The Advocate

Official Publication
of the Idaho State Bar
Volume 57, No. 11/12
November/December 2014

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The Advocate

The Official Publication of the Idaho State Bar
57 (11/12), November/December 2014

Section Articles

Join for news and discussion at Idaho-State-Bar.

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

Columns

News and Notices

On the Cover:

The picture of a bald eagle was taken in the spring of 2013 by Patrick N. George, an attorney in Pocatello. He said that during a trip to Salmon to see some clients he saw the bird near the Salmon River and stopped. "The eagle was perched in a tree about 60 yards from the roadway and was patient enough to allow me to fumble with my camera until I got the picture I wanted," he said.

Section Sponsors:

This issue of *The Advocate* is sponsored by the Idaho Legal History Society.

January issue sponsor:

Employment and Labor Law

Writing a blog?

The Advocate would like to know about it. We want in on the conversation and to flag notable posts through social media. Send your URL to dblack@isb.idaho.gov

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 dblack@isb.idaho.gov.

The Advocate
Official Publication of the Idaho State Bar

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

POSTMASTER: Send address changes to:
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Boise, Idaho 83701

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ISB/ILF Upcoming CLEs

November

November 3
An In-Depth Look Into Idaho's Civil Rules of Procedure
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
12:30 p.m. (MST)
1.0 CLE credits – **NAC**

November 6
Attorney Ethics When Supervising Over Attorneys/Paralegals
Sponsored by the Idaho Law Foundation, Inc. in partnership with Peach New Media and WebCredenza Inc.
Audio Stream/Webinar
11:00 a.m. (MST)
1.0 CLE credits of which 1.0 is Ethics

November 10
A Chief's Perspective
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
12:30 p.m. (MST)
1.0 CLE credits – **NAC**

November 12
Avoiding Malpractice and Risk Management for Lawyers
Sponsored by the Professionalism & Ethics Section
The Law Center, 525 W. Jefferson – Boise / Statewide Webcast
9:00 a.m. (MST)
2.0 CLE credits of which 2.0 is Ethics – **NAC**

November 14
Headline News 2014 – Idaho Falls
Sponsored by the Idaho Law Foundation, Inc.
Hilton Garden Inn, 700 Lindsay – Idaho Falls
8:30 a.m. (MST)
6.0 CLE credits of which 1.0 is Ethics – **NAC**

November (Continued)

November 17
Legal Aid: Readily Available Resources for Your Law Practice to Benefit Your Clients
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
12:30 p.m. (MST)
1.0 CLE credits – **NAC**

November 21
Headline News 2014 – Coeur d'Alene
Sponsored by the Idaho Law Foundation, Inc.
Hampton Inn & Suites, 1500 W. Riverstone, Coeur d'Alene
8:30 a.m. (PST)
6.0 CLE credits of which 1.0 is Ethics – **NAC**

November 24
A Conversation on Idaho's Juvenile Criminal Justice System
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
12:30 p.m. (MST)
1.0 CLE credits – **NAC**

December

December 1
Attorney Ethics and Investigations
Sponsored by the Idaho Law Foundation, Inc. in partnership with Peach New Media and WebCredenza Inc.
Audio Stream/Webinar
11:00 a.m. (MDT)
1.0 CLE credits of which 1.0 is Ethics

December 12
Headline News 2014 – Boise
Sponsored by the Idaho Law Foundation, Inc.
Oxford Suites, 1426 S. Entertainment Ave. – Boise
8:30 a.m. (MST)
6.0 CLE credits of which 1.0 is Ethics –**NAC**

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

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

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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. 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.

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Freedom, Elections and the Rule of Law — An Ongoing Effort

Paul B. Rippel
President, Idaho State Bar
Board of Commissioners

When I was just starting as a Commissioner of the Idaho State Bar over two years ago I thought about the genius of participatory democracy. An old friend and I spoke about the joy of voting in the recent General Election. It did not matter which candidates or political party prevailed. We enjoy the freedoms afforded by the rule of law – to express our own views as equal participants invested in a system that preserves our rights and responsibilities.

These American freedoms are in stark contrast to areas in the world where corruption and a thirst for power subvert the electoral process. All too often in countries with a marginal democratic history the electoral process is in name only, used by dictators or autocrats to preserve power.

Those dictators live on borrowed time. The citizens in such places need only wait for the right moment for an "Arab Spring" or similar event to spark a rebellion to challenge the entire system. If democratic values and rule of law provide stability, a lack of those principles creates volatility.

For example, civil war has raged in Syria for four years now, with thousands killed by the Assad regime and thousands killed by various rebellious factions. The conflict started as a democratic movement to challenge a government ruled by one man, rather than by the rule of law. Unfortunately, that conflict spiraled into regional unrest and we saw the rise of terrorists in both Syria and Iraq.

Iraqis enjoyed a brief taste of democracy, but since the U.S. ground troops left Iraq two years ago, its elected leader, Nouri al-Maliki replaced the country's upper military leadership with cronies who had little or no military experience. That helped the Islamic State of Iraq and Syria, (ISIS) make headway against an inexperienced military.

And in Afghanistan, the fledgling democracy still struggles to suppress the Taliban. Every voting cycle establishes the new government's legitimacy and expands the rule of law.

Not long ago President Obama visited Myanmar (Burma to us older people) to acknowledge the democratic reform its government had made. But he also emphasized that it had more to do to be a fully acceptable form of government by and for a free people. He was criticized for visiting a government that had been so repressive. Thus, without ex-

If democratic values and rule of law provide stability, a lack of those principles creates volatility.

pressing it directly, those critics were acknowledging just how much we value the rule of law. It was the critics' freedom of speech, secured by the rule of law, which allowed those Americans to vocalize their criticism without fear of physical, mental or financial reprisals.

The latest example of people's thirst for freedom and democracy is the youth in Hong Kong who are demonstrating because they want the right to vote. Instead of guns, they are using electronic communication to outsmart the authorities — congregate, demonstrate and disperse to safety or a new location. Who knows where that will lead?

Instead of guns, they are using electronic communication to outsmart the authorities — congregate, demonstrate and disperse to safety or a new location.

The freedom promised by our Constitution, the Bill of Rights and the Equal Protection Clause, is both our continuing dream and our struggle. As lawyers, we hear tough questions about our clients' freedoms. As guardians of the principles of freedom embodied in the rule of law, let us as lawyers uphold those freedoms and press onward for the best of society, rather than the merely tolerable.

About the Author

Paul B. Rippel *is a member of Hopkins Roden in Idaho Falls, and current President of the Idaho State Bar Board of Commissioners. Mr. Rippel received a BS from the University of Idaho in 1976, MS at NM State University in 1978, and his JD from the University of Idaho in 1981. He has practiced in Idaho Falls since clerking for the Hon. Arnold T. Beebe for a year. His wife Alexis is also a U of I graduate and they have a son and daughter living in Portland, Oregon.*

Parsons Behle & Latimer, one of the largest and best-known law firms in the Intermountain Region, is pleased to announce that **David S. Jensen** has joined the firm as a shareholder in its Boise office.

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Mr. Jensen represents clients in real estate transactions, commercial and consumer lending, business entity formation, mergers and acquisitions, and general business planning.

He graduated from the University of Minnesota Law School with a J.D. degree in 1989 and from Carlton College with a B.A. degree in 1984. He is admitted to the Idaho and South Dakota State Bars.

John T. Bujak
(Suspension)

On September 23, 2014, the Idaho Supreme Court issued a Disciplinary Order suspending Eagle attorney John T. Bujak from the practice of law for one year. Consistent with the Idaho Supreme Court's Order providing that the time Mr. Bujak spent on a stipulated interim suspension would be credited toward any eventual sanction, Mr. Bujak has served the one-year suspension in this disciplinary matter. The Idaho Supreme Court's Order followed a stipulated resolution of a disciplinary proceeding that related to the following circumstances.

On October 21, 2011, the Idaho State Bar filed a formal charge Complaint. Mr. Bujak filed his Answer on November 14, 2011. That case and others were held in abeyance under a Stipulation for Interim Suspension. Mr. Bujak served that interim suspension from January 9, 2012 through August 28, 2013. On August 28, 2013, the Idaho Supreme Court entered an Order Dissolving Interim Suspension and Reinstating License.

The Complaint in this case alleged two counts of professional misconduct. With respect to Count One, Mr. Bujak admitted that he violated I.R.P.C. 1.4, 1.15(a), 1.15(c), and 8.4(d). Count One related to a breach of contract action against an estate. Following trial, the court instructed the parties to establish an escrow account for one party's payment to Mr. Bujak's estate client. Payments were made to Mr. Bujak, in care of his client. Mr. Bujak negotiated those checks but did not deposit the funds into his trust account, inform his client about the payments, or deliver any funds to his client. Mr. Bujak's client was paid on a claim from the Client Assistance Fund and Mr. Bujak has agreed to make restitution to the Idaho State Bar for payments made from the Client Assistance Fund. Mr. Bujak was exonerated of criminal charges relating to these circumstances.

With respect to Count Two, Mr. Bujak admitted he violated I.R.P.C. 1.8(c). That count related to Mr. Bujak's preparation of a trust agreement that listed a part-time assistant in Mr. Bujak's office and Mr. Bujak as beneficiaries. In a subsequent proceeding, Mr. Bujak stipulated to declare the trust null and void, the property was restored to his client, and the court made no findings as to fault of any party.

The Disciplinary Order further provides that Bar Counsel agrees not to file any formal charges relating to four other pending disciplinary investigations until a pending federal criminal case against Mr. Bujak is completed at the trial level, either by trial or entry of a plea to any criminal charge in that case. Mr. Bujak agrees that if he is convicted of any criminal charge in the federal criminal case, he will resign his license to practice law in Idaho in lieu of disciplinary proceedings, which will encompass the four other pending disciplinary investigations. If that occurs, Mr. Bujak will receive credit for the remaining time he served on interim suspension.

Since Mr. Bujak received credit for the time previously served on interim suspension, this suspension does not limit Mr. Bujak's eligibility to practice law.

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

Animal law is all around us

Dear Editor,

The Animal Law Section of the ISB was founded roughly two years ago. Many attorneys here have told me that they don't practice Animal Law and therefore don't see what the Section could offer them. Almost without fail, however, those same lawyers can give me several examples of current or past cases where animals have been involved in some key way. Landlord-Tenant and fair housing cases may involve service animal issues. Divorce and custody cases often involve pets, which in some cases the parties view as children. Livestock, equine and agricultural issues are common in Idaho. Courthouse dogs are now available in some counties to assist victims of crimes. Criminal animal abuse cases happen, unfortunately, and so do civil disputes between neighbors centered around animals. Many clients want to provide for their pets when doing estate planning. There are opportunities for every Idaho lawyer to practice Animal Law, and hopefully, the ISB Section provides both networking opportunities and useful practical information on ways these issues have been and can be handled.

This year, the Section has heard from a variety of speakers involved in the recent "Ag-Gag" legislation, including Representative Ken Andrus, who co-sponsored the bill, two ALDF (Animal Legal Defense Fund) lawyers who are involved in the lawsuit challenging the law, and the attorney for Mercy for Animals, which filmed the Bettencourt Dairy abuses which sparked the bill. We have also heard from prosecutors dealing with animal abuse cases, the State Brand Inspector, the Director of the Idaho Humane Society, the owner of a pet insurance business, and attorneys who have handled a variety of animal cases have spoken about their cases.

The Section has attorneys as members, but is also open to law students and non-attorneys interested in animal law issues. If animals, or the ways they come up in cases, is of any interest to you, please consider joining the Section. If you attend the meetings, held on the 2nd Monday of every odd month, you will earn at least 2.5 CLE credits for your $25 membership fee. Our next meeting is Monday, November 10th, and we will hear from Steve Burns, Director of Zoo Boise, about Trends in Animal Law and their impact on zoos.

Heather A. Cunningham
Boise

2014 RESOLUTION MEETING SCHEDULE

2014 District Bar Association Resolution Meetings			
District	Date/Time	City	Location
First Judicial District	Thursday, November 6 at Noon	Coeur d'Alene	North Idaho College, Student Union Building, 1000 W. Garden Avenue
Second Judicial District	Thursday, November 6 at 6 p.m.	Moscow	Best Western Plus University Inn, 1516 Pullman Road
Third Judicial District	Thursday, November 20 at 6 p.m.	Nampa	Hampton Inn and Suites, 5750 E. Franklin Road
Fourth Judicial District	Thursday, November 20 at Noon	Boise	The Owyhee, 1109 Main Street
Fifth Judicial District	Wednesday, November 19 at 6 p.m.	Twin Falls	Stonehouse & Co., 330 4th Avenue South
Sixth Judicial District	Wednesday, November 19 at Noon	Pocatello	Juniper Hills Country Club, 6600 S. Bannock Hwy.
Seventh Judicial District	Tuesday, November 18 at Noon	Idaho Falls	Hilton Garden Inn, 700 Lindsay Boulevard

Renew Your License

License renewal forms will be mailed to members in mid-November.

Relicensing will also be available online. Forms are due Feb. 1, 2015.

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Multiply It!

Diane K. Minnich
Executive Director, Idaho Law Foundation
MIchael H. Felton
President, Idaho Law Foundation

It's been said that when we share, we are doubling our gifts. Our contributions bestow one gift to another and one to ourselves. When our legal community gives to the Idaho Law Foundation, the gifts are multiplied even further. Donations channeled through the Foundation are distributed to important educational and legal service programs, shared with the public on behalf of the legal profession.

By this time last year, 667 of you had donated $85,565 to the Law Foundation and its programs. Nine hundred twenty eight of you had volunteered 14,682 hours of your time to help. Because of your investments:

- 556 people received help from volunteer attorneys.
- 614 people, including seniors, veterans and the homeless were assisted at legal service clinics.
- 960 secondary students participated in mock trial activities.
- 50 refugees representing 5 languages participated in the inaugural year of the New American Law Academy practical law course.

We are proud to convey that the staff of the Idaho Law Foundation are excellent stewards of the funds that you entrust to us. We are just as proud to be able to report that you helped make these accomplishments possible in 2013 and have continued to do so in 2014.

As much as we would love to be able to share that 2014 has only brought good news, there is one note of continued concern. Because of prolonged low interest rates, IOLTA income has dropped by 80% over the last five years. Our programs like Idaho Volunteer Lawyers Program and Law Related Education have been working diligently to replace this drop in income with other sources, including asking our legal community to step in and help us fill the gap.

And that's why at the Idaho Law Foundation Annual Luncheon in July, we asked the people in attendance to match a donation from one of our Board members, Nick Crawford. Nick donated $250 to the Foundation and asked other attorneys to match his gift. As a result of that request and the generosity of our attorneys, 25 of the people in attendance donated at total of $4,600.

But we still need to raise another $13,000 by the end of the year to meet our Law Foundation fundraising goals and ensure the full operation of our programs into 2015. As you decide where to make any year-end charitable gifts, would you consider a tax-deductible donation to help Idaho Law Foundation and our programs? If just 52 of you answer Nick Crawford's challenge of a $250 donation, the Law Foundation will meet its fundraising goal for 2014. Of course, any donation amount is always gratefully accepted.

You can donate to the Law Foundation through a designation on your 2015 Licensing Form or visit our website at www.idaholawfoundation.org and click on the "Donate Now" link on the main page of our website. If you need additional information about the Law Foundation or our programs, please contact Carey Shoufler, the Foundation's Development Director. She will be happy to answer any questions you may have. You can reach her at (208) 334-4500 or cshoufler@isb.idaho.gov.

So, thank you to all of you who have contributed this year, including those of you who gave at the Annual Meeting. We appreciate you helping us to bring in the funds we need to serve the public. As you look back on the year, we hope you have a sense of pride in knowing that your legal community helped create our success. As we move forward, we urge you to continue to show your support for the Idaho Law Foundation. We are grateful to all of you for your work in making the Idaho Law Foundation and our programs part of a current of success that multiplies through our work in Idaho schools and communities.

Welcome From the Idaho Legal History Society

Ernest A. Hoidal

Thank you for your continued support of the Idaho Legal History Society, which will be celebrating its tenth anniversary since U.S. District Judge Lynn Winmill and then state court Judge Ron Bush formed the Society. Our mission is to preserve and promote the public's knowledge of, and interest in, Idaho's legal history by collecting records, oral histories and other items. We continue to enlist contributing members to serve on our Board of Directors that includes Judge Bush, Judy Austin, Dianne Cromwell, U.S. Magistrate Judge Candy Dale, Don Burnett, Ron Kerl, J. Walter Sinclair, and John Zarian.

Our officers are Ernest A. Hoidal, President; Ritchie Eppink, Vice-President; Susie Boring-Headlee, Secretary; and J. Walter Sinclair, Treasurer. We wish to acknowledge the contributions of our past presidents: Judge Bush, Deb Kristensen, Scott Reed and Judge Ron Wilper, as well as Scott Reed and Larry Westberg who have been instrumental in guiding the Society and are retiring from the Board.

Our Oral History Committee Chair has been assumed by Dianne Cromwell, whose committee is comprised of Libby Smith, Clerk of the U.S. Court, Katherine Moriarty, Scott Reed, Ron Wilper, and Chris Cuneo. Judge Jesse Walters and Teri Harbachek are retiring with our sincere thanks. Dianne Cromwell's leadership in arranging volunteer court reporters over the past five years has been outstanding and we offer her, and the volunteer court reporters, our thanks and appreciation.

We have three oral histories in this issue that were compiled by Lindsey Hanks, a Boise State English major who served as a 2014 summer intern with the Idaho State Bar. Lindsey captured from audio tapes at the Idaho Historical Center, interesting information on the professional careers of Willis Sullivan, Edith Miller Klein and Ben Oppenheim.

As to further oral histories, at the Idaho State Bar Meeting at Fort Hall in July and the Federal Bench Bar Conference in October, Judge Winmill encouraged young lawyers to volunteer to interview judges and attorneys who have been in their profession for 30+ years. This is an outstanding recommendation to preserve and an extraordinary learning opportunity for younger lawyers.

We hope you enjoy the article from Clive Strong, Idaho Deputy Attorney General, on the culmination of the Snake River Basin adjudication, which is most compelling and historic in scope.

Finally, a book review. Max Black, a former member of the Idaho House of Representatives, went the "extra mile" to add to the Diamondfield Jack Davis legal saga in his newly published book.

Please contact me if you wish to volunteer and contribute to Idaho's legal history.

About the Author

Ernest A Hoidal's *paternal great-grandparents settled in 1884 in the Troy, Idaho area and his maternal great-grandparents settled in 1901 in Eagle. Although born and raised mostly in Boise, Ernie lived in Nezperce and Mackay during his elementary school years before graduating from Capital High School in Boise. Ernie has been a member of the ILHS for the last five years and was chair of the Oral History Committee prior to assuming the position of president which he now holds.*

Idaho Legal History Society

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Willis E. Sullivan: From Cotton Club to Code Commission

Lindsey Hanks

In July of 1986, Willis E. Sullivan sat down with Madeline Buckendof and recorded his oral history for the historical archive of the law firm Hart & Holland. His family history along with changes in the practice of law made for an interesting oral history.

During the height of the Great Depression millions were looking for work. In the summer of 1932 Willis E. Sullivan had just graduated from the Stanford University with a degree in journalism. He moved back to Boise having received a job offer from the Idaho Daily Statesman. Willis went to work Monday morning only to realize the Boise National Bank closed. His employer couldn't pay the staff. Instead of waiting around for the banks to sort out their problems, he decided to go to law school.

He had always toyed around with the idea of law school. Willis's Grandfather, Isaac Newton Sullivan, was the first chief justice in Idaho and his two children, one of whom is Willis's father, were lawyers. He recalls listening to his father and grandfather, "argue and scream and yell at each other" about all sorts of things. He figured being a lawyer could be fun.

Willis E. Sullivan

For the next three years, Willis attended Harvard Law School, terrified of his professors. The teaching staff's vast knowledge was intimidating and the professors enjoyed scaring the students. He enjoyed his courses and was able to learn a lot. Most of his time was spent studying and working at the legal aid office. Working at the legal aid office allowed him to apply what he was learning. When Willis wasn't studying or working, he and his friends would go to New York City on the weekends. The boys spent their time at taxi dances, clubs where men would buy tickets and a woman would dance with them for one song per ticket, until they closed for the night. Then they would head over to Harlem and spend the rest of the evening at the Cotton Club listening to Cab Calloway, the famous jazz singer and band leader.

He would do all the research and his partner, Langriose, who hated books, would handle court appearances. He would also do research for other lawyers in the valley.

Once he was done with law school he interviewed at firms in New York City. When those didn't work he purchased a ticket advertised on a bulletin board. Someone was selling the other half of a round trip ticket from New York to San Francisco on a boat going through the Panama Canal. He interviewed with firms in Los Angeles and San Francisco, but he made up his mind he wanted to come back to Boise. When he moved to Boise he worked with William Langriose, his cousin's husband, and his Uncle Laverne Sullivan's firm. He spent time working with his uncle and his grandfather, who was retired but still hung around the office.

While working at the firm he remembers his first and last trial case. The client was the owner of the Idaho Candy Company whose manager absconded with a bunch of money. The company wanted it recovered. Unfortunately, Willis lost the case. Willis laughs as he remembers the owner telling him, he was a smart guy, but will never be a trial man. He agreed with this statement because he hated every minute in the court room. He says trials are for extroverts and he is an introvert.

As an introvert he liked to work by himself doing research, which is the thing he loved most about his career. He would do all the research and his partner, Langriose, who hated books, would handle court appearances. He would also do research for other lawyers in the valley. He loved reading through cases and finding support for his position. It was fun. Willis and Langiose would both work out the trial plans together then Willis would write up the briefs.

During Willis's years of law practice he saw quite a bit of change going on in the legal community. When he started out lawyers were not allowed to advertise. The only form of advertising was word of mouth. It was considered unprofessional to formally advertise and you

could be disbarred for advertising. He still considers it unprofessional. Another change was lawyers moving towards specialization. Companies started hiring more lawyers with specialization, which caused firms to get bigger. Willis feared he would get bored if he had one focus. He enjoyed general practice. He would have a variety of cases, and knew a little about everything.

Having loved being a lawyer he did have some frustrations. The greatest frustration he faced was when his eyes went bad, eliminating his ability to do research and forcing him into early retirement. This was something that still frustrated him at the time of the interview. Willis was also disappointed because he never had the opportunity to be a judge. He even applied for the U.S. Court of appeals in San Francisco, but didn't get it.

Willis didn't have the opportunity to be a judge, but he had the opportunity to be on the Idaho Code Commission which handles the publication of new laws. He was on this commission for years and really enjoyed the work. He was also the president of the Idaho State Bar. He loved travelling around the state and meeting different lawyers. Willis said he is very happy with his life and his practice.

Willis died in 2013.

The greatest frustration he faced was when his eyes went bad, eliminating his ability to do research and forcing him into early retirement.

About the Author

Lindsey Hanks *is a senior at Boise State University and spent the summer as an intern for the Idaho State Bar. She is studying for her bachelor's in English.*

Edith Miller Klein: A Pioneer Woman in Idaho Law

Lindsey Hanks

In the spring of 1996 Linda Morton-Keithley, an archivist, interviewed Edith Miller Klein as part of an oral history project "Women and Political Activism in Idaho." Edith was an attorney and one of the first 50 women lawyers in Idaho. She had a busy career that took her all over the country. She also helped pave the way for equal rights for women.

Edith's father was a German immigrant and a meat cutter by trade. Her mother worked at her families' room and boarding house, called The Pleasant Home in Moscow while she went to business school. Edith's father, who was 20 years older than her mother, happened to be staying there when the two met. Edith was born in 1915 and spent most of her time in Moscow; her parents held a high value for education and wanted to stay close to the University of Idaho. They hoped their children would go there, which they did.

Going to the U of I Edith didn't really know what she wanted to do other than get a college degree. Business administration caught her eye. She was actively involved in women's sports including the Hell Divers, the university swim club. Looking back on her time at the U of I she doesn't know how she survived. She had 20 hours of classes, 4 jobs, and played all the sports women could play, such as soccer and basketball. The house she grew up in is actually part of the farm at the U of I and was moved from its original location when the mall was built.

Edith Miller Klein

Wanting to get involved in state politics, she decided she needed to be a judge first. For about a year she served as a municipal judge and in 1948 she was elected to the Idaho Legislature.

After graduating with her bachelors at the age of 19 in Business Administration, she received a fellowship at the State College of Washington, now Washington State University, and taught business courses as she worked on her master's degree. Due to finances she was unable to continue her master's program. She moved back to Moscow and worked for a mail-order religion place doing secretarial work, answering letters, and doing all their proof reading. She remembers her boss telling her she had pretty good grammar.

Soon after Edith started to teach business courses in the high school in Weiser, but World War II broke out. She decided to sell her car and move to Washington D.C. Once accepted at George Washington University law school she began her career in law. She would have loved to have gone to Georgetown University, but they were not accepting any women. She really enjoyed her time at George Washington University. Working during the day in the War Department at the Pentagon and going to law school at night didn't leave a lot of free time. She remembers working really hard and sometimes not having enough time to do her homework, but she managed never to fail a class.

During the war women were getting law degrees and civil service required offices to treat them properly. She remembers her law school class having several women in it, even though the majority was still male. Edith never felt like she didn't belong there and most people treated women well. She graduated a year after the war ended. After graduating she felt it was time for her to return to Idaho.

She applied to several law firms, including the one she wanted most, Langroise and Sullivan but she was hired at Anderson and Thomas, where she received a secretary's pay. She decided to break off and start her own practice. Business was good. One day she asked one of her clients why he chose to come to her and he said, "Well, I figure the women are more honest and direct than men and should have the same knowledge. So, I thought I'd try one." It turns out he was in real estate, and became a long-time customer.

Wanting to get involved in state politics, she decided she needed to be a judge first. For about a year she served as a municipal judge and in 1948 she was elected to the Idaho Legislature. Her campaign consisted of a couple of ads in the newspaper and she went door to door handing out cards. She says she was relieved when the person didn't answer the door. In 1949, during her first year in office she married Sandor "Sandy" Klein, a newspaper man that often hung around the Statehouse.

Edith's husband received a job opportunity in Washington D.C., so she closed up her practice and moved. While she was in D.C. she got her LLM in tax law at George Washington University. She worked in New York for a little while before they returned to Idaho. She served as a member of the house and the senate. She served on multiple committees and was the chairman of the Commerce committee, health committee, etc. She drafted legislation for the house and worked at Langroise and Sullivan. She also worked with governor Smylie on the commission on the status of women, which tracked the progress women were making and how they can be equally treated in the work place. Edith wanted the name to be changed to the commission on women's progress. She says women's progress owes a lot to the professional clubs women organized such as Building Powerful Women and the American Association of University Women.

When asked if she considered herself a feminist she says in some aspects she could be considered a feminist. She has always encouraged young women to do what they want and that they can do anything. Edith believes all people should be encouraged to do what they want.

She also worked with governor Smylie on the commission on the status of women, which tracked the progress women were making and how they can be equally treated in the work place.

About the Author

Lindsey Hanks *is a senior at Boise State University and spent the summer as an intern for the Idaho State Bar. She is studying for her bachelor's in English.*

Benjamin W. Oppenheim: Lincoln Inspired His Career

Lindsey Hanks

In October of 1969 Ann Dunkle interviewed Benjamin W. Oppenheim for the Idaho historical auxiliary. During the interview he discussed his youth. His parents grew up during the Civil War and their adoration for Lincoln rubbed off and even inspired him to be a lawyer.

Before Benjamin's family settled in Idaho he lived in Colorado. Born in 1883 in Denver he was an only child. His mother moved him around to be closer to her family while his father was working in the Coeur d'Alene mining district. Then in 1889 his family settled in Wallace.

Benjamin's mother dressed him in Lord Fauntleroy style. During the late 1800's boys fashion was an outfit called a Lord Fauntleroy suit. It was a black velvet coat with matching trousers and a fancy blouse with a large or ruffled white collar, and the boys generally had long curly hair. The fashion was based off of a children's book called *Little Lord Fauntleroy*. When Benjamin was 7 he made it clear he wanted to start dressing like the other little boys.

When Benjamin was in the fourth grade his teacher moved him up to the sixth grade. In those days the teachers often taught multiple grades in one room, so it was easy for them to move students up. Although the course work was at his level of learning he said he was not at the same social level as the sixth graders. He says, "The best thing you can do for a child is to keep him in his social grade." Not being as socially developed as his peers he tended to be a loner and he wouldn't recommend skipping grades. It did cause him to become more self-reliant than his peers.

By the time Benjamin was 10 he knew he wanted to be a lawyer. His parents were both born before the Civil War and grew up during a time when Lincoln was a new hero. They kept a lot of articles on Lincoln around the house while Benjamin was growing up, and by the time he was 10 he had read all of them.

It wouldn't be too long before he was on his way to becoming a lawyer. He graduated from high school when he was 15. Shortly after that, Benjamin's mother left his father and moved to Moscow, which took him some getting used to because he was raised in the mountains of Wallace, and was not used to seeing the horizon on the level. His mother became a Christian Science practitioner, someone who follows the bible and the text book *Science and Health with key to the Scriptures*; it's still in practice today. A practitioner prays for others based on the teachings, like a healer, and they get paid for their service. He recalled this ostracized him and his mother from the community, which wasn't a new experience for him having grown up a loner.

Unfortunately, during his senior year he ran out of money and had to leave the U of I. After working awhile Benjamin decided to go over to Blair Business College in Spokane. There he was able to become a court stenographer, having spent time playing on a typewriter. He also wrote articles for the university and local paper.

Eventually, he received a job in William Morgan's law firm and went back to Moscow. In those days you learned law in a law office. Benjamin enjoyed working with William. He would quiz Benjamin once a week in his home on his correspondence law classes. Benjamin graduated in 1904.

In 1917 he was appointed by the Idaho Supreme Court as Code Commissioner for two years. Then in 1919 he joined a chapter of Phi Beta Kappa along with Donald Whitehead and William E. Lee. All three of the men on went on to be involved in Idaho politics. Donald Whitehead became Speaker of The House and was Lieutenant Governor for C.A. Bottolfsen. William E. Lee became a member of the Idaho Supreme Court.

During his career Benjamin was able to do different types of work as a lawyer. He drew up the act for workers compensation law and was a "drafts man" for the governor and legislature. Benjamin's career was mostly spent as a general practice lawyer, but he was very involved in banking insurance law. He also drafted an occupational disease compensation law, which he worked on for two years. During the depression his practice suffered and he couldn't keep his doors open. In 1942 he found himself acting as campaign manager for governor C.A. Bottolfsen's second election campaign, and he won. Then he was offered a membership with the industrial accident board. He was reappointed by each governor for 25 years.

In his personal life Benjamin is the father of 4 children. He married Susie Belva Thomas a couple of years after law school. Unfortunately, in 1928 Susie died leaving behind him and their 4 grown children. Two years later he married Glenda Lenore Thoreson whom he was married to at the time of his death in 1979.

About the Author

Lindsey Hanks *is a senior at Boise State University and spent the summer as an intern for the Idaho State Bar. She is studying for her bachelor's in English.*

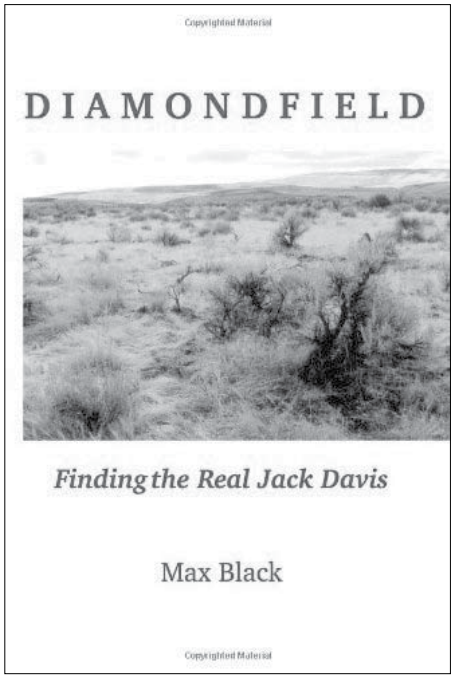
Book Review:
Diamondfield — Finding the Real Jack Davis

Ernest A. Hoidal

As a former insurance agent and Idaho State Legislator, Max Black embarked on a journey to discover the truth. Was Jackson Lee Davis, who was known as "Diamondfield Jack" (the discovery of quartz crystals near Silver City gave him this moniker [they did not turn out to be diamonds]), correctly convicted for the murder of two sheep herders in Cassia County? Jack was hired by the Sparks-Hadreil Cattle Company as an "enforcer" to prevent sheep from encroaching on cattle grazing areas which led to the alleged shooting deaths of Daniel Cummins and John Wilson in February of 1896 in Cassia County near Rogerson.

Mr. Black's survey of the sheep camp, as well as his research of court records, weaves a fascinating rest of the story of Diamondfield Jack. Criminal procedure is a focus of the book with James H. Hawley's heroic efforts on Diamondfield Jack's behalf to save him from hanging.

Diamondfield Jack in Nevada, cira 1904.



Mr. Black's metal detector exposed a missing bullet slug not discovered prior to trial. The distances traveled by Diamondfield Jack on horseback, prior to and following the shootings, did not add up to a conviction but nevertheless, a jury was convinced that Jack killed the two sheep men. Not only was Mr. Hawley able to remove Diamondfield Jack from the hangman's noose, but he convinced Governor Frank Hunt to pardon Jack's convictions.

Following his pardon, Diamondfield Jack located to Goldfield, Nevada and became a successful mine owner and operator with a not so private partner. There is even a bit of romantic intrigue from Mr. Black's connection with "Diamond Tooth Lil" who ran a house of ill repute in Boise.

This is a fine addition to "The Sagebrush Lawyer," a book written by John MacLane which extols the legal exploits of James H. Hawley at the turn of the twentieth century.

Diamondfield Jack had a romantic interest in Diamond Lil, a well-known madam in frontier towns including Boise.

Criminal procedure is a focus of the book with James H. Hawley's heroic efforts on Diamondfield Jack's behalf to save him from hanging.

You will find this read a most interesting part of Idaho legal history. Enjoy.

About the Author

Ernest A Hoidal *has been a member of the ILHS for the last five years and was chair of the Oral History Committee prior to assuming the position of president which he now holds.*

SRBA Retrospective: A 27-Year Effort

Clive J. Strong

On August 25, the Idaho Supreme Court, the University of Idaho College of Law and the Kempthorne Institute sponsored a conference marking the conclusion of the Snake River Basin Adjudication, a 27-year-long judicial proceeding to adjudicate all claims to the use of the waters of the Snake River Basin within Idaho. As part of the celebration, District Judge Eric Wildman signed the Final Unified Decree (FUD).[1]

Although many commented over the years that the SRBA was taking too long to complete, United States Supreme Court Justice Scalia, in his keynote address at the SRBA celebration, put the timeframe of the adjudication in perspective, when he observed that the adjudication of 158,591 claims "works out to around one claim every 90 minutes — an astonishing pace by anyone's standard."

Idaho's accomplishment becomes even more impressive when compared to the current status of other state general stream adjudications. The only other states to have completed stream adjudications are Wyoming and Washington. In both instances, however, these adjudications were smaller and took more time to complete. Wyoming adjudicated the water rights of approximately 25,000 claimants, and Washington adjudicated 3,000 claims. Each adjudication took 37 years to complete. Montana[2], Arizona[3] and New Mexico[4] commenced their general stream adjudications before the SRBA, and all are years from completion.

Photo courtesy of Clive J. Strong

SRBA Judge Eric J. Wildman stands with the documents which comprise the Final Unified Decree.

SRBA by the numbers

Judge Wildman, in his remarks at the SRBA Celebration, estimated the FUD exceeds 275,000 pages. Over the course of the SRBA, the SRBA District Court handled 43,822 contested cases; the Idaho Supreme Court issued 36 opinions; and the United States Supreme Court issued one opinion.

The FUD incorporates just over 130,500 partial decrees based on state law. Of those, approximately 85,000 were beneficial use claims that were not of record with the Idaho Department of Water Resources.[5] The FUD lists approximately 15,000 state-law-based water rights and claims that were decreed as disallowed.[6]

The United States filed more than 13,000 federal reserved water rights claims in the SRBA. Of these claims, the United States was decreed 1,346 and disallowed slightly more than 11,700.[7]

The FUD incorporates just over 130,500 partial decrees based on state law. Of those, approximately 85,000 were beneficial use claims that were not of record with the Idaho Department of Water Resources.[5]

Three Native American reserved water right agreements were negotiated as part of the SRBA. The 1990 Fort Hall Indian Water Rights Agreement is often cited as a model federal reserved water rights agreement because it addressed water right administration issues as well as the

quantification of the federal reserved water rights for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation. Similarly, the Snake River Water Rights Agreement of 2004 has been recognized nationally as an innovative settlement because in addition with resolving the federal reserved water rights for the Nez Perce Reservation, it addressed Endangered Species Act issues related to water use and timber harvest. The third agreement quantified the federal reserved water rights of the Shoshone Paiute Tribes of the Duck Valley Indian Reservation.

The settlement resolved United States federal reserved water rights for wild and scenic rivers, the Hells Canyon National Recreation Area, the Idaho National Engineering Laboratory, Yellowstone National Park and the Craters of the Moon National Monument. Those decreed as disallowed include United States claims for reserved water rights under the Wilderness Act, Multiple Use Sustained Yield Act, the National Forest Organic Act, the Sawtooth National Recreation Area Act, and executive orders creating the Deer Flat National Wildlife Refuge.

Aside from quantifying all water rights within the Snake River Basin within Idaho, the SRBA created 19 new water districts within the Snake River Basin to administer the decreed water rights.

What happens now that the FUD has been entered?

As noted above, the FUD exceeds 275,000 pages.[8] The FUD will be housed at the Idaho Historical Society and a copy will be maintained by the Idaho Department of Water Resources. These records contain a wealth of information regarding the development of the waters of the Snake River Basin and Idaho history in general. Electronic copies of the FUD are available from the SRBA District Court.

Conclusion

This year is significant not only for the entry of FUD after 27 years of litigation, but also because it marks the 30th anniversary of the signing of the Swan Falls Settlement. The Swan Falls Settlement established a framework for Snake River water management, but recognized that "effective management" would necessitate "a comprehensive determination of the nature, extent and priority of all of the outstanding claims to water rights."[9] Now that the task of compiling a comprehensive list of all water rights is completed, the foundation for "effective management" of Idaho's water resources has been laid.

Aside from quantifying all water rights within the Snake River Basin within Idaho, the SRBA created 19 new water districts within the Snake River Basin to administer the decreed water rights.

Endnotes

1. At the time of entry of the FUD, 72 water rights remained to be adjudicated.

2. The Montana general stream adjudication was commenced in 1979. Montana expects to conclude the adjudication of approximately 219,000 water right claims in 2028. Presentation of Honorable Bruce Loble at Big Horn Adjudication Symposium on September 11, 2014.

3. The Gila River General Stream Adjudication was commenced in 1974. Approximately 82,000 claims have been filed in the Gila adjudication. The Gila adjudication is approximately 33% completed, but no state water right based claim has been adjudicated. The Little Colorado General Stream Adjudication was commenced in 1978 and is approximately 55% complete. Approximately 14, 000 claims were filed in the Little Colorado adjudication. Presentation of John Weldon at the Big Horn Adjudication Symposium, September 11, 2014.

4. New Mexico has thirteen pending adjudications, which were commenced between 1956 and 1970. Presentation of D.L. Sanders, former Chief Counsel, New Mexico State Engineer's Office at The Settlement and the FUD are the lodestars of Idaho water law.

5. Personal conversation with Carter Fritschle, IDWR Adjudication Section Manager (September 3, 2014).

6. Of the 15,000 disallowed state based claims, 8,000 were claimed in the SRBA and the remaining 7,000 were unclaimed water rights in the Idaho Department of Water Resources database. Email from Carter Fritschle, IDWR Adjudication Section Manager dated October 3, 2014.

7. These numbers do not include public water reserved federal water right claims for livestock watering on federal lands.

8. The FUD is 16 pages in length and incorporates 10 attachments.

9. *Framework for Final Resolution of Snake River Water Rights Controversy* at 5 (October 1, 1984).

About the Author

Clive J. Strong *is Chief of the Natural Resources Division for the Office of the Idaho Attorney General. Mr. Strong works exclusively in the areas of environmental, natural resources, water, and Indian Law. He was the lead attorney for the State of Idaho in the Snake River Basin Adjudication. Mr. Strong earned his LL.M. in 1983 from the University of Michigan, his J.D. in 1977 from the University of Idaho and his B.S. in Forestry in 1974 from the University of Idaho.*

OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
Roger S. Burdick
Justices
Daniel T. Eismann
Jim Jones
Warren E. Jones
Joel D. Horton

2nd AMENDED - Regular Fall Term for 2014

Boise ..... July 29
Boise ..... August 20, 22, 27, 28 and 29
Boise ..... September 26
Coeur d'Alene (Kootenai County Courthouse) ..... September 29 and 30
Moscow (University of Idaho, College of Law) ..... October 1
Boise ..... October 3
Boise ..... November 3
Burley (Cassia County Courthouse) ..... November 6
Twin Falls (Twin Falls County Courthouse) ..... November ~~6~~ and 7
Boise ..... November 10 and 12
Boise ..... December 1, 3, 5, 8 and 10

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2014 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
Sergio A. Gutierrez
Judges
Karen L. Lansing
David W. Gratton
John M. Melanson

2nd AMENDED - Regular Fall Term for 2014

Boise ..... July 22 and 24
Boise ..... August 12, 19 and 29
Boise ..... September 9, 11, 16 and 18
Boise ..... October 14, 16, and 21 ~~**23**~~
Boise ..... November 13, ~~**14**~~, 24 and 25

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2014 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 Argument for November 2014

Monday, November 3, 2014 – BOISE
8:50 a.m. *BRN Development v. Taylor Engineering* ..... #40625
10:00 a.m. *State v. Sanchez-Castro* ..... #40603
11:10 a.m. *Deon v. H&J* (***Industrial Commission***) ..... #41593

Thursday, November 6, 2014 – BURLEY (Cassia County Courthouse)
8:50 a.m. *Franklin Building Supply v. Hymas* ..... #41041
10:00 a.m. *Flying "A" Ranch v. Fremont County* ..... #41584
11:10 a.m. *Big Wood Ranch v. Water Users' Association* .. #41265

Friday, November 7, 2014 – TWIN FALLS (Twin Falls County Courthouse)
8:50 a.m. *State v. Wolfe* (***Petition for Review***) ..... #41750
10:00 a.m. *Plane Family Trust v. Skinner* ..... #41448

Monday, November 10, 2014 – BOISE
10:00 a.m. *Bond v. Round* ..... #41485
11:10 a.m. *State v. Arrotta* ..... #41632

Wednesday, November 12, 2014 – BOISE
8:50 a.m. *Turner v. City of Lapwai* ..... #41560
10:00 a.m. *Dept. of Transportation v. HJ Grathol* ..... #40168
11:10 a.m. *State v. Abdullah* ..... #31659/39417

Idaho Court of Appeals
Oral Argument for November 2014

Thursday, November 13, 2014 – BOISE
9:00 a.m. *State v. Southwick* ..... #40855
10:30 a.m. *State v. Eauclaire* ..... #41766
1:30 p.m. *State v. Colvin* ..... #41762

Monday, November 24, 2014 – BOISE
10:30 a.m. *State v. Kirk* ..... #41236
1:30 p.m. *State v. Hendren* ..... #41345

Tuesday, November 25, 2014 – BOISE
10:30 a.m. *Padilla v. State* ..... #41772/41773
1:30 p.m. *State v. Daniels* ..... #41997/41998

The Idaho Court of Appeals will have NO oral arguments during the month of December.

Idaho Supreme Court
Oral Argument for December 2014

Monday, December 1, 2014 – BOISE

8:50 a.m. *State v. McKean* ..... #41004
10:00 a.m. *Mosell Equities v. Berryhill & Co.* ..... #41338
11:10 a.m. *Minnick v. Hawley Troxell* ..... #41663

Wednesday, December 3, 2014 – BOISE

8:50 a.m. *ACI Northwest v. Jacobson* ..... #41269
10:00 a.m. *Cedillo v. Farmers Insurance* ..... #41683
11:10 a.m. *Noble Manor v. Shoushtarain* ..... #41350

Friday, December 5, 2014 – BOISE

8:50 a.m. *Adams v. State* (*Petition for Review*) ..... #41912
10:00 a.m. *Bell v. Dept. of Labor* (*Industrial Commission*) .... #41592
11:10 a.m. *Jayo Development v. Board of Equalization* #41668

Monday, December 8, 2014 – BOISE

8:50 a.m. *Pocatello Hospital v. Quail Ridge Medical* ..... #41589
10:00 a.m. *State v. Thomas, Jr.* (*Petition for Review*) ..... #42421
11:10 a.m. *Burlile v. Payette County Commissioners* .... #41113

Wednesday, December 10, 2014 – BOISE

8:50 a.m. *State v. Knutsen* ..... #40803
10:00 a.m. *Golub v. Kirk-Hughes* ..... #41501
11:10 a.m. *Golub v. Kirk-Scott* ..... #41505

Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 10/1/14)

CIVIL APPEALS

Damages

1. Did the jury and/or court improperly award or allow damages that were punitive in nature, and/or in excess of the amount allowed under law?

Hennefer v. Blaine County School District #61
S.Ct. No. 41286
Supreme Court

Evidence

1. Did the court err in finding the Wurmlingers' operation of their bed and breakfast business did not violate the neighborhood CC&Rs?

Greenfield v. Wurmlinger
S.Ct. No. 41178
Supreme Court

Post-conviction relief

1. Did the court err in summarily dismissing Grist's claim related to a juror on grounds not asserted in the State's motion and without giving Grist 20 days notice and an opportunity to respond?

Grist v. State
S.Ct. No. 41409
Court of Appeals

2. Did the court err when it summarily dismissed Peterson's petition for post-conviction relief without making findings of fact or conclusions of law after an evidentiary hearing?

Peterson v. State
S.Ct. No. 41415
Court of Appeals

Standing

1. Whether the district court erred in determining that Ellmaker lacked standing to sue on the unpaid note in Martha Chitwood's name.

Ellmaker v. Tabor
S.Ct. No. 41846
Supreme Court

2. Did the NEA have standing to file a Petition for Declaratory Judgment challenging the "Addendum to the Continuing Teacher Contract" that allowed teachers to voluntarily contribute unpaid furlough days?

Nampa Education Assoc. v. Nampa School Dist. No. 131
S.Ct. No. 41454
Supreme Court

Termination of parental rights

1. Whether the court's finding that Doe was served proper notice of the summons and verified petition for termination was supported at trial by clear and convincing evidence.

Dept. of H & W v. Jane Doe (2014-22)
S.Ct. No. 42442
Supreme Court

CRIMINAL APPEALS

Fundamental error

1. Did the prosecutor commit misconduct in her closing argument that amounted to fundamental error?

State v. Denton
S.Ct. No. 41512
Court of Appeals

Instructions

1. Did the district court err in affirming Cruz's conviction for possession of marijuana and in finding she was not entitled to an instruction on the defense of necessity?

State v. Cruz
S.Ct. No. 41791
Court of Appeals

Pleas

1. Did the court abuse its discretion in denying Gonzales' post-sentencing motion to withdraw his guilty plea?

State v. Gonzales
S.Ct. No. 40038
Court of Appeals

Restitution

1. Was there substantial evidence to support the restitution award of $3,315.63 to the victim's mother for lost wages?

State v. Reale
S.Ct. No. 41892
Court of Appeals

Search and seizure – suppression of evidence

1. Did the district court err when it determined that an on-call probation and parole officer can delegate the duty to supervise and manage a parolee by authorizing a local police officer to conduct a warrantless parolee search?

State v. Armstrong
S.Ct. No. 41458
Court of Appeals

2. Did the court err in denying the motion to suppress and in finding the search was valid under the automobile exception?

State v. Gosch
S.Ct. No. 40895
Court of Appeals

3. Did the court err in denying Stone-Jones' motion to suppress and in finding the duration of the traffic stop was constitutionally reasonable?

State v. Stone-Jones
S.Ct. No. 41513/41607
Court of Appeals

4. Was Watt's detention unlawfully prolonged to facilitate a drug dog sniff such that his motion to suppress evidence should have been granted?

State v. Watt
S.Ct. No. 41870
Court of Appeals

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

Idaho Criminal Rule 12.2: Guidance for Obtaining Necessary Defense Resources

Michael Henderson

In the September, 2014, issue of *The Advocate*, Ben Patrick McGreevy highlighted Idaho Criminal Rule 12.2, which went into effect on August 1 of this year. The rule set out the procedure for defense counsel who represent indigent defendants to request additional defense services, such as investigative assistance and expert witnesses. Mr. McGreevy described the various provisions of the rule and also suggested some possible amendments to address perceived problems arising from the rule. This column will provide some additional background on the rule on attempt to clear up some misconceptions regarding its application.

The standards for deciding whether an indigent defendant should receive additional resources for his defense derive primarily from two cases that Mr. McGreevy discussed: *State v. Olin*,[1] and *Ake v. Oklahoma.*[2] In affirming the denial of the defendant's request for a second psychiatric evaluation in *Olin*, the Court said, "It is incumbent upon the trial court to inquire into the needs of the defendant and the circumstances of the case, and then make a determination of whether an adequate defense will be available to the defendant without the requested expert assistance. If the answer is in the negative, then the services are necessary and must be provided by the state."[3] The Court went on to say that the decision of whether to grant a request for expert or investigative assistance was within the discretion of the trial court.

In *Ake*, the Court held that the failure to provide the defendant with psychiatric assistance in a capital murder case, where the defendant's possible insanity was an issue, was a denial of due process. The Court stated that "meaningful access to justice" required not that "a State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy," but that the defendant be provided with the "basic tools of an adequate defense or appeal."

In making the determination as to whether to provide the assistance the defendant requested, there were three relevant factors to be considered: first, the private interest that will be affected by the action of the state; second, the governmental interest that will be affected if the safeguard is to be provided; and third, the probable value of the additional or substitute procedural safeguards that are sought, and the risk of an erroneous deprivation of the affected

The Court went on to say that the decision of whether to grant a request for expert or investigative assistance was within the discretion of the trial court.

interest if those safeguards are not provided.[4] The *Ake* standards have generally been applied in non-capital cases and in cases involving other types of defense assistance.

Rule 12.2 provides specific procedures and guidelines for implementing the *Olin* and *Ake* requirements. The rule deliberately does not repeat the constitutional standards set out in those cases, as well other case law that has addressed this issue, since the standards are worded in various ways and may be subject to further refinement in subsequent cases. But it is intended that judges will apply these procedures while keeping in mind the constitutional requirement of ensuring that the defendant have "meaningful access to justice."

Three aspects of the rule merit particular attention. First, subsection (c) addresses the finding of indigency and states that the "fact that a defendant has retained private counsel, or has been found not to be indigent for the purposes of appointing counsel at public expense, shall not necessarily preclude a finding that a defendant is indigent with regard to the obtaining of the additional services requested."

A defendant may be able to hire private counsel, but may then find that the cost of obtaining investigative or expert assistance is beyond his means. In such cases, this provision of Rule 12.2 will enable the defendant to continue to be represented by the lawyer of his choosing, who is already familiar with the case, while obtaining the constitutionally required resources for his defense.

Second, subsection (d) provides that defense motions seeking public funds for additional resources shall be submitted ex parte. This will enable defense counsel to submit requests without revealing defense strategy to the prosecution.

Third, subsection (e) is the first provision in Idaho law that specifically addresses the appointment of a "money judge." A judge is often uncomfortable addressing defense requests for additional resources because it may require hearing detailed information about defense counsel's strategy and thought processes regarding a case over which the judge will preside at trial. This provision will allow the judge to request that the administrative district judge appoint another judge to consider the request.

Actually, the intent of the rule is that the motion is to be heard ex parte in all instances, as provided in subsection (d).

Some clarification may be helpful in considering Mr. McGreevy's comments on Rule 12.2. Subsection (g) of the rule states that if the request for additional defense services is filed by private counsel, and the services are to be provided through funds budgeted to the public defender, the public defender is to be served with a copy of the motion for additional services and with notice of the hearing.

An order granting such a motion is also to be provided to the public defender. This leads Mr. McGreevy to observe that the motion for additional services is to be heard ex parte "in most instances." Actually, the intent of the rule is that the motion is to be heard ex parte in all instances, as provided in subsection (d). The notifications required by subsection(g) are only intended to allow the public defender to be informed of possible payments that will be made out of the public defense budget, which, of course, the public defender must monitor. Subsection (g) is not intended to permit the public defender to argue against the request for additional services, which would probably be an improper role for the public defender to assume. Some clarifying language in subsection (g) might be helpful in removing any confusion.

Mr. McGreevy is particularly critical of subsection (b)(6), which states that if the proposed providers of the requested services are located outside of the judicial district or the state, the motion shall include "an explanation of why the proposed providers should be utilized and what efforts have been made to locate providers of the requested services in the judicial district or in the state of Idaho." This provision is not intended to restrict the defense to seeking investigators or experts in Idaho or in the judicial district.

There are any number of valid reasons why defense counsel may prefer to obtain the services of an out-of-state or out-of-district provider, and these should be considered by the court. Even in considering the issue of conserving public funds, it will have to be borne in mind that out-of-state providers will in many cases be less expensive than those in Idaho. It may be more economical for a defendant in Coeur d'Alene to obtain the services of an expert in Spokane than one in Boise.

The overriding consideration must always be providing a defendant with the services required to ensure "meaningful access to justice." The intent of subsection (b)(6) is simply to ensure that the defense will have investigated the possibility of obtaining equivalent services closer to home.

This leads to Mr. McGreevy's primary criticisms of Rule 12.2: that it imposes requirements on the defense in obtaining services that are not imposed on the prosecution, and that it deviates from the standards established in *Olin* and *Ake*. First, it should be noted that those cases and a host of others that have addressed the issue of providing indigent defendants with needed expert and investigative assistance have made clear that the court acts as the gatekeeper to the public funds that may be required for those services.

As our Court of Appeals noted in discussing the *Olin* and *Ake*, standards, in a passage that Mr. McGreevy himself cites, "[E]ach of these cases requires the provision of assistance at public expense where it is necessary for a fair trial and a meaningful opportunity to present a defense, while sifting out requests for services that are not shown to be reasonably necessary for those purposes."[5] Rule 12.2 is intended to guide this process of distinguishing meritorious requests for necessary resources from unsupported or unnecessary requests.

Second, the ability to request that the court order additional funding for preparation of a case provides defendants with an avenue of obtaining funds that is not available to the prosecution, which ordinarily cannot request that the court provide additional funding for investigations or experts. Prosecuting attorneys must work within a budget that is set by the county commissioners; they do not have unlimited funds.

To the extent that prosecutors may have greater resources for experts and investigations than defense counsel, this is an issue that may need to be addressed through the Legislature's Public Defense Reform Interim Committee, and by the newly formed State Public Defense Commission. The point is that defense counsel have a way to obtain the additional resources in order to ensure an adequate defense.

This process fills the gap between the defendant's limited means and the resources that are required to meet constitutional requirements. The court's role is to make sure that the funds requested are actually necessary. Rule 12.2 provides guidance to counsel and courts as we attempt to achieve the goals of ensuring access to justice while protecting against unnecessary expenditures.

The point is that defense counsel have a way to obtain the additional resources in order to ensure an adequate defense.

Endnotes

1. 103 Idaho 391, 648 P.2d 203 (1982)
2. 470 U.S. 68 (1985)
3. 103 Idaho at 395, 648 P.2d at 207
4. 470 U.S. at 77
5. *State v. Martin*, 146 Idaho 357, 363, 195 P.3d 716, 722 (Ct. App. 2008) (emphasis added).

About the Author

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Researching Jurors' Internet Presence

Hon. Candy Waghoff Dale

Why might a trial attorney choose to use Pinterest for something other than personal reasons? If you attended the breakout session on social media at the recent Bench/Bar conference in Fort Hall or Boise, you heard this question answered during a panel discussion among Chief District Judge B. Lynn Winmill, Deputy Attorney General Brian Kane, and me. If you did not attend, the short answer is that trial attorneys and others whom they employ, may find Pinterest a source of useful information about potential jurors summoned for a trial in federal or state court.

Although Facebook is still the most used form of social media, Pinterest is one of the fastest growing sites, used predominantly by women in the age group of 25 to 44. The next questions that arise (after you learn for the first time about Pinterest if you or someone you know isn't already a user) are whether you can or should research potential jurors' internet presence before or during jury selection and during trial, and whether there is a proper way to do so. These questions were addressed at the conferences as well, but I will attempt to answer them in this article, while providing you information about the District of Idaho's new Local Rule 47.2 which addresses the subject.

Earlier this year, and largely upon the suggestion of Chief Judge Winmill after the subject of researching jurors' internet presence became the subject of a pretrial order in one of his trials, the Local Civil Rules Advisory Committee formed a subgroup to research the topic. The subgroup was also charged with proposing either a standing order or local rule that would address what attorneys can and cannot do with regard to investigating information about potential jurors by searching their internet presence. (At this point in reading this article, I'm pausing to ask how many of you will confess that you have used Google to find online information about yourself at least once in the past year to see if you have an internet presence (and the nature of it?)). Around this same time period, the American Bar Association's Standing committee on Ethics and Professional Responsibility released, on April 24, 2014, a Formal Opinion, No. 466, on the timely topic of "Lawyer Reviewing Jurors' Internet Presence."

The results of the subgroup's research was a draft rule that was vetted and revised by the Committee as a whole and later published for Public Comment on June 19, 2014. After receiving only one comment, the Committee once again vetted the proposed rule and agreed, during its September 19, 2014 meeting, to adopt the rule but to delay the effective date until January 2, 2015, to allow the Bar to learn about the rule and its ramifications. Hence, this article is one of the outreach efforts intended to provide guidance about the background of the Rule and how members of the Bar should educate themselves to comply with it.

A search on a social media site must not disclose to the juror who is making the inquiry, and it must only seek information available and accessible to the public.

Here is the new rule, with comments in the footnotes:

Rule 47.2 Social media juror inquires[1]

a) Attorneys may use websites available to the public, including social media websites, for juror or prospective juror research, so long as:

1) The website or information is available and accessible to the public;

2) The attorney does not send an access request to a juror's electronic social media;

3) No direct communication or contact occurs between the attorney and a juror or prospective juror as a result of the research, including, but not limited to Facebook "friend" requests, Twitter or Instagram "follow" requests, LinkedIn "connection" requests, or other forms of internet and social media contact;

4) Social media research is done anonymously. For example, a search on a social media site must not disclose to the juror who is making the inquiry, and it must only seek information available and accessible to the public and not the result of an attorney's account on said social media site;[2] and

5) Deception is not used to gain access to any website or to obtain any information.

b) Third parties working for the benefit of or on behalf of any attorney must comply with all the same restrictions as set forth above for attorneys.

c) If an attorney becomes aware of a juror's or prospective juror's conduct that is criminal or fraudulent, IRPC 3.3(b) requires the attorney to take remedial measures including, if necessary, reporting the matter to the court.

d) If an attorney becomes aware of a juror's posting on the internet about the case in which she or he is serving, the attorney shall report the posting to the court.

With this new rule, the Local Rules Committee has attempted to help trial lawyers know how and where to draw the line between properly investigating jurors and improperly communicating with them. There is a tension here between a growing consensus that trial lawyers have a responsibility to use social media to research and investigate the potential jurors and the prohibition on ex parte contact with the potential jurors under Rule 3.5(b) of the Idaho Rules of Professional Conduct. *See, e.g.*, *Carino v. Muenzen*, 2010 WL 3448071 (N.J. Super. Ct. App. Div. Aug. 30, 2010) (trial court judge abused his discretion by precluding counsel from accessing the internet during the jury selection process to research potential jurors); *Cajamarca v. Regal Ent. Group*, No. 11 CV2780-BMC, 2012 WL 3782437 (E.D.N.Y. Aug. 31, 2012) (criticizing counsel for not researching his client, including on the internet: "plaintiff's lawyer should be roundly embarrassed. At the very least, he did an extraordinarily poor job of client intake in not learning highly material information about his client."). Partly due to this tension, which existed previously but is enhanced by the internet-saturated world we live in today, the Committee decided to include provision (a)(4) requiring the research of jurors' social media presence to be conducted "anonymously."

The anonymity requirement admittedly is a divergence from the ABA's formal opinion that does not mandate anonymity, but is consistent with other opinions identified during the subgroup's research, including Formal Opinion 2012-2 of the Bar of the City of New York Committee on Professional Ethics. Requiring all searches to be anonymous is one of the steps the Committee identified to help lawyers ensure there is no communication from the lawyer perceived by the potential juror, and no communication/contact initiated in reply or in curiosity to the lawyer by the juror. The anonymity requirement ensures no improper communication.

However, the anonymity requirement was the most debated topic when the Committee vetted the rule. The lurking concern was whether "inadvertent" or unwitting contact with a juror by an attorney or someone employed on the attorney's behalf would result in sanctions or contempt of court. But, the requirement was not included as a trap for the unwary; instead, the Committee was aware of comment 8 to Rule 1.1 of the Idaho Rules of Professional Responsibility, effective July 1, 2014:

To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (emphasis added).

The competency responsibility is incorporated in footnote 2 to the rule, with the following sentence: "Attorneys must be familiar with the technology and internet tools they use to be able to do searches, including automatic, subscriber-notification features so as to maintain anonymity in any search."

Again, to assist the lawyers, and judges, with understanding whether and how a juror's internet presence can be accessed and researched anonymously and consistent with the rule, Deputy Attorney General Brian Kane provided a primer on Facebook, Instagram, Twitter, Pinterest and LinkedIn during the recent Bench/Bar conferences. Presently,

The anonymity requirement admittedly is a divergence from the ABA's formal opinion that does not mandate anonymity, but is consistent with other opinions identified during the subgroup's research.

other than LinkedIn, anonymous access can be done on all of these sites so long as the researcher is not logged in on his or her own account and is accessing only publicly accessible pages, rather than "friending" or requesting access personally or through another person (or through deceit). Stated another way, passive monitoring of a juror's publicly available social media activity is allowable, but counsel must not access it in any way through which the juror becomes aware of the monitoring (for example, when someone decides to "follow" or track a Twitter account, under the default setting, an email is sent to the Twitter account user saying that individual is now following them). So, beware if you use LinkedIn and, if you choose to use it, or any other social media platform, make sure you know all of the steps to take to browse, track or follow anonymously. Some examples of such steps were outlined by Mr. Kane during the conference, and the outline of his primer can be found on the federal court's website at: www. Id.uscourts.gov.

Clearly, social media is here to stay and represents an ever growing source of knowledge or information for all of us. Learning as much as you can before and during voir dire about the jurors that will decide your case is essential to making wise use of your peremptory challenges. But, do not fall prey to the lure of easy technology without understanding how it works and how to utilize it within the confines and requirements of our new local rule.

Endnotes

1. Jurors will be advised during the orientation process that their backgrounds will be of interest to the litigants and that the attorneys in the case may investigate their backgrounds, including a review of internet websites and social media.

2. If there is not a method of conducting the internet research in a manner which prevents the juror or prospective juror from discovering who is doing the research, the research shall not be done because it would constitute an inappropriate communication. Attorneys must be familiar with the technology and internet tools they use to be able to do searches, including automatic, subscriber-notification features so as to maintain anonymity in any search.

About the Author

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Idaho Board of Tax Appeals: Adjudicating State Tax and Ad Valorem Appeals Since 1969

Linda Pike

This article is to introduce Idaho Bar members to the Idaho Board of Tax Appeals. The Board is the administrative body for hearing most Idaho state tax and property valuation appeals. Although the Board has existed for 45 years, many members of the Bar, as well as the public, do not know about this appellant process. Hopefully, after reading this, attorneys will have a better understanding of how to help their clients appeal state tax matters by using this quasi-judicial process, rather than pursing such matters in court.

The Board must at all times appear to be neutral even though each member must declare their political party affiliation when appointed.

What is the Board of Tax Appeals?

In 1969, the Idaho legislature established the Idaho Board of Tax Appeals (BTA) as a quasi-judicial, independent body to hear ad valorem, property tax exemption, sales and use tax, "circuit breaker,"[1] and income tax appeals. The bulk of the BTA's caseload consists of ad valorem[2] appeals arising from decisions of the County Commissioners acting as the Board of Equalization in each of Idaho's 44 counties.[3]

The part-time Board consists of three members appointed by the Governor, with confirmation of the Senate. Members serve three-year, staggered terms. The Board must be politically balanced and members are prohibited from being politically active. In other words, the Board must at all times appear to be neutral even though each member must declare their political party affiliation when appointed. Traditionally, Board members are from different geographical regions of Idaho. Currently the Board consists of David Kinghorn (Chair) from Eastern Idaho, Lee Heinrich from Southwestern Idaho, and I am the Board member from Northern Idaho. Board Members are selected based on their knowledge and experience in taxation.[4] The Board is also supported by administrative staff that helps manage the Board's docket, as well as additional hearing officers.

Board members operate out of their own homes using fax machines, email, and phones to communicate with each other and with the support staff in Boise. In-person Board meetings are held in Boise two or three times per year. The bulk of the Board members' work consists of conducting hearings, and drafting and reviewing decisions outside the agency's Boise office.

As a working Board, members travel and conduct hearings in their respective regions. Final decisions are not rendered at hearing. Members review every decision, which requires at least two concurring signatures before becoming final. As in other judicial and quasi-judicial hearings, Board members and even hearing officers must avoid conflicts of interests and disclose any potential conflict. Naturally, there should be no ex parte discussions with the parties about information presented at hearing.

While these rules of judicial practice may seem so fundamental to lawyers that they need not to be discussed, they are mentioned here because of the typical nature of the Board's hearings. Often the hearings involve pro se (self-represented) litigants who are unaware of these rules and want to engage in conversation prior to, or after, the hearing. Some litigants think they have been gathered just to have an informal discussion about their particular issue. The presiding hearing officer is tasked with maintaining control of the hearing so both sides are treated fairly.

Training for hearing officers and board members

Being a lawyer is not a requirement to conduct hearings, however, all Board members and hearing officers attend classes at the National Judicial College in Reno, Nevada. The basic curriculum includes a two-week session on Administrative Law and Fair Hearings. Other ad-

vanced classes are taken as time and budgets permit. Also, when there is an opportunity, judges, law professors, and other administrative agency officials come as guest speakers to the Board's meetings. These speakers enhance the Board's and staff's general knowledge of administrative law and fair hearings. Additionally, the National Association of Hearing Officers (NAHO) provides an educational opportunity for hearing officers through its annual conferences.

The thrift store court

In essence, the Board serves as an administrative tax court for citizens of Idaho. A Magistrate Judge once told me that he considered his position to be a "K-Mart" judge because magistrates deal with myriad basic everyday matters. If that is true, then the BTA must be the thrift store court because there are no filing fees, no court rooms, and we do not wear black robes. Board hearings are held wherever accommodations can be found in every county in the state. Most of the time, hearings are conducted by a single Board member or hearing officer, with no clerk. The hearings are digitally recorded and witnesses are sworn in prior to commencement. Parties can bring witnesses and are encouraged to bring exhibits when appropriate. Many parties are self-represented, though some are represented by counsel. A party unable to appear personally must be represented by an attorney. They cannot be represented by a non-attorney.[5]

The BTA's rules also allow for discovery, as well as other traditional motions one would expect in a legal proceeding. Such rules and procedures are necessary to ensure a significant degree of due process to the parties. However, because the BTA was established to be a process whereby citizens could get cost-free adjudication without the requirement of attorney representation, these rules can sometimes be confusing for pro se parties. It is not unusual for the Board member or hearing officer to explain the process and be somewhat lenient at the hearing in the interests of justice and fairness.

Ad valorem appeals

Ad valorem appeals constitute the bulk of the BTA's docket. These refer to appeals of property value or property tax exemption status. Ad valorem appeals are typically filed in late summer. This is because taxpayers are required to first appeal their assessments by the fourth Monday of June to the County Board of Equalization.[6] The County Board of Equalization then has until the second Monday of July to hear and determine taxpayer appeals.[7] Taxpayers have 30 days from the date of the Board of Equalization's decision to appeal to the BTA or district court.[8] The Board spends the fall and winter seasons hearing and deciding these appeals. All final ad valorem decisions of the Board must be issued by May 1.[9]

The Board's staff in Boise manages the administration of the appeals and verifies each appeal is perfected according to the applicable statutes and rules. Under the direction of the Board Chairman, BTA staff assign each appeal to a Board member or hearing officer, and arrange for a venue in which to conduct the hearing.

Parties come to the hearing prepared to present their cases and often have exhibits to be introduced and marked. Typical exhibits in ad valorem cases may include photographs of the subject property or comparable properties, appraisals of the subject property, information regarding sales of similar property, or even information about local or national real estate trends. If the issue in the appeal concerns whether the property qualifies for an exemption, the parties must demonstrate entitlement to the claimed exemption according to Idaho Code and applicable case law. Exemption appeals are technical in nature so many involve representation by legal counsel.

The Board member or hearing officer can rule on motions at the hearing and also has the discretion to deny exhibits or testimony. Generally, the parties to ad valorem appeals include the property owner, typically the Appellant, and the county assessor representing the Respondent County. In somewhat rare instances

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the assessor is the party challenging the decision of the Board of Equalization, in which case the assessor is the Appellant.

State Tax Commission appeals

The subject matter of State Tax Commission appeals typically centers on income tax, sales and use tax, or "circuit breaker" matters. Circuit breaker is a property tax reduction benefit program available to applicants who satisfy certain age, disability, and income requirements. Qualification for the circuit breaker benefit can reduce the amount of property tax the claimant must pay. State Tax Commission appeals can get complicated depending on the subject matter.

Use tax in Idaho can be a particularly difficult case type, as the code and case law are not always clear. Income tax cases can also be complicated. Because Idaho borders Washington, which does not impose income tax, sometimes people moving to Idaho from Washington do not understand, or are unaware of Idaho's income tax laws and are surprised to learn their retirement benefits or other income may be taxed in Idaho.

Other income tax cases may involve residency or domicile. These cases can also be complicated, where a taxpayer resides in more than one state or conducts business in multiple states. Income tax issues are by their nature usually difficult. Appellants may benefit from being represented by an attorney or advised by an accountant.

Generally in circuit breaker appeals, Appellants are not represented by an attorney because the cost is usually prohibitive. Sometimes the issue may be a change in marital status or disability qualification. Many times the issue centers on whether certain medical expenses should be allowed. These cases are stressful because often there is a lack of understanding by the Appellant about the program's requirements, or because of sad life circumstances of the Appellant. As an example of the latter situation, by Idaho law, to be considered disabled, one must be declared disabled by the social security administration. If the person for whatever reason has never qualified for social security benefits, then regardless of how disabled they actually are, they do not qualify for the circuit breaker benefit.

Most cases arising from the County Board of Equalization, however, are focused on the market value of the property under appeal.

When, where, how?

Appeals brought under Idaho Code § 63-511 must be filed within 30 days of the notice of a decision of the County Board of Equalization. Typically County Board of Equalization decisions are issued in written form, but such is not required. Notice of appeal must be filed with the county auditor in the county in which the property assessment originated.[10] These appeals may also include legal issues, such as whether the property qualifies for an exemption under the various exemption statutes in the Code. Most cases arising from the County Board of Equalization, however, are focused on the market value of the property under appeal.

Appeals from decisions of the State Tax Commission are brought under Idaho Code §63-3049. These appeals must be filed directly with the BTA within 91 days after the receipt of the State Tax Commission's decision. A 20% prepaid deposit must also be made to the State Tax Commission within the 91-day appeal window. Circuit breaker appeals, however, must be filed with the BTA within 30 days of the State Tax Commission's decision to disapprove the taxpayer's circuit breaker application.[11]

Why should I care?

Many Appellants, especially in cases concerning income and sales tax, could benefit from the advice of counsel. These cases can be complicated and often turn on case law, of which the taxpayer might be unaware. Even ad valorem cases can get confusing for self-represented parties because they may not understand the procedural rules or are generally unfamiliar with motions and the discovery process. If an ad valorem case has issues of qualification for exemption, these are legal matters and the advice of counsel might indeed change the outcome of the case.

Though no formal calculation exists, the BTA saves the court system a good deal of time and expense by hearing these various tax-related matters. The BTA's annual caseload varies but some years the docket has exceeded 1,000 appeals. Without the BTA, the district court system would

be tasked with hearing these appeals. Final decisions of the BTA are appealable to district court, which hears such appeals without a jury on a de novo basis.[12]

Summary

The BTA performs a necessary and worthwhile task hearing and deciding a diverse caseload, thereby relieving the court system and taxpayers of the financial and time burdens of litigating in court. Even though many of these appeals are filed by pro se litigants, they could certainly benefit from the guidance of counsel. If you were not previously aware of the BTA, it is hoped that you now have a basic understanding of its workings. If you have clients or potential clients that could benefit from the process, perhaps you can aid them in perfecting their appeal and/or representing them at a hearing. Some of the Board's prior ad valorem decisions are available on its website at www.bta.idaho.gov. We welcome comments from members of the Bar and hope this information has been helpful in understanding the role and functions of the Idaho Board of Tax Appeals.

Endnotes

1. Circuit Breaker – a property tax reduction benefit program available to qualified applicants who meet certain income or disability requirements. See Idaho Code §§ 63-701 through 63-710.
2. Ad valorem – A tax imposed proportionately on the value of something (esp. real property), rather than on its quantity or some other measure. Black's Law Dictionary (7th Ed. 1999).
3. Idaho Code § 63-511.
4. Idaho Code § 63-3802.
5. IDAPA 36.01.01.030; *see also Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 676, 637 P.2d 1168, 1172 (1981).
6. Idaho Code § 63-501A.
7. Idaho Code § 63-501.
8. Idaho Code § 63-511.
9. Idaho Code § 63-3809.
10. Idaho Code § 63-511.
11. Idaho Code § 63-707(6)(b).
12. Idaho Code § 63-3812.

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Linda Pike *has served on the Idaho Board of Tax Appeals for 14 years. She is a retired attorney having practiced law with her husband for 20 years in Moscow. She received her JD from the University of Idaho. She volunteers with Habitat for Humanity and served 6 years on the Idaho AARP Executive Council.*

Typography Matters: Document Design

Tenielle Fordyce-Ruff

In the May edition of *The Advocate*, I covered legibility and credibility related to font choice. The column was incredibly popular. The snippets on block capitals, serif fonts, and font choice lending credibility to writing seem to really have struck a cord with *The Advocate's* readers.

To those of us passionate about good legal writing, the response makes sense. We understand that good writing equals good lawyering. We also understand that all attorneys and judges do a fair bit of reading as part of their jobs — and their attention is a valuable resource. And we understand that if a document is readable, the reader is more likely to remember the content.

This month, I am turning to what I hope is an equally helpful topic: document design. Sit back and enjoy learning more about spaces after periods, cueing devices, point size, justification, and paragraph breaks.

Spaces after sentences

Many of us were taught to always use two spaces after the end of a sentence. Turns out, this practice is obsolete. Using two spaces after a period is a holdover from the bygone days of typewriters. The fonts of typewriters had to be uniform: each letter had the same horizontal proportion as every other letter. That made it difficult for the reader to easily tell where one sentence ended and the next began.

This trouble with fonts no longer exists. Computers use proportional fonts (the horizontal space between letters varies). Thus, readers no longer need the visual cue of two spaces after a sentence.

So to make your documents look more professional, train your fingers to hit the space bar only once![1] This will prevent unattractive gaps between sentences and help the reader glide undistracted to the next sentence.

Underlining as a cueing device

Like the "two-space" rule, using underlining as a cueing device is a remnant of the typewriter age. Typewriters didn't have italics or bold characters, so you had to cue the reader into the importance of something by underlining. Unfortunately, underlining messes up the visual patterns of the letters and breaks the flow.

Readers read letters by shape — and the shape comes at the top and the bottom of each letter. Underlining gets ride of the half of the visual clue we use to comprehend words and thus slows down the reader.

Don't believe me? Compare these:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.[2]

This is one of the most recognizable passages in America, yet simply underlining made it more difficult to read.

So what to do? First, use *italics* or **bold** to draw the reader's attention. Of course, do so sparingly. Some scientific studies show that readers ignore italics.[3]

Point Size

The most comfortable point size for reading is 11 when the lines are shorter than 4 inches. Yes, 11-point fonts are the easiest to read in most common formats: magazines, newspapers, and even reporters. Readers can also read 11-point fonts five percent more quickly than 12-point fonts and six percent more quickly than 14-point fonts.

Legal documents, however, tend to use 6.5 inch line width (standard

paper is 8.5 inches wide). Reader studies suggest that as the line width increases, so should the font size. So if you can, use 12-point fonts for the body of your documents. Larger fonts should be saved for headings.

Justification

"There isn't much justification for justified text."[4] Full-justification is when both the left and right sides of the page are aligned. Full-justification is common in professional publishing. (The columns in *The Advocate*, for instance, are fully justified (except for light feature stories at the back of the magazine.)

Here's the problem. Fully justifying documents changes the spacing between letters and slows down the reader. Moreover, the jagged right edge of left-justified documents adds visual interest to the page without interfering with legibility. Indeed, experts recommend never fully justifying text because the result is course, dry, and uninviting.[5]

Choose, then, to left-justify your writing. It never hurts to add a little visual interest to your briefing.

Paragraph breaks

There are two ways we indicate the beginning of a new paragraph: first indents and a space between paragraphs. First indents are when the first line of a paragraph is indented.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.[6]

A space between paragraphs is when there is an entire line of white space (like the space below):

All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.[7]

Because both of these techniques give the reader a break and signal a new paragraph, use only one. Using both white space and a first-indent is overkill.

Conclusion

Looking good on paper can help make your writing more memorable and more persuasive. Incorporate these tips to give your writing more emotional appeal and help save the reader's energy and attention. After all, persuasion literally includes looking good on paper.[8]

Endnotes

1. If you are using a monospaced or typewriter-style font, do continue to use the double space after a period. This will help give your reader the visual clue that a sentence has ended.

2. Declaration of Independence.

3. Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 116 J.A.L.W.D (Fall 2004).

4. *Id.* at130.

5. Matthew Butterick, *Typography for Lawyers*, 136 (2010).

6. Preamble to the United States Constitution.

7. Idaho Constitution, Art. I.

8. Robbins, *Painting with Print* at 111.

About the Author

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

It's All About Documenting Scope

Mark Bassingthwaighte

I know lawyers get tired of hearing it and risk folk like me get tired of always having to say it; but there is real value in documenting scope of representation on every new matter. Please note that I did not say with every new client, I said with every new matter. Now, I don't mean to suggest that every time a call comes in from some longstanding client that you, as their lawyer, should shoot off a new contract or engagement letter. By no means do I wish to suggest that. I am suggesting, however, that anytime a new file is opened for a client, new or longstanding, one would be well served by taking a few moments to document the scope of representation on that new matter.

Many attorneys respond to this advice by sharing that they object to sending engagement letters to their longstanding and or well-known clients. They argue that doing so would be too formal and would detract from the attorney/client relationship. I could buy into this rationale if such clients never sued their attorneys. Unfortunately, longstanding clients, life-long friends, and even family members do sue their attorneys. In fact, some of our largest losses have come from claims that were brought by such clients. Here's the spin. There is no rule that requires an engagement letter to be a lengthy three page contract full of legalese. A simple thank-you note or confirming email indicating that the usual fees will be charged along with a reference to the nature and scope of the work to be done can suffice.

Then this next argument is made. With flat fee work, such as transactional work, more time would be spent drafting and sending an engagement letter than is warranted. After all, the work itself is usually completed within a month and often sooner. In response, it is uncanny to note the number of times that a planned one-month transaction ended up taking far longer. Unforeseen complications abound, particularly in repetitive transactions such as real estate closings in an area where many transfers are taking place.

Unforeseen complications abound, particularly in repetitive transactions such as real estate closings in an area where many transfers are taking place.

Of course, we also need to recognize that memories can be short, including our own. Who wants to be in a dispute with a client over what you were or weren't asked to do? When this type of dispute does arise, few clients remember that they said they only wanted to pay their attorney to do certain tasks and not every possible action that might have been indicated. Again, a short letter or confirming email can do wonders. This documentation not only confirms your understanding of what the client's needs are, thus avoiding the running with assumptions misstep, but can even be an opportunity to ask if there is anything else you might be able to assist the client with. What harm is there in asking for additional work?

Given what we're seeing in claims coupled with more and more attorneys moving into limited scope representation, I would also encourage you to consider documenting what you are not going to do. If there happens to be a workman's comp component to a personal injury claim and you have no intention of handling that piece, put it in writing! The same could be said for those of you who handle divorces or obtain large settlements of any type but also have no intention of advising those clients as to any tax ramifications that might arise. If you are only being retained to provide a second opinion, document that you have no obligation to file suit on the client's behalf. It's all about documenting that the client was made aware of what you will and will not be doing. Further, where called for, you might also consider documenting that you advised them to seek the services of someone who can assist them on those issues that you won't be.

Finally, it is always a good idea to document that the representation has ended and inform the client that the file is about to be closed, or that the file relative to a particular matter for an on-going client will be closed. A letter of closure sent at the conclusion of representation can meet this need quite effectively. At its most basic level this letter simply confirms for the client that

everything you said you would do has now been completed. It is one more way to make certain that no assumptions are in play on either side.

Of course, the letter of closure is also a way to inform the client of your file retention policy, can serve as a cover letter for the return of original documents to the client, assists in marketing by giving you a chance to say thanks for the business, and is one more opportunity to ask for additional work with a statement as simple as "please don't hesitate to contact me if there is anything else I might be able to assist you with."

All of this speaks to the need to play it safe when it comes to documenting scope of representation. Clients are far less able to allege that their understanding of scope of representation was far broader than what yours was; and here's the rub. Should scope ever be an issue in a malpractice claim and you find yourself in a word against word dispute with the client as to just what your scope was, you've got a serious problem. We all know that attorneys don't fare well in word against word disputes in the malpractice arena. For this reason alone, the time spent documenting scope at the beginning and at the end of representation is well worth it. Try to get into a regular and consistent practice of doing so because claims attorneys will look for these types of documents in every claim file that comes in. They are that important.

Should scope ever be an issue in a malpractice claim and you find yourself in a word against word dispute with the client as to just what your scope was, you've got a serious problem.

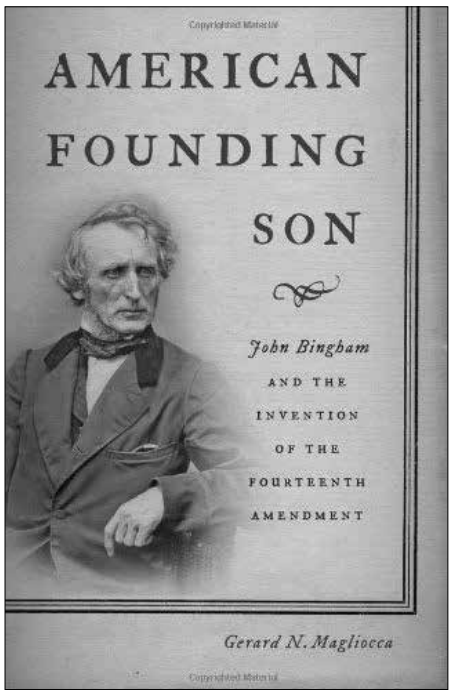
About the Author

Mark Bassingthwaighte *is the Risk Manager with Attorneys Liability Protection Society, Inc., a Risk Retention Group, in Missoula, Montana. ALPS 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.*

Book Review:
The Father of the Fourteenth Amendment — A New Biography

Jon M. Bauman

Among all the biographies and histories about America's founding generation, little is written about the man who was the framer of perhaps the most important amendment to be adopted since the Constitution itself. *American Founding Son* is a commendable, if somewhat perfunctory, effort to fill the lacuna in the scholarly literature about John A. Bingham, the father of the Fourteenth Amendment.



About John A. Bingham

Despite the fact that he was among the most influential leaders of his time, Bingham is almost unknown today. This is regrettable, since it is largely due to his efforts and legal insight that the Bill of Rights, or at least most of it, came to be applied to the states.

Bingham was an Ohio lawyer and congressman who also served as one of the prosecutors at the trial of the conspirators in the assassination of President Lincoln; one of the chief architects of Reconstruction; a manager (prosecutor) at the impeachment trial of President Andrew Johnson; and U.S. ambassador to Japan. It was his work on the Fourteenth Amendment, however, that would justify the attention of posterity. Until the Fourteenth Amendment was adopted, states could and did run roughshod over rights Americans now take for granted. Needless to say, slavery was the most outrageous example. Even whites who went south to speak against the "peculiar institution" could have their bags and papers seized without a warrant, be tossed into jail and held indefinitely, have a confession beaten out of them, and undergo trial without benefit of counsel or the ability to call witnesses on their behalf. In short, while the Bill of Rights limited what the federal government could do to you, states were not so restricted. As a result, being an American citizen could mean absolutely nothing as far as civil rights were concerned, depending on what state you had the misfortune to visit.

Review of *American Founding Son*

American Founding Son was written by Gerard Magliocca, a law professor at Indiana University. John Bingham deserves every bit of the attention he receives in this biography; however, the book fails in several respects to live up to its subject. For example, the book is broken into bite-sized bits, very much like a law school course. This episodic approach lacks the narrative flow and continuity of most biographies. In fairness, some of this may be due to the apparent paucity of primary (and even secondary) source materials about John Bingham.

Unfortunately, Magliocca does not play to his strong suit, namely knowledge of the Fourteenth Amendment and its application in the almost one and a half centuries since its adoption. To his credit, he covers the important points. But given the truncated approach he adopts, there is little opportunity for these to sink in and little context to afford a sense of perspective.

Magliocca also has a tendency to dispute with Bingham after the fact rather than present the counter-arguments made at the time and let the reader draw his or her own inferences. The most prominent example of such treatment occurs in the very brief chapter (18 pages) on the "trial of the century," meaning the six-week trial of those accused of conspiring with John Wilkes Booth to assassinate President Abraham Lincoln. A staunch Republican, Bingham was selected as one of the prosecutors who tried the conspirators before a military commission. Magliocca takes Bingham to task for putting his legal skill at the service of a

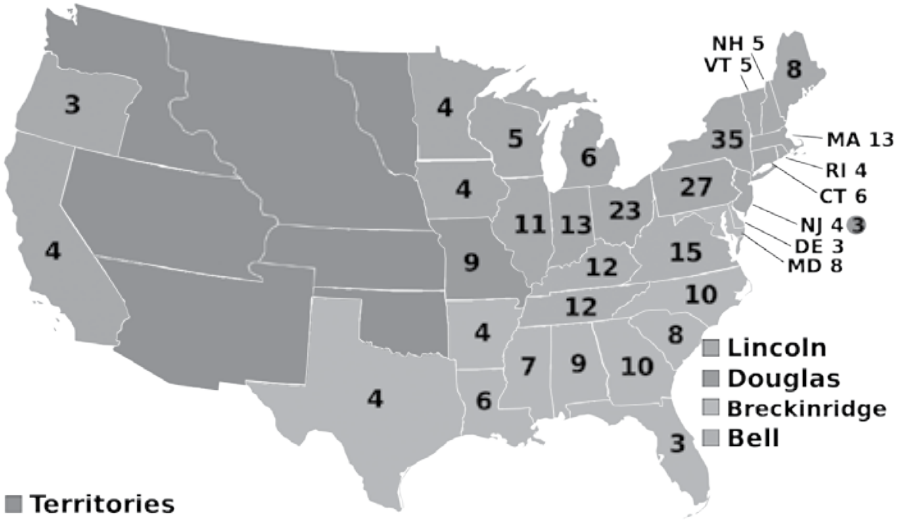
In short, while the Bill of Rights limited what the federal government could do to you, states were not so restricted.

flawed process, relying on hindsight to compare the military commission that tried the conspirators with the military commissions used to prosecute terrorism cases since the events of September 11, 2001. The comparison is unfair, since circumstances were radically different in 1865: active military hostilities continued for some time after Lee's surrender and soldiers were still being shot in the field even during the conspirators' trial.

The federal district courts were closed in many areas; in fact, the court for the District of Columbia had only reopened on the day Lincoln was shot — and then only because of the "force of the bayonet,"[1] as Bingham put it. The use of a military commission to prosecute the conspirators made perfect sense considering that the nation was still at war, martial law and military occupation still prevailed in portions of the country, and it was widely suspected among members of Lincoln's cabinet that the conspirators' plot was concocted in Richmond by the leaders of the Confederacy itself. Magliocca, unfortunately, does not take this concern seriously enough. He concedes that the assassins had a military objective, namely to kidnap Lincoln and use him to extort a prisoner exchange or cease-fire. But since Lee had surrendered five days before the assassination, Magliocca blithely suggests that Booth "probably just wanted vengeance"[2] and therefore any notion of a military objective must have been extinguished.

Such speculation about one conspirator's state of mind is slender support for an argument that it was legally improper to use a military commission to try those who had conspired to assassinate — all in one night — the commander-in-chief, the vice-president, the secretary of state, the secretary of war, and the senior commanding general of the Union armies of the United States, all while the nation was in a state of war. The assassination of all those officials on a single date would certainly have far-reaching political implications that should be explored before simply concluding that the plot was nothing more than retribution.

Electorial map of United States Presidential Election of 1860



Candidate	Party	Electoral Vote	Popular Vote	Percentage of Popular Vote
Abraham Lincoln	Republican	180	1,865,593	39.8%
Stephen A. Douglas	Northern Democrat	12	1,382,713	29.5%
John C. Breckinridge	Southern Democrat	72	848,356	18.1%
John Bell	Constitutional Union	39	592,906	12.6%

**New Jersey cast four electorial votes for Lincoln and three for Douglas.*

Magliocca might also have noted the strength of Bingham's concern that Jefferson Davis was involved in the assassination plot. For example, law professor Garrett Epps, relying on sources listed in Magliocca's bibliography, quotes Bingham as saying to the tribunal that "My own conviction is that Jefferson Davis is as clearly guilty of this conspiracy as John Wilkes Booth."[3] Epps also notes that the conspirators were in contact with the Confederate Secret Service about kidnaping Lincoln, which had been the original plan.[4]

> "My own conviction is that Jefferson Davis is as clearly guilty of this conspiracy as John Wilkes Booth."[3]
>
> *— John A. Bingham*

He cites news reports that Jefferson Davis, when told of the assassination, said only, "If it were to be done, it were better it were well done."[5] To the end of his days, Epps adds, Bingham hinted darkly that "he knew more about the Lincoln plot than he could tell because the true dimensions of the conspiracy

would wreak havoc on the nation."[6] Even his doctor related that on his deathbed, Bingham said, "The truth must remain sealed."[7]

Rather than acknowledge conflicting reports, Magliocca simply comments that there was "flawed testimony from a con man,"[8] whom he fails to identify, leaving the reader to look up the discussion of the unnamed "con man's" testimony in yet another book — as if this "flawed testimony" before the commission were the only indication of official Confederate involvement in the assassination conspiracy.[9]

It is regrettable that Magliocca gives his own conclusory assessment in this fashion without offering the evidence and letting readers draw their own inferences. After all, Bingham could be counted on to have taken the matter seriously. He was selected as a prosecutor by Secretary of War Stanton, who was as concerned as anyone to see that justice was done.

Bingham had been a trial lawyer and a prosecutor himself in Ohio during the years before he was elected to Congress and he had served as a member of Congress for several terms before the trial. It would hardly be plausible to suggest that he was a neophyte in dealing with confidence artists or mendacious witnesses. In this somewhat peremptory tendency to discount or dismiss Bingham's claims more than a century after the fact, Magliocca appears to risk what the great historian E.P. Thompson warned of, namely, "the enormous condescension of posterity."[10]

Under the circumstances, efforts to humanize Bingham in the last pages of the book are belated and ring somewhat hollow. Nevertheless, *American Founding Son* does offer anecdotes demonstrating that in both his personal and professional lives, Bingham remained true to his belief that racism is evil and that all human beings are equal and entitled to dignity and autonomy.

Given the complexity of the issues that faced the nation during Bingham's career, any effort to tell this story in a meaningful way faces daunting obstacles.

That having been said, *American Founding Son* shows that Bingham did not extend himself much on behalf of women's rights. Bingham chaired the House Judiciary Committee and participated in a presentation to a joint meeting of the House and Senate Judiciary Committees by Victoria Woodhull, a remarkable feminist who opened the first stock brokerage for women, ran for president against Ulysses Grant in 1872, and testified (presumably after having been coached by Bingham's nemesis, the cagey lawyer and congressman, Benjamin Butler) that the Fourteenth Amendment logically entitled women to vote. Bingham's reluctance to act may have reflected his awareness of the reality of his time. When asked by Elizabeth Cady Stanton why his reasoning about the Fourteenth Amendment did not apply to women, Bingham is said to have responded that "he was not the puppet of logic but the slave of practical politics."[11] On the whole, *American Founding Son* is a worthwhile effort to portray the life of John Bingham and his times. Given the complexity of the issues that faced the nation during Bingham's career, any effort to tell this story in a meaningful way faces daunting obstacles. Magliocca covers the material coherently and competently, and briefly enough that ordinary readers will at least not be turned away by the length of the book. In the meantime, this volume may spur further investigation into the life of a fascinating and unfairly neglected statesman.

Endnotes

1. Magliocca, at 96.
2. *Id*. at 98, n. 71.
3. Garrett Epps, *Democracy Reborn: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America* (New York: Henry Holt, 2006), at 169.
4. Magliocca, at 89, n. 5.
5. Epps, at 168-169.
6. *Id.* at 169.
7. *Id.* at 168-69.
8. Magliocca, at 92, n. 26.
9. *Id.*
10. E.P. Thomson, *The Making of the English Working Class* (New York: Vintage, 1966), at 12.
11. Magliocca, at 160.

About the Author

Jon M. Bauman *is a shareholder at Elam & Burke. He also teaches Legislation and Worker's Compensation as an adjunct professor for the University of Idaho College of Law. Mr. Bauman has litigated and written on term limits issues and popular initiatives in addition to defending worker's compensation cases.*

Mandatory Continuing Legal Education (MCLE) Rule Changes

Annette Strauser, Membership, Licensing, MCLE and Computer System Administrator

The MCLE Rules — Section IV of Idaho Bar Commission Rules (IBCR)[1] — were rescinded and replaced following the passage of last year's resolution. The new rules took effect six months ago and we have been busy answering questions from attorneys and sponsors.

Here is a quick overview of the most frequently asked questions from the membership:

Credits required per reporting period[2]

There is no change to the number of credits required for attorneys whose current reporting periods end in 2014, 2015 and 2016. These attorneys must complete at least thirty (30) Idaho approved credits including at least two (2) ethics credits and no more than fifteen (15) self-study credits.

However, beginning with attorneys whose reporting period ends in 2017, the ethics credit requirement increases to three (3) per reporting period.

Out of state compliance[3]

Attorneys whose principal office for the practice of law is not in Idaho may be able to use their principal state's MCLE compliance as compliance in Idaho. For many years our members in Oregon, Utah and Washington have been able to take advantage of this compliance option. Under the new rules, it has expanded to all MCLE reporting states except Alaska and Hawaii. Idaho Bar Commission Rule 408 includes the requirements and limitations of out of state compliance. Please review the rule carefully. Only attorneys who meet the requirements and who can obtain the required information from their principal practice state qualify.

Self-study credits[4]

The new rules clarify the definition of self-study credits. A course will be deemed self-study unless there are three or more participants and the participants have access to the presenter or a qualified moderator who can answer questions during the course. Live webcasts and live teleconferences with three or more participants will continue to be considered live as long as the participants can ask questions (verbal or written) that will be answered by the presenter during the course. Recorded courses can also be "live" if there are enough participants and a qualified moderator is present during the course to answer questions.

Recorded programs expiration date[5]

Recorded programs over five (5) years old do not qualify for MCLE credit. Applications for accreditation of recordings must include the date the program was recorded and produced.

Published legal writing credits[6]

Attorneys who write articles that are published in a professional legal journal or publication may be able to receive MCLE credit. Writing credits are limited to six (6) per reporting period. Idaho Bar Commission Rule 404(c) includes the requirements and limitations of published legal writing credit.

Application fees[7]

Individual attorneys who attend courses are not required to pay a fee when applying for MCLE accreditation. However, applications submitted by or on behalf of course sponsors must include the application fee. Most sponsors, including law firms, companies and other groups who hold "in-house" courses, must pay the $40 application fee. Nonprofit sponsors of live courses held in Idaho that are two hours or less in length only pay $20 per application.

New application forms[8]

We created new application forms specifically to conform to the new rules. They include the necessary questions and are intended to reduce the likelihood of incomplete applications. The new forms are available on our website (www.isb.idaho.gov). We encourage everyone to use the new forms.

Questions? Contact us

Questions about the new MCLE rules or any compliance or accreditation issues should be addressed to the MCLE Department at (208) 334-4500 or to Annette Strauser (astrauser@isb.idaho.gov) or Kim Thompson (kthompson@isb.idaho.gov).

Endnotes

1. The current version of IBCR Section IV – Mandatory Continuing Legal Education is available online at www.isb.idaho.gov/general/rules/ibcr.html.
2. See IBCR 402(a)(2).
3. See IBCR 408.
4. See IBCR 404(a)(3)(C).
5. See IBCR 404(a)(3)(B).
6. See IBCR 404(c).
7. See IBCR 405(a).
8. The new application forms are available online at www.isb.idaho.gov/general/forms.html.

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NEW ADMITTEES
DIRECTORY UPDATES
Admitted 10/2/14

ISB photos by Dan Black

New attorneys share their optimism and enthusiasm with family and friends at the Boise Center on Oct. 3.

Peter Jackson Arant
Sara Catherine Archibald
Brendan Lee Ash
Zachary Alexander Battles
Tyler William Beck
Matthew George Bennett
Jason J. Blakley
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Joseph Robert Bowen
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Olga Maria Faller
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Adrien Lindsay Fox
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Bud Reed Hafer
Joseph Randy Hayes
Paul Stephens Hendrickson
Lucas William Henry
James Alden Herring
William Michael Hughbanks
Andrea Shannon Hunter
Lambert Jackson
Ryan Albert Jacobsen
Ryan Cody Janis
Daniel Ellsworth Jenkins
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Matthew Laurence Jessup
Anne M. Kelleher
Daniel Jacob Key
Daniel Matthew Keyes
Kelsie Amanda Kirkham
Abby Laurel Kostecka
Christal Seen-Yan Lam
Jason Dean Lambert
Ashley Margaret Lane
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Owen Hugh Moroney
Scott Walter Newbould
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Rebecca Elise Voss
Tyler Scott Waite
Andrew Virel Wake
Maya Pekarek Waldron
David Webster
April Michelle Wielang
Jeremy Charles Younggren

Alison Hunter joins Perkins Coie

BOISE – Perkins Coie is pleased to announce the addition of Alison Hunter to the firm's Boise office as an associate working in the firm's Litigation practice.

Prior to joining Perkins Coie, Alison was a legal intern in the U.S. Attorney's Office in Boise; she clerked for the Hon. Chief Justice Roger S. Burdick of the Idaho Supreme Court. Alison earned her J.D. from the University of Idaho College of Law where she was the Business Editor of the Idaho Law Review. She received her bachelor's degree from the University of Virginia.

Alison Hunter

Moffatt Thomas hires Jamie K. Moon

BOISE – Moffatt Thomas is pleased to announce that attorney Jamie K. Moon has joined the Idaho law firm. Ms. Moon will focus her practice on workers' compensation issues for employers, commercial litigation and employment law.

"I am excited to join Moffatt Thomas," said Ms. Moon. "The firm has an excellent reputation, and provides a great platform for me to grow my practice."

Prior to joining Moffatt Thomas, Ms. Moon served as a law clerk for the Marion County District Attorney, as well as at the Oregon Law Office of Coughlin, Leuenberger, Moon, and Rohner. Ms. Moon earned a Bachelor of Arts degree from Lewis and Clark College, and she earned her J.D. from the Willamette University College of Law in Salem, Oregon. She was the Editor in Chief of Willamette Law Online, a Board Member of the Willamette University Moot Court, and the Source and Cite Editor of the Environmental Law Journal.

Jamie K. Moon

Parsons Behle attorney elected Intellectual Property Chair of National Bar Association

BOISE – The National Bar Association has elected Boise attorney Kennedy K. Luvai to chair its Intellectual Property Law Section. Luvai is an associate in the Boise office of Parsons Behle & Latimer. The appointment to this distinguished position is for a one-year term.

"The entire firm congratulates Kennedy Luvai on being elected to this highly regarded position," said John N. Zarian, managing shareholder of Parsons Behle & Latimer's Boise office. "A national appointment such as this speaks to Kennedy's legal acumen and growing contributions to the legal profession, particularly in the field of intellectual property law."

Kennedy K. Luvai

Luvai is a registered patent attorney with a practice focused on intellectual property litigation. He represents local, regional, and national clients in actions involving copyrights, trademark and trade dress, patents, and right of publicity. He is licensed to practice in the states of Idaho, Utah, Oregon and Washington. Luvai received his J.D. degree from the University of Oregon in 2006 and a B.S. degree in computer science from Brigham Young University in 2002.

Heidi VanCleave Gudgell
1948 - 2014

Heidi VanCleave Gudgell died at home from cancer on September 21, 2014. She was born in Oakland, Calif. to Merle and Marie Van Cleave in 1948 and graduated with honors from Placerville High School in 1966. She moved to Idaho in 1979, where she graduated from the University of Idaho with B.A. in Sociology in 1986 and a J.D. in 1989.

Heidi VanCleave Gudgell

Heidi married the love of her life, Gery Gudgell, in 1993. She clerked for Judge Bengtson in Moscow. In Boise, she worked for Court of Appeals Judge Cathy Silak and Evans Keane law firm before moving to Lewiston in 1998 to work as a staff attorney for the Nez Perce Tribe.

There she worked on tribal water rights claims related to the Snake River adjudication and other tribal issues until her retirement in 2011. In retirement, she and Gery moved to Port Angeles, Wash., where they enjoyed the beautiful countryside and the cooler temperatures. Heidi's life journey was punctuated with concern for others. In both her professional and personal lives she was a defender of and advocate for those whose voices needed to be heard.

She is survived by husband, Gery Gudgell, of Port Angeles; her sister and brother-in-law Gretchen and David Grayson of Glendale, Calif.

Gordon Siddoway Thatcher
1931 - 2014

Gordon Siddoway Thatcher was born of pioneer stock to Alice Siddoway and John Kenneth Thatcher on Nov. 15, 1931. He was raised in the shadow of the Tetons in Sugar City and attended school there. The majestic Teton Mountains were one of his great "loves," where he enjoyed hiking and later climbing. He graduated from Ricks College and with his beloved wife, Beth Pickett, traveled to Washington D.C. where they both worked. He went to school nights and summers and graduated second in his class at George Washington Law School. The couple chose to return to Southern Idaho to be with good people and raise their family. Gordon formed a new partnership with a man he greatly admired, Ray W. Rigby and they were partners for over 50 years in Rexburg.

Gordon represented murder cases, the downtrodden and poor, the unpopular, many merchants and local farmers. One of his greatest accomplishments came as a result of families who had become victims of the Teton Dam Disaster and he was able to obtain relief for them. He developed a focus on estate planning and joined with Winston Beard firm in Idaho Falls. With four of his friends, he co-owned the Racquetball and Health Center in Rexburg, where he played racquetball every morning for 30 years. He served as president of the Seventh District Bar Association, president of the Idaho Trial Lawyers Association, president of Rexburg Kiwanis Club, president of Rexburg Chamber of Commerce and president of the Ricks College Alumni. Twice he was chosen Outstanding Alumni of Ricks College. He received the Extra Miler reward from the Boy Scouts of America. His church service included three missions - British Mission, Rexburg Stake Mission, and President, with his wife Beth, of Micronesia Guam Mission. He is survived by his wife, Beth Pickett, of 60 years; children, Rochelle (Steve) Hartmann, of Seattle; Kenneth Blake, of Chicago; Bryce (Melanie) Thatcher, of Washington, Utah; Barry (Brenda) Thatcher, of Las Cruces, N.M.; Rebecca (Sean) Covey, of Alpine, Utah; Jennifer (Shawn) Larsen, of Malaysia and Melissa (Brad) Colton, of New Canaan, Conn.; 35 grandchildren and seven great-grandchildren. He is also survived by his siblings, Conley Thatcher, Laurel Ulrich and Layle Erickson.

Gordon Siddoway Thatcher

Nanette Hedrick Songer
1945 - 2014

Nanette Hedrick Songer, 68, passed away on October 7 in Boise, with her family at her side. She was born December 23, 1945, in Malad City, the first of four children, to Clarence & Beth S. Hedrick. Her dad's work took the family to St. Anthony, Rexburg, Vale, and finally Twin Falls, which she always considered home.

As the oldest child, she felt a lifelong responsibility to keep a watchful eye on her siblings, providing help and guidance (even when they

were reluctant recipients). Growing up, she spent many weekends at the family cabin at Boulder Mountain View north of Ketchum, which remained a favorite location throughout her life.

Nanette took pride in being a 4th generation Idahoan and was an avid Idaho historical collector of books and memorabilia. She attended the University of Utah, Gonzaga University, and Portland State University, graduating with a degree in Middle Eastern Studies. Nanette married James E. Songer, in 1969 and worked at JBL&K and Unigard Insurance as their first female outside claims adjuster in the country to do on-site evaluations.

In support of Jim and his work, they traveled and lived internationally for many years, residing in London, Belgium, and France as well as traveling frequently to Southeast Asia and the Middle East, with Portland as home base.

Nanette Hedrick Songer

In 1983, she graduated from law school at Gonzaga University where she excelled and served on Law Review. She continued her studies in London, receiving her LLM degree in Maritime Law from the London School of Economics in 1986. She worked as an attorney in family law in Coeur d'Alene, as well as for the DeBandt Law Firm in Brussels.

Upon her return to the States in 1990, she did pro bono legal counseling for the veterans and underprivileged as well as working in corporate law. She was a member of the Washington D.C. Bar, the Pennsylvania Bar, and an active member of the Idaho State Bar. Probably her most favorite activity was helping people who were in need of support in their education, healthcare, living situation, business venture, or traveling to see family.

She is survived by her husband of 45 years, Jim; two brothers, Wally (Jerrie) Hedrick, Howard (Antonia) Hedrick; her sister, Suzanne (Tom) Gillespie, all of Boise.

Brett Robert Fox
1968 - 2014

Brett Robert Fox, 46, of Boise, passed away October 8, 2014. Brett was born in Watertown, SD August in 1968 to Lynn Bartron and Roger Fox. Brett graduated Augustana College in Sioux Falls, S.D. in Political Science, and went on to earn his J. D. at the University of South Dakota. Brett was self-employed at Fox Law Office where helping others and practicing law was his passion. Outside of work Brett simply loved being surrounded by his family and friends in any setting. Brett also volunteered at Camp Rainbow Gold. If you saw Brett, odds are it was at the theater enjoying a film, out trying a new restaurant, or with his son teaching life lessons and surely cracking some jokes. He was the proudest father. Brett is survived by many, most immediately is his son, Zack Fox of New York, N.Y.; his father, Roger Fox of Watertown, S.D.; his mother, Lynn Schaefer (Larry) of Watertown, S.D.; his sister, Lisa Fox-Boschee (Ryan) and his two nieces, all of Sioux Falls, S.D.; along with the entirety of the Fox - Bartron families.

Brett Robert Fox

Judge Robert Claude Brower
1945 - 2014

The Honorable Robert Claude Brower died October 12 at the University of Utah Medical Center from cancer. Brower was best known as Magistrate of the Seventh District Court of Idaho, serving in Bingham County from 1975 to 1996.

Brower was born in 1945 to Claude G. and Lois Thomas Brower of Blackfoot. He went to school in Blackfoot and in high school was a record-setting track star. Brower attended Idaho State University where he met his future spouse Franca Bradish of Burley with whom he shared 47 years. After receiving a degree in history and a ROTC commission as a second lieutenant in the Army, he served at Ft. Lee, Virginia and in Bupyeong, South Korea during the Vietnam War. The loss of his best friend Jimmy Smith to the war compounded Brower's skepticism about American policy abroad. Brower returned from overseas to attend the University of Idaho's College of Law. Brower worked as a student at the law library and spent summers rafting rivers such as the Selway with friends.

Hon. Robert Claude Brower

After passing the Idaho Bar exam in 1974, Brower practiced law in

Blackfoot in an office furnished with only a folding card table, a 1935 Royal typewriter and a borrowed filing cabinet. After six weeks as a lawyer, he received an appointment from the Seventh District Magistrate Commission to fill an unexpected midterm vacancy. He was sworn in on January 13, 1975 as Magistrate by District Judge Arnold T. Beebe at the age of 29. Brower was then the youngest judge to have presided in Idaho courts. After retirement he served as a Senior Judge in Idaho Falls, Blackfoot, and Rexburg.

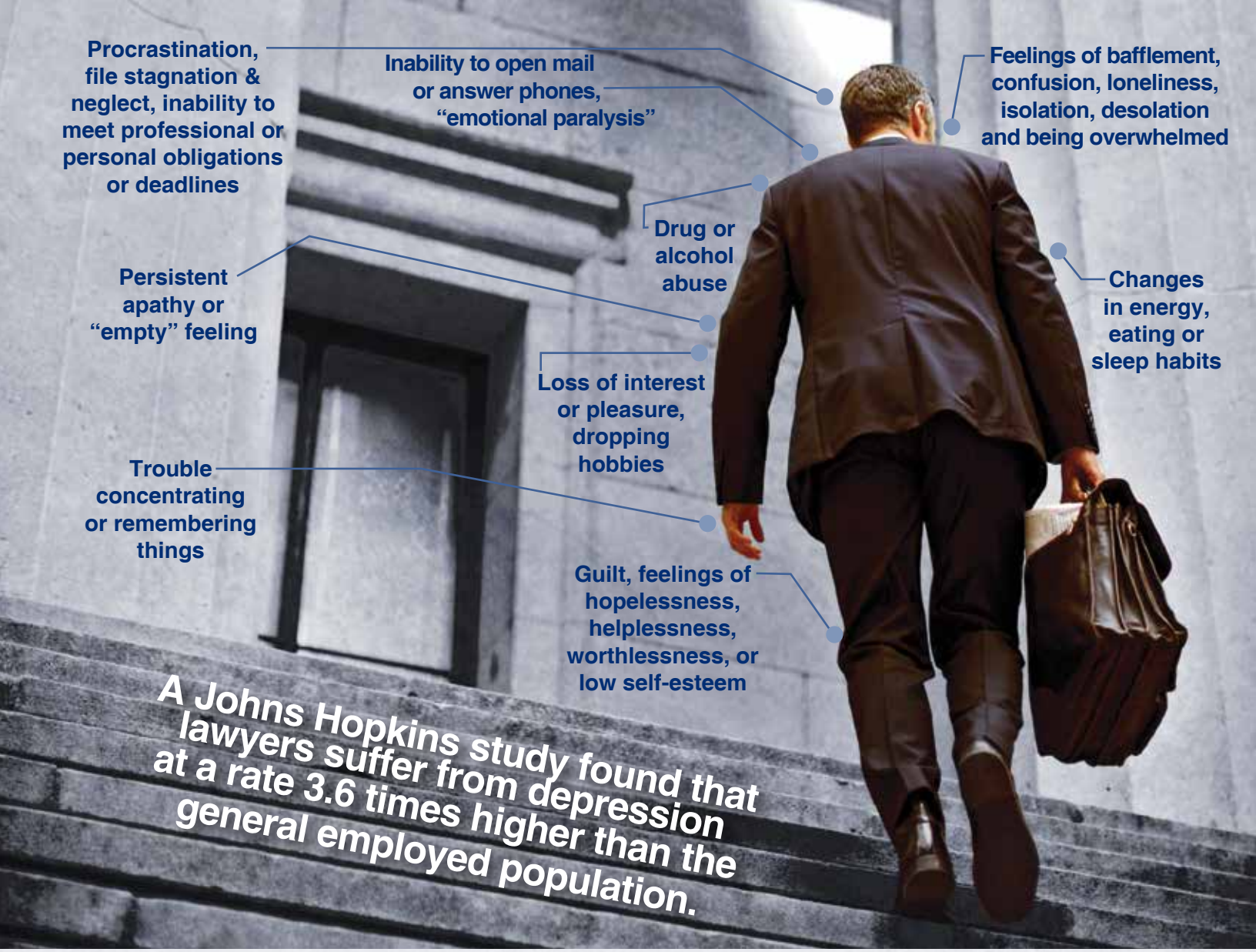
During his 39 years on the bench, Judge Brower was known for his pragmatism and keen sense of fairness. He was an ardent proponent of education for minor offenders. Juveniles were often offered suspended sentences on the condition that they finish high school. Brower staunchly defended civil liberties and decried invasions of privacy and personal liberties.

He also criticized "the criminalization of poverty," arguing that aggressive policing and harsh sentences for victimless crimes harmed working people's chances to improve their lot. With good humor, Brower often opened court with trivia quizzes and was known for his outlandish neckties. Those he sentenced could see that beneath the robe was someone who wanted them to reflect on their mistakes and do right by the world. He was above all a good judge of character. Recognizing this quality, his Shoshone Bannock friends dubbed him "white owl."

Brower was a member in many community organizations including the Exchange Club, Prospectors, and BPOE. The Blackfoot Elks Club honored him with its Distinguished Citizen Award, and he twice drove in the Elks sponsored demolition derby.

Bob's greatest passion in life was travel. He loved rarely visited places, and his outgoing nature earned him friends around the world. During the course of their travels, he and Franca visited over 120 countries in South America, Africa, Asia, and Europe.

Brower is survived by his wife Franca Brower, his sons Ben (Sakina) of Austin, Texas, Brady (Amy) of Ogden, Utah, five grandchildren, and sisters Nancy Dafoe and Betty Holbrook.



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Ahrens DeAngeli Law Group is pleased to announce our merger with Sisson & Sisson, The Elder Law Firm, to create the Elder Law Group at Ahrens DeAngeli Law Group. Peter C. Sisson is a national board-certified elder law attorney who advocates for families with long-term care needs. He brings over two decades of Idaho experience helping families protect their assets and make sound health and legal decisions.

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