

The Advocate

**Official Publication
of the Idaho State Bar
Volume 61, No. 9
September 2018**



**Sponsored by the
Indian Law Section**



TRA

Tenant Realty Advisors

"Tenant Realty Advisors is the only commercial real estate firm that makes a clear commitment regarding whose side they are on. They don't try to work both sides. And it didn't cost my firm a single dollar to have the benefit of 40-plus years of experience helping me. I could relax knowing I was seeing all the options and was coached on what questions to ask and where we should push back."

- Tom Walker, Generations Law Group



Bill Beck and Greg Gaddis: Over 50 Years of Combined Experience in Commercial Real Estate

Boise law firms agree, Tenant Realty Advisors is the best source for finding your ideal office space, **without fees!** And we only work with tenants, so your best interests are always top priority.

Our attorney client list includes:

| | |
|-------------------------------------|------------------------------|
| Carey Perkins | Moore Smith Buxton & Turcke* |
| Cosho Humphrey* | MSBT Law |
| Elam And Burke* | Naylor Hale |
| Evans Keane* | OfficeMax Legal Department |
| Federal Defenders Services Of Idaho | Penland, Munther and Goodrum |
| Generations Law Group | Perkins Coie* |
| Marshall Batt Fisher | Powers Tolman Farley |
| Mchugh Bromley | Spink Butler* |
| Moffatt Thomas* | Stoel Rives* |

**multiple transactions*

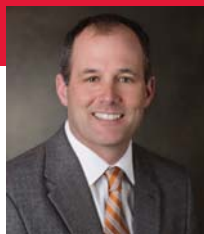
Contact us today for your lease renewal, office purchase, expansion or new lease needs.



BILL BECK, Founder

(208) 333-7050

beck@tenantrealtyadvisors.com



GREG GADDIS, Principal

(208) 333-7052

greg@tenantrealtyadvisors.com

TRA

Tenant Realty Advisors

950 W. Bannock Street, Suite 530, Boise, ID 83702
TenantRealtyAdvisors.com



PROVEN

Results and accolades that speak volumes:
AV-Rated, Best Lawyers, Inner Circle, ABOTA,
ACTL, Superlawyers, Trial Lawyers of the Year,
multiple seven-figure and history making verdicts.

When your client, friend, or family member needs
an injury or malpractice attorney—or you need
assistance with a claim—we are here to help.

FEE SHARE • CO-COUNSEL • REFERRALS • ADVICE



CALL US. 208 343 7510

LET US SHOW YOU WHAT WE MEAN BY LIFE-CHANGING LAW.

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

HEPWORTH·HOLZER
LIFE-CHANGING LAW



BECAUSE...

YOUR FIRM DESERVES THE **BEST PROTECTION** FOR THE GREATEST VALUE.

MORE STATE BARS, INCLUDING YOURS, ENDORSE ALPS THAN ANY OTHER CARRIER.

IF YOU GET A CLAIM, YOUR CLAIM WILL BE HANDLED BY **LICENSED ATTORNEYS**.

BECAUSE BAD THINGS CAN

HAPPEN TO GOOD LAWYERS

Find out more about your ISB-endorsed carrier at:

www.alpsnet.com/advocate



***THE NATION'S LARGEST DIRECT WRITER
OF LAWYERS' MALPRACTICE INSURANCE***

(800) 367-2577 • www.alpsnet.com • learnmore@alpsnet.com

The Advocate

The Official Publication of the Idaho State Bar
61 (9), September 2018

Section Articles

23 Welcome from the Chair of the Indian Law Section
Dylan R. Hedden-Nicely

25 Resistance is Ceremony: Legal Support at Standing Rock and Beyond
David DeRoin and Ritchie Eppink

29 Tribes are Sovereign Nations: State Court Recognition of Tribal Court Judgments in the Post-Coeur d'Alene Tribe v. Johnson Era
Peter J. Smith IV and Jillian H. Caires

32 The Tenth Anniversary of the University of Idaho's Native Law Program
Dylan R. Hedden-Nicely

40 2018 District of Idaho Bench Bar Conferences
Hon. Ronald E. Bush

42 Cybercrime and Social Engineering
Mark Bassingthwaight

50 Idaho Academy of Leadership for Lawyers Announces 2018 - 2019 Class

52 Legal Citation Part III: Using Citation to Convey Textual Meaning
Tenille Fordyce-Ruff and Jason Dykstra

56 Pro Bono Work and the Time-Crunched Attorney
Sue Pierson

58 2018 Annual Meeting Provides CLEs, Networking, Recognition and Fun
Mahmood U. Sheikh

Have news 'Of Interest'?

The Advocate is pleased to present your announcement of honors, awards, career moves, etc. in the "Of Interest" column located on pages 47 - 48 of this issue. Simply send a short announcement to Lindsey Welfley: lwelfley@isb.idaho.gov and include a digital photo.



Like 'Idaho State Bar' on Facebook for news and announcements!



Amp up your professional network! Search 'Idaho State Bar' on LinkedIn.



Follow @idahostatebar on Twitter for real-time interaction!

Columns

14 President's Message, *Michael T. Howard*
20 Executive Director's Report, *Diane K. Minnich*

News and Notices

13 Continuing Legal Education (CLE) Information
17 Discipline
18 Client Assistance Fund Claims
18 News Briefs
22 2018 District Bar Association Resolution Meetings
37 Idaho Court of Appeals and Idaho Supreme Court
38 Cases Pending
44 Classifieds
45 In Memoriam
47 Of Interest



On the Cover:

This sunset photo was taken from the Highlands in Boise on a September evening by Francine Winkle. Francine works in Research Compliance at Boise State University and is married to Robert Winkle who is an Intellectual Property attorney at Green, Howard & Mughal. To contact Francine about her photography email her at: FrancineWinkle.Photography@gmail.com.

Editors:

Special thanks to the September editorial team: Michelle Vos, Karen Pre-set Overly Sheehan and Angela Schaer Kaufmann.

October issue sponsor:

Government & Public Sector Lawyers Section

Photographers!

The Advocate needs your best work for magazine covers. We run photos in the vertical position and will consider all kinds of different images. Please send them to bstrauser@isb.idaho.gov.

START INVESTING IN YOUR LIFENEEDS™

Your financial needs and goals evolve during life's journey. Making sure that your investments deliver what you need, when you need it, is why Idaho Trust Bank has developed our LifeNeeds™ investment process. Services include planning, 401(k)/IRA, trusts & estates, professional line of credit and IOLTA accounts. Contact us for a free portfolio review!



IdahoTrustBank

Boise | Coeur d'Alene | www.idahotrust.com

Not FDIC Insured. Not Bank Guaranteed. May Lose Value. Not Insured by Any Federal Government Agency. Not a Deposit.

Member
FDIC

The Advocate

Official Publication of the Idaho State Bar

EXECUTIVE DIRECTOR

Diane K. Minnich

EDITORIAL ADVISORY BOARD

Brian P. Kane, Chairperson

Anna E. Eberlin

Tenielle Fordyce-Ruff

Spencer W. Holm

Jessica Howell

Angela Schaer Kaufmann

Lea Livingston Kear

Joseph A. Law

Jennifer M. Schindele

Karen Preset Overly Sheehan

Kenneth C. Shumard

Michelle Vos

Zachary S. Zollinger

BOARD OF COMMISSIONERS

Michael T. Howard, President

David C. Cooper, Commissioner

David E. Kerrick, Commissioner

Hon. Michael J. Oths, Commissioner

Donald F. Carey, Commissioner

ADVOCATE EDITORIAL STAFF

Lindsey Welfley

Communications Coordinator/Advocate Manager
lwelfley@isb.idaho.gov

Bob Strauser

Senior Production Editor/Advertising Coordinator
rstrauser@isb.idaho.gov

Kyme Graziano

Member Services Assistant/LRS Coordinator
kgraziano@isb.idaho.gov

www.idaho.gov/isb

(208) 334-4500



Copyright© 2018 The Idaho State Bar. The editorial contents of this publication are the opinions of the authors and do not necessarily represent or reflect the policies or opinions of the Idaho State Bar. *The Advocate* has the authority to edit material submitted for publication. Appearance of an advertisement in *The Advocate* does not constitute a recommendation or endorsement by *The Advocate* or the Idaho State Bar of the goods or services offered therein. The Idaho State Bar Editorial Advisory Board reserves the right to reject advertising determined not to be in keeping with the publication's standards.

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

POSTMASTER: Send address changes to:
The Advocate
P.O. Box 895
Boise, Idaho 83701

Effective, Pragmatic Dispute Resolution

Mediation | Arbitration | Special Masters



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



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



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



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

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



idahomediategroup.com

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

SAVE THE DATE



Celebrating Women in the Law: Building a New Benchmark

Wednesday, March 13, 2019
6 - 9 p.m. at Boise Centre East

Call for Nominations

- Kate Feltham Award
- Notable Achievement of the Year Award
- Bertha Stull Green Award
- Innovator Award
- Rising Star Award
- Setting the Bar Award

Please submit nominations by November 2, 2018

THANK YOU TO
OUR PRESENTING
SPONSOR:

GJORDING | FOUSER
ATTORNEYS AT LAW

THANK YOU TO
OUR DIAMOND
SPONSOR:

STOEL
RIVES LLP

For information, please visit our website at www.idahowomenlawyers.com

PATRICIA M. OLSSON

Expert Witness Consultation, Testimony and Mediation



Patricia M. Olsson

- 35 years of litigation experience.
- Fellow of the American College of Trial Lawyers; AV Martindale-Hubbell.
- Voted Best Employment Lawyer (management) and Medical Malpractice Defense by Best Lawyers.
- Persuasive, analytical, and able to persuade juries.
- Available for expert consultation and testimony on all aspects of employment law: compliance, adequacy of investigation, training and supervision, and some aspects of labor law.
- Also expert in health law compliance, audits, clinical trials, and federal laws such as Stark, Anti-Kickback, False Claims Act, qui tam cases, and Idaho health law.

Mediation Services

- Experienced in mediating personal injury and employment law cases.
- Trial and litigation experience in wide variety of cases, and quick study.
- Excellent communication skills with clients and attorneys.

Please contact Pat Olsson, pat.olsson17@gmail.com; 208-841-0881.
Or visit her website at: <http://patolsson.com>

Patricia Olsson, LLC
References available upon request



Comprehensive Services:

- ✓ Structured Settlements
- ✓ Fee Structure Plus™
- ✓ Lien Resolution
- ✓ Medicare Set-Asides
- ✓ Special Needs Trusts
- ✓ Qualified Settlement Funds
- ✓ Non-Qualified Structures
- ✓ Mediation Attendance

INNOVATIVE SETTLEMENT SOLUTIONS TO MEET YOUR FINANCIAL NEEDS

Millennium Settlements offers the most comprehensive advisory services and financial programs for plaintiffs and their legal counsel.



Audrey Kenney
Millennium Settlements
Settlement Consultant
(208) 631-7298
akenney@msettlements.com



www.msettlements.com

THE HAWLEY TROXELL WAY

GROWTH — AND — PROGRESSION

We are incredibly pleased to announce the newest Hawley Troxell equity partners: James Martin and Mark Peterson. Congratulations to these outstanding attorneys for continuing Hawley Troxell's legacy of excellence. As Idaho's premier, full-service business law firm, we customize our approach — *The Hawley Troxell Way* — using a team of attorneys or one-to-one counsel to meet your specific legal needs. And, best of all, our nationally renowned legal services come with a local address.

JAMES L. MARTIN



MARK C. PETERSON



BOISE / COEUR D'ALENE / IDAHO FALLS / POCATELLO / RENO
Call 208.344.6000 or visit HawleyTroxell.com

**HAWLEY
TROXELL**
ATTORNEYS AND COUNSELORS



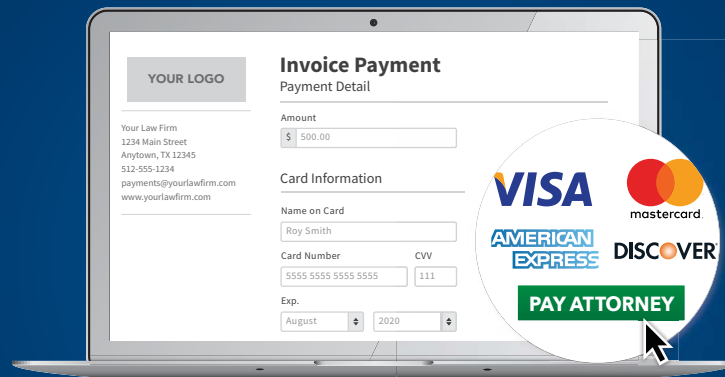
ASSOCIATION OR FEE SPLIT ON MEDICAL MALPRACTICE, PRODUCT LIABILITY, PREMISES LIABILITY,
EMPLOYMENT / WAGE CLAIMS OR OTHER SERIOUS INJURY CASES

208-762-0203

MARTINDALE-HUBBELL AV PREEMINENT RATING / CERTIFIED CIVIL TRIAL SPECIALIST
BEST LAWYERS IN AMERICA SINCE 1993 / MOUNTAIN STATES SUPER LAWYERS SINCE 2010



8596 N Wayne Dr., Suite A, Hayden, ID 83835 www.omllaw.com



**EASY FOR YOUR CLIENTS,
A NO-BRAINER FOR YOUR FIRM.**

LAWPAY[®]

AN AFFINIPAY SOLUTION

THE PREFERRED CHOICE

For more than a decade, LawPay has been the go-to solution for the legal industry. Our simple online payment solution helps lawyers get paid faster. LawPay lets you attach a secure payment link to your email, website, or invoices so that clients can pay with just a click. Our solution was developed specifically for law firms, so earned and unearned fees are properly separated and your IOLTA is always protected from any third-party debiting. Simply put, no online payment processor has more experience helping lawyers than LawPay.



Bar-Approved
Member Benefit



SECURE credit card
processing for law firms



IOLTA COMPLIANT



**Approved Member Benefit
of 47 STATE BARS**



**Trusted by over
50,000 lawyers**



**Powering payments for
30+ TOP PRACTICE
MANAGEMENT SOLUTIONS**

Contact our legal payment experts at
877-217-6239 or visit **lawpay.com/isb**

LawPay is a registered ISO of Citizens Bank, N.A.

GJORDING FOUSER NAMED AS THE

IDAHO

LITIGATION FIRM OF THE YEAR

BY BENCHMARK LITIGATION FOR THE 3RD CONSECUTIVE YEAR

We received this accolade after they reviewed our firm's cases from the past 12 months and conducted extensive interviews with our clients and other Idaho litigators. Thank you to our clients and colleagues for making this possible!

2018

GJORDING | FOUSER

ATTORNEYS AT LAW

121 N. 9th Street, Ste. 600 | Boise, ID 83702 | 208.336.9777 | gfidaholaw.com

SNOW TRIAL SERVICES

JURY FOCUS GROUPS

Experienced trial lawyers providing strategic analysis of civil and criminal cases. We use focus groups and mock trials to test themes, evaluate strengths and weaknesses of a case, and assess witnesses. All services are customized to fit unique matters and budgets, regardless of case size or complexity.

Mock Trials

Jury Selection

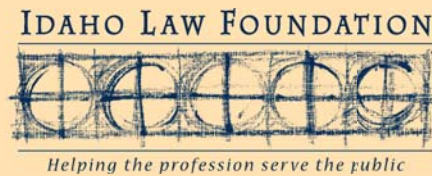
Jury Focus Groups

Witness Preparation

Trial Strategy Consultation

SNOW
CHRISTENSEN
& MARTINEAU

Contact: Andrew Morse 801.322.9183 or Samuel Alba 801.322.9234 | www.scmlaw.com



Upcoming Live CLEs

September

September 14: *Cryptocurrency 101: Understanding the Legal Basics*, Idaho Law & Justice Learning Center, 514 W. Jefferson St. – Boise, 12:30 p.m. (MDT), 4.0 CLE credits ~ Sponsored by the Young Lawyers Section and the University of Idaho Intellectual Property Law Society.

September 20-21: *Annual Estate Planning Conference*, The Grove Hotel, 245 S. Capitol Blvd. – Boise, 10.5 CLE credits ~ Sponsored by the Taxation, Probate & Trust Law Section.

September 25: *2018 Sexual Harassment Update*, Live Audio Stream, 11:00 a.m. (MDT), 1.0 Ethics credit ~ Sponsored by the Idaho Law Foundation Inc., in partnership with WebCredenza, Inc. and Abila.

October

October 5: *Fall 2018 New Attorney Program*, Boise Centre, 850 W. Front St. – Boise, 8:00 a.m. (MDT), 4.0 CLE credits of which 1.0 is Ethics – **NAC** ~ Sponsored by the Idaho Law Foundation, Inc.

October 12: *Adapting to Changing Times in Family Law*, The Riverside Hotel, 2900 Chinden Blvd. – Boise, 8:30 a.m. (MDT), 6.5 CLE credits of which 1.0 is Ethics ~ Sponsored by the Family Law Section.

October 19: *Adapting to Changing Times in Family Law*, Hampton Inn & Suites, 1500 Riverstone Dr. – Coeur d'Alene, 8:30 a.m. (PDT), 6.5 CLE credits of which 1.0 is Ethics ~ Sponsored by the Family Law Section.

October 26: *Adapting to Changing Times in Family Law*, Residence Inn, 635 W. Broadway – Idaho Falls, 8:30 a.m. (MDT), 6.5 CLE credits of which 1.0 is Ethics ~ Sponsored by the Family Law Section.

November

Save the Date: *Mobile Monday CLE Series*

November 5: James B. Alderman, The J.R. Simplot Company

November 12: Bernard W. McHugh, Kootenai County Prosecutor

November 19: Hon. G. Richard Bevan, Idaho Supreme Court

November 26: Zoe Ann Olson, Intermountain Fair Housing Council

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

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

Live Seminars

Throughout the year, live seminars on a variety of legal topics are sponsored by the Idaho State Bar Practice Sections and by the Continuing Legal Education Committee of the Idaho Law Foundation. The seminars range from one hour to multi-day events.

Webcast Seminars

Many of our seminars are also available to view as a live webcast. Pre-registration is required.

Upcoming seminar information and registration forms are posted on the ISB website at: isb.idaho.gov. To learn more contact Dayna Ferrero at (208) 334-4500 or dferrero@isb.idaho.gov. For information around the clock visit isb.fastcle.com.

Online On-Demand Seminars

Pre-recorded (*self-study*) seminars are available on-demand through our online CLE program. You can view these seminars at your convenience. To check out the catalog or purchase a program go to isb.fastcle.com.

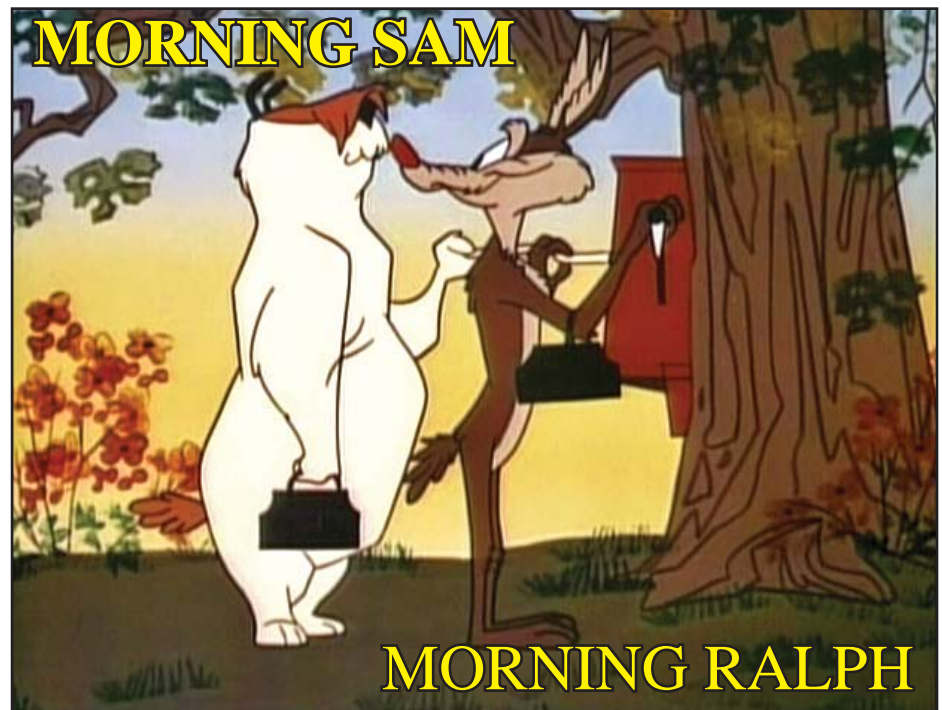
My Most Important Lessons Came from Watching Looney Tunes and Playing Soccer

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

I've been practicing law for almost twenty years. I cannot recount the number of times I've heard the word "professionalism." It's a great word, don't get me wrong, and it's widely used to describe the courtesies and demeanor with which we interact with clients, the Court, and each other. But it's always seemed a little grandiose and overused. While probably less accurate by definition, I've always preferred the word "collegiality" to describe what I perceive to be the hallmark of our profession.

Attorneys work in an adversarial climate. The nature of our work has the tendency to polarize us. Like many other attorneys, I started my legal career believing every case was a competition between me and the opposing attorney, and that they were nothing more or less than the enemy. It didn't take long for me to realize they are more than a mere opponent – they too are human. They are attorneys with other cases, opinions, and responsibilities – just like me, just doing their job.

That concept took me back forty years to Saturday mornings, sitting on the floor in front of the heavy, wood console TV, watching Looney Tunes; the skit "Ralph Wolf and Sam Sheepdog." Each episode started out with Sam and Ralph showing up with their lunch buckets and greeting each other as they punched the



time clock on a nearby tree: "Morning, Sam. Morning, Ralph." Then the two would spend the next fifteen minutes running around, beating the tar out of each other, only to conclude the day with the same collegial parting salutation as they punched out: "See you tomorrow, Sam. See you tomorrow, Ralph." I'm sure, if allowed, the writers of those skits would have shown Sam and Ralph retiring to the local pub for additional comradery. I often use Ralph and Sam as a metaphor when interacting with other attorneys. While cases can become contentious, experience has proven that working together and playing nicely in the sandbox facilitates better results for my client and better physical and mental

Like many other attorneys, I started my legal career believing every case was a competition between me and the opposing attorney, and that they were nothing more or less than the enemy.

health. Some clients have been critical of my good rapport with opposing counsel, and have expressed disapproval over their perception I was making it “too easy” for them. In the courtroom the facts are the facts, and the law is the law. There are arguments I am likely to win, and those I am likely to lose. If along the way I make a habit of poking people in the eye, fighting irresponsible fights, or take advantage of another’s misstep, I will find no helping hand when I inevitably stumble. On the inside, these are thoughtful decisions on how best to advance my client’s case; from the outside, they look a lot like collegiality.

As I mentioned in my last article, I still play competitive soccer. Typical of any sport, playing on one team for an extended period of time can create an “us versus them” mentality. However, over the years I’ve had the fortune of playing with numerous other players and on many teams. Doing so allowed me to appreciate and enjoy a whole different aspect of the sport; playing with another team and with other players allowed me to see the game from *their* perspective. It allowed me to see the personalities of the players involved from the viewpoint of a friend and teammate, rather than an enemy and opponent.

Having gained that perspective from playing *with* them, playing *against* them is now a whole different experience. Not only from the knowledge gained by understanding their strengths and weaknesses, but from the new sense of collegiality that comes with having established a good relationship on a different level. The efforts to play and desire to win are unaffected, but the tenor is different. Skilled play is met with an honest compliment from the other team; a shoulder charge is ac-



companied by a wink; a hard foul is followed by a helping hand off the ground. The game itself does not change, only the way in which the game is played - making it much more enjoyable.

In a similar way, I’ve gained a lot of perspective from representing both plaintiffs and defendants, and working with and against other attorneys. No different than politicians, or perhaps soccer players, the perspectives of attorneys can easily become too one-sided. Plaintiff at-

torneys don their white hats and charge off as protectors of the weak and defenseless, while defense attorneys stand firm as protectors against, well, plaintiff attorneys. Both do so at the cost of losing their most precious commodity: objectivity. Working with and against other attorneys is invaluable to your practice. Not only does it allow you to better understand and appreciate the other party’s perspective and motivation, it makes the practice of law much more ... you guessed it, collegial.

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



Parsons Behle & Latimer is pleased to announce that attorneys **Richard H. Greener, Christopher C. Burke, Fredric V. Shoemaker, Jason R. Mau** and **Slade D. Sokol** have joined the firm's Boise office.



Richard Greener is experienced with varied and complex litigation matters, including securities, construction, environment, employment, patent infringement, legal and medical malpractice, drug and medical products liability, and business. He has tried cases in federal district courts, Circuit Courts of Appeal, and state courts.



Christopher Burke focuses on complex trial litigation, including commercial, business, product liability, personal injury, medical malpractice, employment, construction, transportation, and civil litigation before state and federal courts. He has experience in class action litigation and alternative dispute resolution, as well as appellate practice.



Fredric Shoemaker practices in a broad range of areas including real estate, business, commercial law, pharmaceutical and transportation. He has extensive experience in litigation, transactional work and other areas as well as experience with alternative dispute resolution and has served as a hearings officer for the State of Idaho.



Jason Mau concentrates on employment, commercial, real estate and construction litigation, with experience in cases before the District Court of the United States and State of Idaho. He has served on several appeals before the Idaho Supreme Court, and has experience before various state agencies.



Slade Sokol maintains a general civil litigation practice focused on complex business disputes and employment/labor litigation. He also practices in the areas of product liability, medical malpractice, personal injury/wrongful death, landlord/tenant, and trucking collision litigation. He represents clients in all Idaho courts, as well as before administrative agencies.

**PARSONS
BEHLE &
LATIMER**

NATIONAL EXPERTISE. REGIONAL LAW FIRM.

BOISE | IDAHO FALLS | LEHI | RENO | SALT LAKE CITY | WASHINGTON, D.C.

800 West Main Street, Suite 1300 | Boise, Idaho 83702 | 208.562.4900 | parsonsbhle.com

FREDRICK W. FREEMAN **(Suspension, Withheld** **Suspension and Probation)**

On August 9, 2018, the Idaho Supreme Court issued a Disciplinary Order suspending Boise attorney Fredrick W. Freeman for three years, with an additional two years of suspension withheld, and a two-year probation upon reinstatement to active status. The suspension is effective retroactively to February 7, 2018, the date Respondent transferred to inactive status and voluntarily ceased practicing law.

The Idaho Supreme Court found that Mr. Freeman violated I.R.P.C. 1.2(a) [Failure to Abide by Client Objectives], I.R.P.C. 1.3 [Failure to Act with Reasonable Diligence and Promptness], and I.R.P.C. 1.4 [Failure to Reasonably Communicate with Client] with respect to four different client matters that constituted the four counts in the Complaint. With respect to the first client matter, Mr. Freeman failed to file pleadings in the client's custody modification case, reasonably communicate with the client about the case status, and promptly respond to the client's inquiries. With respect to the second client matter, Mr. Freeman failed to timely serve discovery responses in the client's divorce case, timely file a responsive Affidavit to the opposing party's Motion for Temporary Orders, reasonably communicate with the client about the case status, and promptly respond to the client's inquiries. With respect to the third client matter, Mr. Freeman failed to promptly file the client's custody modification petition, timely serve discovery responses, reasonably communicate with the client about the case status, and promptly respond to the client's inquiries. With respect to the fourth client matter, Mr. Freeman failed to timely file the client's answer and counterclaim in a cus-

tody modification case, timely serve discovery responses, reasonably communicate with the client about the case status, and promptly respond to inquiries from the client's new attorney.

The Disciplinary Order provided that upon reinstatement to active status after the three-year suspension period, Mr. Freeman will serve a two-year probation subject to the terms and conditions of probation specified in the Order. Those conditions include that Mr. Freeman will serve two years of suspension if he admits or is found to have violated any of the Idaho Rules of Professional Conduct for which a public sanction is imposed for any conduct during his period of probation. In addition, Mr. Freeman must arrange for a supervising attorney to supervise his law practice during the probationary period.

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

MICHAEL JAY NELSON **(Suspension)**

On August 2, 2018, the Idaho Supreme Court issued a Disciplinary Order suspending Nampa attorney Michael Jay Nelson from the practice of law for a period of one year. Before the disciplinary case began, Mr. Nelson's license was canceled in March 2018 for nonpayment of his license fees. The Disciplinary Order provided that if Mr. Nelson does not reinstate his license from canceled status within one year from the date his license was canceled, and the Idaho State Bar deems his license resigned under I.B.C.R. 305(e), then Mr. Nelson's suspension will end because his license will be resigned at that time. If his license is resigned,

to be actively licensed again, he would have to apply to take and pass the Idaho bar exam. If Mr. Nelson does reinstate his license before it is deemed resigned under that rule, his license status will remain suspended until the period of suspension is completed and he will then be required to reinstate under the disciplinary rules.

In the disciplinary case, Mr. Nelson pled guilty to a felony DUI charge and was sentenced in November 2017. He did not respond to Bar Counsel, the Hearing Committee or the Idaho Supreme Court in the disciplinary matter. The Idaho Supreme Court found that Mr. Nelson violated Idaho Rules of Professional Conduct 8.4(b) [Commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects] and 8.1(b) [Failure to respond to Bar Counsel in connection with a disciplinary matter], and Idaho Bar Commission Rules 505(b) [Conviction of a serious crime] and 505(e) [Failure to cooperate with or respond to requests from Bar Counsel]. The Disciplinary Order also ordered that Mr. Nelson reimburse the Idaho State Bar for costs in the amount of \$229.20.

The Idaho Supreme Court's Disciplinary Order concluded a disciplinary proceeding that was initiated with a Complaint filed on April 12, 2018. On June 6, 2018, a Hearing Committee of the Professional Conduct Board conducted a hearing on the Idaho State Bar's Motion to Deem Admissions for Failure to Answer and for Imposition of Sanction. Following that hearing, the Hearing Committee entered its Findings of Fact, Conclusions of Law and Recommendation.

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

CLIENT ASSISTANCE FUND CLAIMS

NOTICE TO MICHAEL J. NELSON OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to *Idaho Bar Commission Rule 614(a)*, the Idaho State Bar hereby gives notice to Michael J. Nelson that a Client Assistance Fund claim has been filed against him by former client Cassandra England, in the amount of \$1,500. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

NOTICE TO MICHAEL J. NELSON OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to *Idaho Bar Commission Rule 614(a)*, the Idaho State Bar hereby gives notice to Michael J. Nelson that a Client Assistance Fund claim has been filed against him by former client Kenneth Pickerel, in the amount of \$1,500. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

NOTICE TO RODGER P. FISHER OF CLIENT ASSISTANCE FUND CLAIM

Pursuant to *Idaho Bar Commission Rule 614(a)*, the Idaho State Bar hereby gives notice to Rodger P. Fisher that a Client Assistance Fund claim has been filed against him by former client Kirsten Victor, in the amount of \$2,500. Please be advised that service of this claim is deemed complete fourteen (14) days after the publication of this issue of *The Advocate*.

NEWS BRIEFS

Jerrold Long selected as term dean at College of Law

MOSCOW - The University of Idaho College of Law announces that Jerrold "Jerry" Long has accepted the appointment as term dean at the University of Idaho College of Law for the 2018-19 and 2019-20 academic years.

Jerrold has been a law professor in the College of Law since 2007, serving this past year as associate dean for faculty development, and has been on the University Curriculum Committee since 2016 and has served on numerous other university committees. His appointment as term dean began Aug. 8, 2018.

Jerrold grew up in southeastern Idaho. He holds a Bachelor of Arts in biology from Utah State University and a Juris Doctor from the University of Colorado-Boulder School of Law. He received a doctorate in environment and resources from the



Jerrold "Jerry" Long

2018 Annual Meeting welcomes keynote speaker from Duke University School of Law



Photo by Lindsey Welfley

Dan Bowling III of Duke University School of Law discussed how to achieve balance and happiness in the legal profession during his keynote presentation at the 2018 Annual Meeting Plenary Session. Read more about the Idaho State Bar Annual Meeting in Sun Valley on pages 58-62.

University of Wisconsin-Madison in 2008. He is a member of the Idaho State Bar with a specialization in natural resources and environmental law.

As term dean, Jerrold will partner with the Office of the Provost and Executive Vice President and senior leadership to further foster academic excellence, grow enrollment and cre-

ate a collegial environment for faculty, staff and students in the college.

In this new role, Jerrold will also develop and sustain relationships with alumni and other stakeholders, provide leadership for fundraising and development programs, and ensure stability in curriculum, research and outreach provided by the College of Law.

Brian Donesley LIQUOR LAW

- Former Idaho Liquor Chief
- Former Idaho State Senator
- 30+ years experience in liquor law
 - Retail/Wholesale
 - Revocations/Suspensions/Criminal
 - Hearings/Appeals/Trials
 - Lobbying/Governmental Affairs
 - State, Local, Federal, Multi-State
 - National Association of Alcohol Beverage Attorneys (NAABLA)
 - Licensed in Idaho and Washington

Brian Donesley, Attorney at Law
 ISB No. 2313
 P.O. Box 419, – Boise, ID 83701
 Telephone: (208) 343-3851
 bdonesley@bdlaw.com
 www.idaholiquorlaw.com



Coeur d'Alene Seminar September 29, 2018 at the Kroc Center

Speakers include:

- Brian Elkins
- Heidi Johnson
- Nicole Owens
- Dr. Robin Dodson

More Information:

Contact IACDL
 Executive Director Debi Presher
 (208) 343-1000 or dpresher@nbmlaw.com

Martelle & Associates, p.a.

380 W. State Street - Eagle, ID 83616
 (208) 938-8500 | www.martellelaw.com

TAX DISPUTES | BANKRUPTCY

Tax Problem Resolution

- Offers in Compromise
- Installment Plans
- Tax Court Representation
- Innocent Spouse Relief
- Penalty Abatement
- Tax Return Preparation

Bankruptcy

- Tax Discharge
- Business Bankruptcy
- Chapter 13 Bankruptcy
- Chapter 7 Bankruptcy
- Chapter 11 Bankruptcy

Debt Problem Resolution

- Foreclosure Alternatives
- Mortgage Modifications
- Forbearance Agreements
- Credit Card Settlements
- Loan Workouts



Martelle & Associates is experienced in finding innovative solutions for its client's tax, bankruptcy, and debt resolution needs.



James Davidson Ph.D.

Forensic Psychology
 Timely — Relevant — Reliable



Criminal and Family Law
 Evaluations Anywhere, Anytime

Offices in Boise and Dallas

(800) 380-1035 Office Staff
 (208) 971-1380 Idaho Direct
 (972) 876-8180 Texas Direct

davidsonpsych@me.com | www.jamesdavidson.net



Executive Director's Report

2018 Service Awards — Lawyers Serve!

Diane K. Minnich
Executive Director, Idaho State Bar

Each year, the Board of Commissioners selects lawyers and non-lawyers to receive service awards. These individuals contribute time, resources and expertise to help the legal profession, and it is difficult to select just a few each year. The contributions and commitment of this year's recipients are impressive. Their inspiration for serving and highlights of their service follows.

JOSHUA C. BODE

VA Medical Center, Boise

"I have learned that Idaho is a great state with dedicated legal professionals who want to help. These great professionals have been willing to provide time and energy to assist thousands of veterans and their families in addressing their legal issues. This has provided a great deal of stress relief and support for these veterans and their families."

Highlights of his service

- Idaho Military Legal Alliance – Organizes veteran's legal clinics throughout the state and focuses on providing legal education; Clinics geared toward barriers to housing veterans and wills; Assists with building partnerships that have led to collaborative efforts to improve legal access for military members and veterans

JANELL J.S. BURKE

Coeur d'Alene

"Each attorney must recognize the great privilege and responsibility that comes with being a lawyer. Sup-

porting the Bar and participating in public service helps attorneys to focus on solutions to legal problems and seeking justice for those that can't seek it themselves. I encourage lawyers to be involved in bar activities, it is important to the civility and pride in the profession."

Highlights of her service

- First District Bar Association past officer and president
- Kootenai County Bar Association past chair
- John P. Gray Inn of Court former board member and current member
- Settlement Week coordinator
- Law Day activities coordinator
- Idaho State Bar Professional Conduct Board
- Provides notices for bar meetings and events
- Helps plan judicial retirements

TENIELLE FORDYCE-RUFF

Concordia University School of Law, Boise

"I am passionate about learning, writing, and the law. As a law student, I loved learning about the practice of law, and I wanted to help others find that same passion and share the skills needed to effectively research and write. When I returned to Idaho after teaching at the University of Oregon, I saw an opportunity to reach practicing attorneys with a column in *The Advocate*. I wanted to make learning about legal writing a little more fun and interesting. I viewed my contributions as a way for me to still help clients, even if they were the clients of attorneys who read my columns."

Service Awards

Service awards are given each year to lawyers and non-lawyers for exemplary service to the Bar and/or Idaho Law Foundation.

To nominate someone for a Service Award please email dminnich@isb.idaho.gov. Service Awards were presented at the ISB Annual Meeting in Sun Valley on July 19.

Highlights of her service

- Regular contributor to *The Advocate* with articles on legal writing and research
- Advocate Editorial Advisory Board member

DAVID P. GARDNER

Hawley Troxell, Pocatello

"I have to give credit to my late mother, Patricia, for her inspiration and example of service and the importance of making a difference in the world around us. My mom always instilled in my five siblings and me the importance of doing the right thing for the right reasons. She would not be happy that I am receiving an award for doing service, because she believed in the principle that you did service not so others would see you and recognize you for it. She was a great example of simple, random acts of kindness."

Highlights of his service

- CASA volunteer
- Sixth District Bar Association past president and officer
- Workers Compensation Section

2018 ISB SERVICE AWARD RECIPIENTS



Joshua C. Bode



Janell Burke



Tenielle Fordyce-Ruff



David P. Gardner



Saviraj Grewal



Larry Hunter



Hon. Jessica M.
Lorello



Chelsea E. Kidney



Michael R. McBride



Hon. Gene A. Petty

past Governing Council member and past Section chair

- Access to Justice Leadership Committee member

SAVIRAJ GREWAL

Law Office of Savi Grewal, Coeur d'Alene

"My inspiration to serve my community developed in my formative years in India. I was very fortunate to have a father who served his country (India) as a career Army officer and a mother who was a fierce defender of family values and a champion of character-building hard work. They led by example and taught me the importance of participating in the community in a meaningful way and helping the less fortunate. I carried forward these early lessons from my childhood to my new home in California, where I was sworn in as a proud citizen of these United States in 1976."

Highlights of her service

- Law Day/Career Day volunteer
- CASA volunteer

• John P. Gray Inn of Court past president

• Commercial Law and Bankruptcy Section Governing Council member and two-time past chair

• First District Bar Association past president and officer

LARRY C. HUNTER

Eagle

"With regard to the profession, I am proud to be part of a profession that, through promotion of the Rule of Law, makes society and by extension the world a better, more orderly place within which to live and raise my family. Law is more than a way to make a living; it is a way of life. For law to continue to be a positive force, we, as lawyers, must strengthen and foster the law by giving our time and talents to its improvement. Effective service requires preparation and dedication of one's time. It is usually not just a matter of showing up. When it is done with good intent, voluntary service is very fulfilling."

Highlights of his service

- Idaho State Bar past commissioner

and president

- Bar Exam grader
- IVLP Soundstart presenter
- Professionalism & Ethics Section subcommittee to draft Rule 8.4(g)
- American Bar Association State Bar Delegate, State Delegate, and additional committee involvement

CHELSEA E. KIDNEY

Idaho Attorney General's Office, Boise

"The leaders and mentors in my life instilled in me the importance of public service and community involvement. I am able to do this work because of the support provided to me professionally. Yet, I am inspired by those who work tirelessly, without reward and without recognition, to serve those in their community. I learned what we all know but sometimes forget- collaboration, teamwork, and the art of listening are essential elements of progress."

Highlights of her service

- Idaho State Bar Taxation, Probate and Trust Law Section, Governing

Council member and past chair – During her tenure as chair the Section provided free learning opportunities and financial assistance to Access to Justice Idaho, the Idaho Academy of Leadership for Lawyers and scholarships to law students at the University of Idaho College of Law and Concordia University School of Law.

HON. JESSICA M. LORELLO

Idaho Court of Appeals, Boise

“So many youth activities and organizations depend on volunteers, and the positive impact those activities and organizations have on kids cannot be overstated. Every child/young adult deserves to have the time and attention from someone interested in their development – that’s how we build a better citizenry. I have learned - or at least reinforced what I knew based on my own experiences – that devoting time to helping someone else can change that person’s life, and can improve your own outlook on life in the process.”

Highlights of her service

- Pro bono efforts assisting with cases related to the Violence Against Women Act
- Boise Senior Center, VA, and IVLP legal advice clinics volunteer
- Attorneys for Civic Education co-

chair and founding member - Supporting civic education programs, including the high school mock trial competition, We the People, and Youth in Government

- Appellate Practice Section Governing Council member and past vice chair

MICHAEL R. MCBRIDE

McBride & Roberts, Idaho Falls

“People come in all shapes and sizes, political and religious background and beliefs, but there is always a thread of commonality and it includes the desire or ‘right’ if you will, to ‘function’ injury free in both the mind and body. If injured, one of life’s necessities is returning to optimum functionality. I have been blessed to be able to give, to help, to guide, to educate, and to correct or prevent injuries. This is the real blessing of my legal work. It boils down to this query: What can you give away that guarantees you will have more? Answer: It is love for humanity. The more love you give, the more you get. It is summed up in this exchange when I gave a helmet to one of my client’s children and she said, “Thank you, Mr. McBride, I promise I will wear it.” Hopefully that is one less person in the medical/legal system!”

Highlights of his service

- Helped establish the ‘Get Government’ Scholarship awarded to high school seniors based upon their academic and service related efforts
- Helped established the ‘Head Smart’ Campaign, a children’s bicycle helmet ‘giveaway’
- Workers Compensation Section Kid’s Chance scholarship fund past president

HON. GENE A. PETTY

Third Judicial District Court, Caldwell

“I’ve learned a great deal from the lawyers and judges I served with in these activities. Our Bar is full of kind and intelligent lawyers and judges who care tremendously about our community and the clients we serve. It has truly been an honor to work closely with the Idaho State Bar.”

Highlights of his service

- Idaho Academy of Leadership for Lawyers Steering Committee member and past chair
- Professionalism & Ethics Section Governing Council former chair
- Advocate Editorial Advisory Board former member
- Orientation on Professionalism mentor to first year law students at University of Idaho College of Law and Concordia University School of Law

2018 District Bar Association Resolution Meetings

| District | Date | Time | Location | City |
|---------------------------|-----------------------|-----------|----------|--------------------|
| First Judicial District | Thursday, November 1 | Noon | TBA | Coeur d’Alene |
| Second Judicial District | Thursday, November 1 | 6:00 p.m. | TBA | Moscow or Lewiston |
| Third Judicial District | Wednesday, November 7 | 6:00 p.m. | TBA | Nampa |
| Fourth Judicial District | Wednesday, November 7 | Noon | TBA | Boise |
| Fifth Judicial District | Thursday, November 8 | 6:00 p.m. | TBA | Twin Falls |
| Sixth Judicial District | Thursday, November 8 | Noon | TBA | Pocatello |
| Seventh Judicial District | Friday, November 9 | Noon | TBA | Idaho Falls |

Welcome from the Chair of the Indian Law Section

Dylan R. Hedden-Nicely

On behalf of the Indian Law Section of the Idaho State Bar, welcome to the September edition of *The Advocate*. It has been my honor to serve on the Board of the Indian Law Section for the last five years; first as Vice-Chair and for the last two years as Chair of the section. I am privileged to have the opportunity to work with Vice-Chair Jason Brown and Secretary/Treasurer Peter Smith; as well as with several outstanding staff at the Idaho State Bar including Diane Minnich, Mahmood Sheikh, and Dayna Ferreiro. Thank you to everyone for their support of the Indian Law Section.

The Indian Law Section is small but active. It is diverse in both composition and geography. Our members represent Indian tribal governments, agencies, and people; state and federal governments; as well as non-profit organizations and private industries that work within Indian Country. Geographically, our members reside throughout the Western United States but are principally located on or near one of the approximately ten Indian reservations in or near the borders of the State of Idaho.

The Indian Law Section last sponsored an edition of *The Advocate* in October 2016, on the eve of our last presidential election. In his welcome message of that edition, my predecessor and friend Helo Hancock

noted “[t]he timing of this edition of *The Advocate* is an interesting one . . . The nation is at a veritable crossroad. There are two distinct choices before the electorate for President of the United States and it is clear that either selection will take our country down a new and uncharted path.”

Much has indeed changed in Indian Country over the past two years. From Bears Ears National Monument to the Standing Rock Reservation, the change in administration has had a strong impact in Indian Country. There has been a substantial change in how the executive branch views its trust responsibility toward Indian tribes. That trust responsibility, and the fallout when it is not honored, is explored by two of our authors, Ritchie Eppink and David DeRoin. In their article, they discuss their experience at the Standing Rock Reservation where they defended protestors of the Dakota Access Pipeline.

Other administrative efforts have been more positive for Indian Country. One example is the long-overdue regulations by the Bureau of Indian Affairs regarding the Indian Child Welfare Act.¹ Although not part of this edition, Professor Elizabeth Brandt will provide an overview of those regulations, which will be available in a forthcoming edition of *The Advocate*.

Indian tribes have also been active in the courtroom over the past

two years. Since October 2016, the Supreme Court has twice taken up the question of tribal sovereign immunity; first, in *Lewis v. Clarke*² and again, in *Upper Skagit Indian Tribe v. Lundgren*.³ The Supreme Court also affirmed (4-4) the Ninth Circuit’s decision in *United States v. Washington*, which held that the State of Washington’s installation of barrier culverts on salmon and steelhead bearing streams violated a number of treaties that reserved the right to fish at usual and accustomed places.⁴

Closer to home, the Idaho Supreme Court has heard two major cases involving Indian tribes since 2016. Most recently, the Court decided *Idaho v. George*, affirming the decision of the district court that it lacked criminal jurisdiction over a defendant of Indian descent, who—although not an enrolled citizen—was widely recognized to be a member of the Coeur d’Alene tribal community.⁵

The Idaho Supreme Court has likewise provided guidance on the Idaho judiciary’s responsibility to recognize tribal court judgments in a recent case entitled *Coeur d’Alene Tribe v. Johnson*.⁶ The Idaho Supreme Court’s decision recognizing that tribal court judgments are entitled to comity in Idaho courts is a significant milestone in the relationship between the State of Idaho and the tribes of the Northwest. Peter Smith and Jillian Caires of Smith + Malek

Indian Law Section

Chairperson

Dylan R. Hedden-Nicely
University of Idaho College of Law
875 Perimeter Drive, MS 2321
Moscow, ID 83844-0860
dhedden@uidaho.edu

Vice Chairperson

Jason M. Brown
May, Rammell & Thompson, Chtd.
PO Box 370
Pocatello, ID 83204
Phone: (208) 233-0132
jason@mrtlaw.net

Secretary / Treasurer

Peter J. Smith IV
Smith & Malek, PLLC
601 E. Front Avenue, Ste. 304
Coeur d’Alene, ID 83814
Phone: (208) 215-2411
peter@smithmalek.com

— attorneys for the Coeur d'Alene Tribe in that case — have written an article to explain the *Johnson* case and its effect in our state.

Finally, strides continue to be taken to encourage Native Americans to join the legal profession and to educate legal practitioners regarding the complex field of federal Indian law. For the last ten years, the University of Idaho has been at the forefront of this effort. In celebration of that milestone, I have written an article regarding the University of Idaho's Native American Law Program. That article describes the program as well as its accomplishments over the past decade, and its continued relevance and evolution. It represents a celebration of the next generation of advocates in our State and region.

Despite the uncertainty on the national level, there is much to be excited about in Indian Country. Indian tribes are quietly building their homelands, their enterprises,

and their relationships with outside businesses, states, agencies, and non-Indian stakeholders. Native people are stepping into the fore and taking their place on the political stage.

and their relationships with outside businesses, states, agencies, and non-Indian stakeholders. Native people are stepping into the fore and taking their place on the political stage. Here, in Idaho, we have a gubernatorial candidate who would be the first female Native American governor in the history of the nation. The world continues to turn in Indian Country, and as the articles enclosed in this edition demonstrate, the laws surrounding the relationship between

states, tribes, and the federal government continue to evolve.

Endnotes

1. 25 C.F.R. § 23 (2017).
2. 137 S.Ct. 1285 (2017).
3. 138 S.Ct. 1649 (2018).
4. 853 F.3d 946 (9th Cir. 2017), *Aff'd*, 138 S.Ct. 1832 (2018).
5. The opinion is available at: <https://www.isc.idaho.gov/opinions/45196.pdf> (last visited August 16, 2018).
6. 162 Idaho 754 (2017).

MEDIATION IS PROCESS, PATIENCE AND PERSEVERANCE.

- » 30 years of litigation experience
- » Yale University
- » University of Michigan Law School
- » AAA Certified Arbitrator and Mediator



THOMAS, WILLIAMS
& PARK LLP

DAN WILLIAMS

208 345-7800



Resistance is Ceremony: Legal Support at Standing Rock and Beyond

David DeRoin

Ritchie Eppink

In the time of the Seventh Fire New People will emerge. They will retrace their steps to find what was left by the trail. . . . The Sacred Fire will again be lit. It is this time that the light skinned race will be given a choice between two roads. If they choose the right road, then the Seventh Fire will light the Eighth and final Fire, an eternal fire of peace, love brotherhood and sisterhood. If the light skinned race makes the wrong choice of the roads, then the destruction which they brought with them in coming to this country will come back at them and cause much suffering and death to all the Earth's people.¹

— Excerpt from the
Teachings of the Seven Prophets:
The Seven Fires

We crouched close to a ceremonial fire burning at the center of an arc of seven tipis, each one raised by representatives of the seven bands of Tetonwan Lakota and the Great Sioux Nation, gathered together for the first time since the defeat of the United States Army at the Battle of Greasy Grass² in 1876. The morning was frigid, the Monday before Thanksgiving. All through the night before, armored police carrying shields shot tear gas, rubber bullets, and percussion grenades at Indians. When the temperature dropped into the 20s, the troops shot them with a water cannon.

This battle at Standing Rock was more than 150 years in the making. Eight years before Greasy Grass, the United States had promised the Sioux “the absolute and undisturbed use and occupation” of a great reservation encompassing all of South Dakota west of Mníšoše (the Missouri River).³ The treaty recognized



the place where we crouched this cold and traumatic morning—the Očhéthi Šakówiŋ (Seven Council Fires) pipeline resistance camp—as unceded Indian land. Six years after some Sioux signed the 1868 treaty, white men found gold in Paha Sapa (the Black Hills). By early 1877, Congress had nullified the treaty.⁴ “A more ripe and rank case of dishonorable dealings will never, in all probability, be found in our history,” the United States Court of Claims observed a century later.⁵

Whites have extracted some \$9 trillion in gold from the Black Hills since then.⁶ Yet after the United States Supreme Court held in 1980 that the government wrongfully took the Paha Sapa from the Sioux, just \$102 million was set aside in trust as compensation. Though now worth over \$1 billion with interest, the Sioux refuse to take it. The Black Hills, the tribes have made clear, were never for sale.⁷ This contrast reveals itself through the treaties and inter-national relations between the United States and Indian nations: the whites’ preoccupation with cultural domination and natural resource extraction and the Indians’ desire to preserve those same resources—and

willingness to defend them with their bodies and lives.⁸ When Europeans first arrived in North America, “[m]illions of people and hundreds of independent nations were prospering . . . They lived in communities spread all across the land. Each nation possessed its own government, culture, and language, and all of these people shared a deep religious faith centered in the sanctity of nature.”⁹ These traditions continue. Indian nations who “have been striving to respect and protect the land since time immemorial” continue to clash in the 21st century with white settlers’ industries and troops.¹⁰

When we arrived at the Očhéthi Šakówiŋ camp in late November 2016 to provide legal support, we arrived at the front of a modern Indian war. A camp-wide daily orientation reminded new arrivals that “indigenous history in the Americas is one of uninterrupted resistance to colonization, from 1492 to today. You may be unaware of this history, or not recognize the forms it takes in indigenous cultures.”

We provided support within the Water Protector Legal Collective,

which delivered round-the-clock advice, consult, representation, and investigative resources to thousands of Water Protectors—activists on site at and near the camp. Our clinical law practice as a lawyer and law student took place in an army tent. There we interviewed clients and witnesses shortly after they had been treated by field medics. They brought to us pieces of munitions the police and industrial security forces had shot them with, to be marked and preserved as evidence for active and anticipated litigation.

The skirmish on November 20, 2016 took place at the Backwater Bridge on Highway 1806. A barricade of razor wire, concrete barriers, and armored military vehicles cut the Očhéthi Šakówiŋ camp and the Standing Rock Sioux Reservation off from the shortest route to emergency and hospital services in Bismarck.

Medical personnel and emergency services volunteers from within camp cleared the road between the healing center and the bridge. Throughout the night they raced back and forth, delivering dry clothes and blankets to the resistance on the front lines and retrieving the injured and the frozen back to camp. Some 300 people were treated for injuries that night and at least 26 were taken to area hospitals.¹¹

Throughout the week, we remained under the constant eye of direct and indirect surveillance. Littered about the gently rolling hills of golden grass beyond the perimeter of camp were police, national guard, and private security forces, who nestled themselves in an array of SUVs, pickup trucks, and military humvees. With binoculars, telescopes, and cameras, they kept a fixated eye on camp movements. At night, floodlights, erected on top of tribal burial grounds, illuminated the camp, blacking out the otherwise expected brilliance of stars that typically shine



over the prairie. A constant circling of low-flying helicopters and airplanes photographing and filming presided overhead. At least one airplane could be observed flying with no lights and no markings.¹²

As the week progressed, we received multiple reports of issues with cell phones, including uncharacteristically fast battery drainage, suspicious login attempts to online accounts, Facebook posts and message threads disappearing, and other applications freezing or crashing completely. Concerned about the possible use of cell-site simulators (also known as Stingray technology)—devices used to set up fake cell towers to block signals and take data from people's phones—the Electronic Frontier Foundation (EFF) sent technologists and lawyers to camp. Our clinical work included documenting and collecting reports of these issues and relaying them to EFF.

These efforts taken together: the use of tear gas, percussion grenades, rubber bullets, water canons, attack dogs,¹³ infiltrators,¹⁴ cutting off access to emergency services and hospitals, mass surveillance, mass arrests, and forcible removal of camps¹⁵ unveils a surveillance-industrial com-

plex hellbent on policing an independent and sovereign people into submission.

History is always weighing on the present. Those at Očhéthi Šakówiŋ recognized that the Indian wars of yesteryear never truly ended and that what we were witnessing was simply the latest stage in what is now a centuries-long colonial pillage. Since the invasion of western civilization began in 1492, indigenous resistance to the extraction and exploitation of natural resources has been standard practice. And in response to this resistance, colonizers bring war: “[t]he Indians must conform to ‘the white man’s ways,’ peaceably if they will, forcibly if they must. They must adjust themselves to their environment and conform their mode of living substantially to our civilization. This civilization may not be the best possible, but it is the best the Indians can get. They cannot escape it and must either conform to it or be crushed by it.”¹⁶

When police descended upon the Očhéthi Šakówiŋ camp to evict the remaining water protectors on February 22, 2017, camp elders determined the best way to honor the sacrifices of the resistance was to set the camp structures alight. Past patterns

of abuse by police demonstrated the colonizers' reckless disregard for sacred ground and objects, and igniting the dwellings of camp was a ceremonial act meant to "send their smoke up like prayers . . . [to] ensure these structures go out in dignity."¹⁷

Today, out of 835 state criminal charges laid against water protectors at Standing Rock, prosecutors have backtracked and dismissed nearly 40% of them already. Completed trials in 50 cases have resulted in 33 acquittals and only 17 convictions.¹⁸

Lawsuits brought by the Įnyan Woslál Háj (Standing Rock Sioux) and three other Sioux tribes against the Dakota Access Pipeline developers and the Army Corps of Engineers remain pending. After the Keystone XL pipeline leaked 210,000 gallons of oil near the Sisseton Wahpeton Oyate Tribe's Lake Traverse Reservation in South Dakota last November, the District of Columbia federal district court ordered independent auditing of the Dakota Access Pipeline's compliance with federal law.¹⁹

Civil litigation against the police troops who shot water protectors with teargas, grenades, water cannons in freezing temperatures the night we arrived awaits decision on a motion to dismiss.²⁰

As part of its own investigation, the Electronic Frontier Foundation sent out more than 20 public records requests to federal, state, and local law enforcement agencies. Of the federal agencies, only the U.S. Marshall's Service has denied the use of cell-site simulators, while the remaining agencies have either claimed that their responsive documents are so burdensomely numerous that they could not possibly respond, or have not responded at all. At the state level, Morton County and the North Dakota State Highway Patrol claimed that "public safety" interests prevent them from releasing records.²¹

Despite the completion of the Dakota Access Pipeline and the evacuation of the Očhéthi Šakówiŋ camp, pipeline resistance persists as one contemporary form in the 520 year thread of indigenous resistance to relentless colonization of the Americas. In the year since the resistance at Standing Rock dispersed, indigenous-led resistance camps have resurged across North America.²² These efforts, like Standing Rock, need the support of lawyers, law students, and legal workers, both on site and often from afar.

Endnotes

1. "Teachings of the Seven Prophets: The Seven Fires," Passamaquoddy, http://www.wabanaki.com/seven-fires_prophecy.htm (last visited July 13, 2018), citing Edward Benton-Banai, *The Mishomis book: the voice of the Ojibway* (1979). A prophecy more directly connected to the land that has come to be known as Idaho came from Swopscha of the Wana Pums. Long before the 1800s, Swopscha foretold

the coming of a strange, white-skinned people, who would bring with them surprising customs and many new and wonderful objects, some of which would be useful to the Indians, while others would entail harmful and deadly dangers. The strangers at first would be kind and friendly, treating the Indians as brothers and sisters. Then the seer foretold wars and bloodshed. Dispossessed of their lands the tribes would become broken and scattered. There would be wasting sicknesses and diseases would be brought by the invaders with which the medicine men could not cope, sweeping away not only villages but entire tribes.

L. V. McWhorter, *Hear Me, My Chiefs! Nez Perce Legend and History* 77 (1952). From Swopscha's prophecy arose the Dreamer religion, which coalesced certain Niimiipuu (Nez Perce), including Hinmatóowyalahŋtŋit (Chief Joseph), whom the United States government harassed and terrorized across Idaho and into Montana and their surrender at Bear's Paw, just shy of the Canadian border.

2. The Battle of Greasy Grass is known to many whites as the Battle of the Little

Declaration of support

"History connects the dots of our identity, and our identity was all but obliterated. Our land was taken, our language was forbidden. Our stories, our history, were almost forgotten. What land, language, and identity remains is derived from our cultural and historic sites . . . Sites of cultural and historic significance are important to us because they are a spiritual connection to our ancestors. Even if we do not have access to all such sites, their existence perpetuates the connection. When such a site is destroyed, the connection is lost."

— Dave Archambault II,
Chairman of the Standing Rock
Sioux Tribe²³

Bighorn, or Custer's Last Stand.

3. Fort Laramie Treaty of April 29, 1868, 15 Stat. 635, 636.

4. Act of Feb. 28, 1877, 19 Stat. 254.

5. *United States v. Sioux Nation of Indians*, 448 U.S. 371, 388 (1980) (quoting *United States v. Sioux Nation of Indians*, 518 F.2d 1298, 1302 (Ct. Cl. 1975)). Patrick Lee, an Oglala Sioux Lakota Tribe member and its Chief Judge for twenty years wrote about the irony of how the United States has viewed its treaties with indigenous nations:

To the Indians, the treaty at the time was nothing more than a piece of paper with abstract scratches and markings on it. . . . A formal legally enforceable document was not in the minds of the Lakota during the treaty period.

Over the years, it appears that the parties have switched attitudes toward a formally executed treaty. . . . [H]istory shows that it is the whites that now view a treaty simply as a piece of paper with dates and signatures which can be ignored and abrogated at the will of the whites.

Patrick A. Lee, *Tribal Laws, Treaties, and Government: A Lakota Perspective* 10 (Christopher K. Baker, ed., 2013).

6. Leonard Little Finger, "We Walk on Our Ancestors: The Sacredness of the Black Hills," *Cultural Survival Quarterly Magazine* (Mar. 2014), <https://www.cultural-survival.org/publications/cultural-survival>

[vival-quarterly/we-walk-our-ancestors-sacredness-black-hills](#).

7. "Why the Sioux Are Refusing \$1.3 Billion," PBS News Hour (Aug. 24, 2011), <https://www.pbs.org/newshour/arts/north-america-july-dec11-blackhills-08-23>.

8. One example of a treaty reflecting this contrast is the Fort Bridger Treaty of 1868, between the United States and some of the Newe (Shoshone) and Banakwut (Bannock) people. The treaty is 150 years old this year. Treaty with the Eastern Band Shoshoni and Bannock, 1868, 15 Stat. 673.

9. Stephen L. Pevar, *The Rights of Indians and Tribes* 1 (4th ed. 2012).

10. Mary Kathryn Nagle, *Environmental Justice and Tribal Sovereignty: Lessons from Standing Rock*, 127 Yale L.J. Forum 667, 683 (2018).

11. Alleen Brown, "Medics Describe How Police Sprayed Standing Rock Demonstrators With Tear Gas and Water Cannons," *The Intercept* (Nov. 21, 2016), <https://theintercept.com/2016/11/21/medics-describe-how-police-sprayed-standing-rock-demonstrators-with-tear-gas-and-water-cannons/> (last visited July 15, 2018).

12. LaRae Meadows, "FAA Complicity in Violence Against Standing Rock Water Protectors - Part 4," *Native News Online*.net (Feb. 25, 2017), <https://nativenews-online.net/currents/faa-complicity-violence-standing-rock-water-protectors-part-4/> (last visited July 15, 2018).

13. "Standing Rock Special: Unlicensed #DAPL Guards Attacked Water Protectors with Dogs & Pepper Spray," *Democracy Now!* (Nov. 26, 2016), <https://www.democracynow.org/2016/11/24/standing-rock-special-unlicensed-dapl-guards> (last visited July 15, 2018).

14. Amy Goodman, "Did Dakota Access Security Worker Wielding an Assault Rifle Try to Infiltrate Native Water Protectors?," *truthout.org* (Oct. 31, 2016), <https://truthout.org/video/did-dakota-access-security-worker-wielding-an-assault-rifle-try-to-infiltrate-native-water-protectors/> (last visited July 15, 2018).

15. Caroline Grueskin and Lauren Donovan, "Protesters, law enforcement clash as camp cleared," *The Bismarck Tribune* (Oct. 27, 2016), https://bismarcktribune.com/news/local/mandan/protesters-law-enforcement-clash-as-camp-cleared/article_d8170db7-66f9-5f34-916a-35d40097e07c.html (last visited July 15, 2018).

16. U.S. Office of Indian Affairs, *Annual Report of the Commissioner of Indian Affairs* 3 (1889). Also see *Cobell v. Norton*,

229 F.R.D. 5, 7 (D.D.C. 2005), *vacated sub nom. Cobell v. Kempthorne*, 455 F.3d 317 (D.C. Cir. 2006):

For those harboring hope that the stories of murder, dispossession, forced marches, assimilationist policy programs, and other incidents of cultural genocide against the Indians are merely the echoes of a horrible, bigoted government-past that has been sanitized by the good deeds of more recent history, this case serves as an appalling reminder of the evils that result when large numbers of the politically powerless are placed at the mercy of institutions engendered and controlled by a politically powerful few. It reminds us that even today our great democratic enterprise remains unfinished. And it reminds us, finally, that the terrible power of government, and the frailty of the restraints on the exercise of that power, are never fully revealed until government turns against the people.

Cobell v. Norton, 229 F.R.D. 5, 7 (D.D.C. 2005), *vacated sub nom. Cobell v. Kempthorne*, 455 F.3d 317 (D.C. Cir. 2006).

17. "Ceremonial Fires Engulf Standing Rock Camp Amid Police Eviction," *telesur.tv*.net (Feb. 23, 2017), <https://www.telesur.tv.net/english/multimedia/Ceremonial-Fires-Engulf-Stand->

[ing-Rock-Camp-Amid-Police-Eviction-20170223-0006.html](#) (last visited July 15, 2018).

18. "ND State Criminal Cases," *Water Protector Legal Collective*, <https://waterprotectorlegal.org/nd-state-criminal-defense/> (last visited July 25, 2018).

19. *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 280 F. Supp. 3d 187, 190 – 192 (D.D.C. 2017).

20. *Dundon v. Kirchmeier*, No. 1:16-cv-406 (D. N. Dak.).

21. Stephanie LaCabra, "Investigating Law Enforcement's Possible Use of Surveillance Technology at Standing Rock" *Deeplinks Blog*, *Electronic Frontier Foundation* (December 15, 2016), <https://www.eff.org/deeplinks/2016/12/investigating-law-enforcements-use-technology-surveil-and-disrupt-nodapl-water> (last visited July 15, 2018).

22. See, e.g., Joseph Bullington, "Standing Rock Spawned a Generation of Water Protectors. Now They're on the Move," *In These Times*, Aug. 9, 2017, <http://inthesetimes.com/features/standing-rock-dapl-tacoma-water-protectors.html>.

23. Declaration of Dave Archambault in Support of Motion for Preliminary Injunction ¶¶ 6, 15, *Standing Rock Sioux Tribe v. United States Army Corps of Engineers*, No. 1:16-cv-01534, ECF doc. no. 6-1 (D.D.C. Aug. 4, 2016).

David DeRoin is Báxoje (loway). He works as a Deputy Public Defender in Ada County and is a member of the National Lawyers Guild. He graduated from Concordia University School of Law in 2017.



Ritchie Eppink is a member of the National Lawyers Guild and the Legal Director of the American Civil Liberties Union of Idaho. He graduated from the University of Idaho College of Law in 2006.



Tribes are Sovereign Nations: State Court Recognition of Tribal Court Judgments in the Post-*Coeur d'Alene Tribe v. Johnson* Era

Peter J. Smith IV
Jillian H. Cairns

From 1982 to 2017, the Idaho courts recognized tribal judgments under the full faith and credit clause of the U.S. Constitution. Now Idaho courts will recognize tribal court judgments under the doctrine of comity. This change recognizes that tribes are sovereign nations within the State of Idaho. This article explains why.

Tribal self-government and tribal court jurisdiction

Federally recognized American Indian tribes are sovereign nations; tribes have a “government-to-government relationship” with both the United States and the individual states.¹ These tribes have inherent rights to self-government, which includes the right to form and operate tribal courts. The Idaho Supreme Court recently considered tribal court jurisdiction and enforceability of tribal court judgments in *Coeur d'Alene Tribe v. Johnson*, 162 Idaho 754 (2017). Prior to *Johnson*, Idaho’s courts recognized tribal court judgments under full faith and credit. With *Johnson*, the Idaho Supreme Court overruled the precedent it set in *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895, 901 (S.Ct., 1982), and decided that comity, not full faith and credit, is the appropriate doctrine to apply when considering recognition and enforcement of tribal court judgments.

Tribal courts play an important role in enforcing tribal law and regulating conduct of both Indians and non-Indians living or doing business within the boundaries of tribal reservations. Tribal courts “are competent law-applying bodies” and a

Tribal courts play an important role in enforcing tribal law and regulating conduct of both Indians and non-Indians living or doing business within the boundaries of tribal reservations.

tribal court’s own determination of its jurisdiction is entitled to deference.² Tribal courts have the power to “exercise civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe.”³ Therefore, tribal courts are courts of limited jurisdiction.

Tribes “retain inherent sovereign powers to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.”⁴ The *Montana* test established two grounds for tribal court subject matter jurisdiction:

1. Jurisdiction to regulate, through taxation, licensing, or other means, the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.
2. Jurisdiction, pursuant to inherent tribal powers, to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

An additional independent basis for tribal court subject matter juris-

diction is the right to regulate and exclude use of lands held in trust by the United States for the benefit of a tribe.⁵ Tribes “possess inherent sovereign powers.”⁶ “From a tribe’s inherent sovereign powers flow lesser powers, including the power to regulate non-Indians on tribal land.”⁷ One inherent sovereign power of tribes is the power to exclude nonmembers from tribal lands.⁸

Full faith and credit under *Sheppard v. Sheppard*, 104 Idaho 1

In *Sheppard v. Sheppard*, the Idaho Supreme Court held that tribal court judgments are entitled to full faith and credit under 28 U.S.C. § 1738. In that case, the Court reasoned “[t]ribal court decrees, while not precisely equivalent to decrees of the courts of sister states, are nevertheless entitled to full faith and credit.”⁹ “The full faith and credit clause of the United States Constitution provides that each state shall give full faith and credit to the ‘judicial proceedings of every other state’ and that congress may pass general laws to implement this clause.”¹⁰

Idaho courts recognized tribal court judgments under full faith and credit until 2017, when the Idaho Supreme Court partially overruled *Sheppard* in *Coeur d'Alene Tribe v.*

Johnson, 162 Idaho 754 (2017).¹¹ In *Johnson*, the Idaho Supreme Court adopted the reasoning of the Ninth Circuit and stated that tribal court judgments should be recognized under the doctrine of comity rather than full faith and credit.

The Coeur d'Alene Tribe and the Coeur d'Alene Tribal Reservation

The Coeur d'Alene Tribe is a federally recognized Indian tribe with a reservation spanning Kootenai and Benewah counties in Idaho's panhandle. The Coeur d'Alene Reservation is unique; it includes portions of Lake Coeur d'Alene and the St. Joe River. The beds and banks of Lake Coeur d'Alene and the St. Joe River within the boundaries of the Reservation are held by the United States in trust for the benefit of the Coeur d'Alene Tribe.¹² The Coeur d'Alene Tribe requires landowners who encroach on tribal submerged lands to obtain a permit from the Tribe. The encroachments are usually docks.

Under the Coeur d'Alene Tribal Code, if no encroachment permit is obtained, or if a landowner otherwise fails to comply with the Tribal Code requirements for encroachments, a matter may be filed in the Coeur d'Alene Tribal Court. The Tribal Court has exclusive jurisdiction over suits for possession, trespass or civil penalties resulting from violations of the Tribal Code pertaining to encroachments, non-compliance with Tribal Compliance Orders, and trespass onto the Tribe's submerged lands. The Tribal Court may impose a civil penalty of up to \$500 per day.

***Coeur d'Alene Tribe v. Johnson* factual background**

Kenneth and Donna Johnson own riverfront property on the St. Joe River within the boundaries of the Coeur d'Alene Reservation. The

Johnsons are not members of the Coeur d'Alene Tribe. The Johnsons put a dock and pilings into the bed of the St. Joe River, submerged lands held in trust for the benefit of the Coeur d'Alene Tribe, and refused to apply for a permit for the dock and pilings. The Johnsons also ignored the Tribe's written notices.

After being ignored, the Tribe filed a lawsuit against the Johnsons in Tribal Court. The Tribe sought an order finding the Johnsons were trespassing upon the Tribe's submerged lands, requiring them to remove their dock and pilings, and imposing a civil penalty. The Tribe did not

Though the Tribe had the authority to remove the trespassing encroachments, to maintain a good relationship with the State, it applied to the District Court for the First Judicial District of the State of Idaho for recognition of the Tribal Court Judgment.

seek the maximum penalty of \$500 per day, rather it requested a civil penalty in the amount of only \$100 per day.

The Johnsons ignored the lawsuit and chose not to appear or answer. Order of Default was entered and mailed to the Johnsons. The Coeur d'Alene Tribal Rules of Civil Procedure require more due process than what is required by Idaho Rules of Civil Procedure, and the Tribe sent the Johnsons notice that it was seeking a default judgment. Again, the Johnsons ignored the notices. Subsequently, the Tribal Court entered a default judgment against the Johnsons. The judgment found the John-

sons were in trespass and permitted the Tribe to remove the trespassing dock; it also imposed a civil penalty in the amount of \$17,400.

Though the Tribe had the authority to remove the trespassing encroachments, to maintain a good relationship with the State, it applied to the District Court for the First Judicial District of the State of Idaho for recognition of the Tribal Court Judgment. Pursuant to *Sheppard*, the Tribe sought recognition under the doctrine of full faith and credit. For the first time, the Johnsons appeared and objected. The District Court held that the judgment should be recognized under both full faith and the doctrine of comity. The Johnsons appealed to the Idaho Supreme Court.

Adoption of *Wilson v. Marchington* and comity

In *Coeur d'Alene Tribe v. Johnson*, the Idaho Supreme Court adopted the Ninth Circuit's comity analysis for recognition of tribal court judgments. A judgment should be afforded comity unless acceptance of the judgment "would be contrary or prejudicial to the interest of the nation called upon to give it effect."¹³ In the federal context, there is a general principle that federal courts should recognize and enforce tribal judgments, and federal courts employ comity as the vessel for such recognition and enforcement.¹⁴ *Wilson* cautions, however, that a federal court must not recognize or enforce a tribal court judgment unless:

1. the tribal court had both personal and subject matter jurisdiction; and
2. the defendant was afforded due process by the tribal court.¹⁵

Wilson also identified four discretionary bases upon which a Court may decline to recognize and enforce a tribal judgment on equitable grounds:

1. the judgment was obtained by fraud;
2. the judgment conflicts with another final judgment that is entitled to recognition;
3. the judgment is inconsistent with the parties' contractual choice of forum; or
4. recognition of the judgment, or the cause of action upon which it is based, is against the public policy of the United States or the forum state in which recognition of the judgment is sought.¹⁶

Civil penalties

In addition to overruling *Sheppard* and adopting the *Wilson* comity analysis for tribal court judgments, the *Johnson* Court addressed whether civil penalties levied by tribal court judgments should be enforced by Idaho courts. The Court adopted the the penal judgment rule and held they cannot.

Generally, under comity one nation or territory will recognize the legislative, executive, or judicial acts of another nation. The penal law rule is an exception to the principles of comity. The penal law rule limits recognition of foreign judgments, and the Courts of one country need not execute the penal laws of another.¹⁷

A law is penal if it seeks to redress a wrong to the public at large, rather than a wrong to an individual. Penal laws include both criminal punishments and civil judgments. A penal judgment of the tribal court will not be recognized or enforced by Idaho courts.

Since the *Johnson* decision, the Coeur d'Alene Tribe has amended its code. It now states the amount of damages caused by a trespass of an encroachment. There is no longer a civil penalty for failing to obtain a permit.

Conclusion

Tribes are sovereign nations. Recognition of tribal judgments under the full faith and credit clause of the United States Constitution incorrectly put tribes on equal footing with States. With *Johnson*, the Idaho Supreme Court correctly recognized tribes are sovereign nations. Comity is the doctrine that is applied when the question is whether to recognize a judgment of another nation.

Though recognition of tribal court judgments under comity eliminates any civil penalty, the recognition of the tribes as sovereign nations is of much greater importance. The jurisdiction of tribes over lands within their reservations is best preserved when the Idaho courts recognize and acknowledge the status of tribes as sovereign nations.

Endnotes

1. <https://www.bia.gov/frequently-asked-questions>
2. *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 808 (9th Cir. 2011).

3. *Montana v. United States*, 450 U.S. at 566, 101 S. Ct. at 1258.
4. *Id.* at 565, 101 S. Ct. at 1257.
5. *Water Wheel Camp Recreational Area, Inc.* 642 F.3d 802.
6. *Id.* at 808.
7. *Water Wheel Camp Recreational Area, Inc.*, 642 F.3d at 808-09.
8. *Id.* at 808.
9. *Sheppard*, 104 Idaho at 7, 655 P.2d at 901.
10. *Id.*
11. The Idaho Supreme Court affirmed *Sheppard* to the extent it puts the burden of proving invalidity of a tribal court judgment on the party attacking the judgment.
12. *Idaho v. United States and Coeur d'Alene Tribe*, 533 U.S. 262, 121 S.Ct. 2135 (2001).
13. *Wilson v. Marchington*, 127 F.3d 805, 809 (9th Cir. 1997) (quoting *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir.1971)).
14. *Wilson*, 127 F.3d at 810.
15. *Id.*
16. *Id.*
17. *United States v. Federative Republic of Brazil*, 748 F.3d 86, 91-92 (2d Cir. 2014) (citing *The Antelope*, 23 U.S. (10 Wheat.) 66 (1825)).

Peter J. Smith IV is licensed to practice law in Idaho and the Ninth Circuit. Peter attended Pepperdine University School of Law. Upon graduating Peter went to work as an associate attorney at the firm of Lukins & Annis, P.S. in Coeur d'Alene. In 2015, Peter founded Smith + Malek with his good friend, Luke. Peter is married and has three children. In his spare time, Peter enjoys running, biking, skiing, and golfing.



Jillian H. Caires attended Gonzaga University School of Law. She is an attorney at Smith + Malek. Her husband, Damian, and their son, Cortez, live in Dalton Gardens where they recently started raising chickens. In her free time Jillian enjoys running, gardening and spending time outdoors with her family. Jillian has completed over a dozen marathons and two Ironman triathlons.



The Tenth Anniversary of the University of Idaho's Native Law Program

Dylan R. Hedden-Nicely

It was ten years ago that I first walked through the doors of the University of Idaho College of Law. I came home to Idaho to attend law school because of the interdisciplinary degree programs it offered that allowed law students to concurrently earn a master's degree or Ph.D. from UI's Water Resources Department. However, I come from a family of teachers rather than lawyers and so I had only a vague notion of what I was doing in law school. I knew—or thought I knew—that I wanted to practice environmental law; I wanted to help people and make our corner of the world a more just and fair place.

The universe has a way of bringing people together and, as luck would have it, my first year as a student marked Professor (now Dean) Angelique EagleWoman's first year as a professor at the College of Law. Dean EagleWoman immediately set about creating an institutional program in Native American law at the College of Law. She also became my mentor, subtly guiding me through her newly developed program and a career representing Indian tribes. Much of what I have achieved in my practice can be traced to her guidance; she helped me learn the fundamentals and frustrations of Native American law and introduced me to practitioners and scholars from all over the country. Perhaps, most importantly, when she found out that I wanted to advocate for the Coeur d'Alene Tribe in the North Idaho water rights adjudication, she reached out and introduced me to Howard Funke who was special counsel to the Tribe in that case. Howard—who has had a long career representing Indian tribes throughout the Northwest—would become my employer, mentor, and friend. I owe a

These Tribes have diverse economies, including entertainment, recreation, hospitality, agriculture, natural resources development, environmental remediation and restoration, communication, wildlife preservation, medical and healthcare services, cultural resources protection, education, commercial enterprises, industrial manufacturing, real estate, etc.⁴

lot to Howard; essentially everything I know about practicing in Indian Country I have learned from him.

For just over a year now, I have been at the helm of the Native American Law Program, working to maintain and expand the foundation put in place by Dean EagleWoman. As one of the first Native Law Program students, an alumni of the Program, and now its lead faculty, my personal and professional life has been strongly interwoven with the success of the Native American Law Program. As we embark upon the Program's tenth year, the time is ripe to reflect upon where the Program has been and to celebrate its continued growth and success. Although the impact the Program has had in Indian Country in the Northwest has been significant, the need for strong and competent advocates in Indian Country continues to grow, making the Native Law Program more relevant than ever before.

The need for a Native American Law Program

Native American law is one of the fastest growing legal fields in the Western United States. This is particularly true in Idaho, where Indian tribes have a significant impact on the Idaho economy.¹ As of 2014,

Idaho's tribes added 13,840 jobs to Idaho's economy, when you include multiplier effects, and contributed approximately \$653 million to the gross state product.² As of 2014, the Coeur d'Alene Tribe was the second largest employer in North Idaho, the Nez Perce Tribe was one of the top three employers in the north-central region of Idaho, the Shoshone-Bannock Tribes were the fourth largest employer in Southeastern Idaho, the Kootenai Tribe was one of the largest employers in Boundary County, while the Shoshone-Paiute Tribes were the largest employer within the Duck Valley Indian Reservation.³ These Tribes have diverse economies, including entertainment, recreation, hospitality, agriculture, natural resources development, environmental remediation and restoration, communication, wildlife preservation, medical and healthcare services, cultural resources protection, education, commercial enterprises, industrial manufacturing, real estate, etc.⁴ In all, tribal economic activity has exceeded \$1.1 billion in recent years.⁵

At the same time, Native Americans are one of the most underrepresented minority groups in the legal profession. According to the last census, approximately 2.1% of all people in the United States identi-

fied as Native American, Native Alaskan, Native Hawaiian, or as a Pacific Islander (hereinafter collectively referred to as “Native American”).⁶ However, recent ABA studies indicate that just 0.2%-0.3% of all lawyers in the United States are Native American.⁷ The statistics are equally troubling in Idaho where Native Americans make up approximately 2.6% of the Idaho population,⁸ but only 0.56% of the ISB’s membership reports being an American Indian or Alaska Native.⁹

Furthermore, just 0.8% of the United States law student population were Native American in 2014, a percentage that has been stagnant since the mid-1990s.¹⁰ Among other reasons, investigators have found that this disparity comes from differing motivations for attending law school for Native Americans. Specifically, most non-Native students are motivated to attend law school in order to have a challenging and rewarding career and to attain financial security.¹¹ In contrast, Native American students were “more likely to report that they wanted to give back to their tribe, fight for justice for Native Americans, and work for the betterment of Indian people than they were to report wanting a rewarding career for themselves or seeking financial security.”¹²

UI’s Native American Law Program is uniquely tailored to recruit and help foster the success of Native American students, while at the same time, providing an educational space for *anyone* interested in learning about Native American law and policy.

University of Idaho’s Native American Law Program

The College of Law has a long tradition of providing legal education in the field of Native American law. The cornerstone of the Native

American Law Program is its curriculum emphasis, which provides a pre-developed curriculum that allows students to emphasize a particular subset of the law within their regular law school studies. The emphasis has four tracks, each with different course requirements: natural resources, family law, tribal governance, and economic development. In addition, students are allowed to fashion a custom track with the advice and consent of their faculty advisor.¹³ All emphasis students must take the foundational course Native American Law, as well as at least

However, recent ABA studies indicate that just 0.2%-0.3% of all lawyers in the United States are Native American.⁷ The statistics are equally troubling in Idaho where Native Americans make up approximately 2.6% of the Idaho population,⁸ but only 0.56% of the ISB’s membership reports being an American Indian or Alaska Native.⁹

one of Native American Natural Resources Law and/or Tribal Nations Economics and Law. In addition to these required courses, students take electives that are consistent with their chosen track.

Emphasis students must also undertake a substantial research and writing project on some topic related to Native American law. This requirement’s purpose is to provide students with an opportunity to take a deep dive into a subject of par-

ticular interest, provide additional research and writing skills practice, and potentially provide research on a topic that may be relevant to Indian law practitioners. Past research has included projects regarding civil and criminal jurisdiction; domestic violence and sexual assault in Indian Country; the effects and potential retrocession of Public Law 280; easements through Indian Country; reserved water rights litigation and settlement; water quality; the Columbia River Treaty; etc.¹⁴

Finally, the emphasis requires students to gain experience practicing in Indian Country. This requirement’s purpose is to provide students with a chance to network with tribal attorneys and policymakers, and learn about the unique challenges and opportunities that come with working in Indian Country, while also providing a resource to tribes and other organizations that work with tribes. Almost all students bank more than the required 20 hours of experiential learning.

Students are typically paired with a tribe, agency, or other organization in the field that matches the student’s emphasis track. For example, those interested in tribal governance are usually placed in a tribal attorney’s office while those interested in family law or criminal law are typically placed in a tribal court or with a tribal prosecutor or public defender. Students interested in tribal economic development may be placed within the office of the tribal attorney, within a tribal enterprise, or with agencies or organizations that work with tribes on economic development opportunities. Students interested in natural resources may be placed within a tribal natural resources department, within an agency, or an organization that works with tribes on issues related to natural resources.

The overarching goal of these emphasis requirements are to provide students the foundational tools they need to be ready to make an immediate impact in Indian Country.

University of Idaho's Native American Law Student Association

Like the Native Law Program, UI's Native American Law Student Association ("UI NALSA") turns ten in 2018.¹⁵ UI NALSA is a critical component of UI's Native Law Program and has a multifaceted purpose. NALSA's primary purpose is to work in conjunction with other student services to provide some of the support our law students need to succeed. As most of those reading this know, law school can be a lonely, intimidating, and difficult place, particularly in the first year. This can be especially true for students not culturally attuned to the competitive environment that law schools encourage, and who may be leaving their homes for the first time. This combination can conspire to cause students that are capable of succeeding in the right environment to nonetheless fail to complete law school. NALSA combats these factors by providing an immediate space and social network for our students.

NALSA also provides a critical link between faculty and students. In a field as dynamic as Native American law, an educational program must continue to reinvent itself to remain on the cutting edge, and students expect to be enrolled in a program that is teaching them the fundamentals and the frontier of the field. It is critical that the Native Law Program be continually aware of where the practice is going and how the Program can adapt to stay on the leading edge. A primary conduit for this effort is through the relationships our faculty have with our current students, facilitated by NALSA.

It is critical that the Native Law Program be continually aware of where the practice is going and how the Program can adapt to stay on the leading edge.

Finally, NALSA provides educational and networking opportunities for the students at the College of Law through a number of events, including panels of tribal court judges, tribal attorneys, and others that work in or with Indian Country. This year, NALSA organized a panel to discuss tribal employment rights that included tribal representatives from the Shoshone-Bannock Tribes, the Nez Perce Tribe, the Coeur d'Alene Tribe and the Umatilla Tribes, as well as a panel that included tribal court judges and litigators on the unique challenges and opportunities when working in a tribal court. NALSA students also work closely with the region's tribes for charitable purposes, including organizing an angel tree each year for reservation children in need and conducting Native law recruiting events for Native high school and undergraduate students. Each year, NALSA participates in the National NALSA moot court competition, typically sending two teams to compete. Finally, the UI NALSA works closely with faculty to offer the University of Idaho's Native Law Conference, which takes place in the spring semester and brings together tribal law scholars and practitioners in an effort to provide continuing legal education in Native American law.¹⁶ Although the Native Law Conference has been dormant since 2015, we are thrilled and much ap-

preciative to the Coeur d'Alene Tribe for making a substantial donation to NALSA making it possible to restart the Native Law Conference in the spring of 2019.

The University of Idaho's collaboration with regional tribes

The University of Idaho and the College of Law prides themselves on the close relationship they have with the region's American Indian tribes. These relationships provide the backbone of the NAL Program, ensuring that the College of Law can provide meaningful education that is relevant to Indian Country. The University of Idaho has a memorandum of understanding ("MOU") that outlines the collaborative relationship the University enjoys with ten regional tribes (hereinafter referred to as "MOU Tribes").¹⁷ The University of Idaho President's Native American Advisory Council is one result of that MOU. The Advisory Council holds biannual meetings—one meeting held on-campus and the other hosted by one of the ten MOU Tribes—where university and tribal representatives discuss the current projects and further collaboration.¹⁸

Like the University generally, the College of Law prides the relationship it has with the region's American Indian Tribes. The College hosts the Native American Law Advisory

Board, which is an advisory board to the College to strengthen its relationship with the region's tribes and to provide meaningful legal training for Idaho's students.¹⁹

The NAL Program also collaborates with the MOU Tribes to provide experiential learning opportunities for NAL students by placing students in tribal attorneys' offices, tribal courts, within tribal agencies, and within tribal executive and legislative offices. For example, we have worked closely with the Coeur d'Alene Tribe to provide tribal court appointed special advocates, also known as guardian ad litem, to the court in proceedings involving child welfare.

Also, this year marks the restart of the UI Native American Law Estate Planning Project. Estate planning is a significant issue in Indian Country, particularly in the Northwest, where tribal lands can have many-hundreds of owners as a result of intestate succession.²⁰ As a pilot, the Program worked with the Nez Perce Tribe and Coeur d'Alene Tribe, each of which provided funding for a UI law student (supervised by a licensed attorney) to provide estate-planning services to tribal members on those reservations.²¹ The symbiotic benefits of this project are significant. Students receive incredible experience working with Native American clients in a broadly-applicable legal field, while the Tribes receive an economically efficient means of providing a legal service that is sorely needed in Indian Country.

Ultimately, in order to succeed as a program, we must be providing education on topics that are relevant in Indian Country. As a result, the Native Law Program's continued success is directly dependent upon its relationship with the regional tribes. We are proud of the relationships we have and we look forward to continuing the dialogue.

Ten years and going strong

The College of Law is proud of the Native American Law Program's achievements over the past ten years. Our alumni have struck out into Indian Country near and far, making lasting change for the betterment of Indian people. I would like to thank everyone who has made the mission of the NAL Program possible. In particular, we thank the Coeur d'Alene Tribe and Nez Perce Tribe, both of who have provided substantial support for the Native Law Program, NALSA, our students, and myself.

Students receive incredible experience working with Native American clients in a broadly-applicable legal field, while the Tribes receive an economically efficient means of providing a legal service that is sorely needed in Indian Country.

It is my honor to take the helm of this amazing program at the University of Idaho College of Law. Looking to the future, I am excited to continue to expand upon the foundation built by Dean EagleWoman over the past ten years. As we continue to innovate and evolve the Program, however, we will always be guided by its core purpose of close collaboration with our region's tribes in an effort to provide an environment for Native legal minds to succeed and be leaders in the field of Native American law. Here's to the next ten years!

Endnotes

1. See generally, Steven Peterson, *Impacts of the Five Tribes to Idaho's Economy* (2014), available at: <https://www.sde.idaho.gov/indian-ed/files/curriculum/Idaho-Tribes-Economic-Impact-Report.pdf> (last visited June 27, 2018).
2. *Id.* at 3.
3. *Id.* at 6; 9; 10; 12; 14.
4. See generally, *Id.*
5. *Id.* at 3.
6. Norris, Vines, and Hoeffel, *The American Indian and Alaska Native Population: 2010*, in 2010 Census Briefs, C2010BR-10 at 3 (2012) (hereinafter "Native American Census Brief"); Hixson, Hepler, and Ouk Kim, *The Native Hawaiian and Other Pacific Islander Population: 2010*, in 2010 Census Briefs, C2010BR-12 at 4 (2012) (hereinafter "Native Hawaiian Census Brief").
7. Mary Smith, Native American Attorneys Systematically Excluded in the Legal Profession, 40 ABA Human Rights Magazine 4 (2014), available at: https://www.americanbar.org/publications/human_rights_magazine_home/2014_vol_40/vol--40--no--1--tribal-sovereignty/native-american-attorneys-systematically-excluded-in-the-legal-p.html (last visited June 28, 2018); Patrick Folliard, *Native American Attorneys: Small in Number, Not in Influence*, Diversity The Bar (2006) available at: <https://www.mcca.com/mcca-article/native-american-attorneys/> (last visited June 28, 2018).
8. To arrive at this figure, I added the number of Idaho that reported to be either Native American, Alaska Native, Native Hawaiian, or Pacific Islander and divided that by the total population for the state, as reported in the 2010 census. See, Native American Census Brief, *Supra* n. 6, at 7; Native Hawaiian Census Brief, *Supra* n. 6, at 6; Idaho: 2010 Population and Housing Unit Counts at 9, available at: <https://www.census.gov/prod/cen2010/cph-2-14.pdf> (last visited July 10, 2018).
9. 2016 Idaho State Bar Membership Survey, available at: https://isb.idaho.gov/wp-content/uploads/2016_isb_membership_survey.pdf (last visited July 10, 2018).
10. Institute for Inclusion in the Legal Profession, *ILP Review 2017: The State of Diversity and Inclusion in the Legal Profession* at 22 (2017). However, ABA studies indicate that this figure is too high as a result of non-Native Americans

falsely claiming to be Native American on law school applications. See Lawrence Baca, *American Indians and the "Box Checker" Phenomenon*, IILP Review 2011: The State of Diversity and Inclusion in the Legal Profession (2011), available at <http://nylawyer.nylj.com/adgifs/decisions/090611diversity.pdf>)

11. Smith, *supra* n. 8.

12. See generally, National Native American Bar Association, *The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession* (2015), available at: http://www.nativeamericanbar.org/wp-content/uploads/2014/01/2015-02-11-final-NNA-BA_report_pp6.pdf (last visited June 28, 2018). See also, Smith, *supra* n. 8; Folliard, *supra* n. 8.

13. Courses in Native American Law have been taught by distinguished faculty including: former interim UI President, Dean of the College of Law, and emeritus Professor Donald Burnett, Emeritus Professor Dennis Colson, Douglas Nash, as well as Distinguished Professor Barbara Cosens. However, the birth of the NAL Program as it now exists took place in 2008 when Professor (now Dean) Angelique EagleWoman came to the College of Law

14. Angelique EagleWoman, *A Tradition of Excellence in Native American Law at the University of Idaho College of Law* 57 Advocate at 58-9 (Oct. 2014).

15. UI NALSA has a long history of being headed by co-chairs and this past year it was chaired by Darrel Aubrey (Karuk and Yoruk) and Christopher Murray. Next year, Gaylen Edmo (Shoshone-Bannock) and Garret Brown share the helm

16. Past conferences have included

"Soothing Waters: Tribal Protection & Stewardship," "Living in Balance: Tribal Nation Economics & Law," "Reconnecting Tribal Economies: Indigenous Networks and Commerce," "Idaho Indian Law Basics," and "Tribal Stewardship of Plant and Food Sovereignty."

17. Available at: <https://www.uidaho.edu/president/direct-reports/tribal-relations/mou> (last visited July 1, 2018). The ten "MOU Tribes" are the Coeur d'Alene Tribe, The Confederated Tribes of the Colville Reservation, the Confederated Tribes of the Umatilla Indian Reservation, the Kalispel Tribe of Indians, the Kootenai Tribe of Idaho, the Nez Perce Tribe, the Shoshone-Bannock Tribes, the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, the Spokane Tribe of Indians, and the Confederated Tribes and Bands of the Yakama Nation.

18. See <https://www.uidaho.edu/president/direct-reports/tribal-relations/advisory-council> (last visited July 1, 2018).

19. See <https://www.uidaho.edu/law/academics/emphasis-area/native-american-law> (last visited July 1, 2018).

Our alumni have struck out into Indian Country near and far, making lasting change for the betterment of Indian people.

20. See generally Jessica A. Shoemaker, *Like Snow in the Springtime: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 Wis. L. Rev. 729.

21. This year, we were pleased to have Sheala DiMartini work on the Coeur d'Alene Reservation and Jessica Boone on the Nez Perce Reservation. Both worked under the guidance and supervision of David Risley, an attorney in Lewiston.

Dylan R. Hedden-Nicely is a citizen of the Cherokee Nation of Oklahoma. He is Associate Professor of Law at the University of Idaho College of Law and Director of the University of Idaho Native American Law Program. Professor Hedden-Nicely teaches a variety of courses, including Native American law, Native American natural resources law, tribal nation economics and law, and civil procedure. He can be reached at dhedden@uidaho.edu.



Mediation & Arbitration Services

Senior District Judge
DUFF MCKEE
Over 30 years - Over 2,000 cases



(208) 381-0060
DDMCKEE@DDMCKEE.COM
WWW.DDMCKEE.COM

MOONLIGHTING SOFTWARE

Innovative Custom Software

Home of the Best Child Support Program

(208) 376-7728

P.O. Box 4753
Boise, ID 83711

www.idchildsupport.com

OFFICIAL NOTICE SUPREME COURT OF IDAHO

Chief Justice
Roger S. Burdick

Justices
Joel D. Horton
Robyn M. Brody
G. Richard Bevan
John R. Stegner

Regular Fall Term for 2018
3rd Amended 8/9/18

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

By Order of the Court
Karel A. Lehrman, Clerk

NOTE: The above is the official notice of the 2018 Fall Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE COURT OF APPEALS OF IDAHO

Chief Judge
David W. Gratton

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

Regular Fall Term for 2018
2nd AMENDED 03/20/18

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

By Order of the Court
Karel A. Lehrman, Clerk

NOTE: The above is the official notice of the 2018 Fall Term for the Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

Idaho Supreme Court Oral Arguments for September 2018

7/20/18

Monday, September 10, 2018 – BLACKFOOT

8:50 a.m. OPEN
10:00 a.m. *Bergeman v. Select Portfolio* #45338
11:10 a.m. *Mulberry v. Burns Concrete* #45184

Tuesday, September 11, 2018 – POCATELLO

8:50 a.m. *Monitor Finance v. Wildlife Ridge Estates* #45517
10:00 a.m. *Overholser v. Overholser* #46021
11:10 a.m. *John and Jane Doe I v. Jane Doe* (2018-20) #45995

Wednesday, September 12, 2018

NO COURT

Thursday, September 13, 2018

NO COURT

Friday, September 14, 2018

NO COURT

Monday, September 17, 2018 – BOISE

8:50 a.m. *State v. Jeske* #45989
10:00 a.m. *State v. Amstad* #45707
11:10 a.m. *ID Power v. Tidwell* #45644

Tuesday, September 18, 2018

NO COURT

Wednesday, September 19, 2018 – BOISE

8:50 a.m. *Aguilar v. State of ID Indemnity Fund* #45581
10:00 a.m. *Crawford v. Guthmiller* #45613
11:10 a.m. *Gomez v. Crookham Co.* #45542

Thursday, September 20, 2018

NO COURT

Friday, September 21, 2018 – BOISE

8:50 a.m. *State v. Herrera* #45547
10:00 a.m. *Verity v. USA Today* #45530
11:10 a.m. *State v. Cunningham* #45253

Idaho Court of Appeals Oral Arguments for September 2018

7/20/18

Thursday, September 6, 2018 – BOISE

9:00 a.m. OPEN
10:30 a.m. *State v. Islas* #45174

Idaho Supreme Court Calendar

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

<http://idahoptv.org/insession/courts.cfm>

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

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

CIVIL APPEALS

Attorney fees and costs

1. Whether the district court erred in awarding attorney fees to be assessed against Birch's interest in his mother's estate.

Bailey v. Birch

S. Ct. Docket No. 45451
Supreme Court

2. Did the district court err in awarding attorney fees against counsel, personally, pursuant to I.R.C.P. 11?

Smith v. Treasure Valley Seed Company, LLC

S. Ct. Docket No. 45543
Supreme Court

Due process

1. Did the district court err in finding that the Board of Commissioners did not violate Floyd's right to procedural due process in issuing the tax deed?

Floyd v.

Ada County Board of Commissioners

S. Ct. Docket No. 45421
Supreme Court

Evidence

1. Whether the district court abused its discretion when it excluded the "Chain of Title Analysis" on the basis it was inadmissible hearsay and granted summary judgment in favor of Deutsche Bank on the slander of title claim.

LOSEE v. DEUTSCHE BANK

S. Ct. Docket No. 45721
Supreme Court

Medical indigency

1. Whether the Board violated statutory provisions and exceeded its statutory authority in denying dates of service February 19, 2016, through March 9, 2016, when care at a lower cost facility was unavailable to the patient.

St. Luke's Health System LTC v.

Gem Co. Bd. Of Commissioners

S. Ct. Docket No. 45614
Supreme Court

Other – vexatious litigant

1. Did the ADJ abuse her discretion when she found Colafranceschi to be a vexatious litigant and entered an order that requires him to comply with pre-filing conditions before commencing any future litigation in Idaho courts in which he is not represented by counsel?

Colafranceschi v. Moody

S. Ct. Docket No. 45554
Supreme Court

Post-conviction relief

1. Did the district court abuse its discretion in denying Andrus' motion for relief from judgment pursuant to I.R.C.P. 60(b)(6)?

Andrus v. State

S. Ct. Docket No. 45297

Court of Appeals

2. Did the district court abuse its discretion when it denied Beavers's motion to amend his post-conviction petition?

Beavers v. State

S. Ct. Docket No. 45245

Court of Appeals

3. Did the district court err in summarily dismissing Timpson's petition in which he alleged ineffective assistance of counsel for failure to file a Rule 35 motion?

Timpson v. State

S. Ct. Docket No. 45427

Court of Appeals

Procedure

1. Did the district court use the wrong standard of review and err by treating the State's motion to dismiss as a motion for summary judgment, and by not giving notice to the parties of its determination to review the motion to dismiss under the Rule 56 standard?

Day v. Idaho Transportation Department

S. Ct. Docket No. 45552

Supreme Court

Summary judgment

1. Did the district court err in finding that no material issue of fact existed regarding the issue of abandonment of the easement?

Galvin v. City of Middleton

S. Ct. Docket No. 45578

Supreme Court

2. Did the district court err in finding there was no issue of disputed fact that an employee had stolen in excess of \$1,000,000.00 from Greenwald Neurosurgical and in granting summary judgment in favor of Greenwald?

Greenwald v. Western Surety Co.

S. Ct. Docket No. 45404

Supreme Court

Tax cases

1. Did the district court err when it found that Aspen Park, Inc., was not entitled to tax exempt status under I.C. §63-602GG?

Aspen Park, Inc. v. Bonneville County

S. Ct. Docket No. 45679

Supreme Court

CRIMINAL APPEALS

Evidence

1. Did the district court err in permitting the jury to take into the jury room an exhibit which was admitted at trial only for demonstrative purposes?

State v. Weigle

S. Ct. Docket No. 45389

Court of Appeals

2. Did the district court err when it allowed the State to present evidence of the street value of the seized methamphetamine?

State v. Castro-Angulo

S. Ct. Docket No. 44860

Court of Appeals

3. Whether the district court erred by denying the motion in limine and determining that evidence of the resale or "street" value of the methamphetamine was admissible.

State v. Garcia-Carranza

S. Ct. Docket No. 44878

Court of Appeals

Instructions

1. Did the district court commit fundamental error when it failed to instruct the jury regarding the knowledge element of the offense?

State v. Craven, Sr.

S. Ct. Docket No. 45215

Court of Appeals

Jurisdiction

1. Does this Court have jurisdiction when the civil petition for judicial review was filed under two previous criminal cases instead of a new civil action?

State v. McDay

S. Ct. Docket No. 45595

Supreme Court

Pleas

1. Did the district court abuse its discretion when it denied Kramer's motion to withdraw his guilty plea, because Kramer's lack of understanding was a just reason to withdraw the plea?

State v. Kramer

S. Ct. Docket No. 45533

Court of Appeals

2. Did the district court abuse its discretion by rejecting Pagan-Lopez's guilty plea?

State v. Lopez

S. Ct. Docket No. 45269

Court of Appeals

**Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(7/ 1/18)**

Restitution

1. Did the district court abuse its discretion when it ordered Puckett to pay \$934.18 in restitution?

State v. Puckett
S. Ct. Docket No. 45438
Court of Appeals

**Search and seizure –
suppression of evidence**

1. Did the district court err in denying Gonzales's motion to suppress and in finding his seizure was supported by reasonable suspicion?

State v. Gonzales
S. Ct. Docket No. 45434
Court of Appeals

2. Did the district court err by denying Perez's motion to suppress and by finding the traffic stop was supported by reasonable suspicion?

State v. Perez
S. Ct. Docket No. 45351
Supreme Court

3. Did the district court err by denying Gouge's motion to suppress and by finding she voluntarily consented to the search?

State v. Gouge
S. Ct. Docket No. 45403
Court of Appeals

4. Did the district court err in finding an expired Washington registration provides reasonable articulable suspicion for a traffic stop?

State v. Horton
S. Ct. Docket No. 45482
Court of Appeals

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

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

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

SHAVER & SWANSON L.L.P.

IDAHO'S PREMIER INTELLECTUAL PROPERTY FIRM

**+Patents
+Trademarks
+Trade Secrets**

**+Copyrights
+Licensing
+Litigation**

"All creation is a mine
and every man, a miner"
- Abraham Lincoln

SHAVERSWANSON.COM
1509 S. Tyrell Ln., Ste. 100
P.O. Box 877, Boise, ID 83701
(208) 345-1122



**In conjunction with
Oregon Criminal Defense Lawyers Association
presents its**

**Sunny Climate Seminar
November 9 & 10, 2018
Grand Hyatt Kauai, Hawaii**

Idaho's speakers include:

- Jeffrey Brownson
- Heidi Johnson
- Nicole Owens
- Elisa Massoth

**More Information:
Contact IACDL**

**Executive Director Debi Presher
(208) 343-1000 or dpresher@nbmlaw.com**



Federal Courts

2018 District of Idaho Bench Bar Conferences

Hon. Ronald E. Bush

Save the date! Better even than last year's full solar eclipse, the Idaho U.S. Courts will present the 2018 Bench-Bar Conferences in Fort Hall on Friday, September 14 at the Shoshone-Bannock Tribes Convention Center and in Boise on Friday, October 26 at the Boise Centre.

Change continues in the air in the Idaho federal courts. Even as District Judge David Nye, Bankruptcy Judge Joe Meier, and Clerk Steve Kenyon are now fully settled in with their new duties, District Judge Edward J. Lodge has announced he will retire from the bench on July 3, 2019. A new circuit judge nominee is awaiting Senate confirmation to fill the seat of Judge N. Randy Smith who takes senior status in August. Senior Circuit Judge Richard Tallman, who has been chambered in Seattle, will begin working from our Coeur d'Alene courthouse in September. You will hear State of the Judiciary reports on these details, information about changing trends in our dockets, and the prospects for a third district judgeship, including a report directly from Congressman Michael Simpson (Boise conference). We will honor the memory of the late Judge Larry M. Boyle, who had a long and distinguished career as an Idaho lawyer, in the Idaho state judiciary, and in the Idaho federal courts. He was admired and respected, and he is missed.

During the Boise conference you will be astonished to learn about the amount of information gathered every day about you and your clients



U.S. District and Bankruptcy Courthouse in Pocatello.

by passive surveillance. The view you will have into the privacy and security concerns, instances of malicious misuse of personal information, the extent of law enforcement electronic investigation and surveillance techniques, and other related subjects may have you typing 'OMG!' in your Twitter account. We have two people who are among the most knowledgeable people in the country about such matters:

Former Silicon Valley lawyer and former U.S. Magistrate Judge Paul Grewal, now Facebook's vice-president and general counsel (and the public face of Facebook in responding to the controversy over the use of Facebook user information for voter profiling); and Jennifer Stisa Granick, surveillance and privacy counsel of the ACLU Speech, Privacy and Technology Project and former executive director of the

Center for Internet and Society at Stanford Law School. They will talk about legal and societal issues in the contemporary world of surveillance, cybersecurity, and why those issues are important to your life as a lawyer and your personal life. It is rare to hear from two such experts in one place, at a time when the nature of their work and expertise is front and center in the world of law and society. You will be talking about this program long after the conference is over.

At the Fort Hall conference, attendees will consider the subject of "What is the Real Sum of our Parts? – Understanding and Reconciling the Hidden Biases that Inhabit our Thinking and Decision Making", in a program presented by Dr. Erik Girvan, an associate professor of law at the University of Oregon School of Law and co-director of the univer-

sity's Conflict and Dispute Resolution Program. Dr. Girvan, who grew up in Pocatello, is a graduate of Pocatello High School, with a doctorate degree in psychology from the University of Minnesota and a law degree from Harvard Law School. He reprises the provocative and well-received program first presented in last year's Boise conference, examining the unconscious biases that each of us brings to our work and to our interactions with other people – in court, in our offices, and in our communities. Prepare to be surprised, and to be glad for what you learn about the way you and others think about the world around you.

In a slight twist and addition to our usual program on civil rule changes, this year we will focus on the differences between litigation and trial practice in Idaho federal courts and Idaho state courts. Lawyers and judges with extensive experience in both arenas will talk about nuts and bolts comparisons of motion and trial practice and also about the more nuanced differences of handling cases in the two different court systems. Guaranteed to give you a leg up in your litigation knowledge, this program will be interesting and useful for every Idaho lawyer.

It is unusual for a case to go to trial, and there are many reasons that are offered up for why that is. Since 2005, less than one percent of all civil cases go to trial. What does that mean for our justice system and for our society? Is the civil jury trial destined for extinction? This year we have partnered with the Civil Jury Project at the New York University School of Law to talk about improving the civil jury trial. Trial jurors from recent trials in both state and federal court will participate, along with trial judges and conference attendees, in examining what we can do differently to protect and preserve the right to a jury trial. Steven D. Susman, the Executive Director

of the Civil Jury Project and one of the country's most successful trial lawyers, will lead the discussion. Mr. Susman is an innovative thinker and implementer in identifying how to return the civil jury trial paradigm to its roots as an affordable and sensible means of resolving disputes.

All of us know that the Bill of Rights is perhaps the most important foundational source of the civil liberties we enjoy and celebrate. Less well known is the critical importance of the passage of the 14th Amendment in 1863 in bringing the Bill of Rights to all individuals. Prior to passage of the 14th Amendment, the Bill of Rights acted as a restraint only upon the federal government. It was the incorporation doctrine contained in the 14th Amendment that made the Bill of Rights largely applicable to the states.

Over the last 150 years, the 14th Amendment has been the wellspring of the most important civil rights cases in the history of our country. Shaped in the internecine political battles taking place during and after the Civil War, you will learn the almost unbelievable history of its passage and ratification by the states. You will hear from a noted Idaho historian about the sometimes proud but also often regrettable history of civil rights in Idaho, you will hear from lawyers involved in some of the most significant Idaho cases that are tied in some way to the 14th Amendment, and hear from a panel of lawyers and judges talk about what lies on the future horizon.

Among others, we will have Professor Aman McLeod, an assistant professor of political science and lecturer in law at the University of Idaho, who will amaze you with the story of the passage of the 14th Amendment; Professor Jill Gill, professor of history at Boise State University, who has chronicled many of the proud and less than proud moments of Idaho civil rights history; Norman Gis-

sel, a Coeur d'Alene attorney long active with the Kootenai County Task Force on Human Relations and co-counsel with Morris Dees of the Southern Poverty Law Center in the lawsuit which brought down Richard Butler and the Aryan Nations organization headquartered in Hayden Lake, Idaho; Deborah Ferguson and Craig Durham, Boise attorneys who represented the plaintiffs in *Otter v. Latta*, the Idaho case challenging the constitutionality of Idaho's ban on same sex marriage; and David Metcalf, staff attorney in the chambers of Chief Judge B. Lynn Winmill, who was working as the staff attorney with the late District Judge Marion Callister of the District of Idaho in 1981, while Judge Callister was in the eye of the storm of a nationwide controversy when he ruled on a novel issue of constitutional law that the Idaho Legislature had the power to rescind its prior ratification of the proposed 27th Amendment to the federal Constitution, the so-called Equal Rights Amendment.

No doubt this look into the history and the future of the 14th Amendment will inspire and inform the work you do as a lawyer, and have you seeking out more information about the topics that we discuss.

The traditional Judges Panel program will once again utilize the interactive "Wordle" software, allowing attendees to use their cell phones in answering poll questions about the functioning of the Idaho federal courts, and to submit specific questions for our judges.

Wow! CLE credit, a great luncheon (included in your registration fee), interesting and useful programs, good conversation, and connecting with old friends and new acquaintances — no wonder this conference continues to be the best CLE value and most interesting legal conference in the West!

Tell your friends, and we'll see you there!

Cybercrime and Social Engineering

Mark Bassingthwaighe

Some time ago I was nearly stunned by a conversation with a few lawyers who had almost been scammed into sending several hundred thousand dollars overseas. While we all were pleased that the scam was recognized in time, I was floored by their response to what had happened. In talking about it, the lawyers acknowledged that they were fortunate to have listened to the wisdom of their firm administrator when they agreed to wait to release any funds until the deposited check had actually cleared. Yet, oddly enough, after the check finally did bounce these lawyers felt unable to do anything about it due to a perceived attorney-client relationship and the loyalties they believed flew from that. Apparently the scammers had invested enough time and become so involved with the firm that even after nearly being taken in, the lawyers still believed confidentiality trumped. They were hesitant to even consider having the situation investigated. Wow. Whoever was behind that scam knew what they were doing.

I wish that I could say this particular story was an unusual situation and that lawyers needn't worry but I can't. In the years since, these types of scams have only gotten more frequent and more sophisticated and it's all about social engineering. For the uninitiated among us, social engineering has nothing to do with a group of happy outgoing guys that get to put on those great blue and white striped hats before heading out to drive their trains. Social engineering in the context of cybercrime is really about the use of psychological manipulation to trick a person into doing something that isn't going to be in their best interests. The goal may be to gain access to confidential information, to steal person-



al identities or money, to gain access to computer network resources, and the list goes on.

An attacker has any number of methods at his or her disposal. If the goal is to insert some type of rogue software onto a computer network, perhaps they leave a USB flash drive in the parking lot or send a "lucky winner" a free digital music player. Of course once the device is connected to the network, in order to see what's on the flash drive or to start enjoying that unexpected prize, the network is now compromised. This type of attack is called baiting and law firms are not immune. Other attack methods include, but are by no means limited to, fake callbacks from technical support where the attacker randomly calls numbers at a business until someone falls prey; pretexting where the scammer impersonates a bank employee, tax authority, insurance investigator, etc. to try and trick someone into disclosing information; and phishing, which is something we all need to know more about due to the sheer number of phishing attacks occurring.

First, the basics — phishing is the criminal attempt to trick another into providing personal or sensitive information such as a birth date, their address, a credit card number, or their user name and password to some account typically by requesting a response to an email or text message that the scammer has sent. Many of us have some sense of this general approach and would just delete an email that says our bank account will be closed unless we open the attachment or click on some link in order to verify our login creden-

Social engineering in the context of cybercrime is really about the use of psychological manipulation to trick a person into doing something that isn't going to be in their best interests.

tials simply because the email came from the wrong bank. But what if the email does purport to be from the correct bank? What if the email looks exactly like the bank's website and has all the correct official logos? What if, instead of having you verify login credentials online, the email asks you to call a number and the automated system that answers asks for your login credentials?

Phishing attacks have become very sophisticated. Not only are all of the above examples real, there are many other approaches out there. Who hasn't received one of those important emails informing you of a change in the delivery schedule of your UPS package or letting you know your eBay or email account is about to be closed unless you verify your credentials? I have personally received an email that appeared to be from a close friend stating that he had his wallet stolen and was stuck in London. He was hoping I would wire some money to help him return to the States and he would pay me back upon his return. Then there was the one claiming to be from Microsoft. They wanted me to know about a serious security problem in their software and suggested I immediately click a link to download the necessary update so that I would

remain secure. Honestly, I almost fell for that one. The level of sophistication with the Microsoft email was that good. In truth, the possible variations on phishing attacks seem to only be limited by the imagination and programming skills of the criminals behind them. Unfortunately, we'll keep seeing these attacks and they'll continue to evolve because they work.

Hopefully you now have a sense as to how ugly the situation has become. In my opinion, all lawyers need to be more proactive with computer security because the real risk comes from all who use your systems, including yourself. Please understand that the security hardware and software in place at your firm is the last line of defense. It is you and your users who are on the frontline. It's time to get in front of the problem because no one else is going to take care of it for you. It simply isn't possible for your IT support to protect your systems from all phishing attacks because these attacks are directed at people not hardware or software. The good news is that there are a few things we can all do to protect our personal information as well as our client confidences and it begins with training. Everyone within your firm should be made aware of the nature of phishing attacks and learn how to spot them. Use online resources as training tools such as this Windows Safety & Security Center post¹, this Wikipedia entry², or this Ten Tips for Spotting a Phishing Email post³ on TechRepublic.com. If you have in-house IT staff, invite them to provide an annual in-house seminar on phishing and other on-line hazards.

In addition to training, keep all software updated in terms of critical security patches as they become available. Use reputable antivirus tools as well as spyware identification and removal tools on all computers that are part of the office network and



don't overlook remote and mobile computers such as home computers, personal laptops, and computer tablets. Check with your IT staff or consultant to see if you are running the most current version of your Internet browser. If your browser has anti-phishing capabilities built in make certain that this functionality is enabled on all devices that are on the network or that login to the network remotely. That said, the most important piece of advice is to remember that no matter how sophisticated the security systems and tools that are deployed are, the user will always remain a vulnerability. Awareness and training will continue to be key and should occur on a semianual or annual basis in order to keep the issue front and center. Everyone

at your firm needs to be on the lookout for phishing emails or text messages because law firms are a target for scammers. Lawyers have a significant amount of valuable data residing on their computer systems that scammers want. Yes, lawyers can be a trusting bunch; but as I shared at the beginning of this piece, that attribute doesn't always serve us well.

Endnotes

1. <https://support.microsoft.com/en-us/help/4013405/windows-protect-from-tech-support-scams>
2. <https://en.wikipedia.org/wiki/Phishing>
3. <https://www.techrepublic.com/blog/10-things/10-tips-for-spotting-a-phishing-email>

ALPS Risk Manager Mark Bassingthwaighe, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Check out Mark's recent seminars to assist you with your solo practice by visiting ALP's on-demand CLE library at alps.inreachce.com.

Mark can be contacted at: mbass@alpsnet.com.



CLASSIFIEDS

IN SEARCH OF MISSING WILL

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

EXPERT WITNESSES

EXPERT WITNESS-INTERNAL MEDICINE/GASTROENTEROLOGY

30 year clinical experience, case review, expert testimony. 208-841-0035 or tedbohlman@me.com.

NURSE CONSULTANT

Medical/Legal Consulting. Available to assist with discovery and assistance in Medical/Injury/Malpractice cases; backed by a cadre of expert witnesses. You may contact me by e-mail renaed@cablone.net, (cell) (208) 859-4446, or (fax) (208) 853-6244. Renae Dougal, MSN, RN, CLNC, CCRP

OFFICE SPACE

CLASS "A" OFFICES

Two fully furnished Class A offices for lease, only two blocks from Ada County Courthouse. Both are interior offices with an executive desk, executive chair and two client chairs. Both are full service and include free parking, office supplies, use of large printer, copier, scanner, fax, receptionist service, janitorial service, access to conference rooms, and Wi-Fi. Rent negotiable. Contact Mark at (208) 424-9100.

ST. MARY'S CROSSING 27TH & STATE IN BOISE

Class A building. 1-3 Large offices and 2 Secretary stations. Includes: DSL, Receptionist/Administrative assistant, conference, copier/printer/scanner/fax, phone system with voicemail, basic office & kitchen supplies, free parking, janitor, utilities. Call Bob at (208) 344-9355 or by email at: drozdarl@drozdalaw.com.

OFFICE SPACE

KEY BUSINESS CENTER ADDITIONAL SINGLE USE OFFICES! NOW AVAILABLE!!

KBC is now offering BEAUTIFUL NEW FURNISHED offices & cubicle spaces at Key Financial Plaza! Parking included! Full Service! – all inclusive! On site health club and showers also available. Month-to-month leases. Join us in the heart of Downtown Boise! karen@keybusinesscenter.com; www.keybusinesscenter.com, 208-947-5895.

To place your classified ad
please call Bob Strauser
at (208) 955-8865 or email him
at rstrauser@isb.idaho.gov

What's John Doing Now?

Since 1972



John Glenn Hall Company
PO Box 2683
Boise ID 83701-2683
(208) 345-4120
www.jghco.com
jghall@jghco.com



Photography
Deposition Video
Depo Broadcasting
Medical Exam Video IME DME
Questioned Photo Video Examination

Idaho Legal Drafting

Brian M. DeFriez, J.D., Ph.D.

Research. Writing.
Legal Consulting.

208-459-9166

brian@idaholegaldrafting.com
www.idaholegaldrafting.com

Burr Investigations

H.D. Burr, Sr.

1455 Star Lane | Emmett, ID 88617
(208) 342-3463 | http://burrinternational.com



Your legal staffing
resource for part-time
and full-time attorneys and
professional employees.

*We are accepting applications and resumes
from candidates for all positions.*

Contact Merrily Munther
at (208) 853-2300 or 724-3838
info@idaholegalstaffing.com

Thomas Elmer Moss

1937 - 2018

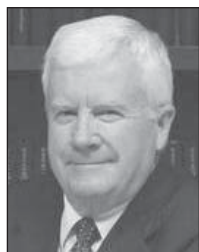
BLACKFOOT - Thomas Elmer Moss, 80, of Blackfoot, Idaho, former U.S. Attorney for Idaho, former Idaho Congressman, and former Bingham County Idaho Prosecutor, died of thyroid cancer Monday, July 30, 2018. He died in his home surrounded by his family.

Tom was born on October 14, 1937 in Idaho Falls, Idaho to J. Elmer and Florence Moss.

He is the fourth of six children who were raised on a small farm in Ririe, Idaho. While a youth, Tom was active in sports and school activities and was Ririe High School's Student Body President his senior year. In 1957, Tom served a 3-year mission for the LDS church in Japan. In 1960, Tom attended Ricks College (BYU Idaho) where he met Bonny Kay Hall. They were married in the Idaho Falls LDS Temple in 1961. Tom and Bonny were married for 44 years until Bonny passed away of brain cancer on September 4, 2006.

Tom attended the University of Idaho earning a Bachelors degree and a Juris Doctorate degree. After law school, Tom began a private practice in Southeastern Idaho. Tom held a general law practice in Blackfoot and was elected as Bingham County's Prosecuting Attorney. He served as prosecutor for Bingham County for over 30 years.

From 2000 to 2001, Tom served in the Idaho State Legislature. In 2001, President George W. Bush appointed Tom as the United States Attorney for Idaho. While U.S. Attorney, Tom



Thomas Elmer Moss

served on the Attorney General's Advisory Committee (AGAC) providing recommendations to the Attorney General on national policies, procedures and substantive issues facing the Country. Tom was later appointed as Associate Deputy Attorney General for Violent Crime in Washington D.C. until his retirement in 2010.

Tom married Susan Cleverley on November 13, 2010. They were sealed in the Idaho Falls LDS Temple on February 3, 2014. In 2012, Tom and Susan served as LDS Missionaries in Bermuda (They often complained about the weather). They later served a mission at the Bishop's Storehouse in Blackfoot, Idaho. They also served as Hospice Volunteers for Signature Hospice and as volunteers for We Honor Veterans Program. They provided companionship and support to patients and family members. Tom and Susan were loved and improved the lives of many patients they met.

Susan was lovingly and tirelessly by Tom's side aiding and caring for him. They were rarely apart and did not like it when they were.

Tom is survived by seven natural children: Shelly (Brian) Harrington of Blackfoot, Idaho, Michael (Andrea) Moss of South Jordan, Utah, Bradley (Candis) Moss of Idaho Falls, Idaho, Douglas (Lisa) Moss of Alpine, Utah, Mathew (Bobbi) Moss of Cody, Wyoming, Christopher Moss of Blackfoot, Idaho, and Rebecca (Tobias) Simmons of Rexburg, Idaho. He has 28 grandchildren, 4 great grandchildren, and 2 on the way. Tom is also survived by the following step-children: Natalie (Rich) Slater, of Fremont, Utah, Shane Robison of St. George, Utah, and Nick (Cindy) Robison of Idaho Falls, Idaho. He has 16 step grandchildren.

Reed Clements

1926 - 2018

SEDONA, AZ - Reed Clements died Wednesday, May 30, 2018, in Sedona, Ariz. He was 92.

Reed was born New Year's Day, 1926, in Lewiston to V.R. Clements and Gail Clements. He joined his older brother, Randy, and was followed by a younger brother, David.

Reed attended schools in Lewiston until he enlisted in the U.S. Army in July of 1943 at

age 17. He served as a radio operator; he called his radio the "dit-dot" machine. He saw combat in France and Belgium, for which he was awarded the Bronze Star for bravery in action.

He was honorably discharged with the rank of sergeant.

After discharge from the Army, Reed attended the University of Idaho, where he was a member of the Beta Theta Pi fraternity. He enrolled in the College of Law in 1947.

Reed married Barbara Spaeth in September 1948 in Jerome, Idaho. They lived in Moscow until Reed graduated from law school in 1950, when they moved to Lewiston, where Reed joined his father to form the firm of Clements and Clements. He practiced law in Lewiston until he retired in 1991. He was a fellow of the American College of Trial Lawyers.

Reed and Barbara had two daughters, Debbie and Betsy, who survive, and a son who died soon after he was born.

He was an active member of the Church of the Nativity (Episcopal), where he served as senior warden and received the Rector's Cross for his service.



Reed Clements

IN MEMORIAM

Reed was a skilled fly fisherman and tennis player and an outstanding golfer.

He retired from the practice of law in 1991, and he and Barbara moved to Scottsdale, Ariz. Barbara became ill and died of cancer in September of 1991.

Reed married Faye McCaffery in the spring of 1994 and they lived in Arizona until her death in June of 2009. He continued to reside in Sedona, Ariz., until his death.

Reed is survived by his brother, David, of Issaquah, Wash.; his daughters, Deborah J. Riedle of Lewiston and Elizabeth K. Reynolds of Boise; granddaughters Megan Riedle and Whitney Ruddell; and great-grandson Spencer Ruddell of Lewiston.

Steven Lee Wetzel

1957 - 2018

IDAHO FALLS - Steven Lee Wetzel, 61, of Idaho Falls, passed away August 4, 2018, at Eastern Idaho Regional Medical Center.

Steven was born May 17, 1957, in Rigby, Idaho, to Jim Wetzel and Maureen E. Wetzel. He attended Madison High School, Ricks College and then earned a degree in Business finance from Brigham Young University. Following graduation, Steven attended

the University of Idaho where he received his Juris Doctorate Degree. As a busy father and law student, Steven was a member of the Idaho Law Review, alternate member of the moot court team, and listed in *Who's Who Among American Law Students*. Steven went on to practice as an attorney and managed his own legal practice for nearly thirty years. He took great pride in his work and always strived to do his very best for his clients.

On December 8, 1979, he married his sweetheart of 38 years, MarJan Schwendiman in the Idaho Falls LDS Temple. Together they were blessed with four children, Trevor, Rissa, Casey, and Carson.

An active member of The Church of Jesus Christ of Latter-day Saints, Steven served in various capacities throughout the church including: Elder's Quorum president, Sunday School president, first counselor in the Young Men's, and ordinance worker in the Idaho Falls Temple. He treasured the time he spent serving as a Bishop and High Councilman at BYU-Idaho. Most recently, he was



Steven Lee Wetzel

blessed to serve as the Priest Quorum advisor, and loved the young men he associated with.

Family life was Steven's greatest joy and he was a regular fixture at the various ball games, school events, and performances for each of his children over the years. Whenever there was a problem to be solved or a question to be answered, his children knew that they could always call dad for the answer. Friends and family describe him as kind and constantly serving those around him. He and his family spent time every summer in Yellowstone National Park, where he would always spot the best wildlife. He loved winters on his snowmobile and relaxing at the cabin in Island Park. Many weekends in the spring and fall were spent out on the trail with his faithful horse, Tex, in search of a beautiful view.

Steven will be dearly missed by his loving wife, MarJan Wetzel of Idaho Falls, ID, son, Trevor Wetzel of Sandy, UT, daughter, Rissa (John) Harper of Scottsdale, AZ, daughter, Casey (Nathan) Fielding of Meridian, ID, son, Carson Wetzel of Kingman, AZ, parents, Jim and Maureen Wetzel of Rexburg, ID, brother, David (Paulette) Wetzel of Ammon, ID, sister, Marilyn (Gary) Grover of Rexburg, ID, and 6 grandchildren.

MIKE SPINK MEDIATION



208.388.1000
251 E Front Street, Suite 200
Boise, Idaho 83702

www.spinkbutler.com

•Practice limited to Mediation/ADR•

Member, National Academy of Distinguished Neutrals
www.nadn.org/michael-spink

Legal Research Services



IDAHO LEGAL RESEARCH
Consulting & Services LLC



Teresa Zywicki, J.D.

Legal Research Specialist ♦ 30 years experience
Powered by Westlaw® ♦ Sample work on request
(208)724-8817 teressazywicki@gmail.com

**Parsons Behle & Latimer
welcomes Greener Burke Shoemaker
attorneys as part of its Boise office**

BOISE - Parsons Behle & Latimer (PB&L) is pleased to announce that five Greener Burke Shoemaker PA (GBS) attorneys joined PB&L's Boise office Aug. 1, 2018.

GBS founders Richard H. Greener, a fellow of the American College of Trial Lawyers and member of the American Board of Trial Advocates (ABOTA); Christopher C. Burke, who has served on the Idaho Federal Court panels of approved arbitrators and mediators and on the Idaho Supreme Court panel of approved mediators; and Fredric V. Shoemaker, who has served as a hearings officer for the State of Idaho, will join PB&L as shareholders. Attorneys Jason R. Mau and Slade D. Sokol will join the firm as associates.

Brook Bond, PB&L's Boise office managing shareholder said, "GBS's depth of trial experience in matters throughout the Western region is impressive and will specifically enhance PB&L's extensive range of specialization in complex litigation. GBS has promoted a culture that places high value on long-term client relationships, as has Parsons Behle &

Latimer. This is a natural fit for all of us."

"Our team is honored to join the Parsons Behle & Latimer family. Combining with a regional firm provides our clients with a much broader and deeper level of legal expertise. This, coupled with our shared value of providing excellent client service and commitment to legal excellence, creates the ideal platform for the firm to continue its growth in the Intermountain West," said GBS founder, Richard Greener.

The addition of GBS lawyers expands PB&L's Boise legal team to 26 attorneys and will provide clients with additional experience in the areas of banking and finance; business and corporate law; complex civil and commercial litigation; employment and labor; environmental and natural resources; intellectual property litigation; insurance defense; medical malpractice and pharmaceuticals; products liability; and real estate law.

**Nevin, Benjamin, McKay &
Bartlett welcomes new lawyer**

BOISE - Mike French has returned to Idaho and joined Nevin, Benjamin, McKay & Bartlett as an associate attorney where she will focus her practice on criminal defense, civil litigation, and representation of individuals before the Idaho Commission of Pardons and Parole. Ms. French is a

2008 summa cum laude graduate of the University of Idaho College of Law and she clerked for Justice Joel Horton at the Idaho Supreme Court. She previously worked as a Deputy Public Defender in Canyon County before taking a position out of state where she worked in labor and employment law. Ms. French was recently re-admitted to the Idaho State Bar and she is serving on the Legislative Committee of the Idaho Association of Criminal Defense Lawyers.

Ms. French grew up in Idaho Falls and graduated summa cum laude from Boise State University. She earned a Master's Degree from Queen's University in Belfast, Northern Ireland. She has previously argued before the Idaho Supreme Court and Ninth Circuit Court of Appeals.

**Coeur d'Alene School Board
appoints attorney as new trustee**

COEUR D'ALENE - The Coeur d'Alene School District Board of Trustees voted Tuesday to appoint Jennifer Brumley to fill a vacancy seat on the school board.

Brumley will serve the rest of the term of Dave Eubanks, who stepped down from the board in July. She was one of three applicants for the position interviewed by the trustees during a special board meeting Tuesday evening.

"Jennifer Brumley demonstrated a keen understanding of the role of trustees and broad knowledge of our community and school system. She



Richard Greener



Jason Mau



Mike French



Christopher Burke



Slade Sokol



Fredric Shoemaker

will serve our families, students and school staff well," said Casey Morrisroe, the board chairman.

Brumley said her top three objectives as trustee will be to develop and adopt a 10-year plan for land acquisition to build another elementary school as well as new middle and high schools; to plan and implement bonds to have the funding necessary to build schools and develop the needed infrastructure for those schools over the next 10 years; and to develop a strategy to increase test scores on the state assessments and the SAT.

Brumley is a family law attorney and partner with Amendola Doty & Brumley, PLLC. She graduated from the University of Idaho in 1996 with a Bachelor of Science degree in communications and a teaching certificate in speech and journalism. She earned her law degree in 1998 from the University of Idaho School of Law.

Brumley's father was a school administrator and her mother was a health teacher in the Coeur d'Alene district. She graduated from Coeur d'Alene High School in 1992. She is married and has two children enrolled in the district.

Four join Concordia University School of Law

BOISE - Concordia University School of Law announced four new faculty members to their campus.

Brenda Bauges has joined Concordia University School of Law as an



Jennifer Brumley

assistant professor and director of externships and pro bono programs. Bauges has practiced a wide range of law, including civil, criminal and administrative law. She served in the criminal division with the office of the Idaho Attorney General, as a private attorney, and as an assistant attorney with the City of Boise.

John Brown is the new associate dean of admissions at the law school. He recently served as associate dean for law school admissions and student affairs at the Mississippi College School of Law. He also worked in the admissions office at Mercer University School of Law. He is experienced in teaching criminal law, legal analysis and appellate advocacy.

Ann Callanan has joined the team as development officer. Previously, Callanan worked for 10 years with the American Red Cross of Greater Idaho, where she was engaged in biomedical and chapter services.

Summer Chandler has also joined



Brenda Bauges



John Brown



Ann Callanan



Summer Chandler

the faculty. Previously, she practiced in large national and international firms where she focused on business bankruptcy and litigation related to commercial real estate. She recently served as a visiting assistant professor at the Georgia State University College of Law.

Partner, two associates added at McConnell Wagner Sykes & Stacey

BOISE - McConnell Wagner Sykes & Stacey PLLC ("MWSS+") is pleased to announce that Chad Nicholson is now an equity member of the firm. We have also hired Gary Greenlee and Lars Lundberg as associates. Mr. Nicholson will continue to focus on employment, personal injury, medical malpractice, and business litigation. Mr. Greenlee comes to MWSS+ after practicing insurance litigation for nearly twenty years at a large regional firm in Cleveland, Ohio. His practice will continue to focus on insurance and commercial litigation. Mr. Lundberg recently completed a two-year clerkship for the Honorable Warren E. Jones of the Idaho Supreme Court. His practice will focus on commercial litigation.



Chad Nicholson



Gary Greenlee



Lars Lundberg



Lisa Barini-García

September 24, 1960 - March 17, 2018

Advocate of those in need, mother, sister and great friend, Lisa Antonia Barini-García, 58, of Twin Falls, Idaho passed away at her home on March 17, 2018, after a struggle with cancer.

Lisa was born September 24, 1960, in New York City, New York to Luis Barini Sr and Elba Barini (Romero) and was raised in Queens, New York. She graduated from Andrew Jackson High School in 1979.

She received an undergraduate degree in political science from SUNY Stony Brook in 1984 before attending Antioch School of Law in Washington DC and graduating in 1987.

In 1988 she took a job as Deputy Public Defender in Twin Falls County and was Chief Deputy by the time she left in 1993 to join the law firm of Roy & Neilson, now Roy, Neilson, Barini García, Platts & McGee. She worked primarily in family, criminal and immigration law.

Lisa was not only one of the first female attorneys in the Magic Valley but the first attorney of color in the area. She was known as a fierce defender of her clients and an excellent trial attorney.

“Lisa was a hard charging advocate who had a special spot for those she felt were being left out of our criminal or civil legal system,” said Hon. Chief Justice Roger S. Burdick.

Brent Nielson Sr. said Lisa was “a very generous person who served those in need and who was willing to give of her time and talents to lift those less fortunate than herself.”

On August 11, 1994 she and attorney Patrick David Brown married in a ceremony in Manhattan, New York. She gave birth to Savina Magdalena Barini-Brown on October 17, 1996, and later on March 4, 2000, to a son Julen Albizu Barini-Brown. Patrick and Lisa later divorced in 2008.

Lisa, a lifelong Catholic, volunteered for Saint Edwards Catholic Church, Catholic Charities, Catholic Legal Immigration Network and volunteered for decades as counsel for Twin Falls’ La Posada helping hundreds with their immigration issues. In 1997 she was awarded the Denise O’Donnell-Day Pro Bono Award. She also served on the Youth Alternative Court for the Fifth Judicial District from 1995-2009 as Judge Pro Tempore, and as a member of the Fifth Judicial District’s Magistrate Commission.

“Lisa brought passion and fire to everything she did. Her absence creates a hole in my life.” said her best friend A. Elizabeth Burr-Jones of Rupert.

More recently she served on the Board of Directors of Xavier Charter School until she stepped down for health reasons.

She is survived by her parents Luis Sr and Elba Barini-García of Coral Springs Florida, sister Magdalena Barini-García of Great Falls, Virginia, brother Luis Barini Jr, of Coral Springs Florida, daughter Savina (attending Howard University in Washington DC) and son Julen (a senior at Xavier Charter School in Twin Falls, Idaho).

Idaho Academy of Leadership for Lawyers Announces 2018 - 2019 Class

The Idaho Academy of Leadership for Lawyers proudly announces their 2018-2019 class. Fourteen participants have been selected which ties with the 2017-2018 class as the largest in the Academy's eight year history. The diverse makeup of the class features attorneys from Coeur d'Alene to Pocatello who encompass an array of practice areas. Participants have pursued legal careers in the fields of higher education, local, state and federal government, private practice and public advocacy. Their legal experiences range from 5 to 18 years of admission into the Idaho State Bar. Participants will meet in Boise over five sessions for this interactive leadership training program designed specifically for lawyers. The first session will take place September 28 & 29 with Graduation set for May 3, 2019. Special thanks to the Fourth District Bar Association, the Idaho State Bar Taxation, Probate & Trust Law Section and the Idaho Women Lawyers, Inc. for their generous financial support of the Academy. For more information please contact Idaho State Bar Deputy Executive Director Mahmood Sheikh at (208) 334-4500.



Christopher S. Atwood



Ruth A. Coose



James E.M. Craig



Jane C. Gordon



Natalie Greaves



Marie Callaway Kellner



Chelsea E. Kidney



Alycia T. Moss



Richard W. Roberts



Lisa M. Schoettger



Kimberly E. Smith



Nicholas A. Warden



Carole I. Wesenberg



Cassandra C. Wright

Idaho Academy of Leadership for Lawyers (IALL) Mission

The mission of the Idaho Academy of Leadership for Lawyers (IALL) is to promote diversity and inspire the development of leadership within the legal profession. IALL will bring together lawyers from different practice areas with a variety of backgrounds from all across Idaho. IALL will build upon the participant's leadership skills and promote leadership experiences by:

- Teaching accepted and recognized leadership skills and philosophies;
- Fostering professional relationships within the Idaho legal community and the greater community;
- Promoting professional obligations and community service; and
- Raising awareness among lawyers of the broad range of issues and challenges facing leaders today.

The 2018 - 19 IALL Class

Christopher S. Atwood
United States Attorney's Office

Ruth A. Coose
Canyon County Prosecutor's Office

James E.M. Craig
University of Idaho Office of General Counsel

Jane C. Gordon
Parke Gordon, LLC

Natalie Greaves
Boise Law Group, PLLC

Marie Callaway Kellner
Idaho Conservation League

Chelsea E. Kidney
Idaho Office of the Attorney General

Alycia T. Moss
Moss Immigration Law, PC

Richard W. Roberts
Roberts Law, PLLC

Lisa M. Schoettger
Roy, Nelson, Barini-Garcia, Platts & McGee

Kimberly E. Smith (*deferred from 2017-18 class*)
Boise City Attorney's Office

Nicholas A. Warden
Idaho Office of the Attorney General

Carole I. Wesenberg
Ninth Circuit Court of Appeals

Cassandra C. Wright
Canyon County Public Defender's Office

THE HAWLEY TROXELL WAY

SERVICE AND DISTINCTION



On August 18, 1968, Craig Meadows began his legal career at Hawley Troxell. It continues to this day, 50 years later. Craig became an equity partner in Hawley Troxell and one of Idaho's premier attorneys. Craig served numerous national and local clients and also the state bar and state and federal court systems. He has been President of the Idaho State Bar and lawyer representative to the United States 9th Circuit Judicial Conference. Over the years he has been recognized by American College of Trial Lawyers, Best Lawyers in America, and recipient of the Idaho State Bar Distinguished Lawyer Award, and the Idaho State Bar Professionalism Award. He served on numerous boards and currently serves on Idaho Public Television and Idaho Law Foundation boards. Please join us in congratulating Craig on his 50th anniversary.

BOISE / COEUR D'ALENE / IDAHO FALLS / POCATELLO / RENO | Call 208.344.6000 or visit HawleyTroxell.com

RITTI DISPUTE RESOLUTION PLLC



Gene Ritti has over three decades of commercial litigation experience in private practice and as in-house counsel.

His firm is limited exclusively to ADR services.

www.rittidisputeresolution.com

ritti@rittidisputeresolution.com

208.484.2851

Legal Citation Part III: Using Citation to Convey Textual Meaning

Tenielle Fordyce-Ruff
Jason Dykstra

This month we will complete the citation trifecta. We've covered the language of citation and tips and tricks to create correct citations. Let's turn now to how to link citation to text to convey additional meaning to the reader.

Remember, at our core, attorneys are advocates, and one of the purposes of citation is to prove to the reader that she can trust your research—to prove that the law is what you state it is and that it works the way you've stated it does.

In addition to understanding the language of citation and using the correct form, citation can also increase the level of trust your reader will have in your positions in two ways: signals and explanatory parentheticals.

Citation signals

Signals provide the reader with great clues to the legal analysis underlying your position. Both major citation guides include a section on signals and agree on what they mean and how to use them.¹ Italicize signals and capitalize the first letter of signals that begin a citation sentence.

Signals are broken down into categories based on the type and degree of support or contradiction the authority provides for the contention in the text.

Indicating the strongest support: No signal

The easiest and most common signal is no signal at all!² Preface a citation with “no signal” signal when the authority provides direct support of the proposition in the textual sentence, is the source of a direct quote, or is the source of a general reference.



In practice, this means that no signal indicates the strongest degree of support.

Signals indicating support

While “no signal” technically indicates support, other signals do as well. Use these signals when you need to convey a more nuanced type of support for the textual proposition. Signals help the legal writer indicate varying types and differing degrees of support.

“E.g.” is an abbreviation for *exempli gratia* which means “for example.” It tells the reader that the cited authority is merely an example of many authorities that stand for the same proposition. This signal can also be combined with other signals: *but see, e.g.*

“Accord” is used when the text quotes or refers to the first citation in a citation sentence, but other authorities also lend support to the proposition in the textual sentence. It can also be used to let the reader know the law of one jurisdiction is essentially the same as that of another.

Remember, at our core, attorneys are advocates, and one of the purposes of citation is to prove to the reader that she can trust your research—to prove that the law is what you state it is and that it works the way you've stated it does.

“See” is used to let the reader know the cited authority provides only implicit support for the textual proposition. In other words, the reader would need to make an inference to get from the authority to your proposition. Consider using

an explanatory parenthetical with a “see” citation to help the reader follow the inference you want them to make.

“See also” lets the reader know one of two things. One: that the cited authority also provides support for the textual proposition. Or two: that the cited authority is in some way distinguishable from the other cited authority in the citation sentence. (Note, you should almost always use an explanatory parenthetical if you want to convey the idea that the two authorities are distinguishable.)

“C.f.” tells the reader that the cited authority supports the textual proposition only by analogy. This is another signal that should almost always be used with an explanatory parenthetical.

Compare: The signal drawing a comparison

We all know that the law can be messy and courts can reach different decisions on very similar facts. In such instances, you might want to let the reader know about the different results from the one you’ve stated in your text. In those instances, use “compare...with...” to draw out the different results for the reader. And of course, consider using an explanatory parenthetical to help guide the reader through the sources.

Signals indicating contradiction

Just as authorities can direct support, implicitly support, and support by analogy a proposition, authorities can also directly contradict, implicitly contradict, and contradict by analogy a proposition.

“Contra” lets the reader know that the cited authority directly contradicts the textual proposition.

“But see” tells the reader that the cited authority implicitly contradicts the textual proposition.

Just as authorities can direct support, implicitly support, and support by analogy a proposition, authorities can also directly contradict, implicitly contradict, and contradict by analogy a proposition.

And “But c.f.” is used to let the reader know the cited authority contradicts by analogy the textual proposition.

Signals indicating background material

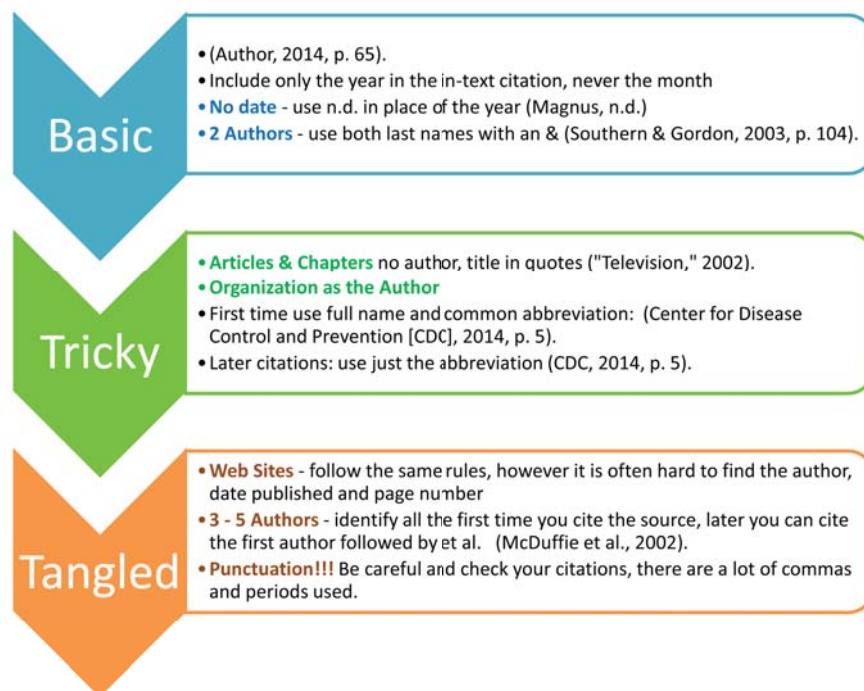
At times, the legal reader doesn’t need to understand every nuance or intricacy of an authority, but she might appreciate some background information. In those instances, use

“see generally” to let her know that the cited authority provides helpful background information for the textual proposition. It would also be helpful to the reader, when using “see generally” to include an explanatory parenthetical.

Explanatory parentheticals

In addition to using signals to help the reader understand your legal analysis, parentheticals can help the

APA In-Text Citations



reader access additional detail about a cited source. Parentheticals consist of text enclosed in parentheses that conveys additional information about the cited source or text. For example, parentheticals commonly add information about a particular source such as the author of the opinion, (Burdick, C.J.), or provide details about the text cited. This added information about the text might include noting omissions from quoted materials (citations omitted) or identifying the cited text as dicta, a concurrence, or a dissenting opinion (Horton, J., dissenting).

Explanatory parentheticals give the legal writer the opportunity to concisely provide additional information to the reader explaining the relevance of the cited source. Generally, explanatory parentheticals follow the date parenthetical, separated by a single space. The common format for an explanatory parenthetical, the participle parenthetical, begins with a gerund (an “-ing” word) such as “holding” to concisely add additional information about the cited case. Because a participle phrase is not a complete sentence, do not capitalize the gerund or include a final punctuation inside the parentheses. For example: *Clark v. United States*, 289 U.S. 1, 15 (1933) (noting the fraud exception to the attorney-client privilege).

The key to crafting an effective explanatory parenthetical is distillation, omit extraneous words to help focus the reader on the most relevant details. Focus on brevity and be wary of long quotes, particularly those that require alteration with ellipses and brackets to fit into a parenthetical. But explanatory parentheticals can provide the perfect place to integrate persuasive, pithy quotes into your legal analysis.

When the parenthetical includes a complete sentence quoted from the source, capitalize the first letter

and include the final punctuation within the parenthetical. For example: *Clark*, 289 U.S. at 15 (“The privilege takes flight if the relation is abused.”). If you quote only a phrase from a source, format the parenthetical as a participle parenthetical.

As part of a string cite, explanatory parentheticals can effectively demonstrate that the law is well-settled, for example that a rule established long ago remains current. If a legal issue is unprecedented in your jurisdiction, a string cite can show the reader that the rule you advocate has been applied by other jurisdictions faced with similar legal issues. A string cite can also highlight different rules adopted by courts in various jurisdictions. Just remember to separate the cases in your string cites with semi-colons and do not use “and” before the last case in a string cite. Also, remain mindful that the real estate in your brief consumed by a string cite can quickly outstrip the reader’s attention span. So reserve string cites for rules that are either

well-settled or remain unprecedented in your jurisdiction.

Conclusion

Using signals and explanatory parentheticals can focus the reader’s attention on legally relevant details and bolster the persuasion of your legal writing. Together, signals and explanatory parentheticals in your citations can raise the level of trust your reader will have in your legal arguments.

Endnotes

1. This article provides only a useful overview of signals. For a more detailed look at the technicalities of using signals, such as the font of punctuation, see Coleen M. Barger, *ALWD Guide to Legal Citation* rule 35 (6th ed. 2017) or The Columbia Law Review et al., *The Bluebook: A Uniform System of Citation*, rule 1 (20th ed. 2015).
2. Yes, the absence of a signal before a citation is a signal itself. Coleen M. Barger, *ALWD Guide to Legal Citation* 300 (6th ed. 2017); The Columbia Law Review et al., *The Bluebook: A Uniform System of Citation* 58 (20th ed. 2015).

Tenielle Fordyce-Ruff is an Assistant Professor of Law and the Director of the Legal Research and Writing Program at Concordia University School of Law in Boise. She is also Of Counsel at Fisher Rainey Hudson. You can reach her at tfordyce@cu-portland.edu or <http://cu-portland.fice.com>.



Jason G. Dykstra teaches Legal Research and Writing at Concordia University School of Law. His practice focuses in the areas of business litigation, estate planning and business transition planning.





KOURTNEY LAYTON

MRC, CRC, LVRC, ABVE/F, IPEC, CLCP

PERSONAL INJURY - FAMILY LAW - SOCIAL SECURITY - WORKER'S COMPENSATION



- VOCATIONAL REHABILITATION SPECIALIST
- VOCATIONAL ANALYST
- CERTIFIED LIFE CARE PLANNER

10 YEARS OF EXPERIENCE IN LITIGATION SUPPORT AND EXPERT WITNESS SERVICES

KOURTNEY LAYTON & ASSOCIATES

Idaho Office: PO Box 187 Arco, ID 83213
Utah Office: 5406 W. 11000 N.,
Suite 103, Box #443 Highland, UT 84003

Telephone: (855) 831-8880 ext 1
Fax: (855) 831-8880
kourtneylayton.com

Bradford S. Eidam



Representing Injured Workers
throughout Idaho

- Workers' Compensation Specialist
certified by the I.T.L.A.
- Past President,
Idaho Trial Lawyers Association

208-338-9000

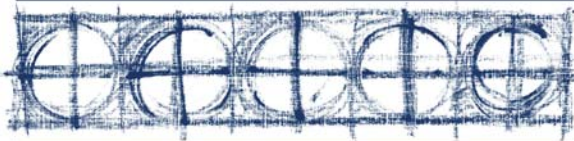
300 E. Mallard Drive, Suite 145
P.O. Box 1677
Boise, ID 83701
www.eidamlaw.com



LexisNexis

Martindale-Hubbell

Peer Review Rated
FOR ETHICAL STANDARDS AND LEGAL ABILITY™ 2010
Bradford S. Eidam



Pro Bono Work and the Time-Crunched Attorney

Sue Pierson

Idaho Volunteer Lawyers

Program Director

Pro bono service is valuable not only for the life changing benefit it provides to clients, their families and the community, but also because engaging in pro bono work increases attorney wellbeing. Attorneys who perform pro bono service report that “helping others with their legal work makes them feel reenergized and recommitted to the law. Pro bono work [...] reminds attorneys they are practicing law to help people.”¹ Through its website, idahoprobono.org, IVLP seeks to connect attorneys with gratifying pro bono experiences by encouraging them to “Make the Time. Make a difference.” This tag line is meant to be inspiring, but as the kids head back to school and regular schedules ramp up, I worry that exhorting attorneys to “make the time,” might not always engender the positive reaction IVLP anticipates. Time is the one thing most attorneys do not have enough of and asking them to find more of it could be stress-inducing.

In my experience, most attorneys believe in pro bono service and want to contribute to the greater good. Many attorneys I contact about full-representation cases express sincere regret their current obligations make representation untenable. Others take on a case and discover, through no fault of their own, that the demands of their paying job make it impossible to manage a case outside of that workload. They muddle through but vow not to do that to themselves again. The reality of the perpetually time-crunched attorney is unlikely to change, but that does not mean those who cannot

take on full-representation cases do not have an important role to play in improving access to justice for low-income Idahoans. IVLP along with various partners operates several legal clinics throughout the state and would like to start more. To keep its clinics, while initiating new ones, IVLP is in need of attorneys who are willing to donate an hour or two of their time a few times a year to staff a community legal clinic.

Legal clinics are an extremely important piece of the legal services landscape. They provide an opportunity for low-income individuals to meet with an attorney one-on-one in a situation where the client knows the attorney is there to offer help with no strings attached. Legal clinics help people understand their legal problems and obtain information about what they can and cannot do to tackle them.

Attorneys often worry they do not have the experience to address the type of questions that come up at clinics. However, the most important skill for a legal clinic attorney is the ability to listen with compassion. Legal clinic participants understand their problem will not be solved at the clinic; they are seeking advice and information from a professional who understands the legal system far better than they do. To have an attorney spend time with them free of charge is a great relief and often, the first step to an improved situation.

After a recent legal clinic at the Interfaith Sanctuary, a Boise homeless shelter and service provider, volunteer attorney Shannon Romero perfectly expressed the value of these clinics to the participants and the attorneys:

To have an attorney spend time with them free of charge is a great relief and often, the first step to an improved situation.

“I love volunteering at clinics like Interfaith because they serve individuals who do not otherwise have access to legal services. People with limited financial means are routinely denied access to legal services and remedies because of their financial status, but are disproportionately subject to the burdens of the legal system. Most days, I can help someone just by referring him or her to another agency or another attorney who can help with their specific problem. Often, people just want to have their stories heard and their concerns validated. Even if I can’t help someone because their problems have no legal solution or remedy, I can provide a sympathetic ear. I’ve volunteered at legal clinics like Interfaith in Salt Lake and Boise since 1999, and it is some of the most gratifying work I do.”

Please sign up to participate in legal clinics by going to idahoprobono.org.

Endnotes

1. <https://www.jaffepr.com/blog/5-reasons-why-pro-bono-win-win-firms-and-attorneys>



William C. Roden

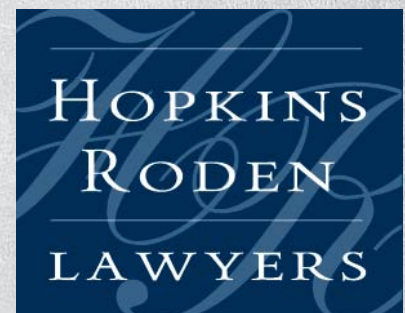
After 65 years of remarkable professional achievement Bill Roden has elected to retire from Hopkins Roden. Bill joined the firm as a partner in 1994, and transitioned to an of counsel role in 2006.

Bill combined an active law practice with his work on behalf of diverse national and state clients concerning major legislative and administrative matters before the Idaho legislature and local and state administrative agencies for most of his career. His role has been not only as a legislative and public affairs advisor to his clients, but as the primary draftsman of significant and complex legislation, including the Idaho Telecommunications Act of 1988, which achieved substantial regulatory reform for the telecommunications industry in Idaho.

Bill has been called “a dean among Idaho lobbyists,” and since 1992, the biennial editions of The Idaho Political Almanac have ranked and reported that he “routinely ranks first in surveys of legislators asked who is the most influential lobbyist at the Statehouse.” The 2000 Idaho Yearbook Directory, published by Ridenbaugh Press and edited by Randy Stapilus, which admits that its list of Idaho’s Influential 100 Idahoans is “an unscientific, thoroughly subjective list, with some claim to reasonable, ballpark validity” listed Bill in the top 25 of that group for the third year in a row and stated that he was “widely regarded as the single most effective lobbyist in Boise.”

Bill is a lifelong resident of Idaho, and a graduate of the University of Idaho, where he received degrees in political science and law. Following his admission to practice law in Idaho, he served as Special Agent, Counter-Intelligence Corps, United States Army for two years. Upon returning to Idaho, he served one year as an Ada County Deputy Prosecuting Attorney, and two years as an Assistant Attorney General for the State of Idaho, where he was counsel for the Department of Law Enforcement, the Department of Finance, and the Public Utilities Commission. In 1958, he was elected to the office of Prosecuting Attorney for Ada County. He entered the private practice of law in 1960, and was also elected to the Idaho Senate, representing Ada County, Idaho. He served four terms in the Senate, during which time he also served as Assistant Majority Leader and as Senate Majority Leader. He has served in a number of civic organizations, and has served on the Board of Directors of the Friends of the Idaho Historical Museum, Buy Idaho, Inc., and the Idaho Tax Foundation.

His friends and colleagues at Hopkins Roden bid him farewell with the greatest respect and their very best wishes.





Keynote speaker Dan Bowling III of Duke University School of Law explains how living life with an optimistic approach - "above zero" - can affect one's overall wellbeing.

Photos by Lindsey Welfley

2018 Annual Meeting Provides CLEs, Networking, Recognition and Fun

Mahmood U. Sheikh

The 2018 ISB Annual Meeting kicked off Wednesday evening, July 18, with the President's Reception and the Distinguished Lawyer & Jurist Awards Dinner. The recipients of the 2018 Distinguished Lawyer Award were Edward D. Ahrens of Boise, Randall C. Budge of Pocatello and Peter C. Erbland of Coeur d'Alene. The Distinguished Jurist Award was presented to Judge N. Randy Smith of the Ninth Circuit Court.

Thursday morning, July 19, officially began with the Plenary Session led by Idaho State Bar President Kent Higgins of Pocatello. Idaho Chief Justice Roger Burdick gave the "State of the Courts." The keynote presentation was given by Daniel S. Bowling III, Senior Lecturing Fellow at Duke University School of Law and former Coca-Cola Enterprise Senior Vice President of Human Resources. 4.5 CLE credits were offered, 1.5 CLE credits in the morning session, and 3.0 CLE credits in the afternoon session. At Noon, the Idaho State Bar and Idaho Law Foundation Service Awards were presented. Seven lawyers, two judges and one non-lawyer who have provided volunteer time to support the work of the Bar and the Law Foundation were honored. The Outstanding Young Lawyer Awards were presented to Catherine A. Freeman of Boise and Tyler S. Rounds of Caldwell. When the awards program concluded the Idaho Law Foundation, Inc., held their Annual Meeting led by President

Craig L. Meadows of Boise. The late afternoon session featured the annual "Lessons from the Masters" CLE. The presenters for the 2018 installment were former Idaho Chief Justice Jim Jones of Boise, R. Keith Roark of Hailey and W. Marcus W. Nye of Pocatello.

During the afternoon ice cream sundae break, representatives from The Advocates, a non-profit in Hailey, Idaho, whose mission is to teach people of all ages how to build and maintain healthy relationships were on hand to thank attendees for their generosity of donated new school supplies for grades K-12 in the Wood River Valley. A dryer box load was filled and donated along with multiple cash donations. The Milestone Celebration Reception: Celebrating 25, 40, 50, 60, & 65 Years of Admission was held later that evening.

An additional 5.5 CLE credits were offered to conference participants on Friday, July 20. Attendees enjoyed the Social Networking BBQ during the lunch hour. The Appellate Practice Section received the Section of the Year Award. The *Advocate* Awards were also presented. President Higgins passed the gavel to incoming president Mike Howard of Coeur d'Alene. The flagship CLE "LGBTQ and the #MeToo Movement: The Modern Civil Rights Movement" was presented Friday afternoon.

The Annual Meeting officially adjourned at 3:20 p.m. on Friday afternoon.



Admitted to the ISB for 50 years, Walt Bithell tells Bar Commissioner David Cooper and attendees the story of his best law school outfit at the Milestone Celebration Reception.



"This was my third Annual Meeting in as many years and I was reminded:

1) how small and collegial our Bar really is; and 2) how this event recharges my interest in the profession. Parroting Pete Erbland's closing comments in accepting the Distinguished Lawyer award; 'I think I'm going to like practicing law in Idaho.'"

— *Michael T. Howard,*
President, Idaho State Bar Board of Commissioners
Coeur d'Alene, ID

2018 ANNUAL MEETING FUN FACTS

Attendance

| | |
|-----------------------------|------------|
| • Attorneys/Judges | 252 |
| • Non-Idaho Attorneys | 11 |
| • Exhibitors | 26 |
| • Spouse/Guests | 69 |
| • Other | 4 |
| • Speakers | 8 |
| • ISB Staff | 8 |
| Total | 378 |

Attendance by Gender



Attendees by Law School



119



11



8



8



7



5



5



Remaining Law Schools
89



The 2018 Annual Meeting kicks off on the patio with conversation and laughter at the President's Reception.



"As an attorney newly admitted to Idaho, I could not have picked a better event to attend. The ISB Annual Meeting was packed with useful information, friendly welcoming people, and great food. The best part was connecting with attorneys in various practice areas from different parts of Idaho."

**— Jin Hee Park
Carlsbad, CA**

2018 ANNUAL MEETING FUN FACTS

Demographics of Idaho Attorney/Judge Attendees

| Decade of Admission | |
|---------------------|----|
| 1950's | 1 |
| 1960's | 19 |
| 1970's | 37 |
| 1980's | 39 |
| 1990's | 42 |
| 2000's | 59 |
| 2010's | 55 |

| Judicial District | |
|-----------------------------------|-----|
| Out of State | 12 |
| 1 st Judicial District | 14 |
| 2 nd Judicial District | 13 |
| 3 rd Judicial District | 10 |
| 4 th Judicial District | 128 |
| 5 th Judicial District | 37 |
| 6 th Judicial District | 19 |
| 7 th Judicial District | 19 |

| Decade of Birth | |
|-----------------|----|
| 1920's | 1 |
| 1930's | 8 |
| 1940's | 45 |
| 1950's | 59 |
| 1960's | 40 |
| 1970's | 62 |
| 1980's | 36 |
| 1990's | 1 |

| Admitted Year with Most Attendees | |
|-----------------------------------|----|
| 2016 | 13 |
| 2012 | 13 |
| 2009 | 10 |
| 1968 | 10 |
| 2000 | 9 |
| 1997 | 9 |
| 1978 | 9 |
| 1985 | 8 |

Annual Meeting Statistics

Highest number of years admitted to ISB: 60 years
 Average number of years admitted to ISB: 23 years
 Least number of years admitted to ISB: Less than one year, admitted on May 2018 (3)

Oldest attendee: Age 89
 Average age of attendees: Age 55
 Youngest attendee: Age 28



Craig Meadows of Boise presents this year's Distinguished Jurist Award to the Honorable N. Randy Smith of Pocatello at the Distinguished Lawyer & Jurist Awards Dinner.

2018 ANNUAL MEETING FUN FACTS

CLE Attendance

774 total attendees (13 programs produced; total of 21.5 hours of CLE programming)

| | |
|--|-----|
| <i>Lessons from the Masters</i> | 127 |
| <i>How to Settle Any Case Using Mediation</i> | 101 |
| <i>LGBTQ and the #MeToo Movement</i> | 94 |
| <i>Justice Neil Gorsuch: Two Years on the Courts</i> | 93 |
| <i>Legality of Racial & Partisan Gerrymandering</i> | 63 |
| <i>Will the Cake be Baked?</i> | 60 |
| <i>Arbitration Law and Practice</i> | 49 |
| <i>Advising Your Clients About Reverse Mortgage</i> | 47 |
| <i>E-Filing in Idaho</i> | 41 |
| <i>Professionalism Perspectives from Young Lawyers</i> | 34 |
| <i>2018 Charitable Tax Update</i> | 29 |
| <i>Working the Wickets: Navigating Veterans Benefits</i> | 19 |
| <i>Appeal Bonds</i> | 17 |



The 2018 ISB Annual Meeting provided an excellent opportunity to celebrate and interact with the attorneys and judges who epitomize the values of the Idaho Bar. The Meeting also attracted knowledgeable speakers who addressed the most current issues facing our legal community. It is impossible to leave without feeling a sense of pride in belonging to the Idaho Bar.

— Taylor H. Fouser
Boise, ID



Representatives from The Advocates stop by to pick up donated items and cash gifts which will benefit underprivileged children in the Wood River Valley with brand new school supplies. The Mission of The Advocates: Preventing emotional and physical abuse through education, shelter and support services.

2018 ANNUAL MEETING CORPORATE SPONSORS

Platinum



Gold



Silver



Bronze





UBS provides a powerful integration of *structured settlements* and *wealth planning* for you and your clients.

By integrating structured settlements with one of the world's leading wealth management firms, your clients can now receive unbiased advice and long-term planning to help secure their financial needs now and in the future. With over 7,000 Financial Advisors in 350 offices across the country, we stand ready to serve you.

Extensive capabilities for a range of settlement solutions

- Structured settlements
- Structured attorney fees
- Traditional wealth planning
- Special needs trusts
- Medicare set-aside trusts
- Qualified settlement funds (468b trusts)
- Revocable and irrevocable trusts
- Guardian and conservatorship accounts
- Court controlled accounts
- Fiduciary bonding
- Trust and estate planning
- Life insurance and long-term care
- Banking services

For more information on the capabilities of Vasconcellos Investment Consulting at UBS, or for a second opinion on your current wealth management strategy, please contact:



Vasconcellos Investment Consulting

William L. Vasconcellos, CIMA®, CRPC®
 Senior Vice President—Wealth Management
 1161 West River Street, Suite 340, Boise, ID 83702
 208-947-2006 888-844-7452 william.vasconcellos@ubs.com
www.ubs.com/fa/williamvasconcellos

We will not rest 

Neither UBS Financial Services Inc., nor any of its employees provide tax or legal advice. You must consult with your tax and legal advisors regarding your personal circumstances. Insurance products are issued by unaffiliated third-party insurance companies and made available through insurance agency subsidiaries of UBS Financial Services Inc. As a firm providing wealth management services to clients, UBS is registered with the U.S. Securities and Exchange Commission (SEC) as an investment adviser and a broker-dealer, offering both investment advisory and brokerage services. Advisory services and brokerage services are separate and distinct, differ in material ways and are governed by different laws and separate contracts. It is important that you carefully read the agreements and disclosures UBS provides to you about the products or services offered. For more information, please visit our website at ubs.com/workingwithus. CIMA® is a registered certification mark of the Investment Management Consultants Association, Inc. in the United States of America and worldwide. Chartered Retirement Planning CounselorSM and CRPC® are registered service marks of the College for Financial Planning®. ©UBS 2014. All rights reserved. UBS Financial Services Inc. is a subsidiary of UBS AG. Member FINRA/SIPC. 7.00_Ad_7.25x9.25-cmyk_BB0314_VasW

SUCCESS IS A REFLECTION OF COMBINED INTEGRITY.

Custer Agency and McDonald & Associates have combined our respective expertise to serve our mutual clients throughout the Northwest and beyond.

Our investigative solutions are unparalleled, and together we can serve you far better than we ever could alone.

