

# The Advocate

**Official Publication  
of the Idaho State Bar  
Volume 61, No. 11/12  
November/December 2018**

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## Have news 'Of Interest'?

*The Advocate* is pleased to present your announcement of honors, awards, career moves, etc. in the "Of Interest" column located on pages 43 - 46 of this issue. Simply send a short announcement to Lindsey Welfley: lwelfley@isb.idaho.gov and include a digital photo.

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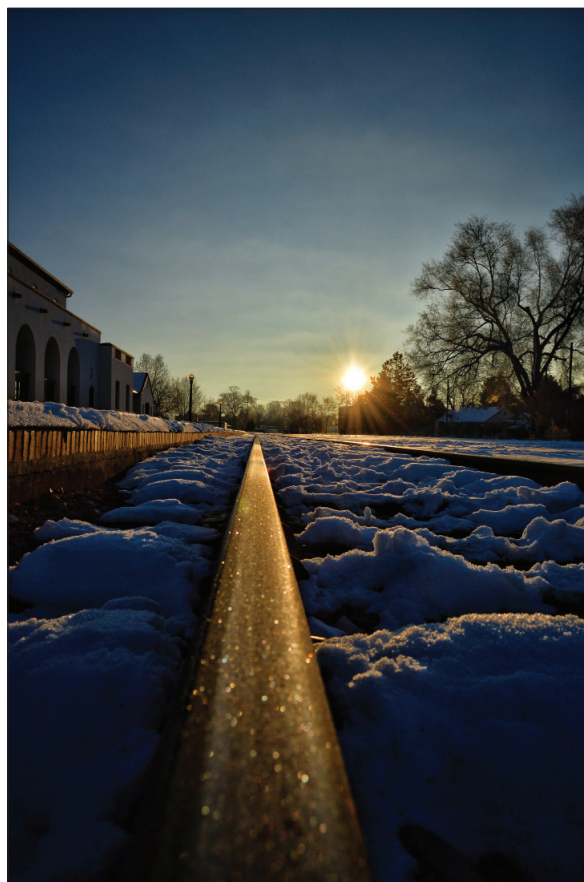
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## On the Cover:

Aisha Hunter of Fruitland, ID took this photo in December of 2016 at the Boise Depot. When she was just starting out in photography, Ms. Hunter enjoyed going out early in the mornings to capture the beautiful frosty atmosphere and to become more acquainted with her camera. She now specializes in maternity, newborn, children and family photography. Ms. Hunter also enjoys macro photography when she has spare time. She can be contacted through her email at aishadhunterphotography@gmail.com or through her website at www.aishadhunterphotography.com.

## Editors:

Special thanks to the November/December editorial team: Karen Preset Overly Sheehan, Jessica A. Howell and Andrew Law.

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*The Advocate* (ISSN 05154987) is published the following months: January, February, March, April, May, June, August, September, October, and November by the Idaho State Bar, 525 W. Jefferson Street, Boise, Idaho 83702. Subscriptions: Idaho State Bar members receive *The Advocate* as part of their annual dues payment. Non-member subscriptions are \$45 per year. Periodicals postage paid at Boise, Idaho.

POSTMASTER: Send address changes to:  
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# GJORDING FOUSER IS PLEASED TO WELCOME CHRISTINA & EMMA TO OUR TEAM!

**Christina represents health care facilities, professionals and employers involved in litigation ranging from medical malpractice to professional malpractice to employment.** She previously worked as an attorney at a Boston-based litigation firm where she represented clients in complex civil suits. Besides being a lawyer, Christina holds the title of Maniac #2041. She earned this by running two marathons and a 50K in 47 days. Her next challenge is to “up” her Marathon Maniac level from Bronze to Iridium by running nine marathons in nine different states/countries/Canadian provinces within 365 days.

**CHRISTINA P. MOTT**

[cmott@gfidaholaw.com](mailto:cmott@gfidaholaw.com)



**Emma represents insurance companies involved in litigation ranging from insurance coverage to personal injury to breach of contract.**

She previously worked as an attorney at a Chicago-based insurance defense litigation firm. Emma is a traveler (her favorite destination was Morocco where she rode a camel), a violinist (and a hopeful guitarist) and a field hockey player (she actually qualified and played in the under 18 Nationals and Junior Olympics field hockey competitions!).

**EMMA C. NOWACKI**

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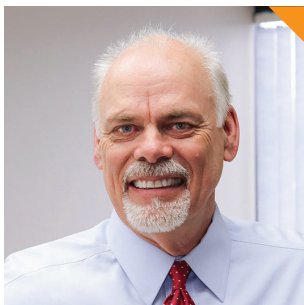
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## Michelle R. Finch

Ms. Finch is licensed in Idaho and Montana and has served on numerous Idaho and Montana state-wide committees and sections, including the Idaho Supreme Court's Guardianship and Conservatorship Rules Committee. She sees clients at Gravis Law offices in Boise, Idaho and Kalispell, Montana.

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## Charles B. Bauer

Mr. Bauer received his J.D. from the University of Idaho College of Law in 1979 and since that time has lived in Boise, focusing his statewide litigation and appellate practice on all aspects of Family Law. He was named as Managing Attorney for the Gravis Law Boise Office in September, 2018.

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## Penelope Gaffney

Ms. Gaffney is a graduate of the University of Nebraska, and received her Juris Doctorate from the University of California Hastings College of Law. Ms. Gaffney represents clients in all aspects of guardianship, conservatorship, probate, estate planning and contested family law matters.

-----



## Andrew Zehrung

Mr. Zehrung is a native of Boise with a J.D. and LLM in taxation from the University of Washington School of Law. He is a member of the Trust, Taxation, and Probate Section of the Idaho State Bar, as well as the Washington State Bar.



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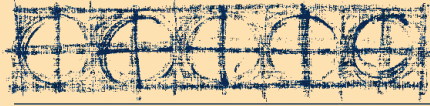
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**November 19:** *A View from the Bench: A Judicial Perspective on Litigation and the Appellate Practice* – Teleseminar, 12:30 p.m. (MST), 1.0 CLE credit – **NAC** ~ Sponsored by the Idaho Law Foundation, Inc.

**November 26:** *Fair Housing 101: Just the Basics* – Teleseminar, 12:30 p.m. (MST), 1.0 CLE credit ~ Sponsored by the Idaho Law Foundation, Inc.

**November 28:** *Ethics and Dishonest Clients* – Live Audio Stream, 11:00 a.m. (MST), 1.0 Ethics credit ~ Sponsored by the Idaho Law Foundation, Inc. in partnership with WebCredenza, Inc. and Abila.

**November 30:** *2018 Headline News: Idaho Falls*, Hilton Garden Inn, 700 Lindsay Blvd. – Idaho Falls, 8:30 a.m. (MST), 6.0 CLE credits of which 1.0 is Ethics – **NAC** ~ Sponsored by the Idaho Law Foundation, Inc.

### December

**December 6:** *Lost in Translation: Overcoming Language Access Barriers in Idaho Courts*, The Law Center, 525 W. Jefferson Street – Boise / Live Webcast, 2:00 p.m. (MST), 3.0 CLE credits of which 0.5 is Ethics ~ Sponsored by the Diversity Section.

**December 7:** *2018 Headline News: Lewiston*, Red Lion Hotel Lewiston, 621 21<sup>st</sup> Street – Lewiston, 8:30 a.m. (PST), 6.0 CLE credits of which 1.0 is Ethics – **NAC** ~ Sponsored by the Idaho Law Foundation, Inc.

**December 14:** *2018 Headline News: Boise*, Red Lion Hotel Boise Downtown, 1800 W. Fairview Drive – Boise, 8:30 a.m. (MST), 6.0 CLE credits of which 1.0 is Ethics – **NAC** ~ Sponsored by the Idaho Law Foundation, Inc.

**December 27:** *Ethics Update Part I* – Live Audio Stream, 11:00 a.m. (MST), 1.0 Ethics credit ~ Sponsored by the Idaho Law Foundation, Inc. in partnership with WebCredenza, Inc. and Abila.

**December 28:** *Ethics Update Part II* – Live Audio Stream, 11:00 a.m. (MST), 1.0 Ethics credit ~ Sponsored by the Idaho Law Foundation, Inc. in partnership with WebCredenza, Inc. and Abila.

**December 31:** *Lawyer Ethics When Clients Won't Pay Fees* – Live Audio Stream, 11:00 a.m. (MST), 1.0 Ethics credit ~ Sponsored by the Idaho Law Foundation, Inc. in partnership with WebCredenza, Inc. and Abila.

\*\*Dates, times, locations and CLE credits are subject to change. The ISB website contains current information on CLEs.

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### Attorney Well-Being: More Important Than You Think

Michael T. Howard  
President, Idaho State Bar  
Board of Commissioners

A relatively new phrase is circulating around our profession – “attorney well-being” – and it genuinely deserves our attention. Boiled down, the phrase encompasses the notion that we find personal satisfaction, growth and enrichment in our work, and keep ourselves mentally and physically healthy in order to be a good lawyer and to live a happy, fulfilling life. My last President’s message touched upon the things I have been able to do to find satisfaction and growth in my work as a lawyer. More difficult, however, is the equally important aspect of taking care of yourself.

Since our first day of law school, we’ve been fed statistics surrounding the high prevalence of anxiety, depression, substance abuse and domestic discord among attorneys. More recently, surveys reveal increased job dissatisfaction among attorneys, particularly young attorneys, resulting in an exodus not previously seen in our profession. Like many things in life, the statistics are just that – statistics. It is oftentimes not real until it happens to you. The scary truth is, it is happening to us and we don’t even know it.

Ten or so years ago I had a medical negligence case that, in retrospect, took the life out of me for a period of time. I can’t tell you exactly what it was about that particular case that stole the wind from my sails; it was a case I lost, but I’ve lost others



before and since. All I can say is that for a period of about eight months afterward, I didn’t feel like myself. I didn’t feel sad or “down;” the most notable trait to me was the lack of ability to feel “up.” Several months after the trial, I remember sitting with my law partner at a beachside restaurant in Laguna Beach in search of a little solace during several days of depositions there. As we sat, sipping a beverage in the sun overlooking the ocean, I commented to him how it seemed like the things I had normally enjoyed just felt “blah.” I’d never felt that way in my 38 trips around the sun and figured I just needed to get back to doing things I knew brought me pleasure in the past. Eventually, I returned to my former self, but it wasn’t the result of anything I had consciously done. For me, it just took time. Looking back, I realize that what I had experienced

More recently, surveys reveal increased job dissatisfaction among attorneys, particularly young attorneys, resulting in an exodus not previously seen in our profession.

was, in fact, mild depression. That experience made me evaluate myself on other levels. Are there stressors in my life that are negatively affecting me that I don’t even appreciate? If so, how am I dealing with them, and is it in an effective, healthy and ethical way?

Recall the fabled boiling frog: if a frog is put suddenly into boiling water, it will jump out, but if the frog is put in tepid water which is then brought to a boil slowly, it will

not perceive the danger and will be cooked to death.

I find it important to reflect on my own coping mechanisms and evaluate whether or not they are healthy ones. I enjoy a beer with a friend; sometimes I think to myself ‘Do I like beer too much? Do I use it as a crutch to ‘take the edge off’ of my hectic day, and has that slowly and imperceptibly increased over time?’ I also have my fair share of anxiety; I will ask myself ‘Have I gotten so used to dealing with it that I don’t perceive the negative impact it is having on me? Does my ability to numb myself to its effects create an inability to appreciate the good things that happen to me?’ This kind of self-reflection, while difficult at times, is vital to sustaining a healthy career and, subsequently, a healthy life. The truth is we all have our own set of life stressors and potential to adapt and acclimate to our given situations. The question is, what can we do to minimize the risk and in doing so ensure we don’t boil to death?

The ABA has empaneled a national task force to address lawyer well-being. In its newly released report, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*<sup>1</sup>, the task force proposes a slate of recommendations for law firms, law schools, regulators, the judiciary, bar associations and professional liability carriers. I encourage you to review it. In short, the report’s recommendations focus on five central themes: (1) identifying stakeholders and the role each of them can play in reducing the level of toxicity in the legal profession, (2) eliminating the stigma associated with help-seeking behaviors, (3) emphasizing that well-being is an indispensable part of a lawyer’s duty of competence, (4) educating lawyers, judges and law students on lawyer well-being issues and (5)



taking small, incremental steps to change how law is practiced and how lawyers are regulated to instill greater well-being in the profession.

The primary import of the ABA’s report and recommendations is that addressing these issues, while historically personal, is necessarily a group effort – it takes a village. Much of my own success can be found in the values and culture fostered by my own law partners: promoting mentorship, supporting personal activities, setting reasonable expectations, friendship and so much more. Maintaining a healthy work-life balance and taking care of yourself is as important as any other aspect of our work. “Attorney well-being” – give it some thought.

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The primary import of the ABA’s report and recommendations is that addressing these issues, while historically personal, is necessarily a group effort – it takes a village.

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### Endnotes

1. <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf>

**Michael T. Howard** is a principal with the Spokane-based firm Winston & Cashatt and manages its Coeur d’ Alene office. Mike clerked for Idaho Supreme Court Justice Cathy Silak, has served as a Regional Director for the Idaho Trial Lawyers Association and as President of the First District Bar Association. Mike is a litigation attorney. In his spare time, Mike drinks beer and plays soccer... not necessarily in that order.



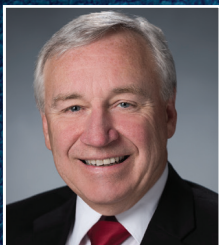


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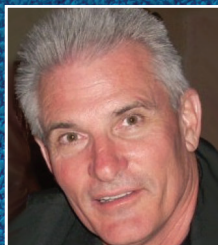
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## PHILLIP B. HEERSINK (Suspension)

On September 27, 2018, the Idaho Supreme Court issued a Disciplinary Order suspending Payette attorney Phillip B. Heersink from the practice of law for a period of two (2) years. Before the disciplinary case began, Mr. Heersink's license was canceled in March 2018 for nonpayment of his 2018 license fees. The Disciplinary Order provided that if Mr. Heersink does not reinstate his license from canceled status within one year from the date his license was canceled, and if the Idaho State Bar deems his license resigned under I.B.C.R. 305(e), then Mr. Heersink's suspension will end because his license will be resigned at that time. If his license is resigned, to be actively licensed again, he would have to apply to take and pass the Idaho bar exam. If Mr. Heersink does reinstate his license before it is deemed resigned under that rule, his license status will remain suspended until the period of suspension is completed and he will then be required to re-

instate under the disciplinary rules.

The disciplinary case related to two public defense clients of Mr. Heersink. In those two cases, Mr. Heersink failed to communicate with his clients and keep them reasonably informed about their cases or promptly comply with his clients' requests for information about their cases. In both cases, the court eventually appointed a new public defender to represent those clients and finish their cases. In addition, Mr. Heersink did not respond to Bar Counsel, the Hearing Committee of the Professional Conduct Board or the Idaho Supreme Court in the disciplinary matter. The Idaho Supreme Court found that Mr. Heersink violated I.R.P.C. 1.2(a) [Scope of Representation], I.R.P.C. 1.4 [Communication], I.R.P.C. 8.1(b) [Bar Admission and Disciplinary Matters], and I.B.C.R. 505(e) [Failure to Cooperate with or Respond to Disciplinary Authorities].

The Idaho Supreme Court's Disciplinary Order concluded a disciplinary proceeding that was initiated

with a Complaint filed on March 23, 2018. On June 28, 2018, a Hearing Committee of the Professional Conduct Board conducted a hearing on the Idaho State Bar's Motion to Deem Admissions for Failure to Answer and for Imposition of Sanction. Following that hearing, the Hearing Committee entered its Findings of Fact, Conclusions of Law and Recommendation.

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

### Notice of Public Discipline

The rules for discipline of Idaho lawyers are established by the Idaho Supreme Court, through Section V of the Idaho Bar Commission Rules. IBCR 521 provides for two types of disciplinary sanctions: private discipline (for less serious violations) and public discipline (for more serious violations). Only public discipline sanctions are posted.

To view a complete list of discipline notices visit our website at: <https://isb.idaho.gov/bar-counsel/public-discipline>



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## Law industry creates pathways for minorities

**STATEWIDE** – As reported by the Idaho Business Review on Sept. 4, the legal profession is slowly making gains in becoming more diverse, but there is still plenty of work to be done, according to a study by the National Association for Law Placement. The report, covering diversity in U.S.-based law firms for 2017, noted how there was a slight increase in “representation of women, minorities, and minority women among associates” but also made clear how those figures are still “below pre-recession levels.” For minority students looking to work in the legal profession, the numbers have started to move upward since 2010, from 19.53 percent to 23.32 percent, according to the study.

In an effort to see those numbers rise even further, several local programs strive to provide a pathway for minority law students to enter the profession. The Idaho State Bar’s Diversity Section provides one such program; Love the Law! introduces the law profession to high school students in rural areas and helps pay for LSAT preparation and the LSAT test itself. The program, which is about five years old, has introduced students from towns including Worley, Orofino, Craigmont and rural Canyon County to courthouses, where they hear presentations from bailiffs, law clerks and attorneys.

Both of Idaho’s law schools are implementing similar measures to increase diversity among their student bodies.

Concordia University School of Law in Boise has an Admission by Performance (ABP) program that allows applicants without the necessary standardized test scores to be

## Annual Attorneys Against Hunger event raises funds for Idaho Foodbank



Photo by Lindsey Welfley

Each fall, the Idaho State Bar’s Young Lawyers Section holds an event benefiting the Idaho Foodbank in partnership with local businesses Goodwood BBQ and Boise Brewing. There are roughly 221,800 food insecure people in Idaho with 72,840 of those being children. The child food insecurity rate in Idaho is 16.7% - far too high. On October 17th a group of local attorneys and community members gathered at Boise Brewing to support this great cause; Boise Brewing generously donated 10% of the proceeds from food and beverage purchases to the Foodbank. Another successful year, the 2018 fundraiser brought in over \$1,300 in donations to the Idaho Foodbank as of the end of October. Source: <https://idahofoodbank.org/about/food-insecurity-in-idaho/>

admitted and take two, five-week, non-credit law courses to demonstrate their ability to perform in law school. Concordia is one of 19 law schools nationwide with such a program. About half of the participants in the program are minorities, and half are women who might or might not be members of a minority group, said Dean Elena Langan. “There is much research on how minorities and women tend to score lower on the LSAT,” Langan said. “I am currently working on an article on this topic that discusses how ABP programs can help correct the racial/ethnic imbalance.”

The University of Idaho College of Law, with campuses in Mos-

cow and Boise, is a host school for the Council on Legal Education Opportunity, Inc., which encourages and assists minority students to attend and complete law school. The college also recruits at the Pre-Law Summer Institute for American Indians and Alaska Natives. This fall, the college’s entering class is 28 percent ethnic minority, said Maria Ortega, marketing and communications manager for U of I in Boise. The college’s academic programs include an emphasis on Native American law and immigration law, and student organizations include a Native American Law Students Association, Black Law Students Association, Multicultural Law Students, Latino

Law Caucus, Women's Law Caucus, and OutLaw, an LGBTQ group.

While there is still much to be done, these incremental measures provide the backbone for progress. *Adapted, Idaho Business Review, 9.4.18*

### **Stoel Rives launches new Health Law insider blog**

**BOISE** – Stoel Rives LLP is pleased to announce the launch of the firm's latest blog, Health Law Insider, which is dedicated to tracking developments and trends in the health care industry. The blog can be found at <https://www.healthlawinsider.com/>.

The intended audience of the blog includes health care providers, managed care entities, insurers, group health plans and vendors in the Pacific Northwest and Intermountain West.

The blog authors will bring their expertise to bear to provide insights on the full spectrum of legal issues shaping today's health care industry, including data privacy and security, fraud and abuse, health care transactions, antitrust, taxation and insurance regulation.

The initial roster of blog authors includes attorneys Sarah Bimber, Manmeet Dhami, Timothy Hatfield, Kelly Knivila, Tony Miles, Kara Morse and Sarah Oyer.

### **Idaho Business Review honors 17 as Leaders In Law**

**STATEWIDE** – The Idaho Business Review has selected its 2018 Leaders in Law. Each year applicants are scored on four dimensions – leadership in their profession, achievements, volunteer work and leadership in the community. This year, a total of 17 Idaho attorneys were selected in eight categories.

### **Bellwood Memorial Lecture Series highlights conversations about immigration**



Photo by Mahmood Sheikh

Michael Chertoff, former U.S. Secretary of Homeland Security, joined attorneys, educators, students and members of the public at this year's Bellwood Memorial Lecture Series in Boise and Moscow. His presentation titled "Solving the Immigration Crisis" highlighted the roots and effects of illegal immigration in the United States and the turbulent, sometimes controversial, conversations that have resulted. The Sherman J. Bellwood Lectures are held each year thanks to an endowment from the late Judge Bellwood; his legacy at the University of Idaho stands tall through his generous contribution to the education of the legal community and, ultimately, the public.

The 2018 Leaders in Law follow: Jon Bauer, Hawley Troxell, Partner; Elizabeth Brandt, University of Idaho, Educator; Jeffrey Brownson, Law Office of Jeffrey Brownson, Sole Practitioner; Roy Eiguren, Eiguren Ellis Public Policy Firm, Lifetime Achievement; Robert Faucher, Holland & Hart, Partner; Debra Groberg, Nevin Benjamin McKay & Bartlett, Up & Coming; James Hovren, Evans Keane, Partner; Clay Karwisch, Holland & Hart, Associate; Franklin Lee, Givens Pursley, Partner; Jamie Moon, Hawley Troxell, Associate; Bryan Norton, Boise Office of the City Attorney, Educator; Chelsea Porter, Hawley Troxell, Associate; Shannon Pearson, Pickens

Cozacos, P.A., Up & Coming; Mark Peterson, Hawley Troxell, Partner; Shelli Stewart, Idaho Power Company, Unsung Hero; Jason Stolworthy, Idaho National Laboratory, Unsung Hero; and Matthew Wilde, Boise State University, In-House Counsel.

### **Idaho may add third U.S. District Court judge**

**U.S. NINTH CIRCUIT** – Legislation authorizing the largest increase in the federal judiciary in nearly 30 years — including the first new position in the District of Idaho since 1954 — received a favorable recommendation from a U.S. House committee recently.

If approved, the omnibus bill would authorize a total of 52 additional judicial positions in 23 U.S. District Courts around the country. The number of positions in the District of Idaho would increase from two to three.

The Idaho district was down to one active federal judge for a two-year period, beginning in 2015, after Judge Edward Lodge retired and took senior status. Lodge was finally replaced last year, when the Senate confirmed the nomination of Judge David Nye.

It's been 15 years since Congress has authorized any increase in the number of district judgeships nationwide. The last major increase came in 1990, when 74 positions were added.

The Judicial Conference of the United States, which advises Congress on the manpower needs of the federal court system, said caseloads have increased by nearly 40 percent since that time, or more than 100,000 cases per year.

Although Congress approved temporary judicial appointments to help with the workload, it has only authorized a handful of permanent new positions since 1990. The last increase came in 2003. The House Judiciary Committee recommended approval of the omnibus bill on a unanimous voice vote. *Adapted, Lewiston Tribune: 9.14.18- William L Spence*

### **Fall admissions ceremony welcomes new Bar members**

**BOISE** – The Fall Admissions Ceremony in October welcomed 92 new members to the Idaho State Bar. New admittees were sworn in with several Idaho dignitaries in attendance. Past President of the Idaho Law Foundation, Craig Meadows, spoke on be-

### **Fall admissions ceremony welcomes new Bar members**



Photo by Lindsey Welfley

New Idaho State Bar members sworn in at Fall 2018 Admissions Ceremony.

half of the Idaho Law Foundation, emphasizing its charitable programs and pro bono initiatives. Mike Howard, president of the Board of Commissioners of the Idaho State Bar, addressed the applicants about the importance of reputation, work ethic and maintaining balance between one's law practice and personal life. Justice Horton spoke on behalf of the Idaho Supreme Court and emphasized the importance of respect for the judiciary and their role in upholding the rule of law. Judge Bush addressed the new admittees on behalf of the U.S. District Courts for the District of Idaho. His speech referred to his father, an attorney and former President of the Idaho State Bar, and his son, who was being sworn in that day. Dignitaries present included all five Board members of the Board of Commissioners; Diane Minnich, Executive Director of the Idaho State Bar; Bar Counsel Brad Andrews; Bob Faucher, Lawyer Representative to the Ninth Circuit

Conference of the United States Courts; Dean Long from the University of Idaho College of Law; Dean Langan from Concordia University School of Law; and Cathy Silak, former Justice of the Idaho Supreme Court and former Dean of Concordia. A special thanks to Idaho Trust Bank and the Young Lawyers Section for sponsoring the reception that followed the ceremony.

### **Pro Bono Week brings together pro bono heroes and aspiring heroes alike**

**STATEWIDE** – The National Celebration of Pro Bono was a great way to head into the holiday season! This year's Pro Bono Week in Idaho lauded a kickoff celebration and two free CLEs. The kickoff event on Oct. 22<sup>nd</sup> at the Owyhee Penthouse was a fun, rooftop celebration of pro bono service in Idaho. Local band Drifter Still, whose members are all Idaho attorneys, was the musical guest, with special awards presentations by

the Idaho Military Legal Alliance. Jodi Nafzger, Alexis Poul and Thomas Walker all received awards. The first of the two free CLEs was geared toward educating attorneys on how to assist Idaho families through Soundstart on a variety of relevant family law topics. Larry Hunter's presentation was both informative and eye-opening. The second of the two free CLEs focused on the ethical responsibility an attorney has to provide pro bono services to indigent members of the community. Idaho Supreme Court Justice Robyn Brody, Bar Counsel Brad Andrews and retired Justice Jim Jones spoke about how the Idaho Rules of Professional Conduct impact a lawyer's duty to pro bono work. The week was a great reminder of the importance of pro bono legal services in our community and beyond.

## Pro Bono Week brings together pro bono heroes and aspiring heroes alike



Photo by Kyme Graziano

Jodi Nafzger (left) and Alexis Poul (right) received awards from the Idaho Military Legal Alliance during the Pro Bono Week Kickoff Event. A little bit of rain left a beautiful rainbow spanning the sky throughout the entire event.

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## Executive Director's Report

### Build Your Client List with Referrals from the Lawyer Referral Service

Kyme Graziano

Lawyer Referral Service Coordinator

**A**lmost 4,000 Idaho residents – plus many out of state residents – contact the Idaho State Bar Lawyer Referral Service (LRS) each year looking for legal help. LRS attorneys provide these potential clients with access to the law while improving the public's trust in attorneys. The LRS puts into action the Idaho State Bar's mission to promote high standards of professional conduct and to aid in the advancement of the administration of justice. The LRS provides a much needed public service by bridging the gap between the community and the experienced attorneys in the LRS program.

Anyone can call the LRS or can otherwise obtain a referral on our website. The LRS fields around 4,000 inquiries each year. As of October 2018, the LRS has provided 595 referrals to the 148 LRS attorneys registered with the service. The LRS intake coordinator screens callers to address which area of law they need assistance in, however not every caller receives a referral to an LRS attorney; some callers receive referrals to community or governmental agencies. Callers may be directed to small claims court, the court assistance office, public defender's office or programs such as Idaho Legal Aid Services, the Idaho Volunteer Lawyers Program or various local legal clinics. Pro bono cases are not referred to LRS attorneys through the program.

Most of the attorneys who participate in the LRS joined for two reasons: 1) they want to develop new clients and 2) they are interested in

giving back to the community. The LRS could not provide this public service without the dedication of the participating attorneys. A new attorney in Idaho, Edward Dindinger, has this to say about the LRS: "Having started a new law firm this year, the Idaho State Bar Lawyer Referral Service has been an essential business generation tool for my partner and me. It also provides an important service to those in our state who are in need of legal advice, but don't know where to turn."

A veteran LRS panel attorney, Ned Cannon from Lewiston, had this to say about the program: "The Idaho State Bar's Lawyer Referral Service has long been a significant part of my law practice. My initial consultation has always seemed helpful to the folks who are referred and,

frequently, I end up accepting their requests for representation. Furthermore, such clients often return for additional legal assistance and/or refer their friends and family. The LRS referral clients are well-vetted and prepared for discussions. I've always felt very comfortable accepting these referrals and in recommending the LRS to the inquiring public, as well as to my fellow attorneys."

Attorneys on the LRS panel are just like you! They are hard-working, intelligent professionals who strive to develop their practice while using their legal skills to provide consumers with access to justice. Of the 148 panel members in 2018, many are solo practitioners or practice in small firms; others practice in medium to large firms. Some have been attorneys for 50 years, some for only



two to three, and a few are newly admitted. These attorneys are experienced and knowledgeable in the specific areas of law in which they register to receive referrals and they each have a passion for helping the people of Idaho. To participate in the LRS, attorneys submit their registration in the areas of law they wish to receive referrals - there are 136 different options. All attorneys in the LRS are in good standing with the Bar and must maintain this status to remain on the LRS panel.

LRS attorneys provide a free initial consultation of up to one half-hour after the client pays the initial \$35 administrative referral fee during screening. Callers are told that while the initial consultation is free, all fee arrangements are determined between the attorney and the client. ISB members pay a registration fee to join the LRS. The LRS receives potential clients from the ABA, other state bar associations, local court

assistance offices, governmental agencies and community organizations. We are continually looking for ways to spread the word about the wonderful public service provided by the LRS. Next time you receive an inquiry about an area of law you don't practice, please know that the experienced LRS attorneys are well suited to serve the needs of your referral.

We invite you to join the LRS in

2019 and thank all the attorneys currently participating in the LRS panel - we couldn't help the public without you. We are so grateful to these 148 attorneys and we encourage you to be part of the service as well. If you have questions about the LRS or would like more information about registration, please contact the Idaho State Bar LRS Coordinator, Kyme Graziano at 208-334-4500 or [kgraziano@isb.idaho.gov](mailto:kgraziano@isb.idaho.gov).

**Kyme Graziano** is the Lawyer Referral Service Coordinator at the Idaho State Bar. She is a graduate of Evergreen State College in Washington with a B.A. in literary theory and deconstructionism. Ms. Graziano has been with the Idaho State Bar since 2007. Kyme volunteers as a Guardian ad Litem with the fourth district CASA program and with the City of Boise Adaptive Recreation program.



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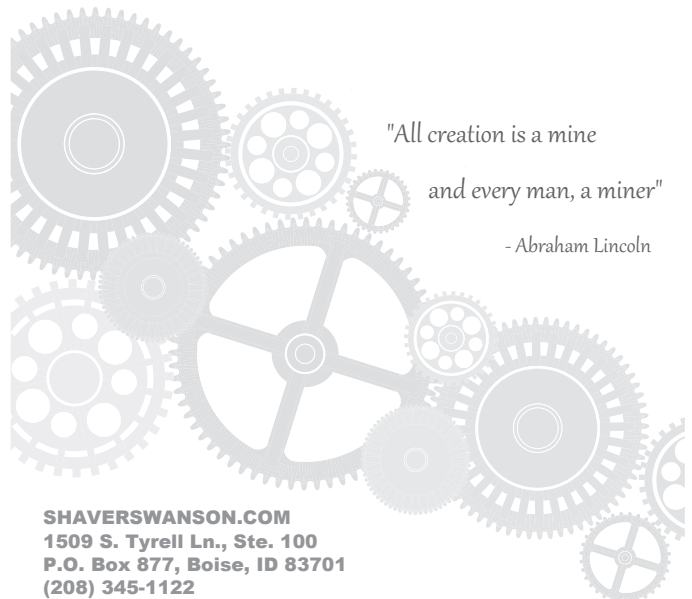
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# From Sagebrush Law to a Modern Profession

Kristina J. Running

The decade surrounding World War I brought great change to the landscape of the legal profession in Idaho. Five years before World War I began, an individual aspiring to join the legal community in the state of Idaho simply needed to enter into an apprenticeship with a current lawyer. There was no law school, no bar association and little rule of law. But five years after World War I ended, “sagebrush lawyers” had started to become a thing of the past. The opening of the University of Idaho College of Law gave aspiring lawyers an option for a formal legal education within the state, with a curriculum quite similar to that offered in law schools today. In addition, the growing call to better regulate those entering the profession resulted in the creation of Idaho’s formal, self-governing bar association. Despite setbacks caused by World War I, by 1923 the foundation of the modern profession had been built in Idaho.

## Creation of the College of Law

Law schools existed in the United States as early as 1784, but it was not until the American Bar Association began pressing for more rigorous bar admission requirements in the 1890s that formal legal education became more commonplace. However, lawyers in Idaho at the turn of the century were more likely to have “read” the law than attended law school. The Idaho Constitution only required that one be “learned in the law,” even to become a judge. Thus, “[i]f you were a citizen of the United States and of Idaho and could convince the Supreme Court that you could perform reasonably well, you were admitted.”<sup>1</sup> In 1891, the Supreme Court created a three-

Law schools existed in the United States as early as 1784, but it was not until the American Bar Association began pressing for more rigorous bar admission requirements in the 1890s that formal legal education became more commonplace.

member committee to review applicants, with the basic requirements being the applicant had studied law in a law school or in an apprenticeship and had read certain important books such as William Blackstone’s *Commentaries on the Laws of England* or Christopher Tiedeman’s *The American Law of Real Property*.<sup>2</sup>

In 1908, James H. Forney, at the request of University of Idaho President James MacLean, prepared a proposal to the Board of Regents for the establishment of a law school.<sup>3</sup> In 1909, the Idaho Legislature appropriated \$5,000 for the operation of the law school and \$2,000 for the purchase of books for a law library. The law school welcomed its first class on September 20, 1909.<sup>4</sup> That first class consisted of 18 full-time students, with one full-time faculty member, John T. MacLane.<sup>5</sup> Another 18 students enrolled in 1910 and two more law faculty were added,<sup>6</sup> with MacLane now serving as dean of the law school.<sup>7</sup>

As World War I began to embroil European nations in 1914, the College of Law was admitted as the 46th member of the American Association of Law Schools. From 1909 to 1914, only a high school diploma was required for admittance to law school; however, starting in 1915, the

law school required at least one year of college education, with a minimum of six college credits in American Constitutional History. The University of Idaho Annual Catalog described attributes law candidates should possess, and explained the reasoning for requiring more than a high school diploma:

It is important that students entering the Law School should have learned to think clearly and to express themselves well, both orally and in writing, in correct and lucid English. It also is important that they should have, so far as possible, that breadth of view which comes from culture. . . . A greater knowledge of history, sociology, economics and of natural science, than can be obtained in a high-school study course alone, is desirable for anyone entering upon the study of law.<sup>8</sup>

The prerequisite of one year of college was still quite relaxed when compared with other law schools, such as Harvard, which required a full college education for admittance as early as 1900, but Idaho now had a law school that could offer aspiring lawyers a modern course in legal education.<sup>9</sup>

## Life of a law student in the 1910s

The law school was housed in the University of Idaho Administration Building and class sizes ranged from four to 12 students between 1914 and 1919. All University of Idaho students, including law students, were required to take a course in Military Art & Tactics starting in 1914, but otherwise the first year of law school looked remarkably similar to courses required at law schools today. In their first year, students were required to take courses in contracts, torts, property, criminal law, pleading and procedure, persons, agency, carriers and argumentation.

Practical experience was also emphasized, with students of all three classes participating in Law Club, in which “moot points of law [were] briefed and argued under the supervision of the faculty.” Third-year students tried cases before juries made up of first and second-year students and argued “questions of law” before student judges. The curriculum also included a course in “Drafting of Legal Instruments.” The school described its approach to the curriculum as “the Laboratory Method”: “the study of legal principles is coupled, so far as circumstances will allow, with practical application, so as to make legal studies pointed and definite.”<sup>10</sup>

Tuition during this time period was \$25 per year, with the proceeds devoted primarily to the expansion of the law library. The university explained that it believed the charging of a small fee to professional students was advisable, “as an earnest of good faith and serious purpose.”<sup>11</sup> Room and board was estimated at four to six dollars per week and a fee of \$6.25 per semester was collected for the Associated Students of the University of Idaho.

Life in Moscow, Idaho was not sheltered from the war. On March 21, 1917, the students of the Uni-

versity of Idaho voted to send a telegram to President Wilson stating: “The entire faculty and student body of the University of Idaho earnestly and sincerely assure you that their best services are dedicated to the vigorous support of your efforts for the protection and advancement of human welfare at home and abroad.”<sup>12</sup> The university demonstrated that support by providing special courses to aid the war effort, such as a course in emergency food conservation, and encouraging young men to enlist through resolutions waiving high school graduation requirements for

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seniors who joined the armed forces and granting diplomas to college seniors who joined instead of completing their spring semester.<sup>13</sup>

At the law school, there were no graduates in 1918. Not only did enlisting take students away from the study of law, but many students also returned home to their family farms as the war threatened a massive labor shortage in agricultural areas of the United States.<sup>14</sup> College of Law Professor Charles Henry Wilber also left Moscow to enlist at the beginning of the war. Wilber had studied law at the University of Chicago and worked at the law firm of Seitz,

Bryan & Wilber in Chicago before joining the College of Law faculty in 1910. His name is now on a plaque hung in the University of Idaho Memorial Gym commemorating those who gave their lives during the war. Thirty-one University of Idaho students, including law student Ralph Jamison Gochnour, are also commemorated on that plaque.<sup>15</sup>

Following the war, the law school adjusted its curriculum to allow returning students to complete their studies without interruption. Five of the 20 students who were enrolled in the law program at some level in 1917 returned to the law school in 1919.

## Growth of the profession

The end of the war brought a new vitality to the law school and the developing bar in Idaho. Courts began to expand as caseloads overwhelmed existing resources. In 1920, the Idaho Legislature increased the number of justices of the Idaho Supreme Court from three to five to deal with growing caseloads and reduce perceived delays.<sup>16</sup> In addition, in 1923, the small claims court was created as a separate department in justice of the peace courts to help deal with the number of cases being filed.<sup>17</sup>

Around this same time, the American Bar Association began “its efforts to regulate access to the legal profession” in 1921, when it “set minimum standards for law school admissions...and declared that only lawyers who were graduates of accredited schools should be allowed to practice law.”<sup>18</sup> The College of Law received its accreditation from the ABA shortly thereafter in 1925. Law school attendance picked back up following the war, with 12 students graduating in 1921. Two members of that class, A.J. Priest and William H. Langroise, went on to prominence in their respective legal communities. Priest became a partner at a

large law firm in New York; an author of leading legal treatises on corporate reorganizations, mergers and liquidation; and eventually a faculty member at the University of Virginia School of Law. Bill Langroise became a deputy U.S. attorney; a founding partner of Langroise, Sullivan, and Smylie; and then chairman of the board and CEO of Continental Life and Accident Insurance Company.<sup>19</sup> Two years after Priest and Langroise graduated, Mary Shelton became the first woman graduate of the University of Idaho College of Law.<sup>20</sup>

Idaho lawyers began a drive for self-regulation following the war, spurred by the large number of applicants to practice law. By 1921, there were around 600 lawyers in Idaho, 187 of whom were members of a voluntary bar association. The majority of these bar members were from southwestern Idaho, so they faced a challenge in convincing lawyers in other parts of the state to approve a state-wide bar association. A bill for a self-regulating bar association was first introduced to the Legislature in 1921, but the bill died in committee. Bar association members then traveled the state to convince other lawyers that the association provided benefits to them, emphasizing common concerns such as the problems created by untrained and unregulated lawyers in the legal practice, the decline in the public image of lawyers and “the need for quick, impartial justice.”<sup>21</sup>

In 1923, another bill for a self-regulating bar association was introduced and bar members found a powerful supporter in the chairman of the Senate Livestock Committee, John McMurray. He was said to have agreed to sponsor the bill because his committee “had jurisdiction over all predatory animals.” The Act passed and called for the election of a three-member Board of Commis-

sioners by bar association members. The new commissioners then began examining applicants to the Idaho State Bar, developing rules of professional conduct and taking disciplinary action against attorneys.<sup>22</sup>

## Conclusion

The short period of time from five years before World War I to five years after the end of the war was perhaps the most formative time period for the legal profession in Idaho. In 1914, aspiring lawyers “read” the law to enter the profession and there was little formal regulation of lawyers once they were admitted to practice. By 1923, Idaho had a robust law school, a self-regulating bar association and a rapidly growing legal system. “Sagebrush lawyers” became a relic of the pre-World War I era as Idaho moved toward a modern profession.

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7. *Annual Catalog of the University of Idaho 1912-1913*, VIII UNIVERSITY OF IDAHO BULLETIN, 16 (March 1913).

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9. McCoy, *supra* note 3, at 17.

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13. Terry W. Soule, *The Moscow Home Front in World War I*, 18 LATAH LEGACY 23, 25 (1989).

14. *Id.*

15. Alex Greig, *The Memorial Grove: A World War I Reminder*, 44 LATAH LEGACY 26, 28 (2017).

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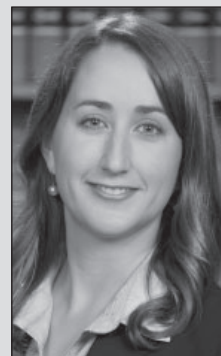
19. Menard, *supra* note 5, at 274.

20. *Idaho Law in the Interwar Years*, at 4.

21. *Idaho Bar One of First to Self-Regulate*, Idaho Legal History Society Newsletter, Vol. II, Issue 3, at 4 (2010).

22. *Id.* (citing Madeline Buckendorf, BUILDING A PROFESSION: A HISTORY OF THE IDAHO STATE BAR 1860s TO 1950s (1992)).

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# Free Speech and the Sedition Act of 1918

Christopher P. Graham

**T**he year 2018 marks the 100<sup>th</sup> anniversary of many noteworthy events in United States history, including the armistice that ended World War I. Historians, free speech proponents and legal scholars, however, also lament that 2018 marks the 100 year anniversary of the Sedition Act.<sup>1</sup> A historical review of the Sedition Act is a useful reminder of its importance in free speech jurisprudence.

Passed a little over a year after the United States' entry into World War I, the Sedition Act of 1918 made it a crime to: (1) willfully utter, print, write or publish any disloyal, profane, scurrilous or abusive language about the government, military or flag of the United States; (2) use any language intended to bring the government, military or flag of the United States into contempt, scorn, contumely or disrepute; or (3) willfully display the flag of any foreign enemy, advocate the curtailment of war production or advocate, teach, defend or suggest doing any of these; or by word or act support the enemy or oppose the United States.<sup>2</sup>

The United States government prosecuted more than 2,000 individuals under the Sedition Act and its predecessor counterpart, the Espionage Act of 1917.<sup>3</sup> Between 1919 and 1920, the Sedition Act, along with other similar laws, resulted in at least 877 convictions,<sup>4</sup> many of which imposed lengthy prison terms. One of the most notable prosecutions under the Sedition Act was of renowned socialist and perennial Presidential candidate Eugene Debs. After his unsuccessful run for President in 1912, Debs had been ill, depressed and isolated from other socialists.<sup>5</sup> America's entry into World War I, however, provided Debs with a chance to reassert himself as the "fa-

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ther" of American socialism through a series of anti-war speeches. In June of 1918, Debs set out on a speaking tour "designed in part to taunt federal officials and bait them into arresting him."<sup>6</sup> His plan worked. On June 16, 1918, Debs gave a passionate anti-war speech in Canton, Ohio. In the audience were stenographers dispatched by E.S. Wertz, the United States Attorney for the Northern District of Ohio, who believed that he could prosecute Debs under the newly enacted Sedition Act.<sup>7</sup> When Debs arrived in Cleveland a week later, federal authorities arrested Debs and charged him with attempting to: (1) "cause and incite insubordination, disloyalty, mutiny and refusal of duty in the military and naval forces of the United States;" and (2) "obstruct the recruiting and enlistment service of the United States...."<sup>8</sup>

Debs' trial took place four months later. The jury convicted Debs and the judge sentenced him to ten years in prison. In 1919, in an opinion authored by Justice Oliver Wendell Holmes, the United States Supreme Court upheld Debs' conviction, holding that Debs' speech was not protected under the First Amendment.<sup>9</sup> After his failed appeal, Debs served two years in fed-

eral prisons in West Virginia and Georgia before having his sentence commuted by President Warren G. Harding.<sup>10</sup> Debs' health never recovered and he died five years later. To some historians, Debs' trial and conviction "functioned as a religious ritual that anointed him as the savior of American liberty."<sup>11</sup>

Another noteworthy prosecution under the Sedition Act involved a female physician living in the Pacific Northwest. Marie Equi was born in 1872 to working class Irish and Italian immigrant parents in New Bedford, Massachusetts. Although she was a good student, Equi dropped out of school to help her family by working in the textile mills. Life was not easy. Three of Equi's siblings died of childhood diseases.<sup>12</sup>

In 1892, Equi left home with her girlfriend to forge a new life in Oregon. From there, Equi moved to San Francisco to attend medical school, a unique goal among working-class women in the West. In 1903, Equi finished medical school at the University of Oregon as one of five women in her class, settled in Portland and set up a family practice specializing in the treatment of women and children. Equi's medical practice was not without controversy,

however, as she performed abortions and advocated for birth control. She also championed numerous other Progressive Era causes such as prison reform and higher education.<sup>13</sup>

A vicious clash with the police during a 1913 cannery worker strike in Portland radicalized Equi. Equi had come to support the women workers, who were seeking better wages, when the strike turned violent. Equi was clubbed by a mounted policeman and observed a pregnant woman forcibly taken to jail after being beaten by another police officer. Deciding that measured political reform could not achieve justice for the working class, Equi subsequently declared herself a socialist, espoused anarchism and began supporting the radical labor union Industrial Workers of the World (IWW). Days after the strike incident, Equi reportedly climbed onto a chair in the middle of Portland's city hall and, allegedly producing a poisoned hat pin certain to cause a "slow and lingering death," threatened to spill blood if anyone stood in the way of her cause.<sup>14</sup>

Staunchly opposed to America's involvement in World War I, Equi gave a fiery anti-war speech at the IWW hall in Portland on June 27, 1918. She was subsequently arrested and charged under the Sedition Act for: (1) stating that she and all of her fellow IWW workers were not fighting for the flag containing the red, white and blue, nor the British flag, nor for a flag of any country, but that the fellow workers and the IWW platform stood for the industrial flag, the red banner that symbolized the blood of the Industrial Workers; (2) stating that the ruling class had been in power long enough, with the law and the Army and Navy behind them, and that the IWW knew there were fellow workers pulled into the Army against their will and were placed in the trenches to fight their own brothers and relatives; and (3)

stating it was against the IWW platform to injure or kill another fellow worker, but if it was necessary to do this, to gain their rights, that she for one, and every man or woman packing a red card (an IWW membership card) would be willing to sacrifice all they had, their lives, if need be, for the cause of industrial freedom.<sup>15</sup>

A jury convicted Equi of five of the eight counts against her and the presiding judge sentenced Equi to three years in federal prison. On October 27, 1919, the Ninth Circuit Court of Appeals, in part relying on the Supreme Court's decision in

In a trilogy of opinions,<sup>22</sup> including *Debs v. United States*, the United States Supreme Court first articulated the "clear and present danger" test to uphold convictions against a challenge under the First Amendment.<sup>23</sup> In doing so, however, the Supreme Court also laid the groundwork "that later served to provide more protection for speech."

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*Debs v. United States*, upheld Equi's conviction and Equi was sent to San Quentin California State Prison to serve out her sentence.<sup>16</sup> She served ten months before being released for good behavior. Many years later, on December 24, 1933, President Franklin Delano Roosevelt pardoned Equi, who continued to be an activist for the working class for the remainder of her life.<sup>17</sup>

Roughly three years after its passage, Congress repealed the Sedition Act, and although the Act is the subject of broad castigation by

many legal scholars and historians, others believe it should instead be remembered today for the "honorable, if misguided reasons why some in Congress supported [its] enactment."<sup>18</sup> For example, when debating the Act's passage, Idaho Senator William Borah is reported to have stated: "I know this is a drastic law and I would not support it . . . unless I believed it necessary to prevent things far worse."<sup>19</sup> Thus, while most legislators supported the act to put down anti-war dissent, Senator Borah and others felt as though the law "was needed to preempt mob violence against dissenters."<sup>20</sup>

World War I therefore marked the first time "in which the courts played a significant role in relation to the restrictions imposed on freedom of expression."<sup>21</sup> As demonstrated by the decisions involving *Debs* and *Equi*, courts throughout the country generally affirmed the restrictions. In a trilogy of opinions,<sup>22</sup> including *Debs v. United States*, the United States Supreme Court first articulated the "clear and present danger" test to uphold convictions against a challenge under the First Amendment.<sup>23</sup> In doing so, however, the Supreme Court also laid the groundwork "that later served to provide more protection for speech." In 1918, the United States Supreme Court upheld the constitutionality of the Sedition Act in *Abrams v. United States*.<sup>24</sup> In *Abrams*, the Court affirmed the convictions of Russian immigrants under the Sedition Act for tossing leaflets from the tops of buildings in Manhattan for – among other things – a strike to protest American operations in Russia after the Russian Revolution.<sup>25</sup> Justice Oliver Wendell Holmes, who earlier authored the opinion creating the "clear and present danger" test, dissented in *Abrams*, in what legal scholars have described as "sonorous language that set the terms for our modern interpretation of the First Amendment."<sup>26</sup>

Viewed as a well-meaning but unsound attempt to suppress free speech in a time of war, the Sedition Act of 1918 thus serves as a cautious reminder regarding the resiliency of the First Amendment. Although the Act was short-lived and it seems unlikely that similar legislation would be considered constitutional today, large portions of the Act's precursor, the Espionage Act of 1917, remain part of United States law. Consequently, it is prudent to keep the Sedition Act of 1918 in mind as – one hundred years later – our country continues to work through the myriad of complex issues surrounding the limits of free speech.

## Endnotes

1. See Andrew P. Napolitano, *A Legal History of National Security Law and Individual Rights in the United States the Unconstitutional Expansion of Executive Power*, 8 NYU J.L. & Liberty 396, 472 (2014) ("The Sedition Act of 1918 represents one of the most constitutionally-repugnant laws ever enacted"); Geoffrey R. Stone, *War Fever*, 69 Mo. L. Rev. 1131, 1140 (2004) ("This is a dreary record of legislative achievement."); cf. *Arar v. Ashcroft*, 585 F.3d 559, 615 (2d Cir. 2009) ("The Supreme Court's decisions upholding convictions under the Sedition Act of 1918 are regarded as indefensible today").
2. Sedition Act of May 16, 1918, ch. 75, § 1, 40 Stat. 553, 553 (1918).
3. See Nancy Murray and Sarah Wunsch, *Civil Liberties in Times of Crisis: Lessons From History*, 87 Mass. L. Rev. 72, 76 (2002).
4. The Sedition Act of 1918 From the United States Statutes at Large, v. 40 (April 1917-March 1919), at [https://www.thirteen.org/wnet/supremecourt/capitalism/sources\\_document1.html](https://www.thirteen.org/wnet/supremecourt/capitalism/sources_document1.html)
5. See Kathleen Kennedy, *Manhood and Subversion During World War I: The Cases of Eugene Debs and Alexander Berkman*, 82 N.C. L. Rev. 1661, 1687 (2004).
6. *Id.* at 1688.
7. See David Forte, *Righting a Wrong: Woodrow Wilson, Warren G. Harding, and the Espionage Act Prosecutions*, 68 Case W. Res. L. Rev. 1097, 1107 (2018).

Although the Act was short-lived and it seems unlikely that similar legislation would be considered constitutional today, large portions of the Act's precursor, the Espionage Act of 1917, remain part of United States law.

8. *Debs v. United States*, 249 U.S. 211, 212 (1919).
9. *Id.* at 217.
10. See Kennedy, *supra* note 5, at 1688.
11. *Id.* (citing NICK SALVATORE, EUGENE V. DEBS: SOCIALIST AND CITIZEN 294 (1982)).
12. See Marie Qui, at <http://historicsouthcoast.org/marie-equi/>; Marie Qui (1872-1952), at [https://oregonencyclopedia.org/articles/equi\\_marie\\_1872\\_1952/#.W5wfAeSWyUk](https://oregonencyclopedia.org/articles/equi_marie_1872_1952/#.W5wfAeSWyUk); an out lesbian and abortion rights activist, Marie Qui got locked up for espionage, at <https://timeline.com/marie-equi-abortion-activist-b712c6ef2656>.
13. *Id.*
14. *Id.*
15. See *Equi v. United States*, 261 F. 53, 54 (9th Cir. 1919).
16. *Id.* at 56-57.
17. See *supra* note 12. For more information on Equi's life and activism, see MICHAEL HELQUIST, MARIE EQUI: RADICAL POLITICS AND OUTLAW PASSIONS (2105).
18. Eric B. Eaton, *A Grim Anniversary: The*

*Sedition Act of 1918*, at: <https://uwpress.wisc.edu/blog/?p=3209>

19. *Id.* (citing GEOFFREY STONE, *PERILOUS TIMES* (2004)).
20. *Id.*
21. Murray and Wunsch, *supra* note 3 at 77.
22. See *Schenk v. United States*, 249 U.S. 47 (1919); *Frohwerk v. United States*, 249 U.S. 204 (1919); *Debs*, 249 U.S. 211.
23. See *Schenk*, 249 U.S. at 52 ("The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.").
24. 250 U.S. 616 (1919).
25. For a thorough analysis of the background and decision in *Abrams*, see Frederick M. Lawrence, *The Coastwise Voyager and the First Amendment: The Fighting Faiths of the Abrams Five*, 69 B.U. L. Rev. 897, 905 (1989).
26. See Wyatt Kozinski, *Our Proudest Boast*, 53 Tulsa L. Rev. 523, 529 (2018).

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# The Battle at Home: The IWW and Criminal Syndicalism Prosecutions in Idaho During World War I and Beyond

William K. Fletcher

In 1917, as the United States became embroiled in the Great War, a world away, a different battle was being fought at home in Idaho. This battle pitted the International Workers of the World (also known as the “IWW” or “Wobblies”) against industry and government interests who viewed the IWW’s radical doctrine for achieving workers’ rights as a threat to good order and the economy.

Conflict with the IWW resulted in Idaho becoming the first state to enact criminal syndicalism legislation, which sought to criminalize advocating IWW’s core beliefs such as striking and sabotaging work production to obtain industrial and political reform. Between 1917 and 1920, 19 other states and two territories, mostly in the West and Midwest, would enact laws based on Idaho’s statute.<sup>1</sup>

During World War I, more than 200 men were prosecuted and 31 were sentenced to prison under Idaho’s Criminal Syndicalism Act,<sup>2</sup> which defined criminal syndicalism as “the doctrine which advocates crime, sabotage, violence or unlawful methods of terrorism as a means of accomplishing industrial or political reform.”<sup>3</sup> A 1919 amendment to the act would clarify that mere membership in an organization which advocated criminal syndicalism was prohibited.<sup>4</sup>

## A brief history of the IWW

At the time Idaho’s Criminal Syndicalism Act became law, there had been more than a decade of history between the State and the IWW. The IWW was founded on the principle of “revolutionary industrial unionism,” an ideal which blended both

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socialist and anarchist labor philosophies.<sup>5</sup>

The group advocated for the overthrow of the wage system and for increasing worker control of production through organization. Its primary tactics included advocating for and organizing strikes, boycotts, work slowdowns and sabotage on the job as a means of forcing the employer class to respect the rights and needs of the working class. Its members consisted mostly of unskilled laborers and factory workers.<sup>6</sup>

Under the IWW’s doctrine, the exploitation of the working class could only be stopped by employees organizing as a class and assuming control of the machinery of production.<sup>7</sup> The group eschewed more traditional means of promoting reform such as voting or running for office in favor of “direct action” by organizing and striking as often as possible, and when it would harm the employer most.<sup>8</sup> The IWW’s philosophy was summarized in the preamble to its constitution, which stated:

The working class and the employing class have nothing in common. There can be no peace so long as hunger and want are found among millions of working people and

the few, who make up the employing class, have all the good things in life.<sup>9</sup>

This philosophy caused many to assume the IWW and its members advocated for and engaged in violence to achieve their goals.<sup>10</sup> However, in principle, the IWW renounced violence and its labor strikes remained mostly peaceful; although violence against IWW members was common.<sup>11</sup> The IWW’s consistent stance against the United States’ involvement in World War I also contributed to the assumption that German money was financing the organization and that its members were anti-patriotic and largely of German or foreign origin.<sup>12</sup>

Idaho’s history with the IWW had perhaps also been a bit more personal than in other states. In 1905, the year of the organization’s founding in Chicago, Albert Horsley assassinated former Idaho governor Frank Steunenberg.<sup>13</sup> Two years later, the State tried IWW founder “Big Bill” Haywood as a conspirator in Steunenberg’s murder. Haywood was acquitted as a result of the talents of his defense attorney, Clarence Darrow, during “Idaho’s Trial of the Century.”<sup>14</sup> Tensions with the IWW, however, did not reach a peak in Idaho until early 1917, when the

IWW began organizing large-scale timber strikes in Idaho's panhandle region.<sup>15</sup>

### The timber strikes of 1917

While the United States debated its involvement in World War I, the IWW was experiencing a great increase in its membership throughout the West.<sup>16</sup> In the numerous logging camps that populated rural Idaho from the Clearwater region to the Canadian border, IWW leaders began organizing to demand an eight-hour work day instead of ten, a minimum pay of \$60 per month, better food, bathing facilities in logging camps and bunkhouses that were smaller than the ones then in use, which could hold 80 or even 150 men.<sup>17</sup>

Competition from lumber mills in Southern states, however, made problematic the increased operating costs that would come with improvements to workers' hours, wages and living conditions.<sup>18</sup> Consequently, Idaho's timber interests remained resistant to these reforms.

Democratic Governor Moses Alexander helped lead the charge against the IWW. Prior to the war, Governor Alexander had been widely viewed as a champion of labor's cause. The war changed that, however, and he began likening association with the IWW to "preach[ing] or practic[ing] treason in Idaho . . ."<sup>19</sup> In response to increasing IWW activity during the war, Alexander also said that it was not the time "when men can talk about revolutionizing society, when we have millions of our boys on the battlefields of Europe."<sup>20</sup>

In June 1917, a mere two months after the United States declared war on Germany, approximately 2,400 loggers walked out of camps in North Idaho as part of IWW-organized strikes.<sup>21</sup> These strikes effec-

tively halted most logging activity in North Idaho and sent a ripple of fear through nearby mining and smelter operators who felt that the strikes would soon envelop their operations, as well.<sup>22</sup>

State leaders, industry and the newly-created and hard-lined State Council of Defense depicted the IWW's efforts as a "reign of terror in the north."<sup>23</sup> Mining interests also claimed that the IWW and "agents of Germany" had encouraged the strikes to cripple the region's war mobilization efforts.<sup>24</sup> The State's Council of Defense in particular

There are also examples of the Act being used as a foil against political opponents, or to silence persons with whom local authorities felt a general disagreement.<sup>33</sup>

pushed Governor Alexander to declare martial law and authorize the use of federal troops to suppress labor extremists.<sup>25</sup>

Strikers further were accused of being "unpatriotic, un-American and . . . most treasonable in their talks. . . [with] three-quarters of the members of the [IWW] . . . [being] foreigners and a big percentage . . . [being] German and Austrian alien enemies."<sup>26</sup> The Benewah County Prosecuting Attorney even went so far as to call for the federal government to take over labor prisoners and hold them as prisoners of war.<sup>27</sup>

### Prosecutions under the Criminal Syndicalism Act

In March 1917, the Idaho Legislature, in direct response to the IWW's activities, passed the Criminal Syndicalism Act by a vote of 60 to 0 in the House and 32 to 3 in the Senate. North Idaho lumber and mining interests had lobbied strongly for the bill's passage.<sup>28</sup> The bill's sponsor, Senator W.G. Walker, gave the bill an anti-IWW introduction before the Legislature and senators were given anti-IWW literature prior to their vote.<sup>29</sup>

A conviction under the Act was a felony punishable by up to ten years in prison and a \$5,000.00 fine.<sup>30</sup> The law's critics pointed out that it did nothing to further protect against violence or the incitement of violence, as existing legislation already prohibited this conduct. Instead, the law's sole focus was to criminalize the advocacy, or suggestion, "of doctrines of violent change of the existing economic and political order."<sup>31</sup>

The bill was drafted by Benjamin W. Oppenheim, a prominent Boise attorney, whose clients included Idaho lumber interests, and who later remarked as follows that the bill had been directly aimed at the Wobblies:

My clients did not consider the poor dupes who generally committed the acts of sabotage as the real criminals, but the agitators who inspired them to act as such. At that particular time it was more important to shut up the agitators and keep them off the job than it was to put them in a penitentiary.<sup>32</sup>

In practice, however, prosecutions under the Act in many occasions resulted in labor agitators being sentenced to prison. There are also examples of the Act being used as a foil against political opponents, or to silence persons with whom local authorities felt a general disagree-

ment.<sup>33</sup> J. Otis Ellis was sentenced to prison after being convicted under the Act. In a plea for clemency, one of Ellis' neighbors remarked to Governor Alexander that he was in prison "on account of people not liking his politics," and not for any criminal acts. Another of Ellis' supporters charged that he had been a victim of county officials using "IWW-phobia" as a means "to get Ellis out of their way."<sup>34</sup>

Critics of the act further decried it for simply attempting to muzzle the expression of IWW's radical doctrines, while completely ignoring very real social and economic inequalities which underlined the group's existence.<sup>35</sup>

During the summer of 1917, dozens of IWW strikers were rounded up and placed in detention at the Latah County fairgrounds while law enforcement considered their fate.<sup>36</sup> Authorities also constructed a stockade in St. Maries capable of holding hundreds of IWW activists.<sup>37</sup> On August 19, 1917, Governor Alexander dispatched a unit of the Idaho National Guard to Spokane to help take over the IWW headquarters and arrest its members and leaders.<sup>38</sup>

By November 1917, two of the first men convicted under the statute began serving their sentences. In one case, the State had met its burden of proof by showing that: 1) the defendant had made a public speech on behalf of the IWW; 2) the defendant had possessed IWW literature at the time of his arrest; and 3) the IWW taught criminal syndicalism as defined under the law.<sup>39</sup>

Prosecutions under the Act were not entirely successful, however. One obstacle was finding juries that would convict a person for criminal syndicalism. Despite a general dislike for the IWW among broad sections of the public, many citizens still did not think it proper to convict a person for handing out literature.<sup>40</sup>

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In 1919, the newly-created Idaho Bureau of Constabulary (which later became the Idaho State Police) was tasked with finding and investigating violations of the law, which during 1920, had resulted in 19 arrests, seven convictions and six pending trials.<sup>43</sup> This marked the decline of prosecutions for criminal syndicalism and the beginning of a handful of Idaho Supreme Court decisions which overturned convictions under the act.

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Elsewhere, some of the law's proponents considered it too weak. As a result, in 1919, the Idaho Legislature amended the act to broaden its reach and clarify that it was a crime to simply become a member of, maintain a membership in or assemble with any group formed to advocate doctrines of criminal syndicalism.<sup>41</sup>

After the war ended, the anti-German rhetoric used against the IWW shifted to anti-communism rhetoric as part of the Red Scare.<sup>42</sup> In 1919, the newly-created Idaho Bureau of Constabulary (which later became the Idaho State Police) was tasked with finding and investigating violations of the law, which during 1920, had resulted in 19 arrests, seven convictions and six pending trials.<sup>43</sup> This marked the decline of prosecutions for criminal syndicalism and the beginning of a handful of Idaho Supreme Court decisions which overturned convictions under the act.

### **Idaho Supreme Court decisions on the Criminal Syndicalism Act**

In 1919, Richard Moore was convicted of criminal syndicalism and sentenced to the maximum of ten years in prison for advocating "sabotage" under the act.<sup>44</sup> In his petition for *habeas corpus* before the Idaho Supreme Court, Moore asked whether an IWW leaflet advocating for slowing down on the job or doing the smallest amount of work possible

constituted sabotage, a term which the Act did not define.<sup>45</sup>

While the court spoke in overwhelming favor of the Act's intention, at one point stating: "It must be borne in mind that we are not here considering the power of the Legislature to make criminal the teaching of such reprehensible practice as striking on the job," it held that the Legislature had not made clear that striking should be considered sabotage under the Act. As a result, Moore was ordered to be released.<sup>46</sup>

In response to the *Moore* decision, the Legislature, in 1925, further amended the statute to define sabotage as including "work done in an improper manner, slack work, waste of property or loitering at work."<sup>47</sup> This amendment prompted an editorial in the *Idaho Statesman* stating that the amendment would make "every employed man and woman in Idaho subject to arrest upon an indication of laziness." There is no record, however, of any charge ever being brought under this amendment.<sup>48</sup>

In a 1923 case, *State v. Dingman*, William Dingman had been the sole defendant convicted for criminal syndicalism in a trial with 22 other defendants in Bonner County. Dingman was sentenced to pay \$1,964.20 in fines and costs, with one day of jail time for every five dollars of his fine should he default on his payments. The Idaho Supreme Court

overturned his conviction, however, due to the State's use of voluminous hearsay evidence to establish the motives and purpose of the IWW.<sup>49</sup> For the same reason, the court also reversed the conviction of Joe Doyle in *State v. Doyle*.<sup>50</sup>

While the Idaho Supreme Court vacated Dingman's conviction due to the state's improper use of hearsay evidence, it rejected numerous challenges he had made to the statute, including that it unlawfully restricted free speech, created an unreasonable distinction between classes of persons and was overly vague in terms.<sup>51</sup>

### The Act's, and the IWW's, demise

While prosecutions under the Act in Idaho waned during the 1920s, criminal syndicalism prosecutions around the country had already taken a heavy toll on the IWW. Nationwide, criminal syndicalism prosecutions effectively closed a number of IWW offices. The IWW also had incurred considerable expense providing its members with bail, legal counsel and support while in custody.<sup>52</sup> In Idaho, efforts to repeal the act failed in 1927 and 1933.<sup>53</sup> During the 1933 attempt to enact repeal legislation, Senator George H. Curtis, who had been one of the three senators who voted against the enactment of the criminal syndicalism law in 1917, called for "a new deal" with respect to such undesirable legislation.<sup>54</sup>

In 1969, the U.S. Supreme Court effectively invalidated Idaho's and other states' criminal syndicalism laws in the case of *Brandenburg v. Ohio*.<sup>55</sup> There, the Court declared that Ohio's statute (which had been based on Idaho's statute), was violative of the right to assembly under the First Amendment.<sup>56</sup> The Court faulted the statute for failing to distinguish between incitement to imminent lawless action and mere advocacy of violence, as a means to

accomplish industrial or political reform.<sup>57</sup>

In its decision in *Brandenburg*, the Court quoted its language in *Noto v. United States* that "the mere abstract teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action."<sup>58</sup> The Court in *Brandenburg* also expressly overturned its 1927 decision in *Whitney v. California*, where it had upheld the text of similar legislation in California on the grounds that mere advocacy of "violent means to

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effect political and economic change involves such danger to the security of the State that the State may outlaw it."<sup>59</sup>

Idaho's statute, however, remained on the books until 1972, when it was quietly repealed as part of a larger bill concerning the criminal code and criminal procedure.<sup>60</sup>

### Conclusion

Idaho's passage of criminal syndicalism legislation and prosecutions under this law are a historical example of how government's response to a perceived threat to good order and

the economy resulted in a profoundly negative effect on civil liberties and free society. The state's reaction to the IWW during the World War I period is a stunning reminder that the act of demonizing those in minority groups for political gain and labeling those with minority viewpoints as unpatriotic is nothing new to our nation's history.

Boise State University History Professor Robert Sims, whose definitive piece on Idaho's Criminal Syndicalism Act is cited heavily in this article, described the state's response to the IWW as a "most disgraceful assault on the liberty of men."<sup>61</sup> It is only by remembering these negative aspects of our history that we can have any hope for understanding the present and preventing the same from being repeated.

### Endnotes

1. Eldridge F. Dowell, *A History of Criminal Syndicalism Legislation in the United States*, pp. 21, 151 (1939).
2. Robert C. Sims, *Idaho's Criminal Syndicalism Act: One State's Response to Radical Labor*, 15 LAB. HIST. 511, 522 (1974).
3. Idaho Laws, 1917, c. 145.
4. Sims, *supra* note 2, at 522; Idaho Laws, 1919, c. 432-33.
5. Dowell, *supra* note 1, at 21-36.
6. *Id.*; Ahmed A. White, *The Crime of Economic Radicalism: Criminal Syndicalism Laws and the Industrial Workers of the World, 1917-1927*, 85 OR. L. REV. 649, 660-63 (2006).
7. Dowell, *supra* note 1, at 28.
8. *Id.* at 28-29.
9. *The Constitution of the Industrial Workers of the World* (Chicago, 1905).
10. Dowell, *supra* note 1, at 23.
11. *Id.* at 22-25, 30; White, *supra* note 6, at 680.
12. Sims, *supra* note 2, at 517; Dowell, *supra* note 1, at 40-44; White, *supra* note 6, at 688.
13. *Orchard Pleads Guilty*, N.Y. TIMES, Mar. 10, 1908, at 1.
14. *Haywood Murder Trial Docket Given to College*, The Spokesman Review (May 11, 2017), <http://www.spokesman.com/stories/2007/may/11/haywood-murder->

trial-docket-given-to-college/.

15. See generally Hugh T. Lovin, *Moses Alexander and the Idaho Lumber Strike of 1917: The Wartime Ordeal of a Progressive*, PACIFIC NORTHWEST QUARTERLY, July 1975.

16. Dowell, *supra* note 1, at 22.

17. Nancy Foster Renk, *1917: Wobblies, War, and Walkouts*, NORTH IDAHO PAST/PRESENT (June 12, 2017), <https://northidahopastpresent.com/2017/06/12/1917-wobblies-war-and-walkouts/>.

18. Lovin, *supra* note 15, at 119.

19. Sims, *supra* note 2, at 520.

20. *Id.* at 510.

21. Renk, *supra* note 17.

22. Lovin, *supra* note 15, at 117.

23. *Id.*

24. *Id.*

25. *Id.* at 118.

26. Sims, *supra* note 2, at 517.

27. *Id.* at 518.

28. *Id.* at 512.

29. White, *supra* note 6, at 700.

30. Dowell, *supra* note 1, at 144-45;.

32. Sims, *supra* note 2, at 512

33. *Id.* at 519.

34. *Id.*

35. Dowell, *supra* note 1, at 45-6.

36. Sims, *supra* note 2, at 516-17.

37. *Id.* at 518.

38. *Id.*

39. *Id.* at 518-19.

40. *Id.* at 518

41. *Id.* at 522.

42. *Id.*

43. *Id.* at 524.

44. *Id.* at 525.

45. *Ex Parte Moore*, 38 Idaho 506, 224 P. 662 (1924).

46. *Id.*

It is only by remembering these negative aspects of our history that we can have any hope for understanding the present and preventing the same from being repeated.

47. Idaho Session Laws, c. 51 (1972).

48. Sims, *supra* note 2, at 526.

49. *State v. Dingman*, 37 Idaho 253, 219 P. 760 (1923).

50. 37 Idaho at 296, 219 P. at 775.

51. 37 Idaho 253, 219 P. 760.

52. White, *supra* note 6, at 659-60.

53. Dowell, *supra* note 1, at 131.

54. *Id.* at 133.

55. 395 U.S. 444 (1969). In an interesting departure from the usual targets of criminal syndicalism prosecution, the *Brandenburg* case involved Ohio's pros-

ecution of a Ku Klux Klan leader for inviting a television reporter to a KKK rally, which resulted in the reporter making a film of the event that was broadcast on local and national television.

56. *Id.*

57. *Id.* at 448-49.

58. *Id.* at 448 (quoting *Noto v. United States*, 367 U.S. 290, 297-98 (1961)).

59. *Id.* at 447, 449 (quoting *Whitney v. California*, 274 U.S. 357 (1927)).

60. Idaho Session Laws, c. 381 (1972).

61. Sims, *supra* note 2, at 527.

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## Two Brief World War I Biographies: Here in Idaho and Over There in France

Ernest A. Hoidal

Leading up to and during World War I, many Idahoans answered the call to service. Oscar W. Worthwine, a well-respected attorney, and John A. Regan, who was committed to serving his local community, are two Boiseans who dedicated their time to serving their nation.

### Oscar W. Worthwine

Oscar W. Worthwine practiced law in Idaho after being admitted to the bar on December 16, 1911. Worthwine was born in St. Joseph, Missouri, in 1885. He received a bachelor's degree in philosophy and economics in 1910, as well as a Juris Doctorate in 1911, from the University of Chicago. Worthwine taught U.S. History and coached football, as well as boys and girls basketball, at Boise High School from 1911 until 1913.

In 1913, Worthwine joined the firm of Hawley & Puckett, which later, from 1920 through 1940, was known as the firm Hawley & Worthwine. Worthwine served the Idaho State Bar as secretary in 1923 and later served on the Idaho Code Commission.

On December 18, 1918, at age 34, Worthwine became a first lieutenant, Field Artillery, Officers' Reserve Corps, following his training at Camp Zachary Taylor in Kentucky. Worthwine missed the conflict in Europe by a month but continued his military reserve and guard duties in Idaho. He was further commissioned as a captain in the Judge Advocate General Officers' Reserve Corps in 1921 and as a captain in the Field Artillery with the Idaho National Guard in 1927.

Worthwine became a staunch supporter of the American Legion; he served as the State of Idaho Department Commander of the American Legion from 1926 through 1927. Worthwine attended several national conventions and became a national vice commander in 1936.

The American Legion is a U.S. war veteran's organization, which was founded on March 15, 1919 in Paris, France by members of the American Expeditionary Forces. Following the cessation of World War I hostilities, General John J. Pershing, at the insistence of Lieutenant Colonel Theodore Roosevelt, Jr., or-



Photo courtesy of the Idaho State Historical Society.  
Oscar Worthwine in his office in 1949.

### World War I Armistice Address, Oscar W. Worthwine — Nov. 11, 1925

Six years ago today the thunder of the mighty guns upon the western front ceased; German militarism which four years previous had leaped as a hideous beast in the nighttime at the throat of France, acknowledged by its capitulation that it had been defeated; the terrible fear and dread that had been gnawing at the hearts of American women was banished; the days of anxiety were over, and, if the reports which were given to us on our return are true, the most noteworthy, spontaneous celebration in the history of the world was held in these United States.

I can only guess at the feeling of exultation and happiness that prompted those demonstrations of joy that caused our civilian populace to crowd streets during the wee small hours. I can only surmise why stranger embraced stranger, why whistles blew and bells rang; why the wild jubilation continued in some places for days.

But as for the men in the ser-

vice, we know what caused the wild yells of delight that echoed along the entire western front; we know why in every camp in this country soldiers left their beds to join in the tumult....

...My friends, it is fitting and proper that we pay a tribute to those who did not survive the conflict and who did not return; they gave the last full measure of devotion.

For them the year 1917 opened with life's most bountiful blessings; youth and promise were their servants; for them the morning sun of life's bright day was just tinting the eastern hilltops. They gave their all.

My friends, it would be easy to sing the praises of those who gave their lives for humanity but this is not my purpose. It would not be the wish of those whose deeds we commemorate. I believe that if those 700 brave Idaho men who gave their lives could speak now they would tell us to consider the problems of today rather than mourn their passing.

dered non-career and career officers to meet and organize the American Legion in Paris.

Known as 'the war to end all wars,' commentators all over the world described the sacrifices and horrors of World War I, as described in the Armistice address by Oscar Worthwine on November 11, 1925, in Caldwell on the previous page.

Although Worthwine did not see active duty during World War I, his commitment to the country was exemplary.

### John A. Regan

While John Regan was not an attorney, his ultimate sacrifice to his community and country should not be overlooked alongside Oscar Worthwine's commitment to military affairs and the American Legion.

John Regan was born in Silver City, Idaho, on February 6, 1886. John's parents were Timothy Regan and Rose Blackinger Regan, who moved the family to Boise in 1889. John attended St. Theresa's Academy and later left Boise to attend Santa Clara College in California.

In 1904, John returned to Boise and was an active member of the Democratic Party. John was involved in providing food, clothing and housing assistance through Associated Charities, and organized fundraisers for this philanthropic organization.

John enlisted in the Idaho National Guard (Company H, 2nd Idaho Infantry) in February 1912 and received an officer's commission in 1915. In 1916, John resigned his commission to rejoin the Idaho National Guard as a private and join John J. Pershing's Punitive Expedition Force in its attempt to capture Poncho Villa at the U.S./Mexico border.

When American troops were called to France, John once again requested an assignment as a private



Photo courtesy of the Idaho State Historical Society.

John A. Regan

in the infantry. He was assigned to Company D, 128th Infantry, 32nd Division.

John was killed in battle in France on August 4, 1918 and was buried on the battlefield. In 1921, however, his body was returned to Boise and interred in the family plot at Morris Hill Cemetery. American Legion Post #2 is named after John Regan and he was posthumously awarded the Distinguished Service Cross for valor.

### Sources:

- French, Hiram T., History of Idaho, Lewis Publishing Company, Chicago & New York 1914
- Fennell, Syringa Blossoms 1914
- Hawley, History of Idaho Vol. 2 1920
- The Idaho Statesman February 1, 1938
- [www.taghistory.com](http://www.taghistory.com); About John Regan and the American Legion Post which carries his name Oct 30, 2013

*Ernest A. Hoidal's paternal great-grandparents settled in 1884 in the Troy, Idaho area and his maternal great-grandparents settled in 1901 in Eagle. Ernie was born and raised mostly in Boise and is the past-president of the Idaho Legal History Society. Ernie currently sits on the ILHS Board of Directors.*



# Allotment and Survivance: War Abroad and Collective Resistance at Home on Idaho's Reservations

Richard A. Eppink

History's omissions deceive us. The monuments we erect, the plaques we display and the articles we publish function not just to tell our stories but also to suppress others. As we look back 100 years on 1918, decades of remembrance celebrating the end of World War I grant the war abroad outsized proportions in our historical perspective. This distorted rearview sets up dominant identities that repetitively marginalize other identities and stories, taking historical lessons away from each generation. In Idaho and the West, especially, our historical omissions coopt our consciousness even today. They write Native American Indians out of existence in a place where hundreds of thousands of us reside on their still-unceded homelands, the same land where the United States warred against them.

In the wake of WWI, in fact, the trope of the "Vanishing Indian," entered popular culture. It had been long a "habit of thought"<sup>1</sup> propagated by historians and politicians to complement the dominant 19th century doctrines of manifest destiny and white supremacy. By the 1920s, educational materials and Zane Grey's novel and film *The Vanishing American* gave wistful white society permission to romanticize the same cultures it was working to systematically destroy.<sup>2</sup> In this myth, which our ongoing historical omissions still perpetuate 100 years later, Native American culture is doomed to disappear and the Indian can never be modern.<sup>3</sup>

In the legal history, a look back 100 years to 1918 in Idaho's tribal communities unveils the fiction of the "Vanishing Indian." A century ago, the West was in the very heart

Each of Idaho's indigenous communities had its own unique experiences with allotment, but a thread of resistance ran through all of them. The General Allotment Act took effect just one decade after one of the last armed Native resistances, the Nez Perce War of 1877, during which the United States Army pushed several bands of Nimiipuu (Nez Perce) violently across Idaho and surrendered in Montana Territory.

of the Allotment Era, a time when the United States continued to take from the sovereign tribes by law what land that it had failed to take by treaty or war. Despite this new land theft strategy, Idaho Native nations proved their self-determination, modernity and extraordinary resilience.

## The Allotment Era

Thirty years before the close of WWI, Congress passed the General Allotment Act of 1887 (known also as the Dawes Act). "The General Allotment Act was designed to accomplish two purposes: divide the reservations up into parcels of land that would be privately held by some of the Indians and to allow whites to acquire more land from the Indians."<sup>4</sup> The ultimate objectives of the Act "were simple and clear cut: to extinguish tribal sovereignty, erase reservation boundaries and force the assimilation of Indians into the society at large."<sup>5</sup> To accomplish this, the Act had three main components:

(1) Every Indian in the United States was to receive title to a piece of land, intended to provide every native family with a working farm. Household heads were to get 160 acres, unmarried adults 80 acres and children 40 acres.

(2) Because there was more than enough land on the reservations to fulfill these allotments to Indians, the United States government would purchase any land the tribes were willing to sell, for use to further white colonization.

(3) Every tribal member who took an allotment would become a U.S. citizen.<sup>6</sup>

The Allotment Era continued until 1934, when Congress repealed the Act. The promise of citizenship was never fulfilled until 1924, when Indians were granted citizenship regardless of their participation in allotment (not until after women were granted the vote in 1920). Despite not being granted citizenship as promised, more than 10,000 Indians served in the United States military in WWI.<sup>7</sup>

## Resistance and resilience

Each of Idaho's indigenous communities had its own unique experiences with allotment, but a thread of resistance ran through all of them. The General Allotment Act took effect just one decade after one of the last armed Native resistances, the Nez Perce War of 1877, during which the United States Army pushed several bands of Nimiipuu

(Nez Perce) violently across Idaho and surrendered in Montana Territory. The War led the federal government to target the Nimiipuu as one of the first indigenous groups for allotment.<sup>8</sup> Nimiipuu resistance continued nonviolently once the government's allotting agent arrived on the reservation. A group of traditional Nez Perce activists, which the allotting agent called "the kickers," embodied this cultural self-defense. They were both sophisticated and straightforward. "[T]hey used the occasion of allotment to settle previous boundary disputes, to demand the payment of long-ignored treaty payouts, to oust a corrupt agent, to hire qualified school personnel, to retain sovereign control of tribal membership and to preserve important ceremonial sites." Their tactics included writing their own histories, sending petitions and ambassadors to Washington D.C., exchanging cultural artifacts and stories and "simple, stubborn and sustained resistance."<sup>9</sup>

North of the Nez Perce reservation, the Schitsu'umsh (Coeur d'Alene) "had long expressed a nearly universal opposition to the entire allotment policy and process."<sup>10</sup> There, surveying for allotment began in 1905 and Coeur d'Alene leadership voted immediately and unanimously against allotment, seeing it as "nothing short of open thievery."<sup>11</sup> When the government's allotting agent arrived there, some Schitsu'umsh refused to allow the allotment surveyors on their land and surveyors rose in the mornings to find their surveying stakes had been pulled up in the dark the night before.<sup>12</sup> The allotting agent responded to the Coeur d'Alene's complaints with the refrain of so many bureaucrats through history: "I am merely doing a job and following the law."<sup>13</sup>

Across to the east at Fort Hall, Shoshone-Bannock communities organized collective action to preserve

religious and cultural connections and successfully prevent the loss of any lands to non-Indian settlement during allotment. They adapted longstanding usufructuary modes of land use and collaborative strategies to acquire grazing allotments at below-market prices and to resist assimilation into the individualist, private-property models the United States tried to force.<sup>14</sup> When the Shoshone-Bannock began a religious ceremony called the Half Dance that a federal agent deemed "immoral" and ordered to cease on July 4, 1908, community leaders sent

The indigenous record of nonviolent rebuke of allotment and assimilation in Idaho exemplifies the survivance concept. Up against the weight of law and bureaucracy, the Native communities lost much; only about eleven percent of the Nez Perce Reservation is still owned by tribal members.<sup>20</sup>

a delegation to Washington D.C., in protest, signaling that the community remained unified in resistance.<sup>15</sup> Six years later, when federal agents prohibited the Sun Dance, the most important religious ceremony of the year, the community held the dance in protest, attended by 1,500 Shoshone-Bannocks.<sup>16</sup>

Following allotment, Congress passed the Act of 1918 to authorize a town site at Fort Hall, stripping the Shoshone-Bannock of their treaty-protected lands. It wasn't until four years ago, in 2014, when Congress finally repealed what Fort Hall Busi-

ness Council Chairman Nathan Small called out as an "antiquated and paternalistic" law.<sup>17</sup> Though "the federal government sought to turn the Shoshone and Bannock people into farmers and ranchers . . . and give up our traditions since time immemorial," Small testified, "[t]he Shoshones and Bannocks, however, proudly continued to practice our traditional ways and continue to do so to this day."<sup>18</sup>

## Survivance

Following a long era of massacres and violent forcible relocation, in conflict against the United States military, the creative indigenous resistance during the allotment era gleams with poignancy in its historical relief. "Survivance," a word coined by Anishnaabe writer Gerald Vizenor, captures the "dynamic, inventive and enduring heart of Native cultures well beyond the colonialist trappings of absence, tragedy and powerlessness."<sup>19</sup>

The indigenous record of nonviolent rebuke of allotment and assimilation in Idaho exemplifies the survivance concept. Up against the weight of law and bureaucracy, the Native communities lost much; only about 11 percent of the Nez Perce Reservation is still owned by tribal members.<sup>20</sup> Coeur d'Alene ownership of reservation lands went from 345,000 acres to 58,000 acres and Schitsu'umsh who lived near the lake and rivers were forced away from the shores.<sup>21</sup> Non-Indians eventually gained access even to Shoshone-Bannock reservation lands through leases following allotment.<sup>22</sup> But through collective resistance, these indigenous communities subverted assimilation and maintained self-determination in forms that still persist a century later.

## Endnotes

1. Brian W. Dippie, *The Vanishing American: White Attitudes & U.S. Indian Policy* 15 (1982).
2. See Liz Sonneborn, *Chronology of American Indian History* 223 (2007).
3. Jean M. O'Brien, *Firsting and Lasting: Writing Indians Out of Existence in New England* xi–xvii (2010).
4. Patrick E. Lee, *Tribal Laws, Treaties, and Government: A Lakota Perspective* 38 (Christopher K. Baker, ed., 2013).
5. *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 254 (1992).
6. *The Nez Perce Tribe, Treaties: Nez Perce Perspectives* 50 (2003).
7. Thomas A. Britten, *American Indians in World War I: At War and at Home* 58–60 (1997).
8. Nicole Tonkovich, *The Allotment Plot: Alice C. Fletcher, E. Jane Gay, and Nez Perce Survivance* 6 (2012).
9. *Id.* at 12.
10. E. Richard Hart, *A History of Coeur d'Alene Tribal Water Use: 1780–1915*, 283 (2015).
11. *Id.* at 284, quoting Thomas R. Cox, "Tribal Leadership in Transition: Chief Peter Moctelme of the Coeur d'Alenes," 23

*Idaho Yesterdays*, Spring 1979, at 7.

12. Cox, "Tribal Leadership in Transition: Chief Peter Moctelme of the Coeur d'Alenes," 23 *Idaho Yesterdays*, Spring 1979, at 8.
13. *Id.* at 7.
14. John W. Heaton, *The Shoshone-Bannocks: Culture & Commerce at Fort Hall, 1870–1940*, at 129 (2005).
15. *Id.* at 151–152.
16. *Id.* at 152.
17. Statement of Nathan Small, Chairman of Fort Hall Business Council for the Shoshone-Bannock Tribes, Hearing on H.R. 5050, May 31, 1918 Act Re-

peal Act, July 29, 2014, at 1, available at <http://docs.house.gov/meetings/II/II24/20140729/102568/HHRG-113-II24-Wstate-SmallN-20140729.pdf>.

18. *Id.* at 2.
19. *Survivance: Narratives of Native Presence*, cover (Gerald Vizenor, ed., 2008).
20. *The Nez Perce Tribe, Treaties: Nez Perce Perspectives* at 55.
21. Hart, *A History of Coeur d'Alene Tribal Water Use* at 288.
22. Heaton, *The Shoshone-Bannocks*, at 129.

Richard A. Eppink is the current president of the Idaho Legal History Society. He graduated from the University of Idaho College of Law in 2006 and now practices law at the American Civil Liberties Union of Idaho.



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## COURT INFORMATION

### OFFICIAL NOTICE SUPREME COURT OF IDAHO

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Justices  
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G. Richard Bevan  
John R. Stegner

#### Regular Fall Term for 2018 3<sup>rd</sup> Amended 8/9/18

Coeur d'Alene ..... August 6  
Boise ..... August 8, 9, 14 and 15  
Blackfoot ..... September 10  
Pocatello ..... September 11  
Boise ..... September 17, 19 and 21  
Boise ..... November 5, 7, 8, 14 and 16  
Boise ..... December 3, 5, 7, 10 and 12

By Order of the Court  
Karel A. Lehrman, Clerk

**NOTE:** The above is the official notice of the 2018 Fall 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.

### Idaho Supreme Court Oral Arguments for December 2018

10/25/18

#### **Monday, December 3, 2018 – BOISE**

8:50 a.m. OPEN  
10:00 a.m. *St. Luke's v. Board of Comm. Gem County* ..... #45614  
11:10 a.m. *IDHW v. Jane Doe* ..... #46230

#### **Wednesday, December 5, 2018 – BOISE**

8:50 a.m. OPEN  
10:00 a.m. *Greenwald v. Western Surety Co.* ..... #45404  
11:10 a.m. *State v. Garnett* ..... #45282

#### **Thursday, December 6, 2018 NO COURT**

#### **Friday, December 7, 2018 - BOISE**

8:50 a.m. *Jenkins v. Old Dominion & New Hampshire Ins. Co.* ..... #45810  
10:00 a.m. *Day v. ID Transportation Dept.* ..... #45552  
11:10 a.m. *Van Hook Vexatious Litigant* ..... #45459

#### **Monday, December 10, 2018 - BOISE**

8:50 a.m. *McFarland v. Liberty Insurance Co.* ..... #45781  
10:00 a.m. *Hajar v. Corizon Health* ..... #45460  
11:10 a.m. *Atkinson v. 2M Co. & Employers Assurance Co.* ..... #45918

#### **Tuesday, December 11, 2018 NO COURT**

#### **Wednesday, December 12, 2018**

8:50 a.m. *State v. Gonzalez* ..... #44534  
10:00 a.m. *State v. Perez, Jr.* ..... #45351  
11:10 a.m. *State v. Mullins* ..... #45632

#### **Thursday, December 13, 2018 NO COURT**

#### **Friday, December 14, 2018 – BOISE NO COURT**

### OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge  
David W. Gratton

Judges  
Sergio A. Gutierrez  
Molly J. Huskey  
Jessica M. Lorello

#### Regular Fall Term for 2018 2<sup>nd</sup> AMENDED 03/20/18

Boise ..... August 7, 16, 21 and 23  
Boise ..... September 6, 11, 18 and 20  
Boise ..... October 9, 11, 16 and 18  
Boise ..... November 1, 27 and 29  
Boise ..... December 6

By Order of the Court  
Karel A. Lehrman, Clerk

**NOTE:** The above is the official notice of the 2018 Fall 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 Court of Appeals Oral Arguments for November 2018

10/25/18

#### **Thursday, November 1, 2018 – BOISE**

9:00 a.m. *State v. Klingner* ..... #45241  
10:30 a.m. *Credit Bureau of E. Idaho v. Hermosillo* ..... #45391/45645

#### **Thursday, November 29, 2018 – BOISE**

10:30 a.m. *State v. Prater* ..... #45352  
1:30 p.m. *Kern v. Idaho Transportation Dept.* ..... #45798/45799

### Idaho Supreme Court Calendar

Oral arguments held in Boise are now available to watch live streaming via Idaho Public Television's Idaho Live at:

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Please note, playback quality will depend on your Internet connection speed.

Press releases and schedules are posted as they are made available at <https://isc.idaho.gov/>.

**Idaho Supreme Court and Court of Appeals  
NEW CASES ON APPEAL PENDING DECISION  
(9/1/18)**

## **CIVIL APPEALS**

### **Attorney fees and costs**

1. Did the district court err when it determined that I.R.C.P. 54(e)(4)(B), regarding pleading the amount of attorney fees in the case of default, did not apply because it was inconsistent with I.C. § 45-513, regarding materialmen liens and attorney fees?

*Regdab, Inc. v. Graybill*  
S. Ct. Docket No. 45649  
Supreme Court

### **Divorce, custody, and support**

1. Did the district court err in affirming the magistrate court's finding that Jerry Papin's business was community property?

*Papin v. Papin*  
S. Ct. Docket No. 45277  
Supreme Court

### **Post-conviction relief**

1. Did the district court err in summarily dismissing Mendenhall's claim that his counsel was ineffective in failing to obtain an I.C. § 19-2522 evaluation?

*Mendenhall v. State*  
S. Ct. Docket No. 45526  
Court of Appeals

2. Did the district court err in summarily dismissing Kolestani's ineffective assistance of counsel claim because she raised a genuine issue of material fact as to whether trial counsel gave her erroneous advice on deportation consequences?

*Kolestani v. State*  
S. Ct. Docket No. 45522  
Court of Appeals

3. Did the district court err when it summarily dismissed Wisdom's ineffective assistance of counsel claim for post-conviction relief?

*Wisdom v. State*  
S. Ct. Docket No. 45590  
Court of Appeals

### **Summary judgment**

1. Whether the district court erred in granting summary judgment in favor of the City of Idaho Falls and in finding the City was entitled to immunity under I.C. § 6-904(1).

*Lamont Bair Enterprises, Inc. v. City of Idaho Falls*  
S. Ct. Docket No.  
Supreme Court

## **CRIMINAL APPEALS**

### **Counsel**

1. Did the district court abuse its discretion in denying Roy's motion for appointment of counsel?

*State v. Roy*  
S. Ct. Docket No. 45532  
Court of Appeals

### **Evidence**

1. Was the State's evidence insufficient for the jury to find beyond a reasonable doubt that Washburn committed the offense in Idaho such that the district court erred by denying her motion for judgment of acquittal?

*State v. Washburn*  
S. Ct. Docket No. 45560  
Court of Appeals

2. Did the State present sufficient evidence to support Anderson's conviction for possession of methamphetamine?

*State v., Anderson*  
S. Ct. Docket No. 45628  
Court of Appeals

### **Instructions**

1. Did the district court commit fundamental error when it instructed the jury that Alberts could not have acted in self-defense if he intentionally put himself in a situation where he knew or believed he would have to act in self-defense?

*State v. Alberts*  
S. Ct. Docket No. 45243  
Court of Appeals

### **Other**

1. Did the district court abuse its discretion when it denied Abramowski's request for expungement?

*State v. Abramowski*  
S. Ct. Docket No. 45296  
Supreme Court

### **Prosecutorial misconduct**

1. Whether the prosecutor committed misconduct rising to the level of fundamental error in his closing argument.

*State v. Davis*  
S. Ct. Docket No. 45457  
Court of Appeals

### **Restitution**

1. Whether the district court abused its discretion by ordering Anderson to pay restitution in the form of repairs to the tow truck he rear-ended while driving under the influence.

*State v. Anderson*  
S. Ct. Docket No. 45567  
Court of Appeals

2. Did the district court abuse its discretion when it ordered Hicks to pay restitution in the amount of \$9,650 to the Crime Victim Compensation Program?

*State v. Hicks*  
S. Ct. Docket No. 45748  
Court of Appeals

### **Search and seizure – suppression of evidence**

1. Did the district court err by denying Reed's motion to suppress and by finding the officer had reasonable suspicion to briefly divert his attention to a drug investigation?

*State v. Reed*  
S. Ct. Docket No. 45373  
Court of Appeals

2. Did the district court err by denying Hinder's motion to suppress and by finding the warrantless search of the vehicle was lawful?

*State v. Hinder*  
S. Ct. Docket No. 45511  
Court of Appeals

3. Did the district court err when it found the search of Spier-Turner's purse was valid under the inventory exception to the warrant requirement?

*State v. Spier-Turner*  
S. Ct. Docket No. 45507  
Court of Appeals

4. Did the district court err by concluding Olvera was not "seized" within the meaning of the Fourth Amendment, and by denying her motion to suppress?

*State v. Olvera*  
S. Ct. Docket No. 45694  
Court of Appeals

**Summarized by:  
Cathy Darden  
Supreme Court Staff Attorney  
(208) 334-2246**

### **Idaho Supreme Court and Court of Appeals Opinions**

The Idaho Supreme Court and Idaho Court of Appeals cited opinions are made available online as a public service at <https://isc.idaho.gov/appeals-court/opinions>. All cited opinions are posted the day of their release. West Publishing Company publishes all cited opinions in the Pacific Reporter and Idaho Reports volumes.

## CLASSIFIEDS

### IN SEARCH OF MISSING WILL

In search of attorney in the Coeur d' Alene Idaho area who drafted Milton W. Anderson's Last Will and Testament sometime around 2005. Please contact Jack S. Anderson at jinnak6@gmail.com.

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### Ryan Sargent named Idaho State University Director of Alumni Relations

POCATELLO – Ryan Sargent has been named the Idaho State University (ISU) director of Alumni Relations. Sargent, a Pocatello native and an ISU alumnus, has been the associate director of ISU Alumni Relations since 2015. His official start date as director was Aug. 27.



Ryan Sargent

Following his graduation from Highland High School, Sargent attended ISU where he served as student body president, was a student lobbyist, an ISU Ambassador, peer adviser and a member of Phi Sigma Alpha. He graduated in 2009 with his bachelor's degree in political science.

Sargent earned his Juris Doctorate at the University of Idaho College of Law, where he also served as student body president.

Prior to returning to his alma mater ISU, he practiced law for a private civil litigation firm in Boise and served as a prosecutor in Power County.

Ryan and his wife, Brandi Reeder Sargent, have a daughter, 17-month-old Emmeline Ivy, and enjoy ISU athletics, traveling, good food and hiking with their dog, Lilly.

### Dana Herberholz named 2019 president of the Idaho Chapter of the Federal Bar Association

BOISE – Dana M. Herberholz has been named the 2019 president of the Idaho Chapter of the Federal Bar Association. He has served on

the executive committee for the past several years. Herberholz is a shareholder, patent attorney and litigator at Parsons Behle & Latimer, where his practice focuses on intellectual property litigation, with particular emphasis on patent litigation, including consumer electronics and hardware, computer software, image processing, wireless communication devices, laboratory equipment, medical devices and internet technologies. *Published in the Idaho Business Review 10.8.18*



Dana M. Herberholz

### Roy Eiguren is the new board chairman of the American Red Cross of Greater Idaho

BOISE – Roy Eiguren has been appointed the new chairman of the board of the American Red Cross of Greater Idaho. Eiguren is the managing partner of Eiguren Ellis Public Policy. Previously, he was an attorney at Givens Pursley and special assistant to the administrator of the Bonneville Power Administration of the U.S. Department of Energy. He also served as chief of the legislative and administrative affairs division of the attorney general of the State of Idaho, as a deputy secretary of state and as an Ada County deputy prosecuting attorney. He has served on the boards of the Idaho State Capitol Commission, the Boise Metro Chamber of Commerce, the Foundation for Idaho History, the Univer-



Roy Eiguren

sity of Idaho Foundation, the Boise Philharmonic Association and the American Basque Association. He is a graduate of the executive management program of the Dartmouth School of Business Administration and holds a Juris Doctorate degree from the University of Idaho College of Law. *Published in the Idaho Business Review 9.19.18*

### Steve Bowman joins Borton-Lakey litigation team

MERIDIAN – Borton-Lakey law offices in Meridian is pleased to announce that Steve Bowman has joined the firm's litigation team. Steve was born and raised in Idaho Falls, Idaho, and is a fourth generation Idahoan. He did his undergraduate work at Idaho State University. He then went to law school at the University of Idaho College of Law, graduating *magna cum laude*. After law school, Steve was honored with a prestigious clerkship with the Hon. Harold L. Ryan, Chief Federal Judge for the District of Idaho. After his clerkship, Steve went to work for and became a partner with one of the nation's largest and most well-respected law firms, with



Steve Bowman

over 550 lawyers and offices in seven states and Washington D.C. Steve is a highly successful litigator, and has successfully represented individuals, businesses and government entities in hundreds of lawsuits. During his years of practice, Steve has also worked closely with business owners and individuals to find the best ways to prevent crises before they occur,

reduce risks and solve problems as they arise. Steve joins Borton-Lakey with more than 25 years of experience at the highest levels of the practice of law. Steve has dedicated his life to helping individuals and businesses in times of need, planning new ventures and new stages in lives and careers, reducing risks and preventing crises before they occur.

### Tim Murphy joins University of Idaho Boise

BOISE – Murphy is the new visiting associate professor of law and director of the Entrepreneurship Law Clinic at the University of Idaho College of Law in Boise. Murphy previously worked for Micron, where he served as a senior patent and trademark counsel for the past eight years. Prior to working with Micron, Murphy was in private practice in Portland, Oregon, and Boise. He has taught as an adjunct for Boise State University and Concordia University. He holds a bachelor's degree from Boise State University and a master's degree in electrical engineering and law degree from the University of Michigan.



Tim Murphy

### Wendy Olson named 2019 President-Elect of Idaho Chapter of Federal Bar Association

BOISE – Stoel Rives LLP is pleased to announce that partner Wendy Olson has been named president-elect of the Idaho Chapter of the Federal Bar Association (FBA). Olson, whose tenure as president begins in 2019, will work to advance the FBA's mis-

sion "to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary and the public they serve."

The Idaho Chapter of the FBA, which was formed in 2004 and whose 174 members represent the entire state and District of Idaho, has since its inception sought to fulfill its stated mission of advancing the science of jurisprudence and promoting the welfare, interests, education, and professional growth and development of members of the federal legal profession.

Olson is a former U.S. Attorney for the District of Idaho and a past FBA Idaho Chapter president and recipient of its "Exemplary Lawyer" award – given to attorneys who have improved the quality of practice in Idaho's federal courts.

Olson is a partner in Stoel Rives' Litigation group, where her practice focuses on government investigations, white collar criminal defense, and civil litigation. She has more than two decades of experience prosecuting white collar crime cases as well as criminal civil rights violations.

### Worst, Fitzgerald & Stover, PLLC is pleased to announce the addition of three attorneys to its firm

BOISE – Janine P. Reynard joined the firm's Boise office. Janine obtained her Bachelor of Science in Nursing at Indiana University of Pennsylvania. After serving as an Army Nurse for

six years, she went on to law school, graduating *magna cum laude* from Gonzaga University School of Law in 1999. After law school, she served as a judicial clerk for the Honorable D. Duff McKee in Boise. Janine has extensive experience in the areas of creditors' rights and bankruptcy which she obtained from private practice, as trial attorney for the U.S. Trustee's Program and as a member of the Panel of Chapter 7 Trustees.

David M. Taylor joined the Twin Falls office as an associate attorney. David received his bachelor's degree from Boise State University where he majored in English Writing. He received his Juris Doctor are from Concordia University School of Law in 2017. David interned at Idaho Estate Planning and is a member of the Magic Valley Estate Planning Council.

Kelly H. Andersen joined the Twin Falls office as an associate attorney. Kelly graduated *magna cum laude* from Brigham Young University Law School in 2002. While in law school, Kelly served on the BYU Law Review as a Managing Editor. She earned her undergraduate degree *magna cum laude* in Economics with a minor in Mathematics from Brigham Young



Janine P. Reynard



Wendy Olson



David M. Taylor



Kelly H. Andersen

University. During law school, Kelly worked as a summer associate for Hughes, Hubbard & Reed, LLP in their Los Angeles office.

### Andrew Hawes joins Snell & Wilmer

BOISE – Andrew Hawes has joined Snell & Wilmer as counsel in the firm’s natural resources group. Hawes’ practice focuses on representing companies in the timber and other natural resource industries in real estate, government relations, land use and other areas of law. Previously, he served as of counsel for Jones Gledhill Fuhrman and Gourley. Prior to that, he spent 12 years as general counsel and general manager for Western Pacific Timber. Hawes holds a bachelor’s degree in political science from the University of Denver and a Juris Doctorate degree from the University of Idaho College of Law.



Andrew Hawes

### Four attorneys join Gravis Law

BOISE – Michelle R. Finch is a native of Thompson Falls, Montana, and a 1985 *cum laude* graduate of Gonzaga University School of Law. Maintaining an active law practice in Boise since 1985 and licensed in Montana since 1993, she has served on numerous Idaho and Montana statewide committees and sections, including the Idaho Supreme Court’s



Michelle R. Finch

Guardianship and Conservatorship Rules Committee. Ms. Finch is former chair of the Idaho State Bar Trust, Taxation and Probate Section and a former member and Chairperson of the Ada County Board of Community Guardians and the Canyon County Organization on Aging. In addition to her position with Gravis Law in Boise, in August 2018 she was named the Managing Attorney for the Gravis Law Office in Kalispell Montana. Ms. Finch represents clients in Montana and Idaho in estate planning, trust, probate, guardianship and family law matters.

During his nearly 40 years in Boise, Charles Bauer has served as Chair of the Family Law Section, as a frequent lecturer and author for the Idaho State Bar and Idaho Law Foundation, and is co-author of the Idaho Family Law Handbook. He has also taught family law and community property as an adjunct instructor for the University of Idaho College of Law. A native of Moscow, Idaho, Mr. Bauer received his J.D. from the University of Idaho College of Law in 1979 and since that time has lived in Boise, focusing his statewide litigation and appellate practice on all aspects of family law. He was named Managing Attorney for the Gravis Law Boise Office in September, 2018.

Penelope Gaffney is a graduate of the University of Nebraska and received her Juris Doctorate from



Charles B. Bauer



Penelope Gaffney

the University of California Hastings College of Law. After serving as a pro se Law Clerk in the Ninth Circuit Court of Appeals for the Eastern District of California, she established her law practice in Boise in 2003. Penelope represents clients in all aspects of guardianship, conservatorship, probate, estate planning and contested family law matters. She is a member of the Trust, Taxation and Probate Section, the Family Law Section and the Richard C. Fields Inns of Court in Boise.

Andrew Zehrung is a native of Boise, but began his legal practice in Richland, Washington after receiving his J.D. and LLM in taxation from the University of Washington School of Law. He was named the original managing attorney for the Gravis Law Boise Office in April 2018 and is a member of the Trust, Taxation and Probate Section of the Idaho State Bar, as well as the Washington State Bar.

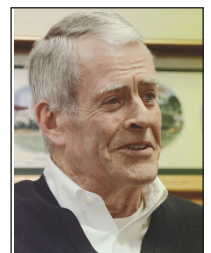


Andrew Zehrung

### The College of Southern Idaho’s board attorney is retiring after 53 years

TWIN FALLS — For 53 years, Bob Alexander has been the only attorney for the College of Southern Idaho’s board of trustees.

Alexander, 78, was hired shortly after the college opened in the mid-1960s. After more than half a century at the helm, Alexander is retiring from the CSI board. He plans to continue



Bob Alexander

working at the Benoit, Alexander & Mollerup law firm in downtown Twin Falls. Over the years, Alexander has worked with all four CSI presidents: Taylor, Gerald Meyerhoeffer, Gerald “Jerry” Beck and Jeff Fox. In the college’s early days, Alexander represented CSI in tort claims. About 20 years ago, the switch was made to handling those by the college’s insurance company, Idaho Counties Risk Management Program. “It’s been a real help to me,” Alexander said. When Alexander isn’t at the CSI campus, he’s at his law firm. He joined in October 1964 and has seen many partners come and go over the years. Alexander has received many accolades over the years, including the Idaho State Bar’s Distinguished Lawyer Award in 2009. Alexander spent his early childhood years in Newburgh, NY, before his family moved to Boise when he was about six years old. He completed his undergraduate and law degrees at the University of Idaho. Alexander moved to the Magic Valley after graduating from law school. His wife, Sonia, grew up in Twin Falls. The couple has four children. Looking to the future of CSI, the board is well organized like it always has been, Alexander said. *Adapted Times News 10.11.18*

#### **Attorney joins Rossman Law Group, PLLC**

BOISE – Rossman Law Group has announced the addition of another attorney, Matthew G. Gunn, to its team in their downtown Boise office. Mr. Gunn was part of the litigation groups at Holland and Hart; Brassey, Crawford and Howell; and Barnum, Howell and Gunn before joining Rossman Law Group. A

#### **Stoel Rives awarded 2018 Construction Lawyers Society of America Law Firm Award**



Photo courtesy of Stoel Rives

Stoel Rives LLP was awarded the 2018 Construction Lawyers Society of America Law Firm Award and 2018 Diversity Law Institute Law Firm Diversity Award at the 2018 Construction Lawyers Society of America International Conference and Induction of Fellows on Sept. 6. The awards were presented to Stoel Rives partner Tamara Boeck. *Published in the Idaho Business Review 9.24.18*

graduate of the University of Arkansas and Columbia Law School, Mr. Gunn returned west where he began his career endeavors serving as a law clerk for the Honorable Justin L. Quackenbush of the Eastern District of Washington. He then served as a law clerk for the Honorable Stephen S. Trott of the Ninth Circuit Court of Appeals in Boise. Mr. Gunn represents a variety of clients in the areas of personal injury, medical malpractice and employment law.



Matthew G. Gunn

#### **Parsons Behle & Latimer welcomes new attorney Bryce Jensen**

BOISE – Bryce Jensen joins Parsons Behle & Latimer’s Boise office as an associate in its litigation, trials and

appeals practice group. Jensen is a Boise State University alum with a bachelor’s degree in criminal justice. After graduation, Jensen worked for three years as a legal assistant in the Ada County Prosecutors office before attending Harvard Law School, where he earned his JD with honors. While at Harvard, Jensen served as an intern for the Honorable B. Lynn Winmill of the United States District Court for the District of Idaho. After graduation, he spent a year clerking for the Honorable N. Randy Smith on the United States Court of Appeals for the Ninth Circuit. In his free time, Jensen enjoys spending time with his family, exploring the beautiful Idaho outdoors and cheering on the Boise State Broncos.



Bryce Jensen

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# Bringing Law to Life: Jerrold Long, Term Dean of the University of Idaho College of Law

Leigh Cooper

**J**errold Long applied for only one job while finishing his doctorate – associate professor at the University of Idaho College of Law.

“Idaho was home,” Long said. “It was the only place I wanted to live.”

The move to Moscow has allowed Long to coalesce his professional and personal lives. Specializing in natural resources law, he wants to be at the center of conversations about the forest, wildlife and water management. And, after class, the job allows him to disappear down a fly-fishing stream or mountain biking trail. He can even cheer his sons — 12-year-old Kieran and 10-year-old Kelton — to victory on the soccer field alongside his wife Jessica, director of the college’s legal aid clinic since 2017.

Since starting at U of I in 2007, Long has mostly taught property, land use and environmental law courses. Now, as the term dean, he will helm the College of Law for the next two years.

## Laws of the landscape

Born on the southern tip of Hawaii’s Big Island in 1973, Long moved to southeastern Idaho with his parents and siblings at age four. He grew up on Idaho’s mountains and rivers, camping, fishing and biking throughout his youth.

After earning a biology degree from Utah State University, Long entered the University of Colorado Boulder School of Law. There, one of his professors, Charles Wilkinson, pointed out laws cannot be separated from the landscape they govern. Instead, a region’s history influences which laws are created and which

laws shape how people use and experience the land.

“The law shapes our relationships with each other and the natural world,” Long said. “I realized that by understanding the law, I could help create the world I wanted to live in.”

Long worked as a lawyer at Holland and Hart LLP in Cheyenne, Wyoming, for three years before attending the University of Wisconsin-Madison. There, he earned his doctorate in environment and resources with a focus on how changing demographics in the American West influenced people’s perception and utilization of the land and available resources.

According to Long, the single greatest challenge facing the legal profession is finding stability while



Photo courtesy of the University of Idaho

Dean Long is eager to be at the helm of the University of Idaho College of Law as term dean for the next two years.

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Laws cannot be separated from the landscape they govern. Instead, a region’s history influences which laws are created and which laws shape how people use and experience the land.

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respecting the rule of law in a changing world. Whether it's the shifting climate, rapidly expanding access to information, fluctuating migration patterns or redistribution of resources, he said attorneys will be an essential part of managing new relationships and legal systems.

"A large part of law is managing relationships among people," Long said. "As the world continues to change, that is going to become more and more complicated and in ways that we have never had to deal with before."

### Teaching philosophy

With chin-length hair and a full beard, Long may not come across as the typical law school dean. But his approachable attitude is reflected in his teaching style. To Long, a good law professor helps students envision the influences laws have on people and places.

"The law without context is just words," Long said. "A professor needs to make the words on the page seem real so the students can imagine how the words change people's behaviors."

This concept is the basis of a field course for law students that Long developed in 2014. The class meets with people in Idaho who deal with natural resource laws on a daily basis. They may meet with ranchers in Idaho's Lemhi Valley to discuss how salmon fisheries affect their operations or with the U.S. Forest Service to learn how to concurrently manage a forest for timber, forest health and lynx habitat.

"You might not think that law students would benefit from a field course, but I wanted students to see how law works on the ground and how it affects real people with real problems in real places," he said.

As dean, Long hopes he can incorporate more experiential learn-

ing opportunities into College of Law classes.

### A 300-mile-long hallway

Long said the greatest challenge for the College of Law is managing a building with a 300-mile-long hallway that connects Moscow to Boise.

As he sees it, the Boise and Moscow locations represent the two different spheres of law in Idaho. Moscow has strong links to communities heavily engaged in agriculture, natural resources and Native American rights – and houses experts in those fields. On the other hand, Boise is the state's epicenter of economic development and home to the judiciary, the state bar and the Legislature.

"As a college within a land-grant university, we remain committed to fulfilling our mission of providing research, education and outreach to address Idaho's needs, whether in our smallest towns or largest cities," he said. "In Boise, we will continue to develop our relationships with the business and governing communities, and in Moscow we want to strengthen our relationships with the other university colleges, possibly expanding the number of con-



Photo courtesy of the University of Idaho

Dean Long enjoys the great outdoors; fly fishing especially

"The law without context is just words," Long said. "A professor needs to make the words on the page seem real so the students can imagine how the words change people's behaviors."

current degrees we have with the rest of the university."

Long believes it is imperative for the College of Law to support the university's land-grant mission and cultivate both private and public resources so the college can continue to provide an affordable legal education at both locations.

In his third month on the job, Long is off to a running start as he navigates the college's long hallway and is excited to bring others along for the journey.

# When Spell-Check Won't Cut It: Confusing Word Pairs

Tenielle Fordyce-Ruff

**Y**ou're likely reading this curled up by a fireplace sipping a warm drink, but I'm writing this just as the new 1L students turn in their first writing assignments. In addition to having to teach them the basics of legal writing like IRAC structure, I also have to gently remind them that confusing word pairs exist. For instance, *cite* and *site* aren't the same.

They will all eventually get the hang of that one, but reading these mistakes by novice legal writers inspired me to create another list of confusing word pairs.<sup>1</sup>

Like some that I've noted before, these are words that sound similar (or are homophones like *site* and *cite*) but have different meanings. Others just have similar meanings that can trip up even brilliant writers.

## Invariably/frequently

While *invariably* is sometimes used to mean *frequently*, that usage is incorrect. These two words aren't interchangeable. *Invariably* means to never vary; it means that something always happens. On the other hand, *frequently* has a much less absolute meaning. Something that occurs frequently happens regularly, but it can indeed vary.

*The sun invariably rises in the east.*

*I am frequently awake before dawn and watch the sun rise as I sip my coffee.*

## Compose/Comprise

The correct usage of *compose* and *comprise* is increasingly rare. *Compose* means to arrange parts into a whole. *Comprise* means to consist of. Parts *compose* the whole; the whole *comprises* the parts.

*The editor composed various poems into an anthology.*



*The book comprises three distinct sections.*

Also, don't use *is comprised of*. While becoming more common, it has always been poor usage. Instead, use a more accurate phrase.

*This issue of the magazine is comprised of fascinating articles.*

*This issue comprises of fascinating articles.*

Or

*This issue has fascinating articles.*

## I.e./E.g.

I once had a student turn in the first assignment due in my class with *et al.* at the end of every sentence. I had to gently explain that various Latin phrases and abbreviations have distinct meanings and specific usages. While you understand that *et al.* is used to signify multiple authors, you might have forgotten the difference between *i.e.* and *e.g.*

*I.e.* means in other words; *e.g.* means for example.

*She had a lot of work to finish today, i.e. she was a little overwhelmed and needs caffeine.*

Like some that I've noted before, these are words that sound similar (or are homophones like *site* and *cite*) but have different meanings. Others just have similar meanings that can trip up even brilliant writers.

*She had a lot of work to finish today, e.g. grading papers, writing an article and attending meetings.*

An easy way to remember the difference is with a memory trick. Think eg-zample for *e.g.* and remem-

ber that *i.e.* and in other words both begin with the letter “i.”

### Loathe/loath

*Loathe* is a verb, and it means to hate or detest. *Loath* is an adjective, and it means reluctant. The most common mistake is to forget the “e” on the end of the verb, *loathe*.

*While he loathes bad grammar in writing, he is loath to correct a person’s speech.*

To remember the difference, see if you can substitute the word hate. If so, use *loathe* (another word that ends in “e”). And if you see a to be verb around, use *loath*.

### Gauntlet/gamut

While both *run the gauntlet* and *run the gamut* are correct, the two phrases have very different meanings. Running the *gauntlet* was a form of punishment where a person was beaten as he ran between two rows of people. Running the *gamut* is to cover a wide range of possibilities or to cover the spectrum. I keep the two separate by remembering the spectrum and gamut both have the letter “m.”

### Peek/peak

I’m skeptical that there is really much confusion over this pair of homophones; instead I think misuse is a typo cause by typing “sneak.”

Let me back up and explain myself. A *peek* is a quick or furtive glance. A *peak* is the high point of a mountain. But the most common mistake between these two is to write that he was about to sneak a peak. The “ea” in sneak creeps into the phrase.

In other words, very few people *sneak a peak* on Mt. Borah. So unless you really snuck up a mountain, don’t write to sneak a *peak*. If it helps, think of the “ee” in *peek* as a pair of eyes.

### Hardy/hearty

Ahhh, more homophones creating confusion. Something that is *hardy* is tough and durable. Something that is *hearty* is warm and nourishing.

*My rain jacket is hardy, but after hiking in the rain all day, I want a hearty bowl of warm soup.*

You can keep this straight in your head if you think that hard = durable.

### Pore over/pour over

While artisanal coffee is all the rage, I certainly hope you don’t use it to *pour over* your legal writing! Instead, if you wanted to carefully edit and proof a document, you would *pore over* it.

These two phrases have very different meanings because of the verbs. To *pore* means to absorb through close study. To *pour* means to cause liquid to flow rapidly.

So think of this, if you want to closely inspect something, it’s like examining the pores in someone’s face.

(And yes, a nerdy grammar joke is fine every so often!).

### Conclusion

I’m done with the jokes and the grammar this month. All of this writing has inspired me, however, to take a lovely hike and then sip a nice pour-over coffee. (I couldn’t resist.)

While artisanal coffee is all the rage, I certainly hope you don’t use it to pour over your legal writing!

### Sources:

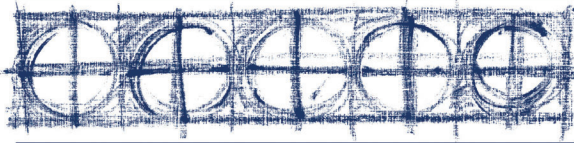
- Alvin Ward, 38 *Word Usage Mistakes Even Smart People Make*, available at <http://mentalfloss.com/article/503256/38-word-usage-mistakes-even-smart-people-make> (last visited September 20, 2018).
- Bryan Garner, *Garner’s Modern Usage*, 75, 517 (3d ed. 2009).

### Endnotes

1. For more information on confusing word pairs, see *Alphabet Soup: More Confusing Word Pairs*, in the June/July 2016 edition of *The Advocate*; *Confusing Word Pairs III: D Words*, in the January 2015 edition of *The Advocate*; *Confusing Word Pairs: Part II*, in the August 2014 edition of *The Advocate*; and *Confusing Word Pairs*, in the January 2012 edition of *The Advocate*.

Tenielle Fordyce-Ruff is an Associate Professor of Law and the Director of the Legal Research & Writing Program at Concordia University School of Law. She is also serves as the editor for Carolina Academic Press’ state specific legal research series. You can access all of her Advocate articles at <https://works.bepress.com/tenielle-fordyce-ruff/>.





## Moving Forward, Looking Back

Carey Ann Shoufler

**A**s I get to this time of year, I always get this image in my head of crossing a finish line. For my work at the Idaho Law Foundation, that means looking back at all the work that propelled our organization to this point while simultaneously making plans that will successfully move us forward into the year that comes.

2018 has been a good year for the Idaho Law Foundation. I'm proud of our stellar record of helping the profession serve the public. Idaho Law Foundation sponsored Continuing Legal Education programs continue to enhance the education of Idaho attorneys. The Idaho Volunteer Lawyers Program increases access to civil legal services for low-income Idahoans. Law Related Education assists students in understanding the law while fostering positive attitudes about the role of the law in our democratic society.

Here are a few examples of what we've been able to accomplish this year:

- The Idaho Volunteer Lawyers Program coordinated the services of 631 volunteer attorneys who worked on over 600 cases, volunteering 11,083 hours, valued at over \$2.2 million dollars in legal services.
- Law Related Education distributed 9,110 copies of the popular 18 in Idaho publication and led 45 classroom visits to teach students about the content.
- Continuing Legal Education held live presentations in all seven Idaho judicial districts.



As someone who has been with the Idaho Law Foundation for almost 14 years, I know our work is supported by the incredible leadership of our organization and carried out by my hard working colleagues. Everyone here holds themselves to a high standard and represents our organization with an eye towards making Idaho's legal profession proud.

We also know that it's not just our staff members who are responsible for our accomplishments. As an organization that relies on the support of volunteers, Idaho attorneys are our partners for success. We have experienced the generosity of attorneys time and time again. We ask you to take on a pro bono case or help at a legal clinic and you say yes. We invite you to judge for the Idaho High School Mock Trial Competition or teach students about the rule of law and you step forward without hesita-

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As an organization that relies on the support of volunteers, Idaho attorneys are our partners for success. We have experienced the generosity of attorneys time and time again.

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tion. You are the cornerstone of our work to build strong and educated communities in all parts of Idaho. On behalf of the Board and staff of the Idaho Law Foundation, thank

you for your continued support.

As we at the Idaho Law Foundation begin to look forward into 2019, we are hopeful that we can continue to build our organization with your help. We have had a robust fundraising year, but we need your help crossing the finish line to reach our 2018 fundraising goal. We ask that you keep us in mind as you make your end of year giving decisions. We welcome and appreciate all gifts at whatever levels are meaningful to you. You can make a donation on our website at [idaholawfoundation.org](http://idaholawfoundation.org) or include a donation through a designation on your 2019 Licensing Form.

Thank you for your support, both now and in the future. As we enter the year-end holiday season, all of us here at the Idaho Law Foundation would like to wish you and your family all the joy, happiness and goodwill of the season.

We have had a robust fundraising year, but we need your help crossing the finish line to reach our 2018 fundraising goal. We ask that you keep us in mind as you make your end of year giving decisions.

Carey Ann Shoufler *has served as the Development and Law Related Education Director for the Idaho Law Foundation for over 13 years.*



JOIN SOME  
TEENAGERS  
IN COURT.

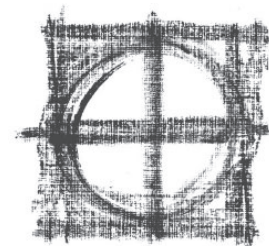


Interested in judging or coaching a mock trial team? The Idaho Law Foundation invites you to participate in the *2019 Idaho High School Mock Trial Competition*. For more information visit our website or contact Carey Shoufler at (208) 334-4500 or [cshoufler@isb.idaho.gov](mailto:cshoufler@isb.idaho.gov).



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*We will not rest* 

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