the ADVOCATE

Volume 68 | No. 5

May 2025

THE STATE PUBLIC DEFENDER ACT

PLUS

Understanding Parole

Clarke DUI Cases

100 50 Years

ISB IDAHO STATE BAR

of service to the public & profession

IDAHO LAW FOUNDATION

Anniversary Article on page 48

CALL US BEFORE YOU RIDE OUT LOOKING FOR COMMERCIAL SPACE.

TRA
Tenant Realty Advisors

★ Code of the West ★

1. Live each day with courage.
2. Take pride in your work.
3. Always finish what you start.
4. Do what has to be done.
5. Be tough but fair.
6. When you make a promise, keep it.
7. Ride for the brand.
8. Talk less and say more.
9. Remember that some things aren't for sale.
10. Know where to draw the line.

We help clients make smart real estate decisions.
Call TRA today!

BILL BECK
Founding Principal
(208) 841-3530
beck@tenantrealtyadvisors.com

GREG GADDIS, CCIM, SIOR
Principal
(208) 869-9294
greg@tenantrealtyadvisors.com

JOSHUA WAITMAN
Principal
(405) 830-4331
joshua@tenantrealtyadvisors.com

950 W. Bannock Street, Suite 400, Boise, ID 83702 | TenantRealtyAdvisors.com

Effective, Pragmatic Dispute Resolution

Mediation | Arbitration | Special Masters

Walt Bithell
Bithell Law PLLC
walter@bithelllaw.com
(208) 336-4440

Deborah Ferguson
Ferguson Durham, PLLC
daf@fergusondurham.com
(208) 345-5183

David Lombardi
Givens Pursley, LLP
drl@givenspursley.com
(208) 388-1200

John Zarian
NCCCO
jnzarian@gmail.com
(208) 871-6798

Virtual Mediation Services Available

With over 150 years of combined legal experience, our panel of well qualified neutrals brings insight and creativity to the most complex disputes. Offering a choice of credible, respected neutrals—individually or as a team—Idaho Mediation Group brings resolution in a timely, unbiased manner.

IMG | Idaho Mediation Group

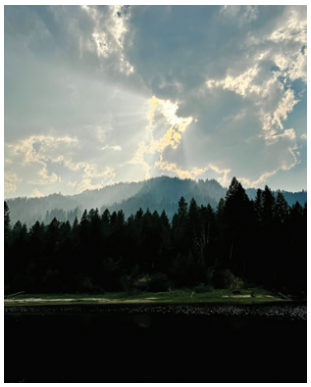
idahomediationgroup.org

IMG, Independent professionals working cooperatively as a panel of highly qualified neutrals

the ADVOCATE

May 2025 Volume 68 | No. 5

On the Cover



Idaho's outdoors offer a serene reminder of this world's beauty—and a subtle hint to slow down. This photo was taken last August by Gage Welfley, husband of Idaho State Bar Communications Director Lindsey Welfley. The two were kayaking on Lake Cascade with their oldest daughter during their annual family "lake trip," only a few months before welcoming their second child.

Featured Article

Sponsored Articles

Sponsored by the Idaho Association of Criminal Defense Lawyers

Additional Articles

From the Bar

In Every Issue

The Advocate (ISSN 05154987) is published 9 times in the following months: January, February, March, May, June, August, September, October, and November by the Idaho State Bar, *The Advocate* P.O. Box 895 Boise, ID 83701. Periodicals postage paid at Boise, ID 83701 and additional mailing offices.

POSTMASTER: Send all address changes to the Idaho State Bar, *The Advocate* P.O. Box 895 Boise, ID 83701.

Subscriptions: Idaho State Bar members receive *The Advocate* as part of their annual dues payment. Nonmember subscriptions are $45 per year.

Bright Days Ahead

Lindsey M. Welfley

Here we are—we've made it to the days of "May flowers" and warmer weather! Thank you for picking up this issue of *The Advocate*, sponsored by the Idaho Association of Criminal Defense Lawyers.

This issue's Featured Article by Jordan Crane is particularly timely and explores the recent change in Idaho's public defense system with the State Public Defender Act. Next, Adam Ondo writes about the preservation and restoration of firearm rights for those making their way through the criminal justice system.

Travis Rice then issues a cautionary tale against reinventing the wheel on citizens' arrests in DUI cases, after the Idaho Supreme Court's decision in *Clarke*. Following this, Valeri Kiesig argues for a better understanding of parole as a way to strengthen criminal defense representation.

This issue also includes a report on the 2025 Idaho High School Mock Trial Competition, which is an incredible program and always a huge success! Idaho's delegate to the ABA House of Delegates, Jonathan Shirts, provides his ABA Mid-Year Report. And, finally, Peter Erbland invites you to take a walk through the 1960s, as we continue to celebrate our historic milestones!

These pages are packed end to end with a wide array of content! We hope you stick around and find something interesting to you.

Best,

Lindsey M. Welfley
Communications Director
Idaho State Bar & Idaho Law Foundation, Inc.

the ADVOCATE

MAY 2025

ADVOCATE EDITORIAL STAFF

Lindsey M. Welfley
Communications Director
lwelfley@isb.idaho.gov

Carissa A. Carns
Communications Coordinator
ccarns@isb.idaho.gov

www.isb.idaho.gov
(208) 334-4500

100 Years ISB IDAHO STATE BAR
of service to the public & profession
IDAHO LAW FOUNDATION

Summary of Recent Changes to Idaho Rules of Professional Conduct and Idaho Bar Commission Rules

During the fall 2024 Resolution process, Bar members approved resolutions to amend the Idaho Rules of Professional Conduct ("I.R.P.C.") and the Idaho Bar Commission Rules ("I.B.C.R."). Consistent with the results of the resolution process, on February 21, 2025, the Idaho Supreme Court entered an Order amending the I.R.P.C. to add a new Rule 1.16A: Client Files, addressing a lawyer's obligations related to client files, effective March 3, 2025. On that same date, the Court entered an Order amending Section II of the I.B.C.R. to adopt the NextGen Bar Exam in Idaho, effective May 1, 2026. Idaho will commence giving the NextGen Bar Exam with the July 2026 bar exam.

During the fall 2023 Resolution process, Bar members approved six resolutions to amend the I.B.C.R. Consistent with the results of that resolution process, on December 28, 2023, the Court entered an Order amending the following provisions of the I.B.C.R.: 1) various Sections to allow for electronic service and notice; 2) Section II to make admission based on practice experience available to attorneys from any jurisdiction and to include judicial law clerk work in the definition of the "Active Practice of Law;" 3) Section IX to allow for electronic voting on resolutions and change the language for emergency resolutions to "time-sensitive" resolutions; 4) Section IV to increase MCLE application fees for CLE course providers, with a reduced fee for Idaho Affinity Groups; and 5) Section V to require reimbursement of funds owed to the Bar or Client Assistance Fund as a condition of reinstatement. The Order and the amendments were effective March 1, 2024. On December 28, 2023, the Court entered an Order amending Section III of the I.B.C.R. to add a Retired Judicial Member status, effective May 1, 2024.

Order to Cancel License to Practice Law for Non-payment of 2025 License Fees

The Commissioners of the Idaho State Bar by and through their Executive Director have filed with the Clerk of this Court evidence that the following named attorneys have not paid the 2025 Idaho State Bar license fees required by Idaho Bar Commission Rule 305(b)(2) and have not given notice of resignation from the practice of law to the Idaho State Bar and this Court;

IT IS ORDERED that the LICENSE TO PRACTICE LAW IN THE STATE OF IDAHO of the following named persons are, CANCELED FOR FAILURE TO PAY THE 2025 IDAHO STATE BAR LICENSE FEES:

ALYSON MARIE ACHESON; HALLE ROBYN ALEXANDER; ALEXANDER CURTIS BAKER; JOHN ROBERT BARLOW; DUSTON K. BARTON; ROBERT IGNACIO BELTRAN; TESSA JEANEAN BENNETT; CHAD EDWARD BERNARDS; SARAH C. BOOTHMAN; JARRETT DAVIS BROUGHTON III; TAYLOR LOUIS BRUUN; PIERRE ALAIN CARNESI; JODY PATRICE CARPENTER; MERIDETH COLLEEN ARNOLD CHAUDOIR; CRAIG WAYNE CHRISTENSEN; MATTHEW R. COMSTOCK; DALE COX; DARREN GRANT CURTIS; JAMES MACLELLAN DAIGLE; CHRISTOPHER LYLE DAINES; ANDREW WILLIAM DANIELS; MATTHEW HERMAN DOLPHAY; ANDREW DREXEL; ROBERT JAMES ELGEE; DANIELLE MARIKO EVANS; KEVIN JOHNSON FIFE; KENNETH STUART GALLANT; SHAWN MARIE GLEN; GEORGE ZACHARY GOLDBERG; TIFFANY LYNN GRANT; BETHANY LYN HARDER; EMILY HOPE HAZEN; AMANDA GLENN HEBESHA; KYLE HOFFMAN; JEFFREY DAVID HOLDSWORTH; JOHN CLINT HOOPES JR.; RYAN D. JENKS; PETER CLEMENS JONES; TERRY MICHAEL KELLY; SEAN MICHAEL KING; KENNETH ORVILLE KREIS; ANDREW JOSEPH LaPORTA; JORDAN T. LEAVITT; JAMES MARK LOREN; JENNA VICTORIA MANDRACCIA; WILLIAM HAYS McADAM JR.; KAREN CLARK McCARTHY; MILO HEATHER-SIERRA McGEHEE; KATHERINE ANNE McNULTY; PAUL O'KEEFE MERRILL; JUSTIN LESLIE MEYER; MICHAEL DAY MOSCRIP; COLIN MATTHEW NASH; ROBERT ALAN NAUMAN; THERESA ANN NUHN; RICHARD BRUCE OWENS; KATELYN RAE PENNEY; TROY DARWIN PETERSON; JASON EMERSON PRINCE; REBECCA ANNE RAINEY; JOHN MARSHALL RANDOLPH; SPENCER MORGAN REESE; JAMES RICHARD REIERSON; SHIREEN REZAEI; THOMAS MACON ROBERTSON; DANA HOFFELT ROSE; DAVID P. ROSSMILLER; ROBERT RAY ROWLEY; ILANA SIMONE RUBEL-PASCHKE; DALE L. RUSSELL; AMANDA KEATING SCHAUS; WILLIAM BRECK SEINIGER JR.; ERIC RODNEY SLOAN; ROBERT SPAJIC; ROBIN JEFFREY STOKER; DANIEL M. TRUSCOTT; BRADLEY WARREN TUBBS; NICOLAS VERNON VIETH; LORI ANN VILLEGAS; STEPHANIE G. WEIR; KEITH HALL WOFFINDEN; JACOB STONE WILSON; MARK SETH WINKEL

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

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

DATED this 28th day of March 2025.

Idaho Supreme Court Orders Granting Petitions for Reinstatement to the Practice of Law

As of the date(s) indicated, the following attorneys' licenses were reinstated:

Bethany Lyn Harder; Active Status, April 2, 2025

Chad Edward Bernards; Active Status, April 2, 2025

Amanda Keating Schaus; Active Status, April 3, 2025

Lori Ann Villegas; Active Status, April 4, 2025

Andrew Joseph LaPorta; Active Status, April 4, 2025

Robert Ignacio Beltran; Active Status. April 4, 2025

Amanda Glenn Hebesha; Inactive Status, April 7, 2025

Shawn Marie Glen; Active Status, April 8, 2025

Nicolas Vernon Vieth; Active Status, April 25, 2025

Dementia: Options for Paths to Prevention, Detection, and Treatment

Hon. Robert L. Jackson

If you have not read the excellent article in the March/April 2025 *Advocate* entitled "Balancing the Scales: Practicing Law While Managing Mental Illness,"[1] please do. That anonymous author presented many of the points I had intended to make with this article, but, as it turns out, that previous article serves as a proper introduction for what this article will address.

After reading the March/April article, you know that many types of mental health challenges can affect one's ability to practice law and do so within the rails of the Idaho Rules of Professional Conduct. This article is intended to address a specific mental health issue—dementia.

The prevalence of dementia is increasing at an alarming rate. Now, there are over 500,000 new cases a year, just in the United States. That number is expected to reach one million new cases a year by 2050.[2]

This article is not intended to guide an attorney's decision regarding the timing of retirement. Rather, I hope it will provide some basic information to aid all practitioners, as well as their families, so they can take steps to minimize the effects of dementia later in life and/or deal with their issues now.

Dementia is a general term used to describe a set of symptoms that affect cognitive abilities, memory, thinking, and behavior. It is not a specific disease but rather an umbrella term for a group of symptoms. Alzheimer's disease is the most common cause of dementia but there are other causes such as vascular dementia, lewy body dementia, frontotemporal dementia ("FTD"), metabolic dementia, traumatic encephalopathy, mechanical, post-radiation, toxins, infections, and dementia caused from tumors.[3]

Why pick dementia as a topic for a bar article? Shouldn't medical/mental conditions be left to the lawyer, his or her family, and medical providers to deal with? It is, unfortunately, a reality for the population in general and attorneys specifically—out of our Idaho bar population consisting of 6,556, active, house, senior, and judicial members, 3,521 of those, or 53.7 percent are age 50 or older.[4]

Early onset dementia can appear in people of any age. Of course, as one gets older the numbers affected increase. I picked age 50 not because at that age many adults get dementia, but rather, much of the evidence suggests that midlife interventions are important to avoid, reduce, or prolong the onset of symptoms. The earlier one takes care of her or himself, the

better the odds for avoiding or prolonging the onset of dementia.

The 2024 report of the *Lancet Commission on Dementia Prevention, Intervention, and Care* builds upon its 2020 findings by identifying 14 modifiable risk factors associated with dementia across the life course. Notably, in their latest report, the authors introduce two new risk factors: untreated vision loss and high levels of low-density lipoprotein ("LDL") cholesterol. Their conclusion is, if those factors are addressed, along with the previously identified ones—such as less education, hearing loss, hypertension, smoking, obesity, depression, physical inactivity, diabetes, excessive alcohol consumption, traumatic brain injury, air pollution, and social isolation—there is the potential to prevent or delay approximately 45 percent of dementia cases.[5]

The *Lancet* report[6] emphasizes that interventions targeting these 14 risk factors should be tailored to different life stages:

- **Early life (0–18 years):** Enhancing education to build cognitive reserve.
- **Midlife (45–65 years):** Managing cardiovascular health, including hypertension and cholesterol levels, and addressing hearing loss.
- **Late life (65+ years):** Mitigating social isolation and treating vision impairments.

By implementing strategies to modify these risk factors, there is significant potential to reduce the burden of dementia.[7]

John Seelig, MD FAANS, a board certified neurosurgeon and founding member of the Ann Early Intervention Foundation[8] believes that an additional 20 percent of people with dementia symptoms are medically treatable because the source of the symptoms may be vascular, metabolic in nature, may be caused by traumatic encephalopathy, have a genetic basis, a mechanical problem, be neurodegenerative, or may be present because of radiation treatment, toxins, infections, or tumors. There are several excellent newsletters as well as other information which can be found on the Ann Early web site noted in the endnotes.

If an adult is concerned about the possibility of dementia, several steps can be taken to test for its existence. Here's a general guide to the process:

1. Consult a Healthcare Professional—*But see the caveat below!*

The first step, after considering the above-mentioned caveat, is to visit a doctor. Ideally the doctor will be a neurologist, neuropsychologist or geriatric specialist. They will review the patient's medical history, current symptoms, and any family history of dementia or related conditions.

2. Cognitive and Memory Tests

Mini-Mental State Examination ("MMSE"): This is a widely used simple screening tool that can assess various cognitive functions, such as memory, attention, language, and spatial abilities.

Montreal Cognitive Assessment ("MoCA"): This is another simple screening tool, similar to the MMSE. It may be useful to detect early-stage dementia.

Other cognitive assessments: There are other cognitive tests which are more than simple screenings. They are validated assessments which are utilized by healthcare professionals to be used as a starting point for diagnosis and treatment. They are Boston Cognitive's **BoCA** and Screen, Inc.'s **CANS-MCI.**

3. Physical and Neurological Exams

A healthcare professional will conduct a physical and neurological exam to rule out other causes of cognitive decline, such as a stroke, tumor, or other neurological conditions.

They may assess coordination, muscle strength, reflexes, and other functions that could indicate a neurological issue.

4. Brain Imaging

Magnetic Resonance Imaging ("MRI") and **Computed Tomography ("CT Scans")**: These can help detect structural changes in the brain that are consistent with dementia, such as atrophy (shrinking) of certain brain regions.

PET scans: In some cases, Positron Emission Tomography ("PET") scans can be used to observe patterns of brain activity and detect early signs of Alzheimer's or other forms of dementia.

5. Blood Tests

Blood tests can be conducted to rule out other medical conditions that might mimic dementia-like symptoms, such as thyroid problems, vitamin deficiencies, or infections.

In some cases, blood tests are used to assess biomarkers associated with dementia (*e.g.*, Alzheimer's disease).

6. Neuropsychological Testing

A more comprehensive evaluation may involve a neuropsychologist who will conduct in-depth testing to evaluate memory, problem-solving abilities, attention, language, and other cognitive functions. This can help pinpoint the specific cognitive deficits and their severity.

7. Genetic Testing

In some cases, genetic testing may be done, especially if there's a strong family history of early-onset dementia. Certain genes, such as the **APOE ε4** allele, are associated with an increased risk for Alzheimer's disease, though not all individuals with this gene will develop the condition.

8. Evaluate Daily Functioning

Often, dementia is diagnosed when changes in a person's ability to perform everyday tasks (*e.g.*, managing finances, driving, or handling daily chores) become apparent. Tracking the progression of difficulties in these areas can help doctors assess the severity and nature of cognitive decline.

9. Monitor Symptoms Over Time

Since dementia progresses slowly, sometimes symptoms may need to be monitored over a longer period of time. Regular check-ups will help assess the rate of cognitive decline and the appropriate course of action.

If someone suspects dementia, early detection can significantly help with managing the condition and exploring potential treatment options. If you or someone

you know is experiencing symptoms of cognitive decline, seeking medical advice as soon as possible is essential.

CAVEAT. There is a major consideration to contemplate before you see a doctor!

As discussed in the previously mentioned anonymous March/April *Advocate* article, what happens if your friends, your clients, your doctor, your insurance company, the bar, the DMV, any licensing agencies etc. believe you have dementia? The risk of stigma and misunderstanding could unnecessarily jeopardize your reputation, career trajectory, income, the cost of insurance or the ability to even get insurance.

One approach to take, if one is not sure how his or her mental capacity stacks up against others, is to do some anonymous testing. There are several options available with a simple Google search. One I am familiar with is produced by Boston Cognitive. The Boston Cognitive test can be taken anywhere and is called the Boston Cognitive Assessment ("BoCA"). It can be completed in about 10 minutes and provides a raw score of 0-30, with a secondary score that compares your score to your peers. Once one has a test result, she or he can consider the next step which could be anything from doing nothing to an appointment with a neurosurgeon.

Whatever your score, the beauty of the self-administered BoCA is the privacy of the result. Certainly, it is not to be used as a determination of one's fitness to practice law. However, it can provide guidance for your next steps in life. Those steps may be: consulting with your physician, calling the Department of Veteran Affairs if you qualify, contacting your local Alzheimer's Association Chapter, or, if you want to consult with a physician who participated in the clinical trials for the BoCA, contact Dr. Mikhail Kogan.[9] He is the Chief Medical Officer at the George Washington Center for Integrative Medicine.[10] Another option could be to contact the previously noted Dr. John Seelig.[11]

In closing, an important point I want to make is that you should not give up. For the younger individuals, take control and heed those 14 factors as described in the *Lancet Commission* 2024 report. For those who are older—it is never too late to adjust one's behavior or habits.

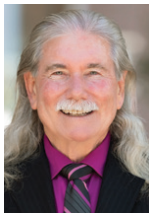
Science is making new and exciting discoveries all the time. For example, sensory therapy utilizing 40 Hz light and sound has shown promise in improving cognition. There is an excellent app available from your app stores called "AlzLife" if you are inclined to explore that.[12] There are new medications being developed. The Alzheimer's Association web site contains a wealth of knowledge and options—for any type of dementia-related issues.

Dementia is something that, if we live long enough, we will probably all experience. Early detection is key. Regular testing is key. Get that baseline score and monitor it for your health and your decision regarding when it may become time to give up the practice!

The BoCA™ can be accessed as follows:

1) Go to: https://bellcurveandme.com/
2) Scroll down and select: Boston Cognitive Assessment™("BoCA™")
3) Select: Get Started
4) Begin filling in the blanks and follow the prompts to complete the test. A score will be compiled for you upon finishing the assessment.

The author wishes to thank John M. Seelig, MD, FAANS, Neurosurgeon, La Jolla, California and Kevin Wolfe, Director of Customer Solutions with Boston Cognitive, (414-807-5397; kevin.wolfe@bostoncognitive.com) for their help and contributions in preparing this article.



Judge Robert L. Jackson *practiced law in Idaho from 1983 until going on the bench as a magistrate in Payette County in August 2013. His varied practice included criminal prosecution, criminal defense, assistant city attorney, personal injury (plaintiff and defense), medical malpractice, insurance law, and workers' compensation. Judge Jackson also serves as the Idaho State Bar Commissioner representing the Third and Fifth Districts. When not engaged in legal work you can find him with family members or friends, at a concert, hiking, backpacking, farming, or traveling.*

Endnotes

1. Anonymous, Balancing the Scales: Practicing Law While Managing Mental Illness, 68 *The Advocate* 24 (2025).

2. Jocelyn Solis-Moreira, *Two in Five Americans Are at Lifetime Risk of Dementia after Age 55, Researchers Warn*, Scientific American, https://www.scientificamerican.com/article/annual-u-s-dementia-cases-projected-to-rise-to-1-million-by-2060/ (last visited Apr 4, 2025).

3. Alzheimer's Vs Dementia - What's The Difference?, UCLA Medical School (2023), https://medschool.ucla.edu/news-article/alzheimers-vs-dementia-what-is-the-difference (last visited Apr 17, 2025).

4. Idaho State Bar Membership Data (Accessed March 14, 2025).

5. Gill Livingston et al., *Dementia Prevention, Intervention, and Care: 2024 Report of the Lancet Standing Commission*, 404 The Lancet 572 (2024).

6. *Id.*

7. For a graphic representing this, see this endnote. ADI - Lancet Commission identifies two new risk factors for dementia and suggests 45% of cases could be delayed or reduced, https://www.alzint.org/news-events/news/lancet-commission-identifies-two-new-risk-factors-for-dementia-and-suggests-45-of-cases-could-be-delayed-or-reduced/ (last visited Apr 17, 2025).

8. Ann Early Intervention Foundation, Ann Early Intervention Foundation, https://www.annearlyintervention.org (last visited Apr 22, 2025).

9: https://gwdocs.com/profile/mikhail-kogan.

10. GW Center for Integrative Medicine, GW Center For Integrative Medicine (2025), https://gwcim.com/ (last visited Apr 22, 2025).

11. He can be reached via email at jseelig12@gmail.com or texted at 858-395-2300. If you text be sure you explain the purpose of your inquiry.

12. Sienna D. McNett et al., *A Feasibility Study of AlzLife 40 Hz Sensory Therapy in Patients with MCI and Early AD*, 11 Healthcare 2040 (2023).

Admissions Department

Abby L. Kostecka

The Idaho State Bar Admissions Department administers the rules governing admission to the practice of law in Idaho. Attorneys can be admitted by taking the Idaho Bar Examination, transferring a Uniform Bar Examination ("UBE") score to Idaho, or based on their experience practicing law in another state. The Admissions Department also oversees limited admission to the practice of law in Idaho through a House Counsel license (working in-house for an Idaho employer), Emeritus Attorney license (limited license to do pro bono work), Military Spouse Provisional admission (service member spouse is stationed in Idaho), pro hac vice admission, and Legal Intern licenses.

Idaho Bar Examination News and Statistics

Admissions Statistics

In 2024, 427 people applied for admission to practice law in Idaho. Of those applicants, 163 were applicants to sit for the bar examination, 67 were applying to transfer their UBE score, seven were House Counsel applicants, and 190 were Experienced Attorney applicants.

The Experienced Attorney applicant figure is notable due to its significant increase. In November 2023, the Idaho State Bar membership considered and approved Resolution 23-02, which recommended to the Idaho Supreme Court that the admissions rules be amended to make admission based on practice experience available to attorneys from any jurisdiction. On December 28, 2023, the Idaho Supreme Court entered an order amending the admissions rules consistent with Resolution 23-02, effective March 1, 2024. This change allowed for experienced attorneys to be admitted without having to sit for the bar examination in Idaho. In 2023, 96 people applied for reciprocal admission under former Idaho Bar Commission Rule ("I.B.C.R.") 206, which was up 18.5 percent from 81 applicants in 2022. Since the rule change became effective on March 1, 2024, 198 applications by Experienced Attorneys were submitted pursuant to Rule 206.

In February of 2025, 41 people sat for the Bar exam. Although we do not yet know the number of applicants who

will sit for the July 2025 bar exam, we predict there will continue to be fewer people taking the Idaho Bar examination going forward. This is due to the amendment of the admission rules mentioned above which enabled more Experienced Attorneys to be admitted to practice law in Idaho without having to take the Idaho Bar Examination.

2024 Resolution Results & NextGen Bar Exam

In December of 2024, the Idaho State Bar membership considered and approved Resolution 24-01, which recommended to the Idaho Supreme Court that Section II of the I.B.C.R. be amended to implement the NextGen Bar Exam in Idaho, commencing with the July 2026 bar examination. On February 21, 2025, the Idaho Supreme Court entered an order amending the admissions rules consistent with Resolution 24-01, replacing the UBE with NextGen.

The NextGen Bar Exam has been years in the making; 36 jurisdictions have announced plans to adopt the NextGen exam and Idaho is currently slated to administer the examination with seven other jurisdictions at its debut in July 2026. We are very excited at the Bar about NextGen. Please stay tuned for updates as we continue to plan for this new test.

Abby Kostecka *joined the Idaho State Bar in January 2025. She comes to the Bar after more than 10 years of practice as a Deputy Prosecutor for the Ada County Prosecutor's Office. Originally from Ohio, Abby received her undergraduate degree from the University of Kentucky and her law degree from Gonzaga University. Her job duties as Licensing Director include overseeing the process of being admitted to the bar in Idaho and monitoring the obligations of Bar members post-admission.*

Anniversary Gala and Updates to the Annual Meeting

Teresa A. Baker

The Idaho State Bar is celebrating its 100th Anniversary and the Idaho Law Foundation is celebrating its 50th Anniversary in 2025. While it is fun to celebrate the past, it is also a great opportunity to evaluate the future.

If you have been reading our Bar's history for the past few months in *the Advocate*, you know that we have been holding an Annual Meeting since before we were officially an organized bar. The purpose of the meeting was multifaceted then and still is now. Meeting in person allows us to conduct business, educate one another on legal topics, celebrate our distinguished colleagues, and, perhaps most importantly, socialize and network with one another. The social connection of attorneys in Idaho is one of the ways that we preserve the civility of our small bar.

The Bar Commissioners and staff have been discussing the best way to keep that social connection and serve our members for the years to come. With decreasing turnout and increasing costs at desirable summer locations, it has become evident that the traditional Annual Meeting spanned over three days in July no longer meets our needs. 2025, as our Anniversary year, is a trial of a condensed Annual Meeting format. We will have a full day of events on Wednesday, July 16th, including a celebratory Anniversary Gala, representing a shortened Annual Meeting format with the goal of increasing attendance. Except for fewer CLEs and the popular Milestone Awards, the same awards will be given. The Milestone honorees will be recognized during the Fall Roadshow in each judicial district. We will evaluate the response to the changes and then make plans for the next hundred years, or at least 2026.

We are also excited about a joint event with the Idaho Judicial Conference that will be held on September 9th in Boise. Jonathan Shapiro, a nationally recognized lawyer-writer and television producer of such shows as *Goliath*, *The Blacklist*, *Boston Legal*, and *The Practice* will present a CLE followed by a reception.

We hope you will join us in the celebration in 2025! Browse the list of upcoming events[1] and mark them in your calendar.

Teresa A. Baker *is a member of the Idaho State Bar. After practicing law for 20 years, she decided to serve her fellow attorneys and currently is the Program and Legal Education Director for the Idaho State Bar and Idaho Law Foundation.*

Endnote

1. https://isb.idaho.gov/anniversary/.

HON. JOHN R. STEGNER

(RET.)

Signature Resolution has welcomed former Idaho Supreme Court Justice John R. Stegner, with over a quarter century of judicial experience, to our exceptional panel of mediators and arbitrators.

Exclusively at

SIGNATURE RESOLUTION

SIGNATURERESOLUTION.COM

The State Public Defender Act: Continuing the Journey of Public Defense in Idaho

Jordan S. Crane

It's June of 2005. I'm in the first days of what would become a decades long career as a public defender. On my desk is a three-foot stack of files, inherited from my predecessor, representing the cases set for court just that week. As I'm wading through files, an energetic man bursts into my office for one of my very first client meetings. I can tell he's got something important on his mind. Something important to tell me. "I just want to know one thing," he says, "I think I have a good defense. So, let me know if I should hire a real lawyer." Amused and undeterred, I embarked on my journey as a public defender. Public defense in Idaho has changed a lot since that day in June 2005. October 1, 2024, may have been the biggest change yet. On that day, Idaho transitioned to a single, statewide, state funded system.

The Right to Counsel

Of all the rights possessed by one accused of a crime, the right to counsel is the most valuable. It stands as a safeguard "deemed necessary to insure fundamental human rights of life and liberty."[1] "The right to counsel is so basic to our notions of fair trial and due process that denial of the right is never treated as harmless error."[2] Without it, the rights to be free from unreasonable searches and seizures,[3] to a speedy and public trial,[4] to an impartial jury,[5] to be free from cruel and unusual

punishments,[6] to confront one's accusers,[7] to hold the government to its burden,[8] and to due process itself,[9] would be little more than ideas scratched on parchment.

Justice Sutherland articulated the fundamental nature of the right to counsel in *Powell v. Alabama*:

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.'[10]

Thirty years later, in *Gideon v. Wainwright*, the U.S. Supreme Court again discussed the "obvious truth" that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him."[11] The *Gideon* Court noted the "vast sums of money" spent by the government "to establish machinery to try defendants accused of crime."[12] "That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend," reasoned the Court, "are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries."[13] Ultimately, the *Gideon* Court held that the Sixth Amendment guarantee of the right to counsel applied to the states declaring, "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."[14]

Idaho's Journey

A review of Idaho history reveals that Idaho reveres the right to counsel even more than the federal system does. In fact, the

> *...Idaho reveres the right to counsel even more than the federal system does.*

right to counsel is so sacred in Idaho that it is not only guaranteed in Article I, § 3 of our state constitution, but the right to court-appointed counsel for every indigent defendant was codified in Idaho decades before *Gideon*. In 1887, Title VI, Chapter I, § 7721 of the Revised Statutes of Idaho read:

> Sec. 7721. If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

In 1923, the Idaho Supreme Court declared:

> It is the public policy of this state, disclosed by constitutional guaranties as well as by numerous provisions of the statutes, to accord to every person accused of crime, not only a fair and impartial trial, but every reasonable opportunity to prepare his defense and to vindicate his innocence upon a trial. In the case of indigent persons accused of crime the court must assign counsel to the defense at public expense.[15]

In *Betts v. Brady*,[16] the U.S. Supreme Court rejected the proposition that the Fourteenth Amendment required states to appoint counsel for all indigent defendants. However, the U.S. Supreme Court noted that at the time of the *Betts* case, Idaho was one of only 18 states requiring appointment of counsel in all cases where defendants were unable to procure counsel.[17]

Up until October 1, 2024, the State of Idaho required each of its 44 counties to "provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense."[18] The counties could choose from establishing a county public defender's office, joining with another county, or counties, to create a joint public defender's office, contracting with an existing public defender's office, or contracting with defending attorneys to provide public defense services.[19] Each county was also tasked with appropriating enough money each year to fund its chosen method.[20]

In 2014, the Idaho Public Defense Act was passed.[21] With this act, the counties were left with the responsibility of providing public defense services, but the state now provided additional funding. The Public Defense Act also created the Public Defense Commission ("PDC"), a self-governing agency tasked with promulgating rules and standards governing public defense.[22] The PDC also acted as the conduit through which state funding was requested and received.[23]

On June 17, 2015, the American Civil Liberties Union of Idaho initiated a class action lawsuit accusing Idaho of failing to meet its state and federal constitutional obligations to provide adequate public defense (the "Tucker Lawsuit").[24] That lawsuit was appealed twice to the Idaho Supreme Court and twice remanded back to the District Court.[25] The Tucker Lawsuit was dismissed by the District Court in February of 2024, and is currently on appeal for the third time.[26]

Enter House Bill 735,[27] passed into law in March 2022. Couched as a "property tax relief" bill, H.B. 735, among other things, released the counties "from any further financial obligation to provide indigent public defense" beginning October 1, 2024.[28] Through H.B. 735, the Legislature also expressed its intention that, before adjournment of the 2023 legislative session, Idaho would create a new state public defense system.[29]

The following legislative session, the State Public Defender Act ("SPDA")[30] passed the legislature and was signed by the governor on March 30, 2023. The SPDA created the Office of the State Public Defender ("OSPD") in the department of self-governing agencies.[31] The Act also created eight statutory positions—the State Public Defender ("SPD") and seven District Public Defenders ("DPD").[32] Together, the SPD and DPDs are charged with fulfilling "Idaho's obligation to provide indigent public defense pursuant to the Sixth Amendment to the United States constitution; Section 13 Article I of the constitution of the State of Idaho;" and the SPDA.[33] On October 1, 2024, Idaho embarked on the transition to a statewide public defense system.

As one might expect, this transition has come with its share of growing pains. The two main hurdles are funding and a shortage of attorneys (though, the two are, of course, related). The SPDA came with a starting budget of approximately $48

Like me, there are hundreds of dedicated professionals steadfastly standing firm against the machinery of the state, protecting the constitutional rights possessed by every citizen of Idaho, protecting my rights, and protecting yours.

million.[34] This fell woefully short of the funding necessary for Idaho to meet the constitutional obligations owed to those accused by the government but without the resources needed to hire counsel. As noted by the U.S. Supreme Court in *Gideon*, the government spends "vast sums of money to establish machinery to try defendants accused of crime."[35] Therefore, to protect citizens from being crushed by the weight of the state's resources, the OSPD must be provided funds sufficient to establish its own "machinery." The machinery required to fulfill the necessity of ensuring the fundamental human rights of life and liberty consists of attorneys, staff, investigators, facilities, equipment, technology, training, experts, support services for clients, etc. Idaho, like many other states, is also seeing a shortage of attorneys, especially those entering public service. The lack of funding only exacerbated the shortage of attorneys in public defense. Recently, with the passage of S.B. 1109 and S.B. 1202, the Idaho Legislature took a step in the right direction by approving a total budget of approximately $83 million.[36] Time will tell whether this amount is sufficient, although I fear it is not.

Idaho's new public defense system needs the help of the entire bar to succeed. Sign up. Join the OSPD.[37] Reach out to your District Public Defender and offer to take just one case—every client matters. Contact your legislators. Remind them of the fundamental nature of the right to counsel. Educate them about the important work done by public defenders. Encourage them to adequately fund the right to counsel. Mentor young attorneys and encourage them to give back by defending one of our most fundamental rights—the right to counsel. Or simply thank a public defender for their work.

Continuing the Journey

It's February 2025, nearly two decades since I first became a public defender. As I wait in the hallway for court to start, a gentleman, also waiting for court, strikes up a conversation. He shares his opinions of his case, the court, the prosecutor, and his treatment in general. I share some advice and try to answer his questions as best I can without knowing all that his case entails. The time has come for us to enter the courtroom. He asks if he could hire me. I tell him, "No, I don't accept private cases, I'm a public defender." He steps back, a stunned look on his face, "You're a public defender? But you sound like a real lawyer." Still amused and still undeterred, I'll continue my journey in public defense as Idaho continues its journey. I believe in the mission. For me, it's a calling. Like me, there are hundreds of dedicated professionals steadfastly standing firm against the machinery of the state, protecting the constitutional rights possessed by every citizen of Idaho, protecting my rights, and protecting yours. Standing tall for the accused.

Jordan S. Crane *is Idaho's Seventh District Public Defender. His career in public defense began in 2005 when he joined Bonneville County's Public Defender's Office where he served as a deputy, chief deputy, and conflict public defender. In 2015 he was appointed as Bonneville County's Chief Public Defender where he remained until being selected for his current position.*

Endnotes

1. *Johnson v. Zerbst*, 304 U.S. 458, 462, 58 S. Ct. 1019, 1022, 82 L. Ed. 1461 (1938).

2. *In Interest of Kinley*, 108 Idaho 862, 866, 702 P.2d 900, 904 (Ct. App. 1985) (citing *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

3. U.S. Const. amend. IV, Idaho Const. art. 1, § 17.

4. U.S. Const. amend. VI, Idaho Const. art. 1, § 13.

5. U.S. Const. amend. VI, Idaho Const. art. 1, § 7.

6. U.S. Const. amend. VIII, Idaho Const. art. 1, § 6.

7. U.S. Const. amend. VI.

8. *Victor v. Nebraska*, 511 U.S. 1, 5, 114 S. Ct. 1239, 1242, 127 L. Ed. 2d 583 (1994).

9. U.S. Const. amend. VI, Idaho Const. art. 1, § 13.

10. *Powell v. Alabama*, 287 U.S. 45, 68-69, 53 S.Ct. 55, 53, 77 L.Ed. 158 (1932).

11. *Gideon v. Wainwright*, 372 U.S. 335, 344, 83 S.Ct. 792, 796, 9 L.Ed.2d 799 (1963).

12. *Id.*

13. *Id.*

14. *Id.*

15. *State v. Montroy*, 37 Idaho 684, 690, 217 P. 611, 614 (1923). (C.S., sec. 8858).

16. 316 U.S. 455, 62 S.Ct. 1252 (1942) (overruled by *Gideon*).

17. *Id.* at 470, 62 S.Ct. at 1260.

18. Idaho Code § 19-859 (repealed 2023, ch. 220, § 27, p. 660).

19. *Id.*

20. I.C. § 19-862 (repealed 2023, ch. 220, § 29, p. 660).

21. I.C. § 19-848 (repealed 2023, ch. 220, § 23, p. 660).

22. I.C. § 19-850 (repealed 2023, ch. 220, § 25, p. 660).

23. I.C. § 19-862A (repealed 2023, ch. 220, § 30, p. 660).

24. *Tucker, et.al. v. Idaho, et.al.*, Ada Co. Case No. CV-OC-2015-10240.

25. *Tucker v. State*, 162 Idaho 11, 394 P.3d 54 (2017) ("*Tucker I*"); Tucker v. State, 168 Idaho 570, 484 P.3d 851 (2021) ("*Tucker II*").

26. *Tucker, et.al. v. Idaho, et.al.*, Ada Co. Case No. CV-OC-2015-10240.

27. H.B. 735 66th Leg. (Idaho 2022).

28. I.C. § 19-847 (repealed 2023, ch. 220, § 3, p. 660), I.C. § 19-6008(1)(a).

29. Statement of Purpose, H.B. 735 66th Leg. (Idaho 2022).

30. I.C. §§ 19-6001-19-6020.

31. I.C. § 19-6003.

32. I.C. §§ 19-6004, 6006.

33. I.C. § 19-6005.

34. H.B. 236 67th Leg. (Idaho 2023).

35. *Gideon*, 372 U.S. at 344.

36. S.B. 1109 68th Leg. (Idaho 2025); S.B. 1202 68th Leg. (Idaho 2025).

37. For information regarding open positions, see spd.idaho.gov or statecareers.idaho.gov.

Preserving and Restoring Firearms Rights, or: How I Learned to Stop Worrying and Love the Government

Adam J. Ondo

Firearms are an integral part of Idaho culture. It is not unusual to see someone open carrying a pistol at your local supermarket or to overhear a hunter talking about shooting some ducks with his 870 Wingmaster. This is not surprising as nearly 60 percent of Idaho households are estimated to own at least one firearm.[1]

Unfortunately, thousands of people are stripped of their rights each year due to Idaho's criminal justice system working in conjunction with federal law. Even more concerning is that some defendants, and their attorneys, are not aware that the resolution of their case has rendered them a person prohibited from possessing firearms. This article is designed to provide tips for avoiding loss of gun rights, elucidate the different avenues by which such rights can be restored, and suggest two proposals for how to potentially restore gun rights to certain classes of defendants who cannot avail themselves of the usual avenues.

Avenues to Loss of Gun Rights

This section does not provide a comprehensive list of all the legal statuses that can lead to loss of firearms rights. Rather, this section focuses on providing warnings for criminal law practitioners who may be unaware of some of the pitfalls that can lead to a defendant unwittingly losing the right to possess firearms. Included are some tips for negotiating resolutions that will not render your clients prohibited persons.

Felons. It is a violation of federal law for a felon to possess a firearm. However, Congress does not use the term "felony," instead opting to utilize the term "crime punishable by imprisonment for a term exceeding one year" to describe this class of offenses.[2] This term, due to its statutory definition, does not include certain white-collar felonies, nor crimes deemed misdemeanors by a State that are punishable by a jail term of not more than two years.[3]

Idaho state law is narrower as to the scope of individuals it pertains to, barring anybody "who has entered a plea of guilty, nolo contendere or has been found guilty *of any of the crimes enumerated in Section 18-310, Idaho Code*, or to a comparable felony crime in another state, territory, commonwealth, or other jurisdiction of the United States" from purchasing, owning, possessing, or having under his or her custody or control any firearm.[4] Because Section 18-310 does not only omit the white-collar offenses omitted under federal law, but also crimes such as felony driving under the influence, Section 18-3316(1) applies to only a fraction of those felons prohibited from owning firearms under federal law.

However, Section 18-3302(2)(d) of the Idaho Code defines "firearm" as any weapon that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive. This definition unfortunately is *broader* than the federal definition, which omits, *inter alia*, black

powder firearms.[5] This leads to felons in Idaho, including some of my former clients, purchasing black-powder muzzleloaders, predominantly so that they can hunt with them. These felons then unwittingly get into trouble with state authorities. Thus, it is important to advise felony clients of this potential danger.

Misdemeanants. Anyone convicted of a "misdemeanor crime of domestic violence" is a prohibited person.[6] To qualify as a misdemeanor crime of domestic violence, a state-level offense must have, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon. In addition, the violence must have been committed by "a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim."

Criminal law practitioners should immediately recognize that this list of qualifying relationships is broader than the list contained in Idaho Code § 18-918. For instance, under Idaho law, neither a dating relationship nor a parent-child relationship can transform a simple battery into a domestic battery.[7]

Confusingly, the domestic relationship "element" of the federal definition need not be an actual element of the state-level offense.[8] That relationship can be established by examining charging documents, plea agreements, plea colloquies, and comparable judicial records. These same records can also be utilized to determine the basis for a conviction under a divisible statute, such as disturbing the peace, as defined by Idaho Code § 18-6409, in which there are multiple actus reus by which guilt can be established.[9]

It is for this reason that (a) disturbing the peace is not an ideal resolution in domestic cases, and (b) practitioners should always make sure that misdemeanor defendants allocute to disturbing the peace by loud and unusual noise in the form of screaming or something along those lines. Another resolution that may be the best that can be negotiated with a tough prosecutor is assault under Idaho Code § 18-901(b), which arguably would not qualify as a crime of domestic violence under federal law assuming no weapon was involved.[10]

However, better resolutions include amending the assault or battery charge to trespass, unlawful entry, malicious injury to property, or obstructing an officer, depending on the specific factual circumstances of a case. Additionally, Idaho Code § 18-2901 defines false imprisonment as the unlawful violation of the personal liberty of another. This definition does not contain the necessary violence element, nor is it divisible. Prosecutors may also be more willing to accept such a resolution because the maximum penalties for false imprisonment are one year in jail and a $5,000 fine.

The federal definition of "misdemeanor crime of domestic violence" also exempts from prosecution for unlawful firearm possession certain persons who have otherwise-qualifying convictions.[11] First, defendants who were not represented by counsel and did not knowingly and intelligently waive their right to counsel are exempt from prosecution. Second, defendants who pleaded guilty or who were found guilty after a court trial but did not knowingly and intelligently waive their right to have their case tried by a jury, are exempt from prosecution.

Judges sometimes forget to make the required inquiries, so federal defenders need to check the underlying record to ensure their clients are not exempt from prosecution. Finally, if the defendant has no more than one conviction for a misdemeanor crime of domestic violence, and if that one conviction involved only a dating relationship, then the defendant ceases to be a prohibited person once five years have elapsed from the later of the judgment of conviction or the completion of the person's custodial or supervisory sentence.

Statuses that Can Apply Regardless of Conviction. There are two pre-conviction statuses that can lead to temporary loss of gun rights, so long as the status exists. The first status is that of a "fugitive from justice" which means that the person has fled from any State to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding.[12] The word "fled" has been interpreted in such as a way that the person need not have *left* the State for the purpose of avoiding prosecution; *remaining* away for the purpose of avoiding prosecution is sufficient.[13] If a client fails to appear and a warrant issues pursuant to Idaho Code § 19-2915, it is vital that they be advised that they could now be considered a prohibited person by the federal government if they leave the State of Idaho.

The second status is that of a person who is subject to a domestic violence protection order, which is very specifically defined in Section 922(g)(8) of Title 18, United States Code. Importantly, subparagraph (A) requires the order to be issued "after a hearing of which such person received actual notice, and at which such person had an opportunity to participate," which means a temporary protection order obtained *ex parte* pursuant to Idaho Code § 39-6308 would not render the restrained individual a prohibited person under federal law.

Mental Defectives. The final class of prohibited persons that this article will address are those persons adjudicated as a mental defective.[14] This status normally applies to those under guardianship or those who have been involuntarily committed, but it sometimes arises from a criminal case. This is because 27 CFR 478.11 defines "adjudicated as a mental defective" as including "a finding of insanity by a court in a criminal case." At least some courts have held that a person who is committed to restore them to competency, such as via the 18-212 process here in Idaho, loses their gun rights.[15] Idaho Code § 66-356 clarifies this determination under Idaho law and also provides a process by which a defendant can petition to

have the prohibition on firearms ownership due to mental defectiveness lifted.

Avenues to Restoration of Gun Rights

In Idaho, there are four ways that a felon can restore their right to possess a firearm. The easiest way is to have the right restored automatically by operation of statute upon completion of probation, parole, or imprisonment, as the case may be. The second method would be to seek restoration from a judge pursuant to Idaho Code § 19-2604(1). However, not all felons qualify for relief under § 19-2604(1), especially if they have had a substantiated probation violation. The third and fourth options are a little less common, and they involve applying to the executive branch, either for a gubernatorial pardon or specifically for restoration of firearms rights through the Commission of Pardons and Parole.

Automatic Restoration. Idaho Code § 18-310(2) works to automatically restore gun rights for certain felons for both state and federal purposes.[16] The restoration occurs upon "final discharge" which is defined as "satisfactory completion of imprisonment, probation and parole as the case may be." There is, however, a list of felonies contained in this subsection that explicitly do not qualify for this automatic restoration. This list contains primarily crimes of violence; however, drug offenses are also listed. Additionally, per Idaho Code § 18-310(4), persons convicted of felonies in other states or jurisdictions are not automatically restored under § 18-310(2).[17]

Final Dismissal Granted by Judge. Idaho Code § 19-2604(1) provides judges with the discretion to "set aside the plea of guilty or conviction of the defendant and finally dismiss the case" if certain prerequisites are met and good cause is shown. Generally speaking, relief under this subsection is only available to felons or misdemeanants who have completed a period of probation with no adjudicated probation violations, or misdemeanants who received a fine-only sentence. A final dismissal of the case pursuant to § 19-2604(1) has the effect of restoring the defendant to his civil rights. This includes the right to possess firearms for defendants with a felony or misdemeanor crime of domestic violence, unless the judge explicitly states otherwise in the order granting the final dismissal.[18]

There are two common misconceptions that must be addressed before proceeding. The first misconception is that the Court granting a withheld judgment, which enters instead of a judgment of conviction, means that the defendant is not a convicted felon and, therefore, not a prohibited person. That is false. Until one "effectuates" the withheld judgment by securing a final dismissal via § 19-2604(1), the withheld judgment still renders one a prohibited person.[19]

The other, more pervasive, misconception is that amending a felony to a misdemeanor under subsection (2) or (3) of § 19-2604 serves to restore gun rights. Though that is logical, as the defendant is no longer deemed a felon, the Idaho Supreme Court clarified in 2021 that subsection (2) lacks the "shall have the effect of restoring the defendant to his civil rights" language found in § 19-2604(1), and thus does not restore the right to possess firearms.[20] Accordingly, individuals convicted of a felony enumerated in Idaho Code § 18-310(2) who have had their conviction reduced to a misdemeanor pursuant to subsection (2) or (3) of § 19-2604 will still need their firearm rights restored by the Commission of Pardons and Parole before they can lawfully possess firearms.

Idaho Commission of Pardons and Parole. If a defendant's rights are not restored automatically pursuant to Idaho Code § 18-310(2) and if the courts cannot or will not restore the defendant's rights pursuant to Idaho Code § 19-2604(1), then the defendant's only hope is the executive branch. The defendant could seek a gubernatorial pardon, which would serve to restore their right to possess firearms, but acquiring a pardon is unlikely.

The more common avenue to restoring gun rights via the executive branch is applying to the Idaho Commission of Pardons and Parole for restoration of firearms rights. The application process is governed by Idaho Code § 18-310(3). The two main criteria to qualify for restoration of rights via this application process are (i) that five years have elapsed from the date of final discharge, and (ii) that the defendant was not convicted of murder or of a disqualifying felony with a firearm enhancement. An additional rule that clients should be advised of is that applications may only be submitted once every 12 months. An application for a pardon or for restoration of gun rights by the Commission is generally the last avenue for criminal defendants who do not qualify for relief under § 18-310(2) or § 19-2604(1).

Voluntary Appeal File. Just because a defendant's rights are restored does not mean the Federal Bureau of Investigations ("FBI") will be aware of this and, so, when a Federal Firearms Licensee ("FFL") (*e.g.*, a gun store), submits the background check associated with Form 4473, it may come back "denied." If the defendant is certain he has no other prohibitions, he can submit a Voluntarily Appeal File application to the FBI. It will expedite the process to have the National Instant Criminal Background Check System (NICS) transaction number, which the FFL who submitted the Form 4473 can provide. Of course, if a defendant does not wish to go through this process, they can still purchase a firearm from a private seller.

Pushing for Automatic Restoration for Certain Non-Violent Offenders

The issue with Idaho Code § 18-310 is that not all non-violent felons have their rights restored automatically upon final discharge. Specifically, under subsection (2)(bb), those convicted of simple possession of a controlled substance, such as a user-amount of methamphetamine or even some cocaine residue on a dollar bill, are not automatically restored to their right to possess firearms upon final discharge. One way to fix this injustice

is to strike "or possession of" from paragraph (bb). If enough citizens contact their local legislators, perhaps a legislative amendment could solve this issue.

The more difficult route would be to challenge the lack of automatic restoration by bringing a constitutional challenge, either facial or as applied, against Idaho Code § 18-310(2)(bb). Although making such a constitutional challenge a couple of decades ago would have been viewed as frivolous or even laughable, the paradigm shift in Second Amendment jurisprudence under *Bruen* coupled with how drugs are currently viewed make it plausible.[21] *Bruen* is a 2022 case wherein the Supreme Court of the United States established a new test for whether a government regulation violates the Second Amendment: "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."[22]

Accordingly, the standard is not strict scrutiny or rational basis, but whether a historical analogue of the current regulation was in existence prior to the ratification of the Second Amendment. Unfortunately, the Supreme Court may have rendered *Bruen* toothless with its "clarification" in *Rahimi* last year, wherein the Court explained that, in the context of historical analogues, "The law must comport with the principles underlying the Second Amendment, but it need not be a dead ringer or a historical twin."[23]

The easiest procedural posture would be to find a defendant in a criminal case who only has a conviction for felony possession of a controlled substance and then move to dismiss that case under Idaho Criminal Rule 48(a). Alternatively, a felon who desires to own a firearm could file a petition for writ of prohibition or perhaps a petition for a declaratory judgment, although the latter would likely only work if the United States Court of Appeals for the Ninth Circuit decided to reinstate the ruling in *Duarte*. In that decision, the Ninth Circuit basically held that crimes, especially non-violent crimes, that were not considered felonies at the time the Second Amendment was ratified, could not serve as a basis for depriving an individual of their right to bear arms. However, after the Supreme Court's decision in *Rahimi*, the opinion in *Duarte* was vacated by the Ninth Circuit pending further argument and analysis.[24]

At this point, the future of *Bruen*-based constitutional challenges is unclear, so it is paramount that practitioners do their best to resolve cases in a manner that avoids loss of gun rights. If loss of gun rights cannot be avoided, defendants need to be properly apprised of the different avenues by which their rights may be restored when the time comes. There is no reason why a defendant's Second Amendment rights should not be safeguarded to the same extent as other constitutional rights, and it is imperative that defense attorneys assist in preserving those rights.

Adam J. Ondo *is a trial attorney for the Idaho State Public Defender, but he previously maintained a criminal and family law practice at Hilverda McRae, PLLC, in Twin Falls. He also hunts, serves on a gun club's board of directors, and teaches the legal portion of an Idaho enhanced concealed weapons license course.*

Endnotes

1. *See, e.g.*, Terry L. Schell et al, *State-Level Estimates of Household Firearm Ownership*, RAND (Apr. 22, 2020).
2. 18 U.S.C. § 922(g)(1).
3. 18 U.S.C. § 921(a)(20).
4. Idaho Code § 18-3316(2).
5. 18 U.S.C. § 921(a)(3); 18 U.S.C. § 921(a)(16).
6. 18 U.S.C. § 921(a)(33).
7. Idaho Code § 18-918(1)(a).
8. *White v. Department of Justice*, 328 F.3d 1361, 1367 (Fed. Cir. 2003).
9. *United States v. Horse Looking*, 828 F.3d 744, 746-47 (8th Cir. 2016).
10. This tip comes courtesy of the sagacious attorney David Gadd.
11. 18 U.S.C. § 921(a)(33).
12. 18 U.S.C. § 921(a)(15).
13. *United States v. Spillane*, 913 F.2d 1079, 1081-82 (4th Cir. 1990).
14. 18 U.S.C. § 922(g)(4).
15. *See, e.g.*, *United States v. Midgett*, 198 F.3d 143 (4th Cir. 1999).
16. Idaho Code § 18-3316(3); *United States v. Gomez*, 911 F.2d 219 (9th Cir. 1990).
17. *State v. Boren*, 156 Idaho 498, 500, 328 P.3d 478, 480 (2014).
18. 27 C.F.R. § 478.11.
19. *United States v. Locke*, 409 F. Supp. 600, 604-05 (D. Idaho 1976).
20. *In re Order Certifying Question to Supreme Court of Idaho*, 169 Idaho 135, 139-140, 492 P.3d 1094, 1098-99 (2021).
21. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022).
22. *Id.* at 20-21.
23. *United States v. Rahimi*, 602 U.S. 680, 692 (2024).
24. *See United States v. Duarte*, 101 F.4th 657, 691 (9th Cir. 2024) (vacated pending *en banc* review).

SAVE THE DAY AND YOUR TIME

Get covered in minutes.

You got into this business to help people. Until now, the villain in your story has been the time it takes to complete all those PDF applications. With ALPS, you can apply, pay, and secure your malpractice coverage in a flash!

> *"The policy options and premiums for a solo practice are very competitive."*

Trustpilot

★★★★★

Proudly endorsed by the **ISB**

ISB
IDAHO STATE BAR

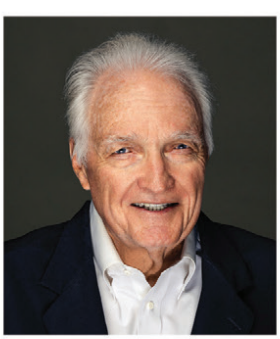
alpsinsurance.com

ALPS
www.alpsinsurance.com

MEDIATION AND ARBITRATION

Merlyn W. Clark

David W. Knotts



Craig L. Meadows

Marvin M. Smith

Cathy R. Silak

Our ADR attorneys are experienced in a wide variety of subject matter areas and skilled at conducting sessions both in person and remotely. They approach each matter with commitment to reaching a fair and cost-effective resolution.

We can host in person at any of our firm's six offices.

HAWLEY TROXELL
Attorneys & Counselors

BOISE | COEUR D'ALENE | IDAHO FALLS | POCATELLO | RENO | YAKIMA

Call 208.344.6000 or visit HawleyTroxell.com

Citizen's Arrests: A Caution Against Reinventing the Wheel on *Clarke* DUI Cases

Travis E. Rice

Let's take the cuffs off and address the elephant in the room. When the Idaho Supreme Court released their decision in *Clarke*, that an officer could no longer make a warrantless arrest unless the officer witnessed a completed misdemeanor "in their presence," it raised an alarm in the criminal justice community.[1] It's no secret that the *Clarke* decision upset a lot of prosecutors and law enforcement officials. The fallout of the *Clarke* decision continues to be felt even years after the Court rendered its decision.

One of the consequences of the *Clarke* decision was that it unintentionally or intentionally increased the use of citizens' arrests in misdemeanor DUI cases. Since *Clarke*, one of the "many misconceptions and urban myths"[2] has been whether a citizen's arrest is a valid exception to the *Clarke* warrant requirement. This is a particular problem when a citizen witnesses the "actual physical control" element on suspected misdemeanor DUI, but the officers do not witness it in his presence.[3] Rather than abiding by the *Clarke* decision's advice to seek a warrant or summons, some prosecutors and law enforcement officers have begun to solicit citizen's arrests. This article hopes to clear up the misconceptions regarding citizen's arrests and encourage a policy of seeking a warrant rather than advocating the libelous prospect of involving a concerned citizen to make these arrests.

The big question is whether or not a citizen may make a citizen's arrest on a DUI (or any other offense) when they only observe actual physical control, without actual knowledge of impairment? May the citizen use the *officer's* collective knowledge to establish a full offense for a DUI after the officer has done the investigation, by assenting to commit a citizen's arrest?

It's well known after *Clarke* that an officer may not make a warrantless arrest unless the completed misdemeanor is committed "in his presence." It's equally well-known that the officer cannot use "collective knowledge" on an element of an offense to make a warrantless misdemeanor arrest under *Clarke*.[4] The arresting officer cannot use "collective

knowledge" to establish a whole offense by communicating with other officers on scene to satisfy the "in the presence" requirement. So, can a citizen use the officers' observations, which were collected outside his presence to make a citizen's arrest on a misdemeanor? Based on *Bell* it stands to reason a citizen has no more arrest authority than a police officer, who cannot use "collective knowledge" gathered outside "their presence;" but there is little clarity on this issue.[5] These are questions that the Idaho Supreme Court and Court of Appeals should answer for us.

When Can a Citizen Make an Arrest for a Misdemeanor?

In Idaho, a citizen just like an officer, must make misdemeanor arrests for a crime committed or attempted "in their presence." The authority for citizen's arrests lay in I.C. § 19-604, which states, a "private person" may arrest another, "for a public offense committed or attempted in his presence."[6] Just like an officer, citizens may use their senses to ascertain whether or not the crime has been committed.[7] And just like an officer, a citizen must have probable cause that a misdemeanor occurred *before* they can make an arrest for an offense completed "in their presence."[8] But, unlike an officer, a citizen may not stop, or detain someone, to investigate a possible crime, *before* making the decision to arrest. This is because the statutory authority for a citizen to make an arrest, already presumes the citizen has facts necessary to make an arrest, at the time the arrest occurs.

Of course, the probable cause issue is also subject to unique shopkeeper's privilege and other common law circumstances. For the purpose of probable cause, generally if the citizen witnesses a crime "in their presence," the citizen may then merely summon law enforcement to *effectuate the arrest* on their behalf. This assumes an officer must be summoned *after* the crime is committed in the citizen's presence. It does not suggest that the officer can be summoned to investigate a possible crime the citizen believes may have been committed "in their presence."

Misdemeanor DUIs and the Citizen's Arrest Issue

I regularly see the following reoccurring scenario in my practice with respect to misdemeanor DUI *Clarke* issues…

It's 1:30 am and a concerned citizen reports a suspected impaired driver to 911. The citizen tells the operator the vehicle is swerving over the lines of the road and nearly colliding with other vehicles. The citizen provides a detailed description of the vehicle, complete with the plate number to 911. Law enforcement receives the call and proceeds to the registered owner's home address. At the residence, they observe a vehicle matching the reported plate number. The vehicle is unoccupied, and the engine is not running. The officer rings the suspect's door. The vehicle owner answers. The officer observes the odor of alcohol and even obtains a reluctant confession through the suspects slurred speech. The officer then promptly administers the sobriety tests, which the suspect inevitably fails.

Realizing this could be a possible *Clarke* issue, because the officer did not witness the suspect in actual physical control, he calls an exhausted on-call prosecutor. The prosecutor gives the officer two options. First, the officer can seek an arrest warrant (and wake up a magistrate). Second, the officer can call back the concerned citizen, sharing the details of his observations with them, and then ask them to perform a citizen's arrest. The officer chooses the citizen's arrest option. The officer calls the concerned citizen, shares the details of his investigation, and then solicits the citizen to make an arrest. The citizen agrees to "press charges" and the officer then makes an arrest. The owner is then handcuffed, placed in the back of a patrol vehicle, and subsequently breathalyzed.

This is the problem, the officer never observed the actual control element in his presence; and the citizen never observed the signs of impairment in his presence; thus, there was no completed offense without the other. A citizen shouldn't be able to use collective knowledge from law enforcement to establish probable cause for a citizen's arrest, because the arrest should take place before law enforcement arrives. Collective knowledge has already been held to not apply in *Clarke* situations and even applies to what an officer learns from "concerned citizens."[9] It stands to reason, if actual knowledge is required, that a citizen also can't use some sort of collective knowledge in establishing probable cause to make a citizen's arrest. Surely the citizen does not have a greater scope in establishing probable cause than an officer. This is the issue the appellate court should address with respect to these types of citizen's arrests, which are being used to try and circumnavigate the *Clarke* decision. Can the citizen use the officers' observations to develop probable cause for an offense which occurred outside the citizen's presence, but inside the presence of law enforcement?

Both the citizen and the officer have no knowledge without the other. The citizen obviously observed actual physical control, but at best only had a hunch on the impairment issue. On the citizen's side they did not have the required actual knowledge of impairment, so there was no completed offense in their presence under I.C. § 18-8004. On the other hand, the officers never witnessed the actual physical control of the vehicle but investigated the impairment portion of the offense upon the citizens observations. Just like two wrongs cannot make a right, here the citizen and the officer must add their knowledge together to equal a completed misdemeanor. It's required, on misdemeanors, that the person making the arrest must have actual knowledge of the completed misdemeanor occurring "in their presence," at the time they make the arrest. The key takeaway is that a citizen must have knowledge of all the elements *before* summoning law enforcement, *not after* law enforcement investigates the misdemeanor DUI. Additionally, the officer must be summoned to assist in the arrest and not solicit the citizen to make one so that he can investigate a possible crime.

Encouraging Against a Citizen's Arrest Is the Best Policy

It's no secret that trust in our criminal justice system may be at an all-time low. Law enforcement, prosecutors, and magistrates are in a unique position to reestablish trust in our system, but only if they choose to uphold the "in the presence" requirement, for officers and citizens alike. The cause of the distrust stems directly from a lack of transparency and accountability populating the criminal justice system. The image of the judiciary needs to be rebuilt stronger than before, but countenancing citizen's arrests, which are potentially unlawful, is not a good way to rebuild it.

When an officer chooses to shortcut the *Clarke* warrant requirement by seeking a citizen to make an arrest on a DUI, it's a waste of resources for everyone in the court system. Time is our most valuable and precious commodity. When an officer pushes through an otherwise unlawful *Clarke* arrest by justifying it was a "citizen's arrest," it clogs an already busy calendar. In most cases, an attorney for the accused will file a Motion to Suppress, causing a notice of hearing to be drafted by the clerk, a brief to be drafted, read, and argued by the parties, and a judge to carefully decide the application of the law to the facts. Ultimately, the only benefit will be to the officer who may be getting paid double time for testifying in court.

Magistrates are also often frustrated when the citizen's arrest is used in DUI cases. Rather than seeking a warrant, the prosecutor bypasses the judge resulting in a possible suppression by him of a otherwise actionable offense. Officers and prosecutors often forget, magistrates are uniquely qualified to determine probable cause. Some prosecutors may fear waking up a judge in the middle of the night to obtain a warrant on a DUI case. But they shouldn't fear anything. Using a magistrate to determine probable cause may result in a stronger case for the prosecutor since probable cause was already determined. Bypassing a magistrate's discretion to avoid inconveniencing them, may create a problem which is then reviewed again by the magistrate on suppression.

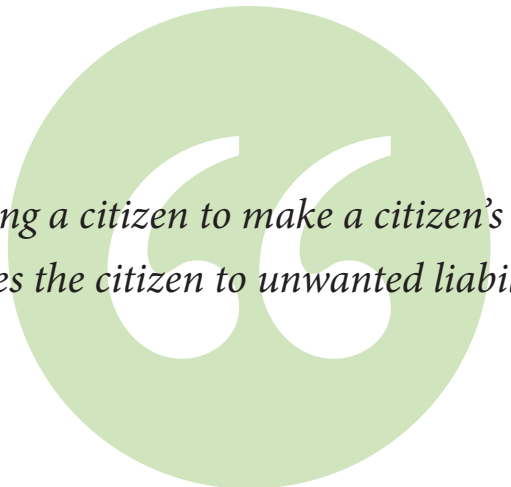
Generally, most citizens first discover there were strings attached to their citizen's arrest, when they receive a court ordered invitation to attend the suppression hearing. One of the most common fears of any person is public speaking. In citizen's arrest cases, the citizen is hauled into court in front of a potentially grumpy magistrate, a nervous prosecutor, and a furled brow defense attorney, before providing testimony they may have no actual knowledge of. This unintended surprise does not inspire trust in the judiciary and it's not anyone's idea of a good time. Rest assured that citizen will then go and tell their family and friends about the awful experience in the courtroom.

What Are the Specific Dangers of Enabling and Encouraging Citizen's Arrests?

A citizen who makes an unlawful arrest outside their presence faces potential civil litigation, as well as criminal charges themselves such as, false imprisonment, battery, assault, kidnapping, etc. Allowing a citizen to make a citizen's arrest exposes the citizen to unwanted liability, often without informing them properly of the possible consequences if they unlawfully arrest. We know most citizens are unfamiliar with the elements of an offense, the requirements to make an arrest and specifically the "in the presence" requirement. The citizen makes a very costly gamble every time they are asked to make an arrest. Additionally, the officer could face potential liability as well for his role in encouraging or enabling the conduct. The Idaho Supreme Court warned in *Sutterfield*…

> "We caution everyone that a citizen's arrest should not be taking lightly. Failing to adhere to statutory requirements, using more force than is reasonably necessary, and abusing the power can subject the citizen to criminal and civil liability…."

When an officer solicits or encourages a citizen to make an arrest, the citizen pays the price when they are wrong because they assume all the risk and obligations to that arrest. If a citizen doesn't observe the crime(s) "in their presence" and is encouraged, solicited, or scapegoated by an officer to make an arrest, the citizen maybe liable for false arrest, assault, battery, kidnapping, or false imprisonment. Unlike the officer, a citizen has no immunity. Under the Idaho Tort Claims Act, the citizen can be sued for false arrest, assault, battery, wrongful imprisonment, defamation, or intentional infliction of emotional distress.[10] Additionally, the officer himself may arguably face some liability



Allowing a citizen to make a citizen's arrest exposes the citizen to unwanted liability ...

for encouraging or soliciting a citizen to make an arrest on his behalf to investigate a crime.

When officers encourage or surrogates the citizen to make an arrest outside their presence for the purpose of investigating a crime, the officer may lose his qualified immunity. Under 42 U.S.C. § 1983 immunity can be overcome if the "state agent" under the color of law violates the constitutional rights of another. If any person acts "with the intent to assist the government in its investigatory or administrative purpose" the protections of the Fourth Amendment are triggered by that individual.[11] A citizen could be in effect a "state agent" if their intention is to assist in the investigation of a suspect, a job traditionally carried out exclusively by law enforcement. This means immunity could arguably be taken away from the officer who solicits this arrest. A sound practice may be for prosecutors to strongly discourage police departments from participating in such arrests because it could pose potential liability for their counties.

Examples in Idaho

Last year, the East Idaho News reported in Bonner County, a $1.5 million-dollar lawsuit was filed against a county commissioner because a local citizen made "threatening emails" toward him in a public forum. The commissioner summoned the police to effectuate the arrest, only to have the arrest be held unlawful.[12] Bonner County taxpayers were ultimately responsible for paying $200,000, all because the commissioner's mistake of effectuating a "citizen's arrest." While that case did not involve a DUI, it illustrates the problem.

Unfortunately, I have already seen it locally here in Caldwell, Idaho. In 2021, we had (or have) a *Citizen Police Academy* put on by the Caldwell Police Department. This academy states it provides "training similar to that of an actual police officer…" and allows a "firsthand look at what rules, regulations and policies the police follow." I don't know if this program is disguised as a citizen's watchdog group or if it is a very on-hands recruiting program. In my opinion this is a dangerous way to spend taxpayers' dollars. Citizens who may be forming "watchdog" groups who are ill-equipped, untrained, but empowered may be a dangerous thing. Will programs like this help or hurt Idahoans in the long run?

> *My biggest fear is that we are using these DUI citizen's arrests for short-term gains, which will inevitably lead to long-term losses.*

My biggest fear is that we are using these DUI citizen's arrests for short-term gains, which will inevitably lead to long-term losses. Using citizen's arrests in such a cavalier manner will necessarily lead to an encouragement for litigation against the citizens who choose to make these arrests. Perhaps, in the future, some law firms will even specialize in personal injury suits resulting from citizen's arrests. Meanwhile, our unwitting friends and family who participate in these arrests may ultimately pay that price.

An Easier Solution to Your Next DUI *Clarke* Case Involving a Citizen's Arrest

"If the tractor ain't broke, don't fix it." The Idaho Supreme Court in *Clarke* already gave all of us great advice on our next DUI *Clarke* case. The advice is simple, safe, but effective. Get a warrant or issue a summons! Let's not reinvent the wheel with citizen's arrests. Speaking as a defense attorney, there's no need to go down that road. If a warrant is issued by a neutral and detached magistrate, it's far more difficult to win on a suppression issue. Magistrates are uniquely qualified to handle issues of probable cause, and warrants can be obtained quickly, easily, and even telephonically. In Idaho, we have a unique opportunity to be better and not make the mistakes of other jurisdictions.

Every lawyer I know wants a better and safer Idaho. I believe Idaho is a great state; but I think we all can agree, it can be ruined quickly. Idaho is still a place where well-meaning prosecutors and patient magistrates can make big differences, whatever their geographical location. I encourage magistrates and defense attorneys to confront these issues when they arise and uphold the "in the presence" requirement for both citizens and law enforcement. I hope prosecutors are able to adequately train police officers on the issues of *Clarke* and citizen's arrests and discourage this practice. If we all educate ourselves on the "in the presence" requirement, I believe with growing pains we can make a better and safer Idaho for now and the future.

Travis E. Rice *is the first member of his immediate family to go to college. Mr. Rice obtained a B.S. degree from Brigham Young University-Idaho, before attending and graduating from the University of Idaho's College of Law in*

2015. Upon graduation Mr. Rice volunteered for the Idaho State Bar's Idaho Volunteer Lawyer Program to gain general experience prior to opening his own solo criminal defense practice in Caldwell, Idaho in 2017. Mr. Rice's practice slowly evolved into a more general practice with a focus on criminal defense. Mr. Rice currently practices in Ada, Canyon, Adams, Elmore, Payette, and Owyhee counties, has been married to his lovely wife for 16 years, and has four very active boys to keep up with.

Endnotes

1. *State v. Clarke*, 165 Idaho 393 (Idaho 2019).

2. *See State v. Sutterfield*, 168 Idaho 558 (2021).

3. *Idaho Code* § 18-8004 requires the establishment of actual physical control on any DUI charge. This is defined as "being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving."

4. *State v. Bell*, 172 Idaho 451 (2023).

5. *Id.*

6. A "public offense" includes a misdemeanor. *Sima v. Skaggs Payless Drug Center, Inc.*, 82 Idaho 387 (1960).

7. *See State v. Sutterfield*, 168 Idaho 558 (2021); *State v. Moore*, 129 Idaho 776 (Idaho Ct. App. 1997) holding a citizen may use their senses to determine if an element of an offense has been committed in their presence.

8. *See State v. Sutterfield*, 168 Idaho 558, 562, 484 P. 3d 839, 843 (2021); *State v. Moore*, 129 Idaho 776 (Idaho Ct. App. 1997) holding a citizen may use their senses to determine if an element of an offense has been committed in their presence.

9. *State v. Bell*, 172 Idaho 451 (2023).

10. *See Idaho Tort Claims Act*, Idaho Code § 6-901-6-923.

11. Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912 (9th Cir. 2001).

12. https://www.eastidahonews.com/2024/12/an-idaho-county-apologizes-to-man-put-under-citizens-arrest-at-commission-meetings/; https://www.spokesman.com/stories/2025/jan/02/bonner-county-settles-and-apologizes-to-second-man/.

LawPay®

+

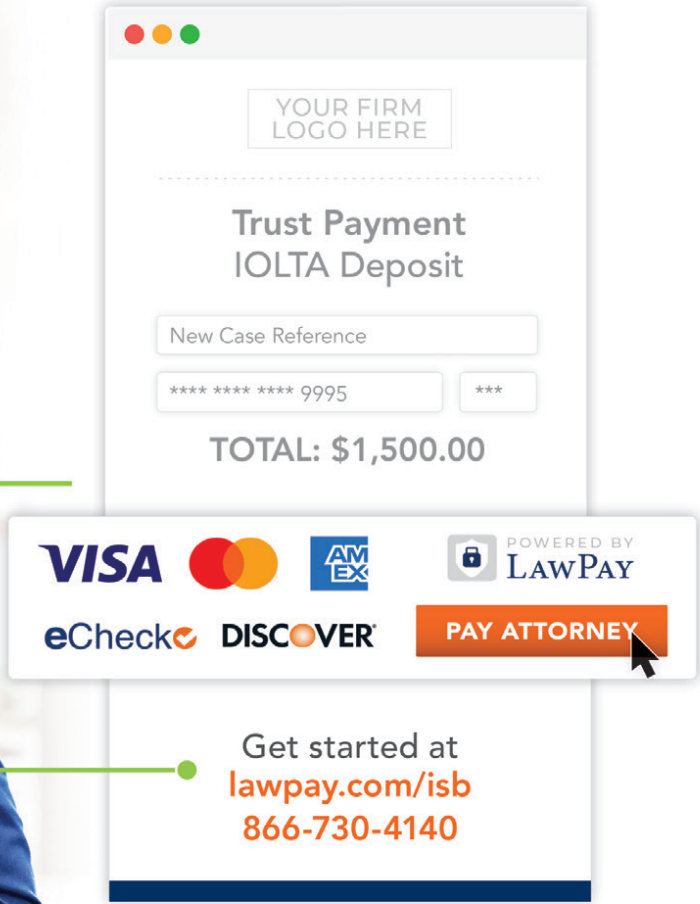
ISB
IDAHO STATE BAR

Member
Benefit
Provider

> **I love LawPay!** I'm not sure why I waited so long to get it set up.
>
> *– Law Firm in Ohio*

Trusted by 50,000 law firms, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

- **22% increase in cash flow with online payments**
- **Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA**
- **62% of bills sent online are paid in 24 hours**



Get started at
lawpay.com/isb
866-730-4140

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered ISO of Synovus Bank, Columbus, GA., Fifth Third Bank, N.A., Cincinnati, OH, and Wells Fargo Bank, N.A., Canadian Branch, Toronto, ON, Canada.

Idaho Women Lawyers thanks the following sponsors for their generous support of the 2025 IWL Member Retreat

DUKE EVETT PLLC
ATTORNEYS AT LAW

IdahoTrustBank

Stoel Rives LLP

PARSONS BEHLE & LATIMER

HAWLEY TROXELL
Attorneys & Counselors

University of Idaho
College of Law

ISB IDAHO STATE BAR
Fourth District Bar Association

ELAM & BURKE
ATTORNEYS AT LAW

MILLER NASH LLP

BAILEY GLASSER LLP

DEPOIDAHO

ISB IDAHO STATE BAR
First District Bar Association

GFH GJORDING FOUSER HALL
ATTORNEYS AT LAW

Perkins Coie

Simplot

ISB IDAHO STATE BAR
Real Property Section

JANE GORDON LAW
YOUR LOCAL INJURY LAWYER

FHBH
FISHER HUDSON BROWN HORTON

ISB IDAHO STATE BAR
Health Law Section

IDAHO POWER
An IDACORP Company

m MOSSMAN
LAW OFFICE

IDAHO WOMEN LAWYERS
-1986-

ISB IDAHO STATE BAR
Fifth District Bar Association

MacMaster Law PLLC

Our customers are talking about us.

"The convenience is favorable, and the ability to forge friendships with your reporting agency is an added bonus! It takes a village."

"YOUR CUSTOMER SERVICE is FIVE STAR ★★★★★"

"I would rather use a local court reporter for convenience and keeping the business in the Treasure Valley."

"I chose Depoldaho as my go-to court reporting agency because of their exceptional reliability, availability, and quick response times. I can always count on them to meet my needs, ensuring everything runs smoothly and efficiently every time."

"Your team is fantastic and wonderful to work with."

"Your invoices do not have any unexpected fees."

"You provide a personalized touch that other agencies do not."

"You always respond to me promptly and you can take care of pretty much any request I ask of you with regard to out of state court reporting agencies."

"Our accounting department said your fees are very reasonable in comparison to other court reporting agencies."

"Our firm has been using Depoldaho (fka Tucker & Associates) for many years. The service from Depoldaho is second to none. Annie is always right on top of things, ensuring we have a qualified reporter whenever we need one and the transcripts are always delivered timely. That's the beauty of working with a local agency, especially a local agency that cares as much as Depoldaho. We have used other agencies in the past, but we will not change because what we have with Depoldaho is perfection. I know when I put in my request for a reporter with Depoldaho, it's going to get taken care of."

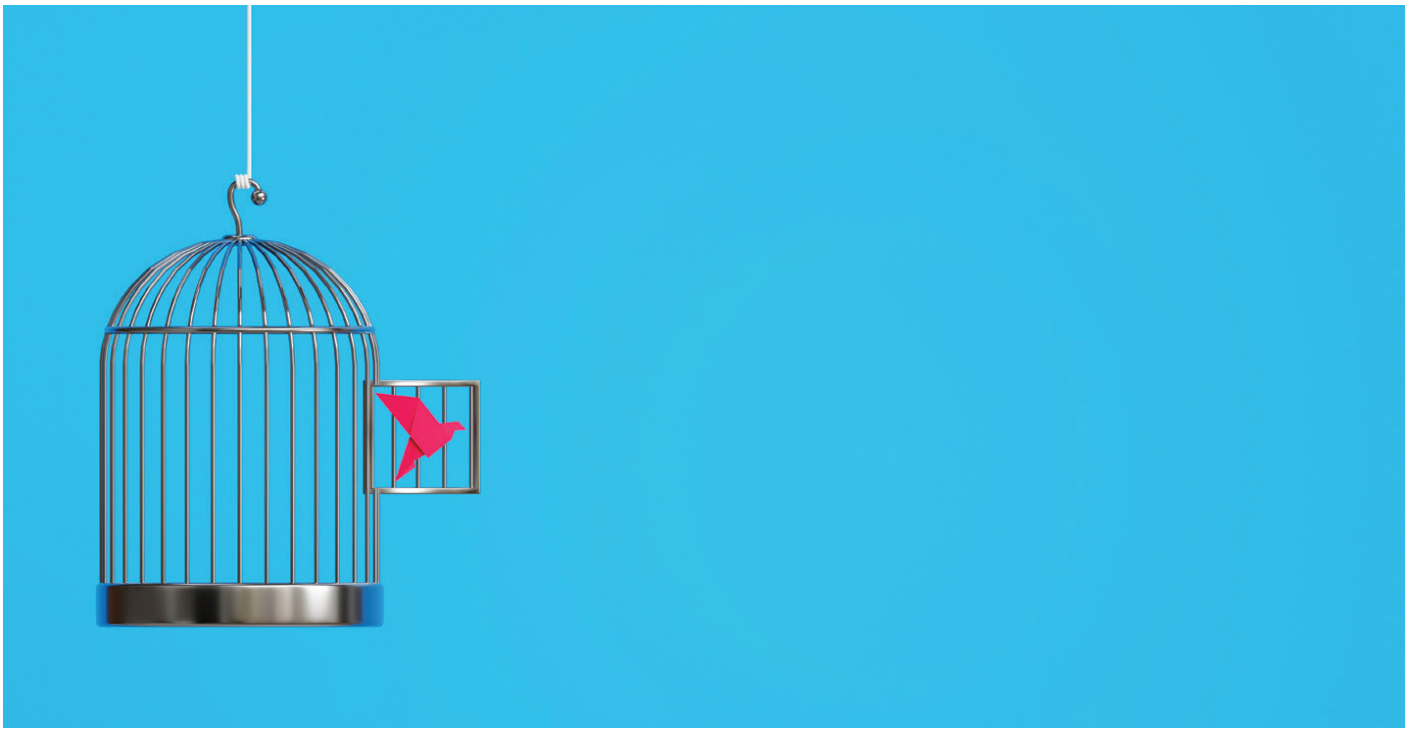
We are proud to provide exceptional and personal service.

DEPOIDAHO

Local Realtime Reporting & Videography Experts

depoidaho.com · 208-345-3704

Annie Nice | David Cromwell



Beyond the Criminal Sentence: How Understanding Parole Can Strengthen Criminal Defense Representation

Valeri M. Kiesig

Everyone involved in the criminal justice system should know the nuts and bolts of what parole entails. Why? Because every time someone receives an imposed prison term with any indeterminate time, they have been sentenced to the uncertainties of the parole process.

The Idaho Commission of Pardons and Parole is the prison gatekeeper. For those sentenced to indeterminate time in Idaho, it's the parole board that determines how many years the person must serve before being released to supervision in the community. This means the parole board has as much power over an incarcerated person's life as the sentencing judge does, and often more. Yet most attorneys understand little about the parole board or how it makes decisions. Which makes it difficult if not impossible to prepare clients for what will happen after a case closes and so too the prison gates.

This article has a simple aim: to educate attorneys about the parole process so they, in turn, can help clients understand how to set up the best possible chances of future parole. It proposes two ways to improve representation: first, by understanding the basic realities of parole, which should be clearly explained to our clients when discussing plea offers and sentencing. And second, by setting up the factual record and clarifying the sentencing judge's intentions so that both can benefit our clients later during the parole process.

The ideas in this article are the product of speaking with many who have faced the parole process as well as those loved

This means the parole board has as much power over an incarcerated person's life as the sentencing judge does, and often more.

ones and allies who have tried to assist them.[1] They describe shared experiences after sentencing—especially feeling scared, frustrated, and unprepared—conditions clear-eyed defense counsel might be able to improve.

Parole Basics: The Idaho Commission of Pardons and Parole

Idaho's Parole Commission operates as an autonomous body within Idaho's criminal justice framework. It deals with parole, parole revocation, commutation, and pardons.[2] The board consists of seven members appointed by the governor and confirmed by the senate for renewable three-year terms.[3] It's a lay-person board, meaning legal training and experience are not required, though several current board members come from law enforcement, and at least one judge served in the past, albeit briefly.

Whoever can serve is probably most limited by time and pay. Parole hearings are held approximately 10 to 15 days per month,[4] with three of the seven commissioners presiding over a day of regular hearings.[5] Each board member is compensated just $300 per day.[6] But each parole application requires major work before the hearing—reviewing support materials, risk assessment scores, Idaho Department of Corrections ("IDOC") records, case materials from the Presentence Investigation ("PSI"), etc. Commissioners don't get paid for any of that work. Nor do they get any paid training, aside from what can be accomplished at the Commission's annual meeting.

The Governor appoints an Executive Director of the Commission, who oversees paid staff.[7] Christine Starr, former Chief of Staff at IDOC, recently took over the role. Starr has big plans for improving transparency and systematizing decision making, but the scope of those plans will be shaped by the legislature's willingness to fund it.

People Sentenced to Prison Get a Lot of Bad Information About Parole (Even from Very Good Attorneys)

The best way to improve a client's chances at parole is to combat misinformation when explaining possible sentences during plea negotiations and sentencing preparation. The following are some examples of common misconceptions and important things to know.

1. Idaho has no presumption of parole.

Many attorneys incorrectly assume that, absent a disciplinary violation, someone sentenced to prison will not do more than their fixed time. If you take nothing else away from this article, hear this: there is no presumption of parole in Idaho. What might have seemed like a great outcome

The Parole Hearing Process

Most people nearing the end of the fixed portion of their sentence will move through the parole process outlined here. It is an administrative process, which occurs without any direct relationship to the criminal case. Although people nearing parole eligibility can retain an attorney to assist them, most proceed to their hearings relying on the assistance of their case managers and the shared experiences of others.

1. **The parole packet:** Between six and nine months before a person's parole eligibility date, they should receive a parole packet from their IDOC case manager, which asks about family, substance, and criminal history as well as the circumstances of the crime for which they are in prison and why they "deserve" parole. The written answer for this last question is forwarded to the parole board.
2. **The pre board interview:** About two months before parole eligibility, a parole commission staff person conducts a phone interview based on the written packet. These interviews vary in tone and length depending on the assigned interviewer. This interview will be far more in depth than the parole hearing. However, the interviewer will not make any recommendation to grant or deny parole. A summary of the proceedings will be forwarded to the parole board.
3. **The parole guidelines worksheet:** At the pre board interview, the hearing officer should provide the parole guidelines worksheet, which scores an applicant between 0 and 20 based on several factors including severity of the offense, risk assessments, Disciplinary Offense Reports ("DORs"), and programming. Many of the factors are static, but some can be improved over time. A score of 8 or below is considered the golden zone for parole, but parole can be granted to those with higher scores.
4. **The board appearance:** Before a person's parole eligibility date, they will appear before at least three members of the parole board by Webex for an interview and an immediate oral decision on whether parole will be granted or denied.[8] If parole is granted, the board may apply conditions, possibly including programming which must be completed before release. If parole is denied, the board will determine how long until the person will again be parole eligible. There is no written decision. Cursory meeting minutes are available by public records request.

at sentencing—a short, fixed term with a long indeterminate tail—could become a very long prison sentence. And for the person living it, the time until they see parole will be barbed with uncertainty.

Worse, defense counsel often doesn't convey that reality when explaining a sentence (maybe because they don't know themselves). I wrote to several people to ask what they understood at sentencing versus after they got to prison about the time they might serve, and each agreed to let me reproduce their words alongside their fixed and indeterminate time, though names have been withheld.

> "I was told I wouldn't do a day over my fixed time. I wish [my attorneys] had been more forthright about how much this whole process basically never ends[.] That's been the hardest part on all of us frankly, the CONSTANT unknowns that never ever end."
> - *Parole eligible in 2026. Sentenced to three years fixed and 17 years indeterminate.*

> "I didn't know you could get flopped and denied parole. I didn't know it was so easy to not get parole. I was expecting to only do a couple of years. I was blown out of the water when I got here and got settled. I wish I would have known a lot more. I never would have taken the [plea] deal."
> - *Lost over five years of probation after violations. Sentenced to four years fixed and four years indeterminate. Paroled at the end of fixed time.*

> "My son was sentenced to 15 years in prison with two years of that time fixed. I was told he had a two-year prison sentence."
> - *Son paroled initially after serving two years of fixed time. Returned to prison less than a year later on technical violations and parole was revoked. Recently paroled after serving an additional two years, including one denied request for parole.*

Idaho Code § 20-1005 and Idaho Administrative Procedures Act ("IDAPA") 50.01.01.250 provide the parole commission with wide discretion to determine whether granting someone parole would be "in the best interests of society" and whether "the commission believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen."[9]

While it's possible to guess how the Commission will see things, nothing is certain, especially when there is no telling what details might capture a commissioner's attention in the hearing.

The unpredictable nature of the hearing itself (something Starr, the Commission's new Executive Director, hopes to improve by systematizing procedures) is stressful. Even someone who believes they have a strong parole application might be unprepared to manage an interview in which they are, for example, confronted with unproved facts from a police report they disagree with. Disagreement might be viewed as a failure to take responsibility and grounds enough for denying parole.

2. Idaho does not have a presumption *against* parole.

Inside Idaho's prisons, our clients trade pessimistic rumors about parole. Other residents, correctional officers, and even case managers may insist, incorrectly, that parole probably isn't going to happen. Some say no one gets parole the first time up. Others say no one gets parole until they have served one-third of their total time. There are other variations of these theories. All might sound somewhat legitimate. But all are wrong. Here is what two people I spoke with had to say about their experiences. (Again, names have been withheld).

> "When I arrived at prison I started being bombarded with information from other residents and staff, all of it different and conflicting. Board is evil, board is fair [...] It was a shitshow. [...] There are actually many case managers who don't fully understand the system and how it works, saying that residents get 'flopped for no reason' all the time."
> - *Parole eligible in 2026. Sentenced to 3 years fixed and 17 years indeterminate.*

> "I met a couple of real people in the prison, not just fake friends. Almost everybody else will try to steer you in the wrong direction. Once someone gets into prison they'll realize it. People are really good at acting. They'll give you wrong information just because they want you to fail. Listen to your case managers."
> - *Paroled after serving 25 years fixed. Sentenced to 25 fixed and life indeterminate.*

People I spoke with cycled through despair, sometimes believing there was no point in even trying to make a good case for parole. They might not focus on classes or certifications or prison jobs or making plans for release, or they might get caught up in prison violence (and sometimes can't help but get caught up in violence)—all of which might lead to parole being denied.

3. The Commission follows patterns in granting and denying parole.

Besides combatting misinformation, defense counsel can help prepare people heading to prison and eventual parole hearings by underscoring what matters to the Commission.

IDAPA 50.01.01.250.01(c) outlines some of the factors to be considered in determining the merits of a parole application. Many of these deal with facts that can't be changed, like the nature of the crime, mitigating factors, criminal history, or past performance on supervision. But other factors concerning how time was served in prison can be shaped, namely by exhibiting good institutional behavior and demonstrating pro-social behavior.

Institutional behavior includes completing required programming and remaining free of disciplinary violations. This can seem a little arbitrary to inmates. Sometimes, and on some prison tiers especially, violence might be necessary to stay safe. Other times, DORs are handed out for relatively small conduct, like covering a window, or contributing ingredients to someone else who was

brewing alcohol. But, regardless of circumstances, if a DOR has been sustained any time in the previous year (and the standard for sustaining a DOR is low: "some evidence"[10]) then parole could be denied until at least a year from the date of the violation. For anyone with future parole on the line, fighting a bad DOR through the prison's procedures and in accordance to its timelines is critical.[11]

Similarly, programming completion is usually a prerequisite for parole, but it isn't always possible. Especially since COVID, not all programming is available at every institution or every security classification. One person I spoke with was housed at the maximum-security prison ("IMSI") for four years where the class he needed was not offered. He was ineligible for a transfer because of his security classification.

There is ongoing discussion about whether some parole applicants could be allowed to do programming upon release as a condition of their parole. But for now, a failure to complete programming, even when it is unavailable, is often a bar to release.

This is an added reason to avoid violence if possible and safe to do so. Like DORs, a failure to complete programming even due to unavailability can result in parole denial after denial.

Defense Counsel Can Help Someone's Parole Chances Before They Leave the Courtroom

1. Make a good record of the sentencing judge's intentions.

Aside from the sentence itself, the commissioners considering a parole application do not generally know what happened in a sentencing hearing. If the judge expressed, directly or indirectly, an expectation that a defendant who served their sentence well would be released to supervision after the fixed time, the parole board will not know that. Nor may the court be aware how important a clear expression of those intentions might be to helping the commissioners weigh a person's release.

The sentencing judge will in many instances have had far more time than the parole commissioners to weigh the facts of the case, mitigation, the protection of society, and rehabilitation...

As a judge will inform someone headed to prison, imposing a prison term necessarily means that jurisdiction is transferred to IDOC, and the court has no ongoing authority over how the sentence is carried out. But that doesn't mean the court's perspective isn't of considerable value. The sentencing judge will in many instances have had far more time than the parole commissioners to weigh the facts of the case, mitigation, the protection of society, and rehabilitation—all factors the commissioners are also directed to weigh.[12]

Especially in difficult cases—murder, child abuse, child pornography, or sex cases—a relatively short, fixed time might signal the court's belief in the defendant's possible rehabilitation. In other situations, a court might acknowledge important mitigation.

All this is useful to someone eventually headed to a parole hearing if those ideas are preserved in the record at the sentencing hearing. Not everyone will be safe keeping a copy of the sentencing transcript with them in prison, but you can explain how a client can get a copy of that information when their parole process begins. And right after sentencing, while the case is still fresh in the mind, defense counsel can write a letter that represents what occurred at sentencing and quotes relevant parts of the sentencing memorandum and sentencing hearing transcript.

2. Beware of unproven facts in the PSI.

When reviewing the PSI, it's important to know that the parole board will review this information when preparing to interview someone applying for parole. The PSI will be used in both the lengthier pre-board telephone interview and in the parole hearing itself.

The pre-board interviewer or commissioner might delve into alleged facts from police reports or victim statements which may never have been proved and might be wrong. But everyone facing parole knows that people who don't take responsibility may be denied. It is an ethical bind—whether to admit to untrue facts because the questioner believes doing otherwise is shirking, or to push back and risk serving more time.

Defense counsel can help in the same two ways described previously: make a clear record at sentencing, especially if there are possibly damaging but dubious factual assertions in the PSI, and write a letter for your client while the case is fresh. A letter from a defense attorney doesn't necessarily need to advocate for future parole. Instead, it can offer the parole commissioners assistance in clarifying the facts, which puts your client on stronger footing to stand by those facts.

3. Beware of messy cases with inaccurate records.

Some of the most snarled parole hearings happen when someone has been in and out of IDOC custody and has myriad experiences on probation and parole, sometimes with a variety of alleged violations. Just because an allegation was unproved doesn't mean a parole applicant won't be asked about it.

In one recent case, a client who had interstate compacted on parole to Arizona was assigned to a parole officer who, based on his underlying crime, told him it was his mission to get him returned to prison—and he did. The records that followed him back to IDOC were rife with errors. For example, the record contained the probation officer's assertion the client had been using drugs, but it did not contain the client's random UAs, which had all been negative. Nor were there records that he'd completed treatment and passed required polygraph tests.

Gathering corroborating records can be difficult, especially from prison. Which is all the more reason to make sure our clients understand at the outset potential problems in these documents because gathering contrary evidence will take time.

Improving Criminal Defense Practice Means Preparing Clients for the Parole Process

Better criminal defense accounts for the lived experiences our clients go through. The pretrial and trial process is often disjointed from the sentencing phase. A person sentenced to prison then must adapt to life inside, governed by IDOC. And then they must pivot again and ask for release from the parole commission—another legally distinct body.

But each of our clients is still one whole person, who is trying to bend to accommodate each phase as demanded in hopes of a future beyond prison. We cannot pretend, as we help a client decide about a plea offer or help them get ready for sentencing, that the client's parole prospects will take care of themselves. Clients must know what their plea agreements and sentences will mean for their lives, and that means they must understand how parole actually works in Idaho.

Criminal defense lawyers, for our part, must therefore know not just how parole works, but we must also be able to explain it in plain terms, and to counsel and advise our clients as they make the decisions in their criminal cases that will return to haunt or help them during the parole process—years, if not decades, later.

Valeri M. Kiesig *is an attorney at Nevin, Benjamin & McKay, where she defends people against a variety of criminal allegations and assists incarcerated individuals seeking parole. She also serves as vice-president of the board of the Federal Defender Services of Idaho. Prior to becoming an attorney, Valeri was English faculty at the College of Western Idaho for several years as well as a public health epidemiologist for the New York City Department of Health. She holds a J.D. from the University of Idaho where she graduated summa cum laude and was editor-in-chief of the Idaho Law Review, as well as an M.F.A. from the Iowa Writers' Workshop and an M.P.H. from Columbia University. She grew up in Idaho.*

Endnotes

1. In writing this article, I drew on discussions with Craig Durham and Ritchie Eppink about how criminal defense attorneys might help their clients to face parole, and both provided valuable comments and feedback on this article.

2. Idaho Code § 20-1004(1); I.C. § 20-1016.

3. Idaho Code § 20-1002(1) – (3).

4. Access Idaho, Home, Commission of Pardons & Parole, https://parole.idaho.gov/ (last visited Apr 23, 2025).

5. Idaho Code § 20-1002(7).

6. Idaho Code § 20-1002(8).

7. Idaho Code § 20-1002(9).

8. If only three board members are present, the decision must be unanimous. Split decisions by the three-person board will be passed to the full board, which meets quarterly. A decision by the full board requires a majority vote of four commissioners. Idaho Code § 20-1002(7); IDAPA 50.01.01.200.07.

9. Idaho Code § 20-1005(5); IDAPA 50.01.01.250.01.

10. IDOC Standard Operating Procedure 318.02.01.001 (v. 6), "Disciplinary Procedures for Inmates," p. 6-7.

11. *See* IDOC Standard Operating Procedure 318.02.01.001 (v. 6), "Disciplinary Procedures for Inmates."

12. IDAPA 50.01.01.250.01.

IDAHO'S FIRST ANNUAL

FOOD FROM THE BAR

SUPPORTING **THE IDAHO FOODBANK**

Thank you to the legal community of Idaho for coming together and make a difference for those facing food insecurity. This campaign of friendly fundraising and volunteering helped raise awareness for food insecurity in Idaho and enabled The Idaho Foodbank programs to continue providing nutritious food statewide.

To learn more or get involved next year: idahofoodbank.org/bar

A SPECIAL THANKS TO THIS YEARS SPONSORS

HAWLEY TROXELL Attorneys & Counselors

THIRD DISTRICT BAR ASSOCIATION

Powers Farley PC

JANE GORDON LAW

MILLER NASH LLP

THORNTON & BYRON LLP

JUSTICE JIM JONES

MOSSMAN LAW OFFICE

TYREE BAUER BALDNER

IDAHO WOMEN LAWYERS

THOMAS MCCABE

MOONEY WIELAND WARREN

FOOD FROM THE BAR

2025 Idaho Mock Trial Champions, The Ambrose School.

Law Related Education Wraps Up 2025 Idaho High School Mock Trial Competition

Carey A. Shoufler

The Idaho Law Foundation's Law Related Education Program hosted its annual High School Mock Trial State Championship from Tuesday to Thursday, March 11th to 13th. This year, students explored a criminal case that centered on the defendant, Jesse James O'Malley, intentionally aiding and abetting murder in the first degree by encouraging Mistic Garcia to kill and murder Declan O'Malley.

For 2025, 252 high school students from 41 teams registered to participate in the mock trial competition. 128 teachers, judges, attorneys, and other community leaders donated their time to serve as coaches, advisors, judges, and competition staff.

This year, 16 teams advanced to state, from regional competitions held in Coeur d'Alene and Boise. These teams participated in four rounds of competition on Tuesday and Wednesday at the Ada County Courthouse with the top two teams facing off for the state championship at the Idaho Supreme Court on Thursday morning. The following schools participated in Idaho's state tournament:

- The Ambrose School (Meridian, two teams)
- Boise High School (two teams)
- Centennial High School (Meridian)
- Greenleaf Friends Academy (A Team)
- Lewiston High School
- Liberty Charter School (Nampa, B team)
- The Logos School (Moscow, two teams)
- Mountain Home High School (A team)
- Renaissance High School (Meridian, two teams)
- Richard McKenna Charter (Mountain Home)
- Timberline High School (Boise)
- Troy High School (A team)

The following teams placed in the top five for Idaho's state tournament:

2025 State Champion: The Ambrose School (A Team)
State Runner Up: The Logos School (B Team)
Third Place: Mountain Home High School (A Team)
Fourth Place: The Logos School (A Team)
Fifth Place: The Ambrose School (B Team)

Mock trial team members who played roles as attorneys and witnesses had the opportunity to be recognized for individual awards. For each trial through four rounds of competition, each judge had the opportunity to select the students they believed gave the best performances for the trial. The top witnesses and attorneys for the 2025 competition include:

Top 10 Attorneys:
Samara Steele (Liberty Charter)
Jude Sprute (Boise High)
David Henreckson (Logos School)
Katelynn Moore (Troy)
Kyla Powell (Liberty Charter)
Ella Doyle (Greenleaf)
Samara Coleman (Ambrose)
Taylor Riggs (Greenleaf)
Ean Gauthier (Mountain Home)
Carolyn FitzGibbons (Ambrose)

Top 9 Witnesses:
Marigold King (Ambrose)
Graham Jones (Lewiston)
Reese Quarterman (Boise High)
Fiona Bothwell (Ambrose)
Ashlyn Strunk (Troy)
Jazmine Rooke (Troy)
Patrick Christopher (Timberline)
Haiden Hiller (Greenleaf)
Ava Gin (Logos School)

As part of the state competition, Idaho's Mock Trial Program, in partnership with the Idaho State Bar Professionalism & Ethics Section, developed the Civility & Ethics Award, created to highlight the importance of civility and professionalism among teams participating in mock trial. During the state competitions teams observe and interact with each other and submit their nomination for the award. For 2025, Greenleaf Friends Academy was chosen by the other teams as the recipient of this year's award.

Idaho's mock trial program also hosts a Courtroom Artist Contest as part of the program. In 2025, 11 courtroom artists participated in the contest. Artists observed trials and submitted sketches that depict courtroom scenes. The top three entries for 2025 were:

First Place: Emma Meyers, Renaissance High School
Second Place: Charlie Hamblack, Boise High School
Third Place: Sylvia Olvalle, Greenleaf Friends Academy

This year, for the first time, we hosted a Courtroom Journalist Contest as part of the program. In 2025, three courtroom journalists participated in the contest. Journalists observed trials from the perspective of a news reporter. They wrote articles reporting on their observations during the second round. The top three entries for 2025 were:

2025 Winning Courtroom Artist Entry, Emma Meyers, Renaissance High School.

2025 Civility & Ethics Award Winner, Greenleaf Friends Academy. Photo credit: Carissa A. Carns.

First Place: Nora Lafferty, Timberline High School
Second Place (Tie): Taylor Jackson, Timberline High School
Second Place (Tie): Grayson Williams, Boise High School

The winning entry is printed at the end of this column.

The Ambrose School will represent Idaho at the National High School Mock Trial Championship in May in Phoenix, Arizona. Emma Meyers will represent Idaho in the National Courtroom Artist Contest while Nora Lafferty will represent Idaho in the National Courtroom Journalist Contest.

The Idaho Law Foundation's Law Related Education Program would like to thank the sponsors and volunteers who helped during the 2025 mock trial season. We couldn't do our important work without your support.

Plans will soon begin for the 2026 mock trial season. For more information about how to get involved with the mock trial program, visit idahomocktrial.org or contact Carey Shoufler, Idaho Law Foundation Law Related Education Director, at cshoufler@isb.idaho.gov.

For 30 years, **Carey A. Shoufler** *has worked in education and communication in an array of settings. In her current role, Carey has spent the last 17 years working as the Law Related Education Director for the Idaho Law Foundation. Carey utilizes her experience as an educator to provide leadership and management for a statewide civic education program. She obtained her bachelor's degrees in English literature from Mills College in Oakland, California and her master's degree in instructional design from Boise State University. A native Idahoan, Carey returned to Boise in 1999 after working for 13 years as a teacher and educational administrator in Boston. When not working, Carey likes to walk her dogs, knit, read, bake pies, and spend time with her grandchildren.*

Read the winning Courtroom Journalist entry from Nora, Lafferty, Timberline High School.

***State of Idaho v. Jessie James O'Malley* Case Awaits Jury Verdict**
Boise, ID – March 12, 2025

Burley Resident Jessie James O'Malley awaits a verdict for crimes committed nearly 8 years ago. In a Cassia County trial held this afternoon, Jessie O'Malley is being prosecuted by the State of Idaho on account of aiding and abetting in the murder of Declan O'Malley in the first degree.

Jessie O'Malley, the defendant, is a practicing attorney in Burley, Idaho. He graduated from Yale Law School and had moved from Connecticut back to Idaho where he had grown up. The reason for this moving back would be because of student debt, and Burley seemed the best place to return, as his family had lived there as well. There he lived on the O'Malley farm, along with siblings Declan, Tully, and his mother Maeve O'Malley. Not long after he had moved in, Maeve O'Malley had unfortunately passed away. With her passing, in her wake was left the $12 million dollar estate of the O'Malleys. With this sum of money, Maeve had originally planned for the executor of the estate to be in Jessie's name. However, Declan O'Malley felt differently. Before Maeve had passed, she changed the executor to Declan. Tully O'Malley, sister of both Declan and Jessie, testified that "Declan wanted to keep the farm but Jess wanted to sell it. Jess needed the money." With this, the dispute between the two began. Jessie had testified, "We would not speak without an attorney present regarding the estate."

The night of November 25, 2017, Jessie and Declan had agreed to try and settle the issue of the estate. However, this issue would not be settled because Declan O'Malley was found dead the next morning. Declan had been found with a gun wound in his left shoulder, and what ultimately killed him was a broken neck, as he had fallen out of his two-story window. Unfortunately, at the time the case was opened, there was no evidence linking a culprit to the scene, and it was declared cold in 2021. However, the case was reopened in 2023, after Jessie's former coworker Mystic Garcia pled guilty to the murder of Declan O'Malley after being offered a plea deal. She confessed to shooting and eventually pushing Declan out of his window and ultimately causing his death. Although with Mystic's confession to the crime, there was still no evidence linking Jessie to the scene, as stated by Samir Slade, a former detective who was the first officer to arrive on the scene of Declan's death.

However, Rowan McGee, reporter and close friend of Declan, received information that linked Jessie to the case, and then submitted it to the Burley Police Department, where they began the investigation of Jessie O'Malley. Detective Francis Magumbo, who was assigned this reopened case, received Rowan's tip, depicting bitcoin transactions from an art company named "Le Finest Works D'Art" to Mystic Garcia, in payments of $12,500 incrementally over several months. These payments would eventually add up to $150,000 dollars. Garcia testified that "Jessie would deposit money into my bank account from the bitcoin transactions." Jessie had been linked to these transactions because of his name on the receipts from the art brokerage. Garcia, along with the transactions, stated that Jessie paid her that $150,000 to kill Declan. "I needed it. I thought of my daughter and I just took it."

With testimonies from witnesses, the jury still has yet to decide whether to declare Jessie O'Malley guilty or not guilty. As tension rose between the State and Defense, Prosecution argues that O'Malley without a doubt aided and abetted in the murder of Declan O'Malley because he may have wanted the estate money to pay off his debt. Defense argues that O'Malley did not aid and abet in the murder of Declan O'Malley, and it was simply a matter of family disputes; stated by the defense, "Family quarrels do not mean death", and the betrayal of his coworker, Mystic Garcia. Reports will continue as the jury discusses.

ACCESS TO JUSTICE

FUND 5K RUN&WALK

Lead Sponsor:
Fourth District
Bar
Association

Saturday
May 31, 2025
10 a.m. | Fort Boise Park

Registration Fees:
$25 Adult & Senior
$15 Youth (12 & Under)

Dog Friendly!

A Phoenix sunrise for the meeting. Photo credit: Jonathan Shirts.

ABA Midyear Report: Lawyers and the Rule of Law

R. Jonathan Shirts

"The first thing we do, let's kill all the lawyers."[1]

"Let me explain; no, there is too much. Let me sum up."[2]

I started writing this about six weeks after the ABA's Midyear meeting, and I've gone back and forth about what to discuss, so I'm starting off with Shakespeare and William Goldman, am going to veer into Hasidic Judaism, take a detour through history, and crash through blockbuster cinema before taking the off-ramp with Michael Jackson and hopefully end up making sense. About the only thing I'm sure of at this point is that no one reading this (including myself) is desperately hoping for a travelogue about an early-February trip to Phoenix. The weather was fantastic, the food was good, self-driving cars kind of freak me out, and the House of Delegates meeting was mostly uneventful.

As has become the recent norm, there was not much debate on most Resolutions considered by the House of Delegates. There are some within the House of Delegates who have bemoaned this to me; however, in my view, the debates have primarily moved from the floor of the House of Delegates to emails and the conference center hallways before the meeting commences. I have come to really appreciate and look forward to those hallway discussions because of the opportunity they give to spend more than just a few minutes hearing one point of view at a time; instead, genuine give-and-take discussions are able to take place. Many different points of view are able to be considered, which allows for improvement and strengthening of weak Resolutions, and softening or adjustments to controversial Resolutions.

Of course, there was one notable exception this meeting—a Resolution put forward by the Young Lawyers Division that urged "all legal employers to adopt policies and practices that provide attorneys with at least one consecutive week of fully uninterrupted time off per year

during which they are relieved of work-related communications and responsibilities."[3] This was the second consecutive meeting this Resolution has been brought forward;[4] however, this time, it had been revised to eliminate specific language requiring 40 hours of billable time credit for employees who took that "unplug" time off.[5] The entire debate on this Resolution lasted nearly an hour, the majority of which we seemed to spend on our feet as the too-close votes were manually counted for both the Resolution itself and one of the two proposed amendments. The audible groan that echoed through the room when the second amendment was proposed was far-and-away the most entertaining part of the debate.

Now, by saying that, I want to be clear I am not commenting on the merits of this Resolution. I did vote to oppose its adoption[6] as I feel vacation or leave policies should implicitly come with this type of understanding; in other words, if I'm using it, only contact me in case of a real emergency, and any time I spend on that emergency should be credited back to me. However, I'm also of the mindset that once a decision has been made, I will set aside my resistance and support it. In many ways, my feelings reflect those of a main character's father in "The Chosen" by Chaim Potok: while he actively discouraged the establishment of the State of Israel after World War II; once the decision was made, he cast aside his opposition and threw his support behind it.[7] In the same fashion, now that this is the policy, I support the ideal it professes.

While Jewish beliefs surrounding the establishment of Israel in the 1940's and the work of the House of Delegates do not seem, at first glance, to be congruent, there are some similarities (even if they only exist in my own mind): while we may disagree on the approach to a certain topic or what should be done, once a decision has been made, we should be able to unite behind it and move forward; if we disagree with the decision or direction, we should work towards a change in a way that continues to show our commitment to the ideals of the profession.

Unfortunately, I have found that all-too many people in today's world only see the end result: "The American Bar Association passed a Resolution on such-and-such topic." Many of those Resolutions from the ABA have been quite passionately argued in favor of topics that many in Idaho may feel go against our general beliefs as a State. But because those Resolutions have passed, the work of the ABA has been discounted or discredited. For example, the Chairman of the Federal Trade Commission issued a statement not long after the ABA's Midyear Meeting which said, in part: "The ABA's long history of leftist advocacy and its recent attacks on the Trump-Vance Administration's governing agenda, however, have made this relationship untenable."[8] I get it, I understand.

But what those attacking the ABA seemingly fail to understand or consider by only looking at the end result are the many equally passionate arguments by the other side, or the hallway discussions where the passion and conviction of both sides are on display. They also miss seeing the willingness of both sides to compromise, the attempts to work together despite their ideological differences, or the true underlying desire by all involved to make things better now than they were before. To me, that reactionary attitude is disheartening. There is a lot of turmoil in the legal world right now, and the last thing this profession needs is to be torn apart from within.

As of the date I'm writing this, there have been multiple Executive Orders targeting law firms—including firms that have an active presence here in Idaho;[9] multiple calls for impeachment of judicial officers because of disagreements with certain rulings;[10] and calls for Court Orders to be outright ignored.[11] Whether you may personally agree or disagree with these actions, they are something that we, as a legal profession should not idly stand by and watch happen. Our great nation was founded on the ideals that "all men are created equal" and entitled to "certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[12] We threw off the yoke of the English because we, as a people, felt that our concerns and frustrations were being ignored.[13]

I have lived in countries that were yoked for years under brutal dictatorships, namely Romania and Moldova. People I know in those countries have personally relayed stories of family or friends who went out to get bread and never came home, and lived in an apartment overlooking a building that I can only describe as a megalomaniac's monument to himself.[14] But

Idaho's ABA Delegates at the Midyear Meeting. From left to right: Jonathan Shirts, Jenn Jensen, and Kendall (Prohaska) Bjornsen. Photo credit: Jonathan Shirts.

what has remained with me, beyond the mental pictures of buildings riddled with bullet holes from the 1989 Revolution, is how the people described feeling powerless and helpless to make any changes to their own lives; essentially, how they were "more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."[15]

I want to be clear, I am not addressing all of this as something coming just from one side of the political spectrum,[16] nor as a solely recent development—there have been calls for judicial reform ever since the formation of our great nation.[17] But the impact of social media and our ever-present global news on these conversations has allowed extremist opinions on all sides to take on an increasingly greater role.[18] More and more, extremist views and opinions from both sides are being given greater attention and emphasis. But there are proper procedures for disagreement with a judicial decision—immediate calls for impeachment or assassination of judges are not it.[19] Similarly, throwing the weight of the government against one law firm (or five) simply because it represented political opponents at one time or hired someone involved with an investigation strikes me as going against the ideal of "Liberty" espoused in the Declaration of Independence.[20]

I am proud to be a member of the ABA because it has been active in this area for years, during Democratic and Republican administrations alike, and it continues to be active now.[21] And it's not alone.[22] If we as lawyers truly believe in the Rule of Law, that disputes are better settled in the Courts than with violence, or that undermining the judiciary will only lead to chaos, then we need to stand together and say, "We can't be consumed by our petty differences anymore. We will be united in our common interests . . . We will not go quietly into the night! We will not vanish without a fight!"[23] But let us remember to keep the fights where they belong—the Courts, and to conduct them in a "civilized manner."[24] Instead of searching for ways to divide and weaken our profession from within, "liking" or reposting things that only serve to drive us apart, I would simply ask that we all look for ways that we can lift each other up within the legal community and support the rule of law.

I will close with something Michael Jackson said that sums up what I'm trying to say much better than my poor words ever could: "Make [the world] a better place."[25] I am working on that daily and it's what I would encourage you all to do as well. As always, "I'm waiting"[26] and always open to a discussion on any of these topics, the odds of the Red Sox making the playoffs this year, or the ABA itself.

R. Jonathan Shirts *graduated from the University of Idaho College of Law in 2018 and is currently the Staff Attorney for the Hon. Randy Grove of the Third District. He has also worked as the Staff Attorney for Hon. Nancy Baskin and Hon. George Southworth. He enjoys good books and spending time outdoors with his wife, daughter, and two sons.*

Endnotes

1. William Shakespeare, The Second Part of Henry the Sixth, Act IV, Scene 2.

2. The Princess Bride (Act III Communications, 1987).

3. https://www.americanbar.org/content/aba-cms-dotorg/en/news/reporter_resources/midyear-meeting-2025/house-of-delegates-resolutions/505/.

4. https://www.americanbar.org/content/aba-cms-dotorg/en/news/reporter_resources/annual-meeting-2024/house-of-delegates-resolutions/521/.

5. The links above would allow you to compare the content from both Resolutions, if you were interested.

6. I also abstained, for the first time, from voting on a Resolution due to my employment within the judiciary.

7. *See, generally*, Chaim Potok, "The Chosen" Chapter 15 (1967).

8. *FTC Chairman Ferguson Announces New Policy Regarding American Bar Association"*, Federal Trade Commission (Feb. 14, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/02/ftc-chairman-ferguson-announces-new-policy-regarding-american-bar-association.

9. These firms include Covington & Burling (https://www.whitehouse.gov/presidential-actions/2025/02/suspension-of-security-clearances-and-evaluation-of-government-contracts/), Perkins Coie (https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-perkins-coie-llp/), Paul Weiss (https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-paul-weiss/), Jenner & Block (https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-jenner-block/), and WilmerHale (https://www.whitehouse.gov/presidential-actions/2025/03/addressing-risks-from-wilmerhale/).

10. *See, e.g.*, Lisa Mascaro, *Republicans eye actions against the courts and judges as Trump rails against rulings*, Associated Press (Mar. 25, 2025) https://apnews.com/article/trump-judge-boasberg-musk-impeachment-1019459fc9517231204b814fd6f36127.

11. *See, e.g.*, Lindsay Whitehurst, *Judge finds Trump administration hasn't fully followed his order to unfreeze federal spending*, Associated Press (Feb. 10, 2025), https://apnews.com/article/funding-freeze-trump-federal-grants-loans-judge-ec9bf2700c41ec0ba4085d375599d295.

12. Declaration of Independence para. 2 (U.S. 1776).

13. *See, generally*, Declaration of Independence.

14. This building is officially called the "Palace of the Parliament" (Palatul Parlamentului) or more colloquially, "the House of the People" (Casa Poproului), and occupies a site in Romania's capital occupying about 2.7 square miles. See Palace of the Parliament, Wikipedia, https://en.wikipedia.org/wiki/Palace_of_the_Parliament. Construction displaced over 40,000 people, destroyed numerous monasteries, churches, and a hospital, and was constructed through the labor of soldiers and forced labor. *Id.*

15. Declaration of Independence para. 2.

16. *See, e.g.*, Crystal Hill, *Biden Joins Chorus of Democrats Calling for Reform in the US Supreme Court*, Associated Press (July 29, 2024), https://www.democracydocket.com/news-alerts/biden-joins-chorus-of-democrats-calling-for-reform-in-the-us-supreme-court/.

17. *See, e.g.*, https://www.fjc.gov/history/exhibits/snapshots-federal-judicial-history-1790-1990; and https://www.fjc.gov/history/legislation/landmark-legislation-judiciary-act-1801. These two pages will show how, from the very beginning, there has been a constant struggle between the Judiciary and the other two branches of government.

18. *See, e.g.*, Jill Colvin, *Vance and Musk question the authority of the courts as Trump's agenda faces legal pushback*, Associated Press (Feb. 9, 2025), https://apnews.com/article/trump-judiciary-musk-separation-of-powers-balance-checks-069c169ea1ddf6eea76f502d544c4c16.

19. *See, e.g.*, Amy Howe, *Chief justice rebukes Trump's call for judicial impeachment*, SCOTUSblog (Mar. 18, 2025, 3:01 PM), https://www.scotusblog.com/2025/03/chief-justice-rebukes-trumps-call-for-judicial-impeachment/.

20. *See* Note viii, *supra*.

21. *See* William R. Bay, *Bar organizations stand together for the rule of law*, American Bar Association (Mar. 31, 2025), https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/bar-organizations-stand-for-rule-of-law/.

22. *Id.*

23. Independence Day (20th Century Studios 1996).

24. The Princess Bride (Act III Communications, 1987).

25. Michael Jackson, Dangerous (Epic Records 1992).

26. The Princess Bride (Act III Communications, 1987).

100 Years
ISB IDAHO STATE BAR
50
of service to the public & profession
IDAHO LAW FOUNDATION

Anniversary

Gala & Events

Wednesday, July 16, 2025
Jack's Urban Meeting Place - Boise

12:00 p.m.
Idaho Law Foundation Annual Meeting & Service Awards Luncheon
Tickets: $50

1:30 p.m. - 3:45 p.m.
Idaho Legal History CLE Programs
$75 per course or $100 for both

5:30 p.m. - 6:30 p.m.
Speakeasy Social Hour
$50 or included with dinner ticket

6:30 p.m. - 9:00 p.m.
Gala Dinner & *Tents to Towers* Book Launch
The Stories of Idaho's Legal History
Presented by the Hon. Debora K. Grasham

2025 Distinguished Lawyer & Outstanding Young Lawyer Awards

Tickets: $150

1920s Cocktail Attire Encouraged

Gala & Event Tickets

1960

1962
Gov. Smylie presents at the Annual Meeting for the 15th time

–1960
The Bar passes resolutions to increase judicial salaries

The population of Idaho is 667,191

1962
Legislation is proposed to create a unified court system

THE IDAHO STATE BAR

The 1960s

Peter C. Erbland

OVERVIEW

This chapter of the history of the Idaho State Bar focuses on the decade of the 1960s. As any "boomer" or stu dent of history knows, the 60s were a time of cultural and political upheaval. The decade is marked by a nuclear showdown with Russia and three assas sinations: a president, the leader of the civil rights movement, and a presi dential candidate. Overshadowing the decade was a growing unpopular war in Vietnam that galvanized young people to protest and reject the views of their elders and political leaders.

This article draws on historical sources to provide the reader with a picture of the Bar in the 60s. A pri mary source is the transcripts of the Proceedings of the Idaho State Bar. The transcripts from 1960 – 1969 show that practitioners grappled with many of the same issues that we see today, including court congestion, court reform, judicial salaries and positions, lawyer discipline and relationships with the legislature in passage of bills supported by the Bar. In contrast, much has changed since the 60s. During this decade, the profession

Observers of the parade for the centennial celebration for the city of Lewiston, Idaho in 1961. Seated from left to right: Wife of Mayor of Lewiston, Mayor of Lewiston, Mrs. McFadden, Governor Smylie, Mrs. Marcus Ware, Mr. Marcus Ware (previous Bar President), and Miss Lewiston Centennial. Back row from left to right: Justice Taylor, Justice McFadden, Mr. Swinney, and unidentified. Photo credit: Idaho State Archives, [Unknown, 63 21 30].

–1963
President John F. Kennedy is assassinated in Dallas, TX

1965 –
U.S. deploys combat troops to Vietnam

–1965
Nez Perce National Historical Park is established

–1968
Martin Luther King, Jr. is assassinated in Memphis, TN

–1969
Creation of the Idaho Human Rights Commission

1970

THE ANNUAL MEETINGS

Eight of the 10 annual meetings were held in Sun Valley. The other two were held in Boise and Coeur d'Alene. Here are some brief observations from each meeting:[1]

- 1960 – President – Sherman Bellwood

  Governor Robert Smylie (himself a Bar member) addressed the problem of overcrowded dockets and also noted the spread of "godless communism." The Bar passed resolutions on the unauthorized prac tice of law as well as increases to judicial salaries.

- 1961 President Blaine Anderson

  Governor Smylie again addressed the meet ing and urged the Bar to become more involved in developing procedures for judicial appointments. Committee reports were provided by John Hepworth, Eugene Thomas, and Lou Racine.

- 1962 – President – Marcus Ware

  Governor Smylie addressed proposals for con stitutional amendments. A resolution passed to support a constitutional change to allow Chinese or persons of "Mongolian" descent to vote, serve as jurors, and hold any office. Also passed was a resolution to employ part time general counsel for the Bar to handle increasing complaints of the unauthorized practice of law.

- 1963 – President – Glen Coughlan

  This meeting included sessions on individual retirement accounts, professional service cor porations, and estate planning.

- 1964 – President – Wesley Merrill

  A speaker from California addressed the Model Code of Evidence. In his talk, he complimented the "wives of lawyers who are so important to their success."

- 1965 – President – Alden Hull

  Speakers addressed topics on crowded dockets and court reform, the value of the legal profession to society, the trial of Jack Ruby, and expert witnesses.

- 1966 – President – Ed Benoit

  Topics included the furnishing of legal services to the indigent, prohibiting the practice of law by realtors, and due process to fathers in adoptions proceedings.

- 1967 – President – R.V. Kidwell

  Speakers included Professor George Bell of the University of Idaho College of Law on the topic of court reform.

- 1968 – President Jerry Smith

  Topics included no-fault motor vehicle court reform, plans for construction of a Supreme Court building, and attorney/physician relations.

- 1969 – President – Harold Ryan

  Topics included an expanded role for the Idaho Judicial Council in disciplining judges, a report and recommendations for teaching students of the "real threat of communism," and legal aid to indigent clients.

was still almost exclusively a male (and Caucasian) membership. The number of Idaho lawyers during the 60s grew from 616 to 720.

Not surprisingly, the leaders of the Bar and participants in these meetings were almost uniformly male Caucasians. This is surely a sign of those times. However, as chronicled in "*The First 50 Women in Idaho Law*" by the Honorable Debora Grasham, during this decade women members of the Bar served their clients and communities with distinction, fulfilling the same profes sional duties as their male counter parts. During this decade, nine women were admitted to the Bar: Zoe Ann Warberg Shaub, Virginia Riley Renwick,

Governor Smylie addresses the legislature in 1963. Photo credit: Idaho State Archives, [Lorimer, Bob, P2006 18 189c].

Patricia L. McDermott, Nancy Louise Grubb Simpson, Maureen Margaret Jones Warren Meehl, Janice Elizabeth Oliver Hamilton, Beverly J. Stiburek Elder, Susan Maria Flandro, and Judith Holcombe.[2]

COURT REFORM

The topic of court reform was part of every annual meeting during the decade. The transcripts demonstrate significant efforts by well recognized Bar members to modernize Idaho's court system. In 1962, the legislature proposed an amendment to Section 2, Article 5 of the Idaho Constitution to create a unified court system admin istered by the Idaho Supreme Court. The amendment was to be voted on in the November election. At the 1962 annual meeting in July, Bar president Marcus J. Ware urged Bar members to promote the passage of this critically important amendment:

> Any proposed comprehensive legislation for reform of the infe rior courts will have significance only if the people adopt the pending constitutional amend ments which will be on the ballot in November. The favorable influ ence of each lawyer in the state as well as that of the State and Local Bar Associations must be made felt among the electorate if these amendments are to pass. The adoption of these amendments may well hinge on our ability to develop and present an acceptable plan of inferior court reform . . .[3]

The amendment passed.

Over the next several years the Bar, as well as the University of Idaho College of Law, members of the judi ciary, legislators, local officials, and citizen groups came together and pro posed legislation to implement court reform. The proposal included the cre ation of the Magistrate Division as part of the District Court, the Administrative Office of the Courts, the creation of seven judicial districts, and the Idaho Judicial Council to oversee the selection, appointment and discipline of judges.

At the 1966 annual meeting, President Edward Benoit provided this background:

> About two and a half years ago when Wes Merrill of Pocatello was President and Alden Hull was Vice President and I was Junior Commissioner and following a commissioners meeting we called Justice McQuade and asked for an appointment with the Supreme Court and we met in the Chief Justice's office and we discussed the matter of court reorganiza tion and said that we were willing to commit some of the meager funds of the Idaho State Bar at least to get a start and the court gave us their blessing and encouragement and we thereupon prevailed upon Tom Miller and George Bell to form a two man committee to present an initial study.[4]

George Bell had just been named Dean of the University of Idaho College of Law (in addition to his significant efforts on the issue of court reform, he is also known for guiding Idaho's practitioners on the law of evidence.) Also present at the meeting and lead ing a panel on judicial reform were Bar members Harold Ryan (future U.S. District Court Judge), and Tom Miller.[5]

The legislative proposal was passed by both the House and Senate but did not survive a veto by Governor Samuelson. To overcome these guber natorial objections, the proposed leg islation was amended to allow for the appointment of magistrate judges by a magistrate commission, which remains in place today. Enabling legislation was enacted in 1969. However, it was not until 1971 that the Magistrate Division of the District Court was created.[6] Court reform that began in earnest in the 1960s and during which the Bar had a leading role has served Idaho citizens well for more than 50 years since.

CIVIL RIGHTS ERA

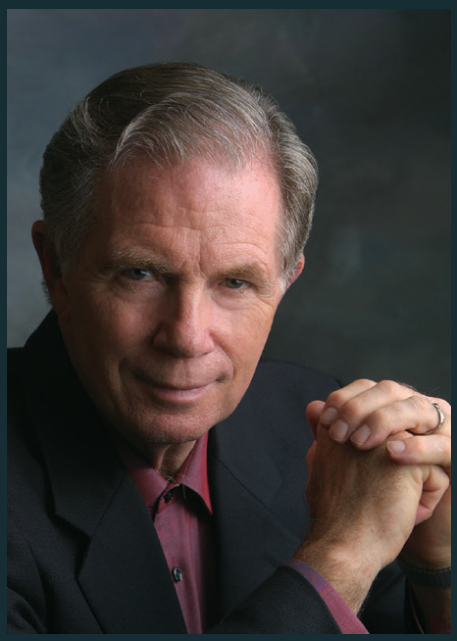
The 1960s was the decade in which civil rights legislation became a reality.

Landmark federal civil rights legislation was enacted in 1964. But, Idaho did not wait for Congress to act. Members of the Bar played a critical role in advanc ing the fight against racial and minority discrimination. As a result of racial dis crimination experienced broadly by Idahoans of color, a multi racial group that included people of Japanese, Native American, African, Mexican and European descent formed the Idaho Citizens Committee for Civil Rights. The Committee drafted and lobbied for a bill outlawing racial discrimination in public accommodations and employment during the 1961 legislative session.[7]

To the great credit of the Bar, Reginald Reeves of Idaho Falls (one of only two African American Bar members at the time), and Republican Bill Roden of Boise championed the bill which passed with only minor opposition.[8] At the time, Bill Roden served in the Senate and after leaving the legislature, became one of Idaho's most influential lobbyists. His obituary notes that writing the first civil rights legislation for Idaho is one of the achievements he was most proud of.[9] Reginald Reeves had a life long association with the military, ris ing to the rank of Lieutenant Colonel in the Army Reserves.[10]

Throughout the decade, members of the Bar continued to work to improve the laws protecting minori ties.Senator Frank Church drew upon support from Idaho and his experience as a legislator in his efforts to help pass the federal 1964 Civil Rights Act out lawing segregation in public accom modation and employment.[12] In the

Reginald Ray Reeves.[11]



Byron Johnson.[14]

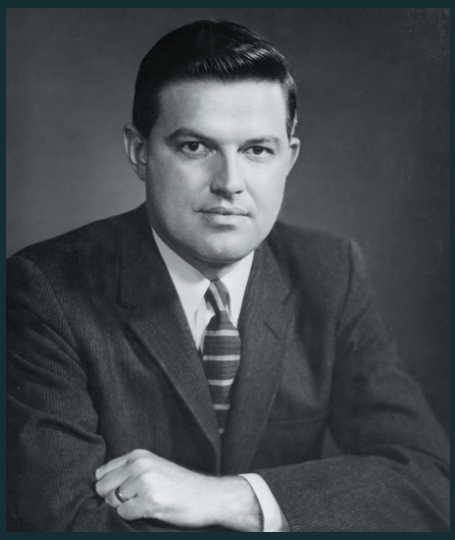
wake of Dr. Martin Luther King, Jr.'s assassination in 1968, a broad coalition of Idaho citizens, including members of the Bar, pushed for strengthening of civil rights legislation at the state level. Those efforts eventually led to the creation of the Idaho Human Rights Commission in 1968. Bar mem bers who are credited with devoting efforts to eventual passage of this legislation are Curtis Oler of Boise (the other African American attor ney member of the Bar at the time) as well as Byron Johnson of Boise and Patricia McDermott of Pocatello.[13]

At the time, the Idaho Human Rights Commission ("IHRC") was one of the least powerful in the nation. However, over the ensuing years the Act was amended to give it more teeth and is now relied upon by Idaho practitioners to vindicate the rights of a more expan sive definition of protected persons.

VIETNAM ERA

The decade must also be remem bered for America becoming mired in an unpopular war in Vietnam. The casual ties touched the lives of many Idahoans (Idaho had 217 fatal casualties from the war).[15] By the late 1960s, Bar member, and by then US Senator, Frank Church became a vocal critic. While originally supporting the war effort, Church

Patricia McDermott, Idaho House of Representatives, 1987. Photo credit: Idaho State Archives, Free Public Record.



Portrait of U.S. Senator Frank Forrester Church II in 1960. Photo credit: Idaho State Archives, [Unknown, 66 49].

became disillusioned to the point of crit icizing then President Lydon B. Johnson for keeping America involved in the war. In addressing the 1964 Gulf of Tonkin incident, Church is said to have made the following warning: "In a democracy you cannot expect the people, whose sons are being killed and who will be killed, to exercise their judgment if the truth is concealed from them."[16] Frank Church's efforts to help bring the war to a conclusion would stretch into the next decade. History has confirmed the validity of his opposition.

Nixon Law Office (112 North 6th St.) in 1968. The building still stands in downtown Boise. Photo credit: Idaho State Archives, [Fitzwater, Ivan M., P1995 25_033].

Over the decade, Bar members who were called to duty served their country well. Two well recognized Bar members who served with distinction were Jim Jones and Daniel Eismann. In the late 1960s, Jim Jones served as an artillery officer in the US Army and received several decorations, including the Army Commendation Medal and the Bronze Star.[17] Daniel Eismann served two consecutive tours of duty in Vietnam as a Crew Chief/Door Gunner on a Huey gunship helicopter. He was awarded two Purple Hearts and three medals for heroism.[18] Both eventually served as Justices of the Idaho Supreme Court.

CONCLUSION

The individual transcripts and historical resources alone do not tell the whole story of the Idaho State Bar in the 1960s. However, from these sources a picture emerges of dedicated, humble, and hardworking practitioners who devoted themselves to the improvement of society through service through the Bar as well as a deep and abiding respect for the rule of law. And the names of the participants in these proceedings, including past presidents and commissioners are themselves examples of how good lawyers view it as a privilege to devote themselves to the profession and ultimately to their clients and society.

Peter Erbland *maintains a civil litigation practice at Lake City Law in Coeur d'Alene with an emphasis on the defense of individuals, business entities, insurance companies, and governmental entities in state and federal courts, both at the trial and appellate levels. He regularly serves as a mediator and arbitrator in all areas of civil disputes. Peter was awarded the Idaho State Bar's highest honor, the Distinguished Lawyer Award, in 2018. He received his B.A.* cum laude *from Saint Bonaventure University and his J.D.* cum laude *from Gonzaga University.*

ENDNOTES

1. Proceedings of the Idaho State Bar Vol. XXXIV to Vol. XLIII. Available on the Idaho Legal History Society pages at www.id.uscourts.gov.

2. Hon. Debora K. Grasham "1885 1975 The First 50 Women in Idaho Law" (2005), pp. 58 72.

3. Proceedings of the Idaho State Bar Vol. XXXVI, 1962, p. 117.

4. Proceedings of the Idaho State Bar Vol. XL, 1966, p. 10.

5. *Id.*, pp. 11 12.

6. Becoming the Magistrate Division; Idaho Magistrate Judges Association: https://imja.idaho.gov/act ii reformation 19691973.

7. African American Civil Rights in Idaho. https://nps.gov/subjects/nationalregister/upload/100007012; Sec. E, p. 37.

8. *Id.*

9. https://isb.idaho.gov inmemoriam roden

10. https://eastidahonews.com/obituaries/reginald ray reeves.

11. Obituary for Reginald Ray Reeves, East Idaho News, https://www.eastidahonews.com/obituaries/reginald ray reeves/ (last visited Apr 15, 2025).

12. African American Civil Rights in Idaho, Sec. E, pp. 40-42.

13. *Id.*, Sec. E, pp. 48 50.

14. Image previously published in *the Advocate*. Armstrong and Ng, Byron Johnson: The Poetry of a Justice, 67 *The Advocate* 34 (2024).

15. 1. Vietnam War U.S. Military Fatal Casualty Statistics, National Archives (2016), https://www.archives.gov/research/military/vietnam war/casualty statistics (last visited Apr 15, 2025).

16. Bumiller, Elizabeth (14 July 2010). "Records Show Doubts on '64 Vietnam Crisis https://www.nytimes.com/2010/07/15/world/asia/15vietnam.html.

17. https://www.parsonsbehle.com/people/jim jones.

18. https://www.idahopress.com/special section/salute/justice-daniel-eismann.

OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
G. Richard Bevan

Justices
Robyn M. Brody
Gregory W. Moeller
Colleen D. Zahn
Cynthia K.C. Meyer

Regular Spring Term for 2025
3rd Amended February 19, 2025

Boise	January 8, 10, 13 and 17
Boise	February 7, 10 and 14
U of I, Boise	February 12
Boise	April 2, 4, 7 and 25
Moscow U of I, Lewiston	April 9 and 10
Boise	May 5, 7, 9, 12 and 14
Boise	June 2, 4, 6, 9 and 11

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2025 Spring Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE
COURT OF APPEALS OF IDAHO

Chief Justice
David W. Gratton

Judges
Molly J. Huskey
Jessica M. Lorello
Michael P. Tribe

Regular Spring Term for 2025
4th Amended 03/11/2025

Boise	January 14, 16, 21 and 23
Boise	February 11 and 13
Boise	March 4 and 6
Boise	April 10 and 17
Boise	May 13 and 15
Boise	June 10, 17, 24 and 26
Boise	July 10

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2025 Spring Term for Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

Idaho Supreme Court
Oral Arguments for May 2025

04/11/2025

Monday, May 5, 2025 – Boise

8:50 a.m. *Radford v. Van Orden*	#51291
10:00 a.m. *State v. Fletcher*	#50707
11:10 a.m. *Tipton v. New Horizon*	#51200

Wednesday, May 7, 2025 - Boise

8:50 a.m. *Row v. State*	#50540
10:00 a.m. *Rupp v. City of Pocatello*	#51056
11:10 a.m. *Gilbert v. Progressive*	#51467

Friday, May 9, 2025 - Boise

8:50 a.m. *East Side Hwy Dist. v. Kootenai Co.*	#51332
10:00 a.m. *Wilson v. Board of Land Comm.*	#51376

Monday, May 12, 2025 - Boise

8:50 a.m. *Bell v. State*	#52104
10:00 a.m. *DeKlotz v. NZ Support*	#51326
11:10 a.m. *Hansen v. Boise School District*	#51605

Wednesday, May 14, 2025 - Boise

8:50 a.m. *Stieffel v. Shiflett*	#50990
10:00 a.m. *Johnson v. Beadz Brothers Farms*	#50970
11:10 a.m. *Smith v. Hippler*	#51412

Idaho Supreme Court
Oral Arguments for June 2025

04/11/2025

Monday, June 2, 2025 - Boise

8:50 a.m. *Jordan v. Powers*	#51330
10:00 a.m. *Smith v. State*	#52468
11:10 a.m. *Tyler v. Masterpiece Floors, Inc*	#51520/51612

Wednesday, June 4, 2025 - Boise

8:50 a.m. *Thaete v. St. Luke's*	#51546
10:00 a.m. *Erie Properties v. Global Growth*	#51266/51616
11:10 a.m. *State v. Frias*	#50950

Friday, June 6, 2025 - Boise

8:50 a.m. *State v. Crist.*	#50737
10:00 a.m. *Westman v. State*	#51719
11:10 a.m. *First Presbyterian Church v. Ada County*	#51890

Monday, June 9, 2025 - Boise

8:50 a.m. *Vanrenselaar v. Batres*	#51451
10:00 a.m. *Doyle v. The Harris Ranch Community*	#51175
11:10 a.m. *State v. Frandsen*	#50878

Wednesday, June 11, 2025 - Boise

8:50 a.m. *Vintage II v. Teton Saddleback*	#51455
10:00 a.m. *State v. Buck*	#52335
11:10 a.m. *Corondado v. City of Boise*	#51722

Idaho Court of Appeals
Oral Arguments for May 2025

04/11/2025

May 13, 2025

10:30 a.m. *State v. Anderson* ..... #51345
1:30 p.m. *State v. Magomadov* ..... #50627

May 15, 2025

10:30 a.m. *State v. Fitzpatrick* ..... #51136
1:30 p.m. *Mann v. North Canyon Medical* ..... #51695

CASES IN ALPHABETICAL ORDER BY CATEGORY – MARCH 2025

Attorney Fees
Whether the district court abused its discretion in denying Respondent's request for attorney fees on appeal when the only issues Appellant raised on appeal were never raised to the trial court.

Medical Recovery Svcs. v. Brandt
Docket No. 52231
Court of Appeals

Contracts
Whether the district court erred by interpreting the parties' Spousal Support Agreement as requiring Appellant to continue to make spousal support payments to Respondent even after Respondent remarried.

Somes v. Starnes
Docket No. 52160
Court of Appeals

First Amendment
Whether the notice and reporting requirements of the Idaho Patient Act violate Plaintiff's First Amendment rights to petition and to free speech.

Ridgeline Medical, LLC v. Lyon
Docket No. 52069
Supreme Court

Justiciability
Whether the district court erred in concluding that original plaintiffs' legal malpractice claims were not assignable because assignment of the claims pursuant to an agreement to settle a separate lawsuit was not a commercial transaction.

Acorn Inv., LLC v. Elsaesser
Docket No. 52007
Supreme Court

Property
Whether the district court erred in concluding that a quitclaim deed transferring ownership of real property to the parties as "joint tenants" created a joint tenancy with rights of survivorship.

Anderson v. Estate of Goffman
Docket No. 52003
Court of Appeals

Wills/Estates
Whether the district court erred in dismissing Plaintiff's claims for judicial determination of estate assets and breach of fiduciary duty on that the ground that they were improperly filed as a separate action in the district court rather than within the original probate case.

Monson v. Monson
Docket No. 51838
Supreme Court

CRIMINAL APPEALS

Evidence
Whether jail and pharmacy records containing information about Defendant's prescription psychiatric medications fell within the scope of the physician or psychotherapist-patient privilege of I.R.E. 503.

State v. Borek
Docket No. 51548
Supreme Court

Mistrial
Whether the district court erred by denying Defendant's motion for a mistrial after the State elicited I.R.E. 404(b) evidence without having provided the required pretrial notice.

State v. Yerton
Docket No. 50518
Court of Appeals

Motion to Suppress
Whether there was a causal nexus between the officer's alleged unlawful entry into the bedroom and the subsequent discovery of contraband in Defendant's wallet.

State v. Buckles
Docket No. 51351
Court of Appeals

Whether the facts known to the officer gave rise to reasonable suspicion justifying an extension of the traffic stop to conduct a drug investigation.

State v. Watts
Docket No. 51757
Court of Appeals

Whether the district court correctly determined the investigatory detention was justified by reasonable suspicion that Defendant had committed a crime.

State v. Ross
Docket No. 51305
Court of Appeals

Whether a Nampa police officer's extra-territorial arrest of Defendant in the City of Caldwell violated Defendant's right under Article 1, Section 17 of the Idaho Constitution to be free from unreasonable seizures.

State v. Satterfield
Docket No. 51162
Court of Appeals

Whether the district court erred by concluding Defendant's statements to police were voluntary and that his will was not overborne due to his relatively young age, his lack of sleep, or the interrogating detective's alleged misstatement of self-defense law.

State v. Morgan
Docket No. 50881
Court of Appeals

Whether the officer unreasonably prolonged the traffic stop without reasonable suspicion to question the driver of the vehicle about a vape device the officer observed in the vehicle.

State v. Maans
Docket No. 51659
Court of Appeals

Prosecutorial Misconduct
Whether the district court erred by denying Defendant's motion to dismiss Count III of the Indictment for lack of probable cause and/or for prosecutorial misconduct by the introduction of highly prejudicial inadmissible evidence.

State v. Susavage
Docket No. 51606
Court of Appeals

Sentence Review
Whether the district court abused its discretion when, following remand and a second trial, it imposed a sentence that was significantly longer than the one it imposed following Defendant's first trial.

State v. Chaves
Docket No. 51290
Court of Appeals

Whether the district court abused its discretion by conducting an improper comparative sentencing analysis as part of its decision to impose the maximum fixed sentence.

State v. Brashear
Docket No. 51448
Court of Appeals

Whether the district court abused its discretion by modifying Defendant's probation to require him to sign a sex offender supervision agreement and participate in sex offender treatment.

State v. Abel
Docket No. 51490
Court of Appeals

Speedy Trial
Whether the right to a speedy trial guaranteed by the Idaho Constitution provides greater protections than the speedy trial right guaranteed by the United States Constitution.

State v. Fierro-Garcia
Docket No. 50530
Supreme Court

ADMINISTRATIVE APPEALS

Judicial Review
Whether the district court erred in concluding that the County's decision approving Respondent's Minor Land Division applications were not subject to judicial review under the Local Land Use Planning Act.

Budig v. Bonner Cnt. Bd. Of Comm'rs
Docket No. 51870
Supreme Court

Summarized by:
Lori Fleming
Supreme Court Staff Attorney
(208) 334-2246

Raymond C. Givens
1946 – 2025

Raymond Conway Givens passed peacefully on February 16, 2025, in Spokane, WA. Born on February 5, 1946 in Boise, Idaho, Ray was a legal warrior coming from a long line of respected Idaho jurists and attorneys (his grandfather, Lewellen Givens served 30 years on the Idaho Supreme Court. His father and uncle both had distinguished legal careers, yet Ray's favorite boyhood stories were herding bands of sheep from the Conway Blackfoot ranch to the summer pasture and spending time with his charismatic grandfather J.J. Conway. Ray attended Borah High School, graduating in 1965. Ray was an athlete, playing baseball, basketball, tennis and golf and was in the Debate Club. In his youth he worked as a box boy at Albertsons grocery and later as a firefighter assistant at the Boise Fire Center.

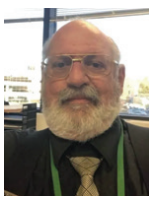
Ray attended the University of Idaho, studying history, acquiring lifelong friends in the Sigma Chi fraternity. Upon graduation he was drafted and served two years in the US Army at Fort Ord. He then traveled around Europe before returning to Law School in Moscow, Idaho. After graduating and passing the Bar in 1974, Ray's legal career veered from the more conventual Givens path. He and Ernest Sanchez founded one of Idaho's first Legal Aid Offices in Caldwell providing free civil law representation to low-income clients. In 1975, he opened the Legal Aid Office in Coeur d'Alene where fate brought him to the love of his life, Jeanne Iyall.

Ray and Jeanne were married in 1978 and together they became proactive social justice, civil rights, and Indian sovereignty advocates in Idaho, the Northwest, and Alaska. Jeanne, son Joe and daughter Maria belong to the Si John and Garry families of the Coeur d'Alene Tribe and they all enthusiastically engaged in Tribal celebrations, politics, government, and sports events. Over the next decades Ray had a civil rights/public interest private practice, litigating high-profile voting rights, utility, water rights, and employment rights cases. Among his memorable cases was challenging the gerrymandering of the Idaho Legislature following the 1980 census. He prevailed and Jeanne was elected as the first American Indian woman to serve the Idaho Legislature under the new court-ordered reapportionment in 1984. When the Legislature refused to appropriate the funds to pay his legal fees, he had the Ada County Sheriff impound the Albertsons supermarket sales tax receipts, no mean trick for a former box boy.

Ray then turned his attention to environmental justice issues and was instrumental in securing the Superfund Cleanup of the Coeur d'Alene River Basin on behalf of the Coeur d' Alene Indian Tribe. He represented the Tribe in areas including lake ownership, pollution cleanup, gaming, and taxation. His greatest victory came before the U.S. Supreme Court, returning ownership of the southern 1/3rd Lake Coeur d'Alene to the Tribe. When their kids, Maria and Joe, were reaching high school, the family moved to the Seattle area and Ray represented the Confederated Tribes and Bands of Yakama Nation in Superfund litigation involving the Hanford nuclear waste site and fisheries sites; and securing royalties for oil and gas extraction for Native clients in Alaska.

While Ray's success as a lawyer is recognized by both peers and adversaries, Ray is best known as a loving husband and father. He was a sports enthusiast, an avid reader, and had great interest and engagement in politics. Ray and Jeanne enjoyed traveling and spending time with friends and family, attending Powwows, boating, fishing, reflecting on the view from their Priest Lake summer cabin, and he and Jeanne's lifelong cribbage game.

Steven Allen Wuthrich
1954 – 2024



Steven Allen Wuthrich was adopted at age 9 months by Donald and Ellen Wuthrich in Montpelier, Idaho. He was an only child who rose from humble beginnings to a first-generation graduate in law school, to serving the community for over 40 years as an attorney in various capacities.

After graduating from the Vocational Tech program at Idaho State University, Steven married Stephany A. Hunt of Salt Lake City, and together they ventured to three different Universities, each of which Steven earned his respective undergraduate degrees. During summer breaks he worked at his father-in-law's dry farm in Soda Springs, Idaho. With his family in hand, Steven graduated Cum Laude, Juris Doctorate, from University of Idaho, Moscow in 1984.

After serving as law clerk for the Hon. Alan M. Schwartzman, he worked at the law firms of Penland & Munther, and Lyman Belnap and Associates in Boise, Idaho. After moving to Salt Lake City, he set up his own private practice, as well as worked at the law office of his father-in-law, the late Gayle Dean Hunt, Esq. Steven took Gayle up as his mentor, colleague, best friend, and partner all in one, and learned from him the true art and etiquette of old school gentleman's lawyering.

In 1998, Steven moved his family back to his hometown of Montpelier and set up a very successful law practice on the civil and bankruptcy docket in both Idaho and Utah, as well as served as Bear Lake County Public Defender for 11 years. His wife served as his legal secretary for 18 years. He won notable cases in the U.S. 10th circuit Court of Appeals, Utah Supreme Court and New Hampshire Supreme Court.

In November 2012, Steven was elected Bear Lake County Prosecutor in a last-minute write-in vote and served a four-year term. As such, he implemented the County's first diversion program and drug court, sending defendants to rehab programs along with, or in lieu of, that of Prison. He prosecuted without regard to socio-economic status, clout, ethnicity, neither political favoritism nor good ol' boys bias; he took each case on its merits, weighing above all any potential risks to the community. During the past seven and a half years, Steven served as

an Assistant Attorney General, Special Prosecutions Division, under Utah attorney General Sean D. Reyes.

Through 40 years of his career path, Steven always made time to be an attentive and loving father to each of his four children; always a great entertainment director, never missing a holiday or birthday, and urging and supporting his children through work and college.

Edward B. Odessey
1953 – 2025

A dear friend, colleague, and long-time public defender, Edward "Ed" Odessey, passed away in Georgia on March 10. Ed was born and raised in Philadelphia to parents that he deeply loved and respected. His father was a jeweler and would repair time pieces that were exquisitely designed and produced. Perhaps that's where Ed learned to love the finer things in life. He spent time skiing at sun valley or walking the beaches and bluffs of the Oregon coast as often as he could. Great conversation ensued about everything from politics, travel, the state of public defense or his beloved Philadelphia Eagles. He would often answer the phone with "Go Eagles!"

Ed was admitted to the Idaho State Bar in 1980. EBO, as he was referred to by his colleagues at the Ada County Public Defender's Office, was one of the Old Guard of the office, along with Alan Trimming, August Cahill, John Adams and Amil Myshin. He had great respect for good lawyers and would often tell courtroom war stories that included Rolf Kehne, Klaus Wiebe and David Nevin. In his time as a public defender, Ed, or "captain decibel" as he was also sometimes referred to, handled some of the biggest and most difficult cases that came through the office, including death penalty cases. He was a great trial lawyer who always owned the courtroom and was greatly respected by his colleagues, prosecutors and judges, and he tried many difficult cases with respected peers such as Steve Botimer, John DeFranco, Larry Smith, and Jon Loschi.

Ed had a huge personality and was very entertaining. He was often the life of the party. He took great pride in the fact that he was banned for life from Pengilly's. Twice.

Ed was fiercely loyal to his family and friends and was very intentional about making it a priority to spend time with those he loved. He was devoted to his first wife Dana, who he lost shortly before retiring from the Public Defender's Office.

It was after losing Dana and retiring that Ed launched into one of his great passions, traveling. He went on numerous trips to many exotic destinations around the world, often with his sister Susan, whom he adored. It was also on one of these trips that Ed met his beloved wife, Anne Terrell. They shared many adventures together in the time that remained, and Anne was by his side at the time of his death.

Judge Cafferty Takes Office in the First District

FIRST DISTRICT—First District Judge John Cafferty was officially sworn in at an investiture ceremony held on Feb. 28 in Coeur d' Alene.

Gov. Brad Little recently appointed Judge Cafferty as a district judge with chambers in Kootenai County, succeeding retired Judge John T. Mitchell.

On behalf of the entire First District, congratulations Judge Cafferty!

Judge John Caffery, left, with Judge Barry McHugh. Photo credit: Nate Poppino, ID Courts.

Judge Cotten Takes Office in Fifth District

FIFTH DISTRICT—Fifth District Judge W. Reed Cotten was officially sworn in at an investiture ceremony held Feb. 21 in Rupert.

Gov. Brad Little recently appointed Judge Cotten as a district judge with chambers in Minidoka County, succeeding retired Judge Jonathan Brody. Surrounded by friends and family, he was officially sworn in at the ceremony by Court of Appeals Judge, Michael Tribe.

Administrative District Judge Eric Wildman welcomed everyone in attendance and congratulated Judge Cotten on the momentous occasion. A guest speaker, attorney Brent Robinson, described Judge Cotten as a man of integrity whom he has watched grow and learn both professionally and personally throughout his career.

Judge Cotten told those in attendance that getting to this moment was a humbling experience, that his community had a tremendous impact on him, and his family was a model of strength and courage to get up every day and do the right thing. The Fifth District welcomes Judge Cotten.

Bartlett Law Welcomes Attorney Tom Callery

BOISE—Bartlett Law PLLC is proud to announce the addition of Tom Callery to our team as a dedicated criminal defense attorney. Tom joined the firm in November 2024, bringing over a decade of experience advocating for clients throughout Idaho.

Born and raised in Lewiston, Idaho, Tom earned his Bachelor of Science degree from the University of Idaho in 2006 and his Juris Doctor from the University of South Dakota School of Law in 2011. Since his admission to the bar in 2011, Tom has exclusively focused on criminal defense, gaining substantial trial experience along the way. His career includes roles at Mimura Law Offices, PLLC, the Canyon County Public Defender's Office, and the Ada County Public Defender's Office. Tom has represented clients facing a wide range of misdemeanor and felony charges and has worked in treatment-focused problem-solving courts.

The firm is excited to have Tom on board and looks forward to his continued contributions to our clients and the firm.

Memorial Service Honors Judges and Attorneys

STATEWIDE—Judges, attorneys and others connected with Idaho's legal system gathered on March 12th for the Idaho Supreme Court's annual Memorial Service, honoring members of the Idaho State Bar who died over the last year.

The service offered a chance to both mourn those who had passed away and recognize the collective impact they had on Idahoans.

Mentorship quickly became a theme across the speakers. Justice Colleen Zahn recalled University of Idaho professor D. Craig Lewis' mentorship of his students,

Judge Eric Wildman, left, Katy Cotten and Judge Cotten. Image provided by Nate Poppino, ID Courts.

Speakers at the court's memorial service. Photo credit: Nate Poppino, ID Courts.

as well as his extensive contributions through projects like the Idaho Trial Handbook. Attorney Peter Wood talked about the advice and support he received from his uncle, former Chief Justice Daniel Eismann. Judge Brian Lee and retired Judge David Epis talked about the well-lived lives of Judge William Dillon III and Judge Earl Whitman Jr. and the service that both provided to those around them.

Video of the service is available to watch through a link on the Idaho Supreme Court's website. The memorial service program and book are also available to read on that website.

Lewiston Attorney Sonyalee R. Nutsch Admitted to American College of Trial Lawyers

LEWISTON—Sonyalee R. Nutsch has become a Fellow of the American College of Trial Lawyers, one of the premier legal associations in North America. The induction ceremony took place before an audience of approximately 600 during the recent Spring Meeting of the College in Maui, Hawaii. Fellowship in the College is extended by invitation only to those experienced trial lawyers of diverse backgrounds, who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility, and collegiality. Lawyers must have a minimum of 15 years trial experience before they can be considered for Fellowship.

Sonyalee is a partner in the firm of Clements, Brown & McNichols, P.A., in Lewiston, Idaho, and has been practicing law for 25 years. She is an alumna of the University of Idaho College of Law and Lewis-Clark State College.

Fourth District Magistrates Commission Appoints Two Attorneys to the Ada County Bench

ADA COUNTY—On April 11, 2025, the Fourth Judicial District Magistrates Commission appointed experienced attorneys Nathan Eilert and Stephen Stokes to the bench. Following a competitive recruitment process in which 23 highly competent licensed attorneys submitted applications, the Magistrates Commission conducted interviews with the top five candidates, ultimately selecting Mr. Nathan Eilert and Mr. Stephen Stokes as magistrate judges for Ada County. These new magistrates will fill openings created by the retirements from the bench of Judge Kira Dale and Judge Jill Jurries.

Nathan Eilert graduated *magna cum laude* from Kansas State University in 2009 with a degree in criminal justice and a minor in Spanish. He earned his law degree with honors from the University of Kansas in 2014. From 2014 to 2017, Mr. Eilert worked as a public defender in Spokane, Washington. As a public defender, Mr. Eilert primarily represented at-risk youths and children in need of services. Mr. Eilert moved to Boise in 2017 and served as an Ada County Prosecutor for two years. He specialized in prosecuting lewd and lascivious conduct with minors and other sex crimes. For the past six years, Mr. Eilert has worked as the staff attorney for the Ada County Family Court judges. He has been married for 11 years and is the proud parent of two daughters.

Stephen Stokes is a lifelong Idahoan, who has spent his legal career dedicated to public service, legal education, and community leadership. Prior to his appointment, he served as the Army Staff Judge Advocate and General Counsel to the Idaho Military Division. Mr. Stokes earned his undergraduate degree in history from Idaho State University and his Juris Doctor from the University of Idaho College of Law. He began his legal career clerking for the Hon. Ronald E. Bush in Pocatello and practiced in family law, criminal defense, personal injury, and commercial litigation before joining the Idaho National Guard as a Judge Advocate in 2009. He deployed to lraq with the 1'l6th Cavalry Brigade Combat Team in 2010-201 1 and transitioned to full-time military legal service in 2014.

Mr. Stokes has served in different leadership roles in state, district, and local bar organizations, including as an officer of the Fourth and Sixth District Bar Associations, the Idaho State Bar Pro Bono Commission, and the ISB Family Law Section Governing Council. He was also the recipient of the Idaho State Bar's Service Award in 2015. Mr. Stokes is an adjunct faculty member at Boise State University and the University of Idaho College of Law, where he teaches Human Resource Law, Business Law, and National Security Law. He is active in the community, and has volunteered with Scouts BSA, Camp Perkins Lutheran Outdoor Ministries, and the Idaho State University Alumni Association. Mr. Stokes is also a proud father of three and enjoys skiing, running, biking, and camping throughout Idaho with his children.

Continuing Legal Education

May

9 *Lawyer Ethics and Email*
Audio Stream
1.0 Ethics credit

16 *Business and Corporate Law Section CLE*
University of Idaho College of Law - Boise

19 *2025 Dispute Resolution Seminar*
The Law Center, Boise & Webcast
6.5 CLE credits including 2.0 Ethics

20 *When Lawyers Make Mistakes: Ethical & Disciplinary Issues*
Audio Stream
1.0 Ethics credit

28 *Ethics of Beginning and Ending Client Relationships*
Audio Stream
1.0 Ethics credit

30 *Shared Spaces: Ethics of Remote and Virtual Offices*
Audio Stream
1.0 Ethics credit

= In Person

= Live Webcast

= Live Audio Stream

June

19 *2025 Ethics Update: Navigating New Challenges, Part 1*

20 *2025 Ethics Update: Navigating New Challenges, Part 2*

27 *Texting While Practicing Law: Ethical Risks*

For more information and to register, visit www.isb.idaho.gov/CLE.

Celebrating 15 years of excellence, integrity and accountability in the provision of Vocational Rehabilitation services.

Kourtney Layton & Assoc.

Kourtney Layton MRC, CRC, ABVE/D, IPEC, CLCP, CVE, CIWCS-A

Rehabilitation Counselor, Vocational Analyst, Life Care Planner

- Worker's Compensation
- Employment
- Personal Injury
- Family Law
- Life Care Plans
- Vocational Assessments
- UCR Medical Bill Analysis
- Rebuttal Opinions
- Expert Testimony
- Prelitigation Packages

One-click referral

E-mail us now!

Reach us at 855-831-8880 or find us online at kourtneylayton.com

537 W. Bannock St Boise, ID 83702 ▪ HepworthHolzer.com

HEPWORTH·HOLZER
LIFE-CHANGING LAW