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The Advocate

The Official Publication of the Idaho State Bar
59 (11/12), November/December 2016

Section Articles

- 24** Welcome from the Idaho Legal History Society
Ernest A. Hoidal
- 25** Contrasting Idaho's Most Iconic Politicians: Borah and Church
Curtis Eaton
- 32** The Life and Times of Senator James Pinckney Pope of Idaho
William K. Fletcher
- 36** Reflections on Hamer H. Budge, Former SEC Chairman
Larry Grimes
- 40** Jerry Brady: An Idahoan with a Story to Match the Times
Ernest A. Hoidal
- 43** Let us Now Praise Famous Men: Why are Nearly All of Idaho's Most Lauded Lawyers White Men?
Richard Eppink
- 52** I Work Like This, Because?
Mark Bassingthwaight
- 54** Enhancing the Effectiveness of Your Legal Writing with Plain English
Jason Dykstra
- 58** Idaho Attorney Measures Rule of Law in Argentina
Larry C. Hunter
- 64** Lawyers Recognize Blackfoot Teacher as 'Teacher of the Year'
Larry C. Hunter
- 66** A Return on Your Investment
Craig L. Meadows
- 68** Pro Bono Attorney Provides a World of Peace
Dan Black
- 70** Website Aims to Transform Pro Bono Access in Idaho
Dan Black



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



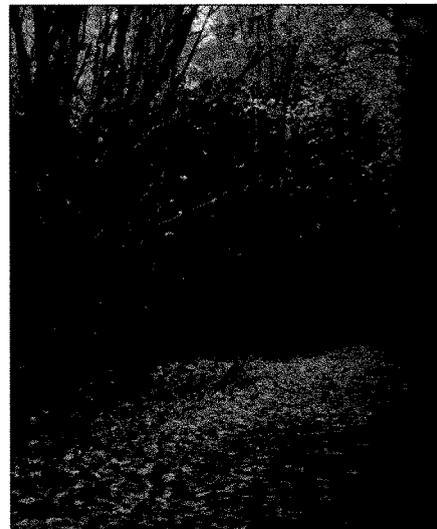
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Columns

- 14 President's Message, *Dennis S. Voorhees*
20 Executive Director's Report, *Mahmood U. Sheikh*

News and Notices

- 13 Continuing Legal Education (CLE) Information
17 News Briefs
48 Idaho Court of Appeals and Idaho Supreme Court
50 Cases Pending
57 Classifieds
60 In Memoriam
62 Of Interest



On the Cover:

This photo was taken by Thomas W. Whitney of Moscow, on the Cascade River Road near Marblemount, Wash., in November 2015. This road runs 20 miles to dead-end at one of the most popular trailheads in North Cascades National Park. Mr. Whitney said, "the combination of the moss, the leaves, the shape of the roadway and the light drew me to the photo. Low, but broken clouds created the unique lighting. I did not use a tripod. The exposure was 1/30 of a second at f2.8. The sharpness and clarity of the image are due to the lens. It's a fixed focal length Olympus 25mm f2.8. The lens was not very expensive, but the glass and construction are amazing. Over and over again I come back to it because its images always pop. Standing in the middle of the road, it looked and felt just like the photo shows. I don't use Photoshop."

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Special thanks to the November/December editorial team: Susan M. Moss, Lea Livingston Kear, and Tenielle Fordyce-Ruff.

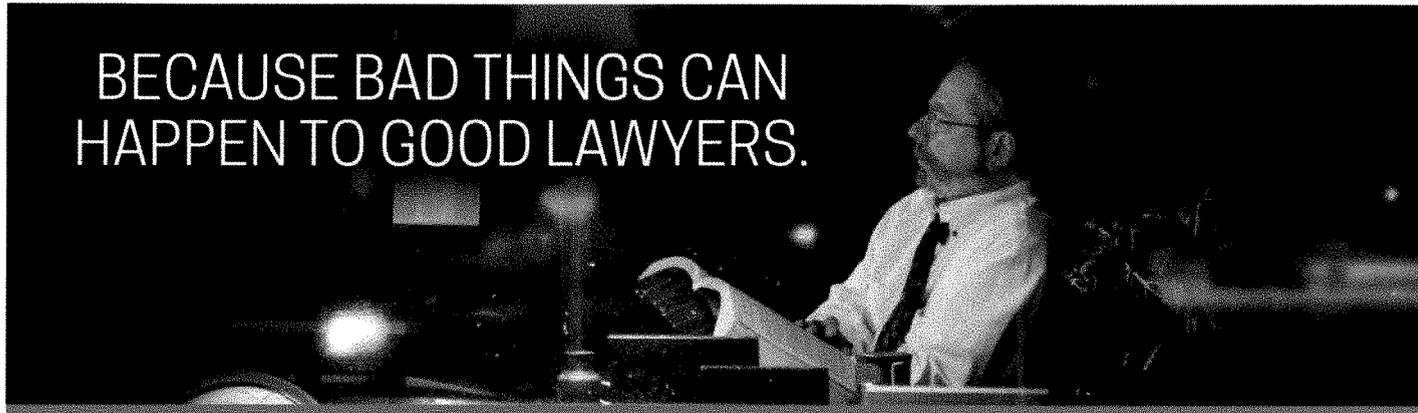
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The Advocate is pleased to present your announcement of honors, awards, career moves, etc. in the "Of Interest" column. Simply send a short announcement to the Managing Editor: dblack@isb.idaho.gov and include a digital photo.

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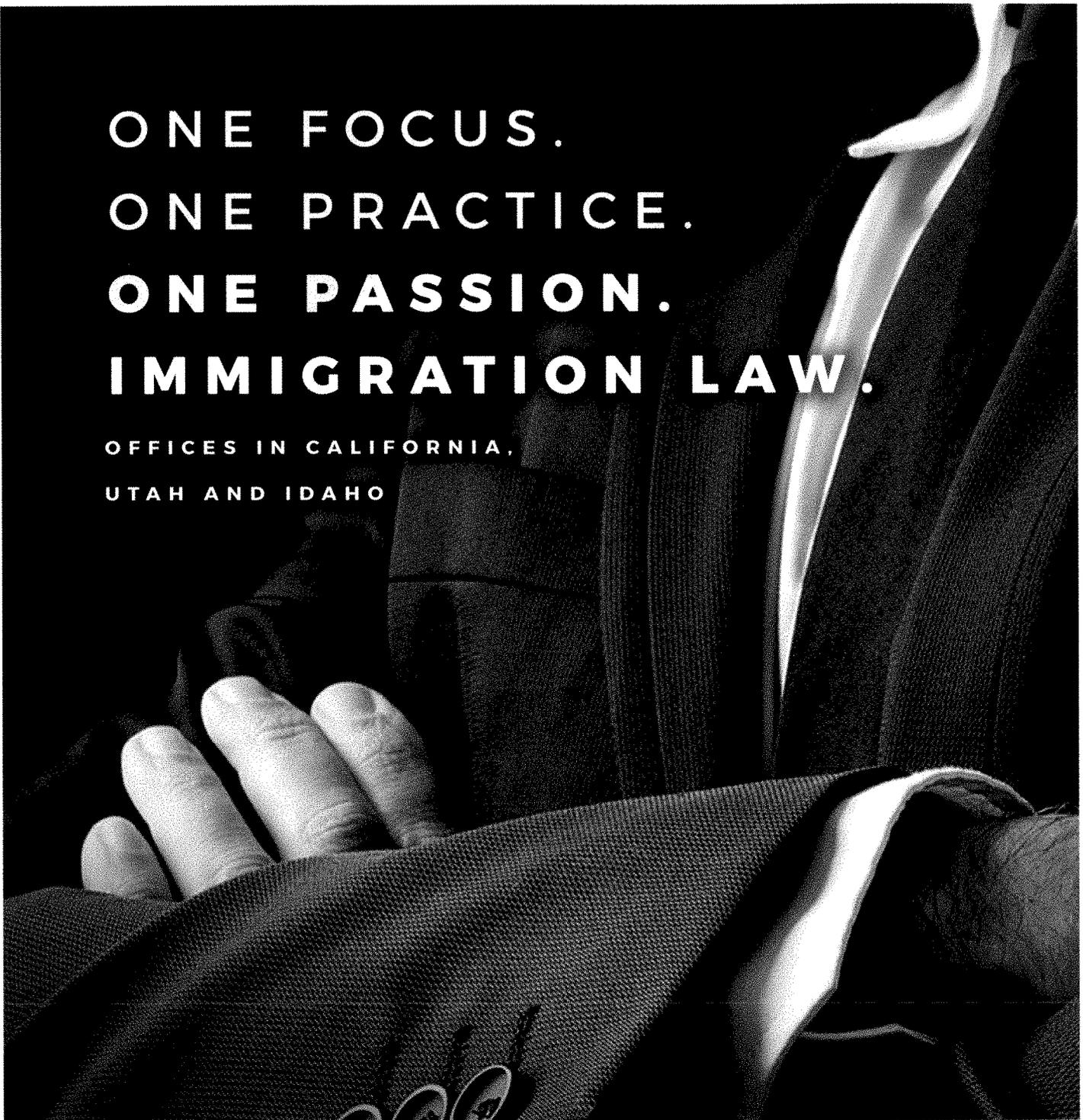
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November

November 7 – Mobile Monday Session #1
Electronic Storage and Communication for Your Practice and Clients
Sponsored by the Idaho Law Foundation, Inc.
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1.0 CLE credit
12:30 p.m. (MDT)

November 14 – Mobile Monday Session #2
My Wheelhouse: 48 Years of Litigation Experience.
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
1.0 CLE credit
12:30 p.m. (MDT)

November 16
Animals, Property & the Law: Housing Issues & Companion Animals
Co-Sponsored by the Animal Law Section & Real Property Section
The Law Center, 525 W. Jefferson Street – Boise /
Statewide Webcast
4.0 CLE credits
12:45 p.m. (MDT)

November 18
2016 Headline News – Idaho Falls
Sponsored by the Idaho Law Foundation, Inc.
Hilton Garden Inn, 700 Lindsay Blvd. – Idaho Falls
6.0 CLE credits
8:30 a.m. (MDT) – NAC

November 21 – Mobile Monday Session #3
Effective Oral Arguments on Appeal
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
1.0 CLE credit
12:30 p.m. (MDT)

November 28 – Mobile Monday Session #4
Writing Persuasive Memorandums or Draft Orders
Sponsored by the Idaho Law Foundation, Inc.
Teleseminar
1.0 CLE credit
12:30 p.m. (MDT)

December

December 2
2016 Headline News – Moscow
Sponsored by the Idaho Law Foundation, Inc.
Best Western Plus University Inn, 1516 Pullman Road -
Moscow
6.0 CLE credits
8:30 a.m. (PDT) – NAC

December 9
2016 Headline News – Meridian
Sponsored by the Idaho Law Foundation, Inc.
Silverstone Amenity Center, 3405 E. Overland Road -
Meridian
6.0 CLE credits
8:30 a.m. (MDT) – NAC

December 12
Ethics of Creating Attorney-Client Relationships in the Electronic Age
Sponsored by the Idaho Law Foundation, Inc. in
partnership with Abila and WebCrendeza, Inc.
Audio Stream
1.0 Ethics credit
11:00 a.m. (MDT)

December 23
Ethics and Confidentiality
Sponsored by the Idaho Law Foundation, Inc. in
partnership with Abila and WebCrendeza, Inc.
Audio Stream
1.0 Ethics credit
11:00 am (MDT)

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

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

Live Seminars

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

Dennis S. Voorhees
President, Idaho State Bar
Board of Commissioners

One of the responsibilities that weighs heavily on the mind of a bar commissioner is how to better address the inability of so many Idahoans to affordably access legal services. So when I first heard the term "Access to Justice Commission" my ears perked up. I was at an event titled *CourtHack*, held on a weekend in early March at the Salt Lake County Courthouse. *CourtHack* was an initiative sponsored by the National Center for State Courts. In a nutshell the gathering brought together legal minds and technologists to compete in teams during a 22-hour hackathon for solutions to everyday court access problems. One of the officials asked me "does Idaho have an Access to Justice Commission?" I didn't know.

So I started my search. But what is an Access to Justice Commission (or ATJ) and why might anyone care? At its core an ATJ is an entity composed of leaders whose charge is to give low and moderate-income people a forum for resolving disputes. The commission primarily plans, educates, develops, coordinates, innovates, and improves delivery of legal services.

The reason lawyers care about access to justice is that they are tasked with assuring that they "(n) ever . . . reject for any consideration personal to (the lawyer), the cause of the defenseless or the oppressed. I.C. 3-201(8)." The preamble to the Idaho Rules of Professional Conduct is fairly explicit regarding

In many respects Idaho is a leader in developing resources for financially-disadvantaged people wanting to access legal services and the court system.



the duties of a lawyer serving the role of public citizen:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

The first ATJ commission was established in the state of Washington in 1994. Since then more than 30 states have created ATJ commissions – including neighboring jurisdictions Montana, Wyoming, and Nevada. There is a logic to this trend that I will discuss below.

Although Idaho does not have a formal ATJ commission this is not to say that Idaho lacks substantial resources needed for people of low

and moderate-means to resolve legal issues. In many respects Idaho is a leader in developing resources for financially-disadvantaged people wanting to access legal services and the court system.

Among those resources available in Idaho to bridge the access to justice gap are:

- Idaho Volunteer Lawyer Program
- Idaho Pro Bono Commission
- Court Assistance Office
- Idaho Legal Aid Services, Inc.
- DisAbility Rights of Idaho
- Idaho Military Legal Alliance
- Access to Justice Idaho - a state-wide campaign to fund legal services for low-income residents and persons with disabilities.
- Idaho Trial Lawyers Association – Street Law Clinic and Family Law Street Law Clinic
- Law School Clinics – offered by University of Idaho and Concordia University

Before commenting further on the wisdom of considering an ATJ for Idaho I should first acknowledge the huge debt of gratitude due

these programs. Each of them merits detailed discussion but due to space constraints I will limit my observations to two of them – the Idaho Pro Bono Commission and the Court Assistance Office.

The Idaho Pro Bono Commission was created in 2008 as a collaboration between the Idaho Supreme Court, the U.S. District Court of Idaho, and the Idaho State Bar. In the short space of eight years – and in no small way through the unrelenting labors and visionary guidance of Chief Justice Jim Jones – the Pro Bono Commission was able to:

- Obtain a procedural rule, IRCP 11.4, which allows pro bono counsel to make a limited appearance in a civil action for a defined purpose and then withdraw at the conclusion of the defined matter.
- Create policy templates that guide and encourage pro bono service from public sector entities, corporate law departments, and private law firms.
- Encourage the development of Continuing Legal Education courses (and CLE credit) designed to give non-experts quality training for accepting pro bono cases in defined areas of need.
- Link experienced family law practitioners as mentors with new attorneys who have agreed to accept a family-law related pro bono referral from the Idaho Volunteer Lawyers Program through the Family Law Mentor Project.
- Develop a menu of clinic and workshop models for local (judicial district) pro bono committees to use in conjunction with Court Assistance Office needs.

The Idaho Pro Bono Commission is an Idaho success story that illustrates the power of commissions and visionary leadership by an inspired group of lawyers and judges.

The Court Assistance Office (CAO) provides various services to help members of the public gain access to the courts. Its resources include the following:

- Services –
 - Review of CAO court forms and documents before they are filed.
 - Availability of public access computers for interactive forms.
 - Help with general form/document questions.
 - Assistance with calculating child support and completing a parenting plan.
 - Legal research assistance on a law library web site.

The Idaho Pro Bono Commission is an Idaho success story that illustrates the power of commissions and visionary leadership by an inspired group of lawyers and judges.

- Referrals –
 - ISB Lawyer Referral Service, which can match a client with an attorney for a consultation, and possible representation.
 - Hotline numbers to address problems such as domestic violence, fair housing, and senior citizen rights operated by Idaho Legal Aid Services.
 - Resources, such as visitation supervisors to protect children in high-conflict cases.

- Certified court interpreters, mediators, and direct legal service providers for low-income individuals.

- Information –
 - The risks and responsibilities when a person self-represents in court.
 - The legal process and what to expect in court.
 - Options for assistance and services provided by other government and private agencies.

The Court Assistance Office was conceived in 1998 by the Idaho Supreme Court's (ISC) Committee to Increase Access to the Court (Access Committee) in response to the challenges presented by increased numbers of self-represented litigants. In one form or another there is a CAO in each Idaho county, though some courthouses have very light coverage. The involvement of the ISC's Statewide Court Assistance Manager Imelda Ramirez provides stability, strength, and continuing vision to the program.

Given the number and diversity of these Idaho resources what does an Access to Justice Commission have to contribute to this constellation? Nothing less than an ongoing "big picture" perspective, consultation, and search by diverse stakeholders for innovation, technology, processes, and systems designed to lower barriers and close the gap to accessing justice for more Idahoans. The stakeholders may include legislators, justices, law school deans, bar leaders, Legal Aid attorneys, industry executives, the Idaho Attorney General, tribal court judges, and civic leaders.

The judicial power of the state of Idaho is vested in the Idaho Supreme Court, which consists of five justices. The ultimate

responsibility for access to justice emanates from the authority vested in the Court. These five justices cannot get the job done alone. They need the wisdom and counsel of allied professionals.

The function of stakeholders on an access to justice commission would be to monitor needs and trends, investigate developments occurring in sister states, and develop an ongoing expertise available from such think tanks as the Institute for the Advancement of the American Legal System¹ (IAALS) at the University of Denver. IAALS is dedicated to facilitating continuous improvement and advancing excellence in the American legal system. Its mission is to forge innovative and practical solutions to problems in our system in collaboration with the best minds in the country.

Additionally, the American Bar Association captures and maintains information on developments

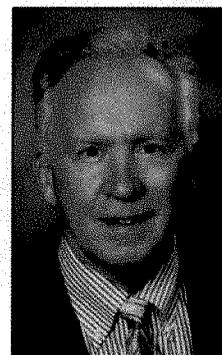
around the country from the more than 30 state ATJ commissions already in existence.² An Idaho ATJ commission would have its eye on the challenges presented by our expanding self-represented litigant population, the adequacy of existing services, and the benefit of evolving technology, rule changes, and innovative designs adopted in other jurisdictions. Its charge would be to keep our Supreme Court informed of best practices from around the country. An Idaho Access to

Justice Commission is worthy of consideration by the Court and judicial stakeholders. Let's move this discussion forward.

Endnotes

1. http://iaals.du.edu/sites/default/files/documents/publications/court_compass_convening_report.pdf
2. http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice/atj-commissions.html

Dennis S. Voorhees is an attorney practicing in Twin Falls, Idaho, as a sole practitioner with The Voorhees Law Firm. He has been a practicing lawyer since 1978. He is both a certified elder law attorney and a certified estate law planning specialist. His practice areas include disability trusts, elder law, and estate planning.



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Photo courtesy of Jennifer Wells

Beard St. Clair Attorneys continued their community involvement this summer by painting a house built by Habitat for Humanity in Idaho Falls. The firm's attorneys do regular service projects usually in connection with existing nonprofit organizations. From left, are attorneys Michael Brown, an unknown volunteer, Joe Fairbank (black hat), Megan Hopfer, and Jarin Hammer.

Young Lawyers Section tackles hunger

BOISE - A social event in downtown Boise raised more than \$2,000 this fall to help the Idaho Foodbank. The Young Lawyers Section sponsors a fundraising event every year. This year, the Payette Brewing Company hosted, and donated 15 percent of all sales during the event.

The Idaho Foodbank operates in several Idaho cities and serves 163,000 people every month with the help of 20,000 volunteers, corporate sponsors, growers, community groups and food processors. Its annual report states that 241,080 Idaho residents don't have enough food in the household. The Idaho Foodbank and its partners provide food to 189 community pantries across the state.

Housing clinic serves homeless folks during summer break

BOISE - Generous funding by the Idaho Law Foundation and a private donor allowed the Concordia Housing Clinic to keep its doors open outside the traditional academic year. The faculty and a summer extern were able to provide pro bono legal services to 34 low-income individuals or families struggling to keep or find adequate housing.

Volunteers also responded to calls from an additional 41 individuals seeking assistance with a variety of housing legal issues but who were referred to other legal resources. The volunteers also joined the Idaho Housing Coalition (comprised of the ACLU of Idaho, Idaho Legal Aid Services, the Idaho Trial Lawyers

Association, the Idaho Volunteer Lawyers Program, and Intermountain Fair Housing Council) to address mass evictions of tenants from mobile home parks and apartment complexes in the Treasure Valley.

Lawyer Referral Service sends callers to LRS panel members

The Idaho State Bar operates a statewide lawyer referral service to provide attorney referrals to the hundreds of callers each month seeking assistance with their legal issues.

The Lawyer Referral Service "LRS" is designed to assist people who are able to pay attorney fees but whose ability to locate appropriate legal representation may be limited by a lack of experience with the legal system, a lack of information about the type of service needed, or a fear of the potential costs of seeing a lawyer.

The LRS provides the client with a referral to an attorney who has experience in the area of law appropriate to the client's needs. To participate as an LRS member, attorneys register annually and are provided with pre-screened client referrals.

For information on LRS panel membership please contact Kyme Graziano at 208-334-4500 or kgraziano@isb.idaho.gov.

Call for article proposals

The AWI JOURNAL is seeking proposals for articles to be published in the quarterly publication of the Association of Workplace Investigators. AWI JOURNAL articles focus on the many different aspects of workplace investigations, such as legal issues, practical matters, similari-

ties and differences between workplace investigations and other fields of endeavor, and developments in the law.

The magazine's readership spans 35 U.S. states and territories, Canada, and a few other countries. The journal seeks national or regional topics. For more information, please visit the website: awi.org.

State seeks public defender

BOISE - Gov. Butch Otter has called for applicants to serve a four-year appointment as Idaho's State Appellate Public Defender, (SAPD). The previous SAPD, Sara Thomas, was appointed administrative director of Idaho courts.

The SAPD's office was created in 1998 and has 22 full-time employees, including 14 attorneys. Gov. Otter is taking applications through Nov. 15.

Thomas was appointed SAPD in January of 2012, after serving as chief of the office's appellate unit for the previous 10 years. She replaced former SAPD Molly Huskey, who was appointed to serve as a Third District judge. For more information, contact Cally Younger at cally.younger@gov.idaho.gov

Perkins Coie supports diversity

SEATTLE – Perkins Coie, a global law firm with more than 1,000 attorneys, announces its support of the American Bar Association's (ABA) recently adopted Resolution 113. That measure aims to promote diversity in the legal profession by urging all providers to expand and create opportunities at all levels of responsibility for diverse attorneys.

As evidence of its support, Perkins Coie has completed the ABA's

Model Diversity Survey and will provide the results to clients. The Model Diversity Survey was created by the ABA as a strategic way to implement Resolution 113. The survey information helps chief legal officers and others choose firms that value diversity.

"We applaud the ABA for passing Resolution 113. The Model Diversity Survey is an effective way for us to share our commitment to diversity," said John Devaney, Managing Partner of Perkins Coie.

Perkins Coie was urged to complete the survey by Mark Roellig, Executive Vice President and General Counsel of MassMutual Financial Group, a Perkins Coie client and one of 24 general counsel who signed a letter asking chief legal officers at other Fortune 1000 companies to join in supporting Resolution 113.

In conjunction with the above, Perkins Coie also unveiled a list on its website highlighting more than 100 of its diverse lawyers who have national leadership responsibility at the firm, including as heads of practices, industry groups and offices, as well as those serving on national committees.

"Diversity is at the core of our firm," said Theresa Cropper, Chief Diversity Officer for Perkins Coie.

225th Bill of Rights Celebration

For Constitution Day this year, Idaho attorneys and law students took a fresh look at the Bill of Rights, which, if it had a birthday cake, would have to accommodate 225 candles to mark the year it was signed. The Diversity Section and the University of Idaho sponsored day-long events in both Boise and Moscow in September.

The symposia offered Continuing Legal Education Credits, and featured American Civil Liberties Union Senior Counsel Stephen Pevar as the keynote speaker. His speech was covered extensively in the *Lewiston Morning Tribune*.

"The framers (of the U.S. Constitution) realized that, although democracy is the best overall form of government, it's also a very dangerous form of government," Pevar was quoted in the *Tribune*. "It's government by the majority, and any majority in a democracy can wipe out the rights of a minority." The Bill of Rights essentially recognizes that "some rights are too precious to leave up to the majority," he said. "It sets aside a small bundle of precious liberties that even the majority can't interfere with. It identifies those rights we have as individuals, regardless of what the majority says."

2016 Resolution Process

Unlike many state bars, the Idaho State Bar cannot take positions on legislative matters, rules of court, substantive rules governing the bar itself at its Annual Meeting or by act of its Bar Commissioners, without first submitting such matters to the membership through the resolution process. Below are two resolutions proposed for your consideration during the 2016 Idaho State Bar resolution process, aka "The Road Show."

- 16-01 Idaho Bar Commission Rule 402 (e)(1)(A). Exemptions – Proposes to allow active military duty not engaged in the practice of law in Idaho to request an exemption from the CLE requirements.
- 16-02 Idaho Bar Commission Rule 302. Licensing Requirements – Proposes to add to the requirements for licensing that active lawyers have a

minimum amount of legal malpractice coverage.

More information is available for each resolution on the ISB website and in the Voter Pamphlet which was mailed in mid-October.

The resolution meetings are scheduled for November. Each judge and active member of the Idaho State Bar in attendance at a resolution meeting will be provided a ballot. Members not in attendance will be mailed a ballot after the meeting in their district. Ballots may be completed and submitted at the resolution meetings, mailed, faxed or delivered to the Idaho State Bar office. Issues shall be determined by the total ayes and nays cast statewide. All ballots must be signed and are due in the Idaho State Bar office by the close of business on Monday, December 5, 2016.



Photo by Dan Black

The Resolution Roadshow meetings are good opportunities to meet a few local attorneys and give accolades to the winners of the Professionalism and Pro Bono Awards. In this photo, Taylor Mossman introduces her father Hugh V. Mossman, Boise, who earned a Professionalism Award in 2015.

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Transformational Member Services and Benefits

Mahmood U. Sheikh
Deputy Executive Director,
Idaho State Bar

Ms. Vicki Clark of Memphis, Tennessee, from “Building the Capacity of Organization,” recently spoke at the 2016 Annual Meeting of the National Association of Bar Executives in San Francisco. Ms. Clark challenged bar executives by asking, “what are you doing to ensure your members have transformational experiences with your Bar? Even you, in Unified Bars?” she asked. On the spot I recalled a conversation I had one month prior with a North Idaho family law practitioner active in an array of bar activities.



Mahmood U. Sheikh

The individual was in the market for office furniture for their law firm. When I mentioned the Idaho State Bar was entering into an agreement with Office Depot for bar members to enjoy substantial savings, the attorney remarked “you know I never stopped to think if an approved partner was aligned with the Bar.” It dawned on me if one of our most engaged members was not in the habit then many of our 6,000+ members were in the same predicament. Perhaps many lawyers don’t know about the numerous member services and benefits. These no-cost or price-reduced benefits are immediate and provide members assis-

These no-cost or price-reduced benefits are immediate and provide members assistance with their practice, career, professional network, everyday lifestyle, commitment to the public and their leadership development.

tance with their practice, career, professional network, everyday lifestyle, commitment to the public and their leadership development.

I thank our friend, Executive Director Diane Minnich for providing me the opportunity of this column to showcase those benefits and services that provide transformational experiences like the one Ms. Clark mentioned. Below is a full listing with a few testimonials.

Your practice

• **Transitioning from the Practice of Law** - Succession planning resources including the *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Death or Disability* is now available under ‘Attorney Shortcuts’ on the Bar’s homepage. This new information is courtesy of the Senior Lawyer Transition Task Force to help the members fulfill their ethical obligations to protect clients in the event of a member’s death, disability, impairment or incapacity.

• **Attorney Liability Protection Society, Inc. (ALPS)** - Provides a full range of professional liability coverage for law firms and solo practitioners. ALPS was started, is owned and is operated by attorneys, for attorneys. To learn more call (800) 367-2577.

• **Casemaker** - Available to all members, this web-based legal research library and search engine is packed with important legal resources, including citation analysis, appellate summaries and positive/negative case treatment. Its database is continually updated.

“Casemaker is a wonderful member benefit that all Idaho lawyers should take advantage of. Their ever expanding library makes Casemaker one of the most valuable legal research resources I use.”

–J. Nick Crawford, Brassey Crawford, PLLC

• **Clio** - The most widely-used, cloud-based practice management system in the world. Every day, tens of thou-

sands of lawyers use Clio to schedule meetings, organize cases, track time, and invoice their clients. Members receive a 10 percent lifetime discount on Clio. To learn more visit landing.goclio.com/idbar.html.

• **Disability Insurance** – The following companies have agreed to the standards for ISB endorsement:

- Hall & Associates – Rick Thompson (208) 919-4253
- MassMutual Idaho – Matt Valentine (208) 850-5507
- Ohio National Life – Lance Kolbet (208) 234-1800

• **Ethics Advice** – Consult with staff attorneys in Bar Counsel’s Office regarding the Idaho Rules of Professional Conduct.

• **Fee Arbitration Program** – Offers an efficient, private and free way to resolve client fee disputes. Fee arbitration can be requested by either the client or attorney.

• **LawPay Credit Card Processing** – Secure and convenient tool for receiving online credit card payments. If interested call (866) 376-0950.

“My office uses LawPay and it is a worthwhile product to have. It helps clients pay who otherwise may struggle to make their quarterly payments without them getting upset. Our clients seem thankful that we have an alternative way to pay.”

– *Michael J. Bartlett,
Nevin, Benjamin, McKay &
Bartlett, LLP*

• **LeanLaw** – Modernizes your practice with Software, Services and Tech Coaching – focused on small practice and solo lawyers – offering special discounts for Idaho State Bar members. Call (888) 882-3017 to join.

“LeanLaw provides a framework to tell me what I need. It’s so wonderful to have this tech support... LeanLaw has a bigger picture for lawyers.”

– *Deborah A. Ferguson,
Ferguson Durham, PLLC*

• **Office Depot** – Members have access to elite pricing on over 16,000 in-stock office products. To learn more visit www.mynpp.com.

“ABA Retirement Funds Program is an outstanding member benefit that our law firm absolutely loves.”

– *Trudy Hanson Fouser,
Gjording Fouser*

Your career

• **American Bar Association Publications** – Idaho State Bar members receive a 15 percent discount on publications designed to assist in managing one’s practice and keeping current in your particular area of law. Visit the ABA online store and use source code PAB7EIDB at check-out.

• **American Bar Association Retirement Funds Programs** – Serving retirement needs of the legal community since in 1963, the program was established to offer unique retirement solutions exclusively to the legal community through this not-for-profit corporation. Call (866) 812-3580 for a free consultation.

“ABA Retirement Funds Program is an outstanding member benefit that our law firm absolutely loves.”

– *Trudy Hanson Fouser,
Gjording Fouser*

• **Continuing Legal Education** – The Idaho Law Foundation and the Idaho State Bar Practice Sections provide educational programs in specific areas of law and offer a wide range of publications for purchase at extremely reasonable rates, tailored to Idaho practitioners.

• **Job Announcements** – A free job announcement service to law related employers and employees. Job announcements must be law related positions, either seeking employment in or an employee for a job in the legal profession.

• **Lawyers Assistance Program** – Confidential program helps and supports lawyers and judges experiencing problems associated with addictive behaviors such as, but not limited to: alcohol, drug use, gambling, mental health issues and/or depression. For more information, including confidential support, call (208) 891-4726 or (800) 386-1695.

“I was referred to John Southworth and the Idaho Lawyers Assistance Program and found other attorneys that were experiencing the same problems of substance abuse and depression. The Lawyers Assistance Program helped me realize that I was not alone and provided a confidential route to address my issues which has made me a better person and attorney.”

– *Anonymous*

• **Lawyer Referral Service** – A state-wide service operated by the Idaho State Bar designed to assist the public with unbiased referrals to an at-

torney who has experience in the area of law appropriate to the client's needs.

- **Mentor Program** – The Idaho State Bar offers a mentor program to assist new lawyers in their transition to a successful practice. The program pairs new lawyers with experienced lawyers in their community.

Your professional network

- **ALPS Attorney Match** – This program allows attorneys to create a profile geared toward building a network of potential mentorships and mentees. Whether you are looking for a successor upon retirement, are seeking to become a solo practitioner or want to network in general, ALPS Attorney Match can assist you. Visit www.ALPSAttorneyMatch.com for more information.

- **Desk Book Directory** – A supplement to *The Advocate*, disseminated each April, the publication contains the Idaho Bar Commission Rules, the Idaho Rules of Professional Conduct, the Local Court Rules, the Rules of the Idaho Judicial Council and contact information for attorneys and judges.

- **District Bar Association** – Idaho's seven District Bar Associations offer a great way to get involved and meet other attorneys practicing in the various geographic regions. Social events, public service projects, CLE programming and the annual Resolution Meeting are organized by the respective Associations.

- **E-Bulletin** – A weekly electronic update details upcoming CLE programs, Section and district bar activities, general legal announcements and more.

- **Idaho State Bar Annual Meeting** – Typically held in July, this conference alternates locations around the state and provides CLEs, network-

Idaho's seven District Bar Associations offer a great way to get involved and meet other attorneys practicing in the various geographic regions.

ing opportunities, social gatherings and awards recognitions. The 2017 session will be held in Moscow, July 12-14.

“The State Bar Annual Meeting is so important in the development of a young lawyer. The ability to interact with seasoned practitioners and to gain insight into the practice of law is why I attend. It is hard to put into words. It is just a feeling. It is the most important event a young lawyer can attend.”

– *Kris Meek,
Beard St. Clair Gaffney PA*

- **Meeting Space** – Members are welcome to use meeting space in downtown Boise at The Law Center, 525 W. Jefferson Street, which includes two conference rooms and a classroom.

- **Practice Sections** – 21 Practice Sections are involved in projects such as publications, CLE seminars and public service while offering networking opportunities with others who practice or work in a similar area of the law. Membership in any Practice Section is open to the bar.

- **The Advocate** - Published nine times a year, the official magazine of the Idaho State Bar, features topics of interest to the Idaho legal community including notices of activities, rule changes, discipline cases, CLE opportunities and scholarly articles.

Your everyday lifestyle

- **Brooks Brothers** - Members save 15 percent on regularly priced merchandise. To enroll over the phone, call 866-515-4747 and refer to Organization ID #11642 and Pin Code #53832.

- **Hotel & Car Discounts** - Members, friends and family have access to a worldwide inventory of hotels and rental cars, domestically or abroad, with savings that may exceed 50 percent and average 10-20 percent below best available rates. Call 800-892-2136 with promotional code 23903.

“I like the service because I am selective of the hotels I stay in and I can usually save 10-15 percent per night when comparing to nationally recognized competitors. I use it for business trips and personal trips with the family.”

– *Ryan Petersen,
Power County*

- **Other Car Rentals** – Members may receive a discount through Avis (AWD#A757300) or Hertz (CDP#92374).

- **Verizon Wireless** - Significant discounts on wireless calling plans, and other discounts on accessories, devices, smartphones and text message plans. Visit Eligibility requirements

to apply. To learn more visit www.mynpp.com.

Your commitment to the public

- **Client Assistance Fund** - Under special provisions of the Idaho State Bar and Idaho Supreme Court Rules, a fund has been created for maintaining the integrity and protecting the good name of the legal profession by reimbursing claimants for losses caused by dishonest conduct of a lawyer. Under the program, fees are paid by all lawyers throughout the state to assist in compensating members of the public for an Idaho lawyer's dishonest conduct when the claimant has no other recourse to recoup the loss.
- **Idaho Volunteer Lawyers Program (IVLP)** - Organizes Idaho private attorneys to expand pro bono

legal resources. IVLP staff members screen applicants for income and case eligibility and support volunteer attorneys as they prepare cases. To learn more call (208) 334-4510.

- **Law Related Education (LRE)** - Provides Idaho teachers and students with materials and strategies to reinforce civic education. LRE relies on attorney volunteers for programs, including *Lawyers in the Classroom*, *Citizens' Law Academy*, the *Turning 18 in Idaho* publication and the *Idaho High School Mock Trial Program*.

Leadership opportunities

- **Idaho Academy of Leadership for Lawyers** - An interactive leadership training program designed specifically for lawyers who have practiced law for or have a total of five years professional experience.

- **Idaho Law Foundation Board of Directors** - A 13-member governing body for the Idaho Law Foundation. Board members come from all parts of Idaho, representing both the legal profession and the communities we serve.

- **Idaho State Bar Board of Commissioners** - Governing body for the Idaho State Bar. Commissioners are elected by the District Bar members and serve three-year terms.

- **Volunteer Opportunities** - 18 committees of the Idaho State Bar and Law Foundation which provide vision and oversight to various programs and functions.

Call (208) 334-4500 to learn more or feel free to email me at msheikh@isb.idaho.gov. You can also visit isb.idaho.gov and locate these services on the bottom left corner of the Bar's homepage. Please help us spread the word and be sure to take advantage of these opportunities.

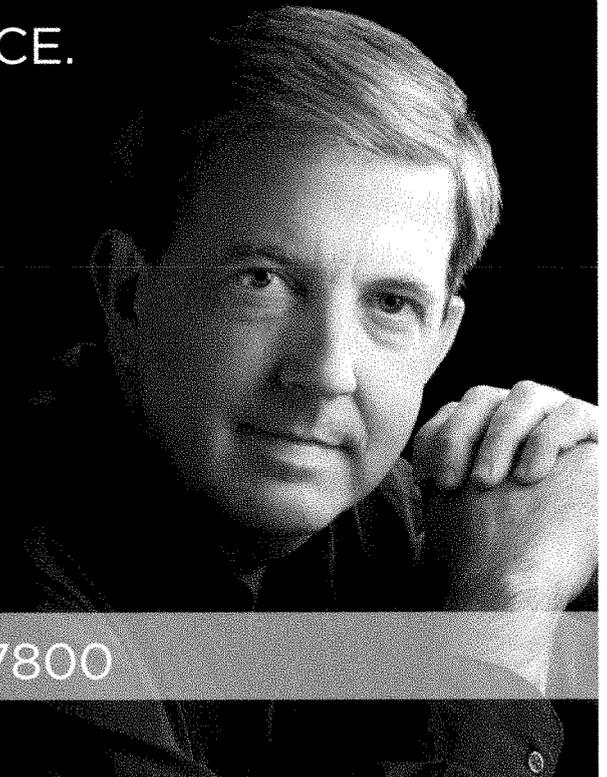
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Welcome from the Idaho Legal History Society

Ernest A. Hoidal

The Idaho Legal History Society is proud to sponsor its seventh issue of *The Advocate* and grateful for the continued support of our members, board and officers.

In 2005, Judges Lynn B. Winmill and Ronald E. Bush created the Society to foster and promote public knowledge of, and interest in, Idaho's legal history. We wish to also acknowledge the contributions of our past presidents: Judge Ronald E. Bush, Debora K. Kristensen, the late Scott Reed and Judge Ronald J. Wilper.

Our oral history subcommittee continues to be led by Dianne Cromwell and is comprised of Libby Smith, Clerk of the U.S. District Court, Katherine Moriarty and Chris Cuneo. Dianne's leadership over the past seven years has been outstanding. We also want to thank the court reporters who volunteered to transcribe oral histories. For their efforts we are truly grateful. A project is now underway to make oral histories accessible to the public at the Idaho History Center on Old Penitentiary Road in Boise. It is scheduled for completion in 2017.

As stated by Judge Winmill many times, the Idaho Legal History Society encourages the bar's newest attorneys to interview

experienced judges or attorneys. These interviews fulfill our mission and new attorneys will gain perspective about their legal careers. Incidentally, Brenda Bauges and Will Fletcher propose projects associated with oral histories and Wikipedia entries as part of their participation in the Idaho Academy of Leadership for Lawyers.

We hope you will enjoy the historical articles presented this month. Special Assistant to the President of College of Southern Idaho, Curtis Eaton, profiles two of Idaho's most famous politicians - William Borah and Frank Church. Will Fletcher profiles a lesser-known politician, U.S. Senator James A. Pope from Idaho, who helped establish national policies and practices with large hydro-electric dams and irrigation development across the country.

Recently-retired attorney Larry Grimes writes about his own experiences with Judge Hamer Budge, who went on to serve as a Commissioner of the Securities and Exchange Commission. Next, I offer a sketch of the kaleidoscope career of Jerry Brady. It is based on an oral history of the Idaho Falls publisher, civics promoter and former Peace Corps Communications Specialist. And finally, attorney Ritchie Eppink gives some context for these historical figures by



illuminating legal biases against Native Americans, Chinese, women and other minorities. Unfortunately, Idaho's history has more than its fair share of prejudice and violence.

I wish to thank J. Walt Sinclair, our Treasurer, who, with the assistance of Nancy Hammond of Holland & Hart, has consistently thought only of service and made exemplary contributions. You will be missed and are most deserving of the Byron Johnson Award, the highest award the Society gives. Finally, a special thanks goes to Susie Headlee, our Secretary since the inception of the Society.

Please contact me if you wish to volunteer and contribute to preserving Idaho's legal history at eahoidal@hoidallaw.com.

Idaho Legal History Society

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Contrasting Idaho's Most Iconic Politicians: Borah and Church

Curtis Eaton

"The profession I chose was politics; the profession I entered was law. I entered the one because I thought it would lead to the other. It was once the sure road; and Congress is still full of lawyers."

— Woodrow Wilson ¹

Frank Forrester Church was 32 when he was first elected as a Democrat to the U.S. Senate from Idaho, where he served for 24 years. William Edgar Borah, a Republican, was appointed to the U.S. Senate by the Idaho State Legislature in 1907 and 1913, and thereafter by direct election under the 16th Amendment which he had supported. He served for 33 years.

Although Senator Borah (1865-1940) and Senator Church (1922-1984) served their state at different points in history, many of the issues they faced were the same. This article reviews some of their many similarities and few differences in addressing those issues. Its purpose is to stimulate interest in the public lives of these attorneys who are the longest serving U.S. Senators in Idaho's history.

Despite illnesses, both pursue the law

Borah and Church followed winding roads that led them to the practice of law and politics. As college students, Borah in the 1880's and Church in the 1940's, they suffered very serious medical conditions that interrupted their pre-law and law studies. Church was diagnosed with cancer shortly after transferring to Stanford law school.

Borah contracted tuberculosis while at the University of Kansas requiring him to withdraw from

school and convalesce at his sister's home in Lyons, Kansas. During his convalescence the young Borah developed a habit of reading. He was especially touched by Ralph Waldo Emerson who had written, 'whoso would be a man must be a nonconformist' and, according to historian and academic Marian McKenna, "Borah meant to illustrate the maxim" ² After months of recuperation from his illness, he read for the law under the tutelage of his brother-in-law, Ansel Lasley and in September of 1887 at the age of 22, passed the Kansas bar.

Borah enjoyed some success in his law practice in Rice County, Kansas. But after handling a few cases and serving for a time as the Lyons city attorney, not to mention the threat of being shot by the opposing party in a case, he considered moving to larger cities in the east. According to McKenna, he decided instead to "go west to seek fame, fortune and an opportunity to grow up with the country." ³

Borah's first year in Idaho was strenuous. Admitted to the Idaho bar in February of 1891, he later said, "The first year in Idaho was the most melancholy of my existence. I battled desperately for a living and many times was on the point of surrendering. I was an utter stranger in Boise and the town was full of attorneys...But I kept on; I don't know why or how..." ⁴

By the turn of the century he explored leaving Idaho, once again



Sen. William Edgar Borah



Sen. Frank Forrester Church

Snapshot

Two names rightly share the mantle as Idaho's foremost political figures - William Borah and Frank Church. Each left an indelible legacy on the character of politics in both Idaho and the nation. Borah, whose booming oration captivated Idahoans and the U.S. Senate, was a staunch opponent of Roosevelt's New Deal, and championed an isolationist position before both world wars.

Decades later, the more introspective Frank Church was among the first in the U.S. Senate to oppose the Vietnam War. Through public hearings and investigations, he helped the country reckon decades of secret and unconstitutional spying and covert actions. In 1975 and 1976, the Church Committee published 14 reports on various abuses by U.S. intelligence agencies. Although ideological opposites, we see remarkable similarities in the two Senators from Idaho.

considering metro areas where he would have a wider variety of cases. "It was not that Borah had outgrown Boise. He had more business than he could handle and an income in five figures, but a career as a lawyer did not wholly satisfy him." McKenna writes that he had already decided to enter politics, a normal course for ambitious lawyers in the West. ⁵

Basis for political careers

Prior to becoming a U.S. Senator, Borah had acquired a national reputation as a trial attorney. He was on the prosecution team against defense attorney Clarence Darrow in the Bill Haywood case involving the bombing death of former Governor Steunenberg. Borah was the prosecutor in another notorious case, the “Diamondfield Jack” case that pitted cattle ranchers against sheep herders.

Like Borah, Church embarked on a legal career prior to entering politics. Church was uncertain about his future as he completed his tour of duty in China as an intelligence officer in World War II. He was despondent and wasn’t sure about attending college where he feared he would be “listening to mindless lectures.”⁶ At the time, he confessed that his true love was politics but saw no path leading him there.⁷ Church nevertheless finished his undergraduate studies at Stanford, and decided to attend law school at Harvard. After one year, he left the east coast and again enrolled at Stanford for law school. He was admitted to practice in 1950.

Church’s first job as an attorney was as counsel for the Idaho Office of Price Stabilization in Boise where his friend, Carl Burke, was also employed. Within a year, he tired of the bureaucracy of the OPS job and started his own practice in an office rented from the firm Langroise and Sullivan. Although not officially associated with the firm, he was the beneficiary of cases they referred to him. As stated by Ashby and Gramer in their book, *Fighting the Odds: The Life of Senator Frank Church*, Church viewed the law as a doorway into politics.⁸

U.S. Senators from Idaho

Borah was Church’s hero as noted by Ashby and Gramer.⁹ Their careers as U.S. Senators were remarkably similar. Borah and Church served as

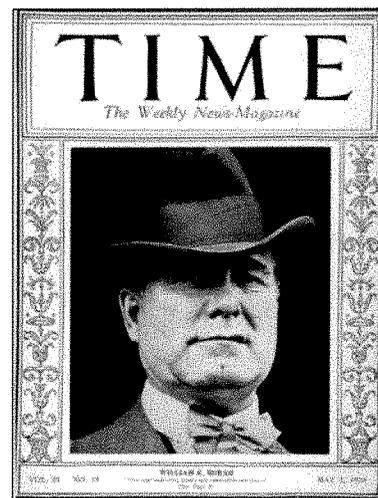
U.S. Senators longer than any other in Idaho. Borah served for 33 years beginning in 1907. Church served for 24 years starting in 1956. A campaign brochure from 1968 showed Church sitting at a desk with the statue of an eagle on one side and a picture of Borah in the background. Although they never met, Church recalled seeing Borah while he was lying in state in the Idaho Capitol.¹⁰

Both Borah and Church debated, argued and fought on the battlegrounds of all the important public policy issues of their times. They were aloof and detached from, and at times antagonistic towards, their

They were aloof and detached from, and at times antagonistic towards, their respective political parties.

respective political parties. As a Republican candidate for U.S. President in 1936, Borah won primaries in Pennsylvania, West Virginia, Wisconsin, Nebraska and Oregon. Forty years later as a Democratic candidate for U.S. President, Church also won primaries in Nebraska and Oregon, as well as Montana, Idaho and Utah. But neither received the nomination, in part because of their distant relationship with the old guard of their parties.

Church chose to stay out of the state’s political wrangling and re-



In his day, Senator Borah captivated audiences with his booming oratory.

mained as detached as possible from the Idaho Democratic Party. This was the exact course Borah had followed with the Idaho Republican party. Church’s boyhood hero had persistently avoided becoming a party functionary thus avoiding state party factionalism. Ashby and Gramer say that four decades later, Church did the same.¹¹

Cut from the same cloth

Borah and Church shared a common set of values based in the western agrarian culture. Church’s philosophical underpinnings derived from the Progressive Era liberals who instilled in him his “prairie radical tendencies,” as described by Ashby and Gramer.¹² Church believed that government by the people in all its Jeffersonian potential would yield good policy. Government policies should promote the general welfare and discourage government overreaching. In the words of Ashby and Gramer, Church believed in the “progressive tradition of muckraking and its assumption that the spiritual health of a democratic culture depends on public access to information.”¹³

Although members of opposite parties, Borah shared William Jen-

nings Bryan's antipathy toward big government and big business. Borah and Bryan were moralists with tendencies toward self-righteousness. Ashby and Gramer write that a similar criticism was leveled at Church because of his "Sunday school demeanor" and "moralistic tendencies."¹⁴ Ashby writes that western progressives "recalled village America with its memory of quiet streets and personal government."¹⁵

Borah and Church hoped to ensure that government was brought closer to the American people. Borah attempted to reform his party so common people could have greater influence in its policies and platforms. Church thought that greater transparency in governmental affairs would allow citizens to judge the performance of government.

While they believed in the values of the agrarian way of life with its rugged individualism and self-reliance, at various times both supported federal government programs and initiatives that they thought were necessary for the greater good of the American people. This is seen in their respective voting records. Church supported, and in many cases initiated, government action, as noted by Ashby and Gramer, in the areas of health care, social security, civil rights and wilderness designation and preservation.¹⁶ In the tradition of the New Deal and the Great Society, Church saw the role of government to be a catalytic agent in matters of national commitment - air, water, transportation and more.

Borah embodied the dilemma of progressives of the 1920's and 30's, in that his instincts were agrarian and small town, but he voted for legislation that he thought served the national purpose. He supported anti-trust legislation, the eight-hour work day, constitutional amendments for graduated income tax and the direct election of Senators. Although he opposed many of the New Deal



U.S. Senator Frank Church talks to then-president Jimmy Carter.

programs, Borah supported Social Security. As reported by McKenna, he supported a program that would subsidize farm exports although against the desires of the Hoover administration.¹⁷

Both married daughters of Idaho Governors

One of their similarities, more of a coincidence, is that Borah and Church both married daughters of Idaho governors. Borah found a job with Idaho Governor William McConnell in the early 1890's as his part-time secretary. While campaigning for the governor, Borah met Governor McConnell's daughter. After a courtship of a couple of years, Borah married Mary McConnell in April of 1895. Their marriage lasted until Borah's death of a cerebral hemorrhage 46 years later. Mrs. Borah was quietly supportive of Borah but not active in the Washington D.C. social scene. Of her job as a campaigner, it is reported that Mrs. Borah said, "the wives did not go out on the hustings with their mates" but needed to be available for teas, luncheons and dinners.¹⁸

Frank Church likewise married the daughter of an Idaho Governor,

Chase Clark. Church had known the Clark family well since he was young. He and Bethine Clark were married at her family's property, Robinson Bar Ranch, in June of 1947, and following a honeymoon in Mexico, they moved to Boston. They thought the theft of his car while he was taking his first law school exam at Harvard was an omen that they should move to the West Coast for Church's enrollment at Stanford. There, he began to have severe back pains which ultimately led to a diagnosis of cancer. With experimental treatment at Stanford University hospital and the nursing care by Bethine, Church survived a brutally debilitating year. His successful treatment forged his resolve to finish his law degree. He was admitted to the Idaho Bar in 1950.

The relationship between Bethine and Frank was polar opposite of Borah's relationship with his wife. In her book, *A Lifelong Affair*, Bethine makes it clear that their relationship was interchangeably public and private. Ashby and Gramer say that Bethine was Church's best friend and constant companion.¹⁹ She was the extrovert who balanced Frank's aloof and academic side.

Bethine said she had a séance-like conversation with Frank long after

he passed away to ask his permission to have her name engraved first on a memorial with his name second. She said he thought it was definitely permissible but wondered why it had taken so long for that to happen.

Skilled orators

Another characteristic that Church and Borah shared was a gift for the use of words. Borah gained notoriety in legal practice as a part of the prosecution team in the Haywood and Diamond Field Jack cases. Church's public notoriety in debate came later in his career in the Senate, particularly with legislation in civil rights, curtailment of presidential authority in conducting the Vietnam War, abuses by intelligence agencies and multinational corporations.

The two senators were elected and several times re-elected, in part because of their cleverness, precision and love affair with words. At age 14, while a freshman in High School, Church wrote a letter to the editor of *The Idaho Statesman*. It was a defense of Senator Borah's position that the United States should stay out of World War II. The letter was printed on the front page of the paper, and Church's social studies teacher had to write a testimonial letter to the paper to confirm that the article was indeed written by young Church. He later was awarded a scholarship to any college in the nation for winning the American Legion National Oratorical contest, on "Our American Way of Life."

After his keynote speech at the Democratic National convention in 1960, Church was described as a Claghorn, the blowhard politician in the Lil' Abner comic strip series. That was the exception. Almost always, however, he was engaging and persuasive in his written articles

and prepared speeches which were praised for their tight logic.

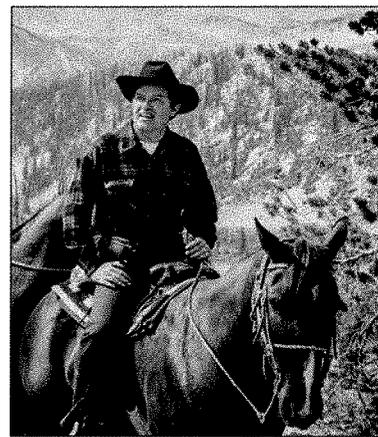
Borah's constituents delighted in his oratory. When he spoke on the Senate floor, the galleries were invariably overflowing. While some thought he was incurably dramatic, he was considered one of the most able and sought-after speakers in the country. He was described as having a protean ability to play both sides. According to McKenna, "(Borah)

When he [Borah] spoke on the Senate floor, the galleries were invariably overflowing. While some thought he was incurably dramatic, he was considered one of the most able and sought-after speakers in the country.

was both a lion and a fox. A man of courage, he knew when to be brave and also when to lie low."²⁰ Ashby writes that when Borah spoke, "the whole world is led to believe that he is fresh from a conference with the gods."²¹

Key differences

Despite their similarities, Church and Borah differed as well. Federal civil rights legislation is an area of public policy over which Church and Borah would have likely disagreed. Borah was a moralistic proponent of the 18th Amendment prohibiting alcohol. He advocated for the constitutional restriction



Senator Church loved the outdoors and worked to preserve Idaho's wilderness.

of liquor, believing that such a law would further the social interests of the country. Ashby notes that at the same time, Borah rejected federal legislation to ensure minority voting rights.²²

Following what he called an "extended inquiry," Borah said he thought there were no voting test laws in any of the states that affected minorities different from whites who had to take the same tests. Accused by Walter Lippmann of supporting the exclusion of minorities from voting in a way typically allowed to whites, Borah merely asserted that southern states were following the law.²³

Church's involvement in civil rights and minority voting legislation stood in stark contrast to Borah's indifference. Early in his first term in the U.S. Senate, Church was actively engaged in what became the Civil Rights Act of 1957 - the first civil rights law in nearly 100 years. There had been protracted argument and maneuvering in the Senate regarding the civil rights bill. Church's amendment providing for protection for minorities in jury selection was, in the words of Ashby and Gramer, "the dynamite with which to blast loose the civil rights logjam."²⁴

Lyndon Johnson, then the Senate Majority Leader, rewarded Church by appointing him to the Senate Foreign Relations Committee - an assignment that greatly irritated senators with more seniority. Church was again active in federal civil rights legislation seven years later as one of the Team Captains for the Senate debate on what became the Civil Rights Act of 1964.

Mrs. Church says the Senator lamented the Gulf of Tonkin Resolution as one of his worst votes and he greatly regretted not fighting it.²⁹

American interests abroad

U.S. involvement in world affairs occupied much of the interest of the two Senators, in part because both served on the Senate Foreign Relations Committee. Bethine Church writes that the Senator became Chair of the FRC "fulfilling a lifelong dream to follow Senator William E. Borah."²⁵ The two eras in which the Senators served were similar, as Americans reacted to the perceived threat of Communism. In Borah's time, during the so-called Red Scare of 1920's, many people in the United States feared that the Bolshevik revolution would spread across the country.

Borah's answer, indeed crusade, was to promote recognition of the legitimacy of the Soviet Union. He said the Russian revolution was as valid as that of the American colonies of the 1700s, writes McKenna.²⁶ Recognition of the government did not mean approval of the type of government.

The second Red Scare, characterized by McCarthyism and nuclear arms proliferation, occurred during the 1950's in part during Church's first term. Church was a vocal cold warrior during his first term, but came to the conclusion that the zero-sum game between the United States and the Soviet Union was destabilizing and, as Church himself said, "disarmament is essential to our survival."²⁷

Regrets about voting for war

Church and Borah both voted on America's engagement in armed conflict. On April 4, 1917, Senator Borah voted for American entry into World War I. Almost 50 years later, on August 7, 1964, Senator Church voted in favor of the Gulf of Tonkin Resolution that ceded unrestrained authority to the President for conduct of the Vietnam War.

Borah later said that of all the votes he had cast in the Senate, he rued most the one supporting American entry into World War I, as stated by his biographer.²⁸ Church later complained that the vote on the Gulf of Tonkin Resolution was hurried and taken in the heat of the moment. Mrs. Church says the Senator lamented the Gulf of Tonkin Resolution as one of his worst votes and he greatly regretted not fighting it.²⁹

Soon after their votes, each began a very public analysis of the foreign policy of the United States and its role in international affairs. Each began a campaign to more carefully assess the self-interest of the United States in the international arena. Their public metamorphosis of a policy position they had earlier espoused was one that few politicians are willing to undertake.³⁰

Probably the greatest point of disagreement between Church and

Borah would have been on the role of international organizations. Certainly a subject to be expanded elsewhere, it is important to acknowledge a significant difference that as senators and members of the Senate Foreign Relations Committee they promoted. Church believed in the promise of international organizations. He thought organizations that brought together the interests of members for discussion and resolution were laudable. An ardent supporter of the United Nations, Church was the U.S. delegate to the 21st General Assembly of the United Nations.

Contrariwise, Borah helped to sink the League of Nations following World War I, because he thought it would entangle the United States in international affairs. He joined some of his fellow senators on a national tour denouncing the League. They believed that adoption of the Versailles Treaty with the League of Nations provisions would be tantamount to turning U.S. foreign policy over to the Europeans.

Church and Borah both thought that the possibility of future wars should somehow be reduced. Each concluded that an unfettered international militarism would lead to yet another disastrous conflict with its concomitant economic and human costs.

Church thought that an important answer was to require transparency in government and to find common ground among and between adversaries in order to reduce and restrict arms. As a primary example, Church proposed transparency in the U.S. relationship with Latin American countries. Church said that “secrecy was an affront to the whole philosophy of a free society,” and that secrecy usually had more to do with concealing bad judgment, incompetence, and corruption than with protecting national security.³¹

Church also believed that a reduction in nuclear arms, while not the elimination of the nuclear threat he sought, was an important step. He was a chief advocate for the Strategic Arms Limitation Treaty of 1972 known as SALT I which had the effect of reducing the strategic (heavy and long distance) deployment capabilities of both the Soviet Union and the United States. Church was in favor of SALT II that would have further reduced nuclear arms until the moment that it was to be approved in the Senate. He declared his opposition when it became apparent that the presence of Soviet troops in Cuba might be announced.³²

Typical of Borah’s boldness, his manner of dealing with the ghastly consequences of war was to adopt the idea to simply make war illegal. Salmon O. Levinson, architect of the Outlawry movement, referred to Borah as “a wavering convert”³³ Borah became a spokesman for Outlawry, however, and in 1923 introduced his first Senate resolution on the subject providing that “war between nations should be outlawed...”³⁴

As outlined by McKenna’s work, the bill on Outlawry would have made war a public crime and create a code of international law admin-

istered through a world court independent of any nation.³⁵ As there is no proselyte like a convert, Borah wrote an Outlawry plank in the Republican platform at the time of Hoover’s nomination. As noted by McKenna, the Kellogg-Briand pact of 1928-29 (“eliminating war” in the resolution of international conflicts) was a direct result of Borah’s advocacy.³⁶

Borah was the featured speaker at the September 1931 dedication of the Borah Foundation for the Outlawry of War at the University of Ida-

Church said that “secrecy was an affront to the whole philosophy of a free society,” and that secrecy usually had more to do with concealing bad judgment, incompetence, and corruption than with protecting national security.³¹

ho in Moscow.³⁷ It was established with a \$50,000 grant from Levinson. The Foundation is still active.

Bold ideas, background in law

It has been said that a period of transition is that moment between two periods of transition. Yet, the times spanned by Borah’s senate service primarily in the 1920’s and 30’s and Church’s mostly in the 1960’s and 70’s certainly were times of transition. On some issues they would have agreed to disagree. Given the opportunity, they would have argued

vehemently whether international organizations protect or undermine international stability. Federal government involvement in minority voting rights protection is also a policy area they would have debated.

Parallels in attacking problems of their days and similarities in their solutions, however, are striking. Perhaps it was training in the law profession that provided foundations for their arguments and analyses. Perhaps it was the moorings to the state they both loved deeply that shaped and shaded their similar world views.

Whether a friend or foe of the two senators, however, it should be noted that they were actually in the arena, strove to do the deeds, spent themselves in worthy causes and in occasionally failing, did so while daring greatly.

— Theodore Roosevelt
in “*Citizen in a Republic*”

Addendum

Frank F. Church (1924-1984) is buried in Morris Hill cemetery in Boise, a short distance from William E. Borah (1865-1940).

For further information and support, please contact:

The Frank Church Institute
(sps.boisestate.edu/frank-churchinstitute)

The Borah Foundation
(www.lib.uidaho.edu)

The author thanks LeRoy Ashby, Rod Gramer and Russ Tremayne for reviewing this article.

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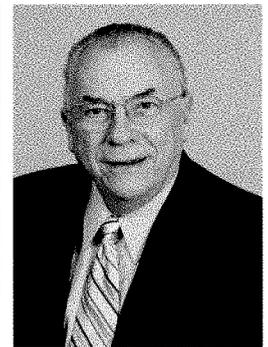
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The Life and Times of Senator James Pinckney Pope of Idaho

William K. Fletcher

James P. Pope was an Idaho lawyer, public servant, and United States Senator during the first half of the twentieth century. His accomplishments include serving as the Boise City Attorney, an Assistant Attorney General of Idaho, President of the Boise School Board, and Mayor of Boise from 1929 through 1933.

Following his time in the Senate from 1933 through 1939, Pope was a director of the Tennessee Valley Authority for more than a decade. Pope served in the Senate alongside the great William E. Borah, who up to that point had enjoyed the reputation as “the only senator from Idaho.” Nonetheless, Pope was quickly able to make a name for himself in national politics, due to his standing opposite of Borah on international issues, and in his many efforts aimed at both protecting and developing Idaho’s resources. Pope was a consequential figure in Idaho’s history whose legacy helped define civic life here for decades.

Early life and education

Pope’s early years did not fore-shadow what he would accomplish or where he would call home for much of his life, and it was quite by chance that he became grounded in Idaho. Pope was born in 1885 on his father’s cotton plantation in Jackson Parish, Louisiana. He was the eldest of 11 children. Pope spent his youth picking cotton and, like many aspects of his life, he was



James Pinckney Pope



In this June 8, 1937 photo from the Library of Congress, Senator James P. Pope, Democrat of Idaho, argues for his bill in the Senate to increase the federal government’s contribution, through the Social Security Board, to care of dependent children from one-third the maintenance cost to one-half.

competitive about it; Pope claimed at one point to be the “cotton picking champion” of his parish.¹

Pope graduated from the Louisiana Polytechnic Institute in Ruston where he was a football standout, and following that, he attended the University of Chicago law school.² A gifted public speaker, Pope was a member of the University of Chicago debate team which performed remarkably in intercollegiate oratorical contests.³

Upon obtaining his law degree in 1909, Pope began to travel. During a trip out west he ran out of money in Boise and was compelled to settle down. Pope immediately took a job as a clerk with the law firm of Morrison and Pence, and began practicing with that firm upon passing the bar exam that November. After a few months, he formed his own partnership with attorney E.P. Barnes.⁴ Pope quickly rose to prominence in his adopted state, and also dove headlong into politics.

Snapshot

James Pinckney Pope was perhaps overshadowed in the U.S. Senate by the boisterous Senator Borah, but he left his mark locally and on the country’s national discussion of war and peace. After serving in Congress, Pope continued his public service through advocating a robust program of reclamation, irrigation and flood control, notably through the Tennessee Valley Authority.

Pope’s rise in Idaho

Pope’s first bid for elected office came in 1910 when he ran on the Democratic ticket for the office of County Attorney of Ada County. However, “owing to the normal supremacy of the Republican party in the county,”⁵ this bid was met with

defeat. Among Pope's early political efforts, he is credited with doing much to bring about the adoption of the commission form of government in Boise in 1912.⁶ Pope was fiercely loyal to the Idaho Democratic Party, and served as a delegate to every Idaho Democratic state convention from 1914 through 1930, and to every national convention from 1924 through 1936.

During the 1920s, Progressives and Democrats held the majority of votes over Republicans within the state; however, factionalism was rampant among the former two parties, which prevented either from obtaining a political majority. Pope was a believer in party unity, and made many efforts to bring his divided party together.⁷

In 1916, Pope became the Boise City Attorney. The following year, he joined the Idaho Attorney General's Office. He was elected to the Boise Board of Education in 1924 and became its president, a position he held until 1929 when he was elected the mayor of Boise.⁸ Pope's philosophy as a leader and politician was well captured during an address he gave to the Lewiston Chamber of Commerce in October, 1931. Pope stated, "[K]eep the spirit of goodwill and cooperation in your community if you wish to succeed; work with people and get their viewpoint, develop a sense of humor, and you will find that human nature is an interesting field in which to work."⁹

Pope's run-up to the Senate

During Pope's term as Boise's mayor, Idaho and the nation had been hit hard by the Great Depression. Pope began to see opportunity for national office due to the overwhelming resentment that had developed against the power establishment in place during the country's spiral into economic collapse. Idaho's two senators at the time were

Republicans, "The Lion" William E. Borah and John W. Thomas, who had served less than one full term after being elected in 1928 in a special election to fill the vacancy created by the death of Senator Frank R. Gooding.¹⁰

Thomas was up for reelection in 1932, and Pope viewed him as vulnerable.¹¹ During the election, Pope had aligned himself with the platform of presidential candidate Franklin D. Roosevelt by campaigning on "the issue of the 'little man'" and economic relief for the lower

In 1935, Pope introduced a bill for the creation of the Columbia Valley Authority, which would have created a federally-owned corporation to manage navigation, flood control, and power development of the Columbia River Basin.¹⁹

strata."¹² However, recognizing the heavy dissatisfaction with the incumbents, Pope also realized that the election could be his to lose, and at times based his strategy on saying as little as possible. In the end, this was sufficient to overcome Borah's endorsement of Thomas, whom Pope easily defeated.¹³

Service in the United States Senate

Pope's election to the Senate was part of a national Democratic tidal wave that routed Republican office holders at all levels of government, including the presidency.¹⁴ However, merely winning office did little for

Pope in establishing himself in Washington. The 1920s and early 1930s had been the time of Borah in congressional politics. Up to that point, Borah had been widely considered "the only Idaho senator" because nobody could ever remember the other fellow's name."¹⁵ Yet, despite Pope's newcomer status, it did not take long for him to cement his status as a major figure—both in terms of what he aspired to for Idaho, and in what he was able to accomplish at the national and international level.

Pope was a member of the Agriculture and Forestry Committee, where he became recognized as "the farm leader for the administration." Pope co-authored and sponsored the Agricultural Adjustment Act of 1938, was originator and sponsor of the Federal Crop Insurance Act, and helped lead the securing of the Sugar Act of 1937, which raised the income of sugar beet growers to parity.¹⁶

As a member of the Joint Congressional Committee on Forestry, he was responsible for a large share of Civilian Conservation Corps projects and efforts to combat blister rust, a form of fungus that had been devastating Idaho's pine forests. Pope was chairman of the Joint Committee Investigating the Adequacy and Use of Phosphate Resources, and promoted the development of Idaho's vast phosphate deposits.¹⁷ Further, Pope advocated for the establishment of national parks at the Shoshone Ice Caves and in the Sawtooths.¹⁸

In 1935, Pope introduced a bill for the creation of the Columbia Valley Authority, which would have created a federally-owned corporation to manage navigation, flood control, and power development of the Columbia River Basin.¹⁹ The proposal was modeled off of the recently created Tennessee Valley Authority in the South. However, Pope's early proposal for a Basin-wide authority

in the Northwest never gained a foothold, and was somewhat surprisingly met with hostility by many Idaho interests, such as the wool growers, reclamation, and the state's banking and mining associations. Their chief concern was concentrating so much power over the region's resources in a federally-owned corporation.²⁰

During his Senate tenure, Pope became a stalwart to the cause of international affairs, which had traditionally been Borah's domain.²¹ Pope's platform on these issues, however, was in stark contrast to that of his Senate colleague.²² Pope was a spirited internationalist; Borah, a devout isolationist. Pope was an ardent supporter of the League of Nations and the World Court.²³ Borah vehemently opposed both.

In May, 1935, Pope introduced a resolution in the Senate which called for the United States' participation in the League of Nations, arguing that only positive action, rather than isolationism, could keep the United States out of another world war.²⁴ Pope's views were driven by his conviction that disputes, both at home and abroad, should be settled judicially, and that the United States had a moral commitment to helping maintain world peace.²⁵

Pope claimed to have predicted in 1920 that "the United States would be involved in another world war, if one came, if we were not able to exert our influence against it through some medium, such as [the League of Nations]."²⁶ Pope travelled to Europe in 1934 and 1935 which reaffirmed his positions on the United States' role in world affairs. Pope also had been a stable critic of neutrality legislation which prohibited the United States from trading with the many nations already in conflict.²⁷

In 1934, Pope became a member of the infamous Nye Committee which between 1934 and 1936 conducted 93 hearings and questioned

[Pope's] support of Roosevelt's platform and positions on international affairs always dogged him at home. Because of this, from as early as midway through his term, Pope was resigned to the likelihood of being a one-term senator.³⁰

more than 200 witnesses on the topic of war profiteering leading up to and during World War I by munitions contractors, and banking and financial interests.²⁸ The Nye Committee reflected sentiment that the United States "had blundered into the [first] world war and that Wall Street—J.P. Morgan was hauled before the committee—had a[i]ded and abetted American intervention by selling arms to all the belligerents."²⁹ The Nye Committee played a big role in public and political support for neutrality leading to World War II. Among committee members, Pope was the sole advocate for collective security rather than isolationism.

Throughout Pope's 1933 through 1939 Senate term, he was an ardent supporter of President Roosevelt and a champion of the New Deal. However, his support of Roosevelt's platform and positions on international affairs always dogged him at home. Because of this, from as early as midway through his term, Pope was resigned to the likelihood of being a one-term senator.³⁰ From the beginning of the 1938 election campaign, Pope faced stiff competition from Republicans and from within his own party.

His primary opponent, U.S. Representative D. Worth Clark, was a conservative Democrat then completing his second term. Clark was an isolationist and campaigned on

an anti-New Deal platform. Clark attacked Pope's loyalty to the Roosevelt administration as being at the expense of the people of Idaho. Pope was upset in the Democratic primary due in part to the fact that Idaho had come to overwhelmingly reject Roosevelt's New Deal. Clark had the support of determined Republican voters who, at the time, could participate in the Democratic primary. Pope's defeat was considered "political theft" by a number of his staunchest supporters, some of whom conspired to have Pope named as an independent on the general ballot. This never materialized, and Clark went on to win Pope's Senate seat.³¹

Post-Senate career

Like his beginnings, Pope's later years were very far from Idaho. Pope never returned to his adopted state following his Senate defeat in 1939, as his loyalty to Roosevelt and the New Deal had secured him an appointment as a director of the Tennessee Valley Authority. Pope relocated to the TVA's headquarters in Knoxville, Tennessee, where he remained until his resignation from the board in 1951. This was a job for which he had been well-prepared by his service in the Senate. Pope was a student of the TVA while in national elected office, both during the time of his championing the creation of

a Columbia Valley Authority, and while seeking to replicate in Idaho some of the TVA's efforts in phosphate mining.³²

Pope's tenure with the TVA came during a crucial point in the corporation's history, as it sought to drastically increase hydroelectric production in order to supply aluminum to build airplanes that would be a key to the Allies' victories in World War II. The TVA also provided much of the vast quantities of electricity needed to enrich uranium at Oak Ridge, Tenn., for the Manhattan Project.³³

Upon retiring from the TVA board, Pope reentered private practice as an attorney with a Knoxville law firm. In 1963, declining health caused him to move into Hermitage Methodist nursing home in Alexandria, Virginia, where he died on January 23, 1966, at the age of 81. During his life, he was the father of two sons by Ruth Horn, his law school sweetheart and wife of 54 years.³⁴

Conclusion

Despite his varied accomplishments, Pope today remains a relatively obscure figure in Idaho's political history. This largely is attributed to his having served at the time of the larger-than-life Senator Borah. Renowned Boise State History Professor Robert C. Sims in his article, "James P. Pope, Senator from Idaho," remarked that "[h]is public service was of the highest character and he deserves more prominence in political histories of his era." It is unfortunate that he was so overshadowed by the "Lion of Idaho."³⁵ However, as his varied life and endeavors show, Pope truly is "a senator worth remembering."³⁶

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Reflections on Hamer H. Budge, Former SEC Chairman

Larry Grimes

When I walked into his office that summer day some 50 years ago, there was no doubt that this man—an Idaho lawyer, a former U.S. Congressman, and now a Commissioner of the Securities & Exchange Commission—still appreciated his Idaho roots. Behind his desk were two or three large pictures of the impressive Sawtooth Mountains. While most Washington politicians have signed pictures of the presidents and other notables on their walls, this was more impressive. The images beckoned to me, as did this short balding man, named Hamer H. “Judge” Budge, with hand extended, greeting me warmly with, “Welcome to Washington, you’re going to have a lot of fun.”

Budge had arranged to have me do a legal clerkship at the SEC in what is now the SEC’s Division of Enforcement. This is where stock fraud cases are investigated and litigated. He told me this was where the action was going to be and that I would like it. Little did I know how profound these statements would prove to be from that day to this, all because of him.

How I came to work with the Judge

In the spring of 1966, my second year at University of Idaho College of Law, Acting Dean George Bell left me a note to see him in his office. I wasn’t aware of any problems, and I had done well in his classes, so I wasn’t too concerned. Had I known how important to my career this meeting would prove to be, I might have been apprehensive, but I wasn’t. That was probably a good thing.



Photo courtesy of the Securities and Exchange Commission
Seated is Hamer H. Budge, a well-liked and respected administrator and then Chairman of the Securities and Exchange Commission.

He told me that the previous summer, at the request of Commissioner Hamer Budge, Bill Longteig had been chosen for a summer clerkship in Washington, D.C. The clerkship had gone well, and I was now being offered a similar position. I took about a nanosecond to say yes, even though I knew nothing about the job and was more than a little concerned to put 3,000 miles between a certain Boise coed and me for a summer. The concern was well founded but it all turned out OK, even though I lost the girl! Or perhaps she lost me? Whatever.

I finally asked George what this was all about, even though I had instantly and unconditionally accepted the offer. Surprisingly, it was to be a paid position. To the son of a Montpelier barber and a forest ranger’s clerk, that was welcome news.

My head spinning, I spoke to my folks. They loved the idea. So did my girlfriend. In retrospect, she should

Snapshot

Hamer Budge was a five-term congressman from East Idaho and later was appointed by President Lyndon B. Johnson to serve as the 16th Chairman of the United States Securities and Exchange Commission, from 1969 to 1971. Hamer was the eighth child of an Idaho Supreme Court Justice, Alfred Budge, and was known to be civil, fair and likeable.

have sounded more concerned. But that is another story. When I finally reached Longteig, he said that the gig was great. So the deal was set.

A couple of months later, I was in Washington, D.C. and had two days to report. I contacted Tim Greene, a fraternity brother, the only person I

knew in D.C. I didn't have a car or a place to live, but I had Tim. Tim's parents had deep Idaho roots. Tim's father George, who had been Athletic Director at UI and his wife, Norma, had gone east to work for Senator Herman Welker and had stayed there to make their careers.

Raised in Maryland, Tim came back to Idaho for undergraduate work and then went to law school in D.C. and worked at the SEC. I stayed with him for a couple of days until I got sorted out. He introduced me to the local cultural scene: places like the Crazy Horse in Georgetown and Mr. Henry's on the Hill come to mind. Though I considered myself an Idaho Democrat, on Friday nights he led me to the young Republicans Club. The GOP girls were very friendly, and pretty, so I followed Tim. And, Tim had just been asked to serve as a legal assistant to Commissioner Budge.

Budge's Idaho roots and early life

My 1966 clerkship was not the first time I met Judge Budge, as he liked to be called. During his 10 years in Congress (1950 to 1960), Budge would make the obligatory campaign trip every two years to campaign in Bear Lake and the other non-Bannock counties in that corner of the state. All candidates for office would inevitably end up in my father's barbershop, a sort of neutral gathering spot. In the summers of 1952, 1954, and 1956, Budge came to Montpelier campaigning and it was as a shoeshine boy in my father's shop that I met him. I am certain that he did not remember me from then. He had deep ties to Bear Lake and knew many of my mother's relatives. My mother called him our shirt-tail relative, whatever that means. His paternal grandfather, William Budge, was a noted religious and sec-

ular leader of the Valley's pioneering Mormons. A longtime LDS Stake President in Paris, William Budge had 35 children (from 3 wives) one of whom was Alfred Budge, Hamer's father. Alfred was educated in Utah, but had gone "east" for a legal education at the University of Michigan. After Michigan, Alfred settled back home in Paris where he practiced law and married a local girl, Ella Hoge, in 1892.

In 1896, Alfred, then the Bear Lake County prosecuting attorney, prosecuted one Bub Meeks, who along with Butch Cassidy and

All candidates for office would inevitably end up in my father's barbershop, a sort of neutral gathering spot.

another man robbed the bank in Montpelier. Meeks got caught later that year and his trial was held in the Bear Lake County courthouse in Paris. Meeks was apparently the only one of the trio that got caught for that event. Butch and the other man made their way out of Montpelier to Star Valley, Wyoming, where they are said to have wintered as guests of a couple of the local girls. This may seem like ancient history, but according to credible reports, a young man named Fred Cruickshank, working for the sheriff, chased the gang out of town on his bike in order to de-

termine which way they had ridden. I remember Mr. Cruickshank, an elderly retired postmaster. His daughter, Louise Cruickshank Adams, was my high school English teacher. When Judge Ron Bush asked me to do this article he mentioned thinking about the famous case in the courthouse where he presided from time to time.

Alfred Budge was a widely known and respected lawyer, prosecuting attorney, rancher, and businessman with interests in Bear Lake County and northern Utah. In 1902, he was elected Judge of Idaho's Fifth Judicial District. Upon reelection to a second term, he moved to Pocatello. Hamer was born on November 21, 1910, in Pocatello. When his father was appointed to the Idaho Supreme Court in 1914, the family moved to Boise. With his Mormon pioneer roots and fundamental values from both sides of his family tree, Hamer was a fair bet to succeed at whatever he wanted to do. That would have, of course, included politics, the bench and bar, and business. He had that sort of DNA.

He was raised in Boise after the age of four and attended schools there. For college, he attended the College of Idaho for a couple of years, and then transferred to Stanford where he graduated in 1933 with a degree in business. Next came the University of Idaho College of Law, where he received his law degree in 1936.

Budge's early professional life

Budge began his law career in 1936, and by 1939 had been elected to the state legislature where he served until 1941 (and again in 1949). Like most Americans, Hamer's life and career were affected by the events on Sunday morning, December 7, 1941, when the Japanese attacked Pearl

Harbor. From 1942 through 1945, he served in the U.S. Navy, attaining a rank of Lt. Commander.

After the War, he went back to practice law in Boise. When an open Congressional seat came along in 1950, he ran against another famous Idaho lawyer, Democrat James Hawley, and won. He served five terms in Congress until being defeated by Ralph Harding, a Pocatello Democrat, in the Kennedy Presidential election of 1960. He had the distinction of being the first Mormon sent from Idaho to either house of Congress.

It is important to note that Hamer Budge was called “Judge” Budge due to his own service on the bench, not because his father was the most famous judge in the state. But it was not just the name that so aptly characterized him—it was his intelligence, temperament, and ability to get along with both sides of most issues, whether political or in a judicial forum. I believe he inherited that trait from his father who, though Republican, was regularly supported for his public posts by the Mormons who mostly voted Democratic at that time.

Judge Budge’s tenure at the SEC and beyond

In 1964, President Lyndon Johnson appointed Judge Budge to the five-member Securities & Exchange Commission. He was obviously a Republican, but under the rules pertaining to independent agencies, the President was required to fill two seats from the opposition party. Budge got one of them. On the Hill this was a popular appointment and Budge was easily confirmed. His appointment was due in large part to the way he conducted himself as a Congressman. After World War II,

Judge Budge was Chairman of the SEC during a time of great turmoil in the stock markets, and particularly in the back office operations of the brokerage community.

many of the servicemen who were attracted to public service came home, completed college, and got elected to Congress. By the 1950s, a number of these individuals attained leadership positions in Congress, including Republicans Richard Nixon, Gerald Ford, and Hamer Budge. Those on the other side of the aisle included Carl Albert and, of course, Lyndon Johnson. These men were patriots, and, even though they were from different political persuasions, they knew how to reach a consensus for the common good. Judge Budge fit in well with this group. They were sometimes called “The Chowder and Marching Society.” Thus, Budge’s appointment was popular and solidly supported by Hill insiders. Four years later, Richard Nixon was elected President, and in accordance with the applicable rules, promoted Judge Budge to become Chairman of the Commission as a majority member.

My friend Tim Greene was at the SEC during most of the time Judge Budge served on the Commission. At about the time I started my clerkship, Tim was serving as a legal assistant to Budge. Two years later, Budge asked him to move up and become the chairman’s executive assistant. Tim stayed in this role until just after the judge decided to retire in 1971. Tim was thus in a position to

accurately assess what kind of a commissioner and later chairman Judge Budge was.

I interviewed Tim in preparation for this article and he was very helpful and generous with his time. Tim mentioned the following traits: the judge was viewed by staff, other commissioners, and outsiders alike as being “good to work with,” “good to work for,” “cautious,” “careful,” “sincere,” “honest,” “modest,” and “judicious.” He was also viewed as having “good humor” and “good sound judgment.”

Judge Budge was Chairman of the SEC during a time of great turmoil in the stock markets, and particularly in the back office operations of the brokerage community. This was a challenging situation that threatened to bring down Wall Street as we know it. Very powerful forces were at work in that period, demanding major changes in Wall Street and enhanced protection of investors. This was before computers and Wall Street and the SEC had a lot of catching up to do. These challenges were too complex to deal with adequately here. Suffice it to say, a steady hand at the wheel was imperative to get the country through this crisis. The country and the world got that from Judge Budge.

The judge did not like to be pressured to make decisions by anybody. Tim noted that whenever the judge got wind that such pressure from within or without the Commission might be coming his way, he would simply ignore it or be unavailable and often would deflect it to Tim's office for a polite dismissal. Most of the time this unsolicited advice was just bothersome to the judge who made decisions based on the arguments before the commission and the appropriate paperwork supporting those arguments.

On one occasion, a man appeared from the office of one of the highest-ranking people in the government. This was not the judge's first rodeo so he told his secretary to send the man to Tim's office for a polite brushoff. The individual would not be denied, however, and told Tim that his boss, the high official, was "interested" in a certain case then being investigated by the Commission. This was not Tim's first rodeo either. He immediately called the SEC's Director of Enforcement, who came up to Tim's office and dragged the unsuspecting supplicant downstairs to read him the riot act. That took care of the problem, but it could have been a disaster for either the judge, Tim, or the Commission. Pressure like that is highly dangerous and could have subjected all concerned parties to criminal prosecution. This deft handling of an improper act before it ever got started showed great judgment by both the chairman and his executive assistant.

A colleague at a law firm I joined in the 1980s once asked me about my record as an SEC prosecutor. I told her that in eight years, I lost only one case. In that case, the Federal District Court in Philadelphia ruled in favor of the Commission. Three months later the judge in that

court reversed his decision, with no explanation given. I hastened to add that my record was not because I was Clarence Darrow, but because under Judge Budge and his Director of Enforcement I was never pressured to bring a case unless I had substantial evidence that a case existed and a prosecution was warranted. That does not always happen in Washington.

The government with its vast resources sometimes brings cases just to make a point, create new law, or give credence to pressure from outside political interests, or just to bring down bad actors. Neither I nor the people that worked for me ever prosecuted a case unless we had a winner in accordance with the Chairman's and his top lieutenant's standards. Tim said that the judge would consistently quiz staff lawyers seeking authority to bring a case to lay out their legal theories and to require them to describe the evidence. Tim also said the judge was aware how grossly unfair it is for the government to investigate a case endlessly. The authority to issue a subpoena is very powerful. I was always aware that if I sent a subpoena calling for a lot of documents to someone it would cost them at least \$50,000 to hire an attorney just to respond. That was before 1975. What would that be today?

The judge was adept at politics but did not expose himself to the media unnecessarily. If it was required, as when he would testify to Congress about Commission business, he was businesslike, getting quickly to the point and presenting sound arguments. His time on the bench and being his father's son clearly influenced how he conducted his life. When the time came for Judge Budge to leave the Commission, there was controversy over his accepting a position with IDS, a large mutual fund manager in Minneapolis. For the only time I remember during my years at the SEC, he was criticized by some for his decision. As Tim put it, "this experience was painful, but the judge got through it."

The judge spent 1971 through 1978 in Minneapolis and after retirement moved to Scottsdale, Ariz. He died at age 93 in Arizona. His last trip to Idaho was to the Cloverdale Cemetery in Boise, his final resting place. My own personal association with the judge was only for seven years at the SEC. After he left Washington, I never saw him again. I did not really know him well and we did not exchange Christmas cards. But he was undoubtedly one of the best friends I ever had and opened the door for me to an enormously exciting and interesting career that spanned the globe. As Judge Budge predicted in 1966, I have had a lot of fun!

Larry Grimes is President and CEO of Iris Unmanned LLC. He has served as City Magistrate in Moscow, Idaho, SEC prosecutor, Senior Chief Counsel at Westinghouse Electric Corporation, and Senior Partner-in-Charge at the Washington, D.C., office of the international firm of McGuire, Woods.



Jerry Brady: An Idahoan with a Story to Match the Times

Ernest A. Hoidal

I was privileged to interview Jerry Brady in March of 2016 on behalf of the Idaho Legal History Society. I approached my assignment with a keen focus on Idahoans who help those who are less fortunate. I encourage all members of the Idaho State Bar to interview an attorney or judge to capture their personal and professional stories.

Family history

Jerry M. Brady was born and raised in Idaho Falls, where his family has deep roots. Jerry's great grandfather was James H. Brady, who had been the governor of Idaho and the first directly-elected U.S. Senator from Idaho. James H. Brady purchased canal company bonds in eastern Idaho and located his business interests in Pocatello. J. Robb Brady, grandfather of Jerry Brady, purchased the newspaper in Idaho Falls in 1925, which propelled the Brady family into the media business. After World War II, Jerry's father, James M. "Jim" Brady, started a radio station and television station in Idaho Falls.

After Jerry's graduation from Idaho Falls High School, he needed to select a college to attend. Jerry's father, James M. Brady, had attended Notre Dame and played quarterback for the Irish's legendary coach, Knute Rockne. When Jerry's father was on the Notre Dame squad, he weighed 125 pounds and was on the 27th unit. Eventually, though, Jerry's father played in the famous "Win one for the Gipper" game on November 10, 1928, in Yankee Stadium, wherein Rockne's halftime speech about George Gipp, a former player, electrified the team, which beat Army 12-6.

Years at Notre Dame

Jerry studied journalism at Notre Dame. One of his professors, Richard Sullivan, encouraged him to write stories in his own voice after Jerry related to Sullivan his experiences growing up in Idaho, skiing the deep powder and picking potatoes. Notre Dame provided an opportunity for spiritual growth as well as student body governance. As a member of the debate team, Jerry travelled to debate tournaments in Chicago, Indianapolis, Charleston, and New York City.

On to Africa and the Summer of 1958

Upon graduation from Notre Dame in 1958, Jerry had a decision to make: either pursue the priesthood as planned or accept an impromptu offer to travel with College President Rev. Theodore M. Hesburgh for two months in Africa.¹ Jerry's roommate at the time told him it would be crazy to pass up the opportunity to travel to Africa. Jerry contacted Rev. Hesburgh to ask if the offer was still available. It was.

The trip to Africa included visiting missionaries, university administrators, and students in the emerging environment of the post-colonial period. Staying in guest quarters with students, Brady visited Senegal, Ghana, Nigeria, the Belgian Congo (now the Democratic Republic of the Congo), South Africa, Basutoland (Lesotho), Southern Rhodesia (Zimbabwe), Kenya, Tanganyika (Tanzania), Uganda, Rwanda, Sudan, and Egypt. Brady said the trip started in the Sub-Sahara, and went down the west coast and up the east coast of Africa, usually by Pan-American Airlines.

Brady's African adventure was, in his words, "eye opening." It opened Jerry's eyes to the potential of further service. He related a time in

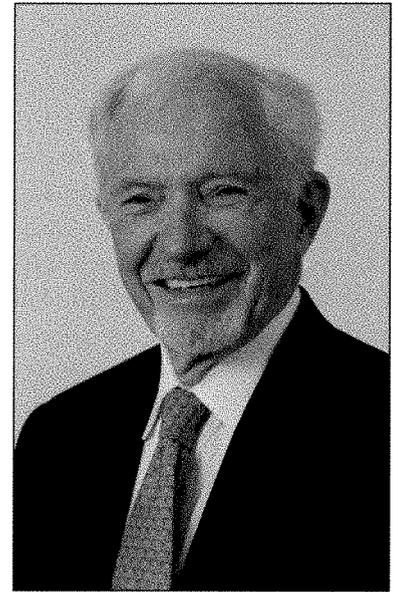


Photo courtesy of Jerry Brady
Publisher and civics leader Jerry M. Brady.

Snapshot

Jerry Brady served on the staff of U.S. Senator Frank Church and in policy and communications for the Peace Corps in Washington, D.C. At home in Idaho he embraced community affairs since 1984, including as publisher of the Idaho Falls Post Register, where he set a high standard for civic life in Eastern Idaho. Jerry's influence included a consistent call for collaboration and participatory democracy to face Idaho's problems. Jerry ran unsuccessfully for governor as a Democrat in Republican-leaning Idaho in 2002 and 2006.

Nigeria when he was being driven through the slums of Lagos where he saw people who had no feet struggling to move forward. In that

instant, he realized how different the United States was from Africa. The thought entered his mind that Americans should come and help others in these places.

Law school at Boalt Hall

Brady next entered law school at Boalt Hall at the University of California-Berkeley and studied under Professors Prosser, Steven Ehrenzweig, Geoffrey Hazard, and Jerome Cohen. In the summers between classes at Boalt, Jerry returned to Idaho to work in the family businesses. In his second year of law school, Jerry read a *Wall Street Journal* article about John F. Kennedy's proposal to form a peace corps. Kennedy announced the idea during the 1960 presidential campaign in a speech at the University of Michigan. There, Kennedy told to a crowd of nearly 10,000 students he wanted to launch a cadre of volunteers to serve their country through peaceful efforts by living and working in developing countries.² Because the *Wall Street Journal* was not enthusiastic about the idea, and called it a "kiddie corps," Brady was inspired to write a letter to the editor defending the proposal based on his African travel experiences during the summer of 1958.

Latin American experiences

Joe Blatchford, a native southern Californian and third-year law student at Boalt, read Jerry's article in the *Wall Street Journal* and contacted him to ask if he wished to help in peace corps type projects in Latin America. Jerry, along with Blatchford and a first year-law student, Garry Glenn, formed Accion International for the purpose of serving impoverished areas in Latin America.

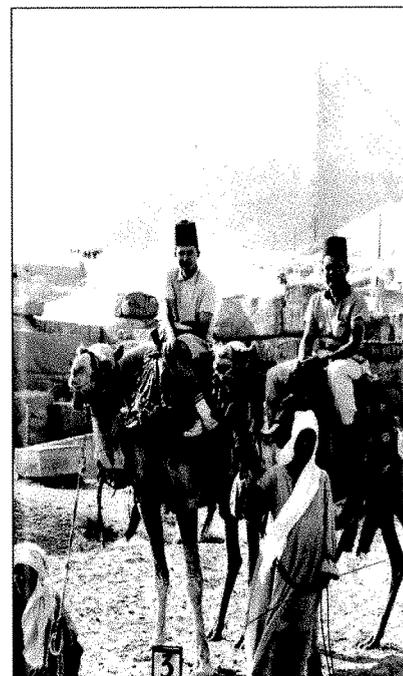
After graduating from Boalt, Jerry moved to New York City to assume the director position at Accion, in offices provided in the Rockefeller Center. He worked for the non-

profit's board and sought funding for their projects in Latin America from foundations like Sears and Rockefeller, and from oil companies. Accion volunteers from America went to Venezuela to help start schools and businesses, and to be involved in community development. Accion's plans were to form capacities for others to prosper. Accion expanded to Brazil, Peru, and Central America. Accion was the first agency to provide community development assistance in Brazil. Brazilians wanted help to start businesses, and micro-loans were instituted there by Accion in 1973.

Entering the political arena

Passing up opportunities to work for Boise Cascade, Simplot, and a Salt Lake City law firm, in October 1963, Brady joined U.S. Senator Frank Church's staff as a legislative assistant in Washington, D.C. Jerry worked in Washington for Senator Church and returned to Idaho to head up his re-election campaign in 1968. Jerry related that his time with Senator Church's staff was extremely stimulating by what he characterized as the most productive Senate of all time. He worked with other senators' staffs—such as those of Everett Dirksen, Paul Douglas, Barry Goldwater, Margaret Chase Smith, Tom Kuchel, Scoop Jackson, Warren Magnusson, Mike Mansfield, Birch Bayh, and Lee Metcalf—on the most pressing issues of that time.

During his time as a staffer with Church, he felt that senators on both sides of the aisle put their parties' interests aside and did their parts for the greater good. The Vietnam War, the Civil Rights Act of 1964, and the Great Society were topics taken up by Congress. After assisting Frank Church with his run for the presidency in 1976, Brady assumed a position as an Energy Specialist for the Congressional Joint Economic Committee to work on energy policy matters. This background allowed



This photo shows Jerry Brady as a Law School graduate, right, and College President Rev. Theodore M. Hesburgh, left, during their travels in Africa. Their trip was featured in the Notre Dame Magazine.

Jerry related that his time with Senator Church's staff was extremely stimulating by what he characterized as the most productive Senate of all time.

him to start a law firm with Joe Blatchford in international energy law.

Peace Corps years

Joe Blatchford moved into the successor position of Director of the Peace Corps (following JFK's brother-in-law, R. Sargent Shriver), and Jerry assumed the position of

Assistant Director for Policy and Planning. Jerry was responsible for communication efforts for the Peace Corps for five years. Brady related a story about when the Peace Corps building was occupied during a Vietnam War protest and the White House wanted to storm the building to toss the protesters out. This was averted with the help of Secretary of Treasury, George Schultz, and the Secretary of the Interior, Wally Hickel.

Conclusion

Jerry's career may have been much different had his father not gone to Notre Dame and persevered on the football field, had he turned down Reverend Hesburgh's invitation in the summer of 1958 to travel to Africa, had he not joined his Boalt classmates to form Accion, had he not taken a position as a staffer with Senator Frank Church, or had he not served in the Peace Corps for

five years. Jerry Brady has made a difference nationally and internationally which we all can commend and must emulate.

Endnotes

1. Rev. Hesburgh was Notre Dame's President from 1952-1987
2. Since President Kennedy signed the executive order on March 1, 1961, over 220,000 Americans have volunteered in 140 countries to pursue his call to assist.

Adding to public service legacy

At the urging of former Governor Cecil Andrus, Jerry M. Brady twice ran respectable races for the Idaho governorship as a Democrat against Dirk Kempthorne and C.L. "Butch" Otter. Brady has continued to assist Accion in micro-lending ventures in India. He has also assisted a non-profit venture, Semilla Nueva, which provides help for small farms in Guatemala.

Ernest A. Hoidal has practiced law in Idaho for over 40 years and served as an Assistant City Attorney in Boise, Deputy Prosecuting Attorney for Ada County and as General Counsel for the Association of Idaho Cities. Ernie is currently serving on the Idaho State Historical Society's Board of Trustees representing Ada, Boise, Elmore and Valley counties and is the President of the Idaho Legal History Society.



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Let Us Now Praise Famous Men: Why are Nearly All of Idaho's Most Lauded Lawyers White Men?

Richard Eppink

Though people have lived and worked in the land we call Idaho for over 12,000 years,¹ white people have been here for barely the last 200 of them.² Just as white settlement began here in the early 1800s, other non-Natives came as well. By 1870, for example, over 20 percent of Idaho's population was Chinese.³ Japanese immigration and settlement surged in the early 1900s.⁴ Between 1990 and 2000, Idaho's Latina/o population nearly doubled,⁵ and between 2000 and 2015 it nearly doubled again;⁶ today Latina/o Idahoans make up over 12 percent of the state's population.⁷ Since 1975, well over 10,000 refugees have escaped persecution through resettlement in Idaho,⁸ which now receives more refugees per capita annually than almost any other state.⁹

Despite this history, white people—and white men especially—have dominated Idaho's legal profession. The Idaho State Bar's membership is 72 percent male and virtually all white,¹⁰ a dramatic contrast to Idaho's overall makeup, which is half female and more than 15 percent non-white.¹¹ Idaho's bench includes just three non-white judges, features an all-white and all-male Supreme Court, is the only state in the Ninth Circuit never to have had a female Article III judge,¹² and has earned notoriety as ranking very last in percentage of women judges.¹³

The Idaho lawyers who have achieved national stature, whom the Idaho Legal History Society highlights in this *Advocate* issue, follow the same pattern: they are nearly all white men. This article, however, is



Rustler and horse thief Frank Vaughan (left forefront), was one of the suspected killers in the 1887 Chinese Massacre, in which a group of white frontiersmen killed 34 Chinese gold miners on May 25, 1887 along the Snake River. Vaughan later turned state's evidence and explained how they shot, stripped and dismembered the Chinese miners. No one was ever punished under the law.

meant as an ombuds piece to balance that focus by examining some of the many barriers that have limited opportunity for women and Idahoans of color in the legal profession.

Legal barriers

The law itself has often operated to hamper women and people of color from advancement in the legal profession. From territorial days, Idaho has formalized their exclusion through official enactments. When thousands flooded Idaho City in the 1860s hoping to strike it rich, Boise County passed a law to prohibit Chinese and Black people from prospecting there.¹⁴ By 1866, the Territorial Legislature had passed a law requiring all Chinese immigrants to pay a monthly tax.¹⁵ Upon statehood, one of the first statutes passed by the

Upon statehood, one of the first statutes passed by the Idaho Legislature barred Chinese or Mongolian residents from holding mining lands at all.¹⁶

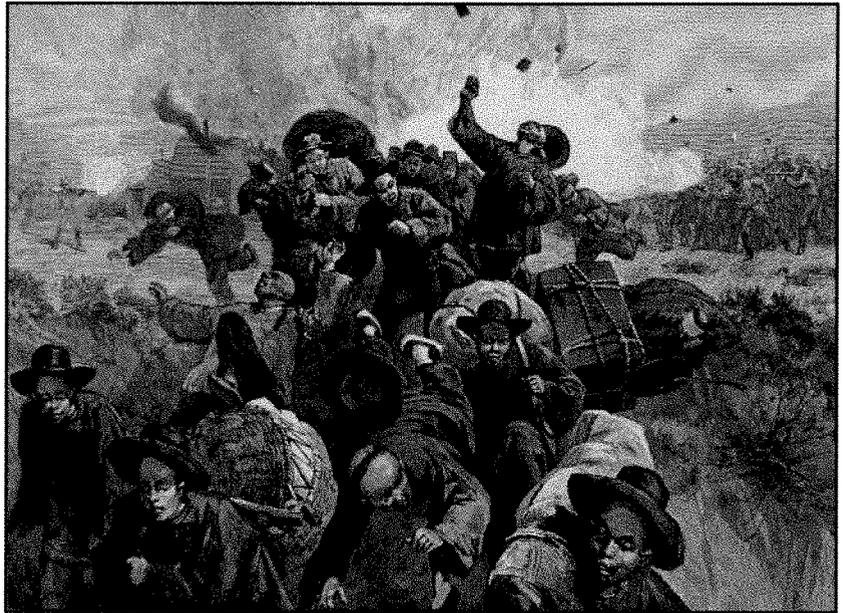
Idaho Legislature barred Chinese or Mongolian residents from holding mining lands at all.¹⁶ Idaho statute also officially restricted admission of attorneys to “white male[s]” until 1899.¹⁷

When Japanese immigrants began settling in Idaho in the early 1900s, the Idaho Legislature passed the Alien Lands Act to prohibit

Japanese Americans from owning land.¹⁸ The law did not see repeal until 1955.¹⁹ Idaho's anti-miscegenation statute segregated Idahoans who were Black, Native American, and Asian by prohibiting them from marrying whites.²⁰ This was not repealed until 1959.²¹ Official legal preference for men over women persisted in Idaho Code even longer, with one instance—in Idaho's probate code—famously struck down by the United States Supreme Court in 1971.²²

Nevertheless, key Idaho legislators considering a 1969 bill to create a civil rights commission remained convinced that Idaho had no serious problems with discrimination.²³ The resulting statute, passed by an all-white Legislature that included only five female members, created an Idaho Human Rights Commission far weaker than similar commissions in other states.²⁴ Although a study of the Commission confirmed that it lacked adequate funding or enforcement powers, efforts to strengthen the Commission's power have largely failed.²⁵

Also as the 20th century progressed, mining gave way to farm work as a primary source of income for Idaho families of color. Our state, though, was one of the last to extend worker's compensation coverage to agricultural laborers, and only after eight unsuccessful attempts between 1917 and 1996.²⁶ It took another half decade of vigorous activism, including protests that shut down the Idaho Senate floor, before Idaho required labor contractors to be bonded and extended a minimum wage to protect farmworkers.²⁷ Nevertheless, even today, standing precedent from the Idaho Industrial Commission denies undocumented farmworkers access to assistance for permanent



An artist's rendering of another atrocity, the Rock Springs Massacre, which took place in 1885 in Sweetwater County, Wyoming. The Union Pacific policy paid Chinese coal miners lower wages than white workers. Consequently, more Chinese were hired. The white miners rioted and killed at least 28 Chinese and injured 15 more.

disability caused by injury on the job, based on the fiction that there is no market for undocumented workers in Idaho.²⁸

Practical barriers

Alongside those legal barriers to opportunity have stood a full spectrum of practical impediments as well. Some are so atrocious that they have largely been left out of white-told histories of our state, such as: the Bear River Massacre, largest slaughter of American Indians in United States history;²⁹ the capture and imprisonment of more than 300 Shoshone in the Boise Valley—land that, to this day, has never been ceded in any ratified treaty;³⁰ and forcible banishments of entire communities of people of color by mobs, such as of Japanese from Nampa, Caldwell, and Mountain Home in the 1890s, and of Black communities in the early 20th century.³¹ In 1890, only half of Idaho's counties had few or no Black residents, but by 1930, fully three quarters (33 of 44) had

Some are so atrocious that they have largely been left out of white-told histories of our state, such as: the Bear River Massacre, largest slaughter of American Indians in United States history.²⁹

few or none, even though the average population across the counties had doubled.³² Legal segregation has also paired with practical segregation in housing and in the job market.³³ Women, especially single mothers, have struggled in Idaho's largely rural geography over the past 50 years, due to few feasible employment and educational opportunities and lack of public transportation.³⁴

Living conditions for migrant farmworkers have been so bad in Idaho that a 1980 report by Idaho's advisory committee to the U.S. Commission on Civil Rights described them as "deplorable," and in the mid-20th-century the Mexican government refused to send workers to Idaho due to discrimination, abuse, and miserable working conditions.³⁵

Race and gender preferences, however, have usually manifested in more genteel ways for those privileged enough to have passed the bar. In three recent *Advocate* articles, for instance, women lawyers have called attention to unconscious (or implicit) bias in the legal profession.³⁶ Not only does study after study confirm that these unconscious biases lead to "thoughtless outcomes" favoring white people and men in both professional and other contexts,³⁷ many women and people of color within Idaho's bar confirm it anecdotally, relating stories of subtle but dismissive treatment in job interviews, meetings, and other interactions.³⁸ National compensation studies offer additional corroboration, revealing that median pay for female lawyers is still just 77 percent of male lawyers, 72 percent for female judges versus their male counterparts, and barely half that of males for females across all law-related jobs.³⁹ The legal profession today has the largest gender pay gap of any field.⁴⁰

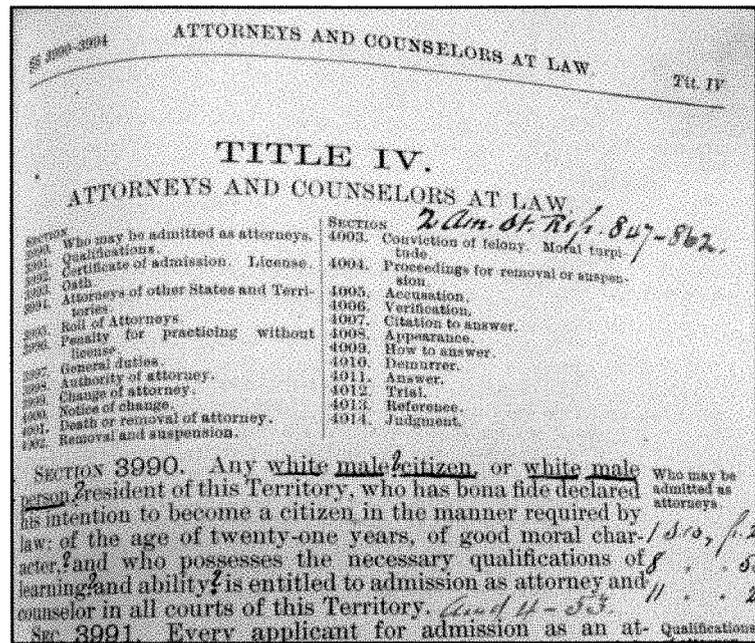
White Idahoans also enjoy what W.E.B. Du Bois called the "psychological wage" of public acceptance,⁴¹ contrasted against the mixed and sometimes hostile messages reserved for women and people of color in this state. The longstanding presence of the Aryan Nations in northern Idaho from 1977 to 2001 is so infamous that just this mention is probably a sufficient reminder of its impact on the state's image. Idaho was also one of the last states in the country to recognize Martin Luther King,

Jr., Day: not until 1990, and only then after several failed attempts.⁴² Messages like these continue today, both in unofficial forms—the spray painting of "Hunt Camp," another name for the Japanese concentration camp at Minidoka, on the Islamic Center in Twin Falls⁴³—and in official forms as well—the Elk City Mayor encouraging residents to report "undesirables" upon spotting four "Arab people" in town.⁴⁴

Conclusion

"Let Us Now Praise Famous Men," the beguiling title of James Agee's profile of poor rural sharecropper families during the Great Depression, highlights the greatness in the unsung achievements of the marginalized, which are usually omitted from written history entirely. This issue of *The Advocate*, with its focus exclusively on lawyers who enjoyed national stature, risks repeating patterns of marginalization evident not just in Idaho's history but still also in contemporary realities that persist in

our bar. Left out here are lawyers like Cassandra Lee Furr Dunn, the first Native American woman admitted to the bar in Idaho and first woman to serve as Chief Legal Counsel for the U.S. Environmental Protection Agency's western region;⁴⁵ the many clerks, paralegals, legal assistants, associates, clients, and spouses whose support and behind-the-scenes toil allowed prominent white male law-



"Section 3990 of the Revised Statutes of Idaho (1887). The underlining and handwritten notes are from Henry Z. Johnson's copy of the Revised Statutes. Johnson, an Idaho lawyer, was later appointed by the Governor to review existing Idaho statutes for re-enactment by the fifth session of the Idaho Legislature in 1899."

yers to succeed; and the unknown numbers of women and people of color for whom the legal and practical barriers to joining our bar proved insurmountable. The effort of this article, as was Agee's book, is "to recognize the stature of a portion of unimagined existence."⁴⁶

Endnotes

1. EDWARD E. WALKER, JR., *INDIANS OF IDAHO* 23 (1978).

2. See Idaho State Historical Society, *The Lewis and Clark Trail Across Idaho (Reference Series no. 49)* 1 (n.d.), <https://history.idaho.gov/sites/default/files/uploads/reference-series/0049.pdf>. Idaho was the last of the 50 states to be seen by Euro-Americans. Idaho State Historical Society, *Idaho's Unique History: 20 Dates You May Not Know* 1 (n.d.), https://history.idaho.gov/sites/default/files/uploads/20_Dates.pdf.

3. U.S. Bureau of the Census, *Compendium of the Ninth Census*, at 20, tab. VII (1870), available at <http://www2.census.gov/library/publications/decennial/1870/compendium/1870e-02.pdf>.

4. Laurie Mercier, *Idaho's Ethnic History*, in *IDAHO'S PLACE: A NEW HISTORY OF THE GEM STATE* 179–180 (Adam M. Soward, ed., 2014).

5. Idaho Commission on Hispanic Affairs, *The Hispanic Profile Data Book for Idaho* 14 (2004), <https://icha.idaho.gov/docs/Hispanic%20Profile%202004.pdf>.

6. Compare *id.* with Idaho Dept. of Labor, *Demographic Data 2010–2015*, https://lmi.idaho.gov/publications/2016/Census/demographic_2010-2015.xlsx.

7. U.S. Bureau of the Census, *Idaho Quick-Facts*, <http://www.census.gov/quick-facts/table/PST045215/16>.

8. Idaho Office for Refugees, "About Refugees in Idaho," <http://www.idahorefugees.org/refugees-in-idaho.html>, last accessed September 5, 2016.

9. See Frankie Barnhill, "Idaho Ranks Among States 'Most Welcoming' for Refugees," Northwest Public Radio, Sep. 15, 2015, <http://nwpr.org/post/idahoranks-among-states-most-welcoming-refugees>.

10. Idaho State Bar, *2011 Idaho State Bar Membership Survey*, https://isb.idaho.gov/pdf/general/2011_membership_survey.pdf.

In 1867, Idaho added an additional provision making "all marriages of white persons with negroes, mulattoes, Indians or Chinese" illegal and void.

11. U.S. Bureau of the Census, *2010–2014 American Community Survey 5-Year Estimates*, table DP05 (ACS Demographic and Housing Estimates), http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/DP05/0400000US16.

12. Betsy Z. Russell, "Women shut out of Idaho judge selection," *Spokesman-Review*, Apr. 28, 2015, <http://www.spokesman.com/stories/2015/apr/28/women-shut-out-of-idaho-judge-selection/>.

13. Center for Women in Government & Civil Society, State University of New York at Albany, *Women in Federal and State-Level Judgeships* 17 (2012), http://www.albany.edu/womeningov/publications/summer2012_judgeships.pdf. As reported recently in the *Advocate*, women also make up just 30% of appointees on Idaho's boards and commissions, and less than 30% of Idaho's state legislature. Alexandra S. Grande, Caitlin King, and Brenda Bauges, "Women on State Boards and Commissions: Is Idaho Where it Wants to Be?," *Advocate*, March/April 2016, at 29 & nn. 2, 3.

14. Mercier, *Idaho's Ethnic History*, at 175.

15. Mark Wyman, *Mining Law in Idaho*, 25 *IDAHO YESTERDAYS* 15 (1981) (citing 1866–1867 Idaho Session Laws 123–124).

16. *Id.* at 16 (citing 1890–1891 Idaho Session Laws 118–119).

17. Revised Statutes of Idaho (R.S.) § 3990 (1887) ("Any white male citizen, or white male person, resident of this Territory . . . is entitled to admission as attorney and counselor in all courts of this Territory."). Despite the statute, the Idaho Supreme Court admitted a white woman, Helen Young, in 1895. See *Application of Kaufman*, 69 Idaho 297, 304, 206 P.2d 528, 532 (1949).

18. 1923 Idaho Session Laws 160, ch. 122

(codified at Idaho Compiled Statutes § 2327 (1923)); cf. Mercier, *Idaho's Ethnic History*, at 181. Nevertheless, Idaho was the only state in the West at that time that allowed Japanese immigrants to lease land. *Id.*

19. *Id.* at 185.

20. 1864 Idaho Territory General Laws § 1, at 604 (prohibiting, as a misdemeanor, "any white man or woman" to "intermarry with any person of African descent, Indian or Chinese"). In 1867, Idaho added an additional provision making "all marriages of white persons with negroes, mulattoes, Indians or Chinese" illegal and void. 1867 Idaho Territory General Laws ch. 11, § 3, at 72; see also 1921 Idaho Session Laws 291, ch. 115 (adding "mongolians").

21. 1959 Idaho Session Laws 89, ch. 44.

22. *Reed v. Reed*, 404 U.S. 71, 77 (1971).

23. Errol Jones, "Latinos Continue to Face Racism in Idaho," *Blue Review*, Feb. 12, 2014, <http://thebluereview.org/latinos-fight-racism-in-idaho/>.

24. *Id.*

25. See *id.*; cf. 1976 Idaho Session Laws 1143, ch. 342, § 3; 1980 Idaho Session Laws 214, ch. 97.

26. Errol D. Jones, *Latinos in Idaho*, in *IDAHO'S PLACE: A NEW HISTORY OF THE GEM STATE* 225 (Adam M. Soward, ed., 2014).

27. *Id.*; "Student protesters shut down senate," *Arbiter*, Feb. 20, 2001, <https://arbiteronline.com/2001/02/20/student-protesters-shut-down-senate/>.

28. *Diaz v. Franklin Building Supply*, I.C.2006–507999 (Idaho Ind.Com. Nov. 20, 2009); see also *Serrano v. Four Seasons Framing*, 157 Idaho 309, 319, 336 P.3d 242, 252 (2014) (J. Jones, J., specially concurring). Data suggests that undocu-

mented workers supply more than 40% of Idaho's farm labor. Pew Research Center, "Occupations with the Highest Shares of Unauthorized Immigrant Workers, by State, 2012," Mar. 26, 2016, http://www.pewhispanic.org/2015/03/26/share-of-unauthorized-immigrant-workers-in-production-construction-jobs-falls-since-2007/ph_2015-03-26_unauthorized-immigrants-testimony-report-12/.

29. See Sylvia Wright, "The Search Is On for the Site of the Worst Indian Massacre in U.S. History," *Smithsonian*, May 13, 2016, <http://www.smithsonianmag.com/history/search-site-worst-indian-massacre-us-history-180959091/>; see also FRANKLIN COUNTY HISTORICAL SOCIETY, THE PASSING OF THE REDMAN, BEING A SUCCINCT ACCOUNT OF THE LAST BATTLE THAT WRESTED IDAHO FROM THE BONDAGE OF THE INDIANS (1917).

30. "Fort Boise Refugee Encampment, Boise," in THE OTHER IDAHOANS: FORGOTTEN STORIES OF THE BOISE VALLEY 129 (Todd Shallat, ed., 2016); see also Idaho State Historical Society, *The Boise Claim* (Reference Series no. 106) (1972), <https://history.idaho.gov/sites/default/files/uploads/reference-series/0106.pdf>.

31. Julie Okamura, *Dollar a Day: Mobs rioted against Japanese workers on the Oregon Short Line*, in THE OTHER IDAHOANS: FORGOTTEN STORIES OF THE BOISE VALLEY 23–24 (Todd Shallat, ed., 2016); Jill Gill, "The Civil Rights Movement in Idaho: Education-based activism dominated protest tactics in Gem State," *Blue Review*, October 6, 2014, <https://thebluereview.org/civil-rights-movement-idaho/>.

32. JAMES W. LOEWEN, SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM 56, 69, 455–456 (2005); see also *id.* at 51, 202, 276.

33. See Pam Demo, *South of the Tracks: Housing segregation isolated the marginalized*, in THE OTHER IDAHOANS: FORGOTTEN STORIES OF THE BOISE VALLEY 94 (Todd Shallat, ed., 2016); Gill, "The Civil Rights Movement in Idaho."

34. See Laura Woodworth-Ney and Tara A. Rowe, *Women in Idaho History*, IDAHO'S PLACE: A NEW HISTORY OF THE GEM STATE 157–158 (Adam M. Soward, ed., 2014).

35. Anna Webb, *Hard Times at Chula Vista: Braceros made community in Wilder's migrant camps*, in THE OTHER IDAHOANS: FORGOTTEN STORIES OF THE BOISE VALLEY 114, 119 (Todd Shallat, ed., 2016).

36. Sarah Q. Simmons, "Litigators Beware: Implicit Bias," *Advocate*, March/

The Advocate, with its focus exclusively on lawyers who enjoyed national stature, risks repeating patterns of marginalization evident not just in Idaho's history but still also in contemporary realities that persist in our bar.

April 2016, at 35; Deborah A. Ferguson, "ABA Delegates to Examine Courtroom Bias," *Advocate*, October 2015, at 40; Molly O'Leary, "What Do You Mean I'm Biased?," *Advocate*, September 2012, at 10–11.

37. Sarah Q. Simmons, "Litigators Beware: Implicit Bias," at 35.

38. See Kristin Rodine, "Idaho women in the law still lag behind men in pay and positions," *Idaho Statesman*, Sept. 4, 2013, <http://www.idahostatesman.com/news/business/article40742823.html>.

39. Debra Cassens Weiss, "Full-time female lawyers earn 77 percent of male lawyer pay," *ABA Journal Daily News*, Mar. 17, 2016, http://www.abajournal.com/news/article/pay_gap_is_greatest_in_legal_occupations/.

40. *Id.*

41. W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA, 1860–1880, at 700–701 (Free Press 1995).

42. "Martin Luther King Day survives, with a longer name," *Moscow-Pullman Daily News*, Mar. 24, 1990, at 4A.

43. "Islamic Center of Twin Falls van-

dalized," *Rexburg Standard Journal*, Dec. 10, 2015, http://www.rexburg-standardjournal.com/news/idaho/islamic-center-of-twin-falls-vandalized/article_4a65b672-9f7d-11e5-92e0-2bd2bf48b286.html.

44. Elizabeth Rudd, "Mayor of Elk River warns of 'undesirables,'" *Lewiston Tribune*, July 28, 2015, http://lmtribune.com/northwest/mayor-of-elk-river-warns-of-undesirables/article_a2ee4256-4975-5b29-8ab1-6c64c655e494.html.

45. DEBORA K. KRISTENSEN, THE FIRST 50 WOMEN IN IDAHO LAW iii, 85–87 (2005). Larry Echo Hawk, who headed the U.S. Bureau of Indian Affairs and Bureau of Indian Education from 2009–2012, could also have been featured in this issue. Rather than write an article profiling Dunn or Echo Hawk alongside all white men, though, I chose instead to write from an ombuds perspective to point out barriers usually unmentioned when our bar celebrates achievement.

46. JAMES AGEE AND WALKER EVANS, LET US NOW PRAISE FAMOUS MEN xiv (1939).

Richard Eppink is Vice President of the Idaho Legal History Society. He graduated from the University of Idaho College of Law in 2006 and worked for Idaho Legal Aid Services before taking his current position as Legal Director of the American Civil Liberties Union of Idaho.



**OFFICIAL NOTICE
SUPREME COURT OF IDAHO**

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

**Regular Fall Term for 2016
5th Amended – 10/4/16**

Boise August 16, 17, ~~24~~, 26, 29
Coeur d'Alene August 30, 31
Moscow September 1
Boise September 19, 29, 30
Idaho Falls September 22
Pocatello September 23
Boise October 3
Boise November 2, 4, 7, ~~9~~, 10, 30
Twin Falls November 9, 10
Boise November 30, December 2, 5, 7, 9 and 15

By Order of the Court
Stephen W. Kenyon, Clerk

NOTE: The above is the official notice of the 2016 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.

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**Regular Spring Term for 2017
10/04/16**

Boise January 11, 13, 17, 18 and 20
Boise February 13, 15, 21, 22
Boise (Concordia University School of Law--501 W. Front Street)
..... February 17
Coeur d'Alene April 4, 5
Lewiston April 6
Boise April 10, 12
Boise May 1, 3, 5
Idaho Falls May 11
Pocatello May 12
Boise May 31, June 2, and 5
Twin Falls June 8 and 9

By Order of the Court
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Chief Judge
John M. Melanson
Judges
Sergio A. Gutierrez
David W. Gratton
Molly J. Huskey

**Regular Fall Term for 2016
5/4/16**

Boise August 9, 18, 23, 25
Boise September 6, 15, 20, 22
Boise October 4, 11, 18, 20
Boise November 3, 8, 29
Boise December 6, 8

By Order of the Court
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NOTE: The above is the official notice of the 2016 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.

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Chief Judge
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Molly J. Huskey

**Regular Spring Term for 2017
10/5/16**

Boise January 10, 12, 19 and 24
Boise February 9, 14, 16 and 23
Boise March 7, 9, 14 and 16
Boise April 4, 6, 13 and 18
Boise May 11, 16, 18 and 25
Boise June 6, 8, 13 and 15

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COURT INFORMATION

**Idaho Supreme Court
Oral Arguments for November 2016**

*1st Amended
10/4/16*

Wednesday, November 2, 2016 – BOISE

8:50 a.m. *Wolford v. Montee* #42719
10:00 a.m. *Kosmann v. Gilbride* #43296
11:10 a.m. *Sallaz v. Rice* #42698

Thursday, November 3, 2016 – NO COURT

Friday, November 4, 2016 – BOISE

8:50 a.m. *inclusion v. IDHW* #42245
10:00 a.m. *Takhsilov v. State* #44099
11:10 a.m. *Evangelical v. Board of Equalization* #43697

Monday, November 7, 2016 – BOISE

8:50 a.m. *State v. Clark* #44123
10:00 a.m. *State v. Meyer* #43332
11:10 a.m. *Hoffman v. Board of Local Improv't.* #43295/43628

Tuesday, November 8, 2016 – NO COURT

Wednesday, November 9, 2016 – TWIN FALLS

8:50 a.m. *Hammer v. Sun Valley* #43079
10:00 a.m. *Gallagher v. Best Western* #43695
11:10 a.m. *Silver Creek v. Sunrain* #43078

Thursday, November 10, 2016 – VALLEY HIGH, HAZELTON, ID

8:50 a.m. *Estay v. NW Trust Srv.* #43162
10:00 a.m. *Rish v. Home Depot* #43677
11:10 a.m. *OPEN*

Friday, November 11, 2016 – NO COURT (Veteran's Day)

**Idaho Supreme Court
Oral Arguments for December 2016**

*2nd Amended
10/4/16*

Wednesday, November 30, 2016 – BOISE

8:50 a.m. *Rodriguez v. Consolidated Farms* #42719
10:00 a.m. *State v. Cunningham* #44176-78
11:10 a.m. *State v. Kralovec* #44250

Thursday, December 1, 2016 – NO COURT

Friday, December 2, 2016 – BOISE

8:50 a.m. *OPEN*
10:00 a.m. *Kemmer v. Newman* #42566
11:10 a.m. *Lee v. Litster* #43554

Monday, December 5, 2016 – BOISE

8:50 a.m. *Saladay v. Bowen* #43603
10:00 a.m. *Molen v. Christian* #43755
11:10 a.m. *Schmidt v. Huston* #43620

Tuesday, December 6, 2016 – NO COURT

Wednesday, December 7, 2016 – BOISE

8:50 a.m. *State v. Olsen* #43496
10:00 a.m. *State v. Chernobieff* #44259
11:10 a.m. *Padilla v. State* #44307

Thursday, December 8, 2016 – NO COURT

Friday, December 9, 2016 – BOISE

8:50 a.m. *Davis v. Hammack Mgmt* #43863
10:00 a.m. *Green v. Green* #42916
11:10 a.m. *Agstar v. Gordon Paving* #43747

Thursday, December 15, 2016 – BOISE

8:50 a.m. *OPEN*
10:00 a.m. *OPEN*
11:10 a.m. *OPEN*
1:30 p.m. *OPEN*
3:00 p.m. *IDHW v. Jane Doe (2016-31)* #44376

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**Idaho Court of Appeals
Oral Arguments for November 2016**

9/8/16

Thursday, November 3, 2016 – BOISE

9:00 a.m. *State v. Moore* #43948
10:30 a.m. *OPEN* *State v. McAuley* #43702
1:30 p.m. *Hawkins v. ITD.* #43918

Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 9/1/16)

CIVIL APPEALS

Contempt

1. Whether the district court erred in affirming the magistrate court's finding that Bybee willfully violated the order modifying judgment because the order does not clearly and unequivocally prohibit the alleged conduct.

Thompson v. Bybee
S.Ct. No. 44113
Court of Appeals

Contract

1. Did the court misconstrue the parties' course of dealing under the agent contract in concluding there was a side agreement as a justification for the profit sharing payments to Kunz, rather than utilizing the parties' course of dealing to interpret contract ambiguity?

Kunz v. Nield, Inc.
S.Ct. No. 43724
Supreme Court

Eminent domain

1. Whether the district court erred in holding that Idaho law allows an award of just compensation for physical damage allegedly caused to the remainder property for all work performed during the construction of the project for which the taking was required.

Ada County Highway District v. Brook View
S.Ct. No. 43452
Supreme Court

Evidence

1. Whether the district court erred in its *sua sponte* grant of a motion for directed verdict, dismissing ASI's claim against Zilog for intentional interference with prospective economic advantage, in view of the substantial evidence presented at trial.

American Semiconductor, Inc. v. Sage Silicon Solutions
S.Ct. No. 43011
Supreme Court

Foreclosure

1. Whether the district court erred by holding the statute of limitations to foreclose a deed of trust, as set forth in I.C. §§ 5-214A and 45-1515, begins to run upon acceleration of the promissory note secured by the deed of trust.

Baughman v. Wells Fargo Bank
S.Ct. No. 43640
Supreme Court

Post-conviction relief

1. Did the district court err in summarily dismissing claims that could have been addressed in the criminal proceedings?

Grove v. State
S.Ct. No. 43537
Court of Appeals

Prisoner complaint

1. Did the district court err in granting summary judgment to the defendants on the claims presented by Hayes in his civil rights complaint?

Hayes v. Corrections Corporation
S.Ct. No. 43327
Court of Appeals

Property

1. Whether the City's denial of Building Permit 831 was (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the City; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious and an abuse of discretion.

Arnold v. City of Stanley
S.Ct. No. 43868
Supreme Court

Summary judgment

1. Did the district court err when it granted JumpTime's motion for summary judgment although a genuine issue of material fact appeared to exist as to whether JumpTime had followed its own safety rules or procedures while supervising a minor who ultimately was severely injured?

Griffith v. JumpTime Meridian
S.Ct. No. 44133
Supreme Court

CRIMINAL APPEALS

Enhancement

1. Whether the district court erred in concluding the Arizona statute, A.R.S. § 28-1383, is substantially conforming to I.C. § 18-8004 for purposes of DUI enhancement.

State v. Schuck
S.Ct. No. 44043
Court of Appeals

Instructions

1. Did the district court err by refusing to give a "mistake of fact" jury instruction pursuant to ICJI 1510?

State v. Willey
S.Ct. No. 43514
Court of Appeals

Pleas

1. Did the district court abuse its discretion by denying Garner's motion to withdraw her guilty plea?

State v. Garner
S.Ct. No. 43612
Court of Appeals

Restitution

1. Did the district court abuse its discretion when it awarded restitution for the cost of repairs to the stolen vehicle?

State v. Stewart
S.Ct. No. 43453
Court of Appeals

2. Did the district court err in awarding restitution for items which were not within the scope of the offense for which Nesbitt was convicted and for which she did not agree to pay restitution?

State v. Nesbitt
S.Ct. No. 43911
Court of Appeals

3. Did the district court err in denying Wahl's motion for relief from the restitution order entered in this case on July 26, 2004?

State v. Wahl
S.Ct. No. 43945
Court of Appeals

4. Did the district court err when it ordered Andersen to pay \$50,705.91 in restitution to the Boise City Attorney's Office for an officer's injury associated with Andersen's arrest?

State v. Andersen
S.Ct. No. 43889
Court of Appeals

**Search and seizure –
suppression of evidence**

1. Did the district court err by denying Mann's motion to suppress based on its determination that he lacked standing to challenge the search of the rental car?

State v. Mann
S.Ct. No. 43745
Supreme Court

2. Did the district court err when it denied Arenas's motion to suppress his statements made to police during a traffic stop and search incident to arrest?

State v. Arenas
S.Ct. No. 43751
Court of Appeals

3. Did the court err in denying Eslinger's motion to suppress and in finding the drug dog's alert established probable cause to search Eslinger's vehicle pursuant to the automobile exception?

State v. Eslinger
S.Ct. No. 43833
Court of Appeals

4. Did the district court err when it determined Pendleton did not have standing to challenge the search of the building where he worked?

State v. Pendleton
S.Ct. No. 43317
Court of Appeals

**Idaho Supreme Court and Court of Appeals
NEW CASES ON APPEAL PENDING DECISION
(Updated 9/1/16)**

5. Did the district court err in its determination that there was reasonable articulable suspicion to expand the traffic stop in light of Poppe's behavior and the positive drug dog alert?

State v. Poppe
S.Ct. No. 43569
Court of Appeals

an arrest, regardless of the officer's subjective intent with respect to the arrest and regardless of whether the defendant is ultimately arrested for the offense for which probable cause initially existed?

State v. Lee
S.Ct. No. 44001
Court of Appeals

would apply only "prospectively and to cases now on direct review," should this Court reject Young's claim that he is nevertheless entitled to relief because a motion pursuant to I.C.R. 35(c) may be filed at any time?

State v. Young
S.Ct. No. 43917
Court of Appeals

6. May an officer search a defendant pursuant to the search incident to arrest exception so long as the officer has probable cause for

Sentence review

1. Because the Supreme Court in *State v. Owens*, 158 Idaho 1, 6-7 (2015), expressly held that its new interpretation of I.C. § 18-309

**Summarized by:
Cathy Derden
Supreme Court Staff Attorney
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Mediator/Arbitrator

W. Anthony (Tony) Park

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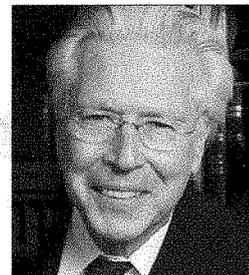
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I Work Like This, Because?

Mark Bassingthwaight

While out on a walk, I briefly overheard part of a conversation about weddings. What caught my attention was this comment: “Why do people spend so much time and money on their wedding and so little on their marriage?” That question struck a chord with me. Now I’m not one to say don’t celebrate life’s big events; but if your focus is such that it will only shine on the big events and never on the day-to-day, there’s a problem.

I’m a road warrior and I understand having to miss the band concerts, the cross country races, and the social functions with friends all in the name of earning a living and helping to pay the bills. I’ve also worked with too many solo attorneys who manage to fit in a long weekend every couple of years which they often refer to as “the family vacation.” Couple this with the stereotypical Big Law definition of part-time lawyers as those who work a 40-hour workweek and hopefully you begin to see my point. Kids don’t stay young forever, spouses don’t want to wait until retirement to enjoy a life together, and friends won’t keep asking if the answer is always “I can’t tonight.”

With all this in mind, I would like to share a few thoughts that if put in play might help keep things in balance over the long haul. Let’s remove some of the stress on the work side of the equation and perhaps find a little time to nourish the personal side. Then, take that time and spend it well. Here are a few ideas.

Do all that you can to determine if a client can actually afford your services before agreeing to accept



their legal matter. If this is a hard conversation to have, it’s time to learn how. Also, stop acting like a bank. Consider shifting away from having to deal with the collections burden by accepting credit card payments or perhaps taking retainers. Finally, if an account becomes delinquent and there is no reasonable way for the client to eventually make good get out if able, come up with a new discounted payment plan that is going to be realistic for the client, or simply acknowledge that this one is going to be pro bono. Staying in denial wastes too much energy. You might also look for any learning in these situations so that you don’t find yourself handling a similar forced pro bono matter next quarter. For example, think about how you could change your intake procedures in such a way that would help you better identify potential problem payers.

Start every day by doing the one thing that you’ve been putting off. It might be returning a call to an unhappy client, having to pass along bad news, finally starting to write that brief, or making one of those marketing calls so many struggle with. We all tend to put off tasks that we view as distasteful. Stop it. The time that is wasted with procrastination and the toll of carrying the burden hour after hour or day after day isn’t worth it. Whatever it is, get it out of the way first thing and the rest of day will be more productive.

Set boundaries and stick to them. Who says all calls must be returned within two hours or that all email

Interruptions wreak havoc because it takes time to get back into the swing. That’s time wasted and it can quickly add up to serious lost time.

must be replied to immediately. We each work differently. If morning is a productive time for you, make sure to protect and make the best use of that time. Let clients know in advance that you will not take calls, receive walk-ins, or read and respond to email between the hours of 8 and 10 and have staff enforce that policy. Short of an important call from a judge or a true client emergency, this becomes your productive time. Calls can be returned and email responded to after. Interruptions wreak havoc because it takes time to get back into the swing. That’s time wasted and it can quickly add up to serious lost time. Learn to control and manage interruptions by setting boundaries. In this same vein, delegate what can be delegated. For those who struggle with this, trust your judgment in who you

hired. It will be OK. If that's hard, periodically review their work as a way to reassure yourself and then start the process of letting go.

Smart phones and tablets are wonderful tools that enable all kinds of efficiencies. That said, just because it's possible to take a call while hiking in Yellowstone or respond to email while poolside in Cabo doesn't mean it's a good idea. Personal time is just that, personal time. Keep it that way. Our kids knew not to respond to a text while at the dinner table and my wife, rightly so, continues to expect that I will refrain from checking work email whenever we've set aside couple time. No Surface Pro, no Droid. This is about learning to prioritize personal time in order to stay sharp. If you never get away, even if it's just a short walk over the noon hour to get some fresh air, the "always available" lifestyle will catch

up with you. Batteries die, engines break down, and hearts stop. I have literally seen guys go down with a heart attack. Trust me, not good. We all need to rest and relax in order to recharge and stay healthy.

Finally, focus on the day-to-day. Even on those occasional 14 hour workdays on the road I still manage to find time to text the kids, call my wife, and when I can, enjoy a glass of red wine with dinner. It forces me

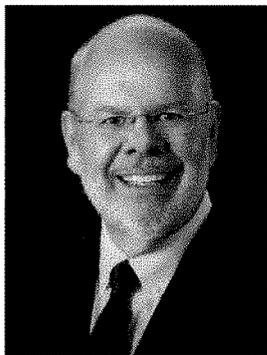
to slow down and refocus. When I am home, I leave work at work and get into the kitchen as much as I can. The whole family loves it when I do, but more importantly, that's my time. Absolutely life's milestones are worth celebrating; but if you're missing too much of the day-to-day stuff you may come to find that no one is there to celebrate with you, or worse yet, that you're the one missing.

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Enhancing the Effectiveness of Your Legal Writing with Plain English

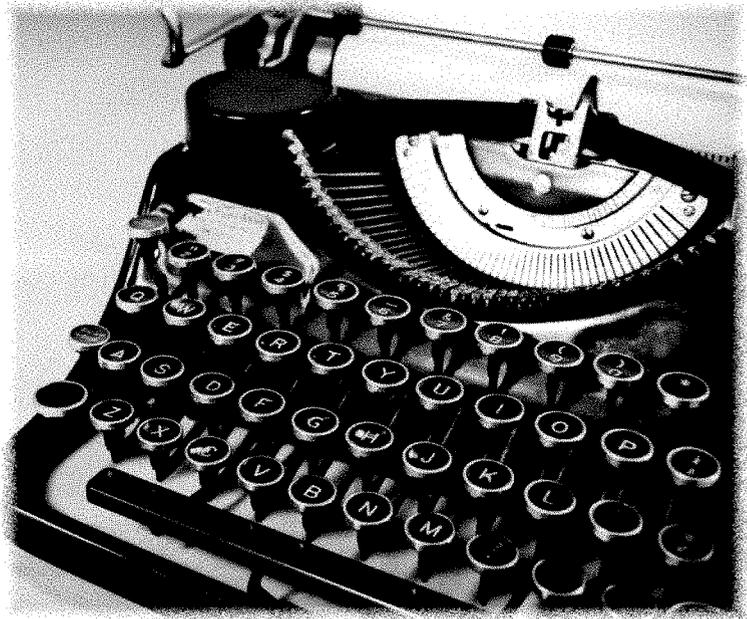
Jason Dykstra

A few years ago, I taught a class devoted to discussing the characteristics of “good” legal writing. Generally, good legal writing consists of plain English.¹ In that class, we discussed that good legal writing should be complete, concise, correct, and clear.² In contrast, we discussed the hallmarks of legalese, the long-criticized³, stuffy form of legal writing transplanted to America on the heels of the English common law.⁴ Its hallmarks include long sentences and paragraphs full of needless verbosity and sprinkled with passive voice, defined terms, Latin phrases, and obscure or original acronyms.

Following the class, I returned to my office to finalize a settlement agreement.

As I reviewed the cumbersome language, I noticed a distinct lack of plain English amidst the long sentences of legal jargon. One provision provided that the release in the agreement extended *to and inure to the benefit of the Parties (as defined herein)* followed by a long list of *shareholders, officers, directors, agents, employees, representatives, assigns, subsidiaries, affiliates, predecessors, successors, contractors, subcontractors, and related entities of all of the above*. I sheepishly realized that my draft settlement agreement epitomized legalese.

While perhaps complete and correct, my writing was neither clear nor concise. In pursuit of precision, my form settlement agreement became verbose. Out of caution, my agreement also became redundant. Legalese remains common in part due to time efficiencies and ingrained tradition.



I share this vignette to explain my view of plain English in the law as aspirational. As a practitioner, I aspired to communicate effectively. But the time constraints of a busy practice did not always afford the opportunity to revise legal documents for clarity or brevity.

This article focuses on areas where busy practitioners can aspire for plain English and not only improve their writing but possibly avoid a few pitfalls. As Justice Brandeis once remarked “there is no such thing as good writing. There is only good rewriting.”⁵ So here are three areas to focus on as you rewrite: minimizing initialisms, acronyms, and defined terms; losing legal jargon and cutting clutter; and balancing legal terms and precision.

Minimize initialisms, acronyms, and defined terms

A few initialisms (an abbreviation pronounced one letter at a time, like FBI or EPA) and acronyms can enhance the readability

As Justice Brandeis once remarked “there is no such thing as good writing. There is only good rewriting.”⁵

of your legal writing. For example, common initialisms and acronyms such as FBI, NATO, Radar and Scuba prove familiar and concise. But don’t risk confusing the reader with a swath of innovative initialisms and contrived acronyms.

Consider this:

WVM possessed an LBI in its CNC prohibiting Dr. Goldstein from working for VMC.

You likely tripped over a term and stopped reading or might be forced to frustratingly backtrack to recollect what LBI means.

Using fewer initialisms and acronyms helps prevent this reaction from the reader.

West Valley Medical possessed a legitimate business interest in its covenant not to compete prohibiting Dr. Goldstein from working for Valley Medical Center.

Much easier to understand.

Also, you should be wary of using well-known initialisms and acronyms for other nouns. For instance, the reader might be confused or distracted by references to your client, the Culinary Institute of America, as the *CIA*.

Next, definitions and defined terms also tend to be over-used in legal writing. Many documents, statutes, and regulations contain definitions that can spur considerable confusion. For example, consider this gem for federal statutory interpretation of words denoting number, gender, and so forth in Acts of Congress:

[U]nless the context indicates otherwise-

words importing the singular include and apply to several persons, parties, or things;

words importing the plural include the singular;

words importing the masculine gender include the feminine as well; [and]

words used in the present tense include the future as well as the present⁶

This statute, like many similar boilerplate contract provisions, seems capable of comically expanding the idiom “boys will be boys.” The use of defined terms and definitions can increase the risk of confusion for the reader. To promote clarity in legal writing, minimize

While some Latin phrases offer efficient precision in legal writing (*ex parte*, *de nova*, *per se*), dispense with unneeded Latin phrases (*arguendo*, *seriatim*, *inter alia*).

acronyms, initialisms, defined terms and definitions.

Lose the legal jargon and cut the clutter

Start by losing most of the vestigial Latin, residual legalese, and omitting surplus words. Justice Scalia coined one test, “if you used the word [or sentence] at a cocktail party, would people look at you funny?”⁷

Imagine that you included this allegation in a draft complaint

Defendant’s tortiously negligent conduct in failing to properly maintain the staircase created, caused, and/or resulted in serious bodily harm and injury to said Plaintiff.

Rewrite it to pass the cocktail party test:

The landlord neglected to maintain the stairs causing Alex Hayne’s injuries.

In cutting the legalese, name parties rather than reference their legal roles (plaintiff, tortfeasor, or witness). Also, while some Latin phrases offer efficient precision in legal writing (*ex parte*, *de nova*, *per se*), dispense with unneeded Latin phrases (*arguendo*, *seriatim*, *inter alia*). After striping most of the Latin and legalese, turn your attention to omitting surplus words.

Eliminate or revise long introductory (throat clearing) phrases that add no special meaning. *It is important to emphasize that plaintiff contends that the landlord caused young Ms. Hayne’s injury by leaving an excavated pile of dirt on the property.*

Similarly, simplify your text to eliminate surplus words. For example, *if* can replace *in the event that*, *to* can replace *for the purpose of*, and *because* can replace *due to the fact that*. Finally, eliminate needless repetition, such as *free gift* and *cease and desist*. To enhance the clarity and brevity of your legal writing, rewrite most of the Latin, and legalese and omit surplus words.

But use legal terms where plain English sacrifices precision

Edit legalese into plain English, but retain precise, well-understood legal terms for professional audiences. The use of some legal terms provides efficient precision for the legally trained reader. For example, in plain English try to explain that a case involves the breach of fiduciary duties by corporate directors. And that the plaintiffs cannot proceed in federal court because there is neither diversity of citizenship nor any federal question. So for a professional audience, retain the precision and efficiency of legal terminology.

Conclusion

The audience for legal writing varies widely, from legally trained readers to laypeople. Across this spectrum, readers prefer plain English. So to enhance the readability of your legal writing, aspire to minimize acronyms, initialisms, defined terms and definitions; lose the legal jargon and omit surplus words; but use legal terms where plain English would sacrifice precision.

Endnotes

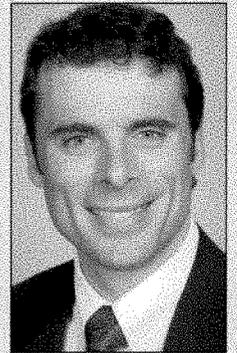
1. Richard C. Wydick, *Plain English for Lawyers* 5 (4th ed. 1998).
2. Richard C. Wydick, *Plain English for Lawyers*, Teacher's Manual 3 (5th ed. 2005).
3. Describing his fellow lawyers' style of drafting statutes, Thomas Jefferson lamented the style of "making every other word a 'said' or 'aforesaid' and saying everything over two or three times, so that nobody but we of the craft can untwist the diction and find out what it means . . .

" Richard C. Wydick, *Plain English for Lawyers* 3-4 (4th ed. 1998)(quoting Letter to Joseph C. Cabell (Sept. 9, 1817), reprinted in 17 Writings of Thomas Jefferson 417-18 (A Berg ed. 1907)).

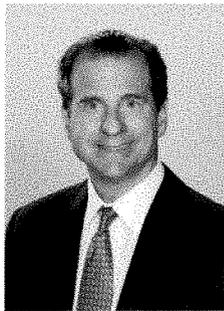
4. *Id.* at 3.
5. Hon. Paul H. Buchanan, Jr., *Memorable Quotes, et Cetera*, 42 Res Gestae 46 (1999).
6. 1 U.S.C. § 1.
7. Bryan A. Garner, *Interview of Justice Antonin Scalia*, 13 Scribes L. Legal Writing 51, 58 (2010).

Edit legalese into plain English, but retain precise, well-understood legal terms for professional audiences.

Jason Dykstra is an Assistant Professor of Law and the Assistant Director of the Legal Research and Writing Program at Concordia University School of Law. You can reach him at jdykstra@cu-portland.edu.



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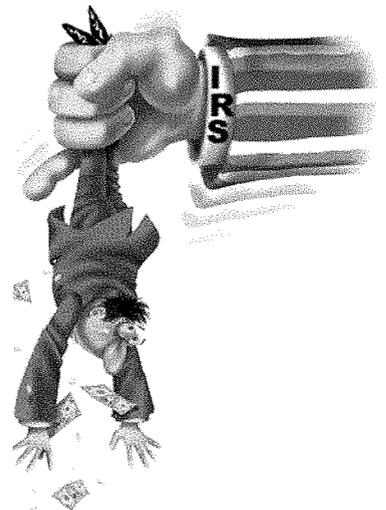
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Idaho Attorney Measures Rule of Law in Argentina

Larry C. Hunter

Let's just get it on the table from the beginning, Buenos Aires is one of the most beautiful cities in the world: a rich amalgam of architecture from the new world and old (principally late 19th, early 20th century French and Italian architecture), well-maintained parks, statues and other monuments and picturesque avenues. It also has its share of cramped slums and crushing poverty.

The challenge in Argentina is to utilize its assets to build an infrastructure to overcome the systemic misdistribution of income. The purpose of this article is not to discuss the economic situation or needed economic reforms in Argentina.

However, for such reforms and development to take place, the basic platform of the Rule of Law needs to be in place. By Rule of Law, I refer to the system wherein a country is governed by duly enacted laws, not by one person's dictation.

It may seem strange to talk about Rule of Law in a country that has such incidents in its fairly recent past as military coups d'état and dictatorships as recently as from 1966 - 1973 and 1976 - 1983. Argentina had a string of four presidents in the space of two weeks in 2001 - 2002 and the "dirty war" of the early 1980s.

The most drastic departure from the rule of law was the era of 1976 - 1983 when the military killed 30,000 suspects and others in what is known now as the "Dirty War." These "desaparecidos," as those victims are referred to, were removed from homes and families and executed without trial or protection of their rights. That horrible violation of human rights lies only 30 years in the past and engenders continuing



Photo courtesy of Larry Hunter

Buenos Aires hums with life, as its residents make the best of their recent history with dictators, coups and 'disappearances.'

weekly demonstrations in Buenos Aires and other places by the mothers and grandmothers of the victims. They parade in the plaza with white scarfs on their heads with that same symbol painted on the plaza.

Nonetheless, even during the darkest periods of government persecution, the flame of democracy was not extinguished. An elected government returned in 1983. There has been an elected government continuously from 1983 to the present. Even during a period of extreme economic stress and rioting in 2001 - 2002, elections were held and a duly elected government was installed.

The last dictator, General Reynaldo Bignone bowed to popular pressure and a flagging enthusiasm for military rule after the military's misguided war over the Falk Islands by allowing elections in October 1983. He was later tried and convicted in 2010, 2011, 2012, and 2016 for his role in various human rights atrocities during his term as dictator

Even during a period of extreme economic stress and rioting in 2001 - 2002, elections were held and a duly elected government was installed.

(1982 - 1983) and earlier as leader in the military government from 1976 - 1981. He had avoided earlier prosecution for reasons too involved to discuss in this short essay, but arguably dictated by the exigencies of the return to democracy. His convictions are one indication of the functioning rule of law in Argentina. The 2015 presidential elections are the other.

Return to democracy

Bignone and his fellow Junta members were the first example of a country in Latin America bringing former dictators of the country to trial for human rights violations of various types. Early trials in the 1980s were instigated by Raúl Alfonsín, the first president elected after the junta in 1983. The trial and convictions against the military leaders of the first three juntas, life sentences against two of the leaders and lesser sentences against three others. These trials were the first and most comprehensive large scale action taken by a democratic government against a former dictatorial government of the same country. It was the first to be conducted by a civilian court, as opposed to a military court. It succeeded in prosecuting the crime of the juntas.

Unfortunately, the prosecution was temporarily thwarted by pressure from the military and political right wing. Laws were passed in 1986 and 1987 prohibiting further prosecution against junta members. In 1989 and 1990, the succeeding President Carlos Menem pardoned the convicted.

However, the Rule of Law prevailed. In the early 2000s, then President Nestor Kirchner was able to obtain Supreme Court rulings allowing extradition in crimes against humanity and a ruling that the laws commuting convictions were unconstitutional. In addition, Congress repealed the laws which banned prosecution. Former general Bignone was tried for separate incidents of crimes against humanity and found guilty in 2010, 2011, 2014 and 2016, the last when he was 88 years old. He is serving prison terms of 25, 15, 23, and 20 years as a result of those convictions. Admittedly, it took years to bring the perpetrators to justice, but it was done

in a trial in a regularly constituted court. All three branches of the government (Argentina has an executive, legislative, and judicial branch – modelled in large part after the system of the United States) cooperated in the eventual outcome.

A difficult standoff

The second example is recent, more straightforward and commonplace, but also very important. There was a Presidential election in the last part of 2015 (in their spring). The winning candidate was Mauricio Macri, the mayor of Buenos Aires, a member of the “opposition” party.

Since 2003 the country’s president had been a Kirchner, first the aforementioned Néstor for one term and his wife Christine Fernández de Kirchner who was elected for two terms. Both of the Kirchners were of the Justicialista party an outgrowth/successor to Peronismo, the party founded by Juan Peron. In simple terms, it is a populist/socialist party with great support from the economically disadvantaged and the working class. Since voting in Argentina is mandatory, it was believed that the expected large turnout would support the Justicialista candidate, Daniel Scioli.

Indeed, Scioli won the first round when there were seven candidates, but failed to gain 50 percent of the vote, necessitating a run-off

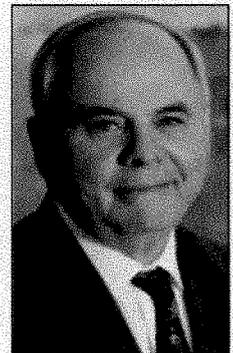
and lost in the finale to Macri. Macri’s party was more conservative and could be likened to a moderate to liberal Republican position in the United States. Macri’s election was seen as a part of the trend in South America to less socialist/nationalistic governments and was significant enough that President Obama paid a state visit to Argentina in March 2016. Obviously, in such a state visit there is much more to the visit than the mere window dressing of social contact between the two leaders and their wives. Clearly, it was a significant visit.

The important part of the election from a “Rule of Law” perspective is that a significant shift in governance took place peacefully and pursuant to law. There will clearly be labor protests (there already have been) over some of the new government policies. However, such demonstrations are common and not viewed as portents of political upheaval¹. As the saying goes “nothing is sure in love and politics” – perhaps particularly so in Latin America. Nonetheless, Argentina has shown that its citizens value the Rule of Law as a basis for their society.

Endnotes

1. To go full circle on the issues treated in this article, one of the fears the Justicialistas have is that Macri will pardon the imprisoned military leaders.

Larry C. Hunter, *Of Counsel with Moffatt Thomas in Boise, practices dispute resolution. He is Past President of the Idaho State Bar, Idaho State Delegate for ABA House of Delegates and a member of the House since 2004. He and his wife were missionaries for their church in Buenos Aires from October 2014-April 2016, where he served as an attorney for the church.*

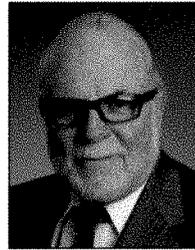


IN MEMORIAM

Peter Michael Desler
1947 - 2016

BOISE - Peter Michael Desler, 68, of Boise, Idaho, formerly of Troy, New York, died on September 9, 2016. Peter was born in Troy on October 2, 1947 to the late Joseph and Helen Desler. His curriculum vitae

includes, LaSalle Institute of Troy, Providence College, as well as William and Mary Law School. Peter served in the U.S. Army and worked in the Pentagon,



Peter Michael Desler

having achieved the rank of Captain. Professionally, Mr. Desler had a law office in Boise, Idaho and was a law professor at Boise State University. Survivors include three daughters, Audrey, Emily and Frances, two sisters, Maryanne Desler Burton and Rita Desler Costa, as well as nieces, nephews and grandchildren.

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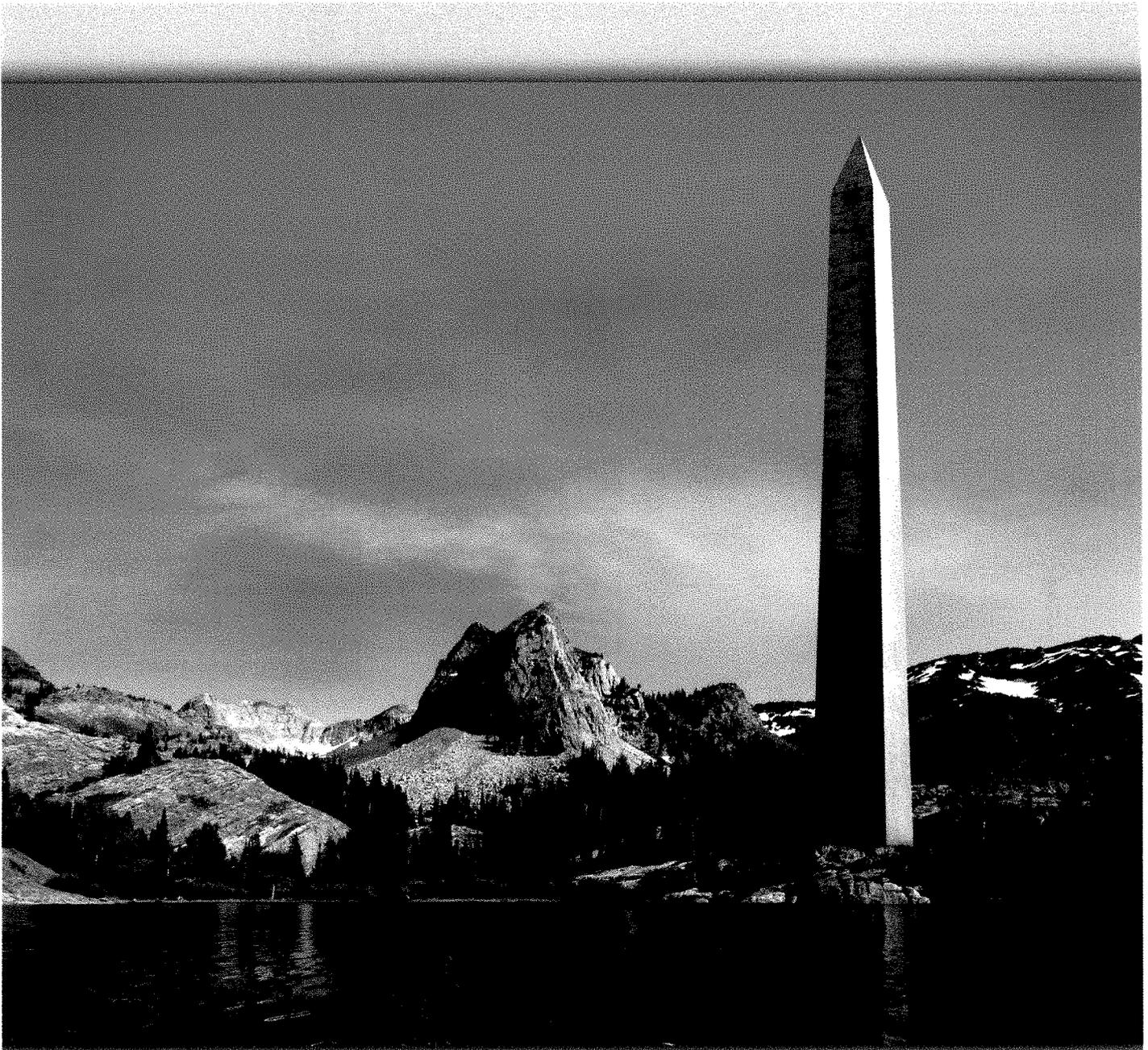
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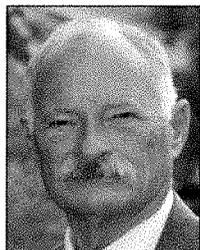
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Clyel Berry joins firm as 'Of Counsel'

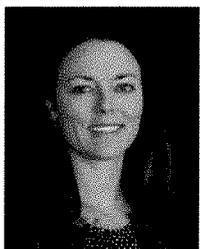
TWIN FALLS - The firm of Stephan, Kvanvig, Stone & Trainor wishes to announce the addition of L. Clyel Berry as "Of Counsel" to the firm. With this addition, the firm will provide assistance on Workmen's Compensation cases and its continued practice of personal injury.



L. Clyel Berry

April Anderson joins Randall | Danskin, P.S.

SPOKANE - The firm of Randall | Danskin, P.S. is pleased to announce that April L. Anderson has joined the firm as a principal. Ms. Anderson is licensed to practice in Washington and Idaho, and she continues practicing in the areas of real estate, business, finance, securities, health care and franchise. She is a graduate of Gonzaga University School of Law. Ms. Anderson can be reached at (509) 747-2052 or ala@randalldanskin.com.



April L. Anderson

Whitney returns to Winston & Cashatt

SPOKANE - Winston & Cashatt, Lawyers, is delighted to announce that attorney Tyler R. Whitney has rejoined the firm. Tyler Whitney's practice will focus primarily on commercial and business-related litigation. He was most recently policy

advisor to Spokane Mayor David Condon.

Tyler first joined Winston & Cashatt in 2014 after graduating magna cum laude from Gonzaga University School of Law. While in law school, Tyler worked as a clerk at Winston & Cashatt, was a judicial extern to Chief Judge Laurel Siddoway of the Washington State Court of Appeals, and enjoyed competitive appellate advocacy on Gonzaga's National Moot Court team.



Tyler R. Whitney

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Holland & Hart announces the hiring of four attorneys

BOISE - Amani Floyd, Yudong Kim, Matthew Montgomery, and Grace Witsil have joined Holland & Hart's Boise office to further develop the firm's trade compliance, patent prosecution, and corporate practices.

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Amani Floyd advises clients in export control and trade sanctions defense and compliance and helps clients navigate the shifting landscape

of global anti-corruption compliance and enforcement. She focuses on coordinating internal investigations and voluntary disclosures related to the International Traffic in Arms Regulations (ITAR) and the U.S. Foreign Corrupt Practices Act (FCPA).

Prior to joining Holland & Hart, Floyd was with Sheppard Mullin Richter & Hamptons LLP in Los Angeles. She received her B.A. from Vanderbilt University, her M.A. from the University of Mississippi, and her J.D. from the University of Southern California Gould School of Law. Floyd is admitted to practice in California. She is not yet admitted to practice in Idaho.



Amani Floyd

Yudong Kim is a patent attorney and engineer who focuses on Intellectual Property, "IP", protection for clients with complex technology and processes. He has particular experience in the semiconductor technology industry, having worked for over two decades at Intel Corporation as a process R&D engineer and manager. Kim received his B.S. in Electrical Engineering from Korea University, his M.S. in Electrical Engineering from the University of Wisconsin, and Ph.D. in Electrical Engineering from Duke University. He received his J.D. from Santa Clara University School of Law. Kim is not yet admitted to practice in Idaho.



Yudong Kim

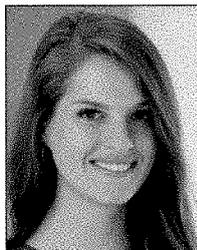
OF INTEREST

Matthew Montgomery counsels electronics and computer-related clients on IP matters pertaining to drafting and prosecuting patent applications. He assists clients through the patent application process and applies his interest in technology advancements to guide clients through patent approvals. Montgomery is a registered patent attorney with a background in mechanical engineering. Prior to joining Holland & Hart, he practiced with Buchanan Nipper LLC. He received his B.S. in Mechanical Engineering from the University of Idaho and his J.D. from the University of Idaho College of Law.



Matthew Montgomery

Grace Witsil assists companies on a broad range of commercial transactions from entity formation, financing, and governance, through complex mergers and acquisitions, as well as in general business matters. In addition, she handles matters involving stock and membership interest transfers, indemnification, nondisclosure, and commercial and residential leases. She received her B.A. from the University of North Carolina at Chapel Hill and her J.D. from the University of Texas School of Law. Witsil is admitted to practice in North Carolina and Texas. She is not yet admitted to practice in Idaho.



Grace Witsil

Debra Groberg joins Nevin, Benjamin, McKay & Bartlett

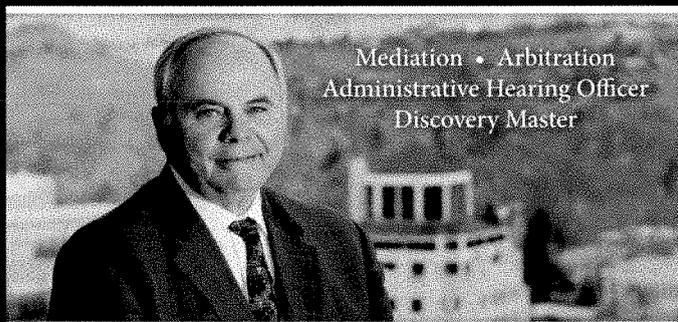
BOISE – Debra Groberg has joined Nevin, Benjamin, McKay & Bartlett as an associate attorney. Ms. Groberg's practice will focus primarily on criminal defense in state and federal court.

Ms. Groberg graduated from the University of Idaho College of Law in 2015 and received her undergraduate degree, *cum laude*, from Boise State University. Following graduation, Ms. Groberg clerked for the Idaho Court of Appeals and briefly worked as a prosecutor for Ada County.



Debra Groberg

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JACLYN T. GANS

Elam & Burke welcomes Jaclyn T. Gans as Associate Attorney.

Ms. Gans rejoined the firm in 2016 after serving a sixteen-month clerkship for the Honorable B. Lynn Winmill, Chief Judge of the United States District Court for the District of Idaho. Her practice focuses on employment and commercial litigation, but she advises clients in a variety of civil matters.

Prior to joining the firm, Ms. Gans also clerked for the Honorable Jim Jones of the Idaho Supreme Court. While in law school at the University of Idaho, Ms. Gans was a member of the Idaho Law Review, where she received the Outstanding Associate Writer award in 2012. At California State University, Fullerton, Ms. Gans was a four-year member of the Division I women's soccer team.

Ms. Gans was raised in Idaho. She enjoys traveling, running, and spending time with her family.

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Lawyers Recognize Blackfoot Teacher as ‘Teacher of the Year’

Larry C. Hunter

On August 5, 2016, while the American Bar Association annual meeting was being held in San Francisco, an ABA related organization, the American Lawyers Alliance (ALA) recognized a high school teacher from Blackfoot, Idaho as its national high school Teacher of the Year. There was a short notice in the August issue of *The Advocate* about the award ceremony, but I felt it appropriate to add a few details about the award and the teacher who received it.

While not so denominated, this award relates principally to teachers of social studies and/or civics. While most people recognize the need for excellent teaching of the STEM courses in our secondary schools, there is no similar push for the teaching of civics.

Based on various questionnaires and surveys, both formal and informal, that is a lamentable failing. For our democracy to continue to be strong and vibrant, it is necessary that citizens understand the importance of the three branches of government (not the Democrats, Republicans and Independents), the systems of checks and balances and an independent judiciary, just to name a few important principles. Fortunately, Idaho, and in particular Blackfoot High School has Holly Kartchner.

Her approach to teaching is one that involves her students in the community and takes them both physically and metaphysically outside of the classroom. Three examples of her teaching technique illustrate her excellence:

1. She offers her students a broad perspective from presentations by attorneys, judges, doctors, business owners, military leaders, and legisla-



Photo courtesy of Larry Hunter

Holly Kartchner, right, accepts her “Teacher of the Year” Award from the American Lawyers Alliance earlier this year.

tors – and through interactive Skype sessions with interesting people in other countries. After discussing Syrian refugees, she arranged a Skype session with Syrian teenagers who fled the violence in Syria to Sweden. Her students then raised money for a sewing machine and materials to help the families of the Syrian teenagers.

2. From her first year of teaching over a decade ago, she has involved her students in the “We the People” program. By her third year of teaching, her students were Idaho State Champions and participated in the national competition in Washington D.C. Her students have now participated in the national competition nine straight years. And for the past three years her teams have won awards at the national level, a first for any Idaho school.

3. When her students turn 18, she accompanies them to register to vote, which places their names on the jury rolls. In the latest election 90 percent of her eligible students voted. Being called for jury service is a privilege that her students wel-

Her approach to teaching is one that involves her students in the community and takes them both physically and metaphysically outside of the classroom.

come. She periodically receives calls from former students who tell her they have been called to jury service. She has created a solid citizenship base for these young adults.

It is small wonder that she received the American Civics Education Teacher Award in 2015. Ms. Kartchner makes a difference and has done much to enhance the knowledge of the American constitutional system to the people of her community. We all can learn from her efforts.

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Year	Percentage
2010	35%
2013	47%
2016	55%
2019	EST 75%

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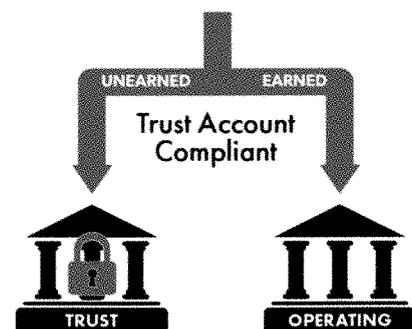
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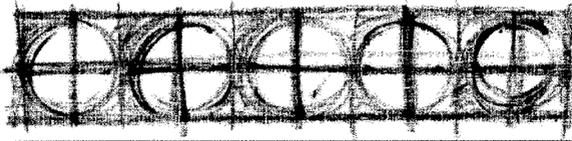
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A Return on Your Investment

Craig L. Meadows

As President of the Idaho Law Foundation, I think a lot about the importance of stewardship. In the last year, over 500 people and 1,000 volunteers have given of their time and treasure to support the Law Foundation and our programs. In return for this generosity, the Board of Directors and staff of the Foundation considers the responsible management of the gifts you entrust to us as our commitment to you.

I can report to you that the Foundation wisely utilizes your investment in us. This year, attendance for our Law Foundation sponsored Continuing Legal Education grew in all areas – including a 149 percent increase in online rentals. This growth is in large part due to the creative work of CLE staff who developed programs like *A Vow & an Oath, a Valentine Celebration* CLE in which legal couples shared the trials and tribulations of their legal careers, showcased the secrets to successful law practice, and discussed what the future holds for the practice of law. These programs are not only innovative; they are highly rated by attendees.

Our Idaho Volunteer Lawyers Program supported 803 volunteer attorneys who worked on 678 cases, donating over 15,000 of pro bono time. IVLP staff is dedicated to serving attorneys so they can more easily fulfill their obligation to provide pro bono legal services. In the coming months, IVLP will be launching a Pro Bono Opportunities Website (PBOW) that will feature statewide

In my time on the Board of Directors, I have really grown to admire all the good work done by all our staff, especially during the years when funding has grown tighter.

opportunities and connect those in need with those looking for opportunities for service.

The Law Foundation also houses the Law Related Education Program, which provides students of all ages with tools to reinforce civic education, while helping to build positive relationships between students and members of Idaho's legal community. In May Law Related Education hosted the National High School Mock Trial Championship for 400 students from 46 teams.

As a member of the National Mock Trial Host Committee, I was really impressed with the level of dedication from the staff and volunteers who worked to put together all the events for the championship weekend. Thanks in great part to their dedication, we raised \$165,000 and recruited 300 volunteers. I had a chance to be on the judging panel for the national championship round and it was impressive. These high school students were prepared and poised. And it was obvious they were having a wonderful time in Idaho.

These impressive achievements I've related are only some of what our small, dedicated Law Foundation staff has been able to accomplish. In my time on the Board of Directors, I have really grown to admire all the good work done by all our staff, especially during the years when funding has grown tighter due the protracted drop in IOLTA income. In spite of these circumstances though, we have found ways to continue to offer our important programs, in great part because so many of you have stepped up and helped us fill the gap.

You might have, at one time or another, noticed the tagline we have on our logo. It says, "Helping the Profession Serve the Public." In all the work we do, we constantly strive to positively represent the legal community to the public. And your investment in the Foundation allows us to continue this work. You help us invest in our staff, who in turn develop great legal and educational programs for the people of Idaho. In my estimation, this is what great stewardship is all about.

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Helping the profession serve the public

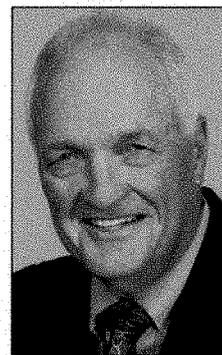
As we move into the holiday season and you are deciding where to make any year-end charitable gifts, we hope you will consider a tax-deductible donation to the Idaho Law Foundation. If you have given in the past, could you increase your donation amount this year? If you have never given to the Idaho Law Foundation, could you join your colleagues who already give to the Idaho Law Foundation?

You can give to the Law Foundation through a designation on your 2017 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 Shouffler, 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 cshouffler@isb.idaho.gov.

Thank you to our Idaho attorneys for allowing us to be the stewards of your gifts. We are grateful to all of you for allowing us to create a return on the investments you make in our organization.

Craig L. Meadows is a partner at Hawley Troxell in Boise, in the firm's civil and commercial litigation group. Craig earned his B.S. from Colorado State University and his J.D. from the University of Idaho College of Law. In addition to serving as the President of the Idaho Law Foundation, Craig is on the Board of Directors for Friends of Idaho Public Television.



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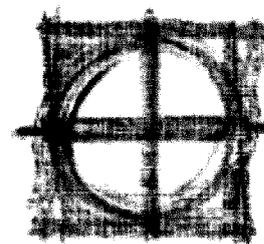


Interested in judging or coaching a mock trial team? The Idaho Law Foundation invites you to participate in the 2017 Idaho High School Mock Trial Competition. For more information visit our website or contact Carey Shouffler at (208) 334-4500 or cshouffler@isb.idaho.gov.

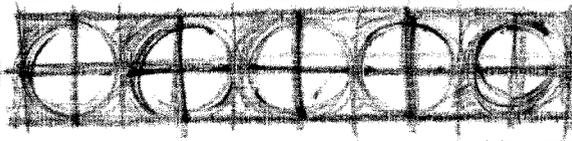


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Pro Bono Attorney Provides a World of Peace

Dan Black

Family Law attorneys unearth their share of messy conflicts. So when the Idaho Volunteer Lawyers Program called attorney Robert Vail to help a victim of abuse with her divorce, he knew it might get complicated. After taking the case, Rob discovered how desperately the client needed help and how profoundly important his assistance would be.

The client suffered from physical and mental abuse from her husband, who was jailed in another county. The victim happened to be undergoing treatment for brain cancer, and the recent violence made future treatment impossible. She had a terminal diagnosis. But before she could really focus on the details of preparing for her own death, the client wanted to be free of her tormentor and his claim on her paltry income and possessions.

"I got the call," said Robert Vail, a mid-career attorney at Howell & Vail in Meridian. "The client wanted a fast divorce," he said, adding that the husband faced a probation violation and domestic violence charges against his client.

"At first it looked like he might not contest the divorce, but he strongly contested it." And, representing himself, he contested the division of assets, which were meager and largely symbolic. "He just wanted to push her buttons," Mr. Vail said.

"She was dealing with a life-threatening brain tumor," he said,

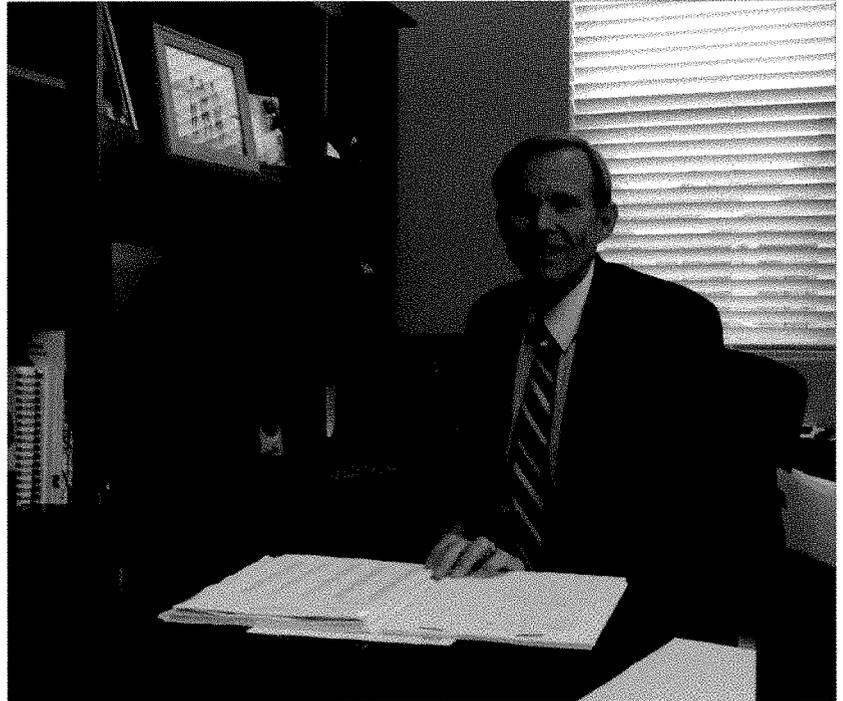


Photo courtesy of Robert Vail

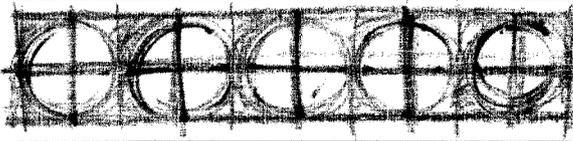
Robert Vail sits in his Meridian office. The Family Law attorney took a pro bono case that gave a dying woman freedom from her abusive husband.

"and stress from this conflict made it worse. She wanted to sever all ties" so she could focus on her own situation. The client suffered from regular seizures, which were made worse by the stress of talking about the case, Mr. Vail said, "including some in my office."

Fortunately, she had a well-trained service dog, a Great Dane, which alerted her and those nearby when she was about to have a seizure. "The dog would get in a position on top of her, which held her down so she wouldn't hurt herself. Then, as she was coming out of it," he said, "she gently stroked the dog, and everything was OK. It relaxed her."

Mr. Vail was able to submit an affidavit to quickly get a hearing. The judge bifurcated the divorce from the division of property, which allowed her to get a divorce more quickly.

The case demanded urgency, Mr. Vail said, because of the client's deteriorating health. Mr. Vail was able to submit an affidavit to quickly get a hearing. The judge bifurcated the divorce from the division of property, which allowed her to get a



Helping the profession serve the public

divorce more quickly. A few months later, the property issues were tried to the Court, and were decided in her favor. "It was a great relief for her to be free from him," Mr. Vail said. "He got his day in court and it didn't go well for him. The judge said he's not entitled to anything. The judge schooled the guy about the damage he caused."

While the husband tried to portray himself as a victim, Mr. Vail said "it was cathartic" for his client to hear the judge rule in her favor, and lecture her abuser about being the cause of his own troubles.

Mr. Vail said, "I felt satisfaction that I was able to give a very valu-

able service to a person in a difficult situation who couldn't pay for it. It gave her a great personal relief so she could move on. She got a measure of justice."

"Although it took a lot of time and the case had complexities with difficulties communicating with the client, needing transportation, etc. It was gratifying for the same reasons."

"This is a service profession," Mr. Vail said. "I would encourage anyone to take an IVLP case. That's why we got into this in the first place."

Robert Vail earned the Denise O'Donnell Day Pro Bono Award in 2003.

Mr. Vail said "it was cathartic" for his client to hear the judge rule in her favor, and lecture her abuser about being the cause of his own troubles.

COMING NOVEMBER 2016 PRO BONO OPPORTUNITIES WEBSITE (PBOW)

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- ★ Sign up for legal clinics
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- ★ Access tips and tools for effective pro bono service
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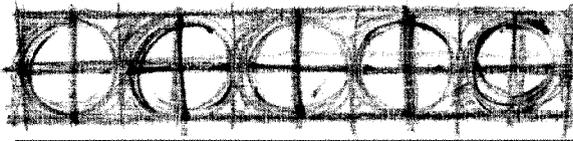
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Website Aims to Transform Pro Bono Access in Idaho

Dan Black

A new website will soon make it easier for Idaho lawyers to find pro bono cases that fit their law practice. This could provide a significant improvement for legal access, according to Anna Almerico, the Program Director of the Idaho Volunteer Lawyers Program, (IVLP), which is based in Boise. She said that the website could automate some tasks allowing IVLP to increase its capacity to serve and connect attorneys to clients.

Currently, the IVLP and Idaho Legal Aid Services, (ILAS), rely on phones and pledges to find pro bono attorneys for the most pressing cases. The site will dramatically increase the number of pro bono cases and their visibility, said ILAS Director of Finance and Administration Mary Zimmerman. She said the web site represents a potential “game changer” for more efficiently finding attorneys to take pro bono cases. “The site offers so many more choices to attorneys,” she said, “so they can find the type of work they find interesting.”

ILAS was awarded a \$276,000, 24-month grant by the Legal Services Corporation (LSC) as part of the Pro Bono Innovation grant program, with IVLP as its “sub-grantee.” LSC is funding 15 similar projects, all aimed at using innovative technologies to improve programs that give low-income litigants access to pro bono attorneys.

In Idaho, program managers found that 61 percent of civil cases involved self-represented defendants and that the demand for free or



Abhijeet Chavan of Urban Insight has helped develop software solutions to address problems of legal access.

low-cost legal services was larger than any of Idaho’s programs could handle.

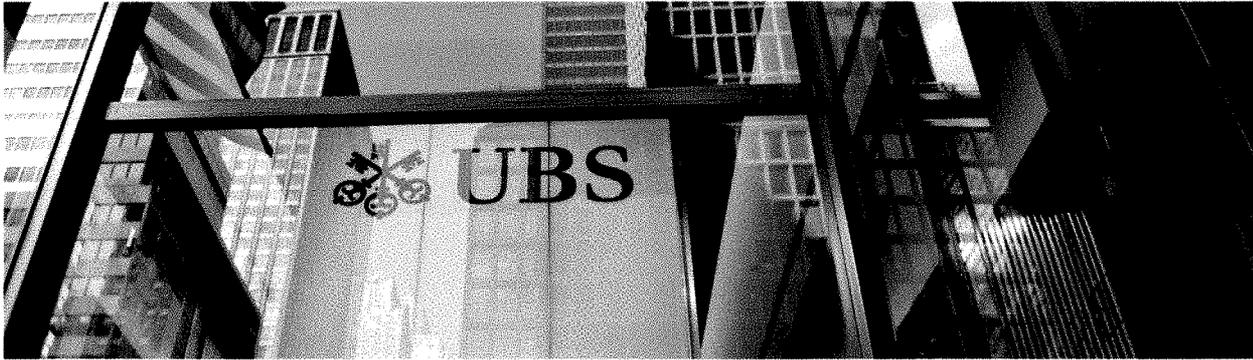
ILAS hired Los Angeles-based technology consulting firm Urban Insight (UI). UI’s Chief Technology Officer Abhijeet Chavan has led several technology projects for legal services including a tool to measure and improve readability of web pages and a glossary to explain complex legal terms in plain language. Urban Insight recently completed a project funded by the U.S. Department of Justice to build the Texas Crime Victims Assistance Network. UI also has experience working with ILAS to build a platform for running legal services websites. (www.openadvocate.org).

The new website, called the Pro Bono Opportunities Website, (PBOW), will enable attorneys to choose pro bono cases by considering desired location, time required, area of law, and case particulars. It will house a repository of current requests for pro bono attorneys.

The web site will also provide case management tools, said Mr. Chavan, so an attorney can record their pro bono hours.

Mr. Chavan said that his team is building the PBOW system as a model that could be adopted by other states facing similar challenges as Idaho. The Idaho model could improve the efficiency of placing pro bono cases and help to increase access to justice, Mr. Chavan said, adding that the new model could also provide insights into areas of legal needs in the state.

“PBOW will make it easier for attorneys in Idaho to find the pro bono opportunities that are right for them,” Mr. Chavan said. “It will also make it possible for those needing legal assistance to apply once to locate a pro bono attorney.” Licensed attorneys in Idaho will be able to activate their free accounts on PBOW starting in November 2016. (Visit <https://www.idahoprobono.org/>)



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