

The Advocate

Official Publication
of the Idaho State Bar
Volume 57, No. 5
May 2014

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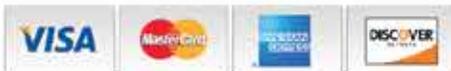


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On the Cover:

Professional photographer Matt Green offered us this photo of his friend, Rick Holscher, an engineer with Aptina Imaging. Incidentally, Matt uses the very same image sensors and memory cards that Rick designs in his Micron-associated lab. With 20 years of experience as a professional photographer, Matt has a master's degree in photography from Professional Photographers of America. The photo was taken on Watchman Trail in the Boise Foothills on a crisp spring morning. Arrow leaf balsam root flowers were everywhere. Although Matt primarily does portraits, he enjoys outdoor sports photography. (mattgreenphoto.com)

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This issue of *The Advocate* is sponsored by Idaho Women Lawyers.

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Special thanks to the May editorial team: Kristine Marie Moriarty, Amber Champree Ellis, Susan M. Moss, T. Heath Clark.

June/July issue sponsor:

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The Advocate makes occasional posts and takes comments on a LinkedIn group called "Magazine for the Idaho State Bar."



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The College of Law, established in 1909, has a long tradition of alumni who become state and national leaders in business, law and public service, for example, **Chief Justice Linda Cople Trout '73, '77**, the first female justice on the Idaho Supreme Court, who was inducted into the University of Idaho Alumni Association Hall of Fame this year.

Justice Trout has received many community and University of Idaho awards and recognitions. Since retiring from the bench in 2007, she continues to be engaged with the Supreme Court and the University of Idaho in various capacities. In 2011, she was recognized by the College of Law faculty for her service with the inaugural Sheldon Vincenti Memorial Award for Exemplary Service. This year, Justice Trout has been named by the Idaho State Bar as one of the Distinguished Lawyers of the Year.



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Ms. Miller received her Juris Doctorate Degree and Maritime Certificate from Tulane University School of Law. Her practice will focus on commercial litigation, business transactions, construction, small business formation and employment.

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GBSO is very pleased to announce that

Thomas J. Lloyd III

has become a Partner of the firm.



Lloyd has distinguished himself in our local community and in the courtroom. He obtained his legal education at The George Washington University Law School. He will continue his practice in representing national and local businesses and individuals in complex litigation matters covering a variety of subjects including employment, business contracts, eminent domain and product liability.

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Randy concentrates his practice on construction litigation and labor law. He has been involved in the counseling, negotiation, mediation, arbitration and trial of construction-related matters on behalf of all segments of the construction industry. Also, what are the odds — Randy has bowled a perfect game, made a hole in one, and even scored seven touchdowns in a single game . . . of pee wee flag football.



JAMES B. SMITH

jsmith@gfidaholaw.com

James is a civil litigation attorney who focuses his practice on insurance defense, professional malpractice defense, and medical malpractice defense. He graduated from University of California, Hastings and moved to Boise from Pleasanton, California to join Gjording Fouser. James has been building his own desktop computers since 1996, and while he was stationed in Korea as a U.S. Army Officer, he used Maroon 5 song lyrics to teach English to Korean soldiers.

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May

May 8

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The Law Center, 525 W. Jefferson (Boise) / Statewide Webcast
Noon (MDT)

1.5 CLE credits of which 1.5 is Ethics – **NAC**

May 9

Balancing Precision & Flexibility: Advanced Contracting Techniques

Sponsored by the Business and Corporate Law Section
The Grove Hotel, 245 S. Capitol Blvd. (Boise) / Statewide Webcast

8:30 a.m. (MDT)

6.5 CLE credits of which 1.0 is Ethics

May 30

CLE Idaho: Lunch with the Judiciary (Boise)

Sponsored by the Idaho Law Foundation

Ada County Courthouse, 200 W. Front Street, Boise
Noon (MDT)

1.0 CLE credit – **NAC**

May 30

CLE Idaho: Lunch with the Judiciary (Twin Falls)

Sponsored by the Idaho Law Foundation

Twin Falls County West Facility, 630 Addison Ave., Twin Falls
Noon (MDT)

1.0 CLE credit – **NAC**

May 30

CLE Idaho: Lunch with the Judiciary (Pocatello)

Sponsored by the Idaho Law Foundation

Bannock County Courthouse, 624 E. Center Street, Pocatello
Noon (MDT)

1.0 CLE credit – **NAC**

***NAC** — These programs are approved for New Admittee Credit pursuant to Idaho Bar Commission Rule 402(f).

May (continued)

May 30

CLE Idaho: Lunch with the Judiciary (Idaho Falls)

Sponsored by the Idaho Law Foundation

Bonneville County Courthouse, 650 N. Capital Avenue, Idaho Falls

Noon (MDT)

1.0 CLE credit – **NAC**

June

June 11

Idaho Legislative Review

Sponsored by the Idaho Law Foundation

The Law Center, 525 W. Jefferson (Boise) / Statewide Webcast
9:00 a.m. (MDT)

2.0 CLE credits – **NAC**

June 27

Attorney Ethics and Disputes with Clients

Sponsored by the Idaho Law Foundation

Telephonic Conferencing / Audio Streaming
11:00 a.m. (MDT)

1.0 Ethics Credit

July

July 16 – 18

Idaho State Bar Annual Meeting

Shoshone Bannock Hotel and Event Center – Fort Hall, ID

Opportunity to earn 10.0 CLE credits of which more than 2.0 is Ethics



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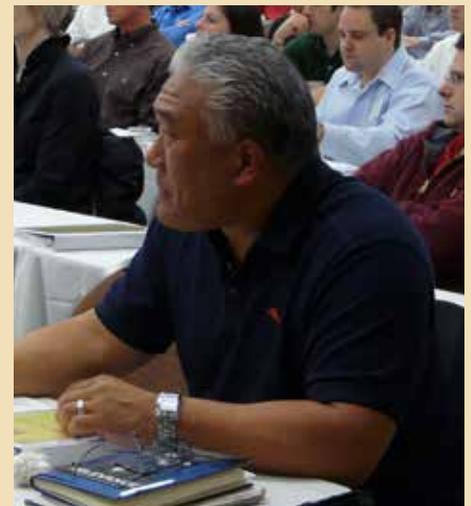
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On Age, Globalization, Technology and the Bar

Robert T. Wetherell
 President, Idaho State Bar
 Board of Commissioners

The baby boom generation is considered to be those individuals born between 1945 and 1963. Some people stretch it to 1965, but the decline in the birth rate began in 1963. This 18-year generation has had a tremendous impact on the United States and on the legal profession. However, people forget it is impossible to lump this group completely together as a demographic.

For instance, my brother, the Honorable Michael Wetherell, was born in 1946. Many of his experiences are entirely different from mine. While he was in high school for the Kennedy years, I was there for Nixon. While his music was the Beach Boys and The Beatles, for me it was Bruce Springsteen and The Rolling Stones. While he grew up watching *Leave It to Beaver*, I grew up watching *All in the Family*. The views of this demographic group are widely divergent, as are their life experiences. The oldest of the baby boomers have just turned 69 and the youngest are in their 50s. This creates a challenge for Bar Associations throughout the United States and here in Idaho.

A snap shot of the legal profession provides us with a view as to where our profession may be headed. Latest figures reveal the following:



Over 60% of Idaho judges will be eligible for retirement in the next five years. Eight of our nine appeals judges will be eligible for retirement in the next five years.

There are 1,268,011 lawyers in the United States. These lawyers are employed as follows:

- 75% Private Practice
- 8% Government
- 8% Private Industry
- 4% Retired
- 3% Judiciary
- 1% Educational
- 2% Legal Aid/Public Defender
- 1% Private Association/Charity

Of the 75% Private Practitioners, they are structured as follows:

- 49% Solo Practice
- 14% 2-5 Lawyers
- 6% 6-10 Lawyers
- 6% 11-20 Lawyers
- 6% 21-50 Lawyers
- 4% 51-100 Lawyers
- 16% 101+ Lawyers

Of the total number of law firms, their size breaks out as follows:

- 76% 2-5 Lawyers
- 13% 6-10 Lawyers
- 6% 11-20 Lawyers
- 3% 21-50 Lawyers
- 1% 51-100 Lawyers
- 1% 101+ Lawyers

Recent University of Idaho statistics for the Class of 2012 reveal this trend. Out of 104 graduates, only three went to work for firms of 25 lawyers or more; 37 went to work for firms of 10 or less; the remainder obtained non-private practice employment; four remain unemployed.

Of the total number of lawyers, approximately 50% are over 50 years old and will be eligible for retirement in the next 15 years. The ABA estimates that 400,000 lawyers will retire within the next 10-15 years and at least 100,000 will "drop out" (that is, use their law degree to pursue a second career). Over 60% of Idaho judges will be eligible for retirement in the next five years. Eight of our nine appeals judges will be eligible for retirement in the next five years.

Some state bars, especially in rural states, face a serious shortage of lawyers in rural communities. South Dakota has already started to address this problem with a pilot program so that members of rural communities will not have to travel several hundred miles to meet with an attorney.

When you look at the numbers, it appears new lawyers are flocking to the cities to be unemployed. There is a great unmet need for lawyers in rural communities throughout the United States and Idaho.

Idaho has 5,669 licensed Bar members. About 4,700 actively practice law. Just over 200 of these lawyers are under 30 years of age. More than 2,000 of them are over 50 years old. Approximately 1,200 are between 40-49 years old. A groundbreaking shift is about to occur and Bar leaders and the courts must begin to discuss these issues.

Aging lawyers

The first issue the Bar and Bench must address is the aging lawyer. I was at the Courthouse a few years ago and saw a lawyer in his mid to late 70's on his way to court. I had known this lawyer for 30 years. When I asked what he was up to he responded, "poor planning."

A large number of lawyers who are eligible to retire do not have the resources to retire and, let's face it, the ability to stay on top of a legal practice slips with age. To top it off, the majority of these lawyers will be solo practitioners with little or no backup. How will the Bench and Bar deal with the lawyer who should retire?

The second issue is where these lawyers will be practicing. A recent Forbes article noted that over the last three years, 250 large law firms laid off over 10,000 lawyers and these lawyers are not being rehired. Some commentators predict there will be 40% fewer lawyers practicing law in the next 13 years largely as a result of retirement, technology and globalization. (I have limited space here, but the ABA website and a presentation by Ury and Lyons is well worth five minutes of your time and thought.)

http://www.americanbarfoundation.org/uploads/cms/documents/rl_spring_2011.pdf

Globalization

As for globalization, legal costs in the United States have escalated by 75% in the last 15 years, especially at large law firms. The United States is a signator to the GAP Trade Agreement and that Agreement specifically includes the legal trade. The United Kingdom, India, Australia and New Zealand all have lawyers who speak English and are trained in the common law. By 2015, it is estimated that \$5.8 billion of legal work will be outsourced to India alone. E-mail a draft contract, receive a re-draft that same day at a fraction of the cost. The latest figures available under GAP signed by the United States in 1995, show that in 2007 the United States exported 6.7 billion dollars of legal services and imported \$1.6 billion. Large American law firms are scrambling to compete for work from corporations that are very fee conscious. Will a significant amount of legal work be practiced overseas and how will Bar leaders deal with this trend?

Technology

The final issue regarding where lawyers will practice deals with technology.

When I graduated from law school, I interviewed with then-pri-

vate practitioner Michael McLaughlin of Mountain Home. His father, Bob McLaughlin, was a well-respected lawyer in Mountain Home. In fact, it was Bob McLaughlin who, on a *pro bono* basis, took up the cause of Ms. Reed and equal protection for women all the way from the Probate Court, to the Idaho Supreme Court and later associated Alan Derr to present the case of *Reed v. Reed* to the U.S. Supreme Court.

As a third generation lawyer in Idaho, three fourths of the physical plant from which now Judge McLaughlin operated had one of the finest private law libraries in the state, assembled over 75 years. You did not have to travel to Boise to do research. Today, that same library is now available on-line and complex litigation can be handled from a law office in Emmett as easily as from a large firm in Boise. Furthermore, the Idaho Judiciary has just initiated the process of putting pleadings online.

Imagine the tremendous amount of legal work product now available for free review. When I started practicing law, Fred Kennedy would read a Supreme Court case and send me to the basement of the Idaho Supreme Court to read the briefs that had been filed, both at the District Court level and before the Supremes. Although a great resource, it was

The latest figures available under GAP signed by the United States in 1995, show that in 2007 the United States exported 6.7 billion dollars of legal services and imported \$1.6 billion.

only available to those in Boise and only used by those who knew of the resource. In a matter of years, that work product will be a click away.

The future challenges for the Bar include an aging bar, rural legal demand, foreign lawyers, cyberspace law sites and technology. Will new lawyers move to rural communities and necessarily enhance those communities by their presence and community involvement, or will citizens of rural communities be required to engage city lawyers over the internet? The California State Bar Executive Director recently spoke at a conference and his comments were disturbing. The California Bar is no longer primarily a resource for California lawyers but is first and foremost a regulatory agency. The Executive Director made it clear that he saw his role and the role of the California Bar as a regulatory agency with the mission of protecting the public from predatory lawyers.

His comments were not directed at California lawyers but at all lawyers, especially cyber-lawyers, who see California as a potential scammer's paradise. He stated bluntly that this was the future of Bar organizations nationwide. The Idaho State Bar has always prided itself on being a resource for Idaho lawyers to make them better practitioners, elevate professional behavior and civility and in that way, better serve the public. How future Bar leaders handle these issues will determine if the Idaho State Bar simply becomes a regulatory agency or an effective legal/public resource.

Thanks to kickoff sponsor

Please join me in welcoming Idaho Trust Bank as the official sponsor of this year's President's Reception which will kick off the Idaho State Bar Annual Meeting. The reception

will be held July 16 from 6 to 7 p.m. at the Juniper Hills Country Club in Pocatello. Thanks go to Tom Prohaska, CEO of Idaho Trust Bank for this generous support. We hope you can join us on July 16. Thank you again to Idaho Trust Bank.

About the Author

Robert T. Wetherell is a 1982 graduate of the University of Idaho Law School and clerked for the United States District Court for the District of Idaho immediately upon his graduation. Since that time he has been in private practice in the city of Boise and is currently a principal and partner at Capitol Law Group. Mr. Wetherell began serving as Bar President in January of 2014. He has been married to his wife, Deborah, for 29 years and they have two adult children; Marie Ellen, a third-year law student at the University of Idaho College of Law and R. John, a senior at the University of Idaho. GO VANDALS!

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DISCIPLINE

Brian L. Boyle

(Public Reprimand/Withheld
Suspension/Probation)

On March 24, 2014, the Idaho Supreme Court entered a Disciplinary Order issuing a Public Reprimand to Boise attorney Brian L. Boyle. The Disciplinary Order included a withheld six-month suspension and a one-year disciplinary probation.

The Idaho Supreme Court found that Mr. Boyle violated I.R.P.C. 1.2(a) [Scope of representation], 1.4 [Communication with client] and 3.3(a) [Candor toward tribunal]. The Idaho Supreme Court's Disciplinary Order followed a stipulated resolu-

tion of an Idaho State Bar disciplinary proceeding in which Mr. Boyle admitted that he violated those rules.

The formal charge case related to Mr. Boyle's representation of a client in a contempt action filed against the client's ex-husband. Mr. Boyle signed his client's name on a Verified Motion for Contempt, instructed a notary public to verify that signature, and filed and served the motion. Thereafter, without his client's express authorization, Mr. Boyle filed a Notice dismissing the verified motion without prejudice.

The Disciplinary Order provides that the six-month suspension will be withheld and that Mr. Boyle will

serve a one-year period of disciplinary probation subject to the condition that he will serve the withheld suspension if he admits or is found to have violated any Idaho Rules of Professional Conduct for which a public sanction is imposed for conduct that occurred during the probationary period.

The public reprimand, withheld suspension, and probation do not limit Mr. Boyle'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.

PUBLIC NOTICES

Richard D. Humberger

(Disability Inactive Status)

On February 19, 2014, the Idaho Supreme Court issued an Order transferring Boise attorney Richard D. Humberger to disability inactive status for medical reasons pursuant to I.B.C.R. 515(b). The Idaho Supreme Court's Order followed a Petition filed by Bar Counsel on January 28, 2014.

Mr. Humberger shall remain on disability inactive status until such time, if any, the Idaho Supreme Court considers a petition for transfer to active status. Mr. Humberger is

not eligible to practice law in Idaho except by future order of the Idaho Supreme Court.

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

Bryninn T. Erickson

(Disability Inactive Status)

On April 3, 2014, the Idaho Supreme Court issued an Order transferring Meridian attorney Bryninn T. Erickson from interim suspension status to disability inactive status pursuant to I.B.C.R. 515(b). The Order, which

followed a Petition filed by Bar Counsel on March 25, 2014, provided that all pending disciplinary matters will be deferred until further Order of the Idaho Supreme Court.

Mr. Erickson shall remain on disability inactive status until such time, if any, the Idaho Supreme Court considers a petition for transfer to active status. Mr. Erickson is not eligible to practice law in Idaho except by further Order of the Idaho Supreme Court.

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

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LICENSING CANCELLATIONS

Order to cancel license to practice law for non-payment of 2014 license fees

The Commissioners of the Idaho State Bar by and through their Executive Director have filed with the Clerk of this Court evidence that the following named attorneys have not paid the 2014 Idaho State Bar license fees required by Idaho Bar Commission Rule 305(b)(2) and have not given notice of resignation from the practice of law to the Idaho State Bar and this Court;

NOW, THEREFORE, IT HEREBY IS ORDERED that the LICENSE TO PRACTICE LAW IN THE STATE OF IDAHO of the following named persons be, and hereby are, CANCELED FOR FAILURE TO PAY THE 2014 IDAHO STATE BAR LICENSE FEES:

RICHARD LAWRENCE ALBAN; JIMMIE JASON BARNWELL; J. CRAIG BARRILE; COURTNEY RENEE BEAUDOIN; SEAN COLLINS BEAVER; NICHOLAS ISAAC CHAMBERLAIN; MERIDETH COLLEEN ARNOLD CHAUDOIR; ERIC RAYMOND COAKLEY; DOYNA VARULEZKA DARDON; KEITH RANDOLPH DONAHUE; MATTHEW S. ECHOHAWK; GARY W. ELLIOTT; JOSHUA WILLIAM ENGLISH; HUNT WILLIAM GARNER; MONTE CHRISTOPHER GRAY; RALPH H. HALEY; MICHAEL DAVID KINKLEY; JAMES WILLIAM KNICKREHM; HAROLD KUEHN; ESTHER LARSEN; J. KELSO LINDSAY; DOUGLAS JAY LINEBERRY; JAMES F. LYONS; RICHARD V. LYONS; KEVIN WILLIAM MICKEY; CRAIG THOMAS MILLER; ROBERT JOSEPH MILLER; JOSEPH SHEAR MUNSON; RICHARD C. OLDHAM JR.; PHOEBE M. PAP-

PAS; VALERIE PAUL; DAVID REX PURNELL; MARK STEPHEN RADER; ROBERT BRUCE RICHBOURG; DONALD C. ROBERTSON; MARK REES SCOVILLE; W. TIMOTHY SEIBLY; KIMBERLY SUSAN SPLAN; TERRI LYNN TACKETT; ERIK H. THORLEIFSON; LAUREN EILEEN VANE; CHRISTINE MARIE WEAVER; and DENNIS EARL WHEELER.

IT FURTHER IS ORDERED AND NOTICE IS HEREBY GIVEN, that the persons listed above are NO LONGER LICENSED TO PRACTICE LAW IN THE STATE OF IDAHO, unless otherwise provided by an Order of this Court.

IT FURTHER IS ORDERED that Bar Counsel of the Idaho State Bar is directed to distribute, serve, and or publish this Order as provided in the Idaho State Bar Commission Rules.

Dated this 4th day of March, 2014.
By Order of the Supreme Court
Roger S. Burdick, Chief Justice

LICENSING REINSTATEMENTS

Order granting petition for reinstatement as active member in the Idaho State Bar

As of the dates indicated, the following attorneys' licenses were reinstated:

W. Timothy Seibly ; Active Status, March 4, 2014*

Sean Collins Beaver ; Active Status, March 6, 2014

Monte Christopher Gray ; Active Status, March 7, 2014

Merideth Colleen Arnold Chaudoir ; Inactive Status, April 16, 2014

*The Court withdrew the cancelation of Mr. Seibly's license which had been incorrectly canceled due to an administrative error.

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Plan now to attend the ISB 2014 Annual Meeting

This year's ISB Annual Meeting will be held July 16-18 in historic Fort Hall, Idaho. The premier event of the Idaho State Bar, the Annual Meeting will give every member an opportunity to honor colleagues, reconnect with friends, meet new people, share stories, and earn CLE credits. In addition to the Annual Meeting, the area provides a vast array of both indoor and outdoor activities.

Attendees will be given the opportunity to earn 10.0 CLE Credits (including more than 2.0 hours of Ethics). Programs will be offered through the Idaho Law Foundation Continuing Legal Education (CLE) Committee, Idaho State Bar Practice Sections, University of Idaho College of Law, Concordia University School of Law and the Idaho Volunteer Lawyers Program. Topics will include, but are not limited to, the following:

- Practical and Ethical Considerations on the Use of Cloud Computing
- Criminal Case Law Updates: Idaho Appellate Decisions from the Past 365 Days
- Do We Have a Living Constitution, A Dead Constitution or A Zombie Constitution?
- Simple in the New Black: Legal Writing's New Look and How to Make It Work for You
- At the Intersection of the Indian Child Welfare Act and Idaho State Law
- Negotiating and Litigating Over Intellectual Property: What is this Stuff Really Worth and Can We Really Price a Value On It?

- Members of the Federal Judiciary: Eastern Idaho Roots to the United States' Courts

ISB to feature journalist as keynote

Mr. Jeffrey Rosen has been named the 2014 ISB Annual Meeting Keynote Speaker. Mr. Rosen is President and Chief Executive Officer of the National Constitution Center, a professor at George Washington University School of Law, an accomplished author of high-profile essays and articles and an accomplished author of several books. The Chicago Tribune named him one of the 10 best magazine journalists in America and a reviewer for the Los Angeles Times called him "the nation's most widely read and influential legal commentator." Mr. Rosen is a graduate of Harvard College; Oxford University, where he was a Marshall Scholar; and Yale Law School.

For more information please visit the ISB Annual Meeting website. Be sure to watch your mail and email for more details and registration.

2014 Annual Meeting scholarships available

The Idaho State Bar is offering a limited number of scholarships to the 2014 Annual Meeting, July 16-18, in Pocatello/Fort Hall. The scholarships include registration fee and a per diem of up to \$50 per day for travel and lodging. The scholarships are designed to provide assistance to those attorneys who, due to financial or professional circumstances, would otherwise be unable to attend. To apply for a scholarship, contact the ISB Commissioner who represents your judicial district, or ISB Deputy Director Mahmood Sheikh at (208) 334-4500. Deadline for a scholarship request is Friday, May 16.

New law to put limits on homeowners association fees

In March, Governor Butch Otter signed Senate Bill 1310 into law, which addresses procedures and resolutions before a homeowner's association may levy or enforce fines. Not only do associations risk violating the law if they do not carefully review their fine processes, but professionals that work with associations risk some liability if they attempt to collect fines that were levied improperly.

"While it may take some work to understand the impact of the law, we are confident that associations in Idaho will take the necessary steps to comply," says Jeremy Evans, an HOA attorney with Vial Fotheringham LLP. "In the meantime, we hope to continue working with the legislature to develop more comprehensive HOA laws in Idaho."

Homeowner associations have grown dramatically in Idaho in recent years, but have largely been left unregulated. The current legislation aims to address this issue, but only by regulating the way HOAs enforce their rules.

Attorney General seeks contract attorneys for risk management

Those interested in providing representation to the Idaho Department of Administration, Division of Risk Management are encouraged to submit an application to the Attorney General's Office by May 30. A list of recommended attorneys will be forwarded to the State Board of Examiners, which will decide which attorneys will be authorized. This list will supersede all previous lists. No attorneys will be carried over. Applications are available on the Attorney General's website. Attorneys appointed as special deputy attorneys general will work at the direction of the Division of Risk Management.



2013 Resolution Process — Final Update

Diane K. Minnich
Executive Director, Idaho State Bar

The 2013 resolution process proposed changes to the Idaho Rules of Professional Conduct, changes to sections of the Idaho Bar Commission Rules, and supported the Idaho Judiciary's efforts to improve court technology and enhance judicial recruitment efforts. As I noted in my January article, all of the resolutions were approved by the membership.

On March 17th, the Idaho Supreme Court issued orders adopting the changes to the Idaho Rules of Professional Conduct and Idaho Bar Commission Rules. The new rules will be included in the 2014-15 Desk Book Directory. We will also post the Idaho Supreme Court order adopting the rules on the ISB website.



The following rules were amended by the Idaho Supreme Court

Idaho rules of Professional Conduct and IBCR Section VI Client Assistance Fund – Both the new and previous versions of the Idaho Rules of Professional Conduct and Client Assistance Fund rules will be included the 2014-15 Desk Book Directory and on the Idaho State Bar website. The new IRPC's and Client Assistance Fund rules are effective July 1, 2014.

Through the resolution process, the membership of the Idaho State Bar supported the Judiciary's efforts to obtain statutory enactments and budgetary support to accomplish to a much needed transition to a modern web-based electronic court records system.

Amendments to the following rules are into effective May 1, 2014

These rule changes are incorporated the rules in the Desk Book Directory and on the website.

- IBCR Section II Admissions - Fees for Admission to the Idaho State Bar
- IBCR Section II Admissions – Legal Intern Rules
- IBCR Section IV Mandatory Continuing Legal Education/ Practical Skills Seminar
- IBCR Section IX General Rules – Electronic Voting

If you have questions about the rule changes, please contact me at dminnich@isb.idaho.gov or 208-334-4500.

New statewide computerized case management and e-filing system

Through the resolution process, the membership of the Idaho State Bar supported the Judiciary's efforts to obtain statutory enactments and budgetary support to accomplish to a much needed transition to a modern web-based electronic court re-

ords system. The system will permit lawyers and litigants to e-file court documents and provide around the clock remote access to case file records, thus saving attorneys, clients, counties and the public time and money.

The legislation needed to implement the new court technology system was approved by the 2014 Legislature and signed into law by the Governor. You can find more detailed information about the court technology system and plan for implementation on the Idaho Supreme Court website.

Judicial recruitment, salary compression and compensation for judges

The Judiciary prepared and transmitted to the 2014 Idaho Legislature a comprehensive proposal to address judicial recruitment, salary compression, and compensations for all judges.

In response to the needs expressed by the Judiciary, joint Majority Leadership appointed a member from each chamber who considered the proposal and needs

of the Judiciary, together with salaries of state constitutional officers and the myriad of other challenges and issues faced by the Idaho legislature.

While not fully accepting the proposal of the Judiciary, both the House and Senate Majority Leadership demonstrated an extraordinary commitment to address the recruitment and compensation problems brought forward. Senate Bill 1394 adjusts judicial salaries and increases the differences between justices and judges holding office at different levels within the judiciary. The bill was passed by both Houses and signed by the Governor.

Special thanks to the Senate Judiciary and Rules Committee Chair Patti Lodge, House Judiciary and Rules Committee Chair Rich Wills, their respective committee members, Senator Bart Davis, Representative Mike Moyle, JFAC committee members and Senate and

House leadership for their support of the Idaho Judiciary during this year's legislative session.

Volunteer service opportunities

Volunteer efforts of bar members and non-lawyers are vital to providing ISB and ILF programs, activities and services to the public and the members. We thank those of you who continue to serve the legal profession through volunteer service. We encourage those of you who have not taken advantage of the volunteer opportunities to give it a try. As many of you already know, volunteer service can provide many rewards.

Each year, the Bar Commissioners and Idaho Law Foundation (ILF) Directors recruit attorneys interested in serving on a committee or volunteering their time to assist with ISB and ILF programs and activities.

We encourage those of you who have not taken advantage of the volunteer opportunities to give it a try. As many of you already know, volunteer service can provide many rewards.



If you are interested in serving as a volunteer, you can submit the Volunteer Opportunities form on page 22, or on available on our website or email me your preferences. If you have questions about the opportunities listed please review the committee information on the ISB website or please contact me at dminnich@isb.idaho.gov.

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ISB/ILF Committees Volunteer Opportunities

Member participation is vital to the success of the Idaho State Bar and Idaho Law Foundation. Lawyers can and do make a difference by participating on one of the many committees or activities listed below. Committee assignments are three-year terms, and each year there are generally one to three openings available on each committee. Time commitments vary with each committee depending upon its function and meeting schedule. In the appointment process, consideration is given to geographic distribution, areas of practice, and other committee assignments or ISB/ILF involvement. For information on the specific duties and responsibilities of specific committees visit the ISB website About Us.

Please let us know if you are interested in contributing to the activities of the Idaho State Bar and the Idaho Law Foundation by serving on one of the committees, or participating in one of the programs listed below. Please indicate your 1st, 2nd, or 3rd choice.



IDAHO STATE BAR VOLUNTEER COMMITTEES

- The Advocate Editorial Advisory Board
(meets monthly)
- Lawyer Assistance Program
(meets quarterly)
- Disciplinary Committees
(meet as needed)
 - Professional Conduct Board
 - Client Assistance Fund
 - Unauthorized Practice of Law
- Admissions Committees | Services
(meet as needed)
 - Character and Fitness
- Bar Exam Grading
(meets twice a year)



IDAHO LAW FOUNDATION VOLUNTEER COMMITTEES

- Continuing Legal Education
(meets three times a year)
- Law Related Education
(meets three times a year)
- Idaho Volunteer Lawyers Program Policy Council
(meets quarterly)

- I would like more information about the Bar Sections.
- I would like more information about the District Bar Associations.

- I would like more information about participating in the Foundation's Law Related Education Programs such as Mock Trial, or Lawyer in the Classroom.
- I am interested in providing pro bono service through the Foundation's Idaho Volunteer Lawyers Program.

Name: _____ Firm: _____

Address: _____ City: _____ Zip: _____

Phone: _____ Email: _____

Have you previously participated as a member of an ISB and/or ILF Committee?

No Yes – Most recent committee assignment(s) _____

Please return this form no later than June 2, 2014

ISB/ILF Committees

P.O. Box 895

Boise, ID 83701

Or email your committee interests to dminnich@isb.idaho.gov

Idaho Women Lawyers Expand its Networking Support

Nicole C. Hancock

As I wind up my third and final year as President of Idaho Women Lawyers, I look back on my time with great pride and thankfulness for the opportunity to know and work with some of the greatest members of our bar, and to participate in an organization with a mission of making a difference. I welcome you to this Advocate issue, sponsored by IWL, with articles by members who so inspirationally represent our organization, and I would like to take this time to share a little more about our organization.

Many things have remained constant at IWL since its inception in 1986. Our members are both women and men within Idaho, and even some from outside our state's borders. Throughout IWL's history, our members have worked diligently to advance diversity in Idaho through the promotion of equal rights and opportunities for women in the legal profession.

In the past few years, IWL has evolved in many ways. Our membership has grown more than 30%, reaching out to colleagues in northern and southeastern Idaho. This summer, representatives from our board of directors took IWL on the road and visited with members in Twin Falls, Pocatello and Idaho Falls. We discovered that despite a wide variety of practices, we are all working toward the same goal: we want a level playing field.

In furtherance of this goal, IWL has considerably expanded our offerings to members. We provide educational breakfast and lunch sessions with topics selected by our members. There are networking opportunities to cross-sell our practices and find collegiality with other members of our bar. We raise awareness about the issues of equality in our bar, and have created more transparency and visibility of leadership and professional opportunities for our members. IWL has brought nationally acclaimed speakers and CLE presentations to our members and the ISB annual meetings. We have sponsored issues of *The Advocate*, allowing our members a forum to present their practices and the issues that are important to them. In 2013, IWL won the award for the best Advocate issue, along with our co-sponsor, the Diversity Section. We encourage, recruit, support and look for opportunities to promote our members and our efforts have resulted in changes in our bar.

We welcome our members to take on leadership roles through our numerous committees and board positions, as it is only through the leadership of our board and committees that IWL can accomplish all that I have described above. IWL's membership is a dynamic and diverse group of women who contribute their time, energy and resources to ensure IWL continues to promote the equal rights of women in Idaho's legal profession. If you are interest-



Save the Date
2015 Celebrating
Women in the Law gala

March 4, 2015 at the Centre on the Grove. Contact Nicole C. Hancock at nchancock@stoel.com if you are interested in becoming a sponsor and reserving your table before they sell out.

ed in becoming a member of IWL, please visit our website at www.idahowomenlawyers.com.

About the Author

Nicole C. Hancock is the President of Idaho Women Lawyers, and a partner at Stoel Rives LLP. Nicole chairs Stoel Rives' Food & Agribusiness industry practice for its 11 office in seven states. Nicole clerked for the honorable T.G. Nelson on the United States Court of Appeals for the Ninth Circuit before joining Stoel Rives. As a trial attorney, Nicole represents corporate clients in all aspects of commercial litigation matters.



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A Jury of One's Peers: What it is; How it is Changing; and Why it is Important

Jaren Nichole Wieland

On February 26, 2012, George Zimmerman, a Hispanic man, fatally shot Trayvon Martin, an unarmed African American teenager, in Sanford, Florida. On July 13, 2013, a six-person jury acquitted Zimmerman of second-degree murder and manslaughter. All six jurors were female. Five of the women were white and one was Hispanic.

Throughout the trial, the media was abuzz with speculation about what the jury's constitution meant for Zimmerman. A *New York Times* article pondered whether the fact that none of the jurors was African American might become a point of contention in the trial's aftermath especially if they acquitted Zimmerman.¹ Meanwhile, *The Washington Times* published "some facts and figures" about the "jury of six women who [would] decide George Zimmerman's" fate.² These included that one juror enjoyed watching "Real Housewives" and that another was active in her church.³ According to the article, one juror, who was not married, had no children while three others had two children each.⁴

Eventually, the media also began to puzzle over why it had made the sex and race of the Zimmerman jurors such big news. *CNN* noted that while, in reality, the gender of the jurors would likely have "little or no effect" on the outcome of the case, the attention given to the issue showed that Americans were "not yet gender blind when it [came] to the justice system."⁵ Conversely, *The Atlantic* concluded that the all-female jury signified "just how far juries have come in embracing the promise of



equality."⁶ The fact that the makeup of the jury was surprising news, it professed, "says something about our expectations of what a representative jury should look like. We expect equal representation of gender, race, and class or a close approximation. That we expect this reality in the face of a history of jury discrimination against women and people of color again is a tribute to the progress made toward equality in jury service."⁷

Because of the extensive publicity it received, the Zimmerman trial shed light on the friction that can exist between the legal concept of an impartial jury and the reality that juror discrimination exists even today. Black's Law Dictionary defines an 'impartial jury' as "a jury that has no opinion about the case at the start of the trial and that bases its verdict on competent legal evidence."⁸ The creation of an impartial jury begins with a jury pool of qualified citizens. In Idaho, qualified citizens included all capable citizens over the age of eigh-

Black's Law Dictionary defines an 'impartial jury' as "a jury that has no opinion about the case at the start of the trial and that bases its verdict on competent legal evidence."⁸

teen, who have lived in the district of the trial for at least one year, who are able to read, speak, and understand English, and who have not been excluded due to criminal charges or conviction. From that pool, jurors ideally are removed by the court and by attorneys based on any inherent impartialities or biases that could cause them to be incapable of fairly

rendering a verdict based only on the competent legal evidence presented. Ideally, the remaining individuals should consist of an impartial jury of one's peers. Factors such as gender, race, sexual orientation, and sexual identity should not factor into the selection process. However, because of preemptory challenges, which are challenges that permit each party to remove jurors without giving a reason for the removal, discrimination in jury selection continues to be a significant issue affecting the United States' legal system today. This is despite a legal history rife with efforts to eliminate discrimination in the jury selection process.

The removal of discriminatory bias in jury selection is extremely important because the very reason that juries exist in the United States is to instill fairness and confidence in our legal system. The complete removal of juror discrimination is further essential because of the changing demographics of the United States. We are no longer a nation consisting predominately of white men, and juries should represent our changing culture. Even Idaho is growing and changing and, like all other states, our attorneys and judges should be wary of juror discrimination and the harms it can cause.

The historical development of the jury selection process in the United States

Thomas Jefferson once famously quoted: "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."⁹ Throughout history, jury selection has been remolded in the United States in an effort to more soundly embrace that ideal.

The right to trial by jury derives from Article III of the United States Constitution which secures the

right in criminal cases.¹⁰ That right was expanded by the Sixth Amendment, which requires the jury to be impartial, and the Seventh Amendment, which ensures the right to an impartial jury in federal civil cases in which the amount in controversy exceeds \$20.¹¹ While the Seventh Amendment does not create a right to a civil jury in state courts, every state constitution, with the exception of Louisiana, provides the right in nearly all civil cases where monetary damages are sought.¹² Lastly, the Fourteenth Amendment, which guarantees all citizens equal protection under the law, assures criminal defendants in state court the right to trial by jury.¹³

The jury selection process has been further impacted by courts' interpretation of the Constitution and its Amendments. This began with *Strauder v. West Virginia*, an 1897 case in which the United States Supreme Court first held that banning people of the defendant's race, in this case African American, from the jury solely because of race violated the Fourteenth Amendment.¹⁴ In so holding, however, the Court recognized that states had the power to "prescribe the qualifications of [their]jurors, and in so doing make discriminations."¹⁵ Specifically, the Court noted that states could "confine the selection to males, to freeholders, to citizens, to persons with-

in certain ages, or to persons having educational qualifications."¹⁶ Attorneys were able to use such selection confinements to continue to limit African American males' ability to serve on juries.¹⁷ For example, the requirement that jurors own property was commonly used to keep African Americans off juries in the South.¹⁸

Nearly 70 years later, in 1965, the Supreme Court heard the case of *Swain v. Alabama*, which dealt with striking potential jurors based on race.¹⁹ Swain, an African American man, was convicted of rape in Talladega County, Alabama.²⁰ He was sentenced to death and appealed to the Supreme Court on the grounds that the jury that heard his case included no African American jurors and thus violated his right to equal protection under the law.²¹ Only males over the age of 21 were eligible as jurors in Talladega County at the time.²² Swain was able to show that while the jury pool in criminal cases in Talladega County generally included six to seven African American men, only white men had served on a trial jury since 1950.²³ The Court denied Swain's appeal, however, because it found that all of the eight empanelled African American jurors had been struck from jury service through preemptory challenges.²⁴ In short, the Court held that removal of African American men from the jury without reason

Courts weighed in with *Strauder v. West Virginia*, an 1897 case in which the United States Supreme Court first held that banning people of the defendant's race, in this case African American, from the jury solely because of race violated the Fourteenth Amendment.¹⁴

through the use of the preemptory strikes did not constitute denial of equal protection.²⁵

The Court revisited *Swain* in *Batson v. Kentucky* in 1986.²⁶ Batson, an African American man, was convicted of burglary and receipt of stolen goods in Kentucky.²⁷ At Batson's trial, the prosecutor used his preemptory challenges to strike all four non-white persons, and a jury of all whites was selected.²⁸ Batson objected. The trial judge denied his objection, stating that, under *Swain*, the parties were entitled to use their preemptory challenges to strike any potential juror for any reason.²⁹ Batson appealed. While the Kentucky Supreme Court affirmed his conviction, the U.S. Supreme Court reversed and remanded to the trial court. The Supreme Court held that "[o]nce a defendant makes a prima facie showing of purposeful discrimination in petit jury venire, the burden shifts to the state to come forward with a neutral explanation for challenging jurors."³⁰ It went on to hold that the prosecutor could not "rebut the defendant's case of purposeful discrimination in jury venire merely by denying that he had a discriminatory motive or by affirming his good faith in making individual selections."³¹

In 1991, the United States Supreme Court extended its decision in *Batson* to civil trials in the case of *Edmonson v. Leesville Concrete Company*.³² The Court found that, although civil cases involve the conduct of private parties that lies "beyond the United States Constitution's scope in most instances," governmental authority dominates the activity of selecting a jury so much so that the "participants must be deemed to act with the authority of the government and, as a result, be subject to

"The United States Constitution cannot countenance state-sponsored group stereotypes rooted in, and reflective of, historical prejudice."⁴⁴

— *Smith Kline Beecham Corp. v. Abbott Labs*

constitutional constraints."³³

Then, just twenty years ago, in 1994, the U.S. Supreme Court expanded the precedents of both *Batson* and *Edmonson* to preemptory challenges based solely on sex to civil cases in *J.E.B. v. Alabama ex rel. T.B.*³⁴ In that case, J.E.B., a putative father against whom the State of Alabama had brought paternity and child-support proceedings, challenged the lower court's decision allowing the State's use of 9 out of 10 of its preemptory challenges to remove male jurors.³⁵ The jury found against J.E.B. and the Court of Civil Appeals of Alabama upheld the jury's decision.³⁶ J.E.B. appealed to the Supreme Court.³⁷ The Supreme Court reversed and remanded the case, holding that, "[d]iscrimination in jury selection, whether based on race or on gender, causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process."³⁸

Most recently, in 2013, the Ninth Circuit Court of Appeals held in *SmithKline Beecham Corp. v. Abbott Labs* that striking individual jurors from a jury panel based on their sexual orientation violates the Fourteenth Amendment.³⁹ The case involved an antitrust action between SmithKline Beecham Corporation and Abbott Labs, both large pharmaceutical companies.⁴⁰ During jury selection,

SmithKline argued that Abbott Labs had used a preemptory challenge to deliberately remove a gay juror because the trial involved a claim relating to the allegedly extreme amount Abbott Labs had charged for a crucial HIV drugs.⁴¹ The district court allowed Abbott's strike.⁴² The Court of Appeals reversed and remanded the case for a new trial, holding that "[j]udicial precedent does not require that, to warrant *Batson* protections, women's experiences had to be identical to those of African Americans. Instead, what remained constant in the analysis was the willingness to reason from the actual experiences of the group."⁴³ "The United States Constitution cannot countenance state-sponsored group stereotypes rooted in, and reflective of, historical prejudice."⁴⁴

Through these cases, and others, the concept of the impartial jury has changed significantly. However, such advancements have not eliminated discrimination in juror selection.

Continued juror discrimination

Although today's juries are much more representative of the American public thanks to cases like *Batson* and *J.E.B.*, discrimination in jury selection still exists. For example, a 2006 study published by the American Psychology-Law Society examined the effect of race on preemptory

tory challenges as well as the justifications provided for each strike.⁴⁵ During the study, jurors, whose races varied, were told to exhibit characteristics designed to be concerning to the prosecution.⁴⁶ The participants, who included practicing attorneys, advanced law students, and college students, were asked which jurors they would strike and provide a reason for each strike.⁴⁷ The race of the juror was found to significantly influence the participants' strikes.⁴⁸ However, most of the participants did not mention race as factoring in their decision and instead used race-neutral terms to "mask the biasing effects of race."⁴⁹

As another example, in 2010, the Equal Justice Initiative, a non-profit law organization headquartered in Alabama, published a report regarding the exclusion of minorities from juries in the South on pretextual bases.⁵⁰ These pretextual bases included people of color being excluded as jurors because they "appeared to have 'low intelligence'; wore eyeglasses; were single, married or separated; were too old for jury service at age 43 or too young at 28."⁵¹

Citing to the Equal Justice Initiative's Report, the Washington Supreme Court acknowledged that discrimination still exists in jury-selection procedures in the case of *State v. Saintcalle* in 2013.⁵² In that case, the court found that Saintcalle, an African American man, who had been convicted of first degree murder, failed to show that the State's peremptory challenge to strike the only African American person in the jury pool was purposeful discrimination under *Batson*.⁵³ The court went on, however, to recognize that "a growing body of evidence shows that racial discrimination remains rampant in jury selection."⁵⁴ It found that peremptory challenges had "become a cloak for discrimination," and noted that in 40 cases since *Batson*, no Washington appellate court had

ever reversed a conviction based on the denial of a *Batson* challenge.⁵⁵ Of those 40 cases, "28 involve[d] the prosecution removing every prospective juror of the same race as the defendant, usually one or two African American jurors."⁵⁶ Because "*Batson* recognizes only 'purposeful discrimination,' whereas racism is often unintentional, institutional, or unconscious," the court concluded that "our *Batson* procedures must change and . . . we must strengthen *Batson* to recognize these more prevalent forms of discrimination."⁵⁷

Conversely, excluding any portion of our peers from juries based on discrimination can minimize the effectiveness and integrity of the jury system and cause Americans to lose faith in its impartiality.

The importance of the impartial jury

The *Saintcalle* court, along with questioning *Batson's* effectiveness at ending racially-biased juror selection, also discussed the importance of the impartial jury to our legal system. It noted that it is fundamental to our democracy that "all citizens have the opportunity to participate in the organs of government, including the jury."⁵⁸ The court went on to surmise that "allow[ing] the systematic removal of minority jurors create[s] a

badge of inferiority, cheapening the value of the jury verdict," and that "it is also fundamental that the defendants who look at the jurors sitting in the box have good reason to believe that the jurors will judge as impartially and fairly as possible."⁵⁹ It concluded, "Our democratic system cannot tolerate any less."⁶⁰

Although the jury system in the United States is, in many ways, far from perfect, both Thomas Jefferson, and, much later, the Washington Supreme Court, correctly observed that it epitomizes our democratic values and beliefs. Juries engender a sense of fairness into the judicial process and can, therefore, bolster Americans' confidence in the system as whole. Conversely, excluding any portion of our peers from juries based on discrimination can minimize the effectiveness and integrity of the jury system and cause Americans to lose faith in its impartiality. Because of this, and because of our continually growing and changing nation, nondiscriminatory jury selection procedures are necessary for juries to remain effective and impartial as the founding fathers intended.

The changing demographics in Idaho

Idaho, as compared to other states, has historically been very homogenous, but it is growing and changing. According to the 2013 census, 89% of Idaho's population was white.⁶¹ Its growth rate from 2012 to 2013 was 1%, which was the thirteenth strongest in the nation.⁶² The Hispanic population during the same period grew approximately 2.1%.⁶³ Even more interestingly, this number showed slower growth as compared to previous years. From 2000 to 2010, Idaho's Hispanic population grew more than any other demographic.⁶⁴ Specifically, U.S. Census data showed that during

that decade, Idaho's non-Hispanic population increased by 17%, while its Hispanic population rose by approximately 73%.⁶⁵ Today, approximately 176,000 people who identify as Hispanics live in Idaho.⁶⁶ So do approximately 21,500 American Indians, 19,000 Asians, and 9,900 African Americans.⁶⁷ Further, according to census data, there were approximately 2,300 same-sex couple households in Idaho in 2012.⁶⁹

Idaho is becoming more diverse, and we must be wary of discrimination in jury selection throughout our state so that all Idahoans are insured impartial juries and all citizens are able participate in the legal system. The different perspectives that *all* people have are the basis of the impartial jury and none of our eligible peers should be removed from a jury solely because of those inherent characteristics that form the basis of who they are. Unfortunately, discrimination in juries continues to exist today, but through the ethical use of preemptory challenges and a wariness of biased jury selection practices, Idaho's attorneys and judges are positioned to ensure all Idahoans the right to the impartiality and democratic effectiveness the jury system was designed to engender.

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Today, approximately 176,000 people who identify as Hispanics live in Idaho.⁶⁶ So do approximately 21,500 American Indians, 19,000 Asians, and 9,900 African Americans.⁶⁷

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67. *Id.*

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About the Author

Jaren Nichole Wieland is a trial attorney at Gjording Fouser PLLC a civil litigation firm in Boise that represents businesses, hospitals, and professionals. Jaren defends clients against professional malpractice, medical malpractice, and employment claims. She is a graduate of University of Iowa College of Law, and she and her husband, attorney Steve Wieland, moved to Boise on a whim in 2009 after reading a National Geographic article about this really cool town called Boise. You can learn more about the firm and Jaren's practice by visiting gfidaholaw.com.



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Make Fitness a Priority in Your Busy Life

Leslie M. Hayes

The idea for this article was born on the treadmill as I was grinding out miles over lunch. I was stuck on a recent discussion I had with Idaho Women Lawyers board member Demi Fisher, where she stated that in an IWL survey, members revealed that they were interested in getting more information on how to integrate more exercise/activity into their busy lives. While I chewed over that concept and pounded away on the machine, I came up with an idea to write an article that shares the collective experiences from IWL members of how they have kept fitness a priority in their individual lives and — more importantly — *why*.²

Why you should exercise³

The science is relatively clear-cut and it is uniformly accepted that *exercise is good for you*.⁴ With that being said, the science is also relatively clear-cut that you don't have to physically exert yourself at marathon pace to achieve the health benefits of exercise.⁵ The benefits are realized by integrating *any* mild physical activity — a twenty-minute walk, for example — into your daily routine and those that realize the greatest health benefits are the ones that integrate *any* exercise into an otherwise sedentary lifestyle.⁶

Exercise can counteract the health detriments of our profession—stress, long hours, time spent sitting, and weight gain associated with a desk job. Exercise can also improve a lawyer's work performance because it improves brain functioning, elevates mood, increases memory, improves cognitive functioning, reduces stress, decreases some of the effects of depression,⁷ and increases pain toler-

ance.⁸ In fact, a recent study found that busy professionals who regularly exercise have a greater sense of work-life balance as opposed to their non-exercising counterparts.⁹ In other words, if you are too busy to exercise — *exercise will actually make you feel less busy*. The researchers attributed this finding to two concepts: (1) "exercise reduces stress, and lower stress makes the time spent in either realm [work or life] more productive and enjoyable[;]" and (2) people who exercise have an increased level of self-efficacy.¹⁰ Self-efficacy "refers to the sense that one is capable of taking things on and getting them done . . . people with high self-efficacy are less likely to avoid difficult tasks or situations, and more likely to see them as challenges to be mastered."¹¹

Based on the above — minimal required effort, the multitude of health benefits, and professional benefits — it is hard to find a reason why lawyers should not include exercise in their already busy schedules. With the reasons *why* in mind, we will now examine the *how*.



Photo courtesy of Matt Green

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Fitting in exercise: Lessons from other practitioners

I detest reading fitness articles that highlight how to fit exercise into your life and then proceed to discuss people who get up at 4:30 a.m. because I am not that person. Exercising that early works for some people, but it does not work for all people. It was with this fundamentally different view on "how" that I decided to turn to the collective

knowledge of the members of IWL. I sought out individuals with different practices, different lifestyles, and different family structures with the hope that I would be able to provide a variety of situations and preferences when it comes to the barriers that each of us must surpass in order to make exercise an individual priority.

“But I’m so busy that nothing will work for my schedule”

An important concept and theme that each person provided was that each individual needs to find what works for their schedule and demands. There is no one-size-fits-all plan and each person has a different preference ranging from running before sunrise, to going to the gym when there is time, to hiring a personal trainer.

Jennifer Dempsey with Andersen Banducci has two children who are at the peak of their after-school activity levels. For that reason, she runs when she knows it will not conflict with other daily activities and meets with a group of friends at 5:30 a.m. three times a week. She has also recently incorporated yoga and weight training into her routine in order to build strength and longevity. Similarly, Ramona Johns with Zions Bank works out first thing in the morning and sets a goal for herself to workout 5-6 days per week. “For me, the key to fitting fitness into a busy schedule is working out in the morning before work. If I workout at the gym, I bring clothes for work and go straight from the gym to work.”

Julianne Hall with Gjording Fouser takes a more flexible approach and sets a goal of 3 workouts per week and then fits it in where she can. She utilizes the YMCA in downtown Boise because of its childcare center. Pam Howland

This summer she went for a run on the beaches of Tel Aviv and inadvertently ran into her Israeli outside counsel, which provided a good starting point for their business relationship.

with Holland & Hart, prefers running as her primary form of exercise because of its inherent flexibility — “[it is a] routine you can perform on your own timetable no matter where you are at.” Demi Fisher with Micron agrees and frequently packs her running shoes while on work-related trips. This summer she went for a run on the beaches of Tel Aviv and inadvertently ran into her Israeli outside counsel, which provided a good starting point for their business relationship. She finds that having a common interest can help immensely when forming new relationships and that traveling with a pair of running shoes has given her several “once in a lifetime experience[s].”

Finally, Keely Duke with Duke Scanlan Hall, recommends that if you can afford it, hire a personal trainer. She finds that her trainer provides her with an overall health perspective, including addressing time constraints, holding her accountable to realistic goals, and providing nutrition advice. Keely notes that having the support of friends and family and setting realistic goals for herself keeps her on track. Despite this, she admits that when she is super busy, she finds it difficult to exercise on a daily basis. If it has been a couple of days since her last

workout, she uses the old adage — “you’re one workout away from a good mood” — to motivate her out the door for at least a short walk on Boise’s greenbelt. “Whether its 20 minutes or 60 minutes, you still get the same [mental] benefit.”

“I exercise sporadically, but then I lose my motivation”

Several people also discussed how they have set personal fitness goals or challenges in order to motivate themselves out of an exercise rut. Setting a goal can be a great motivator, but it is important to make sure the goal is realistic.¹² For example, Pam was recently convinced by a friend to sign up for her first full marathon because “[o]nce you pay the entry fee and pledge to friends and family that you are undertaking this huge goal, there is no turning back.” She has run several half marathons prior to undertaking this step and weighed the pros and cons of how training for a marathon would fit into her life. For Pam, establishing a regular exercise routine, stress relief, weight loss, time spent running with a friend, and a summer road trip associated with bragging rights were the motivation she needed to commit to the marathon.¹³ Simi-

larly, three years ago, Keely signed up for and completed the Robie Creek half marathon in Boise. She described how aspiring to and completing that goal gave her a feeling of accomplishment. “[Achieving] that goal was a huge milestone.”

Others find motivation in their workout partner or group. When meeting her friends for a run one morning, Jennifer recently posed a question to the group: “why do we subject ourselves to this?” The answers included: social hour, mental release, and an opportunity to get it done before the day takes over. Susie Boring-Headlee, the ADR/Pro Bono Coordinator for the Federal Court, notes that “[h]aving a dog has really helped keep [my husband and me] on track — on those early mornings when we really don’t feel like putting on our walking shoes and going outside in the rain or cold weather, our yellow lab Benelli (aka Benny) lets us know that is just not an option.”

Finally, Keely and Susie both note that tracking daily steps through the use of a pedometer or workout journal is an easy way to hold yourself accountable when you lose motivation. Keely notes that the pedometer is a way to set daily goals to accomplish.

“I will do it when I finish fill-in-the-blank project”

The responders also had several creative ways for exercise and other life activities to overlap, which provides the opportunity to multi-task during a workout. Susie notes that “[w]alking regularly is something my husband Paul and I do together. We often plan our holidays around walking-friendly cities[.]” Ramona uses long runs as a way to catch up and stay connected with friends. She does this by either running with



Photo courtesy of Susie Boring-Headlee

Benelli Outlaw, Susie Boring-Headlee’s yellow lab, loves getting exercise in the Boise Foothills. He also gives his master the motivation to go for a walk even in bad weather.

a friend or making phone calls to friends while running.¹⁴ Julianne sometimes uses her time running to work through tough briefing issues and figure out a rough outline. She also finds that in nicer weather, she can combine other activities, such as walking the dog, with her exercise routine in order to accomplish more in less time. Keely finds that as her children have gotten older it has become easier to “kill two birds with one stone” — she can get in some mild exercise while spending time with her twin daughters playing basketball, hiking, or swimming.

“But my friends/co-workers/spouse don’t exercise and I need to spend time with them/him/her”

Getting your co-workers, partner, friends, or spouse involved in a friendly workout competition is also a great way to stay motivated and committed to exercise. In January 2013, Gjording Fouser launched

In January 2013, Gjording Fouser launched a firm-wide Fitbit Challenge¹⁵ by purchasing pedometers and challenging employees to achieve the recommended goal of 10,000 steps each day.¹⁶

a firm-wide Fitbit Challenge¹⁵ by purchasing pedometers and challenging employees to achieve the recommended goal of 10,000 steps each day.¹⁶ Prizes were awarded each month to the person with the most days over 10,000 steps and Fitbit pro-

vided an online format for competitive employees to track their progress against other members of the firm. Gjording Fouser introduced this challenge because “[c]ountless research studies have shown that physical activity drives better health and longevity[.]” and “recent studies say that sitting is the new smoking[.]” In 2014, Gjording Fouser is continuing the challenge with some added twists. The firm also hopes to form teams for two local races and pay the registration fee for those interested in running or walking. “We also think it would be great fun if we could set up a challenge with other law firms!”¹⁷

“I want to send the right message to my children”

When Pam was considering whether to register for a full marathon, she also put a lot of thought into the impact that her decision may have on her children. Pam has two daughters — one with Type I insulin-dependent diabetes. Knowing that diabetes can be better controlled through regular exercise, Pam pondered whether her daughter would “be more inclined to exercise if she saw me doing it with more regularity[.]” Keely notes that as her daughters age, it is important to live by example and show that both fitness and personal time are important elements to a balanced life.

“I have tried before, but failed”

Finally, several of the people I contacted for this article politely declined to be interviewed because they currently feel that exercise has taken “a backseat to their busy schedule.” These women were contacted because I personally know that they have put forth dedication and commitment to integrating exercise into their busy lives. As noted by Keely, as

attorneys, it is mentally difficult for us to set goals and then not achieve them. Demi encompassed this attitude of accepting your own best efforts when she said — “I feel like a fraud lately as regularity has not been my strength — but I fight the good fight.” Anyone who keeps exercise at the forefront of his/her tasks, even if s/he cannot accomplish that task regularly continues to “fight the good fight.” Since Herculean efforts are not required to achieve the health benefits of exercise, everyone that puts forth the effort to do something — *anything* — should congratulate themselves on making fitness a priority.

“The terrible and wonderful reasons why”¹⁸

Since we started with the science of why, I thought I should leave you with the abstract reasons why those interviewed personally exercise and whether she thinks exercise makes her a better attorney. The responses I received were nothing short of wonderful.

“I think exercise undisputedly makes me a more balanced person and permits me to focus more sharply on items on my plate — both personal and work wise.”¹⁹

“It is a stress reliever for me. After a run or work out, I feel more relaxed and focused.”²⁰

“Sanity and longevity. . . . Running is cheap therapy. . . . [and running, yoga, and weights] keeps me strong. I don’t ever want to say to my kids that I can’t do something because I’m old.”²¹

“I do enjoy the peace and solitude of long walks, and I really enjoy being outdoors. . . . [My husband and I] have noticed that walking every day helps with our sleep patterns and aids in keeping our weight down — plus, it’s a great excuse for buying a new pair of shoes!”²²

“I was about to type that I wasn’t sure it made me a better attorney, but that it made me a better person. But then I just realized that it really makes me a whole person and that being a whole person keeps me connected to both myself and others, which in the end I just realized makes me a better attorney because: I am able to find more joy in my day and work; and I better connect with the people I work with and with the people who are influenced by my work.”²³

Since Herculean efforts are not required to achieve the health benefits of exercise, everyone that puts forth the effort to do something — *anything* — should congratulate themselves on making fitness a priority.

Exercise provides multiple benefits to attorneys. Whether it is a twenty-minute walk around downtown during lunch, yoga in the park on Saturday, or a sixty minute cycling class at the gym, find a way to make fitness a priority in your busy life.

Endnotes

1. <http://theoatmeal.com/comics/running6>
2. In writing this article, I was grateful that so many talented and busy women would be willing to share their thoughts and comments in a public forum, even if the response was that she did not feel comfortable speaking on this topic. Each and every response helped me to develop this final piece.
3. The title of this article is "Make *Fitness* a Priority in Your Busy Life." However, you will note that this article addresses exercise almost exclusively. That is because fitness is a fluid concept and exercise is the base that is necessary to build fitness into your life.
4. <http://www.mayoclinic.org/exercise/art-20048389>
5. <http://www.nytimes.com/ref/health/healthguide/esn-exercise-ess.html>
6. *Id.*; <http://www.npr.org/blogs/health/2011/08/04/138926184/even-a-little-exercise-can-help-your-heart>
7. In no way do I intend to underscore the effects of depression and I do not mean to suggest that exercise can "cure" or "prevent" this devastating disease. I make this comment because science suggests that some of the effects of depression may be lessened by a regular exercise routine in some people.
8. http://www.huffingtonpost.com/2013/09/04/body-on-exercise-what-happens-infographic_n_3838293.html; <http://www.npr.org/blogs/health/2013/11/11/244503589/sweat-your-way-to-a-healthier-brain>; <http://www.lawyersweekly.com.au/news/a-fit-lawyers-a-better-lawyer>; <http://www.runnersworld.com/sports-psychology/getting-fit-increases-pain-tolerance>
9. ["Sanity and longevity. . . Running is cheap therapy. . . \[and running, yoga, and weights\] keeps me strong. I don't ever want to say to my kids that I can't do something because I'm old."²¹](http://blogs.hbr.org/2014/01/how-</div><div data-bbox=)

— Response to author's query

regular-exercise-helps-you-balance-work-and-family/

10. *Id.*

11. *Id.*

12. http://www.huffingtonpost.com/natasha-hastings/fast-exercises_b_862835.html

13. Pam also discussed considerations with her children, which will be discussed later in this article.

14. For those interested, Ramona accomplishes this task by either using her speaker phone while on the treadmill or using a Bluetooth headpiece while outdoors.

15. The City of Boise also launched a six month Walk 150 Business Challenge in June 2013. <http://www.walk150.org/>. For readers outside of the Boise area, IWL's Health & Wellness subcommittee would be happy to support you if you would like to setup a similar walk program/challenge in your area.

16. <http://www.fitbit.com>. There are a number of pedometer products on the market currently, including products by Garmin, Jawbone, and Nike.

17. Other firms interested in accepting this challenge should contact Trudy Fouser. Please note, that Trudy did not officially request that I include this challenge request; however, I have included it here because I think this is a great opportunity for law firms to take a small step towards promoting a positive change for their attorneys and support staff.

18. <http://theoatmeal.com/comics/running>

19. Julianne Hall

20. Ramona Johns

21. Jennifer Schrack Dempsey

22. Susie Boring-Headlee

23. Demi Fisher

About the Author

Leslie M. Hayes is a deputy attorney general for the State of Idaho and this article is a presentation of her views. Leslie is an active member of IWL and the Chair of IWL's Health & Wellness subcommittee. The goal of the Health & Wellness subcommittee is to provide access to information and programs in order to promote fitness and wellbeing among IWL members. Leslie enjoys biking, running, skiing, swimming, walking, weight training, and yoga. Leslie doesn't believe that you have to be fast, good, or graceful when you exercise - you simply have to enjoy what you are doing. "And the buzzing roar of the world is nothing compared to the noise inside my head. . . I feed an army of pointless, bantering demons. . . But when I run, the world grows quiet. Demons are forgotten, Krakens are slain, and Blerches are silenced."²¹



The Impact of Leaving Idaho's Government Employees Unprotected

Lauren I. Scholnick
Erika Birch

Because it is both an at-will and right-to-work state,¹ Idaho affords most employees very few rights in the workplace. However, Idaho's civil servants, those working for governmental entities, traditionally have had more job security as insulation from political whim. But that seems to be changing when it comes to Idaho's local government civil servants. This article will explore the impact that waning protections for these employees has on Idaho's economy as a whole and the ever shrinking middle class in particular. We conclude with a call to action as the solution.

The problem

Most Idaho state employees are "classified," meaning they can only be fired for "just cause." They are also entitled to due process when they are disciplined, demoted, or terminated.² The same is typically true of unionized workers in Idaho, who can generally only be fired for just cause and are entitled to due process. But when it comes to Idaho's approximately 75,000 local government employees there is no guarantee they will be fired for just cause or receive due process to challenge terminations. Idaho Code section 50-1601 provides that local governments *may* create their own civil service system but stops short of mandating it. Thus, whether local government employees have any job security is based on the local elected officials' decisions — the same officials who may want to "clean house" in order to employ their political cronies.

As a practical matter, this means that most local government employ-

Whether local government employees have any job security is based on the local elected officials' decisions — the same officials who may want to "clean house" in order to employ their political cronies.

ees do not have traditional civil service protections. For example, Ada County, a large local government employer of 1,600-1,800 employees,³ makes clear in its employee handbook that "Employees of Ada County are at-will and nothing in this policy should be construed to imply otherwise. The County retains the right to terminate employees at any time, with or without cause."⁴ Likewise, several 2013 court decisions held that local government employees lack the basic civil service protections historically provided to civil servants.⁵

Most of these state and federal court cases determined that a simple handbook disclaimer and a signed acknowledgement of the employee that s/he saw the disclaimer was enough to strip the employee of civil service protections. However, in *Brown v. Valley County*⁶ the court held a county employee did indeed maintain civil service job protection. Specifically, the Valley County personnel policy provided that after a 90-day introductory period, an employee could not be suspended without pay, fired or demoted "except for cause related to performance of their job duties or other violation of [the] policies."⁷ Even though the employment policy manual contained a disclaimer stating that the policy did not create a contract, there was no specific mention in the policies

or an acknowledgement by the employee that the employee was at-will. Chief Magistrate Judge Candy Dale held that the disclaimer alone was not adequate to strip Mr. Brown of civil service protections. Subsequent to the *Brown* decision, Valley County revised its policy manual adding in language specifically stating that employment is "at-will" presumably in order to eliminate any civil service protections going forward. Based upon our review of various local government policies, there appears to be a trend for these entities to write, or rewrite, their employee handbooks and/or ordinances to remove traditional job protections for the civil servants who perform the work of government.

The impact

Since the rest of Idaho's non-unionized/non-classified employees are almost always at-will employees, why does this matter? Historically, civil service and union protections have required that employees be treated fairly and not bullied or arbitrarily fired. Also, both government employment and labor union membership have traditionally provided employees with consistent, if modest, pay raise hikes with solid benefits. These relative job security protections plus living wages and benefits have formed the foundation of the vaunted American middle class.

Yet, in an economy where this solid middle class foundation is crucial, union and public sector employees have been under attack. Across the country, policymakers have railed against excessive public employee compensation as a major cause of governmental fiscal crisis at all levels. News headlines across the country support that this rhetoric has led to public employee pay freezes, benefits reductions, privatization, and scaling back collective bargaining rights as an antidote to the public employee overpayment malady.

However, data from the U.S. Bureau of Economic Analysis and the U.S. Census show that on average, government employees are *underpaid* when compared with similar private sector workers. In fact, in 2012, Idaho government employees earned 7.6% less in wages/salary than their private sector counterparts.⁸ According to a recent article, 20 percent of Idaho's state employees make less than \$20,000 a year and 56 percent make less than \$40,000.⁹ In fact, overall pay for state employees is now 19% below market rates.¹⁰

Although public employees earn less than their private sector counterparts, traditional civil service protections and better benefits packages inspire confidence in their continued employment and solvency through retirement. This confidence ensures they are positive players even in an anemic economy as they buy homes, send their children to college, etc.

The decline of civil service protections combined with the de-unionization of our workforces will see that the middle class continues to shrink, and this impact goes beyond government workers. Studies show that highly unionized industries tend to have fairly competitive wages, partly because non-union employers raise wages to the union level to discourage unionization and attract the most skilled workers.¹¹

The late political pundit Molly Ivins said it more directly:

Although it is true that only about 20 percent of American workers are in unions, that 20 percent sets the standards across the board in salaries, benefits and working conditions. If you are making a decent salary in a non-union company, you owe that to the unions. One thing that corporations do not do is give out money out of the goodness of their hearts.¹²

Leaving local civil servants unprotected can cause two more side-effects: hampering the ability to attract qualified employees into these positions, and the loss of efficiencies with regular turn-over due to political preferences. Government efficiency benefits from consistent, professional staff who have been administering government programs for a number of years, no matter what the election cycle brings. And, it is our contention that lack of job protections also hampers the government's ability to attract qualified employees in the first place. In response to two 2013 studies showing that Idaho's state classified employees are paid, on average, 18% below the market rate, Governor Otter said that "[c]apable, motivated employees are critical to the success of State government. It is important that we reward them for their dedication and performance."¹³

The solution

So what can we do? The answer is in our elected officials — both local and statewide. The legislature could change the law and require municipalities to afford their employees job protections similar to those of state employees. This is not uncommon in Idaho's neighboring states, which provide local government employees civil service protections and due process.¹⁴ Alternatively, each local governing body could pass city or county ordinances providing that serious discipline, demotion, or firing take place only with just cause and allow employees to challenge the action in a hearing complete with constitutional due process. But it's time all of us, government and private employees alike, talk with our lawmakers about the importance of maintaining or restoring civil service protections for our local government employees. It is crucial to both to the vitality of Idaho's economy and the stability of our governmental entities.

Endnotes

1. At-will employment means that the employer/employee can end employment at any time for any reason or no reason, while right-to-work laws forbid unions/employers from requiring union membership.
2. See Idaho Code § 67-5301 et seq.
3. TOP EMPLOYERS IN BOISE CITY -

The decline of civil service protections combined with the de-unionization of our workforces will see that the middle class continues to shrink, and this impact goes beyond government workers.

NAMPA MSA October 2012 - September 2013 Average, Boise Valley Boise Valley Economic Partnership Economic Partnership. <http://www.bvep.org/relocate/leading-employers.aspx>.

4. Employee/Manager Handbook & Procedural Guidelines, amended January 14, 2014, p. 44, <https://adacounty.id.gov/Portals/0/ADM/HR/Doc/Employee-Manager%20Handbook%20.pdf>.

5. *Harms v. Power County*, 4:11-cv-0111 (D. Idaho, March 4, 2013) (holding county employee at-will based on handbook disclaimer not a contract and employee signed acknowledgement he was at-will); *Nix v. Elmore County*, CV2012-1213 (4th District, April 16, 2013)(holding disclaimer meant that county employee was at-will even with policy providing hearing prior to termination decision of non-probationary employee); *Sommer v. Elmore County*, No. 11-CV-291, 2013 WL 5274223 (D. Idaho Sept. 18, 2013)(holding employee at-will and no due process due to signed acknowledgement and still on probation).

6. No. 12-cv-57, 2013 WL 1453368 (D. Idaho April 9, 2013)

7. *Id.* at *2.

8. See data at www.bea.gov compiled at www.keypolicydata.com.

9. *Idaho debates worker raises*, *The Spokesman Review* (January 10, 2014)

10. *Id.*

11. *Unions, Norms, and the Rise in U.S. Wage Inequality*, Jake Rosenfeld and Bruce Western *American Sociological Review* Vol. 76 (August 2011).

12. Labor's Fight is Our Fight, Campaign for America's Future, February 29, 2012.

13. *Report: Idaho State Workers Earn Less Than Neighboring State Counterparts*, State Impact Idaho (January 31, 2013).

14. Utah Code §§ 10-3-1105 and 1106; Utah Code § 17-33-1.

About the Authors

Lauren I. Scholnick is a founding member of the firm of *Strindberg & Scholnick, LLC* where she practices employment law primarily on behalf of employees in Utah and Idaho. She is a past President of the Utah Associa-

tion for Justice (the Utah trial lawyers), a board member of Utah Legal Services, and a supervising attorney in Street Law Clinics, providing pro bono civil legal services in both Utah and Idaho.



Erika Birch is a partner at *Strindberg & Scholnick, LLC* and has managed the firm's Boise office since 2008. She has litigated plaintiff's employment and civil rights cases since graduating from the University of Colorado School of Law. She is the founder of the Idaho Trial Lawyers Association Street Law Clinic. She is currently on a sabbatical with her family living in Oxford, England but will return to Boise in July.



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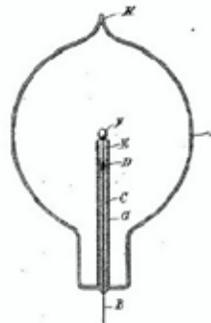
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All Stressed Out and Nowhere to Go

Vicki Olds

recently became a member of two Idaho legal organizations whose missions, although quite different, provide stress management and support networks for lawyers. Those organizations are the Lawyers Assistance Program (LAP) and Idaho Women Lawyers (IWL). Both groups provide avenues for lawyers to find collegial support when they are in need of someone to listen or the company of colleagues who best understand the enormous stress involved with the practice of law.

Idaho attorneys experiencing severe anxiety and stress, feeling depressed and overwhelmed, or turning to self-medication, are not alone. For serious or private difficulties facing a lawyer, confidential consultations and professional referrals are just a phone call away. There are places to go and people who care.

The Lawyers Assistance Program

The LAP recognizes that a lawyer's performance may, at times in her career, become impaired by physical, mental or emotional illness, including addiction.¹ Impairment can result from many different things, including stress caused by a family member's serious illness, a catastrophic financial event, a gradual increased use of alcohol to combat feelings of depression, chronic pain leading to prescription drug abuse, or an inability to adequately cope with one or a series of devastating legal defeats.

LAP's purpose is to assist lawyers and judges in securing treatment for addictive diseases and mental health issues in a confidential manner, separate and distinct from attorney discipline proceedings.² The LAP system encourages early entry into the Program.³ It seeks to provide long-term

LAP's purpose is to assist lawyers and judges in securing treatment for addictive diseases and mental health issues in a confidential manner, separate and distinct from attorney discipline proceedings.²

support for the lawyer to return to a productive place within his/her profession.⁴

Reports estimate that lawyers have problems with substance abuse at rates 5% to 8% higher than the general population.⁵ A 2011 Johns Hopkins University study found lawyers three times more likely to suffer from depression than over 100 other professions.⁶ In addition to addiction, LAP programs across the country continue to see more complex cases than ever before.⁷ Depression is the single most significant mental health issue with legal professionals of all ages, and closely related to depression is the issue of suicide.⁸ LAP programs also confront generalized anxiety orders, eating disorders, sleep problems, and dementia.

Confidentiality remains the cornerstone of LAP, with the full backing of the Idaho State Bar and Idaho Bar Commission:

Rule 1205. ... Confidentiality/Records. All records of the LAP Program shall be confidential. The LAP shall not maintain permanent records relating to the names of the participants or the nature of their participation. Each person who is the subject of any form of inquiry under these Rules shall be assigned a number, which shall thereafter be

used in any subsequent action taken by the LAP Committee, the LAP Program or the Program Coordinator.⁹

Rule 8.3. Reporting Professional Misconduct ...

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyer assistance program.¹⁰

Comment 5 to Rule 8.3 explains: "without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public."¹¹

LAP keeps no long-term records on individuals. Only anonymous demographic data (e.g., judicial district, gender, age, problem, service provided) is collected. That data may be provided to the ABA or a division thereof, such as the ABA Commission on Lawyers Assistance Programs (CoLAP).¹²

The Idaho Lawyers Assistance Program provides:

1. 24-hour phone calls, all of which are confidential;
2. Guidance for the impaired lawyer or referral sources;

3. Information relating to alcohol/drug education, mental health treatment, interventions, monitoring, and/or family support;
4. Guidance for re-entering the workplace;
5. Assistance in ascertaining lawyers who will volunteer time as temporary replacement for those lawyers going to treatment; and
6. Recommendations for appropriate treatment centers.¹³

Idaho's LAP offers educational services for legal professionals and their family and friends about the causes, effects and treatment of alcohol and drug dependency, depression and mental health problems.¹⁴

A vital element of the LAP is a group of volunteer lawyers helping lawyers, but the program relies on each and every Idaho attorney to keep a watchful eye on colleagues in their times of need. In rating the most pressing problems facing LAPs, under-utilization ranked as the most pressing problem.¹⁵ Lack of awareness among bar members was also rated as a highly pressing problem.¹⁶

Idaho's future lawyers deserve special mention. The Illinois Lawyers Assistance Program, one of the nation's oldest programs¹⁷ cites the following statistics:

- 30% of law students report they have abused alcohol
- 9% of law students report use of illegal substances, including marijuana and cocaine
- 12% of students begin abusing substances in law school
- Nearly 4% of law students feel they need help to control abuse of drugs and/or alcohol
- 17% to 40% of law students suffer from depression
- Self-reports of anxiety and depression are significantly higher among law students than either the general population or medical students.¹⁸

The LAP provides an avenue for law students to seek confidential assistance for themselves or for fellow students, as members of Idaho's legal community.

If you are concerned about yourself, a colleague, a fellow student, or a family member, contact the LAP Program Coordinator, John Southworth, at the toll free number (866-460-9014), or direct dial in the Boise area (208-891-4726).¹⁹ LAP Committee members are also available in your area for a confidential, anonymous consultation or referral.²⁰

Idaho Women Lawyers

IWL is a non-profit entity whose mission is to allow women to work toward a collective purpose of improving the legal profession for women lawyers.²¹ Its goals include, *inter alia*, building a community, promoting opportunities, and education.

The competing goals of "work-life balance" and "leaning in" cause internal conflict for female lawyers. In fact, they cause dilemmas for all lawyers. For me, IWL serves as an informal sounding board and support network. Its members understand the stresses, anxiety and burdens facing Idaho lawyers. I have realized that doing something pleasurable and rewarding in the company of those who can relate, where you can laugh and joke and commiserate, can help combat work-related stress.

Its members understand the stresses, anxiety and burdens facing Idaho lawyers. I have realized that doing something pleasurable and rewarding in the company of those who can relate, where you can laugh and joke and commiserate, can help combat work-related stress.

IWL members enjoy opportunities to gather once a month for educational and professional networking lunches. Membership is not limited to women. Men can and do join IWL, and are encouraged to attend events. There is ordinarily a nominal fee for each attendee to cover the meal and venue cost, but IWL and non-IWL members alike are welcome.

IWL breakfast and lunch programs contain positive messages and benefits. At the "Body Language (How to interpret it and how to send the right signals) program,"²² Dr. Nancy Buffington spoke about how to have a real "presence" when speaking publicly:

Whether it's buying jeans a couple sizes too snug (hence the widespread muffin-top phenomenon) or downplaying our own accomplishments, we're often more comfortable when we make ourselves small. This isn't such a great thing as a general life principle, and it's definitely a bad idea when you're in front of an audience. ... The take-away here: creating a powerful presence has little to do with the size or shape of your body. It's how you *use* your body that counts. Whether you wear a size 2 or 22, when you're in front of a group, big is beautiful.²³

In January 2014, IWL presented its “Circuit Training for Leaders Lunch” in Boise, which was well attended by men and women alike. Guest speakers included Idaho State Lieutenant Governor, Brad Little; Idaho State Department of Education Chief of Staff, Luci Willits; Ninth Circuit United States District and Bankruptcy Court Lawyer Representative, Trudy Fouser of Gjording Fouser; Fourth District Representative to the US District Court, Walt Sinclair of Stoel Rives; American Bar Association Idaho State Delegate, Deborah Ferguson of Ferguson Law & Mediation; Brian Kane of the Office of the Attorney General; Gene Petty of the Ada County Prosecutor’s Office Professionalism and Ethics Section and the Idaho Academy of Leadership for Lawyers steering committee; Treasurer of the Idaho Fourth District Bar Association, Damaris Fisher of Micron; and Past President of the Idaho Fourth District Bar Association, Teresa Hill of K&L Gates.

Other programs organized by IWL board members and subcommittees (e.g. the Lunch and Learn Committee and local chapters) provide legal education opportunities. At a Tribal Court CLE in Lewiston²³, members learned about the current legal system for the Nez Perce Tribe and recent developments in the law (e.g. changes to the Violence Against Women Act).²⁴ A mediation advocacy CLE in Grangeville, attended by both male and female local attorneys, focused on the psychology of mediation.²⁵ Lastly, experienced attorneys from Boise gave male and female attendees sound advice on “The Nuts and Bolts of a Law Practice” at an IWL-organized lunch.²⁶

For some “giving-back” activities outside of work, IWL community service events occur many times

each year, and range from volunteers coming together to cook meals for families at a Ronald McDonald House, to donating childcare supplies to the YWCA, to painting walls at the Women’s and Children’s Alliance. Such programs not only benefit the community, but also provide a forum for members to meet outside of court, have fun and simply relax in the company of colleagues.

Admittedly, IWL is not for everyone. For some attorneys, attending a lunch with other lawyers is more stressful than working alone in their office. There may not be enough

Such programs not only benefit the community, but also provide a forum for members to meet outside of court, have fun and simply relax in the company of colleagues.

time in the day to encompass family, work, outside interests, and IWL (or another legal organization), whether you are a sole practitioner, county prosecutor, or big-firm litigator. However, there is a niche for everyone at IWL. Perhaps you’d prefer to become a member of the *Advocate* subcommittee because writing and research is your comfort zone. Maybe physical fitness is your passion, and you’d like to play a role on the Health and Wellness subcommittee. I hear from our northern members how much IWL membership has helped them with networking

and job opportunities, how it gave them the impetus to apply for judicial positions, and how much they have enjoyed getting to know other attorneys who they had yet to meet. Taking part is an individual decision. For me, it has been and continues to be nothing but a positive experience.

Find your healthy outlet

Find your healthy outlet for the stresses and pressures of the practice of law. It may take some time for you to discover it. It may take the advice of friends and family for you to find it. It may take professional help. If you are feeling overwhelmed by the sheer magnitude or seemingly hopelessness of your situation, know that you are not alone. Help is out there and you do have a place to go.

Endnotes

1. *IBCR 1201(a)* (2002).
2. *IBCR 1201(a)(3), (4)* (2002).
3. *IBCR 1201(a)(3)*.
4. *Lawyer Assistance Program: Addiction, Intervention & Recovery Services for Lawyers*, at <http://www.southworthassociates.net/monitoring/lawyer-assistance-program>.
5. *Addiction, Intervention & Recovery Services for Lawyers*, at <http://www.southworthassociates.net/monitoring/lawyer-assistance-program>.
6. Ted David, *Can Lawyers Learn to Be Happy?*, 57 No. 4 *Prac. Law* 29 (2011).
7. *Illinois Lawyers’ Assistance Program Annual Report 2011-2012*, at 9 (2012).
8. *Illinois Lawyers’ Assistance Program Annual Report 2011-2012*, at 9 (2012).
9. *IBCR 1205(a)* (2002).
10. *IRPC 8.3(c)* (2004).
11. *IRPC 8.3*, Comment [5] (2004). However, certain LAP members may be required to comply with federal or state statutes mandating that certain crimes, such as child abuse, be reported to the authorities.
12. *Idaho Lawyers Assistance Program Reference Manual* (June 2013). You can find a PDF version of the manual on the

Idaho State Bar's web site at the "Lawyers Assistance Program" page.

13. *Idaho Lawyers Assistance Program Reference Manual* (June 2013), §1, p. 5.

14. *Id.*

15. *ABA Commission on Lawyer Assistance Programs* (2013), at 44 (receiving an average score of 2.58 on a scale from 1 to 9, where 1 indicated the highest priority and 9 indicated the lowest priority).

16. *Id.* (an average score of 2.59).

17. The Illinois LAP was created in 1980 by the Illinois State Bar Association and the Chicago Bar Association. *Illinois Lawyers Assistance* web site, (2014), at <http://illinoislap.org/about-lap>.

18. Illinois Lawyers Assistance Program, Inc., *Straight Talk About Law School* (2006).

19. For more information, go to www.southworthassociates.net, and click on the "monitoring" link. See also the Idaho State Bar web site at http://isb.idaho.gov/member_services/lap.html. As the program coordinator, Southworth & Associates develop recommendations from an intake evaluation and/or inpa-

tient treatment. From those recommendations, they build a client-specific contract, the price of which is negotiable. If a participant is required to engage in outpatient treatment, see a counselor, etc., Southworth makes referrals.

20. LAP committee members reside throughout Idaho. The *LAP Flyer* located on the Idaho State Bar web site contains each member's contact information, as does the *Idaho State Bar Desk Book*.

21. *Idaho Women Lawyers home page* (2014), at <http://idahowomenlawyers.com>.

22. Presented by guest speaker, Nancy Buffington, PhD, owner and executive communications coach at Boise SpeakWell.

23. *In Praise of Big Women*, Nancy Buffington, PhD, Owner of Boise SpeakWell.

24. Presented by guest speaker and IWL member, Julie Kane, Managing Attorney for the Nez Perce Tribe, Lapwai, Idaho.

25. Presented by guest speaker, attorney Scott Olds of Olds Law Offices, PLLC, in Grangeville, recruited by the author to talk about his 18 years' of experience

mediating complex product liability cases throughout the United States and Canada.

26. Presented by guest speakers, IWL members and Boise-area attorneys, Michelle Points (IWL Board Member and incoming President of IWL), and Trudy Fouser (this year's recipient of IWL's Kate Feltham Award).

About the Author

Vicki Olds graduated from the University of Idaho College of Law in 1991. She clerked for four Second Judicial District Court Judges, and practiced nationwide product liability defense litigation for 17 years. Vicki and her husband, Scott, now offer legal and mediation services at Olds Law Offices, PLLC, located in Grangeville. Vicki is IWL's North Idaho Board Liaison- and Chair of the LAP Education Subcommittee.



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4th AMENDED - Regular Spring Term for 2014

Boise January 13, 15, 17, 22 and 24
Boise February 12, 14, 18 and 19
Boise (Concordia University School of Law - 501 W. Front Street) February 21
Boise April 4 and 14
Coeur d'Alene April 8 and 9
Lewiston April 10
Boise May 2
Idaho Falls May 13, 14 and 15
Pocatello May 16
Boise June 2, 4 and 6
Twin Falls June 10 and 11

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2014 Spring Term for the Supreme Court 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.

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

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

5th AMENDED - Regular Spring Term for 2014

Boise January 9, 14, 16 and 21
Boise February 6, 11, 13 and 20
Coeur d'Alene March 4 and 5*
*United States Federal Courthouse - Coeur d'Alene, located at 6450 N. Mineral Drive
Boise March 18 and 20
Boise April 8, 10, 15, 17 and 24
Boise May 1 (Law Day)*
*Oral Argument to be held at Capital High School, 8055 W. Goddard Road in Boise
Boise May 5, 6, 8, 13 and 15
Boise June 10, 12, 17 and 19

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2014 Spring Term for 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 Scheduled for May 2014

Friday, May 2, 2014 – BOISE

8:50 a.m. *State v. Michael Eugene Koch* #40294-2012
10:00 a.m. *Ryan Conner v. Bryan F. Hodges, M.D.* #40742-2013
11:10 a.m. *State v. Boren* (Petition for Review) #41115-2013

Tuesday, May 13, 2014 – IDAHO FALLS

8:50 a.m. *Beguesse, Inc. v. Kenneth Rammell* #40212-2012
10:00 a.m. *Deanne Muchow v. Varsity Contractors* (Industrial Commission) #40559-2012
11:10 a.m. *Karrin Massey v. Conagra Foods, Inc.* #40504-2012

Wednesday, May 14, 2014 – IDAHO FALLS

8:50 a.m. *Kevin D. Hope v. Industrial Special Indemnity Fund* (Industrial Commission) #40749-2013
10:00 a.m. *Frontier Development v. Louis Caravella* #40581-2012
11:10 a.m. *Karl H. Lewies v. Fremont County Commissioners* #40987/41132-2013

Thursday, May 15, 2014 – IDAHO FALLS

8:50 a.m. *Keith E. Godfrey v. Church of Jesus Christ of Latter-Day Saints* (Industrial Commission) #40942-2013
10:00 a.m. *Bank of Idaho v. First American Title Insurance Co.* #41157-2013
11:10 a.m. *Vianna Stibal v. April Fano* #40427-2012

Friday, May 16, 2014 – POCATELLO

8:50 a.m. *Spirit Ridge Mineral Springs, LLC v. Franklin County* #40865-2013
10:00 a.m. *Agrisource, Inc. v. Robert Johnson* #40340-2012
11:10 a.m. *DAFCO, LLC v. Stewart Title Guaranty Co.* #40738-2013

Idaho Court of Appeals Oral Argument for May 2014

Thursday, May 1, 2014 – LAW DAY (Capital High School - 8055 W. Goddard Road in Boise)

9:30 a.m. *State v. John* (2013-14) *Doe* (EXPEDITED) #41161-2013

Monday, May 5, 2014 – BOISE

9:00 a.m. *Donoval v. City of Sun Valley* #40853-2013

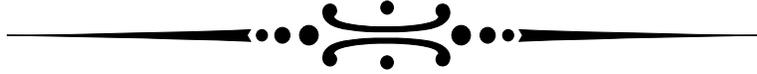
Tuesday, May 6, 2014 – BOISE

10:30 a.m. *State v. Ward* #40467-2012
1:30 p.m. *Huntsman, Sr. v. State* #40549-2012

Thursday, May 8, 2014 – BOISE

9:00 a.m. *State v. Davis* #40720-2013
10:30 a.m. *State v. Johnson* #41168-2013
1:30 p.m. *Marmor v. Marmor* #41062-2013

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**Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 4/1/14)**

CIVIL APPEALS

Attorney fees and costs

1. Whether the district court erred in finding that the petitioners were not entitled to attorney fees and costs pursuant to I.C. § 9-344(2), and in finding the initial refusal to provide records was not frivolously made.

Hymas v. Meridian Police Department
S.Ct. No. 41156
Court of Appeals

Divorce, custody, and support

1. Did the court err as a matter of law and fact by not requiring the community home to be listed for sale and sold to the highest offeror?

Williams v. Williams
S.Ct. No. 41261
Court of Appeals

2. Did the court err in the valuation and award of the shares of stock in Mountain Health Care, Inc.?

Reed v. Reed
S.Ct. No. 41013
Supreme Court

3. Did a valid marriage exist upon which the magistrate court was entitled to exercise subject matter jurisdiction to divide the purported community property allegedly owned by those parties in the Amended Final Judgment and Decree entered on January 4, 2012?

Baird-Sallaz v. Sallaz
S.Ct. No. 41301
Supreme Court

Easement

1. Did the court err in determining H.F.L.P., LLC, had not established the statutory time period for a prescriptive easement by clear and convincing evidence?

H.F.L.P., LLC v. City of Twin Falls
S.Ct. No. 41277
Supreme Court

Liens

1. Whether a lien claimant may tack together work on two projects when 113 days elapse between completion of the first project and reaching an enforceable agreement regarding the scope of work on the second project.

Hap Taylor & Sons, Inc. v.
Summerwind Partners, LLC
S.Ct. No. 40514
Supreme Court

Other

1. Whether the district court erred in determining the Board of Real Estate Appraisers properly delegated its authority to the Idaho Bureau of Occupational Licenses to initiate an investigation against Williams.

Williams v.
Idaho Board of Real Estate Developers
St. Ct. No. 41193
Supreme Court

Post-conviction relief

1. Did the court err in denying Klein's claim of ineffective assistance of counsel because counsel failed to conduct an independent investigation or adequately consult with an independent accident reconstructionist?

Klein v. State
S.Ct. No. 40924
Court of Appeals

2. Did the court err because it dismissed the petition on a ground different than that raised in the notice of intent to dismiss?

Tapp v. State
S.Ct. No. 41056
Court of Appeals

3. Did the court fail to rule on all of Sarabia's claims in post-conviction such that reversal is warranted?

Sarabia v. State
S.Ct. No. 41066
Court of Appeals

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

Zippich v. State
S.Ct. No. 41250
Court of Appeals

5. Did the court err when it summarily dismissed Reece's ineffective assistance of counsel claim by holding the legal analysis in State v. Diaz was grounds to summarily dismiss the claim?

Reece v. State
S.Ct. No. 41369
Court of Appeals

Satisfaction of judgment

1. Did the court err in interpreting and applying the Idaho foreign judgment collection statute, I.C. § 10-1302, in granting plaintiff's motion to reconsider?

International Real Estate Solutions v.
Arave
S.Ct. No. 41297
Supreme Court

Summary judgment

1. Whether the court erred in granting summary judgment in favor of Peabody on the basis that no genuine issue of material fact existed as to the causation between Peabody's negligence and Sales' injuries and damages.

Sales v. Peabody
S.Ct. No. 41446
Supreme Court

2. Did the trial court err in ruling that Mattox had failed to lay adequate foundation for the admission of the testimony of her nursing expert?

Mattox v.
Life Care Centers of America
S.Ct. No. 40762
Supreme Court

3. Whether the trial court manifestly abused its discretion in striking the affidavits of Zylstra's experts.

Zylstra v. Boise State University
S.Ct. No. 41421
Supreme Court

CRIMINAL APPEALS

Death penalty cases

1. Did the court abuse its discretion by denying Abdullah's requests for appointment of a DNA expert at trial?

State v. Abdullah
S.Ct. No. 31659
Supreme Court

**Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 4/1/14)**

Evidence

1. Did the court violate Laursen's due process right to present a defense when it excluded testimony from Laursen that he suffered from PTSD at the time he committed two burglaries?

State v. Laursen
S.Ct. No. 40795
Court of Appeals

2. Did the court abuse its discretion by admitting into evidence at trial Swenson's breath-test results and in finding the foundational prerequisites had been satisfied?

State v. Swenson
S.Ct. No. 41325
Court of Appeals

3. Did the court err in concluding there was substantial evidence to support Freitas' conviction for violating Spirit Lake Ordinance 7-4-10?

State v. Freitas
S.Ct. No. 41378
Court of Appeals

4. Was substantial competent evidence admitted at trial from which a jury could conclude beyond a reasonable doubt that Thompson was guilty of involuntary manslaughter?

State v. Thompson
S.Ct. No. 40796
Court of Appeals

Motion to dismiss

1. Did the court err in denying Varela-Tema's motion to dismiss because the officer lacked probable cause that a crime was being committed as to the "upon public or private property open to the public" element of the DUI statute when he arrested Varela-Tema for felony DUI?

State v. Varela-Tema
S.Ct. No. 40847
Court of Appeals

New trial

1. Did the court err in denying Ellington's motion for a new trial where there was newly discovered evidence showing the State's retained accident reconstruction expert testified falsely at Ellington's trial?

State v. Ellington
S.Ct. No. 39838
Supreme Court

Pleas

1. Did the court abuse its discretion by denying his post-sentencing motion to withdraw his guilty plea because Gomez failed to carry his burden of demonstrating manifest injustice entitling him to withdrawal of his plea?

State v. Gomez
S.Ct. No. 40664
Court of Appeals

2. Did the court abuse its discretion by denying Roberts' motion to withdraw his guilty plea filed after he was discharged from drug court?

State v. Roberts
S.Ct. No. 40557
Court of Appeals

Probation revocation

1. Did the court abuse its discretion in revoking Heck's probation, and by not sua sponte reducing his sentences upon revocation?

State v. Heck
S.Ct. No. 40678/40679
Court of Appeals

2. Did the court abuse its discretion in revoking probation or in failing to reduce his sentence?

State v. Rhoades
S.Ct. No. 40784
Court of Appeals

3. Did the court abuse its discretion in revoking probation or in failing to reduce Murphy's sentence upon revocation?

State v. Murphy
S.Ct. No. 40812
Court of Appeals

4. Did the district court abuse its discretion when it revoked Spicer's probation, or alternatively, when it executed his sentence without reducing it?

State v. Spicer
S.Ct. No. 40797
Court of Appeals

5. Did the court abuse its discretion by imposing two consecutive indeterminate three year sentences upon revoking Hart's withheld judgment and probation?

State v. Hart
S.Ct. No. 40908
Court of Appeals

**Search and seizure –
suppression of evidence**

1. Did the district court err when it concluded that because the blood draw in this case was not justified by one exception to the warrant requirement, exigency, it necessarily could not be justified by a different exception, implied consent?

State v. Halseth
S.Ct. No. 41169
Supreme Court

2. Did the district court err when it concluded that implied consent is not a valid exception to the warrant requirement?

State v. Wulff
S.Ct. No. 41179
Supreme Court

Sentence review

1. Did the court violate Idaho law and Diehl's right to due process by placing him on probation and imposing conditions of probation following his retained jurisdiction in absentia and without his consent?

State v. Diehl
S.Ct. No. 40044
Court of Appeals

**Summarized by:
Cathy Derden
Supreme Court Staff Attorney
(208) 334-3868**

Untangling the Web of Prior Witness Statements

Tim Gresback

Prior statements of witnesses are often admissible, but for different reasons and under different conditions. I forget the distinctions in the heat of trial, so I have made the attached chart for quick reference.

Impeachment: Not for truth

When a witness says something at trial inconsistent with an out-of-court statement, the witness can be impeached under Rule 613. Extrinsic evidence can be offered to prove the inconsistency. In other words, if the witness denies having told a police officer after a crash that the light was red, the lawyer can call the officer under Rule 613 and prove the inconsistency.

Rule 613 impeachment, however, only proves the witness is not worthy of belief; it cannot be offered for the truth of the matter; the inconsistency cannot be offered as substantive evidence. If a party needs to establish that the light was red to prove negligence — and the inconsistent statement is the only evidence of the light's color — the prima facie case of the cause of action is not established and dismissal will follow as a matter of law.

Inconsistent prior testimony: Non-hearsay

Sometimes a witness provides testimony before trial that was not subject to cross-examination. Under Rule 801(d)(1)(A), the testimony can be admitted, provided the witness is available now for trial and subject to cross-examination. Although the prior testimony can be substantively admitted to prove the truth of matters asserted — and the prior testimony sounds like classic hearsay — the rules quirkily define this

Rule 613 impeachment, however, only proves the witness is not worthy of belief; it cannot be offered for the truth of the matter; the inconsistency cannot be offered as substantive evidence.

type of prior statement testimony as “non-hearsay.” A prime example of an 801(d)(1)(A) prior statement is grand jury testimony.

Former testimony: Hearsay exception

A third example of a witness' prior statement is former testimony under Rule 804(b)(1). As a hearsay exception, former testimony can be offered substantively for the truth of matters asserted.

Former testimony is only admissible, however, if the witness is unavailable: absent from the jurisdiction; deceased; has no memory of events; or asserts a privilege. In addition, the witness must have been subject to cross during the prior proceeding. Good examples of former testimony admissible under 804(b)(1) include a preliminary hearing or deposition.

Recorded recollection: Hearsay exception

Recorded recollection is a fourth common avenue that allows the admission of a witness' prior statement. Under Rule 803(5) a statement can be offered substantively for truth as a hearsay exception. Rule 803(5) also has some proscriptions: the witness must testify that although the details were once known to the witness, they cannot now be recalled.

In addition, the witness must vouch for the accuracy of the earlier statement — even though memory of the events is now gone.

When 803(5) recorded recollection is admitted, the statement is read to the jury and can only be offered as an exhibit by an adverse party. One example of recorded recollection is a written witness statement provided to police after a stabbing or car crash.

Refreshing memory: Not admissible

A final evidentiary rule sometimes comes into play when evaluating the use of prior witness statements. Under Rule 612 a witness's memory can be refreshed by a writing, including one the witness wrote previously.

However, the writing is not admissible simply because it refreshes the memory of the witness. Instead, the in-court examination of the writing must cause the witness to think: “Now I remember.” The witness then testifies from the refreshed memory, not the written statement. The written statement does not become admissible under 612. Also, the adverse party has a right to see the writing and cross-examine the witness about it.

I hope the chart on page 47 will assist you in keeping prior statements straight.

Endnotes

1. I do not discuss all hearsay exceptions or rules relating to witness statements. For a scholarly and much more exhaustive treatment of witness statements, see D. Craig Lewis, *Idaho Trial Handbook* (2d ed. 2005) (2012-2013 Supp.).

2. The Federal and Idaho Rules of Evidence are referred to interchangeably, as they are essentially identical regarding witness statements. The Federal Rules of Evidence (FRE) were first enacted by Congress in 1975. The Idaho Rules of Evidence (IRE), based substantially on the FRE, were enacted by the Idaho Supreme Court in 1985. The look of the FRE changed in 2011, when the rules were “re-styled.” The numerous changes were intended to apply uniform conventions of style and usage throughout the FRE; the revisions were not intended to make any substantive changes to evidence principles. Idaho has not yet made these stylistic changes.

3. Rule 613 and 608 are distinct impeachment mechanisms. A 613 impeachment — through a prior inconsistent statement — says: “You are lying today.” A 608 character impeachment of a witness’ credibility — through opinion or reputation testimony — says: “You are always a liar.” Under 613 extrinsic evidence can be used to prove the inconsistent statement; under 608 extrinsic evidence cannot be used to establish a witness’ character for truthfulness — it can only be proven by opinion or reputation testimony.

4. A party’s own statement, only when offered by an opponent, is defined as non-hearsay under 801(d)(1)(2).

5. Similarly, a witness can be rehabilitated with a prior consistent statement at trial with prior testimony under 801(d)(1)(B).

6. Idaho, however, has a specific statute regarding the use of preliminary hearing testimony. See I.C. § 9-336.

7. Other hearsay exceptions may also apply. For example, if the declarant is available under 803: present sense impression; excited utterance; existing mental and emotional condition; and statements made for medical diagnosis. If the declarant is unavailable under 804, a dying declaration or statement against interest can also be admissible.

About the Author

Tim Gresback is a Moscow attorney serves on the Idaho Evidence Rules Committee. He has taught Trial Advocacy and Evidence at the University of Idaho College of Law. Tim is an ITLA Certified Criminal and Civil Trial Specialist. He is also an Idaho State Bar Commissioner.



Untangling the Web of				
PRIOR STATEMENTS				
613 INCONSISTENT PRIOR STATEMENT IMPEACHMENT	801(d)(1)(A) DECLARANT-WITNESS' PRIOR INCONSISTENT STATEMENT	804(b)(1) FORMER TESTIMONY	803(5) RECORDED RECOLLECTION	612 REFRESHED MEMORY
<ul style="list-style-type: none"> Hearsay? No, not offered for truth Not substantive evidence: impeachment only; not evidence of an essential element Declarant must have opportunity now to explain prior statement Statement need not be under oath “You’re lying” 613 impeachment, not 608 “you’re a liar” character evidence. Thus extrinsic evidence OK Adverse lawyer need not show prior statement to witness, but most provide to lawyer, if asked Example: oral statement to police that ends up in officer’s narrative 	<ul style="list-style-type: none"> Hearsay? No, defined as non-hearsay Admitted for truth: substantive Declarant must testify now and is therefore “available” for cross-examination Prior statement must have been given under oath, cross not necessary Example: grand jury testimony 	<ul style="list-style-type: none"> Hearsay? Yes, but falls within this exception Admitted for truth: substantive Witness must be unavailable (absent/privilege/no memory/dead) Prior statement under oath subject to prior cross Examples: testimony from preliminary hearing or deposition 	<ul style="list-style-type: none"> Hearsay? Yes, but falls within this exception Admitted for truth: substantive Witness once knew details well, but now at trial cannot recall Statement made when memory fresh At trial, witness must vouch for statement’s accuracy If admitted, read to jury but only an exhibit for adverse party Example: written witness account provided to police after stabbing or crash 	<ul style="list-style-type: none"> Hearsay? No, not admissible as evidence Witness must not have a present memory of the subject A writing, shown to the witness on the stand, must trigger present memory The prior statement, once read on the stand, causes the witness to think: “Now I remember.” The witness then testifies from the refreshed memory; the writing is not admissible or read into evidence The adverse party can see the writing and cross-examine the witness about it



ABA Report: Idaho's Delegate Braves the Cold

Deborah A. Ferguson
Idaho Delegate
to ABA House of Delegates

I attended the 76th Midyear Meeting of the American Bar Association on February 10, in Chicago as your Idaho State Bar Delegate in the House of Delegates. Instead of the traditional greeting from one of the Chicago area leaders, the House of Delegates had the privilege of witnessing the naturalization ceremony of 24 individuals from 19 countries. These new citizens of the United States were welcomed with a standing ovation.

ABA President James Silkenat then addressed the House, first thanking the Delegates for braving the cold and coming to Chicago. (The daytime temperature at one point sank to 2 degrees below zero). He then touched on three major issues.

He discussed the ABA's efforts in resolving America's "access to justice paradox" — the unmet legal needs of America's poor and middle classes and the shrinking job opportunities that young lawyers face today. He detailed the efforts the ABA's Legal Access Job Corps has undertaken to address this paradox in low-income and rural areas to deliver more legal services. Positive steps have already been taken in Iowa, New York, South Dakota, Utah, Nebraska, Vermont and California.

ABA President Silkenat went on to note the ABA's commitment to address inequalities and irregularities involving voting rights and linked these efforts to the theme for ABA Law Day. He encouraged the House of Delegates to undertake steps in

support of Law Day 2014: "American Democracy and the Rule of Law: Why Every Vote Matters."

President Silkenat next addressed the issue of gun violence and lamented the lack of effective action undertaken by Congress in the wake of the Newtown disaster. After noting that this record was unacceptable, President Silkenat insisted that the ABA play a key role in developing a national conversation on gun violence so that lawyers can help educate and inform the public and the Congress on this extremely important issue.

ABA President Silkenat went on to note the ABA's commitment to address inequalities and irregularities involving voting rights and linked these efforts to the theme for ABA Law Day.

The President of the Conference of Chief Justices advised the House of Delegates on the status of the state court systems in the face of budgetary pressures and the ever-increasing number of pro se representation. The state courts handle over 100 million cases a year, which is in excess of 95% of the litigation in the United States. He urged transparency and adequate financing to insure that this mammoth caseload is efficiently adjudicated. He noted South Dakota's rejection of the "Jail for Judges" proposal, which was defeated in large part due to coordination between the Bench and the Bar.

Job Corps Task Force

The ABA plans to award startup grants for new programs with a dual purpose: to employ new law graduates and to address unmet legal needs of poor and moderate income individuals.

The grants will range from \$5,000 to \$15,000 according to a press release and request for proposals, (found at abajournal.com on the "President's Page"). The money will be given through the Legal Access Job Corps initiative backed by ABA President James R. Silkenat.

Bar associations, courts, law schools and other groups involved in the delivery of legal services to poor or moderate-income individuals are eligible to apply for the grants. The application deadline is May 15.

The ABA 2014 annual meeting will take place in Boston, August 8-10. I look forward to attending as your State Bar Delegate and reporting back to the Bar on the events of that meeting.

About the Author

Deborah A. Ferguson of *Ferguson Law & Mediation*, specializes in civil litigation and mediation. With 27 years of complex civil litigation experience, she has litigated hundreds of federal civil cases. Ms. Ferguson served as the President of the Idaho State Bar in 2011. Please contact her at (208)484-2253 or d@ferguson-lawmediation.com.



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Words on the Page: Font Matters

Tenielle Fordyce-Ruff

As a grade-schooler I learned penmanship. As a high-schooler I learned typing, on a typewriter! I went to my first semester of college with a word processor. **By the time I hit law school, I had a laptop.**

But I never thought much about the font of my work beyond making sure it looked professional. My font of choice: Times New Roman. My Legal Writing Professor required it, so I set the default and never looked back.

Fast forward to a few days ago. I'm discussing point headings with my class, and a student raises her hand. "Professor, why are these in all caps? It makes them so hard to read." Hmm, I pondered—that's just how they are done.

Of course, that doesn't mean all caps is the best choice. I went looking for more information on typeface and how it might affect the reader. Typography, interestingly, is a bit of a hot issue amongst legal writers right now. Turns out, the way words look on a page affects not only the *readability* of the document: the *believability* of the content can change based on font.

This month we will explore how the ways that words look on a page can help (or hurt) your argument by looking at fonts.

Legibility

Legibility means the ease of reading. Factors that affect ease of reading include type and size of font, width of the line, and ratio of black (ink) and white (paper). Each of these factors can make anything much easier or more difficult for the reader. This month, let's stick to fonts.



LEGIBILITY: BLOCK CAPITALS

As it turns out, telling my students to use all caps was bad advice. Readers recognize words mostly by shape, not by the letters. Eliminating the ascenders (letters that go up, like "t" and "h") and descenders (letters that go down, like "g" and "p") also eliminates help the reader gets from shape. That increases the reader's cognitive load, or simply put, makes reading much more difficult. Try reading this:

THE EQUAL RIGHTS AMENDMENT WAS INTRODUCED INTO EVERY CONGRESS BETWEEN 1923 AND 1972, WHEN IT WAS PASSED AND SENT TO THE STATES FOR RATIFICATION. THE ORIGINAL SEVEN-YEAR TIME LIMIT IN THE ERA'S PROPOSING CLAUSE WAS EXTENDED BY CONGRESS TO JUNE 30, 1982, BUT AT THAT DEADLINE, THE ERA HAD BEEN RATIFIED BY 35 STATES, THREE STATES SHORT OF THE 38 REQUIRED TO PUT IT INTO THE CONSTITUTION.

In case you didn't make it through that paragraph, here it is again:

The Equal Rights Amendment was introduced into every Congress between 1923 and 1972, when it was passed and sent to the states for ratification. The original seven-year time limit in the ERA's proposing clause was extended by Congress to June 30, 1982, but at that deadline, the ERA had been ratified by 35 states, three states short of the 38 required to put it into the Constitution.

Most readers (around 90%) prefer the regular font. Reading in all caps takes more energy and slows down reading. Make your reader happy and avoid **BLOCK CAPITALS**. Instead, vary your fonts to draw your reader's attention.

The sex-based classification in Section 15-314 of the Idaho Code, established for a purpose unrelated to any biological difference between the sexes, is a "suspect classification" proscribed by the fourteenth amendment to the United States Constitution.



A. Sex as a Suspect Classification.

Commanding a preference for men and the subordination of women, Section 15-314 of the Idaho Code reflects a view, prevalent in the law a generation ago that, with minimal justification, the legislature could draw “a sharp line between the sexes.” *Goesaert v. Cleary*, 335 U.S. 464, 466 (1948). Similarly, it was once settled law that differential treatment of the races was constitutionally permissible. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

The change for the point heading draws the reader’s attention, but is also much more readable than the block capital option:

A. SEX AS A SUSPECT CLASSIFICATION.

Legibility: Serif Fonts

When trying to increase legibility, stick to serif fonts. These are more readable than sans serif fonts. Scratching your head? Let me give you a quick course on font lingo.

A “serif” is the extra little dangly part on the bottom of letters. Look carefully at the next sentence, and you will most easily see this on the letters “m” and “n.”

Serif fonts have this extra line on the bottom of letters; sans serif fonts don’t.

Turns out, fonts that have serifs make large blocks of text easier to read. Compare:

We note finally that if section 15-314 is viewed merely as a modifying appendage to section 15-312 and as aimed at the same objective, its constitutionality is not thereby saved. The objective of section 15-312 clearly is to establish degrees of entitlement of various classes of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex, persons within any one

of the enumerated classes of that section are similarly situated with respect to that objective. By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause.

We note finally that if section 15-314 is viewed merely as a modifying appendage to section 15-312 and as aimed at the same objective, its constitutionality is not thereby saved. The objective of section 15-312 clearly is to establish degrees of entitlement of various classes of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex, persons within any one of the enumerated classes of that section are similarly situated with respect to that objective. By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause.

Was the second paragraph easier to read? Did you get through it faster?

Font and Credibility

So we can use fonts to make our work easier to read, but it turns out a simple change in font can also make our writing more believable.

In 2012, Errol Morris of the *New York Times* experimented on the newspaper’s readers. He wanted to know the effect of typeface on credibility. Turns out, the font information is presented in can make it more believable.

Which sentence is the most believable?

The 19th amendment guarantees all American women the right to vote. (Helvetica)

The 19th amendment guarantees all American women the right to vote. (Times New Roman)

The 19th amendment guarantees all American women the right to vote. (Baskerville old face)

The 19th amendment guarantees all American women the right to vote. (Comic Sans)

The 19th amendment guarantees all American women the right to vote. (Georgia)

That sentence is true no matter what font. According to Morris’s study, the sentence in Helvetica is the most believable, while that in Comic Sans is the least believable. So, when constructing your next great argument, don’t let your font choice dissuade the reader.

Conclusion

Curiously, the most believable font is a sans serif font. For what it’s worth, I would advise using a slightly less believable but more legible font. Try using Georgia for your next document. It’s a little softer than the Baskerville I’ve used for most of this essay, so it has a great balance of legibility and believability. It just might make enough of a difference!

Sources

- www.badlanguage.net/typography. Errol Morris, *Hear All Ye People; Harken, O Earth* (Part I).
- Ruth Ann Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, Fall 2004 JALWD

About the Author

Tenielle Fordyce-Ruff is an Assistant Professor of Law and the Director of the Legal Research and Writing Program at Concordia University School of Law in Boise. She is also Of Counsel at Rainey Law Office, a boutique firm focusing on civil appeals. You can reach her at tfordyce@cu-portland.edu or tfr@raineylawoffice.com.

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Varin Wardwell welcomes another principal

BOISE - Varin Wardwell welcomes an additional principal, Dylan Lawrence, to the rapidly expanding firm. Lawrence brings the total number of principals to five, a significant step for a firm that started with two — both named Will — in 2012.

Lawrence’s practice areas include water, environmental and natural resources, public lands, mining, and oil and gas, all of which are new to the firm.

“We have been strategically growing in practice areas that we want to excel in,” says Varin Wardwell co-founder J. Will Varin. “Dylan is a great lawyer who fits perfectly in our growth plan.”

“Our diverse backgrounds and expertise allow us to provide top-notch legal representation,” said Dylan, “while our nimble size allows us to deliver great service and value to clients. I look forward to helping continue what they have started, and am honored that they asked me to be a part of their team.”

Lawrence grew up in Houston, Texas, then studied law and worked at Texas firm Bracewell & Giuliani until he and his wife moved to Boise in 2004. He joined Moffatt Thomas in 2006 to pursue an opportunity in water law. He remained at Moffatt Thomas until he was offered the position at Varin Wardwell. Lawrence lives in Boise with his wife and two children.



Dylan Lawrence

Don Burnett earns accolades for leading UI, will return to teaching

BOISE – Boise State University President Bob Kustra commended Don Burnett for his work leading UI and as chairman of the Idaho Universities Presidents’ Council following his final report to the Idaho State Board of Education recently in Boise.

Don Burnett was appointed to serve as interim president of the University of Idaho last year when former President Duane Nellis resigned to take the helm of Texas Tech University. Burnett had served as the longtime dean for the UI’s College of Law, before being asked to serve as interim president. Kustra said Burnett not only filled a void at UI, but quickly assumed the role as chairman for the presidents’ council. Kustra thanked him for helping to get the council through a tough year. “He’s done a spectacular job,” Kustra told the board.

During that time, Kustra said he has enjoyed Burnett’s “constant drumbeat” for collaboration among all of Idaho’s colleges and universities and said it has been a pleasure working with him to try to achieve that ambition. Burnett will return to a faculty position in UI’s College of Law following the conclusion of his term as interim president.

A permanent president, Chuck Staben, was chosen and began work in late spring. The state board hired Staben in November as the next UI president. The former University of South Dakota provost was in attendance during the education board meeting. State Board President Don Soltman of Twin Lakes also thanked



Donald Burnett

Burnett on behalf of the state board — and as UI’s board of regents — for his service during the past nine months.

Holland & Hart LLP welcomes Richard Andrus

BOISE – Holland & Hart LLP is pleased to announce the addition of Richard Andrus to its Boise office as Of Counsel in the firm’s intellectual property practice group.

Andrus advises clients on drafting and negotiating telecommunications agreements involving the provision of video, internet and digital phone services. He acts as outside counsel for one of the nation’s largest cable operators.

In addition to his telecommunications practice, Andrus assists clients with real estate and development issues. He has significant experience guiding clients through varied land use approvals, from small subdivisions to large planned-unit developments and conditional use permits for various commercial operators. Andrus drafts, negotiates and enforces purchase and sale agreements, residential and commercial leases, easements, restrictive covenants and homeowner’s association documents. His litigation experience includes foreclosures, title, boundary, easement, contract disputes and petitions related to land use and entitlement matters.

Andrus is a graduate of the Brigham Young University, J. Reuben Clark Law School (J.D., 2005) and Utah State University (B.S., 2002).



Richard Andrus

Holland & Hart LLP adds Bret Clark

BOISE – ERISA attorney S. Bret Clark has joined the law firm of Holland & Hart LLP. Clark focuses his practice on employee benefits and executive compensation matters. He has extensive experience in virtually all aspects of employee benefits and executive compensation. Clark is on the Board of Directors of the Boise chapter of the Western Pension & Benefits Council, and is admitted to the state bars of Idaho, Washington, Utah and Ohio.



S. Bret Clark

Rebecca B.W. Hardesty now Of Counsel

BOISE – Jones Gledhill Fuhrman Gourley, P.A. is pleased to announce Rebecca B. W. Hardesty has joined the firm as Of Counsel. Rebecca practices in the areas of Commercial Real Estate, Business Law, and Non-Litigation Dispute Resolution. She is admitted in Idaho, Oregon, and California.



Rebecca B.W. Hardesty

Pam Howland earns two awards from foundation

BOISE – Holland & Hart attorney Pam Howland was recently recognized by the Juvenile Diabetes Research Foundation (JDRF) with two separate awards at its annual confer-

ence. The first award Howland received was the Advocates Without Borders award, which recognizes a team of advocates working across chapter and/or state lines to achieve JDRF’s advocacy goals.

As the Advocacy Team Chair for the Utah-Idaho chapter of JDRF, Howland partnered with Inland Northwest chair Todd Casey to promote JDRF and, working with congressmen and senators, to help garner support and funding for the Special Diabetes Program in order to find a cure for diabetes.

The second award Howland received was the Rookie of the Year award, which honors a new leader who has joined the JDRF Grassroots Team within the past year. Howland was described by Melissa Smicker, National Manager of Grassroots Advocacy for JDRF, as an “advocate [who] has boldly emerged onto the scene: recruiting many new advocates, completing her Advocacy responsibilities without hesitation and making a very positive first impression on JDRF staff and other volunteers.” For the past two years, Howland has co-chaired the Boise JDRF Walk to Cure Diabetes.

Spink Butler LLP welcomes Tara Martens Miller as partner

BOISE – Ms. Miller is a native of Idaho and graduated *Magna Cum Laude* from Boise State University with a Bachelor of Business Administration – Economics in 1994. She received her Juris Doctorate degree



Pam Howland

and Maritime Certificate *Cum Laude* from Tulane University School of Law in 1997.

Tara’s practice focuses on commercial litigation and business transactions with an emphasis on commercial, construction, real estate, professional malpractice defense, employment litigation, insurance defense, shareholders rights action, small business formation and health care. She also conducts employment harassment and discrimination investigations for employers.

Tara is an Adjunct Professor at Boise State University where she teaches Commercial Law and Law for Accountants I and II. She is also a member of the Advisory Council for the Concordia University School of Law.

Merrill & Merrill, Chartered welcomes Nathan J. Cuoio

POCATELLO – Merrill & Merrill, Chartered, is pleased to welcome Nathan J. Cuoio as an associate attorney. Mr. Cuoio has been working for the firm as an associate attorney since August, 2013. He received his BA from Idaho State University in August of 2007 and his J.D. from the University of Idaho in May, 2013. His practice focuses on business law, wills, trusts, estates, defense litigation, and immigration. Mr. Cuoio also speaks Spanish.



Tara Martens Miller



Nathan J. Cuoio

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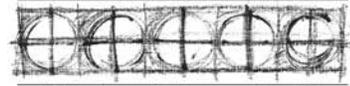
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IN MEMORIAM

Kenneth Frank White 1938 - 2012

It has come to our attention, that this member of the bar had passed away in October of 2012, and somehow we missed his obituary in the papers. Here, then, is the proper notice.

Kenneth Frank White was the ninth of 13 children born to Orval Roy and Mable Pearl (Sigman) White. He was born in McCleary, Washington on January 21, 1938. The family settled in Nampa in 1941 and he graduated from Nampa High in 1956. After high school he worked numerous jobs, including working in Alaska and in Oregon on the John Day Dam.

In 1960, he enrolled in Boise Junior College, and in December 1960 he married Carol Sue Carson. Two sons were born to this marriage, Monte in 1961 and Tony in 1963.

In 1965 he graduated from the College of Idaho and was named a "Distinguished Scholar." In 1965, the family moved to Salem, Oregon and Ken attended Willamette University School of Law, graduating with his Juris Doctorate in 1968. After law school, the family returned to Nampa, where Ken opened his law practice.

During the early 70's, he served as a judge for the City of Nampa, and for two years was a special prosecutor for the federal government, but his first love was the practice of law. He loved a good battle, and a formidable foe, and took on the power



Kenneth Frank White

company, the seed company, the railroad, and any other opponent on behalf of his favorite client, "The Common Man."

He was active in the Trial Lawyer's Association, serving as a state officer and Governor to two National conventions. He was recognized numerous times by the organization as an "Outstanding" attorney for his contributions, and in 2006 was one of two attorneys honored by the Idaho State Bar for his outstanding contributions in the field of law.

He argued in front of the Idaho Supreme Court 16 times, prevailing 15½ times. When not tilting windmills and fighting dragons, his favorite places were the golf course and his garden. He was an excellent golfer, and his family ate well on the wonderful produce from his garden.

When his boys were growing up, only an out-of-town trial would keep him from their wrestling matches and their football games. He loved to take them backpacking and motorcycle riding.

He was preceded in death by his parents; seven brothers, and four sisters. He is succeeded by his wife, Carol Sue; two sons, Monte (Tonylyn) and Tony; three grandsons, Brandon, Kenny, and Casey; and one brother, Dennis. He fought his last battle, the battle with Alzheimer's disease, with the same courage, strength, and dignity that he lived.

James D. Glenn, Jr. 1934 - 2013

James D. Glenn, Jr. died Aug. 1, 2013. He was born in Oakley, Idaho to Vilate Harper Glenn and Vernal Delcar Glenn. Jim attended high

school in Twin Falls. Rexine Ferrel from California became his wife on December 14, 1954. From 1956 to 1960, he attended law school at the University of Utah.

He worked for the Federal Trade Commission in San Francisco and in 1962 opened his own private practice in Fremont, Calif. In 1977 he returned to Idaho to practice law and he was active in the Boy Scouts of America. In 1994, Jim and Rexine retired to Lindon, Utah.

He is survived by his wife, Alice Rexine Glenn; his children, Sheilagh (Scott) Murray of Phoenix, Arizona; Michelle Glenn of Millcreek, Washington; James D (Sharlee) Glenn III of Pleasant Grove, Utah; Deirdre (J.R.) Lieberknecht of Waianae, Hawaii; and David Rex (Debra) Glenn of Cedar Hills, Utah; 23 grandchildren; and 11 great-grandchildren.

James E. Bruce, Jr. 1920 - 2014

James Bruce passed away on Feb. 20, 2014. Jim was born in Boise in 1920 and he spent his entire life in Boise aside from the time he spent away at college and during World War II. Jim was part of the 'old guard' of Boise and truly loved Idaho and all it represented. He was a true Idahoan who loved to spend his time in the great Idaho outdoors fishing, hunting and enjoying all it had to offer. Jim led a life that was by all accounts full and rewarding. In 1936 he went to Portland, Oregon to at-



James D. Glenn, Jr.

IN MEMORIAM

tend Columbia Prep for one year and after graduation he enrolled at the University of Portland. After 2 years at the University of Portland he spent two years at the College of Idaho where he received his Bachelors degree. He then began law school Georgetown University in Washington D.C. World War II had started and he enrolled in the Army. He was sent to the South Pacific and New Guinea and for the remainder of his life never had a desire to go back to the South Pacific! At the conclusion of the war he transferred to the University of Idaho Law School receiving his JD degree in 1947. During the period surrounding the war he met Lois Stevens of Twin Falls. Lois served in the navy during the war. They wrote each other many letters during the war and the rest is history. They were married August 25, 1946. Upon Jim's graduation he worked for a couple of years in the Ada Prosecuting Attorney's office and after a brief time in private practice he went to work for Idaho Power Company. He spent the next 34 years with Idaho Power. He transitioned from junior counsel to senior counsel and vice president. He became president of Idaho Power in 1974, CEO in 1976 and retired in 1985. Idaho Power prospered during his years in leadership and he often attributed the success of the company to the dedicated employees of the company. He was a board member of Albert-



James E. Bruce, Jr.

sons, First Security Bank and Blue Cross of Idaho. Additionally, he volunteered for the YMCA, the Parks Department, the Boise Zoo Board, St. Alphonsus Board and Foundation, Bishop Kelly High School Board and Foundation, St. Joseph's grade school, St. John's Cathedral, the Idaho Catholic Diocese, and The College of Idaho Board. Additionally, he served on the board of the Ada County Highway District and was the Chairman of the Lottery Commission. He was also a proud member of the Arid Club in Boise for almost 50 years.

His greatest dedication and love was to his wife, Lois. Towards the end of her life, Lois was afflicted with Alzheimer's disease and had to be moved to a care facility in 1997. She remained there until 2005 when she passed away. It was a rare day in that time period when Jim did not visit her twice a day.

Jim leaves behind his four sons: Jim Bruce (Micki), Steve Bruce (Beri), Bob Bruce (Gloria) and Dave Bruce (Terri). Jim also leaves behind eight grandchildren and 11 great-grandchildren.

David Samuel Eismann 1937 - 2014

Coeur d'Alene attorney Samuel Eismann passed away on the morning of March 17, 2014, at his lake home in Bayview, Idaho. Sam was born on April 24, 1937, and was raised in Oregon. He spent much of his childhood in Neskowin, Ore., loved the ocean, and would return to Neskowin many times throughout his life.

Sam attended Lakeside private

school in the Seattle area, and went on to attend the University of Idaho and University of Idaho Law School. On June 20, 1964, Sam married Penelope White, and they would have celebrated their 50th anniversary in June.

Sam was admitted to the Idaho State Bar and practiced law until the time of his death. He was passionate about the law, and will be remembered for his aggressive pursuit of justice and his thorough preparation for any proceeding he faced. Sam served as a state legislator and a Deputy United States Attorney General. Prior to his service of his state and community, Sam served his country in the United States Army. He was also a member of numerous professional organizations.

Sam had a great passion for his family. He was a lifelong Seattle Seahawks fan and finally got to see them win a Super Bowl. He enjoyed golfing, traveling, antique hunting and his time as a private pilot. Sam was passionate about the Oregon Coast, and loved being at the lake in Bayview where he spent his final days.

He is survived by his wife, Penelope Eismann, his children: Mimi TenEyck, Patrick Eismann, Treva Davis, Curtis Eismann and Eric Eismann; brother and sister-in-law, Christian and Bonnie Eismann; brother-in-law and sister-in-laws Peter and Treva White, and Timothy and Beverly White, of the Seattle area; as well as 10 grandchildren, three great-grandchildren.



David Samuel
Eismann

IN MEMORIAM

Eli "Bud" Ponack 1920 - 2014

Eli "Bud" Ponack of Lewiston, Idaho, passed away at age 93 on March 20, 2014. Bud will be remembered not only for his outstanding achievements, but for his quick wit and the twinkle in his eye.

Bud was born in 1920, in Sandpoint, and graduated from high school in Hope, Idaho. He served in the U.S. Army for six years, serving as a pilot in the Army Air Corp in the South Pacific. Bud attained the rank of Major during his service, and flew troops and supplies from the United States to Australia.

In 1950 Bud obtained his law degree from Gonzaga University School of Law. He started his law practice in Sandpoint and was elected as prosecutor. He owned numerous businesses in Sandpoint, including a car dealership and a lumber mill.

In 1967, Bud married Patricia Strohmaier and moved to Lewiston to open Nez Perce County Title Insurance Company. Bud and Pat also owned title companies in Clarkston, Coeur d'Alene and Sandpoint.

Bud was appointed as a magistrate judge in Nez Perce County in 1970, and served in that position for six years. As a magistrate, the majority of Bud's cases were with juveniles, where he found meaningful ways to sentence them in the hope that the sentences



Eli "Bud" Ponack

would teach, rather than punish. In 1976, Bud retired from the magistrate position to spend more time with his family. But retirement was short-lived. Bud ran for 2nd District Court Judge in 1986 and he served in that position for five years.

Bud is survived by his wife of 47 years, Patricia; his four children: Peg Ponack, of Everett, Wash., Patty (Stan) Medlen, of Post Falls, Marilee (David) Garinger, of Manhattan Beach, Calif., and Ted (Denice) Strohmaier, of Lewiston; six grandchildren and one great-granddaughter.

Charles Paul van Ormer 1977 - 2014

Charles P. van Ormer, age 37, passed away very suddenly on April 1, 2014 as a result of a pulmonary embolism (blood clot in the lungs).

Charles was an attorney by profession, but most of all he was a devoted husband and father. He is survived by his wife Mari, daughter Sammi (12), son Daniel (11), son William (7), son Henry (2), and his parents. Charles was born in Anchorage, Alaska in 1977.

He and Mari were married in 1999. Charles received a Bachelor's Degree in Mathematics from the University of Alaska Anchorage and then received a J.D. from the Gonzaga University Law School. He practiced law as a prosecutor for three years in Ada County, Idaho before opening his own law practice in Boise.



Charles Paul van Ormer

Jeffrey Andrew Child 1956 - 2014

Jeffrey Andrew Child, 58, of Coeur d'Alene, died Saturday, April 5, 2014, while on vacation in Mexico. Jeff was born February 6, 1956, to Robert and Frances Child in Springfield, Illinois. He graduated from Carbondale Community High School in Illinois and from the University of Illinois at Urbana-Champaign. In 1980 Jeff received his law degree from the University of Colorado at Boulder; there he met fellow law student Heidi L. Fisher, who became his wife of 33 years. Since moving to Coeur d'Alene in 1980, Jeff and Heidi have partnered in the law firm of Child and Fisher.

Shortly after coming to Coeur d'Alene, Jeff became very active in the United Way organization and annual United Way campaigns for several years. Jeff gave his time as campaign manager or treasurer for various local political candidates over the years and also sought to serve the community in public office himself, by running for county prosecutor on two occasions. Jeff believed passionately in the mission, purpose, and performance of the Coeur d'Alene Charter Academy.

Jeff is survived by his wife Heidi, who was with him at his death. He is also survived by his daughter Hillary; his parents Robert and Frances Child, of Carbondale, Illinois; his sisters Chanda Child, of Scottsdale, Arizona, and Tressa DiGiorgio, of Summerfeld, North Carolina.



Jeffrey Andrew Child

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The spoken word perishes; the written word remains.





2014 Idaho High School Mock Trial State Championship Team from The Ambrose School in Meridian.

2014 Mock Trial Season Reaches Successful Close

Carey Shoufler

The Idaho Mock Trial program crowned a new champion for the first time in over 10 years on March 21. The Ambrose

School in Meridian won Idaho's Annual High School Mock Trial Competition, defeating The Logos School from Moscow, earning their first ever mock trial championship. This year, mock trial teams had the opportunity to try a civil case based loosely on Evel Knievel's jump over the Snake River Canyon.



Carey Shoufler



From left are judges for the Mock Trial State Championship, Lisa Nordstrom, Cathy Silak and Marcia Franklin.

Teams participated in regional tournaments held in Blackfoot, Caldwell, and Coeur d'Alene in early March. Twelve of those teams qualified to participate in the state tournament held in Boise on March 19 to 21.

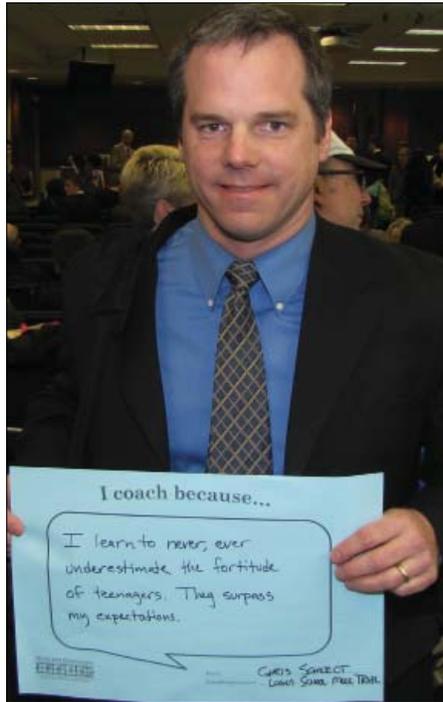
For the second year, the mock trial program also sponsored a courtroom artist contest. Eight students participated in regional competitions and five of those students moved on to participate in the state contest. Entries were judged by local artists.



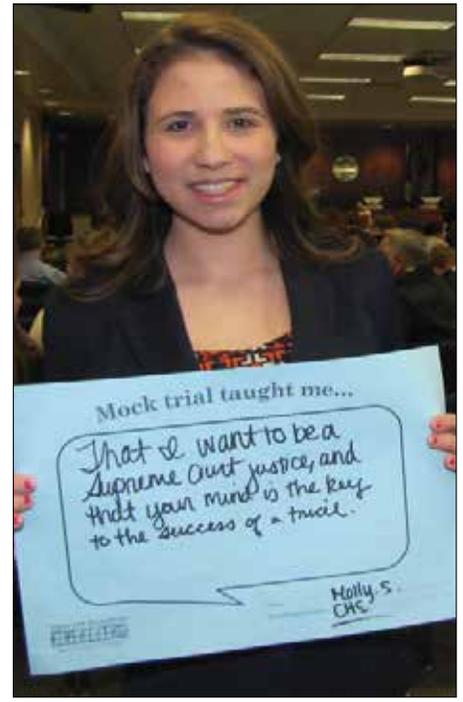
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Shane Stokes from The Logos Schools explains an exhibit during the mock trial championship round.



Chris Schlect, teacher coach from The Logos School, shares his passion for coaching mock trial.



Molly Sullivan from Coeur d'Alene High School has some fun with her fellow students before the competition.

Teams and courtroom artists participating in the state tournament had the opportunity to participate in four rounds of competition over two evenings at the Ada County Courthouse in Boise. Four teams advanced to the semi-final rounds held at the Federal Courthouse, including:

- The Ambrose School
- Centennial High School
- Logos School (two teams)

Logos and Ambrose moved on to the finals held at the Idaho Supreme Court. Ambrose will now advance to the National High School Mock Trial Championship in Madison, WI to be held on May 8 to 11.

The Law Related Education staff would like to thank the many volunteers who ensured a successful mock trial season. We

would especially like to thank the Mock Trial Committee who put together a wonderful case, the coaches who spent countless hours preparing their teams to participate, the donors who help underwrite mock trial expenses, a group of local artists who judged regional courtroom artist entries and provided feedback to participants, and the mock trial judges who took

time out of their busy schedules to help make the mock trial experience successful for the young people who participate.

For information about volunteering for or making a contribution to the Idaho High School Mock Trial Program, contact Carey Shoufler, Law Related Education Director, at 208.334.4500 or cshoufler@isb.idaho.gov.



Autumn Coles from Lewiston earned top honors for this year's courtroom artist contest.

Get Ready to Make a Commitment to Justice

Sunrise Ayers

New campaign supports three non-profit organizations

This year is the kickoff year for Access to Justice Idaho, an annual campaign to raise funds to support Idaho's principal providers of free civil legal services to poor and vulnerable Idahoans. The campaign will enable Disability Rights Idaho, Idaho Legal Aid Services, and the Idaho Volunteer Lawyers Program to provide quality legal services to low-income and vulnerable Idahoans across our state. To celebrate the launch of this exciting fundraising initiative, Access to Justice Idaho is hosting a kick-off event 5 to 7 p.m. on June 5.

The event will be held in Boise at the Zion's Bank Building at Eighth and Main, which had its ribbon cutting just two months ago.

All members of the Idaho State Bar are invited to attend and enjoy appetizers, pick up information about the Access to Justice Campaign and help us recognize our lead gift donors for the campaign. The event is free and is an excellent opportunity to enjoy networking with peers while showing your support for improving access to justice in Idaho.

The goal of the Access to Justice Idaho campaign is to provide critical legal services to Idahoans who live in poverty, or who have disabilities, by raising funds from Idaho attorneys and others who understand the essential role that attorneys and the judicial system can play in improving lives. The kick-off event launches this



Sunrise Ayers

Access to Justice



Kick Off Campaign

year's campaign and showcases Idaho attorneys' ongoing commitment to civil legal services for vulnerable Idahoans. We hope you will join us on June 5 to show your moral support for the Access to Justice Idaho and help us celebrate what we anticipate will be a successful and impactful inaugural year for the campaign.

For questions about Access to Justice or the kick-off event please contact Sunrise Ayers at (208) 345-0106 ext. 1511 or sunriseayers@idaholegalaid.org.

Don't forget about the Fun Run/Walk for Justice

Mark your calendar for Saturday, June 14, at 10 a.m. for a "FUND" run/walk to benefit the Access to Justice Idaho campaign. The Access to Justice Idaho campaign is raising funds to provide support for the three main providers of free civil legal services to poor and vulnerable Idahoans. The goals of this FUND run/walk are to raise money, raise awareness and to have FUN!

Run, walk, stroll, skip, jump, or crawl the 5k course. The event will

start at Fort Boise Park in the Military Reserve area (near the corner of Reserve Street and Mountain Cove Road). The course will be an out-and-back route along Mountain Cove Road. Prizes will be awarded to the first three finishers. Food and beverages will be available for participants at the finish line.

Bring your friends and family, (small children included), with you to participate in this event in Idaho's beautiful outdoors. Registration is \$25, which gets you a t-shirt and a priceless warm and fuzzy feeling for supporting a good cause.

Registration will be available in mid-May. Keep your eyes open for an email announcing registration procedures. More details about the event will follow in the next few weeks.

If you have questions about the event, or if you would like to help with organization and race day logistics, please contact Maureen Ryan Braley, Director of Admissions of the Idaho State Bar, at 208-334-4500 or mryanbraley@isb.idaho.gov.

See you on Saturday, June 14!

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*Eldon Shields, Partner in Gates, Shields & Ferguson
Overland Park, Kansas & Blue Springs, Missouri*

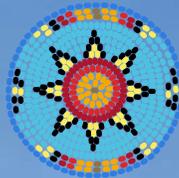


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Jeffrey Rosen

Leading Security Expert & Best-Selling Author

Jeffrey Rosen is one of the leading speakers and writers on the issue of privacy and security in post-9/11 America.

Jeffrey Rosen is one of the leading speakers and writers on the issue of privacy and security in America. He is a strong advocate of using well-designed laws and technologies to strike an effective and reasonable balance between liberty, privacy, and security; and he offers a penetrating account of why some are reluctant to adopt the appropriate laws and technologies necessary to accomplish these goals. He describes the challenges for businesses and citizens of living in the world of Facebook and Google where everything we do is recorded and it's hard to escape your past, and he offers practical suggestions for protecting your reputation.

Most recently, Rosen co-edited *Constitution 3.0: Freedom and Technological Change*. The book, featured on NPR's *Fresh Air*, asks America's thought leaders to imagine the ways that technology will challenge our Constitutional values and to propose ways of preserving those values in a changing world. With vivid examples, Rosen describes how new technologies are transforming our privacy and what we can do to preserve it.

Rosen, who has been described by the *Los Angeles Times* as "the nation's most widely read and influential legal commentator," is also a leading expert on the Supreme Court and the judicial system. His book *The Supreme Court: The Personalities and Rivalries That Defined America* (Times Books, 2007) is the best-selling companion book to the PBS series on the Supreme Court. The book examines the Court's history of bench rivalries and the ways in which justices guided by a strong ideology spar with those who conform to evolving ideologies. Rosen also illustrates how temperament relates to judicial success or failure and the subsequent effects on American society. Rosen has interviewed many of the Supreme Court justices, including Chief Justice John Roberts, Justice Anthony Kennedy, Justice Stephen Breyer, and Justice Ruth Bader Ginsburg and can give astute insights into the way that personality, temperament, and judicial philosophy are affecting the dynamics on the Roberts Court and will continue to do so in the future.

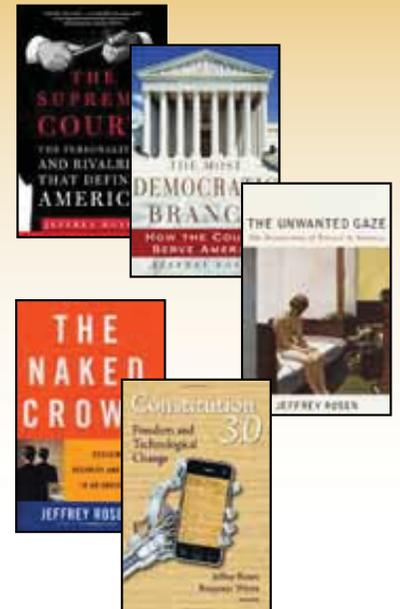
In 2006, Rosen authored *The Most Democratic Branch: How the Courts Serve America* (Oxford University Press), providing an in-depth look at some of the most important Supreme Court cases in American history—cases involving racial equality, affirmative action, abortion, gay rights and marriage, the right to die, electoral disputes, and civil liberties in wartime.

In *The Naked Crowd: Reclaiming Security and Freedom in an Anxious Age* (Random House, 2005), Rosen details how to preserve the American ideals of freedom, privacy, and security in an information economy via the use of emerging technologies. *The New York Times* dubbed his book *The Unwanted Gaze: The Destruction of Privacy in America* (Random House, 2000) "the definitive text on privacy perils in the digital age."

Rosen is a provocative storyteller whose insight is essential intelligence for everyone in the digital age. He proposes ways of reconstructing the zones of privacy that law and technology have been allowed to invade. For organizations seeking to answer the questions posed by technology, he instills a deeper understanding to both employee and customer relations.

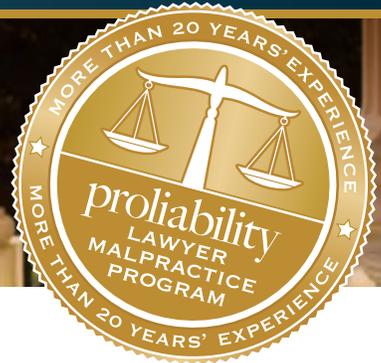
Rosen is president and CEO of the National Constitution Center, a museum and education center that sponsors national debates about constitutional issues. He is also a Professor of Law at George Washington University and the legal affairs editor of *The New Republic*. Rosen is a nonresident Senior Fellow at the Brookings Institution. His essays and commentaries have appeared in *The New York Times Magazine*, *The Atlantic Monthly*, on National Public Radio and in *The New Yorker*. *The Chicago Tribune* named him one of the "Ten best magazine journalists in America." An acclaimed teacher, he has recorded lectures on the future of privacy, free speech, and property for The Teaching Company's Great Courses.

Rosen is a graduate of Harvard College, summa cum laude; Oxford University, where he was a Marshall Scholar; and Yale Law School. He lives in Washington, D.C., with his wife Christine and two sons.



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Dear Idaho Lawyers,

Over twenty years ago I had the privilege of making several friends in Boise under the most unlikely of circumstances. I was representing a defendant in a lawsuit in which the plaintiff was represented by Boise attorney, William "Breck" Seiniger. The case is memorable for several reasons, principally because it was one of the hardest-fought cases of my career. I have tried and argued cases in courts from the United States Supreme Court to trial and appellate courts in over twenty states. I have never encountered an adversary who fought harder for his clients or whom I respect more than Breck Seiniger.

Breck and I did not start off as friends. We fought fiercely in the courtroom, each doing his utmost to prevail for his client. However, after a two-week trial, followed by an appeal, we stayed in touch. It seems that we had developed a grudging respect for each other.

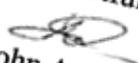
Although different in degree, it is the same kind of respect that I had previously developed for hard-fighting adversaries, whether in the boxing ring at West Point, the jungles of Vietnam or courtrooms across America. Over the years that grudging respect evolved into a friendship.

That friendship resulted from my respect and admiration for Breck. I respect him as a lawyer, as an advocate for the people of Idaho, and simply as a good man.

I recently learned that Breck is a candidate for the Idaho Supreme Court. Although I am not so fortunate as to live in Idaho and be able to vote there, I did want to share with his colleagues at the Idaho Bar my unique perspective on Breck Seiniger, as a lawyer and as a man.

Because I know his values and devotion to duty, I have no doubt that he will be impartial and favor no one person or group. He will be a superb Supreme Court Justice.

Respectfully,


John A. Lucas



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About John Lucas:

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