the ADVOCATE

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ENDOWMENT LANDS AND THEIR PLACE IN TODAY'S WORLD

PLUS

What to Do When the EPA Comes Knocking

Is This the End of NEPA Nitpicking?

The Idaho SPEED Act

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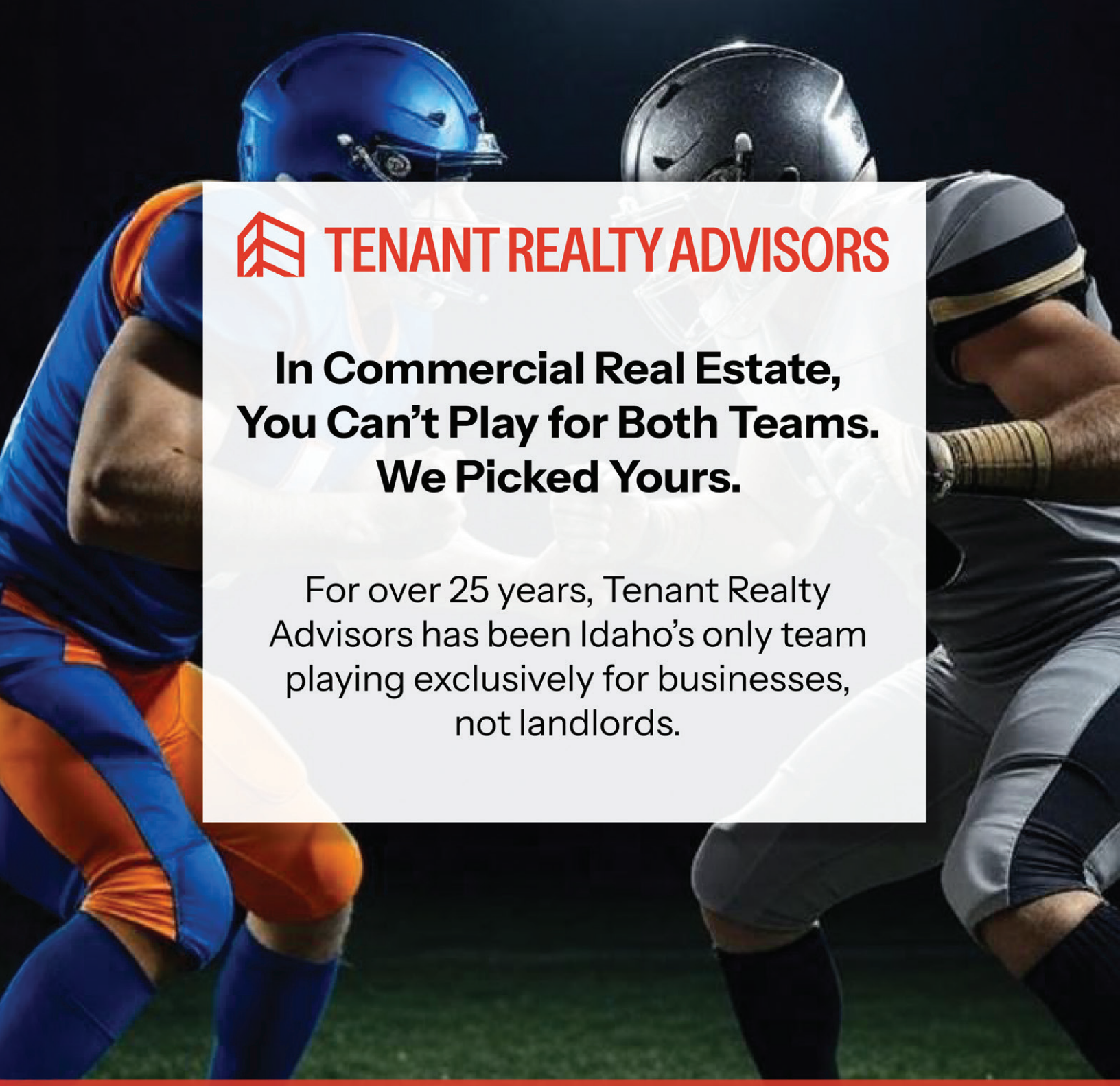

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CORRECTION

In the print version of this article "The Role of Lawyers During the Japanese American Incarceration" by Lorraine K. Bannai (*The Advocate*, Vol. 68, No. 9, pp. 2, 16-21), the caption for the cover image and title page image should read as follows.

Gordon Hirabayashi with (counterclockwise) Kathryn Bannai (lead counsel 1982-85, Rodney Kawakami (lead counsel 1985-87), Benson Wong, Arthur Barnett, and Michael Leong. Photo credit: ©Michael Yamashita.

The caption has been corrected in the online version.

On the Cover

This image features an old school house sitting in the middle of fields in Idaho, representing this issue's Featured Article by Alli Olson on endowment lands. Read more about the history of endowment lands and their place in our present world starting on page 14.

Featured Article

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Additional Articles

From the Bar

In Every Issue

Ethics, Fiduciary Duties, and a Call for Mentors

Frederick J. Hahn, III

Law schools have historically excelled at teaching the law. By the time students graduate and sit for the bar exam, they often know more black-letter law—contracts, torts, constitutional law—than they ever will again. Yet, knowing the law is not the same as knowing how to practice it. Law schools rarely teach the judgment, practical skills, and professional instincts essential to "lawyering" in the real world. Those lessons are acquired through experience and, most effectively, through mentorship.

Finding a good mentor can mark the difference between becoming a competent lawyer and a truly exceptional one. A mentor helps cultivate sound judgment, professionalism, and the practical wisdom necessary to serve clients effectively. Importantly, the value of mentorship is not limited to those just entering practice. For senior members of the bar, mentoring offers professional fulfillment while reinforcing the high standards that have long distinguished Idaho's legal community. At its best, mentoring is not about recounting war stories or past victories, but about communicating core values, modeling integrity, and shaping the next generation of attorneys.

As a young lawyer, I recall one such lesson that has guided my career. One of my early mentors offered the simple but profound reminder: *"Remember, lawyers can do many things, but they cannot change the facts."* This truth is critical to effective and ethical practice. Practicing with this admonition in mind helps attorneys navigate the mandates of the Idaho Rules of Professional Conduct ("IRPC") while staying faithful to the fiduciary nature of the attorney–client relationship.

Facts as the Immutable Anchors to Ethical Advocacy

No matter how artful our advocacy is, the facts at issue in any controversy are immutable. There is no room in ethical practice for "alternative facts." Rule 3.3 of the IRPC forbids lawyers from knowingly making false statements of fact or law to a tribunal (IRPC 3.3(a)(1), (a)(3)), and Rule 4.1 prohibits knowingly false statements to third parties (IRPC 4.1(a)). These core obligations reinforce the early lesson that acknowledging the facts of a case is fundamental to professional integrity. A client untethered to the truth, paired with an attorney willing to overlook false testimony, creates a dangerous scenario for any litigated conflict. Unfortunately, in an age of disinformation and "alterative facts", these challenges seem increasingly common.

Beyond Advocacy: The Lawyer as Fiduciary and Counselor

Our duties to clients extend far beyond courtroom zeal. The IRPC recognize that attorneys are not merely advocates but fiduciaries, charged with exercising independent professional judgment and rendering candid advice. This includes counseling clients to resolve disputes when the facts or law favor settlement over litigation. The obligation of zealous representation cannot be elevated above our fiduciary duty to advise clients responsibly.

Too often, clients insist they would "rather pay their lawyer" than settle with the other side. Fidelity to our fiduciary role requires us to counsel against such short-sighted positions. True advocacy sometimes means urging compromise, even when clients are resistant, because it serves their best interests.

The Perils of "Win-At-All-Costs" Advocacy

Increasingly, some practitioners appear tempted by a "win-at-all-costs" mentality, cloaking it in the rhetoric of zealous representation. Yet Idaho law makes clear that zeal divorced from candor, loyalty, and judgment is not advocacy but a breach of fiduciary duty. As the Supreme Court emphasized in *Parkinson v. Bevis*, 165 Idaho 599, 448 P.3d 1027 (2019), attorneys are fiduciaries first and foremost, and when zeal eclipses judgment, fiduciary duties are compromised. In recent cases, the Idaho Supreme Court has admonished attorneys for their lack of candor in appellate practice. An attorney's willingness

to shade the truth for perceived tactical advantage may result in professional discipline and illustrates that "winning" by any means necessary is, in truth, losing one's professional compass.

Moreover, pushing litigation forward despite adverse facts, weak legal footing, escalating fees, or heightened client risk is not zealous advocacy, it may be a breach of fiduciary duty. Such conduct jeopardizes the duty of loyalty, implicates IRPC 1.5(a), and violates the Preamble's command that representation be both zealous and principled. True advocacy does not mean fighting every battle; it means acting in the client's best interest. Where settlement offers certainty, reduces cost, and minimizes risk, advising compromise is not weakness but fidelity to one's fiduciary role. Failure to temper zeal with judgment risks transforming advocacy into an ethical breach.

The Idaho State Bar Mentor Program

Mentorship remains central to cultivating these professional values. The Idaho State Bar maintains a formal Mentor Program, accessible through the ISB website.[1] The program pairs experienced attorneys with newer lawyers seeking guidance. Senior attorneys may submit an application identifying their background and areas of interest, and newer attorneys may contact the Bar—currently through Teresa Baker at tbaker@isb.idaho.gov—to be matched with a mentor.

The program's success, however, depends upon participation. To preserve the high standards that define our profession in Idaho, we need more experienced lawyers willing to guide the next generation. For senior members of the bar, mentoring is not only an opportunity to give back but also a way to ensure that professionalism, integrity, and ethical advocacy remain hallmarks of our practice.

F.J. Hahn *is currently a commissioner serving the 6th and 7th districts of the Idaho State Bar. He attended the University of Idaho College of Law and works in Idaho Falls.*

Endnote

1. https://isb.idaho.gov/member-services/programs-resources/mentor-program/.

NextGen Bar Exam Update

Abby Kostecka

In July of 2026, Idaho and ten other jurisdictions will be the first to administer the NextGen Uniform Bar Exam ("UBE"). The NextGen UBE is designed to balance the skills and knowledge needed to successfully practice law and is touted as a better assessment of the qualifications necessary to become a lawyer. Additionally, the modernized format of the exam, entirely online, is designed to ensure that graduates and new admittees are prepared to competently engage in the practice of law.

The NextGen UBE has been in the making since 2018; guided by the results of a comprehensive, empirical three-year study, the National Conference of Bar Examiners ("NCBE") planned for the earliest stages of the implementation process to begin in 2021 and 2022. The NCBE's process included several phases of research testing and statistical analysis, with the implementation timeline continuing until 2028. 40 jurisdictions have adopted the NextGen UBE and will have administered the new exam in or before 2028. The current examination is comprised of the Multistate Bar Examination ("MBE"), the Multistate Essay Examination ("MEE"), and the Multistate Performance Test ("MPT"). The NCBE intends for the final administration of the MBE, MEE, and MPT to take place in 2028.

In 2023, the Idaho State Bar Board of Commissioners established the NextGen Task Force to explore whether they should recommend adopting the NextGen UBE in Idaho. As a result of their work, the Idaho State Bar membership approved Resolution 24-01, which recommended to the Idaho Supreme Court that Section II of the Idaho Bar Commission Rules be amended to implement the NextGen Bar Exam in Idaho. In February 2025, the Idaho Supreme Court entered an order amending the admissions rules consistent with Resolution 24-01, replacing the current UBE with the NextGen UBE.

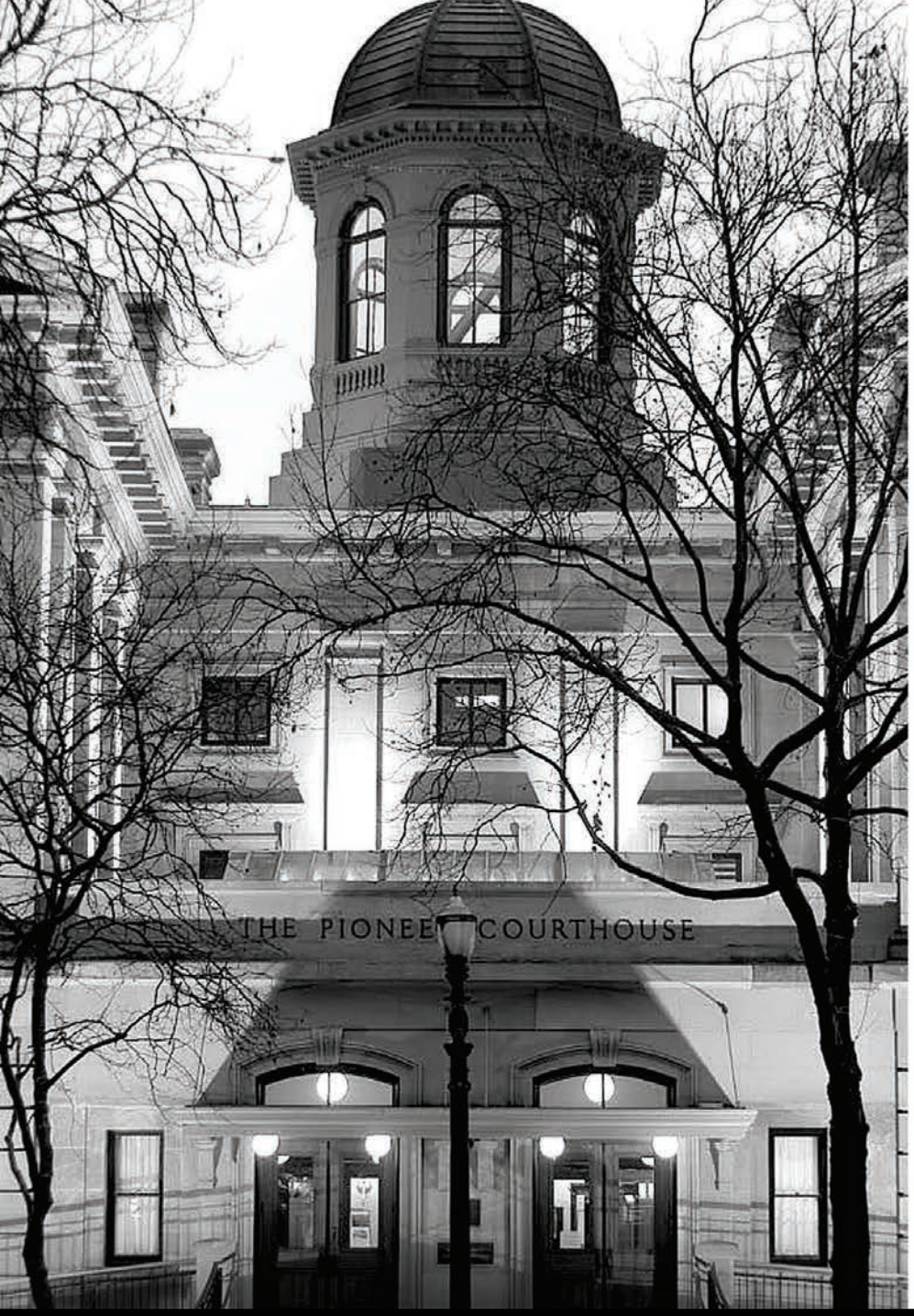
The important work of the NextGen Task force is ongoing. As next summer approaches, the Task Force will continue to meet and discuss important topics and decisions, including setting a passing score, portability with states who have not administered NextGen, and standard-setting guidelines for Idaho. The Task Force will also monitor ongoing developments with the NextGen UBE, as the NCBE continues to assist jurisdictions with preparation and troubleshooting.

The Idaho State Bar is working collaboratively with the NCBE and the University of Idaho College of Law to prepare—both substantively and logistically. The Bar is fortunate to have a long-standing collaborative relationship with the University of Idaho College of Law, which graciously provides the primary testing site for the July bar exam. The NCBE is assisting with site engineer and proctor training, as well as ensuring the exam location possesses the appropriate and necessary Wi-Fi capabilities for this wholly digital exam. Finally, the NCBE and the Idaho State Bar are coordinating efforts to provide Idaho applicants with exam content scope outlines, question samples by type, and an exam software preview.

Idaho is at the forefront of legal education reform by adopting the NextGen UBE. The Idaho State Bar has taken deliberate steps to prepare both applicants and legal educators for this significant transition. Efforts to support applicant success reflect Idaho's commitment to innovation in legal assessment and ensuring that future attorneys are well-equipped to meet the demands of modern legal practice.

You can contact Abby Kostecka, Licensing Director, at akostecka@isb.idaho.gov or (208) 334-4500 with any questions.

Abby Kostecka *is the Licensing Director of the Idaho State Bar. Her job duties include overseeing applying and being admitted to the Idaho State Bar, and MCLE accreditation and compliance for attorneys in Idaho. She worked as a prosecutor for Ada County prior to joining the Bar. She received her undergraduate degree from the University of Kentucky and her law degree from Gonzaga University.*



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Department Report: MCLE & Licensing

Abby Kostecka
Annette Strauser

MCLE Information

The Idaho State Bar Mandatory Continuing Legal Education ("MCLE") Department administers the rules governing accreditation of CLE programming in Idaho and monitors Idaho attorneys' compliance with MCLE requirements.

Course Accreditation

A program must meet the accreditation standards in the Idaho Bar Commission Rules. The MCLE Department receives over 6,000 accreditation applications annually. Individual Idaho lawyers do not pay application fees. Commercial course providers pay a $75 application fee.

Compliance

Idaho attorneys must complete at least 30 Idaho-accredited CLE programs every three-year reporting period, including at least three ethics credits. No more than 15 of the 30 credits can be "self-study," which refers to an attorney watching a recorded program. Live CLE programs include in-person classes, as well as live webcasts. Attorneys can earn three hours of CLE credit for each hour spent teaching a CLE. Attorneys can also earn up to six CLE credits per reporting period for published legal writing.

Every year, approximately 1,750 Idaho attorneys (one-third of the Active members of the Idaho State Bar) are required to report their MCLE compliance to the Idaho State Bar. The MCLE Department verifies Idaho attorneys' compliance with the MCLE requirements.

Ongoing Work to Review MCLE Compliance Requirements

In 2025, the Board of Commissioners of the Idaho State Bar approved the creation of a Mandatory Continuing Legal Education Task Force, whose goal is to review Section IV of the Idaho Bar Commission Rules. In reviewing Section IV, the Task Force is contemplating several topics, including changes in credit hour requirements to place Idaho on parity with other states and allowing MCLE credit for activities other than those listed in Bar Commission Rule 404. The Task Force is currently collecting information about

all 50 states' mandatory continuing legal education requirements for comparative purposes.

Spotlight on MCLE Department Staff

The Idaho State Bar is fortunate to have experienced and talented staff in the MCLE Department. Nelda Adolf, Calle Belodoff, Karen Carlisle, and Kim Wilson skillfully handle thousands of applications, field inquiries from course providers and attorneys, and help attorneys navigate the MCLE compliance process.

Abby Kostecka *is the Licensing Director of the Idaho State Bar. Her job duties include overseeing applying and being admitted to the Idaho State Bar, and MCLE accreditation and compliance for attorneys in Idaho. She worked as a prosecutor for Ada County prior to joining the Bar. She received her undergraduate degree from the University of Kentucky and her law degree from Gonzaga University. Things Abby likes: the smell of freshly cut grass, newly washed sheets, cold lake water on a hot day, and painting by numbers. Things Abby hates: the smell of gasoline, anything banana flavored that is not a banana, couples that share social media accounts, when babies wear bows bigger than their heads, and hellgrammites.*

Licensing Information

All Idaho State Bar members must comply with the annual licensing requirements of Section III of the Idaho Bar Commission Rules. The Licensing Department administers these rules and assists members with compliance.

Annual Licensing Renewal

The 2026 annual licensing renewal will begin in late November/early December when the online licensing portal is opened, and the paper licensing packets are mailed. The normal February 1st and March 1st deadlines fall on Sundays in 2026 and will be extended to the following Mondays. The deadline for paying the 2026 licensing fee and completing the required forms is February 2, 2026. Licensing not received by February 2nd will be subject to a late fee. The final deadline is March 2, 2026. The names of attorneys who do not submit their licensing by March 2nd will be given to the Idaho Supreme Court for cancelation of their licenses.

Fee Increases

The annual licensing fees are increasing with the 2026 licensing renewals:

- Active or House Counsel Member, starting with fourth full year of admission ($485)
- Active or House Counsel in the first, second, or third full year of admission ($350)
- Inactive or Emeritus Members ($170)
- Senior Members ($80)
- Members age 72 years or older, regardless of status ($80)

Online Licensing

Attorneys who have completed their licensing renewal online within the past two years will automatically be presumed to be renewing online again for 2026. An email will be sent to all licensed members notifying them of the upcoming licensing and allowing them to choose an alternative renewal process.

Online licensing renewal is encouraged for all members, it reduces paper, postage and time. Individual attorneys and firms can submit licensing online and payments can be made by credit card or electronic check. In addition, firms can submit the licensing online and pay with a paper check by using the "voucher" option.

The online licensing portal will close beginning on March 3, 2026, and will not reopen until the 2027 licensing renewal period begins. All firm renewal attorney rosters from the past year will be cleared out before the next renewal period begins.

Membership Information

All members are required to provide the following membership information, which shall be considered public information:

- Full name
- Name of employer or firm (if applicable)

Please remember:

- Keep the Bar informed of all changes to your membership information.
- Any changes to the above information must be submitted within thirty days—except for changes to the eService address which must be submitted within seven days.
- Address changes can be submitted online at https://laserfiche.isb.idaho.gov/forms/addressupdate.
- The mailing address, phone and email are required, but do not use your personal information unless you are okay with having it in the public records.
- Changes to your eService ("iCourt") email need to be submitted to the Bar first so it can be passed to the Idaho Supreme Court.

- Mailing address
- Phone number
- Email address
- eService Email address (active and house counsel members only)

New membership cards will be mailed in mid-March 2026 following the final licensing deadline.

Licensing and Status Changes

In addition to changes to membership information, licensing and status changes occur throughout the year. Attorneys whose trust account or professional liability insurance changes need to update their records with the Bar. New trust account and professional liability insurance certificates can be requested at any time.

Attorneys interested in changing status should review Section III of the Idaho Bar Commission Rules and contact Annette Strauser (208-334-4500 or astrauser@isb.idaho.gov). Please note that most transfers to inactive or senior status can be made with annual licensing. All other changes need to be made through the Licensing Department.

Questions?

Please feel free to contact the Bar if you have any questions about the licensing requirements (208-334-4500 or licensing@isb.idaho.gov). We are here to assist you with your licensing needs.

Annette Strauser *is the Licensing/IT Administrator responsible for licensing, membership and IT services. She was born and raised in Idaho, graduated from Boise State University and has been with the Idaho State Bar for 42 years.*

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Endowment Lands: A Sovereign Startup, Sacred Trust, & Promise for the Future

Alli Olson

What are endowment lands? Are they public lands? Or are they just open to the public? Aren't they owned by the state? So, they're managed for the people of the state…right? Endowment lands are, well, complicated. But their underlying principle is fairly straightforward. This article endeavors to answer each of the above questions by taking a retrospective look at where these lands originated and why they were created, so that their function in today's society can be understood. Let's start with the most important question…

Where Did They Come From?

Endowment (n. a gift of money or property to an institution for a specific purpose) lands were gifted to some states by the federal government upon statehood to support public institutions, primarily public schools. Their origins can be traced from present-day statutes and constitutions back through statehood and territory acts, to the equal-footing doctrine, the Northwest Ordinance, and the Land Ordinance.

The Land Ordinance of 1785 ("Ordinance") created a survey system to inventory and dispose of land owned by the general (federal) government. The starting point for the entire survey system was to be where the Ohio River flowed from Pennsylvania's southern border. From there, the Ordinance required a rectangular survey system to divide the land into township and ranges. Each township was to consist of thirty-six sections; each one square mile section was to contain 640-acres.[1]

Within the Ordinance, the continental congress granted some land, sold some, and reserved certain, yet unnumbered, sections. The most important reservation (for the purposes of this article) was for the "maintenance of public schools."[2] Reserving each township's "central section" signaled the early government's first intention to use lands to support public institutions. Once surveyed, the central section became section sixteen.

As the United States acquired land from foreign governments, tribes, and the original colonies, it was surveyed according to the Ordinance's survey system, reserved, and, among other things, disposed of pursuant to various westward expansion acts such as The Homesteading Act of 1862 and the Desert Lands Act of 1877. The 1785 Ordinance's survey system persists today as the Public Land Survey System and is administered by the Bureau of Land Management.

In 1787, the Northwest Ordinance ("NW Ordinance") created a system of governance for the territory north-west of the Ohio River (i.e. the area that had just been surveyed under the Land Ordinance). It also established the procedure for joining the Union and provided that three to five states were to be established from what became known as the Northwest Territory. The territories that formed from the Northwest Territory were eventually "enabled," via congressional enabling acts, to draft and submit a state constitution and, hopefully, officially join the Union. The Northwest Territory gave way to present day Ohio, Indiana, Illinois, Michigan, Wisconsin, and the eastern portion of Minnesota, each of which were admitted "on an equal footing, in all respects" with the original states.[3]

The equal-footing doctrine holds that each state admitted into the Union is equal to the original thirteen states "in power, dignity, and authority" and that each state is "competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself."[4] In an attempt to put new states on an equal footing with the original thirteen states, who owned the land within their borders when it agreed to form the Union, Congress granted a "fixed portion of the lands within [the new state's] borders for the support of public education."[5]

The equal-footing doctrine is often associated with the public trust doctrine. This association is because the public trust doctrine is *inherent* in the equal footing doctrine.[6] The public trust doctrine stems from English common law (which stemmed from Roman civil law). When the American Revolution occurred, the people of the thirteen colonies "became themselves sovereign; and in that character hold the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the constitution to the general government."[7] So, just as the original states obtained title to the beds and banks of navigable waters from the English post-Revolution, so did subsequently admitted states since "a State's title to these sovereign lands arises from the equal footing doctrine and is conferred not by Congress but by the Constitution itself."[8]

Aside from helping create the equal footing doctrine, the NW Ordinance laid the foundation for how to join the Union. It was, in essence, the first territory act.

As the United States' title to land expanded westward, more territories started to form. The territories that morphed into the individual states as they are known today were all formally recognized by congressional territory acts akin to the NW Ordinance. Subsequent territory acts confirmed the 1785 Land Ordinance's reservation of the central section, section sixteen, for common schools. For example, Idaho's Territory Act, section 14, states: "When the lands in the territory shall be surveyed … sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said territory[.]"[9]

Like the states that emerged from the Northwest Territory per the NW Ordinance, subsequent territories would eventually be "enabled" by Congress to join the Union via enabling acts, which were, essentially, Congress's terms and conditions for joining the United States of America. Upon receiving an enabling act, the territories would convene a constitutional convention to draft a constitution that, at minimum, provided for the act's terms and conditions.[10] If the constitution was deemed acceptable by the general (federal) government, the territory would be admitted "on an equal footing" into the Union via a Presidential Proclamation.[11]

The terms and conditions Congress used in enabling acts varied very little between each act. Seeing the precedent set by newly admitted neighbor states, some territories took it upon themselves to initiate the process of joining the Union. They did so sans enabling act by convening a constitutional convention, drafting a constitution based on recent enabling acts and constitutions, ratifying it, and then submitting it to Congress for approval. Since there wasn't an enabling act, if the constitution was sufficient, a congressional admissions act was drafted, passed, and approved, and the state was admitted into the Union "on an equal footing". This was Idaho's path to admission.[12]

It is within these enabling or admission acts that endowment lands, as they are known today, were officially born. Consistent with the 1785 Land Ordinance and territory acts, enabling and admission acts reserved section sixteen within each township "for the support of" common (public) schools.[13] Thanks to that same Ordinance, these "in place" grants were easily identified, or would be once surveyed, and title to surveyed and unsurveyed sections was transferred upon admission.[14] If the land wasn't available for whatever reason at the time of statehood, the state could select "in-lieu," aka "indemnity," lands to make up the difference.[15]

In later acts, additional acres of land were also often granted from the federal government to the states. These "in quantity" grants were to support other public institutions, such as, in Idaho's case: "university purposes;" "an agriculture college;" "a scientific school;" "normal schools;" "an insane-asylum;" "the state University in Moscow;" "the penitentiary;" "other state, charitable, educational, penal, and reformatory institutions;" and "public buildings." The "in-lieu" and "in quantity" grants were to be selected as the legislature may provide, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the state's boundaries.

The further along the timeline of states being admitted into the Union, the more land was granted for public institutions. This trend is most noticeable in relation to public schools. "Between the years 1802 and 1846 the grants were of every section sixteen, and, thereafter, of sections sixteen and thirty-six. In some instances, additional sections have been granted."[16] Nearly all states surrounding and including Idaho were granted both sections sixteen and thirty-six "for the support of" common schools.[17] Arizona, New Mexico, and Utah are instances where sections two and thirty-two were granted in addition to sections sixteen and thirty-six.

As Congress granted more of the federal government's land, it imposed more conditions within enabling and admission acts. When states joined the Union, they assented to the terms and conditions of their enabling or admission act by ratifying their constitution.[18] So, what exactly did the states sign up for in accepting the granted, or "endowed," land?

Honorary Obligation or Sacred Trust?

"Although the basic pattern of school lands grants was generally consistent from State to State in terms of the reservation and grant of the lands, the specific provisions of the grants varied by State and over time."[19]

In states admitted early on, like Alabama and Michigan, the Supreme Court has found that the sparse language surrounding the grant of lands did little more than create an "honorary obligation," not a trust.[20] In these states, the granting language said little more than that section sixteen was "for the use of schools."[21]

In later-admitted states, like Arizona and New Mexico, there is no question as to whether Congress intended to create a trust when it granted the lands. Their

enabling act plainly states that "all lands hereby granted … shall be held by the said State in trust" and that "[d]isposition of any of said lands [or of any money derived therefrom]… in any manner contrary to the provisions of this Act, shall be deemed a breach of trust."[22]

Most states, like Idaho, fell between the two extremes. Since Congress evolved its legislative approach to granting school lands, a case-specific analysis of a state's enabling or admission act is required to determine whether a trust was created.[23]

Congress can, without question, create a trust. It need not use the term "trust" nor know it is creating one *if* it manifests an intention to create a trust relationship.[24] One way a trust relationship is created is when a trustor (the U.S.) transfers property (the land) to a trustee (the individual states) to be managed for a specific purpose (i.e. "common schools") *with enforceable duties*.[25]

As explained, Alabama and Michigan's grant "for the use of" was not enough to create enforceable duties. So, what was? In Colorado's enabling act the Tenth Circuit found "a sufficient enumeration of duties to indicate Congress's intent to create a fiduciary relationship" with the state since it prescribed: (1) how the lands are to be disposed; (2) at what minimum price; (3) how income from disposals is to be held; (4) what may be done with the interest accrued from the income; and (5) the permanent nature of the assets for the "support of" public institutions.[26]

Idaho's land granting act, along with many other western states', enumerates similar, if not identical, duties. Idaho's admission act requires that: if disposal of education lands occurs, it be done at public auction and that the proceeds constitute a permanent school fund, of which only the interest may be used to support schools; certain lands granted by the act may not be sold for less than ten dollars an acre; and that all "lands granted shall be held, appropriated, and disposed of exclusively for the purpose herein mentioned in such manner as the legislature of the state may provide"—among other things.[27]

These fundamental duties created a fiduciary relationship between the federal government, as trustor, and the individual state, as trustee. Accordingly, traditional trust law principles, including fiduciary duties, have been imposed by courts. So, in addition to following the duties prescribed by the trustor in the act granting the land, the state must carry out the purposes of the trust with undivided loyalty, in good faith, and in a way that a prudent person "of good business sense and judgment" would act in regard to their own affairs[28]. The state may further constitutionally or statutorily bind itself to additional duties, but, fundamentally, as trustee, the state must manage the trust for the sole benefit of the beneficiary.

The trust corpus, or body, is twofold. One is comprised of the physical land granted "for the support of" a certain public institution. The other is a fiscal trust, "the principal of which is derived primarily from the sale or lease of [granted] lands."[29]

The two corpuses work in conjunction with each other. Both are permanent and inviolate. One cannot be significantly reduced without the other growing. For example, if granted lands are sold, money is gained. The land trust diminishes, but the fiscal trust grows. The fiscal trust's principal is protected since only the accrued interest may be expended to support the institution to which the land was granted. When exchanging endowment land for other land (which is a common practice among western states) the acquired land becomes a part of the land trust so that neither the land nor fiscal trust is significantly diminished.

Congress granted these lands to provide financial support to public institutions and put the newly admitted state on an equal footing with the original states.

The endowment land and fund are independently and collectively a "sacred trust" that must be managed for the benefit of the beneficiary.[30] Beneficiaries receive all the trust's benefits, without having to do much, if anything. Here, they are the public institutions that received land in the enabling or admission acts. For example, public schools in Idaho are the beneficiaries of the land within sections 16 and 36 and the revenue derived from that land.

Congress granted these lands to provide financial support to public institutions and put the newly admitted state on an equal footing with the original states. Given that these lands were intended to help the new state financially support various public institutions, the question becomes—how are the lands managed to generate revenue?

How Are They *Actually* Managed?

When states ratified their constitutions, they accepted the trust and its terms "by an ordinance irrevocable without the consent of the United States and the people of the State."[31] Some states took their fiduciary duty to financially support the public institutions seriously by inscribing a financial management mandate within their constitution.

Idaho's original constitutional mandate was to manage the lands "in such a manner as will secure the maximum possible amount therefor[.]" In 1982 that mandate was changed to language that remains today. Now, management must "secure the maximum long term financial return to the institution to which granted." Acting as trustees for the state, the State Board of Land Commissioners "is granted discretion in determining what constitutes the maximum long term financial return."[32]

Originally, Colorado's constitution mirrored Idaho's original constitutional mandate. In 1996, a voter-approved amendment, which was challenged and upheld (twice), heralded a "new management approach for the land trust" by announcing a "'sound stewardship' principle."[33] Instead of managing the lands "in such manner as will secure the maximum possible amount," the lands are to be managed "in order to produce reasonable and consistent income over time" and "in a manner which will conserve the long-term value of such resources, as well as existing and future uses[.]"[34]

Montana is unique in how it has interpreted the trust created in its enabling act. Since the Montana's inception, it's constitution has held "all lands of the state" that have been granted to the state by congress "in trust for the people, to be disposed of hereafter provided, for the respective purposes for which they have been … granted."[35] The constitution provides for the endowment fund trust but otherwise provides no fiscal guidance for how to manage the lands. Statutorily, however, the state board of land commissioners must administer the trust to "secure the largest measure of legitimate and reasonable advantage to the state" and "provide for the long-term financial support of education"[36] while managing the lands under a "multiple-use management concept" that recognizes "some land may be used for less than all of the resources" and avoids "impairment of the productivity of the land."[37]

Other western constitutions, original and current, do little more than acknowledge the granted lands and require the revenue be held for the use of schools. Even still, those states, along with most others, provide statutory guidance on how to fulfill the fiduciary obligations associated with managing endowment lands. Even with a fiscal mandate, some variation of trust law's "prudent investor rule" lingers in the background guiding management practices and decisions. Throughout the varying approaches the duty to manage these lands (and revenue) for the sole and exclusive benefit of the beneficiary remains unalterable.[38]

To execute their duties as trustees and administer the trusts most western states have a constitutionally[39] or statutorily[40] created board of land commissioners. The board serves as trustees on behalf of the state and oversees the management of the "sacred trust." States with land boards often have an "administrative arm" to carry out the day-to-day duties of being a land manager. These divisions, departments, or agencies, depending on the state, all report to the board and are bound by the same fiduciary obligations of the "sacred trust."

In Idaho, for example, the constitution created the state board of land commissioners consisting of the governor, superintendent of public instruction, secretary of state, attorney general, and state controller.[41] The Department of Lands is statutorily created and acts as the Board's "administrative arm."[42]

Other states, like Arizona[43] and Nevada,[44] just have a statutorily created division, department, or agency to act as trustee and oversee all aspects of managing and administering the trust.

How Do They Generate Revenue?

Initially, most western states "pursued an aggressive policy of selling off the school-grant lands both to provide income for the state's public schools and as a means to spur settlement in the state."[45] For this reason, some states, like Nevada, have very little trust land left (in Nevada's case, about 3,000 of the estimated 4,000,000 granted acres remain). But, just as Congress's legislative approach to granting lands changed throughout the years, so did the state's approach to managing those lands. Over the years, states have seemingly shifted from disposal to retention. While endowment land sales are still a prevalent source of revenue, states have found ways to generate revenue while retaining title to the lands.

State management activities vary depending on a variety of factors such as the type of resources available on the land, what the land is best suited for, and how the state has interpreted its duties. Most states lease endowment land for a variety of purposes, most commonly, timber harvesting, agriculture, grazing, oil and gas, renewable energy, and mineral extraction. Heavily timbered states, like Idaho, derive

most of their revenue from timber harvests while mineral-heavy states, like Utah, derive most of their revenue from mineral extraction. Arizona, Colorado, and Montana generate a significant amount of revenue from commercial, residential, and recreational leasing. Colorado's leasing program includes carbon sequestration and ecosystem services (e.g. a pollinator program). Overall, the state, as trustee, has broad discretion to determine how to fulfill its fiduciary obligations to the beneficiary.[46] Other uses are also permitted—literally and figuratively—like public access.

Before turning to the final question—*are these lands public lands or just open to the public?* —here is a quick recap. Endowment lands were granted to help support various public institutions, such as public schools, and are held in a "sacred trust" by the respective state to support those various public institutions. They are "working lands" and must be managed as such.

The term "public lands," evokes different meanings for different people, but it is commonly associated with land owned by the government (usually federal) that is open to and managed for the general public (usually under a multiple use and sustained yield management approach). While endowment lands are managed by a governmental agency and may be open to the public, they are held in trust and are managed to financially support their associated beneficiary. So, fundamentally, endowment lands differ from the traditional use and understanding of "public lands." Practically, however, that difference can be hard to distinguish.

Just because they're "working lands" doesn't necessarily mean that they're closed for public use. In Idaho, Oregon, and Wyoming, endowment lands are generally open for responsible public use, free of charge. In Colorado, endowment lands are closed for public use unless a lessee opens the land up for such use. And, while Montana's constitution states that the granted lands are "public lands of the state," it, along with Arizona and Washington, require a fee to use endowment lands (think of the Idaho's Parks and Recreation Passport that you can purchase when registering your car). So, once again, whether endowment lands are open to the public depends on the state and how it, as trustee, has interested and implemented its duties.

One thing is certain, regardless of the state, endowment lands are special. They represent a unique piece of western land policy that highlights the importance of land and public institutions and that has persisted since the inception of this nation. While land management policy and approaches evolve over time, this "intergenerational," "sacred trust" between a state and its public institutions has endured the test of time and will continue to do so given the states entrusted with endowment lands continue to responsibly manage both the land and fiscal corpus of the sacred trust to benefit current and future beneficiaries.

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Endnotes

1. An Ordinance for ascertaining the mode of disposing of lands in the Western Territory, Cont. Cong. No. 124 (May 20, 1785).

2. *Id.*

3. Northwest Ordinance of 1785, Const. Cong. No. 224a (July 13, 1787).

4. *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

5. *Andrus v. Utah*, 446 U.S. 500, 523 (1980) (Powell, J. dissenting).

6. *Idaho v. Cour d'Alene Tribe of Idaho*, 521 U.S. 261 (1997) (internal citation omitted).

7. *Martin v. Waddell's Lessee*, 41 U.S. 367, 410 (1842).

8. *Cour d'Alene Tribe of Idaho*, 521 U.S. at 283 (internal citation omitted); *see also PPL Montana, LLC v. Montana*, 565 U.S. 576, 591 (2012).

9. An Act to provide a temporary government for the territory of Idaho (Idaho Territory Act), 12 Stat. L. 808, ch. 117, § 14 (1863).

10. *See e.g.*, An Act to enable the people of Utah to form a constitution and state government and be admitted into the Union on an equal footing with the original States, 28 Stat. 107, §§ 6 – 13 (1894).

11. *See e.g.*, Proclamation No. 9, 29 Stat. 876 (Jan. 4, 1896).

12. *See e.g.*, An act to provide for the admission of the State of Idaho into the Union (Idaho Admission Act), 26 Stat. 215 (1890).

13. *See e.g., Id.* at § 4.

14. *Balderson v. Brady*, 17 Idaho 567, 107 P. 493 (Idaho 1910).

15. *Andrus*, 446 U.S. at 508 ("[A]s is typical of private contract remedies, the purpose of the right to make indemnity selections was to give the State the benefit of the bargain.").

16. *United States v. Morrison*, 240 U.S. 192, 198 (1916).

17. Colorado, Montana, Nevada, Oregon, Washington, and Wyoming were also granted sections sixteen and thirty-six.

18. *Ervien v. United States*, 251 U.S. 41, 46 (1919) ("The constitutional convention was required to provide, by an ordinance irrevocable without the consent of the United States and the people of the State, that the State and its people consent to the provisions of the act, and the constitution of the State did so provide.").

19. *Papasan v. Allain*, 478 U.S. 265, 270, (1986).

20. *Alabama v. Schmidt*, 232 U.S. 168 (1914); *Cooper v. Roberts*, 59 U.S. 173 (1855) (regarding Michigan).

21. *Id.*

22. An Act to enable the people of New Mexico to form a constitution and state government and be admitted into the Union on an equal footing with the original States; and to enable the people of Arizona to form a constitution and state government and be admitted into the Union on an equal footing with the original States, 36 Stat. 557, §§ 10, 28 (June 20, 1910); *see also United States v. Ervien*, 251 U.S. 41 (1919); *Lassen v. Arizona*, 385 U.S. 458 (1966).

23. *See Papasan*, 478 U.S. 265.

24. Restatement (Third) of Trusts § 13 (Am. Law Inst. 2003).

25. *Id.* at §§ 10, 13.

26. *Branson Sch. Dist. Re-82 v. Romer*, 161 F.3d 619, 634 (10th Cir. 1998).

27. Idaho Admission Act, 26 Stat. 215, §§ 4-14 (July 3, 1890).

28. *Barber Lumber v. Gifford*, 25 Idaho 654, 139 P. 557, 561 (1914).

29. *State, ex rel. Moon v. State Bd. of Examiners*, 104 Idaho 640, 641, 662 P.2d 221, 222 (1983).

30. *State v. Peterson*, 61 Idaho 50, 97 P.2d 603, 604 (1939).

31. *Ervien*, 251 U.S. at 46.

32. *Idaho Watersheds Project v. St. Bd. Of Lnd. Comm'rs*, 128 Idaho 761, 765, 918 P.2d 1206, 1210 (1996).

33. *Branson Sch. Dist. Re-82 v. Romer*, 958 F. Supp. 1501 (D. Colorado 1997), *aff'd*, 161 F.3d 619, 626 (10th Cir. 1998).

34. Colo. const. art 9, § 10.

35. Mont. const. art. 10, § 11 (originally art. 17, §1).

36. M.C.A. §77-1-202.

37. M.C.A. §77-1-203.

38. *See Cooper v. Roberts*, 59 U.S. 173 (1855); *Ervien v. United States*, 251 U.S. 41, 46 (1919).

39. Colorado, Montana, Idaho, and Wyoming have constitutionally created land boards.

40. Utah and Washington have statutorily created land boards.

41. Idaho Const. Art. IX § 7.

42. I.C. § 58-101.

43. In title 37, chapter 1, Arizona created the state land commissioner and state land department.

44. In title 26, chapter 321, Nevada created the division of state lands.

45. *Romer*, 161 F.3d at 626.

46. *See Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

The Need for Speed: Expediting Permitting for Mining and Infrastructure—Safely

Andrew A. Irvine

Imagine you're running late for a flight. You get into the TSA line, which snakes longer than expected. People fumble with their countless carry-ons, one person argues about the "new" twenty-year-old liquid restriction, and you worry you'll miss your departure—yet you wouldn't skip the safety checks. That's what permitting often feels like: urgent projects—mines, transmission lines, power generation—are waiting for security to clear while the line moves at a snail's pace.

National leaders and state governments increasingly recognize that we need to open more "TSA Pre-Check lanes" in our permitting process. In Idaho, the *Strategic Permitting, Efficiency, and Economic Development* Executive Order (the "Idaho SPEED Act") tried to do just that. At the federal level, Executive Orders ("EO") 14,241 and 14,285 are expanding fast-track permitting lanes to critical-mineral projects via FAST-41. Congress is weighing in too, with its own proposed SPEED Act. This article takes you through those developments (current as of the date of this submission), shares what's already moving (some mines are now in FAST-41), and discusses the challenge of speeding up projects while maintaining environmental and climate protections.

Federal Action: Executive Orders, FAST-41, and Visible Movement

10 years ago, Congress enacted Fixing America's Surface Transportation Act. Title 41 of this Act—known as FAST-41—created a coordinated process for major federal projects. Think of it like a CLEAR lane at the airport: the security screening still happens, but with streamlined scheduling, clearer accountability, and frequent status updates—getting you through faster without cutting corners.[1] Yet critical mineral projects were largely excluded from the express lane.

To address this, on March 20, 2025, Executive Order 14241, *Immediate Measures to Increase American Mineral Production*, declared mineral development a national priority and directed federal agencies to prioritize and accelerate permitting for critical mineral projects by enhancing interagency coordination, removing procedural bottlenecks, and leveraging existing authorities to shorten review times.[2] With clear milestones and strengthened collaboration, the EO seeks to fast-track previously slow-moving projects to support national supply chain resilience and security objectives.

On April 24, 2025, Executive Order 14285, *Unleashing America's Offshore Critical Minerals and Resources*, extended this urgency to seabed minerals.[3] Agencies were told to coordinate, expedite exploration, and support offshore processing.

The Critiques: Deep-Sea Mining and Environmental Guardrails

Not everyone is cheering on the faster pace. Deep-sea mining, in particular, has sparked concern among marine scientists and environmental advocates. The ocean floor contains critical minerals but extracting them could disrupt fragile ecosystems that play a role in carbon sequestration and biodiversity.[4] If permitting timelines compress without sufficient environmental safeguards, opponents fear irreversible harm.[5]

Similarly, climate change advocates warn that "speed" should not be code for reduced oversight. Building out critical-mineral capacity for renewable energy is essential—but so is ensuring that the process aligns with greenhouse-gas reduction goals and avoids displacing communities or damaging watersheds. The challenge is to have the equivalent of TSA Pre-Check: faster processing for those prepared and vetted, not skipping the metal detector entirely.

Results: Moving Projects Along

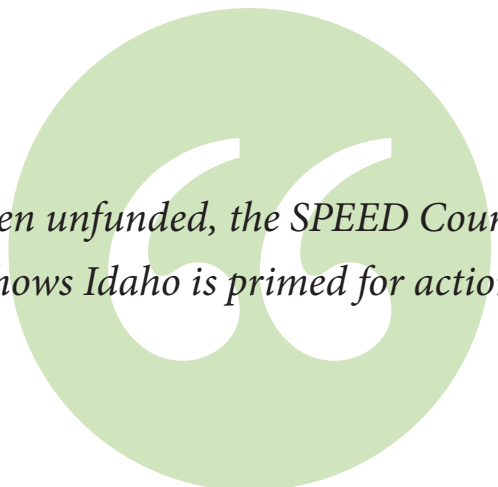
Since these EOs, several domestic critical-mineral projects (including some in Idaho) have earned FAST-41 "covered" status.[6] That means they now pass through a better-managed process—still thorough, but less winding.

State Action: Idaho's SPEED Council—Paper Plans, No Fuel

In Idaho, Governor Brad Little created the SPEED Council on January 24, 2025, to streamline permitting for energy and infrastructure projects, with interagency timetables and a single coordinating body.[7] It was a move to open a new express lane in the state's "security line."

But when the 2025 Legislature adjourned, funding for the Council wasn't approved.[8] The express lane is drafted—but there's no backing to hire staff or convene the Council. The intent is clear, but the power to run it is missing.

Even unfunded, the SPEED Council shows Idaho is primed for action. Should federal momentum continue, once the legislature funds it, Idaho could align with national "express lane" practices—making the wait less painful for developers and regulators alike.



Even unfunded, the SPEED Council shows Idaho is primed for action.

Federal SPEED Act: Codifying the Express Lane

In July 2025, Reps. Westerman (R-AR) and Golden (D-ME) introduced the Standardizing Permitting and Expediting Economic Development ("SPEED") Act (H.R. 4776).[9] Key features include limiting NEPA review strictly to impacts directly connected to the project, enforcing deadlines for agency decisions, and encouraging courts to defer to agencies that meet those timelines.

If passed, SPEED would codify the expedited process into law, giving it legal staying power. Critics warn, however, that narrowing NEPA scope could overlook indirect but significant environmental impacts.[10]

Why Speed and Safety Must Coexist: From TSA Nightmares to Pre-Check Efficiency

America's challenge with mineral development and energy infrastructure isn't a shortage of capital or good ideas—it's sluggish governance and cumbersome processes that slow essential projects. Mining and clean energy development depend on timely, yet thoughtful, action. The key is creating the right "express lane" approach: fast, predictable permitting timelines paired with robust environmental review. Speed should not come at the expense of the environment or climate goals.

Policymakers are starting to recognize this need. Idaho's SPEED Council, federal Executive Orders, FAST-41 designations, and the proposed SPEED Act all reflect efforts to open speedier permitting lanes. But achieving speed isn't about blasting through the line recklessly, it's about making the process fair, robust, and swift by eliminating unnecessary delays and improving coordination.

The next step for Idaho is clear: fund the SPEED Council so it can build capacity, publish clear permitting timelines, and synchronize state efforts with federal schedules. For practitioners, success means preparing detailed yet nimble permitting records, so when the "express lane" opens, projects glide through smoothly.

But achieving speed isn't about blasting through the line recklessly, it's about making the process fair, robust, and swift by eliminating unnecessary delays and improving coordination.

In short, the goal should be a permitting system that works more like TSA Pre-Check and CLEAR—not like the frustrating long security line where everyone fumbles with carry-ons, debates outdated rules and worries about missing their flight. Efficient, predictable, and thorough—that's the future of domestic mineral and energy infrastructure development.

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Endnotes

1. Fixing America's Surface Transportation Act, Pub. L. No. 114-94, div. A, tit. XLI, 129 Stat. 1312 (2015); *see* Permitting Council FAST-41 Dashboard, https://permits.performance.gov/fast-41 (last visited Aug. 10, 2025).

2. Exec. Order No. 14,241, *Immediate Measures to Increase American Mineral Production*, 90 Fed. Reg. 13,673 (Mar. 25, 2025).

3. Exec. Order No. 14,285, *Unleashing America's Offshore Critical Minerals and Resources*, 90 Fed. Reg. 17,735 (Apr. 29, 2025).

4. Aryn Baker, *The Environmental Costs of Deep-Sea Mining*, TIME (Aug. 4, 2021), https://time.com/6094560/deep-sea-mining-environmental-costs-benefits/.

5. Rod McGuirk, *Seabed Mining Debate Intensifies as Demand for Critical Minerals Grows*, AP NEWS (Jan. 14, 2025), https://apnews.com/article/bd8c98390b3711439c055023b77e31b5.

6. Permitting Council Press Releases (Aug. 2025), https://www.permitting.gov/newsroom/press-releases (last visited Aug. 10, 2025).

7. Idaho Exec. Order No. 2025-02 (Jan. 24, 2025).

8. *See* 2025 Idaho Legislative Session—No Appropriation for SPEED Council (on file with author).

9. H.R. 4776, 119th Cong. (2025) (proposing the *Standardizing Permitting and Expediting Economic Development Act*).

10. *See, e.g.*, W. Env't. L. Ctr., *NEPA Rollback Bill, SPEED Act, Would Threaten Environment, Communities, Provide Legal Immunity to Polluters* (July 25, 2025), https://western-law.org/nepa-rollback-bill-speed-act-would-threaten-environment-communities-provide-legal-immunity-to-polluters/ (last visited Aug. 10, 2025).

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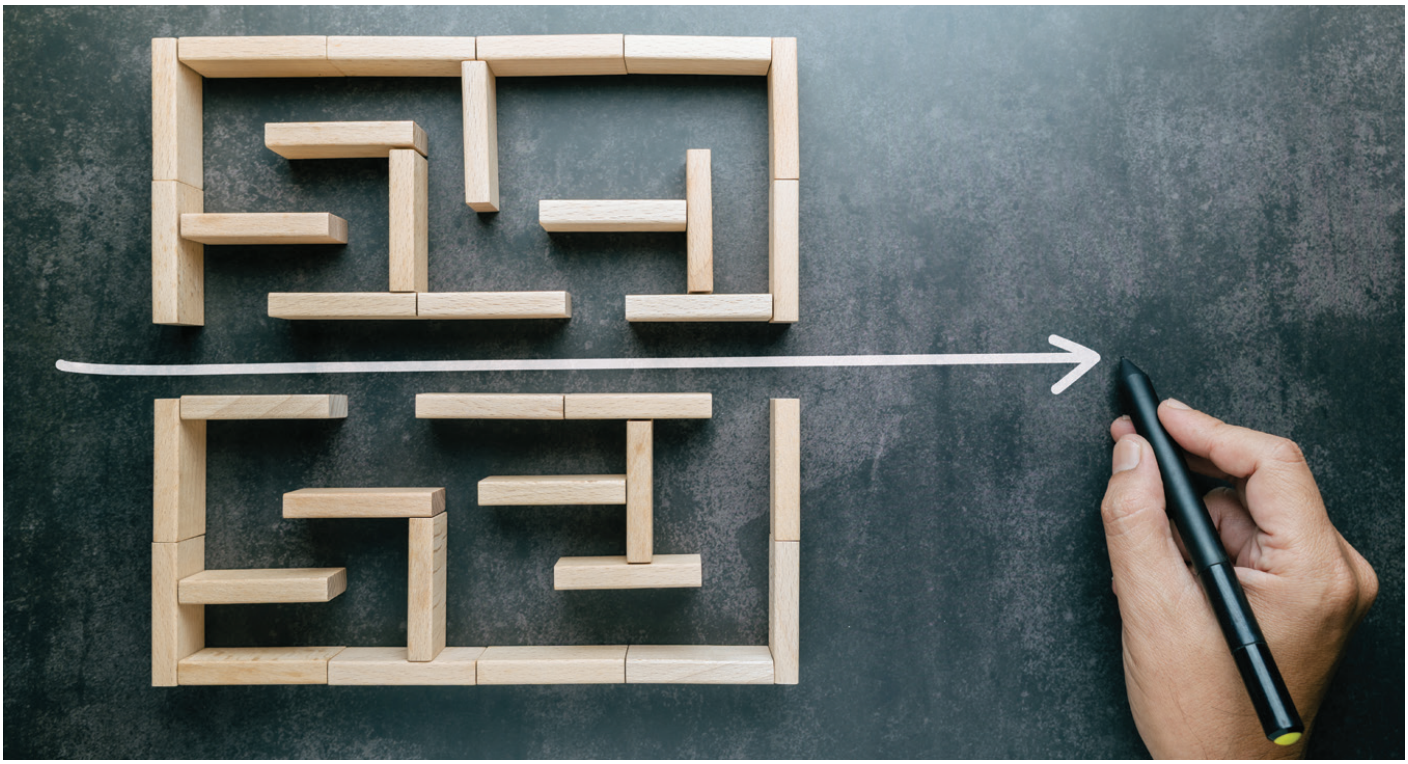

The End to NEPA Nitpicking?

Jeffrey S. Beelaert

Whenever a federal agency proposes a project on federal land in Idaho, there is a good chance that the project will face a legal challenge under the National Environmental Policy Act ("NEPA"). That should come as no surprise. Thousands of NEPA lawsuits have been filed over the years challenging a wide variety of actions taken by agencies on federal lands throughout the West. Plaintiffs have long praised the statute as the "Magna Carta" of environmental law, while critics have suggested that NEPA unnecessarily imposes bureaucratic red tape and encourages judicial activism.[1]

To be sure, NEPA litigation affects not only national policies but also has shaped the pace of development, conservation, and economic growth in our state. In Idaho, the federal government owns nearly two-thirds of the State's entire land mass, and plaintiffs have relied on NEPA to challenge federal agency decisions approving renewable energy, mining, and road construction projects.[2] NEPA litigation is particularly important in Idaho, and the contours of that litigation soon may change.

Earlier this year, the United States Supreme Court issued a decision in *Seven County Infrastructure Coalition v. Eagle County* announcing a "course correction" meant to bring judicial review under NEPA "back in line with the statutory text and common sense."[3] The Court emphasized that Congress did not design NEPA to act as a substantive roadblock for courts to hamstring projects on federal lands.[4] Instead, reviewing courts must defer to a federal agency's discretionary decisions as to where to draw the line in analyzing environmental impacts under the statute.[5]

According to the D.C. Circuit, the Supreme Court in *Seven County* essentially "shut the courthouse door to NEPA nitpicking."[6] However, it is unclear whether that is also true here in Idaho and in the Ninth Circuit. For Idaho lawyers and those in other western states, NEPA litigation inevitably will continue, and federal courts will need to grapple with the Supreme Court's "course correction" to decide whether NEPA nitpicking actually will come to an end in the West.

NEPA Is a Procedural Statute

The primary purpose of NEPA is not to dictate substantive outcomes, but to ensure that federal agencies take a "hard look" at the environmental consequences of their actions before making decisions.[7] Agencies must analyze environmental effects and consider reasonable alternatives, but NEPA does not mandate any substantive standards or particular outcomes.[8] NEPA is a procedural statute, and it does not require a federal agency to mitigate environmental impacts or to reach a specific result. As the Supreme Court explained more than three decades ago, "NEPA merely prohibits uninformed—rather than unwise—agency action."[9] NEPA demands that agencies show their work, but it does not grade the quality of the answers.

Since President Nixon signed NEPA into law in 1970, it has generated lawsuits nationwide, including many here in Idaho. Critics have suggested that NEPA "remains an anachronism that unduly politicizes environmental protection and encourages judicial activism."[10] The statute applies to a broad

range of federal agency actions, and it gives plaintiffs a relatively straightforward opportunity to attempt to delay, or even to prevent, projects from proceeding as the government becomes bogged down in litigation.

Idaho alone provides no shortage of examples. Earlier this year, several conservation groups filed a federal lawsuit against the Forest Service challenging the agency's approval of a mining project in Central Idaho. The mining company explained that the project "has undergone a rigorous, science-based environmental review over the course of eight years," yet it still resulted in NEPA litigation.[11]

Or, consider the Lava Ridge Wind Project, a renewable energy project in southern Idaho that faced widespread opposition from state and local officials, residents, and environmental groups. Although that project was canceled not by a lawsuit but by an executive decision, it still highlights the potential weaponization of NEPA: years of environmental review followed by litigation (or the threat thereof) and political uncertainty.[12] Even when litigation is not the decisive factor, the specter of NEPA challenges continues to shape the pace of Idaho's energy development.

Even so, the Supreme Court's *Seven County* decision may not change much from the plaintiff's perspective, especially if their goal is to delay.

NEPA Plaintiffs Still May Claim to "Win" Without a Favorable Judgment.

Environmental plaintiffs and project opponents routinely achieve their broader goals of delaying or halting projects, even when they do not ultimately prevail in court. For instance, a pipeline company filed an application in 2015 with the Federal Energy Regulatory Commission to construct and operate a natural gas pipeline extending from West Virginia to North Carolina.[13] To comply with NEPA, the Commission prepared an environmental impact statement that analyzed alternative pipeline routes and assessed environmental impacts from construction activities.[14] In 2017, the Commission approved the $8 billion pipeline project.[15]

Litigation quickly followed.[16] The Fourth Circuit eventually vacated the agency's decision, and the intervenor company petitioned the Supreme Court for further review.[17] After granting certiorari, the Supreme Court reversed the Fourth Circuit in 2019 in a 6-2 decision.[18] But after years of litigation, including its Supreme Court victory, the company announced in 2020 that it had abandoned the project.[19] In this instance, an intervenor, Appalachian Voices (a nonprofit organiation that opposed the pipeline), lost in court but declared a win nonetheless, praising the cancellation of the project as "a monumental victory for the many communities that spent the better part of a decade fighting this fracked-gas monstrosity."[20]

Thus, even when plaintiffs lose in court, they can claim victory by creating long delays and mounting costs, and when uncertainty looms, investors ultimately may decide to abandon a project long before the first shovel hits the ground. For Idaho projects, it is no different. Even unsuccessful NEPA challenges can alter timelines so significantly that investors may decide to walk away, effectively handing plaintiffs a "win" outside the courtroom.

Substantial Judicial Deference Has Limits.

NEPA contains no provision for judicial review, so a court reviews an agency's compliance with the statute under the Administrative Procedure Act.[21] If the court concludes that an agency's action was arbitrary or capricious, or otherwise not in accordance with the law, the court may order the agency to reconsider its analysis and to fix any issues on remand.[22]

In practice, federal agencies often compile massive administrative records, as the NEPA review process may take years to complete, depending on the project. After an agency finally completes its review and approves a project, opponents then can file a lawsuit challenging various aspects of the agency's environmental analysis as potential NEPA violations. For example, earlier this year, six environmental groups filed a lawsuit in federal district court against the Forest Service challenging the agency's approval of the Stibnite Gold Project in Valley County, Idaho.[23] In that case, plaintiffs allege under NEPA that the Forest Service failed to take a "hard look" at the environmental impacts of mining antimony and gold, and they allege that the Forest Service failed to consider reasonable alternatives in its analysis.[24] The case is still pending, but the outcome of these NEPA claims likely will be impacted by the Supreme Court's decision in *Seven County*. The litigation is worth watching.

In some ways, *Seven County* simply reinforced existing precedent. NEPA remains a purely procedural statute, and

> *The primary purpose of NEPA is not to dictate substantive outcomes, but to ensure that federal agencies take a "hard look" at the environmental consequences of their actions before making decisions.*

Even unsuccessful NEPA challenges can alter timelines so significantly that investors may decide to walk away, effectively handing plaintiffs a "win" outside the courtroom.

an agency's only obligation is to prepare an "adequate" environmental analysis.[25] Yet a reviewing court still must confirm that the agency properly addressed the potential environmental impacts of the proposed action and that the agency considered feasible alternatives for the relevant project.[26]

The Supreme Court recognized that judicial deference in NEPA cases can take several forms.[27] The Supreme Court did not hold, however, that judicial deference is absolute.[28] Courts should afford substantial deference to agencies, but that does not mean that agencies always will prevail. Judge Nelson's recent Ninth Circuit decision in a NEPA challenge brought by the Center for Biological Diversity illustrates this.[29]

In reviewing a billion-dollar oil and gas project that potentially will employ more than 1,000 people in Alaska, the Ninth Circuit still remanded the case back to the Bureau of Land Management after the Supreme Court decided *Seven County* because the agency "never explained" in the administrative record how its chosen alternative complied with its existing regulations that imposed certain development requirements on federal leases. A court's review of an agency's NEPA analysis must be under its most deferential standard, but a court cannot defer to something that does not exist.

Even after *Seven County*, an agency's action remains arbitrary and capricious "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[30] It is not NEPA "nitpicking" to require agencies to meet this baseline standard.

Doors Ajar, Not Shut

In future NEPA litigation, the outcome of a particular challenge to a project will likely continue to depend on the unique facts of each case even if the litigants rely heavily on *Seven County*. Courts will continue to apply the "rule of reason," which, for NEPA analysis, is functionally identical to an abuse of discretion review.[31] Substantial deference under *Seven County* will not necessarily eliminate careful, searching judicial review, especially in the Ninth Circuit given its long history in deciding NEPA cases. Courts will continue to enforce NEPA, and agencies will be held accountable for omissions and errors.

For Idaho lawyers, the takeaway is clear. NEPA litigation will continue because the statute applies to a broad range of federal agency actions, and it still provides plaintiffs with a relatively straightforward tool to delay (or to prevent) projects from proceeding. The Ninth Circuit has not yet "shut the courthouse door to NEPA nitpicking," even if the Supreme Court's decision in *Seven County* has narrowed the pathway for successful claims. It may be that the courtroom doors remain open, just a bit less ajar than they used to be.[32]

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Environmental Enforcement: When EPA Comes Knocking

Krista K. McIntyre
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Introduction

There is significant skepticism about EPA's inspection and enforcement activities in the current administration. Certainly, EPA's priorities shifted after the second inauguration of President Trump; however, EPA is still flexing its enforcement muscle. This is particularly true for its "core enforcement programs," which target hazardous air pollutants affecting human health; "high-risk" facilities handling extremely hazardous substances; hazardous wastes; and unpermitted discharges to surface waters.[2] In the second quarter of 2025, EPA Region 10, which covers Idaho, alone closed 19 civil enforcement cases brought under six separate laws.[3]

This article summarizes EPA's broad enforcement authorities and some of the compliance obligations that EPA emphasizes for enforcement. This article offers guidance on preparation and practices for navigating an EPA inspection. Ultimately, the best preparation is a good compliance program that catches and corrects potential violations before EPA comes knocking.

President Richard Nixon's Reorganization Plan No. 3 of 1970, consolidated roles of the Departments of the Interior; Health, Education, and Welfare; Agriculture; and others, to form the U.S. Environmental Protection Agency ("EPA"). President Nixon announced:

> Our national government today is not structured to make a coordinated attack on the pollutants which debase the air we breathe, the water we drink, and the land that grows our food. Indeed, the present governmental structure for dealing with environmental pollution often defies effective and concerted action. [¶] Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed.[1]

Subsequently, Congress enacted strict environmental protection laws that vested the new agency with significant regulatory and enforcement authorities.

Environmental Law 101

In the 1970s, Congress passed multiple laws to protect our environment and public health. These laws vest the EPA with authority to regulate facilities big and small that engage in regulated activities, including large manufacturing plants, [4] energy facilities,[5] apartment complexes,[6] and municipalities.[7] Environmental compliance is triggered by activities (e.g., discharge of pollutants) and site conditions (e.g. the presence of hazardous materials or wetlands), not necessarily the type of business. The term "facility" is used as an umbrella term for locations that are regulated. Laws limit the discharge of pollutants and hazardous substances into our environment. Laws afford EPA broad enforcement authority, allowing on-site inspections, data collection, and remote investigations that can result in significant penalties and corrective actions.

Examples of the laws enacted over fifty years ago are the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and the Resource Conservation and Recovery Act ("RCRA"). The CWA prohibits the discharge of a pollutant to a water of the United States without first obtaining a discharge permit.[8] The CAA requires facilities to obtain a permit before "constructing" or installing equipment that would emit pollutants to the atmosphere and imposes technology requirements on many types of pollution emitting equipment.[9] The RCRA requires facilities that generate, store, treat, or dispose of hazardous waste to manage hazardous wastes according to prescribed standards.[10] Laws may impose technology requirements, work practice standards, recordkeeping, reporting, and notification requirements to demonstrate compliance. Generally, these laws are enforceable by EPA and state regulators. Citizens groups can enforce them too.

Environmental laws carry both civil and criminal penalties. For civil violations, these laws impose strict liability.[11] To be liable for civil enforcement, the owner or operator need not have knowledge of the violation, nor be negligent.[12] Violations can trigger large civil penalties. For example, the CWA authorizes a maximum civil penalty of $59,114 per day of violation.[13] Environmental laws impose criminal penalties for both negligent and knowing violations.[14] Negligent violations are generally a misdemeanor punishable by significant fines and up to a year in prison. Knowing violations are felonies punishable by fines and multiple years of prison.[15] A violator need not know they were violating the law, only that they were committing the violative act.[16]

Environmental laws apply to industrial facilities that generate pollution during manufacturing. These regulated entities must comply with emissions and discharge limitations, pollution reduction obligations, and significant documentation requirements.[17] Environmental laws also apply in unexpected places and ways. Examples include:

- The owner of an apartment building, built in 1970, wants to remodel several apartments. If original building materials contain asbestos, the owner is required to submit a notice to EPA prior to disturbing any asbestos-containing material and follow certain work practice standards when performing demolition work.[18] These requirements stem from the CAA, which designates asbestos as a hazardous air pollutant.[19]
- A small auto mechanic is prohibited from removing or altering emission control units on diesel trucks, including personal vehicles, and is also prohibited from installing what are called "defeat devices" which bypass or render inoperative emission control systems.[20] These prohibitions come directly from the CAA requirements for mobile sources.[21]

While these activities do not require permits to operate, EPA actions against small business violators yield settlements that cost tens of thousands of dollars in penalties.

Recordkeeping Is Essential

In addition to compliance with pollution reduction requirements, entities must keep records to document compliance. Recordkeeping is the foundation for compliance assurance. Some laws require submitting records to EPA, allowing EPA to evaluate a regulated entity's compliance status without an on-site inspection.

Records must be truthful, accurate, and complete. EPA fined an all-terrain vehicle importer $686,000 related, in part, to its inaccurate and missing records.[22] EPA relies on records, or the absence of records, as evidence in enforcement actions. Records submitted to the agency are publicly available under the Freedom of Information Act, 5 U.S.C § 552.[23] Public records can serve as the basis for a citizen suit, which is an enforcement action initiated by a concerned group or individual. Knowingly providing false information, or altering or failing to file any required records, is a criminal violation subject to imprisonment for up to two years.[24]

EPA at the Gate

EPA has broad authority to enter a facility to evaluate compliance with environmental laws.[25] Inspections can be announced, meaning EPA schedules them ahead of time, or unannounced, meaning EPA shows up without warning. EPA can use contractors to conduct inspections and special agents who investigate criminal allegations.

EPA inspectors are assigned by region or industry type, so a facility may get to know their EPA inspector. Inspectors may be friendly, but they are not friends. Inspectors are looking for violations. The inspector's job is to ensure compliance, not to offer compliance assistance. Past uneventful visits do not predict future inspections, and a future inspector may find something that the last one missed.

An inspection is a formal legal action, no matter how friendly the inspector may present. There are a few guiding principles to follow when EPA comes knocking:

The inspector's job is to ensure compliance, not to offer compliance assistance.

Execute a communications plan. The plan should identify (and include directions for security staff, if any) who is the primary contact when EPA (or any other inspector) arrives. This may be the site manager, site environmental professional, or legal department. The plan should prescribe a clear chain of communication and identify an on-site point of contact who will be responsible for interacting with EPA. Clear communication is essential.

Allow EPA access. Environmental laws grant broad inspection authority to EPA. While an owner or operator can deny EPA inspectors access, note that an administrative search warrant is easily obtainable.[26] Delaying EPA offers no advantage to the company and will cause the inspectors to approach the facility with more suspicion when they return. Access is inevitable.

Treat EPA inspectors like other visitors. Collect credentials (typically business cards) and determine the reason for the visit (e.g., routine inspection, responding to a complaint, collecting data). Provide EPA inspectors with safety training provided to other visitors before entering the facility. Designate a company representative to be the "tour guide" and point of contact for questions. Answer questions truthfully and directly, providing only relevant information. Importantly, "I don't know" is a fine response. The "tour guide" can offer to provide a response to EPA's question following the inspection. Control the visit to ensure safety and responsiveness.

Keep an inspection journal. Note the areas visited, the questions asked, and any comments of interest. These notes will help assess risks following the inspection. Additionally, the "tour guide" can request copies of all photos and videos taken by the inspector and take the same photos and videos.[27] If the inspector takes samples, facility staff should either request a split sample or be prepared to take their own samples. If the inspector requests documents, keep a copy of each for review after the visit. Do not provide documents labeled confidential or attorney-client privilege without review by counsel. Document the inspection with notes, photos, and copies to facilitate evaluation of risk.

Request a closing conference. A closing conference allows the facility staff and inspector to review findings before the inspector departs the facility. If there were any unanswered questions raised during inspection, the "tour guide" can review those outstanding items, request that EPA clearly restate the question, and agree on a timeline for providing a written response. Review the findings with the inspector at the closing conference to highlight items of concern and follow-up. Use the closing conference to gather real time feedback. If the inspector identifies a deficiency during the inspection that can be corrected promptly, do so before the closing conference

Debrief promptly with counsel. Organize information collected during the inspection and debrief with facility management and legal counsel while impressions and interactions are fresh. Follow-up from the inspection should involve counsel and can include: a litigation hold for potentially relevant records, preparation of responses to EPA, and a plan to correct noncompliance promptly. If the corrective action requires significant work, begin developing a plan and schedule. Act on findings with purpose and promptness.

In addition to its on-site visit inspection authority, EPA has authority to send information collection requests ("ICR") to evaluate compliance with environmental laws remotely.[28] EPA may provide a detailed ICR before or during the inspection. EPA may digest the information it collected during the inspection and send an ICR weeks or months after the inspection. Responding to an ICR is a formal legal action, and the facility should engage counsel in responding to the ICR to reduce potential liability.

Post-Inspection Penalty Negotiation

The inspection is over. The ICR response is submitted. Now you wait. EPA may take several months or more before following up on an inspection or an ICR.

If EPA did not identify any violations or did not identify any actionable violations, you may never hear anything more. In this instance, no news is good news. If EPA identified actionable violations, then the facility will receive a notice of violation and an opportunity to confer, prior to EPA filing a formal complaint.[29]

EPA will not express a penalty demand until the facility agrees to corrective actions

that achieve compliance. Cooperating through this initial corrective action stage will influence the ultimate penalty demand. If the facility is cooperative, EPA can exercise discretion to reduce the penalty. If the facility is slow to come into compliance or slow to respond, then the initial penalty demand increases. EPA drives compliance first, then negotiates its penalty demand second.

EPA's negotiated penalties are governed by agency policies, each with its own specific factors.[30] These policies provide a standardized framework to calculate the civil penalty. Although the specific policy factors differ by statute and violation type, each comprise the same general elements:

Economic Benefit: This factor considers the violator's avoided cost from delaying compliance. Examples of economic benefit include savings from the delay in installing required control equipment, avoidance of monitoring costs, or avoidance of costs to prepare a report or obtain a permit. This element of EPA's penalty demand levels the playing field for entities that invest in compliance timely.

Gravity: The gravity component reflects statutory factors outlined for civil penalties, such as 1) the potential for harm from the violation, 2) the extent of deviation from the regulatory requirements, and 3) the history of compliance. These elements assess penalties commensurate with the violator's environmental impact(s).

Size of Violator: Some penalty policies adjust the demand based on the size of the violator. This element is based on the net worth of violator. The larger (financially) the violator, the larger the penalty. This factor calibrates the penalty to the entity's financial position.

Cooperation: EPA can reduce most penalties by up to 30 percent if the alleged violator promptly cooperates, takes corrective action, and expeditiously reaches settlement. This factor encourages cooperation.

Other Factors: EPA can adjust the penalty based on the degree of willfulness or negligence and the severity of environmental damage. These factors give agency staff discretion to increase or decrease the penalty based on circumstances.

Ability to Pay: EPA can further reduce the penalty if the demand threatens to put the violator out of business. The ability to pay analysis requires the alleged violator to provide detailed financial records for EPA's review. When considering whether to make an ability to pay argument, it is important to remember that the question is not whether there will be financial hardship but whether the company will go out of business. This analysis extracts a penalty for noncompliance without jeopardizing the viability of a business.

EPA's first penalty offer is not its final offer. In particular, the gravity component provides an ample set of levers to pull to during negotiations. EPA's penalty demands can typically be reduced up to 50 percent, with negotiation of the penalty policy factors and presentation of new information that the agency did not consider initially. A significant portion of this reduction can come from the cooperation of good actors.

Preparation Enhances Performance

The best inspection is the one that results in no violations, and the best penalty negotiation is the one you never have. To minimize the risk of EPA enforcement, shore up the facility's compliance program with the following activities.

Identify the environmental laws and regulations that apply and develop a regular environmental audit program to self-police and detect gaps. A good environmental audit follows a checklist of the applicable requirements. Check for complete records and walk around the site to ensure the facility is physically in compliance. The audit can be conducted under attorney-client privilege to ensure that employees feel free to fully identify potential compliance gaps, and to limit dissemination.

Revisit the facility's housekeeping program. If an inspector enters a tidy, well-maintained facility, the inspector may presume the underlying requirements are also well maintained. Housekeeping is a surrogate for compliance focus. Moreover, many violations stem from delayed, deferred, or ignored maintenance. Housekeeping helps catch small deviations early.

Automate recordkeeping, if possible. Deploy a practical system that prompts appropriate personnel to perform compliance tasks timely and to document the task in a designated workflow or location on your system. Invest in compliance, education, and proactive tasks that mitigate risk and support compliance. Then when EPA arrives, the on-site team is prepared, and the facility will show well.

Conclusion

While EPA's enforcement priorities shift, their authorities remain constant and broad. Environmental laws apply broadly to large and small businesses that are required to comply with permitting, pollution standards, and recordkeeping tasks. Continue to invest in compliance and education to minimize risk of enforcement and the related penalties. Engage employees and counsel, as appropriate, to prepare and to respond when EPA comes knocking.

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6. *See* 40 C.F.R. § 61.145 (1993).

7. *See, e.g.*, Consent Decree, *United States v. City of Cahokia Heights*, Case No. 3:24-cv-02591 (S.D. Ill Dec. 10, 2024) (ordering city to pay $30,000 in penalties and spend $30 million in compliance measures to resolve alleged CWA violations due to sanitary sewer overflows).

8. 33 U.S.C. § 1311(a); *see also United States v. Ortiz*, 427 F.3d 1278, 1282 (10th Cir. 2005).

9. 42 U.S.C. §§ 7401, *et seq.*

10. 42 U.S.C. §§ 6901 *et seq.*; *see also* Complaint, *United States v. Stericycle, Inc.*, Case No. 1:25-cv-00498 (S.D.N.Y. Jan. 17, 2025) (alleging hazardous waste transporter committed multiple RCRA violations).

11. *See Pound v. Airosol Co.*, 498 F.3d 1089, 1097 (10th Cir. 2007).

12. *See Id.*

13. The CWA originally authorized a penalty of $25,000 per day of violation, which is regularly adjusted for inflation. 90 Fed. Reg. 1375 (Jan. 8, 2025); 40 C.F.R. § 19.4 (2025).

14. *See, e.g.*, 33 U.S.C. § 1319(c).

15. The environmental laws typically cap the maximum sentence for knowing violations at 2 to 3 years per violation, depending on the statute. Violations can quickly accrue, resulting in a very high total maximum sentence. For instance, a knowing violation of a daily discharge limit for even a week would result in seven discrete violations.

16. *See United States v. Lucero*, 989 F.3d 1088, 1097 (9th Cir. 2021).

17. *See supra* notes 8 – 10.

18. *See* 40 C.F.R. § 61.145 (1993).

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24. *See* 42 U.S.C. § 7413(c)(2).

25. *See, e.g.*, 42 U.S.C. § 7414.

26. *See Nat'l-Standard Co. v. Adamkus*, 881 F.2d 352, 361 (7th Cir. 1989) ("In order for an administrative warrant to issue, (1) there must be specific evidence of an existing violation, or (2) the search must be part of a general neutral administrative plan."); Memorandum from Thomas L. Adams, Jr., Assistant Adm'r, EPA, to Reg'l Adm'rs I-X and Reg'l Couns. I-X (June 5, 1987), https://www.epa.gov/sites/default/files/2013-09/documents/cont-access-mem.pdf.

27. If the photos or videos are of proprietary process equipment or other trade secret information, facility staff should inform the inspector that the photos contain confidential business information and seek protection of that information.

28. *See* 42 U.S.C. § 7414(a)(1).

29. EPA may also refer particularly complex, large, or egregious cases to the Department of Justice. Whether the matter is handled administratively or referred to the DOJ depends on the severity of the violations, the size of the potential penalty, and how cooperative the facility has been with EPA. Most environmental laws set a cap on the size of a penalty EPA can obtain administratively; this cap is around $300,000. EPA can obtain a waiver from DOJ to bring administrative enforcement actions seeking larger penalties.

30. *See, e.g.*, EPA, Clean Air Act Stationary Source Civil Penalty Policy (Oct. 25, 1991), https://www.epa.gov/sites/default/files/documents/penpol.pdf; Memorandum on Revisions to the RCRA Civil Penalty Policy from John Peter Suarez, Assistant Adm'r, EPA, to Reg'l Couns., Regions 1-10 et al. (June 23, 2003), https://www.epa.gov/sites/default/files/2020-05/documents/june2003rcracivil-penaltypolicyamended050620.pdf.

How Attorneys Can Think About Artificial Intelligence

Will Fletcher

Imagine the future of legal practice: A potential client calls about representation for injuries from an automobile accident. But instead of a human answering the phone, the person speaks with an "AI intake specialist," a form of artificial intelligence ("AI")[1] trained to ask probing questions about their injuries, background, and the crash. After the call, the same AI system orders relevant medical and billing records, as well as the police report, which it uses to evaluate the claim. A reviewing attorney accepts the case, prompting the AI to draft an initial demand letter with a settlement figure informed by its database of thousands of similar matters.

Across the server aisle, dueling AI "agents"[2] negotiate a major contract between two large companies, agreeing on terms from each side's digital playbook of preferred and fallback positions. Lawyers will only step in later to settle any major sticking points.[3]

If this future sounds far-fetched, consider that it is beginning to unfold now. For example, the legal tech startup EvenUP currently offers an AI-powered platform for helping plaintiff's attorneys prepare cases and demand letters. The company says its AI was trained on hundreds of thousands of injury cases and millions of medical records, which it says has helped its customers claim over $1.5 billion in damages. In October 2024, EvenUp was valued at over $1 billion. [4]

"Generative AI"—the type of artificial intelligence that learns from data, creates new content, and communicates with users in their "natural language" instead of code—became a household term with ChatGPT's public release in November 2022. The three years since have been marked as the beginning of a renaissance in how people work and interact with the world. For lawyers, this has included the realization that GenAI has the power to reshape much of legal practice.

Unsurprisingly, thinking about GenAI in the law can be dizzying. For starters, there is the hype—Legal AI tools can promise near magical results that they may struggle to deliver on. Legal AI has become big business with investor firms contributing approximately $2.2 billion to legal AI startups in 2024.[5] Consequently, attorney inboxes are often filled with solicitations for these new tools, at times with eye-catching prices. In a profession traditionally reluctant towards technological change, it is no wonder many practitioners would like this "AI revolution" to slow down or go away. This may be wishful thinking. The American Bar Association has already imagined the day when GenAI use could be part of a lawyer's duty of competence.[6]

Though even without a current requirement, lawyers should not wait to explore the AI tools relevant to their work.[7] Even seemingly minor uses can provide tremendous value to both attorneys and clients, particularly in small practice and public interest settings that lack the resources of their bigger law counterparts. For those overwhelmed or frustrated by our new "AI age," this article offers a few thoughts for getting started.

Embrace GenAI, but Don't Over-Rely

Finding boundaries between what AI should do and what must remain the province of licensed, human lawyers is often central to the legal-AI discussion. Also, at the center of the legal-AI discussion are many other questions of professionalism and ethics, such as obtaining informed client consent, billing practices, and candor to the tribunal, which are outside the scope of this article.[8]

Given how quickly the technology is advancing,[9] these boundaries can feel urgent, especially as "agentic" AI systems

capable of making decisions and performing tasks with limited human involvement begin to appear in legal settings.[10] In its formal opinion on GenAI tools, the American Bar Association ("ABA") Standing Committee on Ethics and Professional Responsibility described GenAI as a "rapidly moving target—in the sense that their precise features and utility to law practice are quickly changing and will continue to change in ways that may be difficult or impossible to anticipate." To navigate this shifting landscape, it can be helpful to reflect on what, exactly, we attorneys are hired to do, anyway.

Preamble 2 of the ABA's rules of professional conduct outline the lawyer's primary functions. We are foremost informed legal and practical advisors, zealous advocates, honest but adept negotiators, and critical evaluators.[11] Fulfilling these functions requires consistently exercising competence, promptness, and diligence.[12] Powering this work includes the use of critical and strategic thinking, sound judgment, strong interpersonal skills, and the ability to nimbly plan and direct the events in our legal matters. These are the lawyer's core "powers," and they create the central value we bring to clients.

The problem is that GenAI can increasingly do these things, too. When considering any new GenAI use case, one of the first risks to evaluate is the potential for uncritical or overreliance. Indeed, the hypotheticals at the start of this article elicit a few moments where this line might be reached.

Many state bar associations—including Idaho's—have yet to issue formal, comprehensive guidance on GenAI use in legal practice, including avoiding overreliance. However, ABA's Standing Committee on Ethics and Professional Responsibility addressed the issue in Formal Opinion 512, released in July 2024. The opinion warns against overreliance with GenAI, stating:

> While [GenAI] may be used as a springboard or foundation for legal work—for example, by generating an analysis on which a lawyer bases legal advice, or by generating a draft from which a lawyer produces a legal document—lawyers may not abdicate their responsibilities by relying solely on a [GenAI] tool to perform tasks that call for the exercise of professional judgment.[13]

The Committee further emphasized, "lawyers may not leave it to [GenAI] tools alone to offer legal advice to clients, negotiate clients' claims, or perform other functions that require a lawyer's personal judgment or participation."[14] Lawyers, then, must think of AI as a tool to enhance the core attorney functions outlined in the rules of professional conduct rather than as a means to outsource them.

The State Bar of California Standing Committee on Professional Responsibility and Conduct has also addressed the issue of AI overreliance in clear terms. Its Standing Committee on Professional Responsibility and Conduct has stated: "Overreliance on AI tools is inconsistent with the active practice of law and application of trained judgment by the lawyer." The committee continued: "A lawyer should take steps to avoid over-reliance on generative AI to such a degree that it hinders critical attorney analysis fostered by traditional [skills such as] research and writing."[15]

Avoiding GenAI overreliance typically begins with independently verifying that the outputs it produces are correct. The level of verification needed, though, depends on the GenAI tool and the context. As an example, the ABA explained:

> [I]f a lawyer relies on a [GenAI] tool to review and summarize numerous, lengthy contracts, the lawyer would not necessarily have to manually review the entire set of documents to verify the results if the lawyer had previously tested the accuracy of the tool on a smaller subset of documents by manually reviewing those documents, comparing them to the summaries produced by the tool, and finding the summaries accurate.
>
> Moreover:
>
> [a] lawyer's use of a [GenAI] tool designed specifically for the practice of law or to perform a discrete legal task, such as generating ideas, may require less independent verification or review, particularly where a lawyer's prior experience with the [GenAI] tool provides a reasonable basis for relying on its results.[16]

Lawyers, then, must think of AI as a tool to enhance the core attorney functions outlined in the rules of professional conduct rather than as a means to outsource them.

The near frequent headlines about attorneys facing sanctions for citing nonexistent caselaw,[17] or the example of attorneys

submitting a ChatGPT analysis to support the reasonableness of their heightened hourly rate in a motion for attorney's fees,[18] offer clear examples of uncritical or overreliance on GenAI. Few would argue, though, that using to GenAI help present an argument in the best possible terms, automate routine or low risk tasks to save time and client expense, or simulate a "hot bench" in preparation for arguments crosses any professional and ethical lines. But blindly relying on GenAI to tell you what the law is, or make key legal decisions without human input, supplants rather than enhances the attorney's core functions under Preamble 2.

AI Is Getting Better with Facts—but Still Check Your Cites

Understanding a bit about how GenAI works is also helpful for navigating the boundaries between proper and improper use. The ABA has said that to competently use GenAI for legal work, lawyers don't need to be experts. But they must have "a reasonable understanding of the capabilities and limitations of the specific [GenAI] technology that the lawyer might use."[19]

On their own, large language models—the engines behind most GenAI tools—don't come equipped with a database of facts from which they draw their answers. Instead, they generate responses by making predictions of each next word in a sequence based on patterns in data to which they've previously been exposed (i.e., their training).

For example, if you asked an LLM to name the capital of France, it would not consult a definitive list of national capitals. Instead, it would generate a response based on statistical patterns learned during training. That's why GenAI might produce a "hallucination," and give you an answer other than Paris. Additionally, the model's training data may have been incomplete, biased, or incorrect. And over time, training data inherently becomes outdated. In a sense, then, all outputs can be thought of as hallucinations, many just happen to also be correct. This is one reason publicly available tools like ChatGPT have been better suited for creative tasks, where there is no single right answer. But that's changing.

With retrieval augmented generation ("RAG"), the GenAI model connects to the internet or an external database to pull in data for its outputs. For legal research, this should be a well-curated database of relevant and trustworthy legal information. RAG-based tools are far more reliable for tasks requiring definitive answers, like providing a legal citation. RAG-based tools can also link you to the source of the information, allowing you to verify it. Most specialized legal AI tools (like the ones in all those vendor emails) now incorporate RAG to varying degrees. Still, Rag-based GenAI can get it wrong. That's why independent review remains critical, or at a minimum, developing strong trust in a tool through repeated use before relying on it. Public tools like ChatGPT can do a lot of things, but unless connected to a proven database of authorities, they remain a poor choice for researching case law.

It's also helpful to know that GenAI is by design, stochastic—meaning it can give you different answers to the same question asked multiple times. This is why the handlers behind the *Economist's* "SCOTUSbot," a GenAI tool created to predict Supreme Court rulings, run each query at least 10 times to find an "average" outcome for how the justices might rule.[20] Recognizing these limitations can be crucial for lawyers to use GenAI to enhance, rather than undermine, their work.

A Word on Confidentiality and Security

Unless you're certain otherwise, assume that any GenAI tool you use is processing both your inputs and its outputs in the cloud. GenAI tools capable of "self-learning" also create the risk that information relating to representation can be inadvertently disclosed to another user outside of the attorney-client relationship.[21] These factors a host of client confidentiality, consent, work product protection, and data security concerns, which the ABA has acknowledged can be difficult to navigate.[22] That doesn't mean it's impossible to use GenAI tools for legal work involving client confidential information. But doing so requires thoroughly investigating the provider's practices and the risks, and at times even consulting with cybersecurity and IT professionals.[23] According to the ABA, key considerations include:

- Ensuring the tool is properly configured for confidentiality and security, and that the provider's obligations are legally enforceable;
- The ability to receive notices in case the provider's obligations are breached;
- Maintaining control over your data, particularly whether it is retained and when it is deleted; and

Public tools like ChatGPT can do a lot of things, but unless connected to a proven database of authorities, they remain a poor choice for researching case law.

- Confirming whether the provider has any rights to use your data beyond delivering the AI service to you (e.g., using your data to train its models).[24]

As a rule of thumb, paid subscriptions to legal-specific tools tend to offer stronger—although not infallible—privacy and security assurances than general-use tools (like Anthropic's Claude or Google NotebookLM). And the "enterprise" or "professional" grade versions of general-use tools (like ChatGPT) offer better assurances than the free versions of the same tools, which often come with minimal or no assurances.[25]

Fortunately, there is a universe of potential GenAI uses that don't require sending client confidential information to the cloud, like creating your own version of "SCOTUSbot" to draw insights about a local court you regularly appear before. Other uses include creating rough drafts of or refining standard documents or summarizing public documents like cases and statutes.

Finding the Right Use Cases

It can be easy to feel like incorporating GenAI requires instantly reinventing your practice. It doesn't. Instead, start by simply identifying existing challenges in your practice. Then, consider ways to add AI to the things you already do in ways that will make them a little more efficient. Also talk to other practitioners about ways in which they are using GenAI.

Early research suggests that more than work quality, GenAI's greatest value may lie in providing large and consistent improvements to the speed with which legal work can be done.[26] There's also GenAI's ability to automate many legal tasks. According to a 2024 Goldman Sachs study, up to 44 percent of current legal tasks performed in the US could be automated by AI.[27] Moreover, a 2024 Thompson Reuters report estimates that within five years the efficiencies AI can create in legal practices could free up to 12 hours per week for lawyers and other white-collar professionals.[28]

And as a side benefit to all this efficiency, a 2023 study found that participants reported increased satisfaction when completing legal work-related tasks with GenAI. According to the study, this was presumably because the technology reduced or eliminated the burden of tedious tasks common throughout the legal profession. The study authors noted that while this might seem to be a minor point, "In an era where lawyer dissatisfaction and burnout are widespread, a tool that has the potential to increase lawyer wellbeing. . . is one that is worth taking seriously."[29] For those who've yet to consider how GenAI might help them grow their legal powers, the promise of improved job satisfaction may be reason enough to take a closer look.

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Endnotes

1. "Artificial Intelligence" generally refers to a computing system capable of performing tasks typically associated with intelligent beings, such as the ability to reason, discover meaning, generalize, or learn from past experience. Brittanica, https://www.britannica.com/technology/artificial-intelligence (last visited July 2, 2025).

2. "Agentic AI" generally describes AI systems capable of performing autonomous actions without human intervention. *See* Agentic AI, Wikipedia, https://en.wikipedia.org/wiki/Agentic_AI (last visited July 2, 2025).

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8. *See* Generative AI in Legal Practice: A Survey of Professional and Ethical Challenges, Montoya, T., the *Advocate*, Vol 68, No. 3/4, pp. 20—23 (March/April 2025).

9. ABA, Formal Opinion 512, p. 2.

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11. Idaho Rules of Professional Conduct preamble 2 (2014); American Bar Association, Model Rules of Professional Conduct preamble 2 (2025).

12. *Id.* at preamble 4; *Id.* at preamble 4.

13. ABA, Formal Opinion 512, p. 4.

14. *Id.*

15. *See* AI and Attorney Ethics Rules: 50-State Survey https://www.justia.com/trials-litigation/ai-and-attorney-ethics-rules-50-state-survey/ (last visited June 24, 2025).

16. ABA, Formal Opinion 512, p. 4.

17. *See e.g.*, Butler Snow LLP's Response to Order to Show Cause, *Johnson v. Dunn, et al.*, Case No. 21:21-CV (N.D. Alabama, So. Div.) (May 19, 2025) (Instead of the beleaguered junior associate having ChatGPT provide non-existent citations for submission in a brief, in this case, it was the supervising partner who added case law imagined by ChatGPT to the more junior attorney's work.).

18. *See* DC Bar, Ethics Opinion 388, Attorney's Use of Generative Artificial Intelligence in Client Matters, pp. 8—9 (April 2024). https://www.dcbar.org/for-lawyers/legal-ethics/ethics-opinions-210-present/ethics-opinion-388

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22. *Id.* at p. 6.

23. *Id.* at 7.

24. *Id.* at 11.

25. *See* DC Bar, Ethics Opinion 388, pp. 10—12 (stating the confidentiality assurances given by publicly available "free" tools like ChatGPT can be so inadequate that clients shouldn't even be asked to provide consent for their use with client confidential information).

26. *See generally,* Choi, J.H., Monahan, A.B., & Schwarcz, D. (2024), Lawyering in the Age of Artificial Intelligence, MINN. LAW REV., 109(1).

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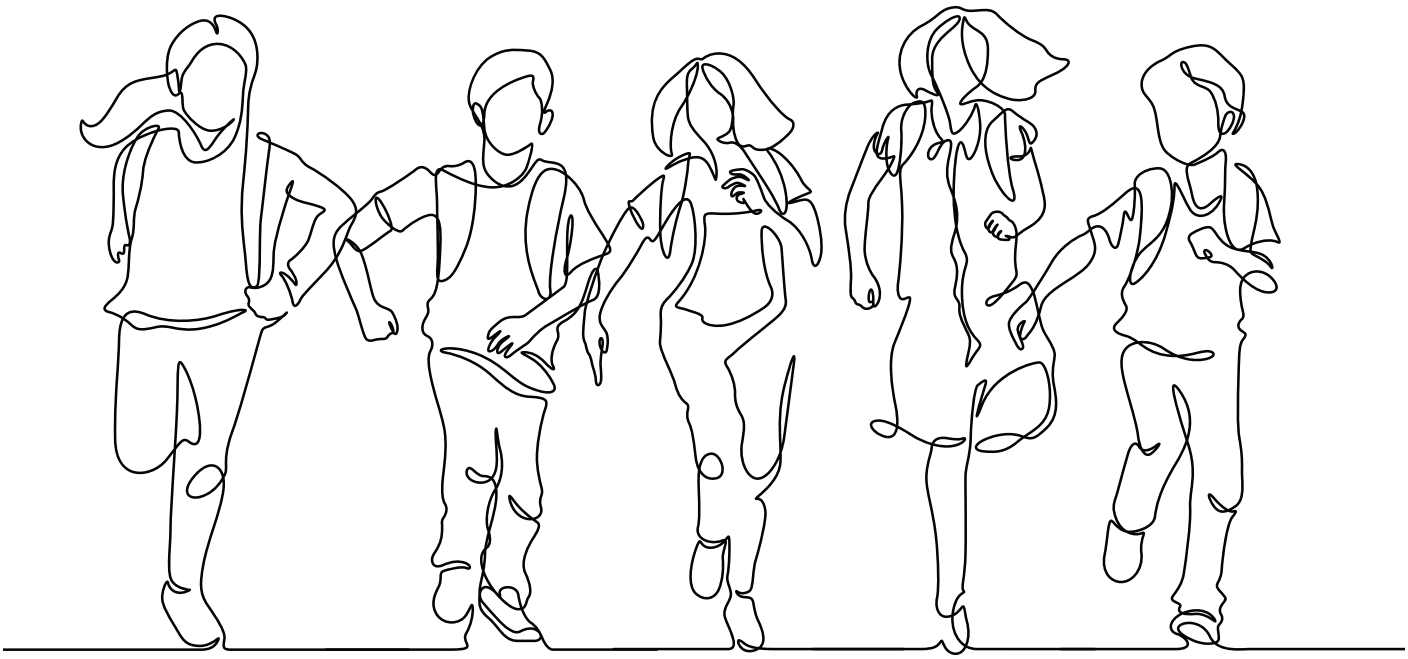

The Turning Tide on Medicalized Gender Interventions for Kids

Rep. Bruce Skaug

In 2023, in the wake of a mental health crisis among America's youth and an exponential rise in gender clinics pushing medical interventions to alter children's bodies in response to gender dysphoria,[1] Idaho enacted the Vulnerable Child Protection Act.[2] As its name suggests, the law aims to protect children who feel uncomfortable with their sex from drugs and procedures that disrupt the body's natural development causing lifelong harm.

Since the law was passed, there have been significant changes in the world's understanding of the science and medicine surrounding so-called "gender-affirming care." As will be discussed below, countries that pioneered medicalized gender interventions have reversed course and the interest groups that vouched for its safety have been discredited.[3] It is now clear that the widely touted "Standards of Care" were infected by political pressure and conflicts of interest.[4]

There have also been changes on the legal and policy front in the United States. The 2024 election ushered in a reversal of federal policy on gender issues.[5] And on June 18, 2025, the U.S. Supreme Court upheld the constitutionality of a Tennessee law protecting children from medicalized gender interventions.[6] Together, these changes reflect a turning of the tide on gender interventions for kids in the United States.

This article gives a brief description of Idaho's law and the medical context. Next, it explains the politicization that drove the alleged medical consensus around treating children with gender dysphoria and the recent course reversal. Then it addresses the country's changing political and popular culture. Finally, it explains the recent U.S. Supreme Court ruling in *United States v. Skrmetti*, which upheld laws, like Idaho's, as constitutional.

Idaho's Common-Sense Law

The Vulnerable Child Protection Act prohibits medical providers from administering puberty-blocking drugs or giving cross-sex hormones to kids under the age of 18 as a treatment for gender dysphoria.[7] It also prevents medical providers from performing surgeries on children that would remove healthy body parts and sterilize the child to affirm the child's perception of his or her gender identity.[8] According to the Mayo Clinic, "gender-affirming surgery" can include "top surgery" (e.g., mastectomies) and "bottom surgery" (removal of healthy genitals and "surgical creation" of a penis or vagina), and cosmetic procedures.[9]

Idaho's law clarifies that it is never medically necessary to perform surgery or intervene medically with a child's body based on the child's subjective perception that his or her body is the wrong sex.[10] More than half of the states have now passed similar laws.[11]

Proponents of these laws, including me, believe they reflect common sense and sound medicine. As described in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM 5"), gender dysphoria is a *mental* disorder.[12] Children experiencing discomfort with their biological sex or who believe they were "born in the wrong body" should be treated not with experimental drugs and surgeries, but with counseling that helps them align their perception with reality. Doctors and counselors should not "affirm" this misperception by treating a

healthy body as the problem; they should treat the unhealthy perception to restore the mind to health.

Litigation Over Idaho's Law

Idaho's law protecting children from medicalized gender interventions was challenged by the American Civil Liberties Union ("ACLU"), which represented two teenagers and their parents in *Poe v. Labrador*.[13] The federal district court enjoined the entire law,[14] and the Ninth Circuit declined to stay the injunction during the appeal.[15] Idaho then appealed to the U.S. Supreme Court. On April 15, 2024, the Supreme Court granted Idaho's emergency motion and narrowed the injunction, permitting Idaho to enforce its law except as to the specific plaintiffs in *Poe* and the medical services they were requesting.[16] This restored Idaho's ability to otherwise enforce the law while litigation continued. The Ninth Circuit heard oral arguments in August 2024 but then stayed the case in light of the Supreme Court's decision to hear a challenge to a similar state law in *United States v. Skrmetti* (discussed below).[17] On June 17, 2025, the parties in the Ninth Circuit litigation agreed to dismiss the appeal, leaving Idaho free to enforce its law.[18]

Updates Since Law Was Passed and Challenged

There have been major developments since Idaho's law protecting children from medicalized gender interventions was passed and challenged. As the next section will explain, the leading advocacy organization for the interventions has been thoroughly discredited.[19] European countries that were years ahead of the United States in performing these interventions have dramatically reversed course based on the lack of evidence and risk of harm to children.[20] The U.S. Supreme Court upheld the constitutionality of state laws like Idaho's in a case about Tennessee's law regulating the procedures for children.[21] Also, the 2024 election ushered in a dramatic reversal of federal policy on transgender issues.[22]

The Discredited Standards of Care

Opponents of laws like Idaho's Vulnerable Child Protection Act insist that medicalized gender interventions are "medically necessary treatment" for children with gender dysphoria.[23] They rely primarily on statements from medical interest groups pointing to "evidence-based clinical guidelines" from the World Professional Association of Transgender Health ("WPATH").[24] But as internal WPATH emails reveal,[25] these groups and their "standards" are ideologically driven.[26]

WPATH, a self-proclaimed "advocacy organization,"[27] promulgates "Standards of Care" for "transgender healthcare."[28] The most recent version is SOC-8, which came out in 2022.[29] While claiming to be "based on the best available science and expert professional consensus,"[30] WPATH's standards were influenced by U.S. politics, ACLU lawyers, and pre-determined outcomes.[31]

For example, WPATH loosened its guidelines after receiving pressure from the Biden Administration.[32] Originally, SOC-8 suggested age minimums for gender interventions for kids—14 for cross-sex hormones, 15 for mastectomies, and 17 for surgeries removing healthy reproductive organs.[33] Before publication, WPATH consulted Admiral Rachel Levine, the former Assistant Secretary for Health at the U.S. Department for Health and Human Services who identifies as a transgender woman and is a longtime LGBTQ activist.[34] As the New York Times reported, Levine's staff "urged [WPATH] to drop the proposed limits from the group's guidelines and apparently succeeded."[35] Internal WPATH emails show that although some members expressed concern "about allowing US politics to dictate international professional clinical guidelines,"[36] WPATH ultimately removed the age minimums from the guidelines.[37]

In addition to taking content out for political reasons, WPATH also added certain phrases to make the standards "a tool for our attorneys to use in defending access to care."[38] WPATH consulted with an ACLU lawyer in creating the guidelines, writing SOC-8 with an eye toward litigation.[39] SOC-8 repeats throughout that "gender-affirming" treatments are "medically necessary."[40] Ironically, the ACLU now cites WPATH's guidelines, which it helped shape, "to argue that its legal position is grounded in medical science."[41]

Representative Skaug listens to Chloe Cole explaining how her doctors lied to her parents to convince them to allow the surgical procedures on her, while a minor, for sex change purposes in 2023. Ms. Cole is now suing those doctors for medical malpractice. Photo provided by the author.

Even putting politics aside, many of the doctors and researchers who helped create SOC-8 had undeclared conflicts of interest. While the guidelines state that "[n]o conflicts of interest were deemed significant or consequential,"[42] the chair of WPATH's Standards of Care agreed that "most participants in the SOC-8 process had financial and/or non-financial conflicts of interest."[43] Rather than seek out neutral experts, the president of WPATH believed it was "important for someone to be an advocate for [transitioning treatments] before the guidelines were created."[44] WPATH members stood to profit financially from the procedures they were asserting were "medically necessary." WPATH's President did not think that making "more than a million dollars" the previous year from performing transitioning surgeries needed to be disclosed as a conflict.[45] As far as non-financial conflicts, WPATH members did not approach the guidelines with a spirit of open inquiry. Instead, they suppressed research that did not align with their pre-determined agenda.[46] WPATH commissioned systematic reviews of the medical evidence from Johns Hopkins University.[47] But when Johns Hopkins came back with results WPATH did not like, those reviews were not published.[48]

Europe Pumps the Brakes on Gender Interventions for Kids

America is not the only country that is now seeing the serious problems with gender experimentation on children. Europe was ahead of the United States in giving children puberty blockers, cross-sex hormones, and life-altering surgeries. But now many countries in Europe have reversed course.[49] The national healthcare systems of several countries have recognized that the benefits of gender transition interventions are speculative and far outweighed by the risks.[50]

England's National Health Service commissioned an independent review of the research around gender interventions for children.[51] The review was led by the former president of the Royal College of Pediatrics and Child Health, Dr. Hilary Cass. Her final report was released in April 2024. The Cass Review concluded: "This is an area of remarkably weak evidence."[52] Specifically, it found that "we have no good evidence on the long-term outcomes of interventions to manage gender-related distress."[53] Moreover, it found that the systematic reviews "have demonstrated the poor quality of the published studies, meaning there is not a reliable evidence base upon which to base clinical decisions."[54] Now, the United Kingdom's government has banned all new prescriptions of puberty blockers to minors by any physician, public or private, based on the "lack of evidence for these medical treatments."[55]

The United Kingdom is not the only country to reverse course. In 2020, Finland's health care service ended the surgical transition of minors and greatly restricted access to puberty blockers and cross-sex hormones by restricting the procedures to their centralized research clinics.[56] All of the Scandinavian health authorities have now severely restricted the medical transition of minors or have commissioned studies that have recommended policy changes in that direction.[57] The issue is less partisan in Europe than it is in the United States. Finland and Sweden's restrictions were put in place by left-leaning governments.[58] And the UK ban was initiated by the conservative Tory government and later confirmed by the liberal Labour government.[59]

The 2024 Election and President Trump's Indictment of Gender Ideology

The 2024 Presidential election has brought even more change on transgender issues. While the Biden Administration aggressively promoted gender theory,[60] President Trump's victory in the 2024 election has been interpreted by some as an indictment of the Biden Administration's promotion of gender theory over biological reality.[61] One of Trump's first actions as President was to make it an official policy of the United States that there are only two sexes, male and female, and they are "not changeable and are grounded in fundamental and incontrovertible reality."[62]

Just over a week after taking office, President Trump issued an executive order entitled "Protecting Children from Chemical and Surgical Mutilation" which announced the federal government's strong opposition to medicalized gender interventions for children.[63] The order condemned the "blatant harm done to children by chemical and surgical mutilation cloaks itself in medical necessity, spurred by guidance from the World Professional Association for Transgender Health ("WPATH"), which lacks scientific integrity."[64]

The order also directed the Secretary of Health and Human Services to "publish a review of the existing literature on best practices for promoting the health of children who assert gender dysphoria" and work "to increase the quality of data to guide practices" for treating these children.[65] Hopefully these actions will lead to better policy and medicine in the United States for children suffering from gender dysphoria.

SCOTUS Upholds Tennessee's Law

In June of 2024, the Supreme Court granted review in *United States v. Skrmetti* to address whether Tennessee's law prohibiting medical gender interventions for children violated the Equal Protection clause.[66] The United States under the Biden Administration briefed and argued the case, and the Court heard oral argument in December 2024. The Court issued its opinion on June 18, 2025, upholding Tennessee's law as constitutional.[67] The decision was 6-3, with Justices Sotomayor, Jackson, and Kagan dissenting.

The Court, in an opinion written by Chief Justice Roberts, held that the law at issue was subject only to rational basis review, which it easily met.[68] It rejected the argument that the law was subject to heightened scrutiny since it classified only based on age and medical purpose.[69] Under the law, "[h]ealthcare providers may administer certain medical treatments to individuals ages 18 and older but not to minors" and "to treat certain conditions but not to treat gender dysphoria."[70] And the state "clearly" met the deferential

rational-basis standard.[71] It was reasonable for Tennessee to act to protect vulnerable children's health and welfare in the face of legislative findings of the "experimental [ ] nature" and "life-altering consequences of such procedures."[72] The Court referenced the "[r]ecent developments" in medicine and policy discussed above, like the Cass Review and England's National Health Service reversal on gender treatments for children, as "underscor[ing] the need for legislative flexibility in this area."[73]

In a concurrence, Justice Thomas wrote extensively about the dubious "medical consensus" for these treatments.[74] He noted that "recent revelations suggest that leading voices in this area have relied on questionable evidence, and have allowed ideology to influence their medical guidance."[75] Specifically, he recounted troubling evidence discussed above that "WPATH bases its guidance on insufficient evidence and allows politics to influence its medical conclusions."[76] Justice Thomas also referenced how other countries have reversed course on their policies, the ethical issue of whether children have the capacity to consent to these interventions, and the testimony of detransitioners—people who underwent these treatments and now regret them.[77] Although no other justices joined this concurrence, it echoed concerns raised by several other justices at oral argument.[78]

Conclusion

Idaho was right to step out to protect its children from experimental medical gender interventions. In my view, the procedures are a scam that will go down in history, with disgust, similar to frontal lobotomies. Increasingly, the world is waking up to the dangers caused by the rush to "affirm" children in gender identities contrary to their sex. The risks—as Justice Thomas cited in his *Skrmetti* concurrence[79]—include infertility,[80] sexual dysfunction,[81] and heart problems, to name a few.[82]

The heartbreaking stories of detransitioners who regret the irreversible changes made to their bodies as children are a stark reminder of the reason for regulating medical providers providing gender interventions to kids.[83] Thankfully, the U.S. Supreme Court has now clarified that it is within the states' authority to legislate in this area.

Representative Bruce D. Skaug *is currently the Chairman of the Idaho House Judiciary & Rules Committee, serving as a legislator since 2021. He is a recently retired attorney and a member of the Idaho Bar since 1988. Bruce is married to his wife, Debbie, of 39 years and they have six children and 12 grandchildren. They reside in Canyon County.*

Endnotes

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8. Idaho Code § 18-1506C (3)(a), (3)(d). The American Psychological Association (APA) defines "gender identity" as "[a]n internal sense of being male, female or something else." APA, *A Glossary: Defining Transgender Terms*, 49(8) Monitor on Psych. 32 (2018).

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13. Case No. 1:23-cv-00269 (D. Idaho).

14. Memorandum Decision and Order, *Poe v. Labrador*, No. 23-269 (D. Idaho Dec. 26, 2023).

15. *Poe v. Labrador*, No. 24-142 (9th Cir. Jan. 30, 2024).

16. *Labrador v. Poe*, No. 23A763, 01 U.S. ____, 144 S.Ct. 921 (Mem) (2024).

17. Oral Argument, *Poe v. Labrador*, No. 24-142 (9th Cir. Aug. 21, 2024); Order (9th Cir. Sept. 16, 2024). *United States v. Skrmetti*, No. 23-477 (U.S. June 24, 2024).

18. Stipulated Motion to Voluntarily Dismiss Appeal, *Poe v. Labrador*, No. 24-142 (9th Cir. June 17, 2025).

19. Barnes, *supra* note 3; Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, supra note 4.

20. Cohen, *supra* note 3; Ghorayshi, *Youth Gender Medications Limited in England, Part of Big Shift in Europe*, *supra* note 3.

21. *United States v. Skrmetti*, 145 S.Ct. 1816, 605 U.S. __ (2025).

22. *See, e.g.*, Exec. Orders, *supra* note 5.

23. *See, e.g.*, Jennifer S. Dempsey, *HB 71: The State's Attempt to Ban Gender Affirming Medical Care for Transgender Minors*, 67 Advocate 14 (2024) (citing Amicus Brief of American Academy of Pediatrics (AAP) et al., *Poe v. Labrador*, No. 24-142 (9th Cir. Mar. 12, 2024)).

24. *Id.*

25. In litigation defending its law protecting children from medicalized gender interventions, Alabama was able to obtain internal emails from WPATH. *See generally Boe v. Marshall*, 2:22-cv-00184 (M.D. Ala.), https://www.alabamaag.gov/boe-v-marshall/. The discovery was reported on by the New York Times and City Journal. *See* Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *supra* note 4; Leor Sapir, *A Consensus No Longer*, City J. (Aug. 12, 2024).

26. *See* Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *supra* note 4; Sapir, *A Consensus No Longer*, *supra* note 25.

27. Mot. to Quash 3, *Boe v. Marshall*, No. 22-00184 (M.D. Ala. Dec. 27, 2022), Doc. 208.

28. WPATH, Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 S5, 23 Int'l J. Transgender Health S1 (2022) [SOC-8].

29. *Id.*

30. *Id.* at S3.

31. *See* Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *supra* note 4; Sapir, *A Consensus No Longer*, *supra* note 25.

32. *See* Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *supra* note 4.

33. *Id.*

34. *Id.*; *see also* Mariana Brandman, National Women's History Museum: Rachel Levine, Womenshistory.org, https://www.womenshistory.org/education-resources/biographies/rachel-levine.

35. *See* Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *supra* note 4.

36. *Boe v. Marshall*, No. 22-184, Doc. 700-15, Page 33, https://www.alabamaag.gov/wp-content/uploads/2024/10/SJ.DX186-700-15-WPATH-13-REDACTED-560-36.pdf (Aug. 1, 2022 Email, "feedback regarding the age statement in Adolescent SOC8 chapter").

37. *See* SOC-8, *supra* note 28; Ghorayshi, *Biden Officials Pushed to Remove Age Limits for Trans Surgery, Documents Show*, *supra* note 4. Internal WPATH emails discuss "removing the age criteria" because "[i]t led to [the American Academy of Pediatrics] formally not opposing the SOC," adding "this is highly confidential." *See Boe v. Marshall*, No. 22-184, Doc. 700-17, Page 153 (Oct. 3, 2022 Email, "Re: New York Post article"), https://www.alabamaag.gov/wp-content/uploads/2024/10/SJ.DX188-700-17-WPATH-15-REDACTED-560-38.pdf.

38. *Boe v. Marshall*, No. 22-184, Doc. 700-10, Page 34 (Jan. 6, 2022 Email), https://www.alabamaag.gov/wp-content/uploads/2024/10/SJ.DX181-700-10-WPATH-8-REDACTED-560-31.pdf.

39. Sapir, *A Consensus No Longer*, *supra* note 25.

40. *See, e.g.*, SOC-8, *supra* note 28, at S16. The phrase "medically necessary" is used 56 times in the document.

41. Sapir, *A Consensus No Longer*, *supra* note 25.

42. SOC-8, *supra* note 28.

43. *See* Leor Sapir, *The Deposition of Eli Coleman*, City J. (Dec. 13, 2024).

44. *Boe v. Marshall*, No. 22-184, Doc. 564-8, Unsealed Marci Bowers Dep., 121:7-10, May 3, 2024, https://www.alabamaag.gov/wp-content/uploads/2025/02/SJ.DX18-564-8-Bowers-Depo-Tr.-UNSEALED.pdf.

45. *Id.* Bowers Dep., 37:1-13; 185:25 – 186:1-9.

46. *See Research into Trans Medicine Has Been Manipulated*, Economist (June 27, 2024).

47. *Id.*

48. *Id. See also* Jennifer Block, *Dispute Arises over World Professional Association for Transgender Health's Involvement in WHO's Trans Health Guideline*, BMJ (Oct. 30, 2024), https://www.bmj.com/content/bmj/387/bmj.q2227.full.pdf.

49. Cohen, *supra* note 3.

50. Cohen, *supra* note 3; Ghorayshi, *Youth Gender Medications Limited in England, Part of Big Shift in Europe*, *supra* note 3.

51. The Cass Review, Final Report, https://cass.independent-review.uk/home/publications/final-report/.

52. The Cass Review, Independent Review of Gender Identity Services for Children and Young People 13 (Apr. 2024).

53. *Id.*

54. *Id.* at 385.

55. U.K. Department of Health and Social Care, Press Release, *Ban on Puberty Blockers To Be Made Indefinite on Experts' Advice* (Dec. 11, 2024), https://www.gov.uk/government/news/ban-on-puberty-blockers-to-be-made-indefinite-on-experts-advice.

56. Ghorayshi, *Youth Gender Medications Limited in England, Part of Big Shift in Europe*, *supra* note 3; Council for Choices in Health Care in Finland, *Medical Treatment Methods for Dysphoria Associated with Variations in Gender Identity in Minors—Summary of a Recommendation* (June 16, 2020), https://palveluvalikoima.fi/documents/1237350/22895008/Summary_minors_en+(1).pdf/.

57. Cohen, *supra* note 3; Ghorayshi, *Youth Gender Medications Limited in England, Part of Big Shift in Europe*, *supra* note 3.

58. Sapir, *A Consensus No Longer*, *supra* note 25.

59. *Id.*

60. Gender theory "distinguishe[s] sex (being female or male) from gender (being a woman or a man)," understanding gender as something socially constructed. *See generally* Mari Mikkola, *Feminist Perspectives on Sex and Gender*, The Stanford Encyclopedia of Philosophy (Edward N. Zalta & Uri Nodelman, eds., Summer 2024), https://plato.stanford.edu/archives/sum2024/entries/feminism-gender/.

61. *See* Bill Barrow & Marc Levy, *Trump hammered Democrats on transgender issues. Now the party is at odds on a response*, AP News (Nov. 14, 2024); Shane Goldmacher et al., *How Trump Won, and How Harris Lost*, N.Y. Times (Nov. 7, 2024, updated Nov. 16, 2024) (discussing polling effect of Trump ads portraying Kamala Harris as "dangerously liberal" and out of step with voters on transgender issues).

62. Exec. Order 14168, *supra* note 5.

63. Exec. Order 14187, *supra* note 5.

64. *Id.* § 3.

65. *Id.* § 3(a)(ii), (b).

66. *United States v. Skrmetti*, No. 23-477 (U.S. June 24, 2024). The Court did not take up the Due Process issue, which was raised by the private plaintiffs.

67. *United States v. Skrmetti*, 145 S.Ct. 1816, 605 U.S. __ (2025).

68. *Id.* at 1835 ("SB1 clearly meets this standard.").

69. *Id.* at 1829.

70. *Id.*

71. *Id.* at 1835.

72. *Id.* at 1835-36.

73. *Id.* at 1836-37.

74. *Id.* at 1839-40 (Thomas, J., concurring).

75. *Id.* at 1840.

76. *Id.* at 1847.

77. *Id.* at 1844.

78. *See United States v. Skrmetti*, No. 23-477, Oral Argument Transcript (U.S. Dec. 4, 2024). Chief Justice Roberts noted the issue of "how extensive any evolution or increase in uncertainty in Europe has been and elsewhere" on the medical issues. *Id.* at 12-14. Justice Kavanaugh raised the fact that Europe is "pumping the brakes on this kind of treatment because of concerns about the risks" and highlighted the experience of detransitioners. *Id.* at 50:6-16, 49:11-16. Justice Alito asked about "the state of medical evidence" and quoted the assessment of Sweden's National Board of Health and Welfare "that the risks of puberty blockers and gender-affirming treatment are likely to outweigh the expected benefits of these treatments." *Id.* at 14:12-13; 14:22-25 – 15:1-2. *See also* Swedish National Board of Health and Welfare, *Updated Recommendations for Hormone Therapy for Gender Dysphoria in Young People* (Feb. 22, 2022), https://www.socialstyrelsen.se/om-socialstyrelsen/pressrum/press/uppdaterade-rekommendationer-for-hormonbehandling-vid-konsdysfori-hos-unga/.

79. *United States v. Skrmetti*, 145 S.Ct. 1816, 1842-43 (Thomas, J., concurring).

80. Removal of reproductive organs means a person will not be able to generate or bear children. See MayoClinic.org, "Feminizing Surgery" (Sept. 26, 2024); MayoClinic.org, "Masculinizing Surgery" (Oct. 1, 2024), *supra* note 9. "The risk of permanent infertility increases with long-term use of hormones. That is particularly true if hormone therapy is started before puberty begins." MayoClinic.org, "Feminizing Hormone Therapy" (July 12, 2024), https://www.mayoclinic.org/tests-procedures/feminizing-hormone-therapy/about/pac-20385096; MayoClinic.org, "Masculinizing Hormone Therapy" (July 12, 2024), https://www.mayoclinic.org/tests-procedures/masculinizing-hormone-therapy/about/pac-20385099).

81. Barnes, *supra* note 3 ("WPATH's president, Dr Marci Bowers, comments on the impact of early blocking of puberty on sexual function in adulthood. 'To date,' she writes, 'I'm unaware of an individual claiming ability to orgasm when they were blocked at Tanner 2.'").

82. *See* MayoClinic.org, "Feminizing Hormone Therapy," *supra* note 89 (risks include blood clots in a deep vein or in the lungs, heart problems, high blood pressure, and Type 2 diabetes, among other things); "Masculinizing Hormone Therapy," *supra* note 89 (risks also include those).

83. *See, e.g.*, Robin Respaut et al., *Why Detransitioners are Crucial to the Science of Gender Care*, Reuters (Dec. 22, 2022); Pamela Paul, Opinion, *As Kids, They Thought They Were Trans. They No Longer Do.*, N.Y. Times (Feb. 2, 2024).

EVEN SUPERHEROES ARE BETTER WITH A TEAM

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Michelle A. Behnke, President of the ABA, welcomes the delegates to the conference in Toronto.

2025 ABA Annual Meeting in Toronto

R. Jonathan Shirts

This year's ABA Annual Meeting was held in the beautiful city of Toronto, Ontario.[1] The meetings were held in the historic Fairmont Royal York, directly across the street from the historic Union Station.[2] The Royal York (as it's known to locals) is just shy of 100 years old and is an absolutely stunning architectural wonder. The little boy inside of me was astounded to be staying at the same hotel Queen Elizabeth II, President Ronald Reagan, and Andrew Lloyd Webber (among countless other celebrities and world leaders) had stayed in. I spent way too much time staring at the oil painted ceiling of the Ballroom during the celebration for the incoming ABA President, admiring the intricate gilded carvings in the elevators (and almost missing the floor for my room more than once), and being blown away at the floral arrangements in the lobby that were replaced every day. But when I wasn't distracted by those things, I was doing my best to represent Idaho and ensure our voice was heard.

This particular Annual Meeting was far and away the busiest of the meetings I've been fortunate to attend. There were more than 60 resolutions, including 15 revisions or amendments,[3] and more than 400 requests to speak in favor or against various Resolutions were submitted.[4] By mid-afternoon on Monday, everyone's favorite person was a Delegate from Michigan who, it turns out, was asked to step in and request the debate on a Resolution be stopped. At one point during a particularly passionate (read: lengthy) debate on a Resolution, Idaho's Young Lawyer Delegate, Kendall, leaned over and asked when he was going to get up. Almost on cue, "the Angel of Death" (as he called himself) stood up. We both got a really good chuckle out of that.[5]

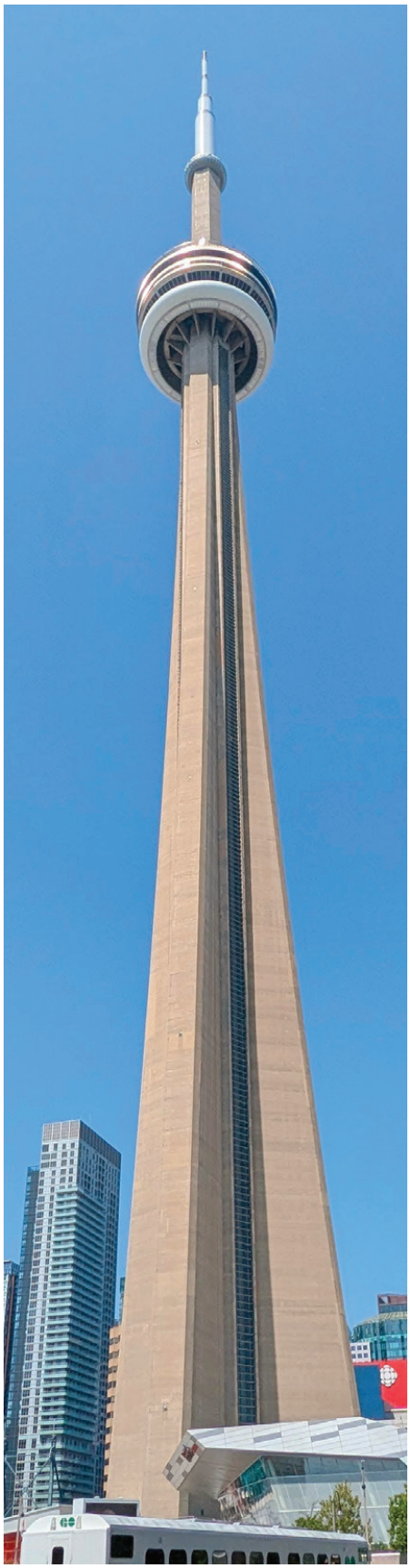
The Meeting was also a bit of an interesting one for anyone who is a constitutional or bylaw nerd.[6] Article 16 of the ABA Constitution requires a review of the membership of the Association every ten years.[7] The entire text of this section reads,

The Fairmont Royal York hotel in Toronto, this year's location of the ABA Annual Meeting.

> Beginning in 2005 and once every ten years thereafter a review shall be conducted of the House of Delegates, the Board of Governors and the Nominating Committee. With respect to each body the review shall include an examination of its size and a consideration of its composition to ensure appropriate representation of constituencies.[8]

Two Meetings ago, the ABA leadership formed a working group to undertake that review and make recommendations. While there's not much direction to go on from that section, the Decennial Commission took its work seriously, hosting several town halls over the past three Meetings, gathering input and soliciting ideas, then reporting back to the House of Delegates and Board of Governors how they thought the House of Delegates and Board of Governors needed to be adjusted in terms of representation.[9] After a significant amount of debate, the House voted to keep the composition of both the House of Delegates and the Board of Governors as they are currently.[10] Many people thought it would be best for the Board of Governors and House of Delegates to be downsized in order to be more efficient; but as someone said during the debate, "We [the ABA] decided long ago that inclusion was more important than efficiency." Clearly.

I feel compelled to take a brief interlude to discuss the word, "inclusion." Over the last decade or so, this word has taken on a very politicized meaning, to the point there have been Executive Orders from the last two Administrations using that term, each purporting to be an attempt to accomplish the same thing.[11] Merriam-Webster defines inclusion as, "the act of including: the state of being included;"[12] while Black's Law Dictionary, which I'm sure everyone reading this is more than familiar with, defines "include" as, "To contain as a part of something."[13] Even though the word has been politicized, I want to say that I have felt included as a member of the Idaho State Bar from the day I started law school, and that our Bar feels (for the most part) inclusive for new attorneys. Sure, the very nature of our profession requires us to be adversarial at times, but I have never felt—as a whole—attorneys in our State could not sit down for a drink together, regardless of which side of the "vs." they may have been on.[14]



The CN Tower in Toronto.

One aspect of inclusion that the House of Delegates voted on this Meeting was a change to the Constitution that gave the United States Virgin Islands and the Pacific Territories representation on the Board of Governors as "States."[15] While speaking in favor of the Resolution, the Delegate from Guam, a person I have gotten to know well the last few Meetings, said this is something that has been in the works for over 40 years. Passage of this Resolution meant a lot to me as a Delegate from one of the smaller States because there are times when I feel the voices of the three to four of us representing our State could be drowned out by the Delegations from California, Illinois, or Texas—all States with more than 20 Delegates. But enough of that, let's move on.

Some of the more important Resolutions taken up by the House of Delegates this Meeting included Resolutions on upholding the Rule of Law in our society,[16] freedom of speech in academia,[17] and freedom of the press against spurious defamation claims.[18] I think these **should** be the most important Resolutions passed by the House of Delegates this meeting, but I am afraid they will likely go down as mere footnotes in history unless we, as a profession, decide we will not allow our profession to be attacked, and stand up for our judges who are doing their best to judge cases fairly, and our press who impartially report on the issues we face in society.

But I want to end by discussing two Resolutions which both involved bullying: in the legal profession against each other,[19] and against the judiciary and the legal profession in general.[20] This topic, to me, hits close to home, not only because of my job in the judiciary and as an attorney, but on a very personal level. This is not something I have spoken about much, outside of my family and a very small group of people, because it is such a painful subject. I grew up in a tiny little

town where my high school graduating class was less than 90 people (imagine my shock moving to Coeur d'Alene for my Senior year where the graduating class was bigger than the entire high school I had just left). In fifth grade, I made two "mistakes" that nearly destroyed me: I beat one of the more popular eighth graders in the finals of the school's Geography Bee, and, after dropping a pass on the playground one fall morning, said I was "really junky at this game." Kids being kids, I was saddled with the nickname "Junky" for the rest of time I lived there. I was relentlessly harassed because I was incredibly book smart, but not all-that athletically gifted (even though I tried, so very hard). When I tried to stand up for myself, I wouldn't do it the right way and found myself in fights on a frequent basis (one day in sixth grade, I was in a fight before school started, another at lunch, and one during the afternoon recess). I was the geeky kid who was caught during class in fifth grade reading, *A Brief History of Time* by Stephen Hawking instead of doing my math work, who constantly got in trouble for not doing any homework then passing the tests (this drove my seventh grade math teacher, in particular, up the wall), and who ran his mouth off about becoming the starting quarterback my sophomore year even though I had never played a single down of organized football. I went home a great many days depressed, hurt, and thinking it just would be better for everyone else if I simply wasn't there. I wanted so badly to fit in, to just be part of a group, but never felt that I was. Even now, I find myself chasing and craving things that seem so easy for everyone else, but always just out of reach for me.

Looking back now, I recognize I did not do much to help myself with any of those problems; I was quick to anger, easy to take offense at everything, and saddled with mental health conditions that I somehow always suspected but was not diagnosed with until I was in my 30s. I don't say this to throw a pity party for myself—I say it to reflect on the impact being bullied has had on my entire life and continues to have today. I would simply caution all of us as attorneys to be mindful of the way we treat those around us, including other attorneys and staff, and recognize that our actions today could have either a detrimental or uplifting impact on someone else. The words we speak, or the actions we don't take, can have ripple effects beyond what we might be able to conceive right now. We should think about how putting wanted posters featuring judges in the halls of Congress impacts not only those judges and their families, but it also impacts their staff and their families, as well.[21]

I will close with something the current President of the ABA, Michelle Behnke of Wisconsin, said during her introductory speech, "If you want to go fast, go alone; if you want to go far, go together."[22] I look forward to going far with each of you.

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. https://www.abajournal.com/web/article/aba-celebrates-long-standing-ties-with-canadian-lawyers-at-annual-meeting

2. https://www.fairmont.com/en/hotels/toronto/fairmont-royal-york.html.

3. *See* https://www.abajournal.com/web/article/aba-house-adopts-policy-on-law-firm-intimidation-immigration-issues for a discussion on some of the various Resolutions that were considered, and https://www.americanbar.org/groups/leadership/house_of_delegates/2025hodannualmeeting/ for links to all of the Resolutions, Amendments, and Revisions considered during this Meeting.

4. A list of Delegates who submitted electronic requests to speak can be found here: https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2025-annual-supplemental-materials/movants-and-speakers-25am.pdf; however, that list is not complete as the House of Delegates has a procedure where a Delegate can submit a request to speak during the meeting itself. The line for doing that was a dozen people deep when the Meeting was called to order on Monday, and it never fully disappeared until the Meeting was adjourned on Tuesday afternoon.

5. We both missed the presence of our Idaho Delegation leader, Jenn, who was caught up in depositions and unable to join us. Hopefully we'll be at full-strength in San Antonio in February.

6. I am on the fringes of being this type of nerd, but I know there are some lawyers out there who are incredibly passionate about this kind of thing.

7. A full copy of the Constitution's text can be found on the ABA's website: https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/constitution-and-bylaws/constitution-and-bylaws.pdf. It will be cited or referred to as "ABA Constitution" or "ABA Const."

8. ABA Const., Art. 16, §16.1.

9. *See* Daily Journal of the ABA House of Delegates, specifically the Proposed Constitutional Amendments 11-4A(1-4), 11-4B(1-6), 11-4C(1-2), and 11-4D(1). https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/daily-journals/2025-annual-daily-journal.pdf.

10. *Id.*

11. *See, e.g.*, the Biden Administration's Executive Order 13985, "Advancing Equity and Racial Justice Through the Federal Government" (https://bidenwhitehouse.archives.gov/equity/); and the current Trump Administration's Order 14151, "Ending Radical And Wasteful Government DEI Programs And Preferencing" (https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/).

12. https://www.merriam-webster.com/dictionary/inclusion.

13. INCLUDE, Black's Law Dictionary (12th ed. 2024).

14. I say, "as a whole," because there will always been some people and personalities who just don't get along or play nicely together. But even so, I think the collegiality of our Bar would allow them to at least behave civilly towards each other, most of the time.

15. *See* https://www.americanbar.org/news/reporter_resources/annual-meeting-2025/house-of-delegates-resolutions/11-2/, and as revised https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2025-annual-supplemental-materials/11-2-rev.pdf.

16. https://www.americanbar.org/news/reporter_resources/annual-meeting-2025/house-of-delegates-resolutions/512/.

17. https://www.americanbar.org/news/reporter_resources/annual-meeting-2025/house-of-delegates-resolutions/513/.

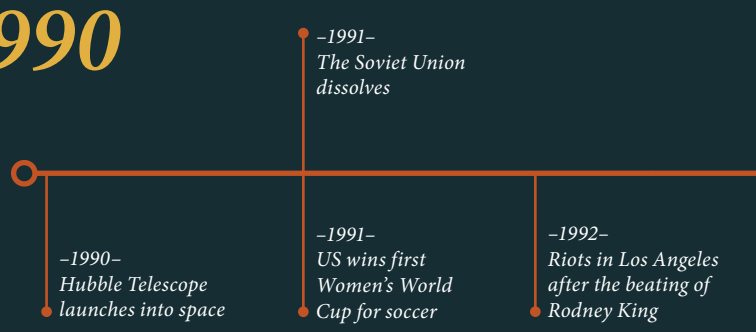
18. https://www.americanbar.org/news/reporter_resources/annual-meeting-2025/house-of-delegates-resolutions/514/.

19. https://www.abajournal.com/web/article/aba-house-takes-aim-at-bullying-in-the-legal-profession, https://www.americanbar.org/content/dam/aba/directories/policy/annual-2025/523-annual-2025.pdf

20. https://www.americanbar.org/content/dam/aba/directories/policy/annual-2025/509-annual-2025.pdf

21. *See* https://www.wyomingnews.com/news/local_news/judges-lawyers-describe-perils-of-attacking-judiciary-at-grand-teton-national-park-gathering/article_7c7695e1-0489-41f0-a8ac-aa8379452df5.html (discussing the impact of the Wanted posters and other attacks on the judiciary); https://www.courthousenews.com/citing-escalating-threats-judiciary-urges-congress-to-set-aside-more-cash-for-court-security/ (discussing escalating security concerns); and https://www.americanbar.org/news/reporter_resources/annual-meeting-2023/house-of-delegates-resolutions/200/ (encouraging policymakers at all levels to consider mental health assistance and the impact of trauma on court staff).

22. https://www.abajournal.com/web/article/aba-president-elect-michelle-behnke-recommits-to-defending-the-rule-of-law.



THE IDAHO STATE BAR & IDAHO LAW FOUNDATION

The 1990s

Hon. Jessica M. Lorello

In the September issue of *The Advocate*, Chris Graham, author of the article on the 1980s, closed with an invitation to "bring on the 1990s!"[1] I accept that invitation! On the national stage, the 1990s featured the end of the Cold War and the collapse of the Soviet Union; the Oklahoma City bombing; the election of Nelson Mandela as the first Black president of South Africa; the Columbine High School shooting; the death of Princess Diana; the Los Angeles riots following the beating of Rodney King; the O.J. Simpson trial; the launch of the Hubble Space Telescope; the beginning of Google and Amazon; the debut of the iconic television series, *Friends*; the end of another iconic television series, *Seinfeld*; and the publication of the first Harry Potter book by J.K. Rowling.[2] And, as an alumna of the University of North Carolina at Chapel Hill, I would be remiss if I didn't note that the 1990s also marked milestones in the careers of two fellow alumna who made a mark on sports' history—Mia Hamm led the United States to its first women's World Cup win in soccer in 1992 and Michael Jordan announced his retirement (for the second time) in 1999.[3]

Meanwhile, on our home court in Idaho...

A NEW HOME FOR THE IDAHO STATE BAR & IDAHO LAW FOUNDATION

On September 20, 1990, a joint meeting between the Idaho State Bar Commissioners and the Idaho Law Foundation's Board of Directors was held and included members of the ISB/ILF Bar Center Taskforce. The charge of the Taskforce "was to ascertain the staff, space, and facility needs of the Idaho State Bar and Idaho Law Foundation."[4] The purpose of the September 20, 1990 meeting was to decide "whether to accept the building at 701 W. Franklin which had been offered by J. Charles Blanton."[5] To sweeten the offer, Blanton agreed to make a "$15,000 cash contribution."[6] The 701 W. Franklin building offered 7,830 square feet of space and thirteen parking spots.[7] Acceptance of the offer would cost a total of $770,000, an amount that would include "payment of $475,000 in indebtedness and back taxes," and $295,000 in "deferred maintenance, remodeling, and transactional costs."[8]

The meeting participants also discussed other options, including renovations of ISB/ILF's current location at 204 W. State Street.[9] Ultimately, "[a]fter considerable discussion, regarding the relatives costs and long term suitability of the [701 W. Franklin] facility," the group unanimously decided to decline Blanton's offer.[10] The Taskforce determined its next steps would be to continue "looking at existing buildings and potential building sites" that would best serve the needs of the Bar and the Foundation.[11]

In late 1991, the Taskforce's efforts led to an offer to purchase the property located at 525 W. Jefferson, where the Law Center now stands.[12] Although the $230,000 offer was rejected, [13] there was an eventual counter-offer for $325,00, after which a final purchase price of $300,000 was agreed upon.[14] The Idaho Law Foundation Board of Directors then created "bar center committees to facilitate the building of

a new bar center."[15] The Directors who served on the committees included Mike Moore, Judge May, Dennis Baird, Dave Gadda, and P. Craig Storti.[16] A request for proposal was sent to local architecture firms to bid on construction of the new building.[17] Armstrong Architects won the bid.[18] The budget for construction of the new bar center was $650,000.[19] Fred Hahn led fundraising efforts for the Law Center campaign to solicit contributions to assist in paying the costs of the new building.[20] The fundraising goal was set at $300,000.[21] Just over half of that goal was reached by the time the Law Center was occupied in late 1993.[22]

Construction on the Law Center began in March 1993.[23] Perhaps unsurprisingly, the project quickly fell behind. Weather delays and "problems with compacting the dirt" were the culprits.[24] After the initial delays, there were relatively few hiccups during the construction process. The July 21, 1993, minutes from the Board of Commissioners' meeting noted: "There are no problems at this point except for possible costs incurred in installing streetlights which may be required by the city of Boise."[25] The disagreement revolved around whether the Law Center would be required to install "historical streetlights" at a cost of "about $12,000."[26]

Construction was substantially completed by the end of October 1993, and the Idaho State Bar and Idaho Law Foundation staff occupied the Law Center at 525 W. Jefferson in Boise in November 1993.[27] On December 10, 1993, there was a dedication and open house celebrating the Law Center as the new home of the Idaho State Bar and Idaho Law Foundation.[28] The lot for the new building previously housed the Ada County Public Defender's Office and the Clerk's office.

Meanwhile, an appraisal of the State Street building that was being used by the Bar and the Foundation before the Law Center was built was conducted by Idaho Land and Appraisal; that appraisal indicated a market value of $345,000.[29] The property was listed at $380,000 with a plan to advertise it in *The Advocate* and to notify physicians in Ada County that the building was for sale.[30] Advertising later expanded to include listings in the Idaho Statesman, the CPA Society newsletter, the Idaho Business Review, and "local medical and dental journals."[31] These advertising efforts were part of a plan to avoid hiring a realtor to facilitate the sale.[32] This strategy proved unsuccessful. By January 1993, the Executive Director, Diane Minnich, was interviewing realtors to assist with the sale.[33] The first potential buyer for the State Street property made a full-price cash offer and tendered a check. Immediately thereafter we received visitors from The Treasury Department or the IRS advising us not to cash the check, because the proceeds were a result of a fraudulent tax refund.[34] Chuck Winder was eventually selected to assist with the sale of State Street building; Winder generously agreed to donate 1.5 percent of the 6 percent sales commission to the Idaho Law Foundation.[35] The State Street property was finally sold for $327,500 in November 1993.[36]

Breaking ground on the new building for The Law Center in 1993.

Construction on the Law Center in 1993 on Jefferson St. in downtown Boise, seen in the background is the old Law Library.

The basement of the Bar Offices in the 1990s being used as a classroom for CLEs; now used for storage.

Looking back, the Law Center looks like a pretty great deal by today's standards!

PLAY BALL!

As I write this article, we are closing in on the end of the 2025 regular season in Major League Baseball. As the count creeps toward the final 162-game tally, I anxiously await to see where my two favorite teams—the Los Angeles Dodgers and the New York Mets—may (or may not) land in the post-season. The Dodgers currently sit with a three-game lead on the San Diego Padres in the National League West—not a spread I am comfortable with, particularly given the team's underperforming injury-laden season despite a pitching roster with big names and a lineup with even more star power, including Shohei Ohtani, a true unicorn of the game. Meanwhile, the Mets are sitting in second place in the National League East, eleven games behind the Philadelphia Phillies and fighting for a wild card spot. Whatever the result of this major league baseball season, at least there is no risk of a baseball strike, which resulted in the cancellation of the 1994 World Series.[37]

But the real story involving a bat and a ball in the 1990s was right here in Idaho when Idaho State Bar Commissioners faced off against members of the Idaho Judiciary in what may have been a bigger rivalry than anything in the big leagues. The minutes from the March 22, 1991 Board of Commissioners meeting indicate that then-Bar Counsel Mike Oths had secured "a commitment from ex-commissioner Mark Nye to play on the Idaho State Bar team," and that Oths had "sent a copy of the proposed rules to Justice [Byron] Johnson." [38] Clearly this match-up was not going to be some haphazard, beer league, pickup game. Indeed, Oths recalls that he and John "Jack" McMahon "were the delegation sent to discuss protocols with Justice Johnson and it was soon obvious he was taking this pretty seriously." Indeed, it was serious enough that there were player-eligibility requirements. The eligible players on the judicial team included appellate judges, district judges, Fred Lyon (Clerk of Court for the Idaho Supreme Court from 1982 to 2004[39]), and Carl Bianchi (Administrative Director of the Courts from 1973 to 1993[40]). For the Commissioner side of the scorecard, eligible players could be any past or present Commissioner, then-Executive Director Diane Minnich, and, of course, Oths.

Although the minutes from subsequent Board of Commissioner meetings are silent on the result, Oths reports that the judicial team won the first game. That win may have been attributable to Justice Johnson's skills (honed from his days on Harvard's baseball team) in combination with Judge Larry Boyle's abilities at shortstop. Although Oths notes: "In the altitude of Sun Valley the ball really carries, and a DJ (who shall remain nameless) let a couple balls go over his head. Justice Johnson never invited him back." In that same game, Oths recalled that

The Idaho Judicial team in 1995 at the Bar's Annual Meeting.

"Bill McCurdy got on base but didn't want to run. Then-trial judge, Roger Burdick, was sitting in a lawn chair by 1st base and took his place. When Justice Johnson noticed Burdick on base, he protested that he was ineligible. Justice Bakes simply told him 'Byron, we'll take it up at conference on Monday.'" Despite falling short in the first game, the Commissioners' team won the next three games. At one point, Justices Trout and Silak told Oths: "He (Byron) is never going to let us discontinue the series until we get even in the standings." Nevertheless, the annual contest came to an end after "5-6 years." Apparently, it wasn't always fun and games, especially that time when a couple of players on the field nearly came to blows. I am told there was an "audible gasp" from the crowd. For me, and hopefully for you, the story led to an audible chuckle.[41]

OATH

Speaking of oaths, this article appears not long after the September 26, 2025, admissions ceremony. The ceremony is the time new admittees to the Idaho State Bar take the Attorney's Oath; it is also an opportunity for practicing attorneys to take the oath again. While the principles reflected in that oath have persisted over time, in 1990, then-Bar Commissioner McMahon and Oths took the lead on updating and improving some of its language.[42] The language changes were approved by the ISB Board of Commissioners on August 10, 1990.

ATTORNEY'S OATH

I Do Solemnly Swear (or Affirm) That:

I will support the Constitution of the United States and the Constitution of the state of Idaho. I will abide by the rules of professional conduct adopted by the Idaho Supreme Court. I will respect courts and judicial officers in keeping with my role as an officer of the court. I will represent my clients with vigor and zeal and will preserve inviolate their confidences and secrets. I will never seek to mislead a court or opposing party by false statement of fact or law and will scrupulously honor promises and commitments made. I will attempt to resolve matters expeditiously and without unnecessary expense. I will contribute time and resources to public service, and will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed. I will conduct myself personally and professionally in conformity with the high standards of my profession.

SO HELP ME GOD. (I hereby affirm.)

AMERICAN INNS OF COURT

The American Inns of Court was introduced in Idaho in 1991.[43] The American Inns of Court is a national organization with a mission to "inspire the legal community to advance the rule of law by achieving the highest level of professionalism through example, education, and mentoring."[44] The program is designed to bring together "lawyers, judges, and other legal professionals from all levels and backgrounds who share a passion for professional excellence."[45] The Inn is "divided into 'pupillage teams,' with each team consisting of a few members from each membership category depending on the members' level of experience. Each pupillage team conducts one program for the Inn each year."[46] Through this collaboration, law students and less-experienced attorneys can learn "to become more effective advocates and counselors by learning from the more-experienced attorneys and judges."[47]

The first Inn meeting was scheduled in Boise for September 18, 1991.[48] Idaho has since created five Inns: the Richard C. Fields American Inn of

The Board of Commissioners team in 1995 at the Bar's Annual Meeting.

Richard C. Fields (namesake for one of Idaho's Inns of Court).

Court in Boise; the Portneuf American Inn of Court in Pocatello; the Theron W. Ward American Inn of Court in the Fifth Judicial District; the Eagle Rock American Inn of Court in Idaho Falls; and the Ray McNichols American Inn of Court in Lewiston and Moscow.[49]

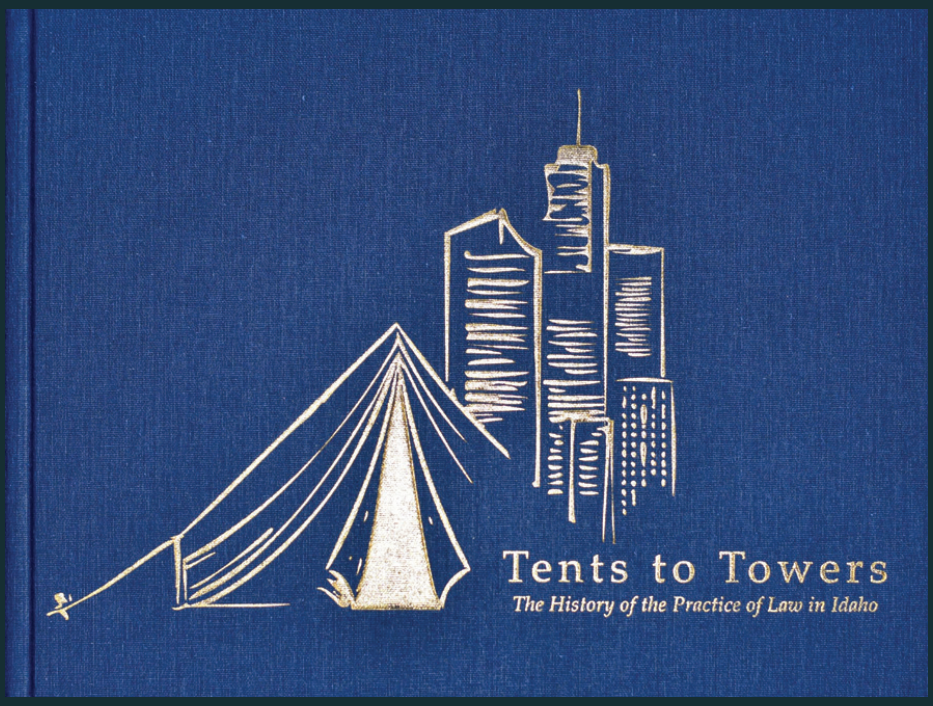
SOVIET/AMERICAN LAWYER EXCHANGE PROGRAM

As noted in the introductory paragraph, the Soviet Union dissolved in 1991. That same year, the Idaho Law Foundation received an application for the creation of a Soviet/American scholarship fund.[50] The request was made by then-Idaho Governor John Evans on behalf of Konstantin Gavrilov who, at the time, was attending Stanford University.[51] Prior to that, Gavrilov was an intern at Boise Cascade's Corporate Legal Office in Boise.[52] The Executive Committee approved the request, which was for $5,376.90, in addition to approving future funds up to the total amount requested ($7,315).[53]

The minutes of the Board of Commissioners meeting on March 22, 1991, indicate there was a more formalized program to support an internship for lawyers from the Soviet Union.[54] In particular, the Bar president at that time "sent a letter to the major firms and corporations in Idaho asking them to participate in the Soviet/American Lawyer Intern exchange program sponsored by the American Bar Association."[55] The ABA arranged to have "30 lawyers from Soviet bloc countries come to the U.S. in the summer of 1991 to serve a six month internship" at an "approximate cost" of $13,000 per year, "plus housing for the firm or corporation that sponsors the attorney."[56] A notice was placed in *The Advocate* advertising the program and seeking participation by Idaho law firms.[57]

THE SEEDS OF *TENTS TO TOWERS*

The publication of *Tents to Towers: The History of the Practice of Law in Idaho* has been one of the key features of this year's celebration of the 100th anniversary of the Idaho State Bar and the 50th anniversary of the Idaho Law Foundation. As it turns out, the seeds of that endeavor were planted in the 1990s and it appears it may have been inspired by the publication of the *Centennial History of the Idaho State Courts*.[58] The Idaho Law Foundation approved a request from the Administrative Director of the Courts to serve as the book's publisher.[59] Four months later, in May 1990, the Board of Commissioners received a proposal for a written history of the organized bar in Idaho.[60]



The book cover for Tents to Towers.

At the June 8, 1990 Board of Commissioners meeting in Big Fork, Montana, then-Executive Director Dennis Harwick presented a proposal based on his meeting with Madeline Buckendorf, a graduate student at Boise State University.[61] "It was estimated that the project would take between 300 and 350 hours and would result in a document of approximately 100 pages" at a charge of $15 per hour payable to Buckendorf for her work.[62] The Commissioners approved the project and "asked to meet with Ms. Buckendorf as early as possible to share its ideas on such a history."[63] That meeting occurred on August 10, 1990. The minutes from the meeting reveal that Buckendorf "asked for clarification as to the intended audience for such a document."[64] The "consensus" was "that the audience would be members of the Idaho State Bar."[65] There was also a "consensus" (and "considerable discussion") related to "the focus of such a history on the period of 1900 to approximately 1950, i.e., the 'ancient' history of the bar."[66] Buckendorf "noted that she would focus on the major turning points within the bar and the transition from an informal apprenticeship profession to a formalized institution."[67]

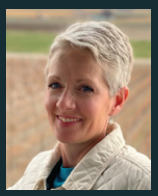
Consistent with the agreement between the Board of Commissioners and Buckendorf, subsequent meeting minutes reflect regular updates on the status of the project. Buckendorf submitted the first installment of her work in March 1991[68] and a first draft in June 1991.[69] At that point, individuals responsible for reviewing the draft and making edits were identified.[70] It appears the project stalled sometime after that before it was picked up by members of the Idaho Legal History Society, which later became a section of the Idaho State Bar. After years of work by many volunteers, the final product came to fruition in 2025. If you haven't already purchased a copy of *Tents to Towers*, I encourage you to do so before it is sold out![71]

Judge Michael Others (previous Bar Counsel) and Diane Minnich (previous Executive Director of the Bar) in the Bar offices in 1997 with the jackrabbit mascot from the Jackrabbit Bar Conference.

MISCELLANEOUS NOTABLES

On April 19, 1990, the Board of Commissioners "formally adopt[ed] a policy prohibiting smoking at Commission meetings."[72] In conjunction with this vote, "the Executive Director was asked to obtain a discreet sign to be placed in the Conference Room to that effect."[73] This prohibition was a sign of the times, and perhaps even ahead of its time given that smoking bans on all domestic and international flights did not occur until 2000.[74]

In 1991, Diane Minnich began her tenure as Executive Director of the Idaho State Bar and Idaho Law Foundation. Minnich retired in 2024 after 39 years of service to the legal community. Thank you, Diane!



Judge Jessica M. Lorello *is an Idaho native who graduated from Boise High School. She received a master's degree in health care administration and her Juris Doctor degree from the University of North Carolina at Chapel Hill. After law school, she worked in private practice until 2004 when she joined the Criminal Law Division of the Idaho Attorney General's Office. Governor Otter appointed Judge Lorello to the Idaho Court of Appeals in 2017. Judge Lorello is also an adjunct professor at the University of Idaho College of Law, is a member of the Law Related Education Committee of the Idaho Law Foundation and is a founding member of Attorneys for Civic Education.*

Endnotes

1. Chris Graham, The 1980s, The Era of Modernization Begins, 68 *The Advocate* 9 (2025).

2. https://www.britannica.com/story/timeline-of-the-1990s (last visited September 11, 2025).

3. *Id.*

4. Idaho State Bar Board of Commissioner, Directors of the Idaho Law Foundation, and Members of the ISB/ILF Bar Center Task Force Joint Meeting Minutes, September 20, 1990.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Conference Call Minutes for the Idaho Law Foundation Board of Directors, December 12, 1991.

13. Conference Call Minutes for the Idaho Law Foundation Board of Directors, December 12, 1991.

14. Idaho State Bar Board of Commissioner Meeting Minutes, December 13, 1991; Idaho Law Foundation Board of Directors Meeting Minutes, January 24, 1992.

15. *Id.*

16. *Id.*

17. Idaho State Bar Board of Commissioner Meeting Minutes, February 14, 1992.

18. Idaho Law Foundation Board of Directors Meeting Minutes, April 24, 1992.

19. Idaho State Bar Board of Commissioner Meeting Minutes, July 22, 1992.

20. Idaho Law Foundation Board of Directors Meeting Minutes, October 23, 1992.

21. Annual Meeting Minutes, July 21, 1993.

22. Idaho Law Foundation Board of Directors Meeting Minutes, January 21, 1994 (noting $177,140 in funds raised to contribute to the construction of the new Law Center).

23. Idaho State Bar Board of Commissioner Meeting Minutes, April 2, 1993.

24. Idaho Law Foundation Board of Directors Meeting Minutes, April 23, 1993.

25. Idaho State Bar Board of Commissioner Meeting Minutes, July 21, 1992.

26. Idaho Law Foundation Board of Directors Meeting Minutes, July 22, 1993.

27. Idaho Law Foundation Board of Directors Meeting Minutes, October 22, 1993.

28. *Id.*

29. Idaho State Bar Board of Commissioner Meeting Minutes, March 6, 1992.

30. Idaho Law Foundation Board of Directors Meeting Minutes, April 24, 1992.

31. Idaho Law Foundation Board of Directors Meeting Minutes, October 23, 1992.

32. *See* Idaho State Bar Board of Commissioner Meeting Minutes, November 19, 1992.

33. Idaho Law Foundation Board of Directors Meeting Minutes, January 29, 1993.

34. Email interview with Diane Minnich, September 15, 2025.

35. Idaho State Bar Board of Commissioner Meeting Minutes, March 5, 1993.

36. Idaho Law Foundation Board of Directors Meeting Minutes, October 22 1993.

37. https://www.britannica.com/story/timeline-of-the-1990s (last visited September 11, 2025).

38. Idaho State Bar Board of Commissioner Meeting Minutes, March 22, 1991.

39. https://isb.idaho.gov/blog/60-year-milestone-attorneys-admitted-in-1964/ (last visited September 11, 2025).

40. https://isb.idaho.gov/blog/50-year-milestone-attorneys-admitted-in-1973/ (last visited September 11, 2025).

41. Many thanks to Mike Oths and Diane Minnich for their insight on the softball saga and to Diane for photo evidence of the same.

42. Idaho State Bar Board of Commissioner Meeting Minutes, February 16, 1990.

43. *See* Idaho State Bar Board of Commissioner Meeting Minutes, May 10, 1991.

44. https://www.innsofcourt.org/AIC/About_Us/Our_Vision_and_Mission/AIC/AIC_About_Us/Vision_Mission_and_Goals.aspx?hkey=27d5bcde-8492-45da-aebd-0514af4154ce (last visited September 12, 2025).

45. https://www.innsofcourt.org/AIC/About_Us/What_Is_an_American_Inn_of_Court/AIC/AIC_About_Us/What_Is_An_American_Inn_of_Court.aspx?hkey=d3aa9ba2-459a-4bab-aee8-f8faca2bfa0f (last visited September 12, 2025).

46. *Id.*

47. *Id.*

48. Idaho State Bar Board of Commissioner Meeting Minutes, September 7, 1991.

49. https://www.innsofcourt.org/AIC/Find_an_Inn/AIC/AIC_Get_Involved/Find_An_Inn.aspx?hkey=ffb07a28-dcd9-45dc-bda5-48ab4e2d8e62 (last visited September 12, 2025).

50. Idaho Law Foundation Board of Directors Executive Committee Meeting Minutes, January 3, 1991.

51. *Id.*

52. *Id.*

53. *Id.*

54. Idaho State Bar Board of Commissioner Meeting Minutes, March 22, 1991.

55. *Id.*

56. *Id.*

57. *Id.*

58. Idaho Law Foundation Board of Directors Meeting Minutes, January 26, 1990.

59. *Id.*

60. Idaho State Bar Board of Commissioner Meeting Minutes, May 11, 1990.

61. Idaho State Bar Board of Commissioner Meeting Minutes, June 8, 1990.

62. *Id.*

63. *Id.*

64. Idaho State Bar Board of Commissioner Meeting Minutes, August 10, 1990.

65. *Id.*

66. *Id.*

67. *Id.*

68. Idaho State Bar Board of Commissioner Meeting Minutes, March 22, 1991.

69. Idaho State Bar Board of Commissioner Meeting Minutes, June 7, 1991.

70. *Id.*

71. https://laserfiche.isb.idaho.gov/Forms/BookOrder.

72. Idaho State Bar Board of Commissioner Meeting Minutes, April 19, 1990.

73. *Id.*

74. https://en.wikipedia.org/wiki/Inflight_smoking (last visited September 11, 2025).

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 Fall Term for 2025
2nd Amended March 25, 2025

Boise	August 18, 20, 22 and 25
Boise	September 10 and 12
Coeur d' Alene	September 17 and 18
Boise	October 1, 3 and 6
Blackfoot	October 8
Idaho State University (Pocatello)	October 9
Boise	November 3, 7 and 10
Twin Falls	November 5

By Order of the Court
Melanie Gagnepain, Clerk

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

OFFICIAL NOTICE
COURT OF APPEALS OF IDAHO

Chief Justice
David W. Gratton

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

Regular Fall Term for 2025
04/07/2025

Boise	August 5, 12, 14 and 26
Boise	September 11, 16, 18 and 23
Boise	October 7 and 9
Boise	November 6, 13, 18 and 20
Boise	December 9

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2025 Fall 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.

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 2026

Boise	January 5, 7, 9 and 14
Boise	February 9, 13, 18 and 20
Boise (University of Idaho)	February 11
Boise	April 6, 15 and 17
Moscow (University of Idaho)	April 8
Lewiston	April 9
Boise	May 6, 8, 11, 13 and 15
Boise	June 3, 5 and 8
Rexburg (BYU Idaho)	June 10
Twin Falls	June 11

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2026 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.

Idaho Supreme Court
Oral Arguments for October 2025

09/10/2025

Wednesday, October 1, 2025 - Boise
8:50 a.m. *Johnson v. SRM Double L* ..... #51893
10:00 a.m. *State v. Perez Garcia* ..... #51585
11:10 a.m. *State v. Robertson* ..... #52794

Friday, October 3, 2025 - Boise
8:50 a.m. *Shelstad v. Pacific Life Insurance* ..... #52014
10:00 a.m. *State v. Knight* ..... #52929
11:10 a.m. *PacifiCorp v. IPUC* ..... #52508

Monday, October 6, 2025 - Boise
8:50 a.m. *City of Idaho Falls v. IDWR* ..... #52102
10:00 a.m. *State v. McGarvey* ..... #52843

Wednesday, October 8, 2025 - Blackfoot
8:50 a.m. *Camp Magical Moments v. Walsh* ..... #51061
10:00 a.m. *Smallwood v. Little* ..... #52011
11:10 a.m. *Monson v. Monson* ..... #51838

Thursday, October 9, 2025 - Pocatello (Idaho State University)
8:50 a.m. *Stasiewicz v. Henry's Lake Village* ..... #52313
10:00 a.m. *Proulx v. Saveway* ..... #51856
11:10 a.m. *Ridgeline Medical v. Lyon* ..... #52069

Thursday, October 30, 2025 - Boise
2:00 p.m. *Jane Doe v. John Doe (2025-36)/*
Jane Doe v. John Doe (2025-33) ..... #53148/53137

Idaho Court of Appeals
Oral Arguments for October 2025

09/10/2025

October 7, 2025
9:00 a.m. *Burke v. Baugh* ..... #52429
10:30 a.m. *Dept. H&W v. Doe (2025-22)* ..... #53025

October 9, 2025
9:00 a.m. ..... Vacated
10:30 a.m. Dept. H&W v. Doe (2025-20) ..... #53013

CASES IN ALPHABETICAL ORDER BY CATEGORY – AUGUST 2025

CIVIL APPEALS

Estates And Trusts
Whether the district court erred in denying Plaintiff's petition to remove trustees and to appoint a successor trustee.

Morrison v. Thompson
Docket No. 52401
Supreme Court

Immunity
Whether the district court erred in concluding as a matter of law that Plaintiff's negligence claims were barred by the exclusive remedy provision of Idaho's worker's compensation law.

Bauer v. Scott Myers and Sons Roofing and Const., LLC
Docket No. 52706
Supreme Court

Legal Malpractice
Whether the district court erred when it dismissed Plaintiff's unjust enrichment and violation of the Idaho Consumer Protection Act claims and concluding neither claim provided an independent cause of action in Plaintiff's legal malpractice case.

The Estate of Laurel Ann Kalinski v. Murphy Law Office, PLLC
Docket No. 52242
Supreme Court

Restrictive Covenants
Whether the district court erred in concluding that a provision of the CC&Rs prohibiting the use of real property for commercial enterprises but permitting the private renting of a dwelling on any lot did not prohibit homeowners from offering their home as a short-term rental.

Delano v. Pike
Docket No. 52723
Court of Appeals

CRIMINAL APPEALS

Confrontation
Whether the district court's ruling allowing the State's fingerprint analysist to testify remotely by Zoom violated Defendant's confrontation rights.

State v. Jacobson
Docket No. 51454
Court of Appeals

Contempt
Whether a defendant in a criminal case may initiate nonsummary contempt proceedings against a sheriff for alleged misbehavior in office or other willful neglect or violation of duty.

State v. Lutz
Docket No. 52554
Supreme Court

Evidence
Whether the district court erred by admitting Facebook messages over Defendant's foundation objection because the State did not provide sufficient direct or circumstantial corroborating evidence of authorship.

State v. Kline
Docket No. 51696
Court of Appeals

Whether evidence that Defendant slapped the victim's buttocks and showed her an image of Defendant engaged in autoerotic activity should have been excluded from Defendant's sexual battery trial because the evidence was inadmissible propensity evidence under I.R.E. 404(b).

State v. Randell
Docket No. 51874
Court of Appeals

Whether the district court abused its discretion by admitting unfairly prejudicial and cumulative video evidence showing Defendant repeatedly yelling offensive and inflammatory expletives, including racial epithets, at jail deputies.

State v. Hanning
Docket No. 52188
Court of Appeals

Whether evidence that Defendant expressed a desire to leave the behavioral health care facility and planned to commit a felony to do so was inadmissible propensity evidence under I.R.E. 404(b).
State v. Bronson
Docket No. 52178
Court of Appeals

Motion to Continue
Whether the district court abused its discretion by denying Defendant's motion to continue the sentencing hearing until the court received the psychological and polygraph evaluations it had ordered.

State v. Gutierrez
Docket No. 51649
Supreme Court

Motion to Suppress
Whether the district court erred in denying Defendant's motion to suppress because the totality of the circumstances did not give rise to reasonable suspicion justifying the investigatory detention.

State v. Wimmer
Docket No. 51610
Court of Appeals

Whether the information in the search warrant application was too stale to establish probable cause supporting the issuance of the search warrant.

State v. King
Docket No. 52480
Court of Appeals

Whether the officers' entry on to the curtilage of Defendant's home was unlawful because the officers did not have reason to believe the person for whom they had a valid arrest warrant was there.

State v. Troup
Docket No. 51328
Court of Appeals

Prosecutorial Misconduct
Whether the district court erred by overruling Defendant's objection to the prosecutor's statements in rebuttal closing argument that Defendant did not present any evidence to establish the value of the property that formed the basis of the grand theft charge.

State v. Sartin
Docket No. 51676
Court of Appeals

Sentence Review
Whether the district court erred by concluding Defendant willfully violated his probation by failing to take his prescription medication "as needed" and by failing to obtain approval from his probation officer before changing residences.

State v. Rubalcaba
Docket No. 51416
Court of Appeals

Whether the district court erred by imposing separate, consecutive sentences for the underlying offense and the persistent violator enhancement.

State v. Swanson
Docket No. 51969
Court of Appeals

ADMINISTRATIVE APPEALS

Judicial Review
Whether the district court erred in holding that the 6.5% tax rate provided for in I.C. § 63-3025 is applicable for a full year for a fiscal year taxpayer whose return was filed after that rate went into effect.

WAFD, Inc. v. Idaho State Tax Comm'n
Docket No. 52584
Supreme Court

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

William K. Bayert
1951 – 2025

William "Bill" Kenneth Bayert passed away peacefully on August 6, 2025, following a brave and dignified struggle with pancreatic cancer.

Bill was born in Ironton, Ohio, on August 17, 1951, to William Bayert and Mary Margaret Barron Bayert, both of whom preceded him in death. He graduated from Ironton High School in 1969, where he was an athlete, lettering in both baseball and basketball. Bill earned a Bachelor of Arts degree from Marshall University in 1973 and went on to receive his Juris Doctor degree from Capital University School of Law in 1977. He was a member of both the Idaho and Ohio Bar Associations.

His distinguished legal career spanned 35 years. Bill began as a private attorney and county prosecutor in Bonners Ferry, Idaho, before spending over 26 years with the U.S. Army Corps of Engineers. He worked in the Real Estate Directorate and Office of the Chief Counsel in both the Huntington District in West Virginia and at Corps Headquarters in Washington, D.C. It was during a meeting of the Corps of Engineers' Board of Engineers for Rivers and Harbors in 1992 that Bill first met Nicole, and their partnership was built on a shared love for both work and life.

Bill was passionate about the outdoors and dedicated much of his time after retirement to environmental causes. He completed a course of study with the Virginia Cooperative Extension to become a certified Master Gardener, focusing on incorporating native plants into his landscape to create habitats for wildlife. His home was proudly recognized as an Audubon at Home Wildlife Sanctuary, where he nurtured at least 10 species of sanctuary birds and animals. He was also an avid fly fisherman.

Bill's intelligence was quiet but keen, reflected in the thoughtful questions he asked and the careful attention he gave to every conversation. Humble in his achievements and kind in spirit, he made people feel seen, heard, and valued. His warm, engaging manner drew people in, and his genuine curiosity about others created bonds that endured. Whether talking with a lifelong friend or a stranger he had just met, Bill had a gift for making connections that left people feeling richer for having known him.

Above all, Bill treasured time spent with his family, often combining his love of nature and fishing with his cherished loved ones. His legacy of kindness, humor, humility, and unwavering love for his family, friends, and the environment will be deeply missed.

Bill was the beloved husband of Nicole Doucette Bayert, whom he married on October 25, 1997, in Alexandria, Virginia. In addition to his wife, he is survived by his daughter, Anna Fink (and her mother), son-in-law Erec Fink, and grandsons Max and Sam Fink. Bill also leaves behind his sister Bethany (Glenn) Mara and their children, brother Robert (Lynne) Bayert and their daughter and granddaughter; as well as his sister-in-law Allene Doucette, brother-in-law William Casler, and nephew.

Robert Newhouse
1935 – 2025

Robert "Bob" Gary Newhouse was born on June 11, 1935, at St. Lukes Hospital in Boise, Idaho to his parents, Robert Earl and Margaret (Good) Newhouse. Bob was joined by brother Neal in 1937. Bob attended Washington Grade School, then to Cole School when his parents moved to the bench to go into the dairy business. He graduated from Boise High School in 1952 having achieved the Eagle Scout rank as well as and distinguished rifleman status in the NRA along the way. Bob had his own radio program in high school and, of course, became accomplished at milking cows and putting up hay at his Dad's Rencrest Dairy.

Bob then attended the University of Idaho where he was at the top of the Accounting Department in the College of Business before moving in his senior year to the College of Law where he graduated with a dual degree in 1959 and was admitted to the Idaho State Bar that same year. Bob was serving as President of the Beta Theta Pi fraternity when a perky Delta Gamma across the street caught his attention. He and Gretchen Holmes eloped on New Years eve in 1956 and their first child, Robert Neal, was born in Moscow. Three more sons followed, Franklyn Claude, Charles Erwin and John Ross, and lastly Margaret Marie, the daughter they wanted.

During law school, Bob was the first summer intern Albertsons employed in its accounting department, and Bob continued with the company in the legal department after graduation. However, when the opportunity to be appointed the Prosecuting Attorney of Camas County was presented, he and the growing family moved to Fairfield where they spent the next 15 years.

The family then returned to Boise and Bob started his judicial career as a Magistrate Judge where he established the Juvenile Detention Center. Bob then was elected District Judge in a contested election where he bested the sitting Judge, the first time that had happened in Ada County. Respected by the Bench and Bar, Bob served as Chief Judge of the Fourth Judicial District for 10 years. He was named a Distinguished Citizen by the Idaho Statesman newspaper. Judge Newhouse retired in 1998. He and Gretchen then enjoyed the winter weather in Las Vegas for the next 15 years. They returned to Idaho and spent the next years living in Meridian.

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Sixth District Welcomes Judge Strong

The Sixth Judicial District welcomed Magistrate Judge Adam Strong during his investiture ceremony in Power County on August 11th.

Judge Strong previously served as a magistrate judge in Boise County. He replaces recently retired Power County Magistrate Judge Paul Laggis.

Judges of the Sixth District at the investiture: From left, Judge Jarman, Judge Hooste, Judge Axline, Judge Carnaroli, Judge Garbett, Judge Laggis, Judge Strong, Judge Hunn and Judge Brower. Photo courtesy of ID courts.

2025 Resolution Meetings Schedule

See the graph below for the schedule of the 2025 Resolution Meetings ("Roadshow"). The agenda for these meetings includes: a 30-minute CLE, update from the Courts, Resolutions, Professionalism Awards, Pro Bono Awards, Honoring Retiring Judges, Richard C. Fields Civility Award, and the Milestone Awards.

2025 Resolution Process Roadshow

District	Date	Time	Venue	City	District Bar Contact
Second District	Wednesday, November 5th	5:30 p.m.	Best Western University Inn 1516 Pullman Rd.	Moscow	Jennifer Tengono jennwebe@gmail.com
First District	Thursday, November 6th	11:00 a.m.	Coeur d'Alene Resort 115 S. Second St.	CDA	Julia Schoffstall jschoffstall@workwith.com
Seventh District	Wednesday, November 12th	11:30 a.m.	Hilton Garden Inn 700 Lindsey Blvd.	Idaho Falls	Payton Hampton phampton@parsonsbehle.com
Sixth District	Thursday, November 13th	11:30 a.m.	TBD	Pocatello	John Bulger bulger@hearnlawyers.com
Fifth District	Thursday, November 13th	5:30 p.m.	Blue Lakes Country Club 1940 Blue Lakes Grade	Jerome	Tyler Rands trands@randslawidaho.com
Third District	Tuesday, November 18th	5:30 p.m.	Indian Creek Steakhouse 711 Main St.	Caldwell	Tyler Rounds trounds@trlawidaho.com
Fourth District	Wednesday, November 19th	11:30 a.m.	The Arid Club 1137 W. River St.	Boise	Jill Holinka jsh@holinkalaw.com

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5 *Second District Bar Roadshow CLE (Moscow)*

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12 *Lawyers Supervising Lawyers: Navigating Ethical Responsibilities*

12 *Seventh District Bar Roadshow CLE (Idaho Falls)*

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13 *Fifth District Bar Roadshow CLE (Jerome)*

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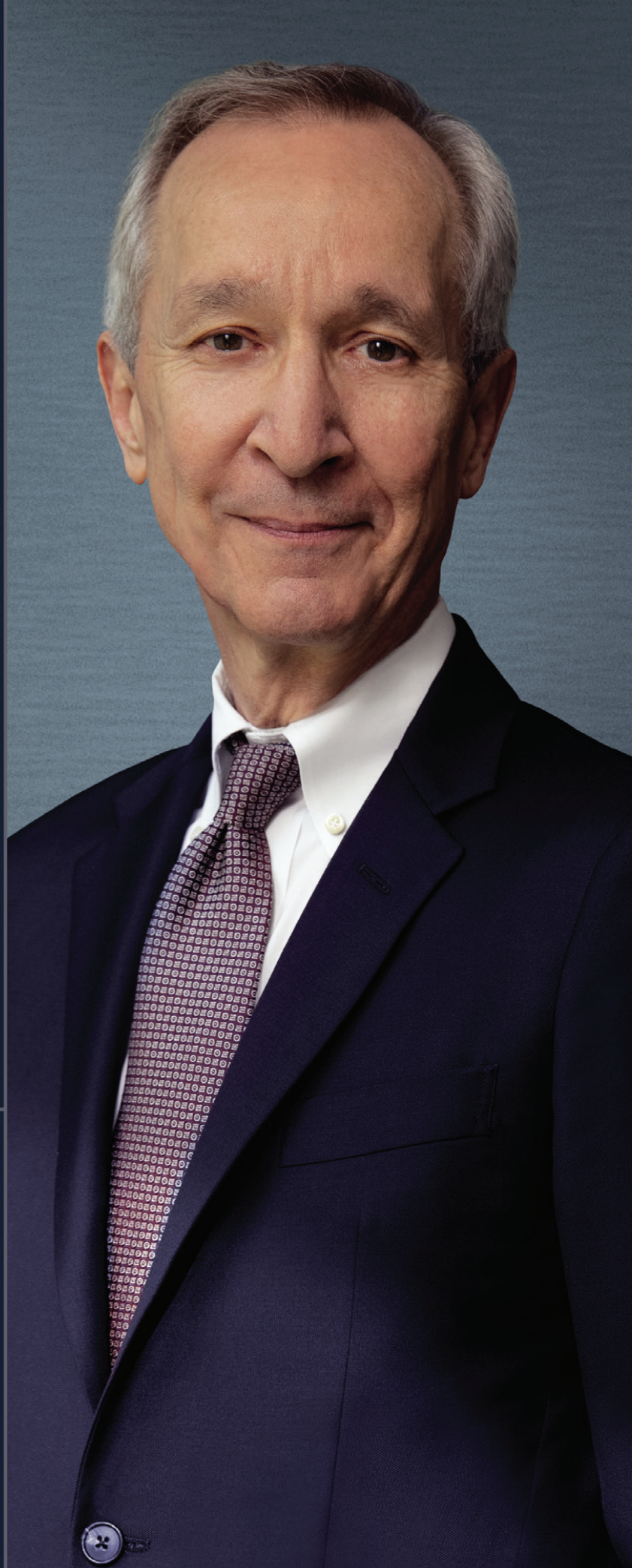

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