served (the tenth tragically being rendered unable to serve by an automobile accident). The clerks were hired on a "one year plus one" basis and many served two years. As it turned out, and not by design, the ten consisted of equal numbers of men and women. They came from the University of Idaho College of Law as well as other law schools across the country. I hired them based on academic excellence and demonstrated writing ability, as well as good character and professionalism (including civility), as gleaned from interviews and letters of recommendation. I did not impose a political or "favored viewpoint" criterion because it potentially could have deprived me of the opportunity to engage first-class minds.

The law clerks were utilized in a way that reflected the reason the Court of Appeals was created: to solve a backlog problem in Idaho's appellate system. The Idaho Constitution, at Article I, § 18, provides that the state courts shall deliver "right and justice ... without sale, denial, delay, or prejudice." The new Court's task was to deliver "right and justice" by deciding cases carefully while also disposing of cases expeditiously in order to reduce "delay."⁴ Consequently, during the 1980s, the Court of Appeals judges generally did not ask the law clerks to write pre-argument memoranda. We were reading the briefs and relevant portions of the record before argument anyway, so it appeared to us that there would be greater productivity value in having the clerks focus on helping with opinions.

After each round of arguments I would meet with the clerks and discuss the cases assigned to me. In a manner similar to the approach earlier taken by Chief Justice McQuade, I would broadly outline the direction my colleagues and I believed each opinion should go. We would also discuss whether the opinion was likely to be individually signed or issued *per curiam*, the latter designation being used primarily when a case called for a statement of well-settled law and a garden-variety application of the law to the facts. I was fully involved in crafting the substance of the *per curiam* opinions, but my stylistic editing was lighter than my treatment of signed opinions. In all cases I asked the law clerks to do independent research, and we developed a checklist to assure consistency in the organization and scope of the research effort. If the research caused a clerk to question the guidance earlier given about the direction of an opinion, the law clerk usually would write either a memorandum on a particular issue or an entire opinion reflecting the clerk's view, for my consideration. Ultimately, the "call" on which direction to pursue was mine alone.

During my eight-and-one-half years on the Court, I wrote for publication, with my law clerks' help, 441 majority opinions (including *per curiam* opinions), along with 46 substitute majority opinions, 60 specially concurring opinions, and 29 dissents. My colleagues on the Court had similar records of high productivity in generating published opinions and, of course, each of us read and commented on the others' work. I mention publication because in those days the Court of Appeals seldom decided cases without a published opinion; indeed, I do not recall ever writing an unpublished opinion. The reason was not that we were enamored of seeing our words in print, but rather that we thought explaining the basis of each decision was a foundational element of appellate justice. Moreover, we thought accountability (what commentators today might call "transparency in government") required that those explanatory statements be written and publicly accessible.⁵ Of course, our caseloads, while challenging, were smaller than those facing Idaho's appellate judges today.⁶

The Court of Appeals, in its early years, developed templates of analysis for commonly recurring issues, such as sentence reviews in criminal appeals and

I made this request because I had found in my own work that there is an iterative relationship between thought and expression. That is to say, cogency of thought is tested by coherency of expression.

standards for reviewing summary judgments in civil cases. The templates did not dictate the outcomes of particular cases, but they did promote consistency in the language chosen by the Court to articulate well-settled legal principles. We believed this consistency was helpful in signaling stability and predictability in the law to trial courts as well as to lawyers advising clients. The consistency also minimized any inadvertent "language drift" in draft opinions due to the turnover of law clerks, and it freed up the clerks and judges to devote time to careful crafting of language in the cases presenting novel or nuanced issues.

In every case, I asked the clerks to develop their analyses in written memoranda and to write draft opinions carefully enough to merit publication in the official reports – even though the writings almost never would be published without substantial revision or wholesale rewriting. I made this request because I had found in my own work that there is an iterative relationship between thought and expression.⁷ That is to say, cogency of thought is tested by coherency of expression. I also told my clerks that they should imagine a law professor or sharp-eyed law review student focusing on one of our opinions some day and writing a critical article or comment about it. We needed to make sure our analysis could pass the test of academic as well as professional scrutiny. My clerks may have thought at times that I embraced these tests too eagerly, and that I re-wrote (and re-wrote again) our opinions more often than necessary; but the clerks remained unflinchingly gracious and hard-working. I was proud of all of them, and today I am profoundly grateful for their contributions to the quality of the Court's work.

Law clerking has been described as "the culmination of a great period of schooling for the young graduate.... Having seen the judicial process firsthand, the clerk ... will have a sense of

how fragile some judgments really are. But [s]he will realize that they are, nonetheless, our only promise. In this discovery lies the beginning of ... wisdom.⁸ Those evocative words capture the experience I had as a clerk and the experience I sought to provide the clerks who later served me. The clerkship is a distinctive passage toward a life of fulfillment in the law. That is why it is vitally important to the profession and why, for me, it remains "my favorite year."

About the Author

Dean Donald L. Burnett, Jr., a native of Pocatello, has served as the University of Idaho's law dean and as Foundation Professor of Law since 2002. He is a former President of the Idaho State Bar, Judge of the Idaho Court of Appeals, and Dean of the Louis D. Brandeis School of Law at the University of Louisville. He received his legal education at the University of Chicago (J.D.) and University of Virginia (LL.M.)

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THE PERFECT TRANSITION

Christian Carl Christensen II
Andrade Law Office, Inc.

Dean Don Burnett from the University of Idaho College of Law has said on more than one occasion that his favorite year in the legal profession was spent as a judicial clerk. That comment stuck with me because I admire the Dean, his reputation, and all he has done for the practice of law in this great state. Dean Burnett was a clerk, he has been in private practice, he was a judge on the Idaho Court of Appeals, he has been a legal educator, and now he is the Dean of the University of Idaho College of Law.

I clerked for the Honorable Darrel Perry on the Idaho Court of Appeals for slightly over two years. Much of what Dean Burnett describes in his article about the daily tasks of a law clerk is consistent with my experience clerking for Judge Perry. I agree wholeheartedly with the Dean's apt descriptions of his experience as both "heady and humbling" and the clerkship as a mentor/mentee relationship and a great learning experience. There are several reasons why I desired a clerkship right after law school and I am very happy with the decision I made and the knowledge I gained. During law school, I heard clerkships described as a fourth year of school; one consisting almost exclusively of research and writing, two skills that are invaluable in the legal profession. In addition, I knew that a clerkship would expose me to new areas of law, insight into the legal profession from a unique perspective, and mentoring with a pay check in less demanding conditions than those often encountered in private practice.

Although the value in clerking and the experiences gained are no secret nationally, one of the many great things about Idaho is the significant number of clerkship opportunities available relative to the number of new law graduates. Members of the Idaho judiciary take their role as mentors and educators very seriously. Even though permanent clerks would likely reduce a judge's workload, members of the Idaho bench have continued to train



Christian Carl Christensen II

There was also a sense of importance that came with helping to create and interpret the laws of the only state I have ever called home.

new lawyers and help them transition into the legal profession through a clerkship. According to current statistics, between 25-30% of recent graduates from the University of Idaho College of Law clerk after graduation from law school. The number of Idaho law graduates taking jobs as clerks has consistently been two or three times the number of graduates nationally.

These numbers attest to the Idaho judiciary's commitment to maintaining the integrity and quality of the Idaho State Bar by mentoring new admittees for a year or two as clerks.

My clerkship began in August 2007 and ended in September 2009. I loved clerking at the Court of Appeals. There are currently four judges on the Idaho Court of Appeals who sit on cases in panels of three. The fourth judge was added in January of 2009 to combat a growing case load that included the issuance of over 500 opinions the last several years. Each judge has two clerks and during my first year with the Court half of the clerks were female. The judges on the Court of Appeals had an incredible working relationship with each other and the clerks. I felt appreciated and included. There was also a sense of importance that came with helping to create and interpret the laws of the only state I have ever called home. It

was a fantastic and nurturing work environment.

My primary tasks as a clerk were researching and drafting opinions. After a review of the file and the briefing, Judge Perry would first meet with the clerk and discuss his thoughts on the case. Next, it was in my hands to begin reviewing the record, researching the law, and drafting an opinion as directed. Similar to Dean Burnett's experience, Judge Perry's clerks were allowed broad discretion in this initial drafting. However, before an opinion was ready for circulation among the judges, it underwent a thorough and thoughtful review by Judge Perry's Judicial Assistant, Sue Stover, and the keen eyes of the judge. Often, several drafts were exchanged with Sue before the opinion moved to Judge Perry's desk. The process was repeated with Judge Perry and only then was the proposed opinion circulated among the judges. The opinion almost always came back to the clerk after circulation for additional research, changes for more precise wording demanded by the judges or, at minimum, a final review before it was released.

Each clerk was assigned one or two cases a month that would be argued orally, as well as several cases submitted on the briefs. The workload varied significantly;

Law school graduates who take clerkships		
Year	National Average	Idaho Graduates Average
1999	11.2%	25.7%
2000	11.4%	22.6%
2001	11.6%	22%
2002	11.4%	32.9%
2003	11.1%	25.9%
2004	11.1%	28.2
2005	10.6%	21.2%
2006	9.8%	23.8%
2007	9.8%	23.7%
2008	9.6%	23.8% ¹

at the busiest period I had 12 open cases on my desk. I particularly enjoyed the cases that were orally argued. One of the best perks of my job was attending oral conference with the judges after hearing the parties argue. It was great to be present during the discussion of the outcome of the case and the insight into the law I gained was invaluable. The Court also conferenced regularly to discuss cases that were particularly challenging or if the Court had not been able to reach a decision after circulating drafts.

In addition to drafting opinions, clerks are also responsible for making changes or updating the templates (which are described in Dean Burnett's article), reviewing the advanced sheets from West, reading all Idaho Supreme Court and Court of Appeals opinions as they are issued, and reading editions of the Criminal Law Update because the Court of Appeals adjudicates primarily criminal cases.

There are many reasons why I describe my clerkship as the perfect transition between school and private practice. It was an eight-to-five job; I received good compensation; the benefits included health, vision, and dental insurance; and the people I worked with were awesome. We took turns providing treats for the office every Wednesday and went to lunch together the

We took turns providing treats for the office every Wednesday and went to lunch together the first Friday of every month.

first Friday of every month. It was both a comfortable learning environment and a lot of fun. Judge Perry was an excellent mentor and the lessons I learned will help me successfully practice law in this great state. I appreciate that so many recent graduates can have the clerkship experience in Idaho. I recommend a clerkship to any graduate who might not be sure what area of the law he or she wants to work in, who does not know where to settle geographically, or who may be a little hesitant about entering the real world and would like a year of close mentoring. In my experience, clerking was the perfect transition between law school and a legal career.

About the Author

Christian Carl Christensen II graduated from the University of Idaho College of Law magna cum laude in 2007,

and before that he earned a triple major at Willamette University. After graduation, Chris clerked for the Honorable Darrel Perry on the Idaho Court of Appeals for 27 months. Chris loves his current job at Andrade Law Office, Inc., where he specializes in family-based immigration. Chris has been involved in various aspects of the Idaho State Bar, including: grading bar exams, serving as the chair of the Young Lawyers Section, working with the Idaho Immigration Law Pro Bono Network, volunteering for Family Law Clinics, helping craft the Idaho State High School Mock Trial problem for 2009 and 2010, and participating in Law Day.

Endnotes

¹ A special thanks to Anne-Marie Fulfer from the Career Services Office at the University of Idaho College of Law for providing me with these statistics.



BROOK B. BOND

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Zarian Midgley & Johnson, PLLC, a Boise-based firm specializing in intellectual property matters and complex litigation, is pleased to announce that **Brook B. Bond** has been named a Member of the firm. Brook becomes the fourth Member of Zarian Midgley and the first new **Member** since the firm was founded in October 2007. The firm now includes twelve lawyers and a patent agent.

Brook's legal practice focuses on intellectual property litigation, complex insurance coverage litigation, and complex commercial litigation. He has handled many complex cases involving multiple parties, millions of documents and complex legal and scientific issues. Brook earned his Juris Doctor from the University of San Diego, and also holds a Bachelor of Science degree in Genetics from the University of California-Davis.

Brook can be reached at bond@zarianmidgley.com or 208-562-4900.

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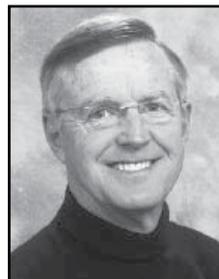
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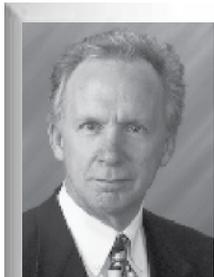
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MAKING SOMETHING OF THEMSELVES: HOW LAWYERS ENTERING THE PRACTICE IN THE LATE 70s DID IT

Dennis S. Voorhees
Voorhees Law Firm

One of the enduring themes former New York Times columnist Russell Baker wrote about in his Pulitzer Prize winning memoir, *Growing Up*, was how his dear mother constantly nagged at him to buckle down, work hard, and *make something of himself*. Whether or not the mothers of lawyers I write about now used that refrain remains a matter of speculation, but this much is clear: in making something of themselves they did so without the benefit of Twitter, LinkedIn, or Facebook. How did they do it? That's the subject of this piece.

Lisa McGrath, a 2008 Idaho State Bar admittee, asked me to contrast her article on how social media marketing is revolutionizing the practice of law for her colleagues with some insights on how lawyers of my generation



Dennis S. Voorhees

— those entering the practice in the late 1970s — built their practices. One of our biggest challenges — after more than 30 years — was even remembering.

Yellow Pads and Time Sheets

There was no Internet; nor were there personal computers, fax machines, or cell phones. Many of us had IBM Selectric typewriters and mag-card typewriters in our offices. Westlaw and LexisNexis, electronically searchable legal databases, were not generally available to us until the mid-1980s.

Most of us entered offices with existing practices. It was a matter of scrambling to learn the law we needed to responsibly represent our clients. For the most part, we were not expected to get new business so much as we were expected to get our assigned work done in a reasonable amount of time.

Practice settings had a lot to do with how one went about building skills, reputation, and clientele. At about the same time J. Walter Sinclair was developing his practice in a largely insurance defense firm in Twin Falls, Clive Strong was em-

For the most part, we were not expected to get new business so much as we were expected to get our assigned work done in a reasonable amount of time.

barking upon a natural resource law career with the Idaho Attorney General's Office. Charlie Creason had joined his father's three-generation law practice in Rupert when Howard ("Howie") Belodoff was starting—fresh out of law school — on a fellowship project, representing prisoners in Boise. Scott Campbell was trying his first jury trial for the Twin Falls County Prosecutor's office (six days after law school graduation on a provisional practice license) as Susan Roy was very likely in an adjoining courtroom arguing a domestic relations motion.

Imagination and Innovation

Each had a distinct focus. Each went about his and her work in unique and effective ways. Imagine Howie Belodoff, while still a law student at the U of I, seeing a notice of the Reginald Heber Smith Fellowship and then submitting a proposal that would fund his first two years in the practice of law. Howie worked out of the Boise offices of Idaho Legal Aid, which provided him space and clerical support. As he was arriving, his supervising attorney was departing for another position. Howie ended up supervising himself, spending hours on end at the Idaho Supreme Court Law Library reading Wright and Miller on Federal Practice and Procedure. He took over a case already filed, challenging the failure of the prison to provide an adequate law library for inmates. Howie had plenty of willing though discerning clients. At the conclusion of his two year fellowship he took a position with Idaho Legal Aid Services where he remains to this day as associate director.

Realizing Childhood Aspirations

Some knew at a very early age what they wanted to do with their lives and their careers. While a student a Wendell High School in the late '60s Clive Strong

aspired to practice natural resource and environmental law and methodically set about to accomplish his goal. After graduating from the University of Idaho College of Law in 1978, Clive entered private practice. A year later he headed to Tacoma, to teach at the University of Puget Sound Law School for two years. Then off to the University of Michigan for one year to earn an LLM before returning to Idaho in August 1983 to assume a position with the Idaho Attorney General. He became the chief of its Natural Resources Division in December 1984. A position he holds to this day.

Despite seemingly interminable litigation and negotiations with irrigators, Indian Tribes, the federal government, and power companies, along with two trips to the nation's capitol to argue Idaho's cases before the United States Supreme Court, Clive remains a thoughtful and humble man, reflecting recently that he finds more value in listening than talking. He sees himself as a problem solver. Persistence pays off: fair accommodations — however unlikely they may appear at the outset — can be achieved if people are willing to push through their self-imposed boundaries. He's as good an example as one can find that it is possible to disagree without being disagreeable.

A Gamble that Paid Off

Some find great value in talking. My good friend Wm. Breck Seiniger can "hold court" and regale with story and exploits as well as anyone I know. I have always thought that Breck was the law's answer to the extreme athletes we see in Olympic competition, where the byword is "just because you love it!" Amazing courage, energy, and creativity; I don't know how else to describe him. My personal theory is that Breck has extra dopamine receptor sites that need to be doused by far greater challenges than

mere “normals” would ever care to think about.

Breck started his law career in 1979 with the Pocatello law firm, Racine, Huntley and Olsen. Perhaps because someone told him that Boise had too many lawyers, Breck left the firm in the summer of 1980, sold his sports car, bought a beat-up Plymouth Valiant, and with a dog-eared copy of Jay Foonberg’s legal classic *How to Start & Build a Law Practice* in the trunk, set off across the Snake River plain to Boise. He took the proceeds from the sale of his sports car, rented a one-room apartment, negotiated a \$350 office with part-time secretary and conference room arrangement, and let every lawyer he could find know that he was now accepting clients of every kind and description.

Breck says that John Runft and the late Allyn Dingel taught him to love the profession, not just practice it. He credits John Runft as being unsparing with his help and support throughout the development of his practice.

Two hallmarks of Breck’s practice are cutting-edge technology and bold, effective advertising. It would not be unusual to walk into a federal courtroom in Boise and see a team of defense techies from Chicago scrambling to stay up with Breck and his laptop. The back flap of the local phone book, out-of-town counsel will find back at the hotel, might well portray a dashing pose of Breck before an adoring jury.

Envisioning a Secure Niche

Boise attorney Scott Campbell could quite easily have had a very successful career handling municipal, zoning, and commercial law matters with the top-drawer law firm he joined in 1984 after an already successful career in county government law at the Ada County Prosecuting Attorney’s Office. But Scott wanted to create his own niche and sensed he could do so if he acquired the necessary skills to represent clients in the recently-established Snake River Basin Adjudication. But how? That was Scott’s challenge.

First, surmising that a little legal knowledge couldn’t hurt, he attended a seminar on water law sponsored by the Idaho Water Users Association (IWUA) at Redfish Lake Lodge, attended by about 20 people. The gathering gave Scott a chance to meet with veteran water law attorneys and hydrologists who practiced the arcane art of water law.

After gaining some fundamental skills and understanding of the Adjudication issues, Scott began giving pre-

He took the proceeds from the sale of his sports car, rented a one-room apartment, negotiated a \$350 office with part-time secretary and conference room arrangement.

sentations and seminars to existing and prospective clients. Though he may have learned more than he taught at the initial presentations, he soon acquired a high degree of insight and talent that made his talks exceedingly valuable for attendees. By 1987 Scott was actively involved with IWUA’s Legislative Committee and has subsequently testified not only before various Idaho legislative committees on water law issues, but also before subcommittees of the U.S. Senate and the U.S. House of Representatives on water resource issues. Imagine where inspiration, effort, and perseverance can take an enterprising lawyer.

Small Town Roots, Lasting Community Foundations

Charlie Creason and Alan Stephens each found ways to make their communities better places through their labors in service clubs, church organizations, and community activities. Working in and about Rupert, Charlie contributed to the society his father and grandfather helped build. He served three terms as Minidoka County Prosecuting Attorney, being first elected just three years out of law school. Charlie would be the first to tell you that Rupert attorneys are known to work as hard at the bar of justice as they do after hours in the bar – or local pub, that is. Charlie keeps that tradition alive through ownership and operation of *Henry’s at the Drift Inn*, a Rupert fine dining establishment named in honor of Charlie’s grandfather, Henry Vernon Creason, a prominent local attorney who arrived in Rupert in 1919 to begin the practice of law.

Al Stephens may not have spent as much time as Charlie in local pubs, but around Idaho Falls he’s probably coached more kids, attended more church meetings, and served at more service club functions than any other Upper Snake region lawyer.

Combining courtroom talent and transactional lawyering skills is rare enough these days, but rolling all of that

in with world-class service to community and professional organizations sets Walt Sinclair apart from his peers. Walt came from a family committed to professionalism and community service, starting out in Twin Falls but now with a regional practice based in Boise. His community service work is far too great to cite here but has included terms as president of the Magic Valley Regional Medical Center Foundation, Campaign Chair for the Magic Valley United Way, and National Chair of the American Heart Association. His professional honors include being a Fellow of the American College of Trial Lawyers and President of the International Association of Defense Counsel.

Twin Falls domestic relations attorney Susan Roy probably summed up the marketing strategy of the lawyers entering practice in the late ‘70s as well as anyone when she said, “it was all about word of mouth.” People talk. They always have and they always will. Do your best, hope that it will get noticed, and hope that the word gets out to the right people. Word of mouth was the viral marketing strategy of that era. It remains so today. Whether hammered out on a Selectric one page at a time, or tweeted on the Internet to 30,000 followers, no technology can replace hard work, perseverance, and community service as the foundation of a successful legal career.

About the Author

Dennis S. Voorhees is a principal in the Twin Falls law firm *The Voorhees Law Firm*. He has been a practicing lawyer since 1978. He is both a certified elder law attorney (*National Elder Law Foundation*) and a certified estate law planning specialist (*Estate Law Planning Specialist Board, Inc.*). He is the Idaho representative for the *Special Needs Alliance*, an organization of attorneys specializing in the establishment of trusts for persons with disabilities. His practice areas include disability trusts, elder law, and estate planning.

SOCIAL MEDIA, THE BIGGEST COCKTAIL PARTY ON THE PLANET

Lisa M. McGrath
Lisa McGrath, LLC

People say Twitter is like one big cocktail party.¹ And they're right. Twitter, Inc. ("Twitter"), a micro-blogging site – and other social networking platforms such as Facebook, Inc. ("Facebook") and LinkedIn, Inc. ("LinkedIn") – are the new form of communication.

And by that, I mean that of the more than 1.6 billion people that use the Internet everyday,² 44.5 million use Twitter worldwide.³ The number of unique visitors to Twitter increased by 959% in August 2009 alone.⁴

Facebook, a social networking website founded in 2004, had 350 million users as of December 2009, up from 150 million in January 2009,⁵ and roughly 45 million Facebook status updates are posted everyday.⁶

If Facebook were a country, it would be the eighth most populated in the world, just ahead of Japan, Russia and Nigeria.⁷

LinkedIn, a professional networking site launched in 2003, had 50 million unique users as of October 2009, and about one new user per second. When LinkedIn launched in 2003, it took 477 days – almost a year and four months – to reach its first million members. The last million took only 12 days.⁸

In terms of popularity, social media beats out email.⁹ The blogosphere is doubling between once and twice a year, and there are over one million blog posts daily.¹⁰ Ad spending on social media and blogging sites grew 119% in August 2009 alone,¹¹ and 94% of businesses continue to invest in social media.¹²

Why the rate of usage? Why the monetary investment?

Ask Dell, Inc. ("Dell"). Dell started tweeting Twitter-exclusive discounts from the Twitter-handle @DellOutlet in June 2007.¹³ A year later, it had over half of a million followers and had pushed sales to around \$3 million by June 2009.¹⁴ After two and a half years, the company claimed \$7 million in total



Lisa M. McGrath

They're investing in a conversation with us, because what we say on social media sites is the new advertising, as we are the new media.

Twitter-based sales.¹⁵ Why it worked, Dell has succeeded in using Twitter to transform its large corporation into a "mom and pop shop" for millions.¹⁶

Ask PepsiCo, Inc. ("Pepsi"), who is hoping for the same story when it announced in December 2009 that it's walking with its \$20 million television ad budget for the Super Bowl to invest it in social media instead.¹⁷ The campaign has been dubbed "The Pepsi Refresh Project."

Or ask Pepsi how it recently used social media for crisis prevention. In Fall 2009, Pepsi released its iPhone application for its AMP energy drink called "Before You Score," which broke women down into 24 types, suggested "lines" to ensure men had a successful night with them, and then encouraged men to share their exploits on Twitter and Facebook.¹⁸ Tweets blasting the application as sexist and derogatory quickly went viral on Twitter. Since Pepsi was monitoring the Twitter stream for chat about its brand, however, it was able to quickly pull the application, apologize, and avert a full-scale public relations nightmare.¹⁹

If asked, these companies would brush aside suggestions of social media as fad, and say they've adopted social media as a business approach. They'd say they're opting for a medium where they don't simply talk to the consumer, but the consumer talks back. In real-time. They're investing in a conversation with us, because what we say on social media sites is the new advertising, as we are the new media.

Lawyers Welcome

The legal profession, unsurprisingly, lags behind. In the 2009 Continuing Legal Education ("CLE") seminars I gave on Social Media and the Law, roughly 80% of attorneys didn't have laptops with them. Even more didn't know what

social media was. I was even asked to define "real-time," which Model Rule of Professional Conduct 7.3 currently covers.²⁰

The hard numbers: Of the American Law 100 Law Firms, only 29 are tweeting. Worse, just nine of the 29 firms post to Twitter on a regular basis and timely basis, meaning they post news within 24 hours.²¹ Translation: Social media is becoming a missed opportunity for lawyers.²²

And it is an opportunity. Of the 38 American Law 100 law firms that have embraced two or more forms of social/new media averaged a 6.46% increase in revenue, with the 17 firms using three forms averaging a 5.93% increase, and the 7 firms using four or more, averaging a 6.5% increase.²³

Moreover, the best in business use social media. The fastest growing Fortune 500 companies adopt social media marketing initiatives at much higher rates than other companies. Of these, 68% monitor mentions of their company name or brand on social media sites, 34% reported that they were social media to communicate with vendors and suppliers, and 26% cited Twitter as an important vehicle for communicating with outside partners.²⁴

Perhaps most important, roughly 93% of Americans believe you *should* have a presence on social media sites.²⁵

The Afterparty

Coming up with a strategic plan that maximizes the benefits of social media (monitoring the competition, brand/reputation management, crisis prevention, customer service, and marketing) while minimizing risks (implementing best practices, enforcing a social media policy), is so last decade.

What's now? Look for location-based marketing through services such

as Foursquare²⁶ and Gowalla,²⁷ and their applications on mobile phones across the globe.

What next? Lawyers will find a way to use these location-based technologies to market their firms, manage their brands, and offer superlative customer/client service. How do you do this? I leave this, and whatever else shows up at the party next, to you.

About the Author

Lisa McGrath runs *lisa mcgrath, llc*, an exclusive flat fee law firm that focuses on solving legal problems related to social media and Web 2.0 execution, including privacy, advertising, intellectual property, employment, and commercial law issues. She also advises law firms and companies on strategic social media use and is a frequent lecturer on *Social media & the law*.

McGrath is a graduate of American University, Washington College of Law. She is a former Capitol Hill Counsel and previously clerked for Chief Justice Daniel Eismann of the Idaho Supreme Court. McGrath co-founded Social Media Club Boise, co-organized Idaho Startup Weekend, and is Chair of a section of the Idaho State Bar.

She can be found online at <http://iammcg.com/>, <http://twitter.com/tweet-mcg>, and <http://www.linkedin.com/in/lisammcgrath>.

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¹⁷ Christina Warren, *Pepsi to Skip Super Bowl Ads in Favor of \$20M Social Media Campaign*, (December 23, 2009), <http://mashable.com/2009/12/23/pepsi-super-bowl/>, (Last visited February 7, 2010).

¹⁸ Adam Ostrow, *Alienate Your Female Customers, Pepsi has an App for That*, (October 12, 2009), <http://mashable.com/2009/10/12/amp-before-you-score/>, (Last visited February 7, 2010).

¹⁹ Adam Ostrow, *Pepsi Pulls AMP's Controversial "Before You Score" iPhone App*, (October 22, 2009), <http://mashable.com/2009/10/22/pepsi-amp-before-you-score/>, (Last visited February 7, 2010).

²⁰ American Bar Association, *Model Rules of Professional Conduct*, Available online at: http://www.abanet.org/cpr/mrpr/rule_7_3.html, (Last visited February 7, 2010).

²¹ See http://legalblogwatch.typepad.com/legal_blog_watch/2010/01/of-amlaw-100-firms-29-are-tweeting.html

²² But lawyers should be aware that while participating in social media, they are still bound by the ethics rules. See e.g. Philadelphia Bar Association's Professional Guidance Committee: Opinion 2009-02. Judges have similar concerns. See e.g. New York Advisory Committee on Judicial Ethics: Opinion 08-176 (2009); North Carolina Judicial Standards Commission Inquiry No. 08-234 (2009).

²³ Law.com, *Of Am Law 100 Firms, 29 Are Tweeting*, (January 2010), http://legalblogwatch.typepad.com/legal_blog_watch/2010/01/of-amlaw-100-firms-29-are-tweeting.html, (Last visited February 7, 2010).

²⁴ Tamara Schweitzer, *Study: 500 CEOs Aggressively Use Social Media for Business*, (November 25, 2009), <http://www.inc.com/news/articles/2009/11/inc500-social-media-usage.html>, (Last visited February 7, 2010).

²⁵ Frederic Lardinois, *Study: 93 Percent of Americans Want Companies to Have Presence on Social Media Sites*, (September 26, 2008), http://www.readwriteweb.com/archives/study_social_media_presence.php, (Last visited February 7, 2010).

²⁶ Foursquare, <http://foursquare.com/>, (Last visited February 7, 2010).

²⁷ Gowalla, <http://gowalla.com/>, (Last visited February 7, 2010).



IDAHO COURTS

Chief Justice Daniel T. Eismann
Idaho Supreme Court

State of the Judiciary Address

January 21, 2010

Mr. Speaker and distinguished members of the Idaho House of Representatives, my colleagues on the Court, and fellow Idahoans.

Mr. President, Mr. President Pro Tem, and distinguished members of the Idaho Senate, my colleagues on the Court, and fellow Idahoans.

Thank you for inviting me to report on the state of the Idaho judiciary. It is an honor to be invited into this historic chamber that has been refurbished to its prior glory in our magnificently restored and rededicated capitol. In a word, the state of the Idaho judiciary is "excellent."

I want to explain why I say that, but more importantly I want to thank you for all you do in helping us to provide an excellent judiciary for all Idahoans. I will highlight some of the legislative action that has laid the foundation upon which Idaho's outstanding judicial system has been built.

Idaho's court system began, as did most states, with several disconnected and individualized courts. At statehood, Idaho's courts consisted of a supreme court, district courts, probate courts, and justices of the peace. Later, as towns grew, police courts were added. The justices of the peace and police court judges were not lawyers, had no formal legal training, and generally worked part-time, holding court in pool halls, barber shops, cafes, homes, or wherever it was convenient.

In the 1960's, the legislature in its foresight began making the constitutional and statutory changes necessary to transform the various courts within our state into a modern, streamlined judicial system.

Prior to that time, the Supreme Court had no administrative authority over any of the lower courts. It could only review their decisions on appeal. In 1961, the legislature proposed, and the voters approved, a constitutional amendment that provided, "The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court." That has enabled the Idaho judiciary to become a state court system serving citizens throughout Idaho, rather than simply a variety of courts operating in separate and independent counties and judicial districts.

In 1967, the legislature created the position of Administrative Assistant of the Courts which was changed seven years later to the Administrative Director of the Courts. William F. Lee was the first administrator, followed by Carl Bianchi, and then by Patti Tobias. I did not know Mr. Lee, but I am familiar with the work of both Carl and Patti. They have, with their vision and leadership, been indispensable in assisting the Supreme Court to administer a unified state court system in Idaho. That could not have occurred without the legislature's foresight in creating that position.

Providing the Supreme Court with administrative staff and resources has over the years enabled it to implement various innovations necessary to continually improve our judicial system and to respond to new challenges. Those programs include trainings for judges, trial court administrators, court clerks, court reporters, jury commissioners, and court interpreters, and also multi-disciplinary trainings open to all who are involved in specific areas such as children and families and problem-solving courts. The Supreme Court also has thirty-four committees, some chaired by justices, whose mission is to seek out and recommend ways to improve specific areas of the legal system.

In 1969, the legislature enacted legislation to create the magistrate division of the district court and to eliminate over 300 mostly part-time judicial positions in the probate courts, justice of the peace courts, and police courts. That legislation

took effect on January 11, 1971, and so this month begins the fortieth year of the magistrate division of the district court.

Many of the non-lawyer judges were well-respected and were allowed to apply to be appointed magistrates. Of the first sixty magistrates, only twenty were lawyers. However, as the non-lawyer magistrates left office, the legislature provided the necessary resources to replace them with attorneys.

I practiced in front of several non-lawyer magistrates, and, although they served well decades ago, the legislature's commitment to replace them with attorneys has been one of the most significant contributions to the quality of justice in Idaho. The matters that come before magistrate judges throughout the state are simply too complex to be handled by persons who are not trained in the law.

There are now 87 magistrate judges in Idaho, all of whom are attorneys. Each county has at least one resident magistrate judge who is available not only to preside over most of the court cases in the county, but also to be available after hours for arrest and search warrants, involuntary commitments, and other emergency matters.

Because they do not preside over all types of cases, the magistrate division is often characterized as a limited jurisdiction court. Magistrates in Idaho have the broadest jurisdiction of any limited jurisdiction judges in the nation. They preside over some of the most significant and challenging cases in the court system, such as high conflict divorces and all cases involving child custody and support; proceedings to protect abused and neglected children and victims of domestic violence; and juvenile delinquency cases. They also preside over probate cases, some of which involve millions of dollars; guardianships and conservatorships to protect children and incapacitated persons; traffic and misdemeanor offenses; small claims cases; and civil cases seeking up to \$10,000. During each of the last ten years, there have been over 450,000 cases filed in the magistrate division of the district court. In addition, magistrates often preside over problem-solving courts.



Chief Justice Daniel
T. Eismann

In my opinion, establishing a unified court system with accompanying administrative support and creating the magistrate division whose judges are now all attorneys are the two legislative achievements that are most responsible for insuring that Idaho provides high quality justice to those who come into our courts.

At one time, the Supreme Court shared this grand building with you and the executive branch. The Joint Finance and Appropriations Committee room is the old Supreme Court courtroom. The justices' offices and their law clerks were scattered throughout the capitol building on several different floors. The court did not even have a conference room in which to meet to discuss the cases after oral argument. In the late 1960's, the legislature funded the Supreme Court building, which the court occupied in 1970. Providing the Court with a wonderful building to house the justices and support staff, and later the Court of Appeals, has enabled the Court to organize and administer a unified and integrated court system as envisioned by our Constitution. The building also serves as a symbol of justice for the people of Idaho.

As our state population grew, so did court caseloads, including appeals to the Supreme Court. The legislature responded by creating the Idaho Court of Appeals, which began hearing cases in 1982. The number of appeals has steadily increased over the years, and the Court of Appeals has been essential to having appeals decided timely. Two sessions ago, the legislature added a fourth judge to the Court of Appeals, for which we are very grateful. Chief Judge Karen Lansing of the Court of Appeals is present along with the Court's newest member, Judge John Melanson. Judges Gutierrez and Gratton are hearing cases today.

In the 1980's, the legislature funded the Idaho Statewide Trial Court Automated Records System, commonly known as ISTARs, which was the first case management system in the nation that included every trial court case filed in the state. The funding also enabled the Court to place computers in all of the trial courts and clerks' offices in every county. The legislature later established the ISTARs fund to provide dedicated funding to maintain and enhance that system. Our ability to use new technology has dramatically increased the efficiency of the judiciary.

In 1986, the legislature enacted the

Unified Sentencing Act, under which judges set the minimum and maximum periods that a felon will be incarcerated. In 1995, it enacted the Juvenile Corrections Act, to transform juvenile justice by basing it upon accountability, community protection, and competency development. These enactments have greatly increased public trust and confidence in the adult and juvenile corrections systems.

Twice in 2009, Idaho received national recognition that highlights the excellence of the Idaho judiciary and affirms the legislature's dedication to insuring justice.

The first award was mentioned by the Governor in his State of the State address. It was the 2009 award for justice system innovation and improvement from the Justice Management Institute, headquartered in Denver, Colorado. Five key innovations were recognized that assist Idahoans, especially those residing in rural areas of our state.

Many Idahoans are unable to afford legal representation. In some of our courts, up to one-half of the litigants in contested domestic relations cases are not represented by attorneys. The legal resources available through Idaho Legal Aid and the Idaho Volunteer Lawyers Program are simply insufficient to meet the demand for legal services for low-income Idahoans. The award stated, "Idaho pioneered the development of court assistance offices to provide direct assistance to Idahoans who need help in understanding how to seek resolution of their legal disputes." There are almost 50,000 requests for assistance annually through these offices.

Also, self-represented parties throughout the state can go online and use interactive software to create legal forms by following printed or oral instructions. The courthouse doors are open to anyone with access to the internet.

The Institute also noted the work in Idaho to help children and families, including domestic violence courts, parent education classes and mediation programs. It lauded Idaho's problem solving courts, stating, "Idaho was one of the first states to make drug courts, DUI courts, and mental health courts function successfully in rural environments where it is difficult to access treatment services." Finally, it commended the Supreme Court for establishing a training and certification program for court interpreters.

These many accomplishments are a direct result of your work with the courts to bring justice to Idahoans.

The second national recognition was by the National Association of Drug Court Professionals. Each year since 2003, its members throughout the nation have elected one or two persons from half a dozen nominees nationwide for induction into the Association's hall of fame. In 2009, I was inducted into the hall of fame. That award was really earned by all of those who have worked to establish, expand, and improve problem-solving courts. They include judges and court personnel, prosecutors and defense attorneys, the Departments of Health and Welfare and Corrections, the Office of Drug Policy, county officials, and the Idaho legislature. It demonstrates that Idaho is a national leader in effectively addressing substance abuse and mental illness in the criminal justice system. National studies show that drug courts save taxpayers from \$4,000 to \$12,000 per offender, and those savings do not include reduced recidivism or the priceless value of restored families and saved lives.

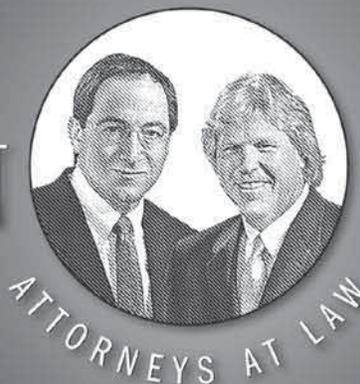
In my experience, Idaho is unique in that all three branches of government have worked together effectively to address difficult issues. National surveys indicate that the public expects this level of cooperation to solve societal problems. We appreciate the dedicated efforts and commitment of the Senate Judiciary and Rules Committee chaired by Senator Denton Darrington. I want to reaffirm our commitment to continue that cooperation for the benefit of our fellow Idahoans.

The excellence of the Idaho judiciary is in large part the result of the foresight of the legislature and its continued support. We will work with you to devise solutions that will maintain that excellence in these tough economic times. On behalf of the court, I thank you for your part in building a judicial system in which litigants can have confidence that their cases will be heard timely and decided fairly according to the law.

About the Author

The Hon. Daniel T. Eismann has been on the Idaho Supreme Court since January 1, 2001. He has served as Chief Justice since January 2, 2007. The views expressed in this article are those of the author and should not be interpreted as a formal statement of law or policy of the Idaho Supreme Court.

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COURT INFORMATION

OFFICIAL NOTICE SUPREME COURT OF IDAHO

Chief Justice
Daniel T. Eismann
Justices
Roger S. Burdick
Jim Jones
Warren E. Jones
Joel D. Horton

AMENDED - Regular Spring Terms for 2010

Boise January 13, 15, 19, 20 and 22
Boise February 10, 12, 16, 17 and 19
Wallace **April 5**
Coeur d'Alene **April 6 and 7**
Moscow **April 8**
Lewiston **April 9**
Boise (Eastern Idaho) May 3, 5, 7, 10 and 12
Boise (Twin Falls) June 2, 4, 7, 9 and 11

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2010 Spring Terms of the Idaho Supreme Court, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
Karen L. Lansing
Judges
Sergio A. Gutierrez
David W. Gratton
John M. Melanson

2nd AMENDED - Regular Spring Terms for 2010

Boise January 14, 21, 26 and 28
Boise February 18 and 23
Boise March 11, and ~~16~~, 18, ~~19~~
Boise April 8, 13, 15 and 20
Boise May 11, 13, 18 and 20
Boise June 10, 15, 17 and 22

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of setting of the year 2010 Spring Terms of the Court of Appeals, of the State of Idaho 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 for April 2010

(Supreme Court will not be hearing any oral argument in March)

Monday, April 5, 2010 – WALLACE

8:50 a.m. Northwest Pipeline v. Jose Luna.....#35469
10:00 a.m. Hausladen v. Sahlin.....#35996
11:10 a.m. State v. Barclay (Petition for Review)
.....#36237

Tuesday, April 6, 2010 – COEUR D'ALENE

8:50 a.m. Capstar Radio v. Lawrence.....#35120
10:00 a.m. Spectra Site LLC v. Lawrence.....#35119
11:10 a.m. Kirk-Hughes v. Kootenai County...#35730

Wednesday, April 7, 2010 – COEUR D'ALENE

10:00 a.m. Lake CDA Investments v. Dept. of
Transportation#35323/35326
11:10 a.m. Mortensen v. Stewart Title.....#35949

Thursday, April 8, 2010 – MOSCOW

8:50 a.m. Kootenai Hospital District v. Bonner
County.....#36217
10:00 a.m. State v. Jane Doe 2007-1 (Petition for
Review).....#36121
11:10 a.m. Viking Construction v. Hayden Lake
.....#36231

Friday, April 9, 2010 – LEWISTON

8:50 a.m. Duncan v. State Board of Accountancy
.....#35804
10:00 a.m. Alcohol Beverage Control v. Boyd
.....#36124
11:10 a.m. Taylor v. McNichols.....#36130/36131

Idaho Court of Appeals Oral Argument for March 2010

Thursday, March 11, 2010 – BOISE

9:00 a.m. State v. Gamino#35796
10:30 a.m. State v. Two Jinn, Inc.#36339

Thursday, March 18, 2010 – BOISE

9:00 a.m. State v. Two Jinn, Inc.#36629
10:30 a.m. State v. Coleman#36077

2010 Licensing Receipts and Stickers

The 2010 licensing receipts and membership card stickers will be mailed in mid-March. Please contact the Membership Department at (208) 334-4500 or astrouser@isb.idaho.gov if you need a new membership card.

Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Update 2/02/10)

CIVIL APPEALS

Habeas Corpus

1. Did the district court err in affirming the dismissal of Vickrey's petition for a writ of habeas corpus?

Vickrey v. Craven
S.Ct. No. 36675
Court of Appeals

2. Did the revocation of parole violate Layton's right to due process?

Layton v. Craven
S.Ct. No. 36718
Court of Appeals

3. Did the court err in dismissing McCoy's amended petition for failure to state a claim?

McCoy v. Craven
S.Ct. No. 36848
Court of Appeals

Prisoner Civil Rights

1. Did the termination of the Lightners' visiting privileges by IDOC violate their constitutional rights?

Lightner v. Hardison
S.Ct. No. 36259
Court of Appeals

Post-Conviction Relief

1. Did the district court err in summarily dismissing Brigg's successive petition for post-conviction relief?

Briggs v. State
S.Ct. No. 35530
Court of Appeals

2. Did the court err when it summarily dismissed Cook's petition for post-conviction relief?

Cook v. State
S.Ct. No. 36225
Court of Appeals

3. Did the court err in the summary dismissal of the ineffective assistance of counsel, prosecutorial misconduct and Fifth and Sixth Amendment claims alleged in Hansen's post-conviction petition?

Hansen v. State
S.Ct. No. 35778
Court of Appeals

Procedure

1. Did the court err by dismissing the residents' petition for judicial review?

Steele v. City of Shelley
S.Ct. No. 36481
Supreme Court

2. Did the court abuse its discretion in denying plaintiff's motion for an enlargement of time to obtain affidavits to respond to the motion for summary judgment and to complete discovery before the hearing on the motion for summary judgment?

Eakin v. Krosch
S.Ct. No. 36284
Supreme Court

Substantive Law

1. Whether I.C. § 49-808(1) is unconstitutionally void as applied to this case because it fails to provide fair notice that signaling is appropriate when roadway design necessitates merging from two lanes into one.

Burton v. Idaho Transportation Department
S.Ct. No. 36540
Court of Appeals

2. Did the district court err by denying Ward's petition to compel production of public records?

Ward v. Portneuf Medical Center
S.Ct. No. 36701
Supreme Court

3. Whether the court erred in dismissing, pursuant to the Idaho Tort Claims Act, several counts of Hoffer's complaint.

Hoffer v. City of Boise
S.Ct. No. 36731
Court of Appeals

Summary Judgment

1. Did the district court err in holding that Erickson could not raise any defenses involving Bagley's wrongful conduct in this action involving Sirius LC?

Sirius LC v. Erickson
S.Ct. No. 36466
Supreme Court

Tort

1. Did the district court err in ruling that the notice of tort claim was untimely because it was not filed within 180 days of the wrongful act?

Renzo v. Idaho Department of Agriculture
S.Ct. No. 36672
Supreme Court

CRIMINAL APPEALS

Evidence

1. Was there substantial competent evidence from which a jury could have found beyond a reasonable doubt that Johnson was guilty of grand theft by possession of stolen property?

State v. Johnson
S.Ct. No. 35635
Court of Appeals

2. Did the court err by admitting evidence under Rule 404(b) and in finding the probative value was not outweighed by the danger of unfair prejudice?

State v. Pokorney
S.Ct. No. 34945
Court of Appeals

Instructions

1. Whether the court committed reversible error when it substituted a corrected verdict form after the jury had begun deliberations.

State v. Wall
S.Ct. No. 32070
Court of Appeals

Restitution

1. Did the court have jurisdiction to order restitution in Jensen's case due to a delay of over six years from the date of judgment?

State v. Jensen
S.Ct. No. 36018
Court of Appeals

Search and Seizure

– Suppression of Evidence

1. Did the court fail to follow Fifth and Sixth Amendment law when it denied Adamcik's motion to suppress statements made while in custody and after the invocation of the right to counsel by Adamcik and his parents?

State v. Adamcik
S.Ct. No. 34639
Supreme Court

2. Did the court err in denying James' motion to suppress and in finding the officer's actions were justified under the community caretaking function?

State v. James
S.Ct. No. 36210
Court of Appeals

3. Under the Supreme Court's decision in *Arizona v. Gant*, was the search incident to arrest in this case unconstitutional such that the evidence found in the search should have been suppressed?

State v. Newman
S.Ct. No. 35988
Court of Appeals

Sentence Review

1. Did the court abuse its discretion by relinquishing jurisdiction?

State v. Maschek
S.Ct. No. 36580
Court of Appeals

Sex Offender Registration

1. Whether the retroactive application of Idaho's Sexual Offender Registration Act, as amended in 2001 and subsequently, violates Idaho laws prohibiting retroactive laws and the *ex post facto* provisions of the Idaho and U.S. Constitutions.

State v. Hartwig
S.Ct. No. 36460
Supreme Court

Summarized by:
Cathy Derden

Supreme Court Staff Attorney
(208) 334-3867



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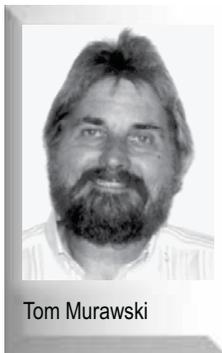
FEDERAL COURT CORNER

Tom Murawski
United States District and Bankruptcy Courts

New Lawyer Representative Appointed

Thomas B. High was appointed as the new Lawyer Representative replacing outgoing Lawyer Representative Barry McHugh. He joins current Lawyer Representatives Steve Andersen, and Alan Stephens and Circuit Representatives Deb Kristensen and Larry Westberg.

Mr. High is a partner in the law firm of Benoit, Alexander, Harwood & High, LLP. After graduating cum laude from the University of Utah in 1973 with a Bachelor of Science degree in Psychology, Mr High pursued graduate work at the University of Tennessee before being employed by the Department of the Interior. He obtained his Juris Doctorate in 1979 from the University of Idaho School of Law, after which he returned to practice in his hometown of Twin Falls, Idaho. His diverse practice includes personal injury litigation, workers compensation, insurance, business and commercial litigation, contracts and real estate. Mr. High is a member of the American Bar Association, the Idaho State Bar, and has served as past president of both the Fifth District Bar Association and the Idaho Association of Defense Counsel.



Tom Murawski

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

District of Idaho Announces Availability of Community Grant Funds for 2010

The District of Idaho has announced that a total of \$5,675 will be available for the Community Grant Program for 2010. The purpose of this program is to enhance public trust and confidence in the



judiciary, promote better understanding of the judiciary and legal processes, and improve communication with the public about the role of courts and the legal process. This grant funding must be related in some way to community education. Applications should briefly describe the organization, association or group, the date organized, history, purpose and tax status. Applications must be submitted or co-signed by an active member of the Bar of the U. S. District and Bankruptcy Court for the District of Idaho. Only one application can be submitted by a single organization or entity. Preference will be given to non-profit agencies or organizations. Deadline for submission of completed applications is May 1, 2010 and should be e-mailed in pdf format to Clerk@id.uscourts.gov. Applications and other information on this Program is available on our website at: www.id.uscourts.gov under Community Outreach.

'Start' Court Successfully Completes First Year

The District of Idaho celebrated the first anniversary of its "START" program (Success through assisted Recovery and Treatment) with the graduation of three former offenders. The incentive for completion of this program is a one-year reduction in the term of supervised release after serving a sentence of incarceration. The START Program, initially spearheaded by U.S. Magistrate Judge Mikel H. Williams, is somewhat patterned after the state drug and mental health courts which have existed for a number of years and have proven to be quite successful. The major differences being that it is entirely voluntary and the participants have already been convicted and served a term

of incarceration. The program assists re-entry into the community by directing resources toward recovery from substance abuse through treatment and counseling, maintaining a safe and sober environment, obtaining employment, pursuing educational opportunities, and actively engaging in community service. The District of Idaho is one of only 13 federal courts to have implemented this type of program. The program began in Boise in September, 2008, and was later implemented in Pocatello in April, 2009.

2009 Statistical Highlights: Bankruptcy and Civil Filing Increases

During calendar year 2009, Bankruptcy filings increased 45%, following a 41% increase during the prior year. Civil case filings also rose 28% during calendar year 2009. The number of criminal trials conducted during 2009 increased by 38%, while the number of civil trial days increased by 162%. A complete summary of all statistical data can be viewed on our website at www.id.uscourts.gov.

Upcoming District Conference Roadshows

Please mark your calendar with the dates of the upcoming Annual District Conference Roadshows: Pocatello - Friday, Oct. 22, 2010 at the Red Lion; Boise - Friday Nov. 5, 2010 at the Boise Centre. Stay tuned for specific details.

About the Author

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

MANAGING E-MAIL OVERLOAD: REDUCING VOLUME BY BEING MINDFUL OF OTHERS

Stephen M. Nipper
Dykas, Shaver & Nipper, LLP

As Abraham Lincoln once said, “[a] lawyer’s time and advice are his stock in trade.” Sadly, in this electronic world, email quickly eats into the time we have each day to earn a living. The first step in staying focused on billable work and not on email is to reduce email volume. Luckily, I have nine tips for helping you tame email overload:

1. Repeat after me: “My email habits impact others.” A Microsoft study from a few years ago found that it takes a worker on average 15 minutes to return to productive work after being distracted by a phone call or email. While 15 minutes seems extreme, it is easy to envision that every joke, cute video link, and funny picture which you forward by email to a co-worker will take them 1-5 minutes of time to read/view and return back to productive work. Take that 1-5 minutes of “wasted time” and multiply it by the number of co-workers you forwarded the email to...the total impact on business can be shocking. The reality is that forwarding funny e-mails to co-workers let’s them know it is OK to forward them to you (resulting in more email for you to process and review). Do yourself a favor—quit forwarding junk emails to others in your office at their work email addresses.



Stephen M. Nipper

2. We all have “home” and “work” email accounts. So does everyone in our offices. We need to ALL remember to only use our work email addresses for work purposes, forwarding anything non-work (including the aforementioned “joke, cute video link, and funny picture” emails) to your home email account. Doing so is really easy, just politely remind the next person that emails you such an email that you prefer to read emails like that at home, in your free time, and provide them with your home email address. Trust me, they quickly



catch on. Another approach is to address the issue in your office’s computer use policy; reminding employees that they have no expectation of privacy in their work email accounts and that you expect them to utilize their home email accounts for all personal emails.

3. When you do receive non-work email at your work email account from your friends/family, don’t read it. Instead, forward it home and deal with it later. Plus, when you respond to the email, you’ll be responding from your home email address.

4. Next, for every other legitimate email you are receiving at work that you don’t have an ethical or business reason to read, you need to forward it to your home email address. Then, for each of those sources of emails, you need to spend time updating your email address with them, changing it from work to home. While you are at it, consider unsubscribing from newsletters you aren’t really reading.

5. Even legitimate emails can be huge time wasters. We all need to remember that “reply to all” should never be our default. Instead, we should always ask, “Does each of these people really need to read my reply?” If the answer is “no,” then delete the email addresses from the reply of anyone that doesn’t need to know. Every time you do that, you’ve save someone else at least a minute of productivity.

6. Lawyers like to talk. Couple that with the fact that we are trained to be accurate, never failing to mention every last possible exception that can happen and you have a potential for email disaster. All of us need to do a better job of writing shorter email replies. Do we really need to type out every possible exception? Can we cut to the chase, make

Even legitimate emails can be huge time wasters. We all need to remember that “reply to all” should never be our default. Instead, we should always ask, “Does each of these people really need to read my reply?”

our point and remind the reader that he can follow up with any questions?

Venture capitalist Guy Kawasaki had a blog post (*Ten Things to Learn This School Year*) a few years ago in which he discussed the art of writing a two-minute response to an email. The technique is simple, “All you should do is explain who you are, what you want, why you should get it, and when you need it by.” It’s a great lesson for lawyers.

7. Find out if your Internet Service Provider (ISP) offers spam filtering and whether it is enabled. While your ISP can block more than 90 percent of the spam you receive (if you let them), you need to know and understand how and what they filter. My previous ISP had a policy whereby by default all filtered spam was automatically deleted. As you can imagine, that is a truly frightening prospect for a law firm. By logging onto the administrative account with your ISP, you can usually change settings regarding how long spam is kept, as

well as how the server-side spam filter settings are.

8. Your email client (e.g., Outlook) usually has spam settings that are adjustable as well. For instance, in Outlook you can change how tight/loose the settings are, as well as tagging particular behavior as being suspicious (e.g., presume all email with a return email address top level domain of .ru (Russia) is spam). Most email clients are “smart,” learning from the email you flag as spam and updating filters on the fly. Thus, there can be tremendous benefit to you in understanding how to flag spam as “spam” instead of merely deleting it. If you are having a severe problem with spam, you can also consider installing the open source (free) anti-spam plugin (works with most email clients) called “SpamBayes.” However you choose to filter spam, do not forget that you have a duty to review what was tagged as spam to make sure that legitimate mail (such as email from the court) was not flagged as spam.

9. We’ve all been taught that the “unsubscribe” link in spam is a way

By logging onto the administrative account with your ISP, you can usually change settings regarding how long spam is kept, as well as how the server-side spam filter settings are.

that spammers determine whether an email address is valid, and that clicking the “unsubscribe” link is pure folly. Depending on the type of spam, I completely disagree. Most spam for “legal products/services” is sent by legitimate vendors (albeit using a tacky marketing tactic). A legitimate vendor isn’t sending out millions of spam emails fishing for valid email addresses, nor are they interested in violating the CAN-SPAM Act, and thus, you really shouldn’t be afraid of their “unsubscribe” link. However, if the spam is trying to sell you a Rolex watch... I would stay

away from the “unsubscribe” link.

While Lincoln never had to deal with email, his words are something we should remember that everything we can do to have more time (and less stress) at work, the more “stock in trade” we have to sell.

About the Author

Stephen M. Nipper is a Registered Patent Attorney with Dykas, Shaver & Nipper, LLP in Boise. If you would like to test using any of the social media tools listed above with Mr. Nipper, you can find links to his social media accounts at <http://iMetNipper.com>.

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NOUNINESS AND SUCH: MAKE YOUR KEY WORDS COUNT

Mark T. Peters, Sr.
Solo Practitioner

“The main cause of wordiness is nouniness. If you bury the meaning of verbs in derivative nouns or derivative adjectives, you must come up with other words on which to hang the derivative nouns and derivative adjectives. You must grope around for groped-for verbs to hold up these mushy constructions.”¹

I understood the idea of nouniness before I ever learned a one-word description for the concept. Nouniness occurs when a writer transforms verbs into nouns. The problem is that nouns must be attached to sentences either by verbs or prepositions. So instead of using a perfectly good verb to state the thought of the sentence, we now need a noun and another verb or perhaps a compound preposition.



Mark T. Peters, Sr.

Let's look at the following sentence:

Acceptance of the premises by Tenant will occur upon the earlier of Tenant's taking possession of the premises, the completion of the improvements by Landlord or condemnation of the premises by a governmental entity.

There are four words that are nouns but could be used as verbs: acceptance, possession, completion and condemnation. Can we change the words into verbs and make the sentence shorter and easier to read?

First, note that the tenant is the actor in the sentence, not acceptance. In other words, this sentence uses the passive voice. So if we want to make a stronger sentence, we should make the tenant the subject. So, how about "Tenant accepts the premises upon the earlier of..." In another column I will talk about trying to put as much of the document as you can into the present tense. However, in this case, the tenant's acceptance will occur in the future, so maybe this is a future contingency that allows us to use the word "will." Better then would be



"Tenant will accept the premises upon the earlier of..."

The second noun that could be a verb is possession. Can we say "Tenant will accept the premises upon the earlier of possessing the premises...?" Perhaps, but it doesn't sound quite right, does it? One way to tell good writing is if it sounds good. In this case, it may be that lawyers are used to the idea of taking possession, but I believe that even non-lawyers would find this awkward. So let's go with "Tenant will accept the premises upon the earlier of taking possession of the premises..."

What about the Landlord's completion of the improvements? Again, this clause is in the passive voice, since the improvements are being performed by the landlord. I propose that we make the landlord the subject of the clause as follows, "Tenant will accept the premises upon the earlier of taking possession of the premises, Landlord completes the improvements..."

The last noun that can be changed is condemnation. Again, the governmental agency is performing the action, so we make it the subject of the clause as follows: "a governmental agency condemns the premises." Now how does the sentence read?

Tenant will accept the premises upon the earlier of taking possession of the premises, Landlord completes the improvements or a governmental agency condemns the premises.

Just a couple of more thoughts. The word will was used to show a future contingency; however remembering last month's column on "shall," perhaps we should use the word "must." Also to clarify that the Tenant's acceptance must occur upon the earlier to occur of a particular event, let's enumerate them. So the final version of the sentence is:

Nouniness occurs when a writer transforms verbs into nouns. The problem is that nouns must be attached to sentences either by verbs or prepositions.

Tenant must accept the premises upon the earlier to occur of the following: a) Tenant takes possession of the Premises, b) Landlord completes the improvements, or c) a government agency condemns the Premises.

The original sentence had 34 words and the revision has 30, a four-word improvement, but the sentence is also clearer and easier to read. The four-word improvement may not seem like much, but I downloaded a master financing agreement that had 7000 words, roughly 200 times the length of our sentence. Using the revised sentence as a model, we might be able to cut 800 words from that finance agreement, 800 words that don't add to the meaning or understanding of the document or the transaction.

The second part of this article deals with the use of the word "such." Lets use an example took from a contract I found filed with the SEC:

Rent shall be paid to Landlord at its address recited in Section 26.7, or to **such** other person or at **such** other address as Landlord may from time to time designate in writing... In addition to interest, if any **such** Rent or other payment is not received within

ten (10) days from the date it is due, Tenant shall pay to Landlord a late charge equal to five (5%) percent of the amount of **such** Rent or other payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. [Emphasis supplied]

There are a number of entries in the definition of "such," but I think that the definition that comes closest to its usage by attorneys is "of the same, class or type."² However, if you look at the use of "such" in the above quotation, you will see that the word is not referring to a class of persons, addresses or Rent, but rather to specific items. In using the word "such," attorneys are attempting to be more precise by using a word that denotes a class of objects to refer to specific items. Plus, it sounds lawyerly!

But can "such" be removed or replaced and still provide the meaning that the attorney wants? Sure it can:

Rent shall be paid to Landlord at its address recited in Section 26.7, or to **any** other person or at **any** other address as Landlord may from time to time designate in writing... In addition to interest, if any ~~such~~ Rent or other payment is not received within ten (10) days from the date it is due, Tenant shall pay to Landlord a late charge equal to five (5%) percent of the amount of ~~such~~ **the** Rent or other payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant's delinquency. [Emphasis supplied]

In the first sentence, I changed the word "such" to "any." Since we are not talking about a class of persons or addresses, but specific addresses designat-

However, while I can justify the change based on inappropriate usage, the real reason to make the change is that the contract reads better, it flows more smoothly.

ed by the Landlord, "such" is inapplicable. It may seem strange to use the word "any" to identify a specific person or address, but think about it. In this usage, we are identifying a specific person, who may be anybody, and a specific address, which may be anywhere. The specificity comes from the Landlord's designation.

In the second sentence, I deleted the first use of the word and replaced it with "the" in the second use. Again, in that sentence, "such" was referring to specific payments, not to a class of payments. Both of these changes clarify that the contract is referring to a specific payment.

However, while I can justify the change based on inappropriate usage, the real reason to make the change is that the contract reads better, it flows more smoothly. Finally, to show what happens if we get rid of the word shall and make some other changes I will talk about in the future, I would rewrite the section to read as follow:

Rent must be paid to Landlord at the address given in Section 26.7, or to any other person or at any other address Landlord may designate in writing... In addition to interest, if any Rent or other payment is not received within 10 days from its due date, Ten-

ant will pay Landlord a late fee equal to 5% percent of the amount of the Rent or other payment to *reimburse Landlord for its cost and inconvenience incurred because of Tenant's delinquency.* [Emphasis supplied]

The word count goes from 94 to 81. Unless the italicized language is required by state law, I would delete that as well and the word count drops to 68. Next month I plan to discuss why it is important to reduce the number of words used.

About the Author

Mark Peters graduated from the University of Michigan with a B.A. in Political Science and Economics and the University of Michigan Law School. He has been a member of the State Bar of Michigan for about 30 years and a member of the Idaho Bar since September, 2009. Most of his career has been spent as in-house counsel for a number of corporations drafting a variety of agreements and documents. Presently he is developing a practice in business law. You may contact him at mpeters47@ca-bleone.net.

Endnotes

¹ *Mightier Than the Sword: Powerful Writing in the Legal Profession*; Good, C. Edward; Blue Jeans Press; Charlottesville, VA (1989), p.47

² Merriam-Webster Online

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WALKING AWAY FROM THE AMERICAN DREAM:

HOW ATTORNEYS ARE COUNSELING CLIENTS WITH UNDERWATER MORTGAGES

Laurie Reynoldson

The Reynoldson Group, PLLC

When the concept of the “American Dream” was first discussed by James Truslow Adams in *The Epic of America*, Adams’ description was of the “American dream of a better, richer, and happier life for all our citizens of every rank.” The American Dream has evolved over the years to include the enjoyment of economic success, including home ownership. Indeed, the excessive materialistic benchmarks now associated with achieving the American Dream include owning a McMansion and parking brand-new cars in the driveway and annually upgrading to the newest and largest HDTV. With the standards set higher than ever, the American Dream no longer seems achievable to some, particularly in this economy. Is it possible to always have a better, richer and happier life than the generation before us?

Coming out of one of the deepest recessions the United States has ever experienced, the idea of the American Dream seems to be changing again and, for many Americans, the opportunity to own their own home is moving in the reverse: from reality to an aspiration. In some instances, homeowners believe that letting go of their home is their only option. Homes are major investments, with most homeowners having the bulk of their retirement tied to the equity in their homes. Why then, would it ever make sense to walk away from that equity and begin building anew?

Take Allison, for example. Allison is 34 years old, college-educated and, until recently, was gainfully employed by a large local corporation. She receives an unemployment check, but has been unable to find full-time, salaried employment since being laid off last August. She has returned to school and is pursuing a degree in marketing. Her brother lives out of state and was diagnosed with cancer last year, but has no health insurance. Allison purchased her home in Nampa three years ago, and financed



Laurie Reynoldson

Even if the market appears to be starting its slow recovery, some properties may be so far underwater that it would take years and another run-up in market prices to recover the value of the property.

the purchase with a 3-year adjustable rate mortgage. Although her monthly house payment nearly doubled recently, her home is now worth \$40,000 less than the remaining principal balance on her mortgage, and homes prices in her neighborhood have declined 30% from what they were in 2006. Between making mortgage payments on a limited income and helping her brother pay his medical bills, Allison has depleted her savings account. She has been unsuccessful in negotiating a modification with her lender, and she is not optimistic that her financial picture will change any time soon. Last week, she received notice from her lender that the lender was moving forward with a foreclosure sale.

Typically, homeowners like Allison are not surprised when a notice of mortgage default is delivered. They know that the mortgage payments have not been timely made, and they may be avoiding calls from the lender. There are a number of reasons in today’s economy that otherwise sound borrowers may fail to make their monthly mortgage payments: unemployment, unforeseen medical costs, inability to refinance a high-interest adjustable rate mortgage, excessive consumer debt and other reasons.

Some Tough Decisions

Whatever the reason for the default, whether homeowners choose to keep their homes generally depends on whether these hardships are temporary and how much equity they have in the property. While it may make sense for one homeowner to try everything possible to keep the home, another homeowner may just as soon walk away and let the property proceed through foreclosure.

Regardless of the path a borrower chooses to take, these decisions should not be made lightly or without careful and honest consideration. The home-

owner, with the assistance of an attorney, must realistically evaluate the homeowner’s current economic situation. This analysis includes determining the current value of the home. Just as home prices increased appreciably across the board from 2000 – 2007, home prices have fallen in nearly every market in the country. Some markets have been hit harder than others: Los Angeles, Las Vegas, Phoenix, Detroit. While Idaho has seen falling real estate prices, many believe that Idaho is better positioned than many other states. It is difficult to tell if the market has bottomed out, but real estate agents are seeing some movement of properties again. Even if the market appears to be starting its slow recovery, some properties may be so far underwater that it would take years and another run-up in market prices to recover the value of the property. Holding the property that long may not be part of the homeowner’s investment or retirement strategy.

Assuming that the property value will recover to the point that it exceeds the debt on the house, the homeowner must also realistically evaluate his ability to make current and future mortgage payments. This includes critically looking at what is being spent each month on housing costs and other costs, and whether the homeowner’s income will remain at least steady for the foreseeable future. If the homeowner is out of work and does not have skills that translate to other industries or job categories, it may be difficult to find new employment. Or if the homeowner or someone in the homeowner’s family is critically ill or injured, and the medical bills continue to mount but there is no medical insurance, it is unlikely that the homeowner’s financial picture will improve in the short-term. Whatever the situation, the homeowner, along with an attorney, must look critically at the hard

facts to determine whether an alternative to foreclosure makes financial sense.

Conventional wisdom indicates that no more than 25% of gross monthly income on shelter. Many of the new federal loan modification programs have raised that threshold to 31% of gross monthly income. That is, no more than 31% of a homeowner's gross monthly income should be used to pay housing costs (including taxes and insurance) or the homeowner is at "serious risk" of defaulting on the loan. These numerical thresholds say nothing of the potential emotional drain on a homeowner: if the homeowner is paying more than a third of his income on housing costs, are there other areas of the homeowner's life that are suffering? More and more homeowners are realizing that there are things in their lives that are more important to them than their address or owning their own homes, like spending time with friends and family, enjoying leisure and recreational activities, pursuing an education and seeking routine medical care. If housing costs are compromising the homeowner's quality of life, the homeowner may be increasingly tolerant of letting the home go.

Additionally, to avoid foreclosure, the homeowner and his attorney are in the tough position of convincing the lender(s) to accept less money than is outstanding on the original debt. If there is only a first position deed of trust recorded against the property, the homeowner and his attorney may have an easier time negotiating an alternative to foreclosure. However, many homes are saddled with second and third mortgages because many homeowners have borrowed against the equity in their homes. Regardless of the number of lenders involved, each lien holder must agree to take less money than was originally promised in order to avoid foreclosure. For junior lien holders, this sometimes means they will not receive a dime from the homeowner – hardly the benefit of the bargain they initially made with the borrower. Whatever the circumstances, these negotiations are time-intensive and can be emotionally draining. Some homeowners choose to walk away from their homes because they simply do not have the time or energy – or stomach – to devote to trying to save their homes from foreclosure.

There are alternatives to losing a home to the foreclosure process: non-traditional financing like borrowing from a friend or family member, loan modification, negotiating a short-sale or deed-

Even if a workable solution can be found with the lender, homeowners must understand that there are some lesser-known consequences of foreclosure that may impact them even after they walk away from their home.

in-lieu of foreclosure with a lender, and even bankruptcy. Even if a workable solution can be found with the lender, homeowners must understand that there are some lesser-known consequences of foreclosure that may impact them even after they walk away from their home – and that is why consultation with an attorney is so important when facing foreclosure. For example, a lender is entitled to pursue a deficiency judgment against the homeowner to recover the difference between the original note amount and the amount the lender received at the foreclosure sale. A lender can even seek a deficiency judgment if the lender has agreed to allow the homeowner short-sale the property. Homeowners also may not realize that second and third mortgages are not automatically extinguished following a short-sale. Just because the primary lender agrees to a short-sale does not mean the liens of junior creditors are extinguished. To avoid the situation where their home has been sold but they still owe tens of thousands of dollars to other lenders, homeowners negotiating a short-sale should include all lenders in the conversations. Additionally, if a lender agrees to modify a loan by reducing the principal amount of the loan, the forgiven loan amount becomes taxable income to the homeowner. Depending on the homeowner's income bracket and the amount forgiven, the tax payment could quickly turn the forbearance into a tax burden. Despite doing everything they can to avoid foreclosure, some homeowners find themselves declaring bankruptcy in the end because they simply cannot afford to pay the deficiency judgment awarded to the bank following foreclosure or short-sale of their home. Homeowners facing these tough decisions would be well-served to consult with an attorney to fully understand the available options and possible consequences of walking away from their homes.

Attorneys, for their part, should be prepared to counsel their clients about

not only the legal issues involved in the foreclosure process, but also the emotional effects. There is no one-size-fits-all approach to these issues, and each situation requires the homeowner's attorney to clearly understand the homeowner's economic picture, goals and tolerance for all outcomes. In helping homeowners evaluate their options, many real estate attorneys are finding themselves in more of a counselor role – much like a family law attorney – called upon to assist their clients in dealing with issues of loss, guilt, grief and anger.

Finally, there has long been a societal stigma associated with losing a home through foreclosure or declaring bankruptcy. The self-imposed shame and guilt linked to these alternatives seems to have lessened significantly in the recent past. Is this because so many borrowers found themselves in the same boat – a sort of misery-loves-company empathy, perhaps? Even with the threat of being branded with the "foreclosed" or "bankrupt" titles, more homeowners than ever are making the conscious decision to walk away from their home, seeing it as a socially acceptable alternative and a financial planning tool. While most homeowners will try everything and anything to avoid the financial and emotional stigma of losing their home, some Idahoans believe that they have no other choice and choose to walk away from their homes. In the end, Allison may be one of those people. She may decide to give up on today's realization of her American Dream to begin chasing the dream again when she lands back on her feet. And in today's economy, that may be the best choice for other homeowners, as well.

About the Author

Laurie Reynoldson has practiced law in Idaho since 1998. Her practice is focused on commercial and real estate transactions, land use and entitlement work, and general business advising. Laurie and her husband, Mike, live in Boise with their yellow lab, Hank.

IN MEMORIAM

Donald Edward (Pidge) Downen 1931 - 2009

Donald was born in Asotin, Washington, Apr. 12, 1931, to Donald A. and Evelyn E. Downen. He was raised and attended school in Lewiston, Idaho. From 1949 to 1953 Donald attended the University of Idaho and graduated with a degree in Business. Donald married Geraldine Fountain in 1953 and to that union they had a son Mark Edward and daughter, Jaqueline Lee. Mark was killed in an automobile accident at 11 months old in 1954.

Donald worked in Wall Walla, Washington as a bookkeeper until he entered the US Army as a 2nd Lieutenant in Jun. 1954. He was honorably discharged in 1964 as a Captain. After the service, Donald returned to the U of I and attended law school. He was admitted to the Idaho State Bar on Oct. 19, 1959. On Aug. 1, 1960 Donald began working for Gigray and Boyd, attorneys in Caldwell, Idaho. Donald was a partner with William F. Gigray until Donald's retirement on Nov. 1, 2002. In 1970 Donald married Norma Clugston later that year they had a child, Rebecca.

During his career, Donald held many positions within the Caldwell community. He was appointed as a Commissioner of the Housing Authority of the City of Caldwell in 1968 until his retirement from the position in 2002. Donald was also a member of the Caldwell Junior Chamber of Commerce. After serving as the chamber's president from 1964-1965, Donald received the Distinguished Service Award from the chamber in 1966. Donald was selected to appear in the 1967 Edition of the Outstanding Young Men of America and was a former Lions Club member until 1966. Donald was a life member of the Caldwell Elks Lodge #1448. He was Exalted Ruler in 1971-1972, and a Trustee 1972-1982. In 1973-1974 he was District Deputy Grand Exalted Ruler of the Grand Lodge.

Donald is survived by his wife of 39 years, Norma Jean and his seven children, Jackie Downen, Rebecca (Scott) Catlett, Mike (Melissa) Clugston, Randy



Donald Edward (Pidge) Downen

Clugston, Alleen (Joseph) Winslow, Evelyn (Rich) Yoder, Glenna (Ken) Smith and numerous grand and great grand children. Donald was preceded in death by his son, his mother Evelyn Humphrey, his father Donald A. Downen and a step-father.

A funeral service was held on Wednesday, Nov. 18, 2009, at Flahiff Funeral Chapel in Caldwell. Interment followed at Canyon Hill Cemetery in Caldwell. Memorials may be made to the Elks Rehabilitation Hospital. Condolences may be submitted online at www.flahifffuneralchapel.com.

L. Charles Johnson 1927 - 2010

L. Charles Johnson passed this life at 4 p.m. J a n. 22, 2010, of cancer of the larynx while in Hospice of the Valley.

He was born in Pocatello, on Feb. 8, 1927. He married Marcene Sue Foreman on Sept. 5, 1953, who survives him and resides in their home in Phoenix, Arizona. They have four surviving children, Charles (and wife Emily) and granddaughters Olivia and Christianna, all of Pocatello, Idaho; a daughter, Kaari Georgia Swope (San Antonio, Texas); and sons, Ethan Whitney (Phoenix, Arizona), Eric Collins, (Oakland, California). He is also survived by his sister, Daisy Jones (Pikesville, Maryland), brother, James Jason Johnson (Boise, Idaho) and numerous nieces and nephews. His parents, Luvern C. Johnson and Jace Palmer Johnson, and his sister, Dr. Benita Mackie, have predeceased him.

Charles Johnson graduated from Pocatello High School, and served in the U.S. Army Armored (Tank) Corps in World War II. He then attended ISU and graduated from the Northwestern University (Chicago) School of Law in 1952, under the G.I. Bill of Rights, supplemented by a scholarship at law school.

He was employed by Montgomery Ward in Chicago, Illinois, after his graduation from law school, handling claims and litigation in the Western United States and worker's compensation in

the Chicago area. He resigned his position with Montgomery Ward in 1954, so that he might return to his home town of Pocatello and start a private law practice. In 1956 he commenced, with Gerald W. Olson, the Pocatello law firm Johnson Olson Chartered which continues in business.

He was admitted to practice before the Supreme Courts of the United States, Illinois and Idaho; the United States Tax Court; the Interstate Commerce Commission; the Federal Courts in Idaho and the Northern District of Illinois, and the following Federal Circuit Court of Appeals: Seventh (Chicago), Ninth (San Francisco), Tenth (Denver) and District of Columbia (Washington D.C.) and the Court of Appeals for the Federal Circuit.

He had been a member of the Chicago, Federal, and Idaho Bar Associations. In 1958 he was president of the Southeastern Idaho Bar Association. From 1976 to 1990 he was the Idaho designated trustee of the Rocky Mountain Mineral Law Foundation headquartered in Colorado. Mr. Johnson's professional work was in the areas of government regulation and in corporate and trial practice. He successfully represented governmental entities including the city of Pocatello in a defective sewage treatment plant dispute, entities in a Cassia County flood, taxpayers (including union members claiming mileage deductions), and corporations like Garrett Freightlines, Alumet and others in major disputes.

He served the Pocatello Chamber of Commerce as director from 1957-1961, vice president in 1959, and as president in 1960. He was made Chief of Pocatello on Jan. 24, 1957, a Chamber of Commerce award for distinguished service. He was selected Outstanding Young Man of 1959 and thus received the Distinguished Service Award from the Junior Chamber of Commerce. He has served on the Board of Trustees (1957-1964) and as regional vice president (1959-1961) and president (1960-1963) of the Idaho Society for Crippled Children and Adults (Easter Seal Society). He served as exalted ruler of Pocatello BPOE No. 674 (1962-1963), president of Washington School PTA (1963-1964); a past member of the Board of Trustees of the First Methodist Church of Pocatello (1957-1960 and 1969-1971); served on the Board of Directors for Pocatello Council of Camp Fire Girls, and as director of the Crown



L. Charles Johnson

IN MEMORIAM

Club; he was a Scottish Rite 32nd degree Mason (commander, Council of Kadosh 1970) and since 1993 has been the oldest living commander of the Pocatello Council of Kadosh. Mr. Johnson was a member of Northwestern University Law Alumni Association. He has served the Republican party as precinct committeeman and as a delegate to state conventions and was president of Eastern Idaho Lincoln Day in 1957.

In addition to numerous law directories he was listed in the National Social Directory, New York City, and Who's Who for Idaho. For decades he was a member of the Pocatello Rotary Club, the Alta Club of Salt Lake City, the National Lawyers Club, Washington D.C., the former Pocatello Country Club, now the Juniper Hills Country Club. Mr. Johnson and his wife, Marcene, established the John C. Foreman Green Room in the Stephens Performing Arts Center at Idaho State University.

At the request of the deceased no services were held. Following his wishes, his ashes will be returned to Pocatello.

Memorials may be sent to the following: Idaho State University Foundation, 921 South Eighth Ave., Pocatello, Idaho 83209, 208-282-3470 or to the Pocatello Parks and Recreation Department, 911 North Seventh Ave., Pocatello, Idaho 83201, 208-234-6232.

Condolences may be sent to: JOHNSON OLSON CHARTERED, P.O. Box 1725, Pocatello, Idaho 83204-1725, Fax: (208) 232-9161, E-Mail: cjlaw@allidaho.com.

Hon. Glenn A. Phillips 1927 - 2010

Honorable Glenn A. Phillips, 82, loving husband of Margene Parsons Phillips, passed away peacefully at home surrounded by his wife of nearly 60 years, four daughters and other close family members. He had fought a very courageous battle with cancer for the last 16 years.

Glenn was born on Nov. 13, 1927 to Karna and Roscoe Phillips in Shoestring, Idaho, near Gooding. He worked on the family farm and loved to play football. Following graduation from American Falls High School in 1946, he proudly enlisted in the US Army Air Corps. He was honorably discharged after three years of dedicated service. His love for his country did not end there, for he con-

tinued to serve his country throughout his life.

He met his lifetime "angel of all angels", Margene Parsons, on a blind date. They were married on Jul. 15, 1950. To this union they were blessed with four daughters and one son. Glenn and Margene made their home in Arco, Idaho where Glenn continued to be active in service to his country and his community while working as a security guard at the AEC. He held many positions in the state VFW (Veterans of Foreign Wars). He was proud to be the State Commander in 1971, where he was honored as the All American Commander in the nation. He humbly held any position that was requested of him at state and national levels.

Glenn marched with the Color Guard in many hometown parades. He was an all around sportsman participating in bowling, fishing and hunting and officiating high school basketball and football games. Glenn loved to spend summers camping with family and friends.

In 1958 Glenn was appointed as a Justice of the Peace in Butte County and following court reform he was appointed as Magistrate Judge. He served in the justice system for 27 years.

Upon his retirement Glenn learned he could not just stay home so he went to town and purchased a restaurant to entertain himself. He and Margene built and operated Pickle's Place for ten years, where he was on duty to pour the coffee and greet people. He was the original Pickles Place Greeter.

Following his second retirement, he and Margene traveled to Arizona for the winter to visit his brother. There they discovered a new and exciting world of friends and adventures. He was a proud member of the Geriatric Hells Angels Gang.

Glenn and Margene traveled and saw much of the country that he loved. Glenn always said he had never met a stranger, he just didn't know their names yet. He was a true friend to many and helped everyone in their time of need.

Glenn is survived by his bride, Margene, daughters Glenda (Salva-



Honorable Glenn A. Phillips

dor) Rodriguez of Blackfoot, Geraldene (Doug) England of Arimo, Gay-Lynn Quiroz of Blackfoot and GaLene (Vaughn) Andersen of Inkom. He leaves behind sixteen grandchildren, 43 great grandchildren, with two more on the way. He is also survived by siblings Jay (Betty) Phillips, Maxine McUone, Merlon (Elaine) Phillips, Darlene Grimm and Sarah Phillips. He was preceded in death by his son Gary, his parents, his mother and father-in-law, Albert and Mabel Parsons, two granddaughters, Crissa Cottrell and Tazia Quiroz, brothers Roy, Dean, and Earl, and sister, Vera.

Funeral services were held on Thursday, Feb. 4, 2010 at the Arco LDS Church. Charitable donations may be made in Glenn's honor to the Lost River EMTs.



Desk Book Updates

The Idaho State Bar staff is preparing the 2010-2011 Idaho State Bar Desk Book Directory. All address updates must be received by March 12, 2010 to be included in the upcoming edition.

Please check your address information on the ISB website (www.isb.idaho.gov) and send any changes to the Membership Department at astrouser@isb.idaho.gov by March 12, 2010.

Cynthia Melillo 2010 Women of the Year Recipient

Givens Pursley LLP is pleased to acknowledge Cynthia A. Melillo as the 2010 recipient of the Idaho Business Review Women of the Year award. The award honors the outstanding efforts of women in all fields, including business, health care, education, non-profits, and law.

Cynthia is a partner at Givens Pursley LLP where her legal practice is focused primarily in the areas of real estate, public utilities and corporate and business transactions. She earned her J.D. (Summa Cum Laude) from the University of Arizona College of Law, her M.A. in Political Thought from University of Kent, Canterbury, England, and her B.A. in Political Science (Magna Cum Laude) from the University of Southern California.



Cynthia A. Melillo

The Women of the Year awards ceremony will be held on March 18, 2010.

Christensen joins Andrade Law Office, Inc.

In October 2009, Chris Christensen joined the Andrade Law Office, Inc.'s immigration law practice where he focuses upon family immigration and naturalization cases.

Chris graduated from the University of Idaho College of Law magna cum laude in 2007 and subsequently clerked for the Honorable Darrel Perry on the Idaho Court of Appeals.

As a student-attorney with the University of Idaho Immigration Clinic, Chris represented individuals before administrative bodies and argued a case before the Court of Appeals for the Ninth Circuit.



Chris Christensen

Following graduation, Chris has been active with the Idaho State Bar's committees and service projects. He currently chairs the Young Lawyers Section of the Bar and will coordinate Law Day in 2010.

Chris joins attorneys Maria Andrade and Angela Levesque and can be reached at (208) 472-5690.



Candice McHugh



Carol "Tippi" Volyn

Racine Olson Nye Budge & Bailey announce Partners

Racine Olson Nye Budge & Bailey Chartered, Attorneys at Law is pleased to announce the addition of two new Partners: Candice McHugh and C. "Tippi" Volyn.

Candice practices in the area of Natural Resource and Water Law and is based in the Boise office of the firm. She

has practiced 11 years, grew up in Idaho and attended the University of Denver College of Law.

Carol "Tippi" Volyn practices Business and Litigation Law in the Pocatello office of the Firm. She grew up in Pocatello and graduated from the University of Idaho College of Law.

The law firm is beginning its 70th year in Idaho and is pleased to welcome these attorneys as partners in the firm.

Lawyer named president of Idaho Prosecuting Attorneys Association

Bonneville County Prosecutor Dane H. Watkins Jr. Has been appointed the 2010 president of the Idaho Prosecuting Attorney Association. Watkins was recently selected during the 2010 IPAA winter training conference in Boise.

"It is humbling to consider the responsibility of representing Idaho prosecutors," Watkins said. "Prosecutors are the gatekeepers of the criminal justice system."

The IPAA is a nonprofit corporation designed to educate, train and assist Idaho's 44 elected prosecuting attorneys in the pursuit of justice.

Watkins, who was appointed the Bonneville County prosecutor in 2001, will serve until 2011. He said his goal is to have every prosecutor in the state commit to earning the public's trust through integrity and fairness, he said.



Dane H. Watkins Jr.



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~ LEGAL ETHICS ~

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OFFICE SPACE

DOWNTOWN BOISE OFFICE SPACE

Office share with three other practicing attorneys in the Idaho Central Credit Union Building, 4th and Idaho. Included: reception area, private office, telephone (pay for own service), copy, fax, DSL, postage meter, use of common legal library, part-time receptionist, and client referrals possible. On-site parking available \$650.00/mo. Contact: 830-8413 or 890-1584.

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Historic McCarty Building at 9th & Idaho, office spaces for sale or lease. Single offices to half-floors available, \$18.00 per square foot full service. For more information contact L. D. Knapp & Assoc. (208) 385-9325.

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ATTORNEYS STEP UP FOR LAW DAY, 2010

The Fourth District has planned several activities associated with Law Day 2010. This year, the theme is, "Law in the 21st Century: Enduring Traditions, Emerging Challenges." Several volunteer opportunities are listed below.

Law Day Reception

Come enjoy free appetizers and drinks on Friday, April 30 after work. The Law Day Reception will be hosted at the Rose Room beginning about 4:30 p.m. and everyone is welcome! Please join us as we present the 2010 Liberty Bell Award, the 6.1 Challenge award recipients, and hear about each of our Law Day events.

Ask a Lawyer

Ask a Lawyer provides free legal advice to members of the public. The event begins at 5:00 a.m. at the Ada County Courthouse and volunteers are needed to take incoming calls (something law clerks can do) and call the public back with answers to their legal questions. We need attorney volunteers from every aspect of the law. Please contact Laurie Fortier at lfortier@cityofboise.org to learn more or get involved

6.1 Challenge

The 6.1 Challenge is a competition to see what entity provided the most pro bono hours during the last year. There are categories for small and large firms and the government sector. To learn more visit our website at www.isb.idaho.gov/pdf/ivlp/6.1_challenge_web_description.pdf For forms to enter the Challenge go to www.isb.idaho.gov/pdf/ivlp/6.1_challenge_volunteer_hours_form.pdf

Oral Argument 101

Oral Argument 101 offers local high school students the opportunity to view an actual oral argument before the Idaho Court of Appeals and to learn about the law and the procedure during the process. This year Oral Argument 101 will take place on April 30 in the afternoon at Boise High School. There may be some volunteers needed to explain the process to students before the event or to answer follow up questions afterwards. Those interested can email Gabe McCarthy at mccarthylaw@cableone.net

Liberty Bell Award

The Liberty Bell Award is given to



Photo courtesy Idaho State Bar

Attorneys from the Fourth District respond to telephone calls during the Ask-a-Lawyer program in 2009.

Law Day 2010 as an opportunity to honor the law

As we begin the second decade of the twenty-first century, the law is changing dramatically as it seeks to shape and adapt to new conditions. Economic markets are becoming global, transactions require cultural adaptation and understanding, populations are more mobile, and communication technologies such as the Internet bridge distances and time zones to form new communities around the world. In such a world, all of us must renew our commitment to the enduring principles of law, become knowledgeable about other legal systems, recognize the need to adapt our practices, and acquire new cultural understandings. In a global era, matters such as human rights, criminal justice, intellectual property, business transactions, dispute resolution, human migration, and environmental regulation become not just international issues—between nations—but shared concerns. Law Day 2010 provides us with an opportunity to understand and appreciate the emerging challenges and enduring traditions of law in the 21st century.

- Chris Christensen

acknowledge outstanding community service and is most commonly awarded to a layperson, but it can also go to a lawyer or a judge in the right circumstances. On occasion, the award is given to an

organization, rather than a person. The recipient of the Liberty Bell Award is someone who embodies the theme of the year, promotes a better understanding of the rule of law, encourages a greater re-

spect for law and the courts, stimulates a sense of civic responsibility, and contributes to good government in the community. The Law Day Committee is now accepting nominations for the 2010 Liberty Bell Award. Please send the name of your nomination and a short summary describing why your nomination should receive the award to Nicole Hancock at nchancock@stoel.com. All nominations must be received no later than March 1, 2010.

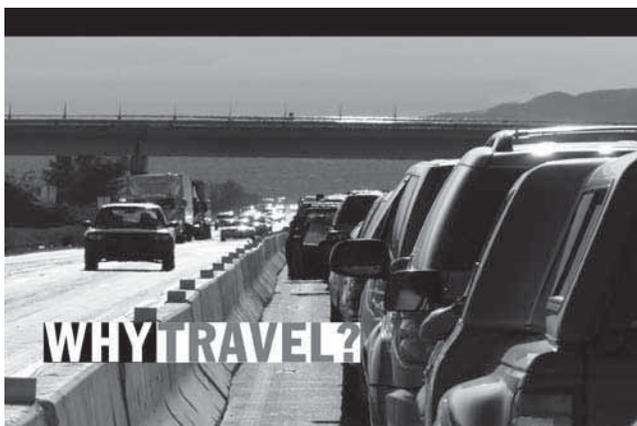
School Outreach

The School Outreach Program matches local attorneys with classrooms of students ranging from 1st grade through seniors in high school. The attorneys present on a variety of topics and answer questions posed by the students. The program has been incredibly successful the last few years and we have matched nearly 50 attorneys with local schools. We need a significant number of attorney volunteers for this worthwhile program and volunteering may require as little as one hour of your time. To learn more or volunteer please email Heather McCarthy at IdahoLawDay@gmail.com.



Photo courtesy Idaho State Bar

Robert Faucher, left, holds the 2009 6.1 Challenge Award. At right is Allen Derr.



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Helping the profession serve the public

Please join us in saying a special thanks to the **473** attorneys who accepted or completed pro bono assignments in family law, individual rights, immigration, consumer protection, wills, benefits, nonprofit corporation issues and other special needs for IVLP applicants in 2009. Many attorneys represent(ed) victims of domestic violence in family law cases, thereby helping traumatized parents and their children get on with their lives free from physical and psychological abuse. Others took up the challenge to represent or assist prisoners in federal court litigation, stepped in to represent Court Appointed Special Advocates in a child protection cases, or helped a grandparent rescue an innocent grandchild from a dysfunctional home by establishing guardianship. Volunteers include attorneys in Child Protection Act and individual rights (federal court) cases that were closed by the courts prior to 2009. Nevertheless, IVLP does not want to miss the opportunity to say thank you to these generous attorneys and to congratulate them for their part in helping so many individuals have a better life.

The **IVLP Wall of Fame** includes the names of another **204** attorneys or judges (some overlap with those who take cases) who participated in other IVLP activities including: Advice and Counsel given at Senior Centers, at the St. Vincent DePaul Center in Coeur d'Alene, on the Bankruptcy Helpline, to IVLP clients, at an IVLP Family Law Pro Se or Wills Clinic, or at Stand Down in Boise. Volunteers also participated in Citizenship Day, Idaho Immigration Law Pro Bono Network's "Charla" (education presentation and case screening) & Case Review Panel, **Soundstart** (proactive education and motivation sessions for low-income parents) and Youth Court mentoring for high school students participating in an alternative sentencing court.

To view the list of names on the IVLP Wall of Fame please visit our website at http://www.isb.idaho.gov/iff/ivlp/join_ivlp.html

We Help Families with Parkinson's Disease Planning



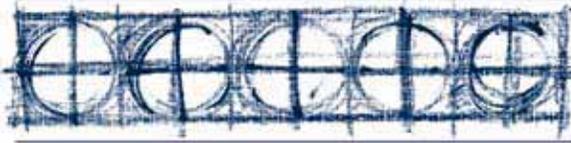
We help seniors and their families find, get and pay for quality long-term care.

Parkinson's Disease is a progressive disorder that affects nerve cells in the part of the brain controlling muscle movement. People often experience trembling, muscle rigidity, difficulty walking, problems with balance and slowed movements. People with the disease need caregiving and legal advice. Long-term care is expensive, no matter where the person lives (home, assisted living facility or nursing home). Sisson & Sisson concentrates on helping seniors with chronic health care issues protect assets for themselves and their families and get the care they need.

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Idaho Volunteer Lawyer Program hours soar 80 percent over last year

Lawyers who represented Idaho Volunteer Lawyer Program clients posted 6,988 hours of pro bono service in 2009, a dramatic 80 percent increase over 3,877 in 2008.

“We are amazed by our volunteers,” said IVLP Program Director Carol Craighill.

“Without their generosity, so many people who would not have access to the legal system. Our volunteers have resolved hundreds of cases that help the least-protected people, especially low-income women and children who are being exploited, battered or abused.”

Several reasons came together for such a dramatic increase in pro bono hours, Craighill said. A large part of the success in recruiting volunteer attorneys lies in better screening for eligible clients, new volunteer options, and the involvement of several groups including: The Idaho Pro Bono Commission, a joint venture of the Idaho State Bar, the Idaho Supreme Court and the US Court District of Idaho and the IVLP Policy Council and the firm/law office liaison project. In that project, the Policy Council members contact firms or law offices of five or more members for a representative to serve as liaison for IVLP requests and activities.

To illustrate the value of these volunteer services, at a conservative rate of \$150 per hour, those attorneys reporting their service provided \$1,757,700 worth of legal services. Of course, a great deal of pro bono work goes unrecorded. And Idaho still needs more volunteers. Indeed, a backlog of unmet needs await.

Expressing appreciation

In honor of all those who have helped families and individuals under the Idaho Volunteer Lawyer Program, IVLP is launching a website of recognition dubbed “IVLP Pro Bono Wall of Fame” at www.isb.idaho.gov/ilf/ivlp,

Please join us in saying a special thanks to the 473 attorneys who accept-



ed or completed pro bono assignments in family law, individual rights, immigration, consumer protection, wills, benefits, nonprofit corporation issues and other special needs for IVLP applicants in 2009. This list includes 164 volunteer attorneys in Child Protection Act or individual rights cases that were closed by the courts prior to 2009. Nevertheless, IVLP does not want to miss the opportunity to say thank you to these generous attorneys and to congratulate them for their part in helping so many individuals have a better life.

These individuals from all over Idaho have provided a significant contribution to the lives of people in critical need of legal services in a time-honored tradition of public service. Many attorneys named on the list represented victims of domestic violence in family law cases, thereby helping traumatized parents and their children get on with their lives free from physical and psychological abuse. Others assisted prisoners in federal court litigation, stepped in to represent Court Appointed Special Advocates in a child protection cases¹, or helped a grandpar-

ent rescue an innocent grandchild from a dysfunctional home by establishing guardianship.

The IVLP Wall of Fame also includes the names of another 204 attorneys or judges who participated in other IVLP activities including: Advice and Counsel given at Senior Centers, at the St. Vincent DePaul Center in Coeur d’Alene, on the Bankruptcy Helpline, to IVLP clients, at an IVLP Family Law Pro Se or Wills Clinic, or at Stand Down in Boise. Volunteers also participated in Citizenship Day, Idaho Immigration Law Pro Bono Network’s “Charla” (education presentation and case screening) & Case Review Panel, *Soundstart* (proactive education and motivation sessions for low-income parents) and Youth Court mentoring for high school students participating in an alternative sentencing court.

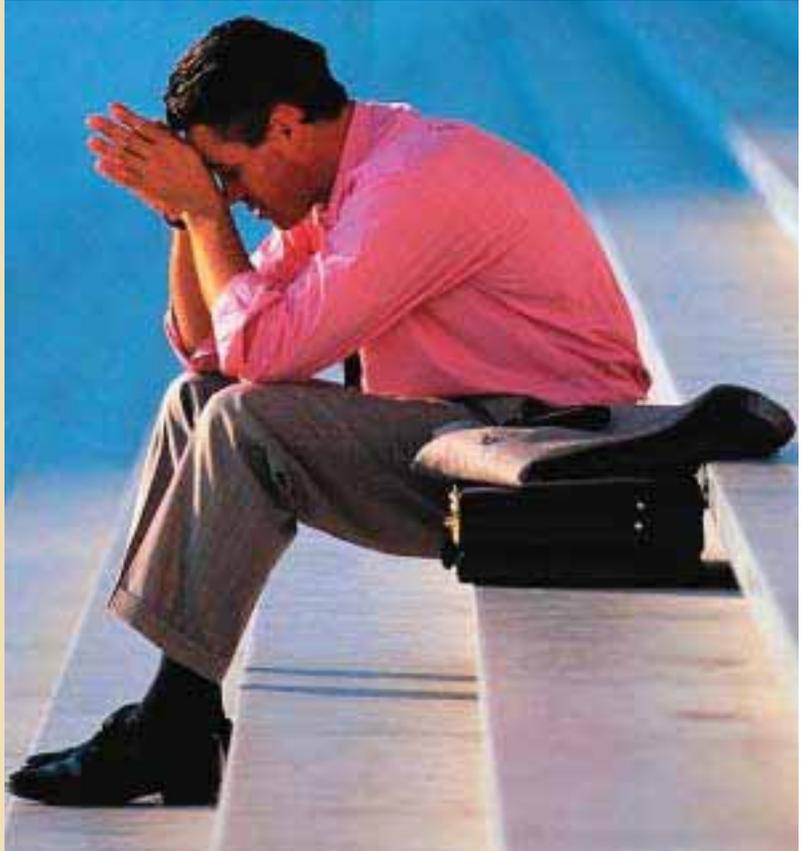
Craighill invited more participation. “If you are doing a pro bono case on your own, please consider letting IVLP know. It benefits the profession, your firm and yourself,” she said.

FEELING STRESSED OUT?

A lawyer's life involves deadlines, frustrations, and demands. For many, living under stress has become a way of life. Occasional stress can help you perform under pressure and motivate you to do your best. But when you're constantly operating in emergency mode, your mind and body pay the price.

At a certain point, stress stops being helpful and starts causing major damage to your health, your mood, your productivity, your relationships, and your quality of life. Living under constant pressure can lead to depression and alcohol or substance abuse.

The Idaho Lawyer Assistance Program offers confidential 24-hour help to lawyers who are experiencing problems associated with alcohol and/or substance abuse and other mental health issues related to stress.



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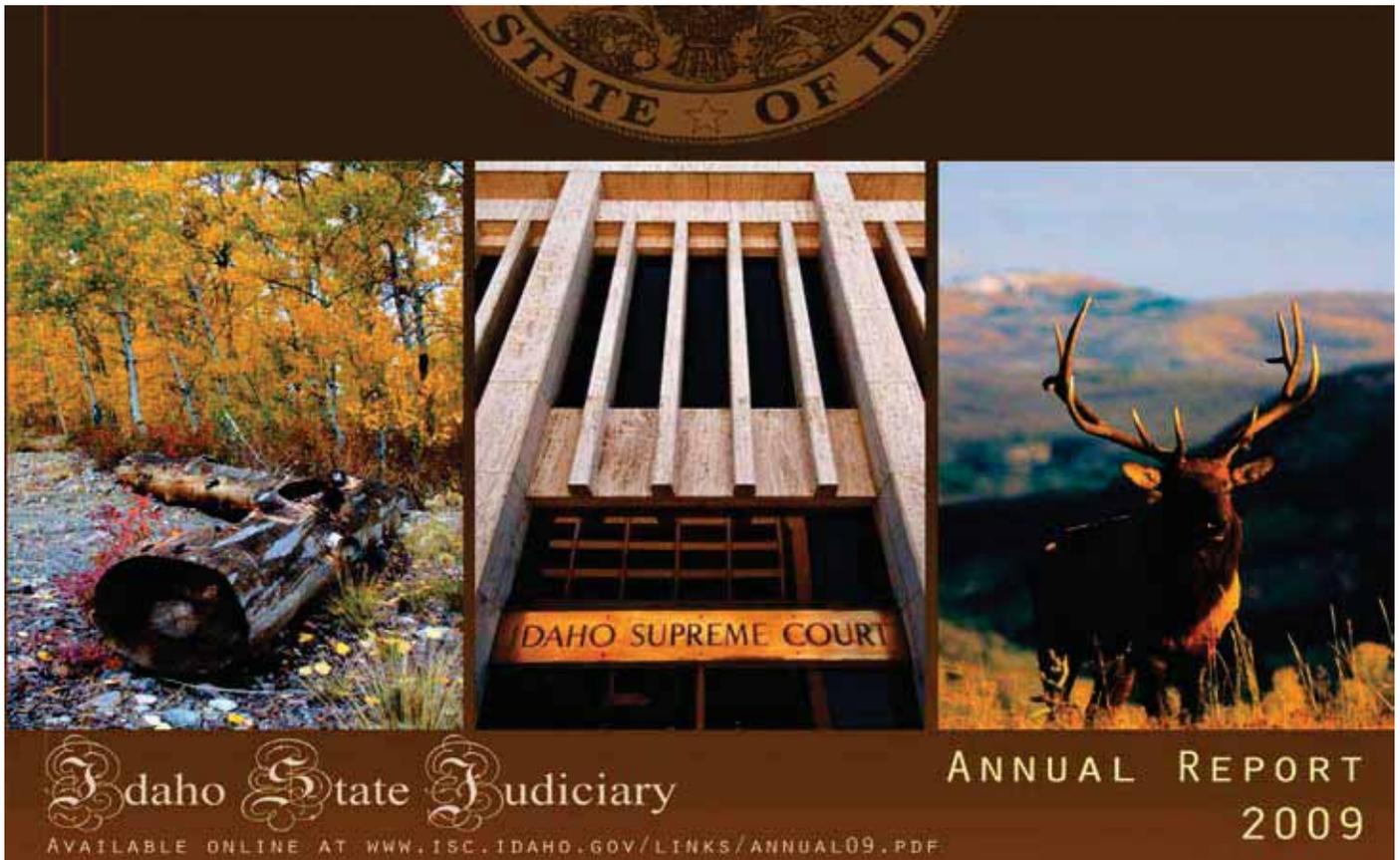
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For deceased Idaho Judges and Attorneys
Thursday, March 25, 2010 beginning at 10:00 a.m.
at the Idaho Supreme Court Building

Judges	Residence City	Deceased
Honorable Robert W. Bennett	Boise, ID	4/10/09
Honorable Garth S. Pincock	Pocatello, ID	9/15/09

Attorneys	Residence City	Deceased
John Marlon Sharp	Salt Lake City, UT	1/17/09
Charles Breaud Brantley II	Boise, ID	2/13/09
Joseph Charles Burgess	Idaho Falls, ID	2/24/09
Patrick Victor Collins	Boise, ID	3/8/09
Ralph H. Jones, Jr.	Pocatello, ID	3/20/09
John Xavier Combo	Idaho Falls, ID	4/3/09
M. Allyn Dingel, Jr.	Boise, ID	4/23/09
Lloyd Jackson Webb	Twin Falls, ID	4/26/09
Jay D. Sudweeks	Twin Falls, ID	4/26/09
John G. Gray, Jr.	Boise, ID	5/4/09
Edward Wallace "Ted" Pike	Idaho Falls, ID	5/19/09
James Thomas Knudson	Coeur d'Alene, ID	5/30/09
Robert "Bob" Burks	Bellingham, WA	7/10/09
Daniel J. Brown	Jacksonville, FL	8/22/09
Robert W. Mullen	Spokane, WA	8/22/09
Mark B. Clark	Pocatello, ID	8/29/09
Donald E. Downen	Caldwell, ID	11/12/09
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UPCOMING CLEs

March 5

Workers Compensation Section Annual Seminar
Sponsored by the Workers Compensation Section
Sun Valley Resort, Sun Valley Idaho
6 CLE credits of which 1.0 is Ethics (RAC)
Room Reservations call 1-800-786-8559

March 12

Handling Your First or Next Employment Law Case
Sponsored by the Idaho Law Foundation
8:30 - 10:30 a.m. Law Center, Boise Boise- Live: Statewide-Webcast
2.0 CLE Credits (RAC)

March 24

Ethics and Appellate Practice
8:30 - 9:30 a.m. Law Center, Boise- Live: Statewide-Webcast
Sponsored by the Young Lawyers Section
1.0 CLE Credits of which .5 is Ethics (RAC)

April 28

Idaho Practical Skills
Sponsored by the Idaho Law Foundation
Boise Centre, Boise
Credits TBD (5-6 credits anticipated)

April 24

Building a Case from Discovery to Trial and Beyond: Depositions
8:30 - 9:30 a.m. Law Center, Boise- Live: Statewide-Webcast
Sponsored by the Young Lawyers Section
1.0 CLE Credits (RAC)

Save the Date

May 21

Annual Business Section Seminar
Boise Centre, Boise

July 14-16

Idaho State Bar Annual Conference
Idaho Falls, Idaho

September 10-11

Annual Advanced Estate Planning Seminar
Sponsored by the Taxation, Probate and Trust Law Section
Sun Valley Resort, Idaho
Credits TBD
Room Reservations call 1-800-786-8559

October 1

Idaho Practical Skills
Sponsored by the Idaho Law Foundation
Boise Centre, Boise
Credits TBD (5-6 credits anticipated)

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