

## Boise man found guilty of first-degree murder in Depot shooting

IdahoStatesman.com: Apr. 23- Staff

*CORRECTION: This article originally misreported the jury's verdict on Bahr's weapons enhancement.*

A jury found a Boise man guilty of killing his ex-girlfriend's new boyfriend at the Boise Depot Sept. 23, according to court documents. Brandon Bahr, 24, got in a fight with his ex-girlfriend in September following a messy breakup. She had told him she may be pregnant, then on the 23rd, said she was no longer pregnant. Bahr engaged in a day-long argument via texting and phone calls with the woman and her new boyfriend, Zacheriah Neil Peterson, 21. They agreed to meet at the Depot that night, according to opening statements from attorneys on both sides.

### **The charges against Brandon T. Bahr (with jury decision)**

- First-degree murder (guilty)
- Aggravated assault with a deadly weapon (not guilty)
- Grand theft (guilty)
- Use of a deadly weapon in commission of a felony (not guilty)
- Theft-petit (guilty)

Before they met, Bahr stole an automatic handgun from his mother's boyfriend, stole a bandanna from Wal-Mart (which he used to hide his face) and hid in tall grasses around the Depot until Peterson arrived, according to the prosecution. Peterson and two friends looked for Bahr at the depot around 8:30 p.m. When they found him, Bahr shot Peterson in the chest. On Friday, the jury found Bahr guilty of first-degree murder, grand theft and petit theft. It acquitted him of aggravated assault with a deadly weapon and an enhancement for the use of a deadly weapon in a felony. Bahr is scheduled for sentencing on June 24 at 9 a.m., according to court documents. He could face up to life in prison for first-degree murder, according to a press release from the Ada County prosecutor's office.

## Man arrested in Lewiston indicted by grand jury for murder in Oregon

Lewiston Tribune: Apr. 23- Ralph Bartholdt

A Umatilla tribal member arrested last month in Lewiston after leading federal agents, tribal police and Lewiston officers on a brief foot chase near an elementary school, has been indicted for murder by a federal grand jury in Oregon. Julian Darryl Simpson, 22, faces a first-degree murder charge for the shooting death of Antonio "Tony" Jimenez of Pendleton, Ore., according to U.S. Attorney Gerri Badden. Simpson was indicted last week while being held in the Nez Perce County Jail without bond on an unrelated probation violation in Nez Perce County. A bond of \$100,000 was set this week for charges of possession of a controlled substance stemming from his March arrest in Lewiston. A May 2 preliminary conference is scheduled in Lewiston Magistrate Court. The two local cases may be adjudicated before Simpson is extradited to face the federal charge, Badden said. But sometimes the process is reversed. "The process is, one jurisdiction defers to another," she said. According to the indictment filed in Portland, Ore., Simpson is charged with first-degree murder, possession of a firearm in furtherance of a crime of violence and for being a convicted felon in possession of a firearm. Prosecutors allege Simpson used a .40-caliber Ruger handgun March 19 - four days before his arrest in Lewiston - to shoot and kill Jimenez following a party on the Umatilla Indian Reservation near Pendleton. Another man, Beau Welch, suffered a gunshot wound to the leg. A co-defendant in the federal case, Victor Joseph Contreras, pleaded innocent last week to five felonies stemming from the shooting of Welch, according to the U.S. Attorney's Office. Federal prosecutors have jurisdiction over the case because Simpson and Welch are members of the Confederated Tribes of Umatilla Indian Reservation, where the incident occurred. Simpson was arrested in Lewiston March 23 after police learned through a tip that he was a person of interest in the Pendleton shooting. Lewiston police along with federal and tribal agents had been surveilling a residence on the 1700 block of 12th Avenue in Lewiston, where Simpson was supposed to be staying. Officers followed a vehicle from the residence to the parking lot of Burger King on 21st Street, but Simpson dashed from the vehicle. He was apprehended a short time later hiding in a shed in a residential backyard. Nearby Whitman Elementary School was placed on "soft lockdown" as police searched for a handgun Simpson allegedly tossed as he ran from officers. The firearm was recovered, along with approximately a half ounce of methamphetamine, according to court records. Badden said that U.S. attorneys expect the Lewiston cases to take precedence. "I'm told the state charges will likely be resolved prior to the federal charges," she said.

## Four seek open Idaho Supreme Court seat

Lewiston Tribune: Apr. 24- Kimberlee Kruesi/ AP

BOISE - One of the most important races in the coming May primary election is an open spot on the Idaho Supreme Court, but the little-known position isn't expected to draw voters, despite attracting a number of candidates. Court Chief Justice Jim Jones announced in March that he would not run for a third, six-year term on the state's highest court. The non-partisan vacancy opened the door to four hopefuls seeking the seat. Candidates include Clive Strong, a longtime deputy attorney general; Curt McKenzie, a seven-term Republican state senator; Robyn Brody, an attorney from Rupert; and Idaho Court of Appeals Judge Sergio Gutierrez. Strong has worked in the attorney general's office for more than 30 years, and helped lead one of the state's largest cases regarding water rights adjudication. A key priority for Strong, if elected, would be to restore public confidence in the judicial system. "We see the public turning away from the court because of the costs and time it takes," he said. "(But) the consequence of meditation is that it's private." McKenzie said that a judicial career had been a lifelong dream. He promised to recuse himself from a case that came before the high court if he had somehow been involved with it because of his time at the Idaho Legislature. McKenzie said it was a top priority for him to develop more specialty courts, such as drug or domestic violence courts. Meanwhile, Brody said she would fight for the rights of Idahoans and protect the separation between the judiciary and legislative branches. Even though she came from a small town, Brody cited that she's had experience taking on big cases that involved suing state agencies. Gutierrez, who has served as a judge for more than 20 years, stressed his longtime independence and judicial experience as key factors that make him stand out against the rest of the field. "I was and am the only Latino judge in the state. Because of that, some people see me as a symbol of progress. That is my burden and also my honor," he said. Idaho is currently just one of two states with no Supreme Court justices who are female or people of color. When asked about the importance of diversity, McKenzie and Strong both argued that diversity in education and backgrounds must be taken into account as much as ethnicity and gender for judicial positions. Brody said the question was difficult for her because she was the only one in a pink suit, but she believed that she "had never been about her gender." But Gutierrez argued that diversity is important because the public should be able to see their community on the bench. Idaho bans judicial candidates from directly asking for campaign contributions, in an effort to insulate judges. Instead, justice candidates are only allowed to solicit contributions through a committee. Protecting impartiality on the state supreme court is critical as justices have a heavy hand in reshaping the state for years. However, while the post is important, it has historically not been a major attraction to get voters to the polls. That's largely because of the multiple restrictions candidates have throughout their campaigns. For example, candidates cannot talk about their past or current political party affiliations - even though political party registrations are public records. Candidates will need to secure a majority of the vote in the May 17 election. If not, then the top two candidates will compete in a runoff election in November. The last time a Supreme Court justice race required a runoff was in 1998.

## Let's talk about privacy

Idaho Business Review: Apr. 25- Brad Frazer

Everyone seems to be concerned about privacy these days, and rightly so. There is much talk about identity theft and cell phone hacking and cameras in hotel rooms and naughty celebrity videos and websites like Gawker and TheDirty. All of this relates, generally, to the notion of "privacy," a concept that with the advent of the Internet has taken on multiple layers of complexity. Back in the old days, it was not even completely clear if you had a right to privacy. There were a few statutes and a little bit of case law, but because it was actually kind of hard to "peep" into someone's private life (absent all of today's technology), privacy was a thing about which most courts were not greatly concerned. They were more concerned about keeping the railroads running and protecting the oil barons. But now, your privacy, whether it be a real or merely an imagined right, can be violated in multiple ways. Remember that the word "violated" assumes you have a right to privacy. You may not, and you certainly do not in all circumstances. Even today there is no overarching federal or state law that says you have an absolute right to privacy when you are not in public view. I like to contrast "privacy" with "data security." They are related, but I think they are different legal concepts. "Data security" connotes the ability to stop someone from hacking into the servers at Target and stealing your social security number and address. That is certainly a crime, and a whole body of law has evolved to address such facts. In my view, "privacy" is more akin to your legal standing when someone places an unflattering photo or video of you on the Internet. Or, uses an email address you provided to a website to send you spam. Yes, there are a few laws that deal specifically with "privacy," but they are generally very narrowly tailored to particular facts. For example, the California Online Privacy Protection Act of 2003 requires that websites that collect personally identifiable information have a conspicuous privacy policy. HIPAA, a federal law, deals with the privacy of your personal health information, but not every business is covered by HIPAA. Gramm-Leach-Bliley is another federal privacy law, but it only covers certain financial institutions and related data. COPPA is a federal law that governs how websites directed to children 13 years of age and under must protect the personal information of those children. FERPA is a federal law that protects certain types of public school educational records. Even the seemingly aptly titled federal Privacy Act of 1974 is limited in scope, acting to constrain only federal agencies from disclosure of personal information. None of these come right out and create a statutory right of privacy on all facts. Most states have a so-called "common-law" right of privacy, part of the general family of tort law, but most of those theories are not well suited to protecting simple personal information, like an email address or a photo. Note that even in the recent and much-vaunted Hulk Hogan v. Gawker case, the jury's damages award was based in large part on Hulk's emotional distress, not a particular right of privacy violation. So in general, for today, your ability to protect your privacy is principally a matter of contract law. Yes, you can try in each case to invoke a federal or state privacy law, or a state tort law, but as mentioned, those are all fairly narrowly tailored remedies. This means that when you feel your privacy has been compromised, look to see if you can find a contract between you and the person who committed the unpermitted disclosure. This is why the often-overlooked website privacy policy is so important. Before you commit personal information to a website, read the privacy policy to see what they can do with it. Can they sell it? Can they re-post pictures you upload? Using a contract, if you can find one, is better than trying to rely on a statute or a common-law theory that is likely not fully applicable. Of course, if a hack has occurred, that is a different issue, and remedies for a data breach may also be available. *Brad Frazer is a partner at Hawley Troxell where he practices Internet and intellectual property law. He is a published novelist (look for "Bradlee Frazer" at [www.diversionbooks.com](http://www.diversionbooks.com)), frequent speaker and regular author of Internet content. He may be reached at [bfrazer@hawleytroxell.com](mailto:bfrazer@hawleytroxell.com).*

## Idaho joins long wait list as Senate fails to act on judicial nominees

Idaho State Journal: Apr. 26- Rob Hotakainen

At 82, U.S. District Court Judge Edward Lodge is ready to call it quits, retiring as the longest-serving jurist in Idaho history. He got some good news last week, when President Barack Obama nominated his successor, Judge David Nye of Pocatello, ending a long search that began when Lodge announced his retirement in September 2014. "We all knew that it was going to be a tough slog because Idaho is very conservative as you know, and the president, not so much," said Sen. Jim Risch, R-Idaho. If history is any indication, the next step may be even tougher: getting the U.S. Senate to vote anytime soon on whether to approve Nye for the job. While the Senate remains at loggerheads over how to replace the late Supreme Court Justice Antonin Scalia, that dispute is just the tip of the iceberg when it comes to judicial fights on Capitol Hill. Nye is one of 50 of nominees awaiting a vote. The Senate on Monday approved a new federal judge for Tennessee, but, meanwhile, 85 other vacancies remained, according to the Administrative Office of the U.S. Courts. North Carolina has had one court vacancy since 2005. The growing backlog is causing headaches in federal courthouses across the country, with overloaded caseloads and overworked judges and little relief in sight. "One district nominee has had a hearing this year, and it's April," said Carl Tobias, Williams Professor at the University of Richmond School of Law and a close observer of the Senate's judicial confirmations. "So you can do the math. It's not rocket science. It's just a total shutdown as far as I can tell." Idaho is now one of 34 jurisdictions facing a "judicial emergency," with the number of cases overwhelming the number of judges, according to the Judicial Conference of the United States, a group of judges that advises Congress. "All over the country, you've got senior judges in their 80s, sometimes in their 90s, who are still working because they just don't want to leave the other judges with even more work to do," said Paul Gordon, senior legislative counsel for the liberal advocacy group People For the American Way. "It's a bad situation." Gordon said the current slowdown marks a sharp departure from the norm. With the confirmation Monday of Waverly Crenshaw Jr. as a new judge for Tennessee, the Senate has approved 17 judicial nominations since Republicans took control in 2015. Gordon said that compares to at least 40 circuit and district court nominees who'd been approved by the Democrat-controlled Senate in a similar time period during George W. Bush's presidency. He noted that the number of confirmations last year was the fewest since 1960. Hoping to win a quick vote, Risch and Idaho Republican Sen. Mike Crapo say they've already begun twisting arms with their colleagues, urging them to let Nye leapfrog ahead of some of the more controversial nominees. Both senators say they want the Senate to sign off on Nye before Congress adjourns for the year. "It's very clear that we are in the last quarter of this Congress and so we need to move urgently. ... The queue can get moved around," Crapo said. Risch said he's "cautiously optimistic" that they'll succeed: "You can't move anything in the Senate without 60 votes, and it generally takes negotiations between the two parties. We've already had numerous conversations." With partisan warfare ruling the Senate, Tobias said the Idaho senators face long odds. He said the only hope for quick action will be if Crapo and Risch can convince Iowa Republican Sen. Charles Grassley, chairman of the Senate Judiciary Committee, of "how desperate the Idaho situation is." But he said it will be difficult to convince all senators that Nye deserves an immediate vote when other nominees have waited much longer. "I cannot be very optimistic," Tobias said. "I do think that it could be a very long wait. My best guess is confirmation next spring, depending on the election results. It is very unfair to Idaho judges and litigants." Lodge, who began his judicial career in 1963, agreed to stay on the job after announcing his retirement but reduced his caseload to 75 percent last year. Since then, Idaho has used visiting judges from Washington state, Utah, California, Colorado, Iowa and elsewhere, with 25 to 30 judges from across the country volunteering to help, said Elizabeth "Libby" Smith, clerk of court for the Idaho federal court system. "That is one way we are trying to put a Band-Aid on this process and trying to keep the wheels of justice moving," she said. It's an unpopular choice for litigating attorneys. "Idaho lawyers don't necessarily want visiting judges; they want their judges," said Trudy Hanson Fouser, a Boise trial attorney and president of the Idaho State Bar. She credited U.S. District Judge B. Lynn Winmill, Idaho's only full-time federal judge, for keeping the courts going, adding: "I think most places would just come to a screeching halt." Risch said he and Crapo hope to convince senators that Nye, a district court judge for Idaho's Sixth Judicial District Court since 2007, is a consensus choice who deserves speedy consideration. He said the two senators considered dozens of applicants, looking for the candidate who would satisfy them and the White House. "David Nye has a unique qualification that no other Idahoan has," Risch said. "Three people agree that he should be the judge: the president, Senator Crapo and myself. ... We knew it was going to be like looking for a needle in a haystack." Last month, Vermont Sen. Patrick Leahy, the top Democrat on the Senate Judiciary Committee, complained that the GOP-controlled Senate had all but stopped voting, even on "consensus nominees" who aroused no controversy. He accused Republicans of "listening to the moneyed Washington interest groups over their own constituents." In January, Heritage Action of America, a conservative advocacy group, urged the Senate to block all confirmation votes on federal judges this year, allowing exceptions only for posts that are necessary for national security. The group said the Senate needed to take back its power after Obama earlier used executive orders dealing with gun control and immigration. Dan Holler, vice president for communications and government relations for Heritage Action for America, said that blocking votes is "certainly not ideal" for states such as Idaho but is necessary for Congress to reassert its constitutional authority. "That is not always the cleanest thing to do. But it's incredibly important for the country to get that balance right, even if it's temporarily inconvenient," he said. Meanwhile, as Nye awaits his vote, Risch and Crapo are working to try to bring a third judgeship to their state. Idaho is now one of only three states — North Dakota and Vermont are the others — with two federal district court judges. Risch said Congress would have to approve such a plan, not an easy sell for a small state. "It's big states that have muscle versus small states that don't," he said. Tobias offered his advice: Forget about it. "I think Judge Winmill should get used to having a huge caseload," he said. "It doesn't make any difference. If you can't even fill the present vacancies, how are you going to get a new judgeship authorized?"

## CASA to raise funds for 32 percent hike in cases

Coeur d'Alene Press: Apr. 26

In 2015, Court Appointed Special Advocates, or CASA, served 353 North Idaho children removed from their homes due to abuse, neglect or violence. In just Kootenai County, 223 children were advocated for in court by CASA. Those numbers have increased 32.4 percent this year, and 50 percent of these children are age 5 or younger. "Our CASA advocates are volunteers. The increase in number of children needing a CASA advocate puts a strain on our existing advocates. Historically, one advocate serves an average of three children. Currently, that number is higher. With case numbers on the rise, it is critical that CASA train a substantial number of new advocates to meet the demand," said Lora Whalen, CASA board president. Without adequate funding for training, CASA cannot train enough advocates to meet the caseload demand. CASA then has to triage cases — remove an advocate from one case to another more desperate case, resulting in CASA only "monitoring" a case. So far this year, CASA has had to monitor 9 cases. CASA provides a diverse network of Court Appointed Special Advocates to represent and protect neglected and abused children of North Idaho. The organization is holding its largest fundraiser and awareness event of the year, the Ray of Hope breakfast, from 7-8 a.m. Thursday, April 28, at The Coeur d'Alene Resort. The breakfast is free. "It is our goal that we raise enough funds and recruit enough new advocates so that every child has a CASA advocate to serve as their voice in court," said advocate trainer Diane Shriner. The keynote speaker is CASA advocate Chris Nguyen. "Chris is an exemplary young man. It is very unusual for a young male, still in college, to volunteer so much time to serve children in need in our community. He does a wonderful job fighting for these kiddos. I wish we had more young individuals like him volunteering as CASA advocates. They have so much to offer," said KJ Torgerson, CEO of CASA. Tim Storms, Guinness World Record holder for "lowest note produced by a human" and the "widest vocal range," will be performing at the free breakfast, as well as members of the Northern Dance Academy. They will be performing the dance number "Break the Cycle." CASA's vision is to ensure every child in the five northern counties of Idaho lives in a safe, healthy and nurturing family environment. CASA relies on the contributions from the many generous individuals and corporations of North Idaho. For more information, please contact KJ Torgerson, CEO, at 667-9165. To RSVP for the breakfast, visit [www.NorthIdahoCASA.com](http://www.NorthIdahoCASA.com) or text names of attendees to (208) 771-4274.

## High court backs decision to throw out BAC evidence

Lewiston Tribune: Apr. 27- Ralph Bartholdt

The blood-alcohol concentration of motorist Kyle N. Rios - whom police allege was involved in a fatal car crash in Lewiston two years ago - won't be used in his vehicular manslaughter trial. The ruling was one of two Idaho Supreme Court opinions released Tuesday that upheld earlier 2nd District Court decisions. Nez Perce County Deputy Prosecutor Justin Coleman, who appealed the court's original ruling on Rios, said he was disappointed in the Supreme Court finding. "It's obviously not the decision I wanted," Coleman said. County prosecutors appealed the decision by 2nd District Judge Jeff M. Brudie last year after Brudie ruled to throw out Rios' blood-alcohol concentration results because he said Rios had not signed a consent form and therefore had prohibited police from drawing his blood. Brudie said officers should have secured a warrant prior to getting the blood sample. Rios was charged in December 2013 with leaving the scene of an injury accident and vehicular manslaughter, both felonies, as well as DUI, after a wreck on East Main Street that killed Paul Stuk of Peck. Prosecutors argued that because Rios didn't verbally or physically resist, consent was implied. But defense attorneys alleged the results were obtained through an unlawful search and seizure. The justices unanimously concurred. "This case presents the question of how to evaluate implied consent when the state attempts to obtain actual written consent and the suspect refuses to provide it," Chief Justice Jim Jones wrote in his opinion. Implied consent is justified only when the driver gives his or her initial consent voluntarily and continues to give voluntary consent throughout the testing, Jones wrote. "This court has never stated that verbal or physical resistance was required to withdraw implied consent," Jones wrote. "In fact, we have expressly recognized implied consent may be withdrawn where a suspect refuses to consent." Rios followed police orders to have his blood sampled after declining to sign the consent form, the justice wrote. "Compliance with an officer's orders alone does not renew consent," Jones wrote. "We affirm the District Court's order suppressing the results of the blood-alcohol test." At least one other Nez Perce County case has been on hold pending the Idaho Supreme Court ruling in the Rios case. Dorika Powaukee was charged with vehicular manslaughter following a 2015 accident on the Spalding Bridge that killed Joseph G. Seubert of Cottonwood. Her blood was also allegedly drawn without her permission, according to court records that indicate her blood-alcohol concentration was 0.318 at the time of the crash. Coleman said that despite the high court's decision, he is confident other evidence in the Rios case will win over a jury. "Even without the blood results I'm confident in the evidence," he said. "Since this case, we have worked with local law enforcement to make several changes to their approach on search warrants for blood draws. I'm hopeful we won't have an issue like this again." The state's highest court also affirmed a 2nd District Court conviction Tuesday in a 2013 drug trafficking trial in which Brian N. Pratt was convicted and sentenced to 10 years in prison. The Lewiston man was convicted of two counts of delivering a controlled substance and one count of delivering methamphetamine. He argued in his appeal that a mistrial should have been called during jury selection in his 2013 trial because of a statement a potential juror made about the defendant. The juror, Pratt argued, told attorneys during jury selection that he knew Pratt was a drug dealer. That was grounds for a mistrial, Pratt argued, because the entire panel of prospective jurors heard the statement. Justices, however, said Pratt misrepresented in his appeal what the juror had actually said during jury selection. "(The deputy state appellate public defender) based his argument on misquoting the prospective juror," Justice Daniel Eismann wrote. "He quoted the juror 11 times in his brief and each time ... misquoted him." In addition, Eismann noted Pratt's counsel agreed to the jury panel after the comment was made. "At the conclusion of the (jury selection), defense counsel passed the jury for cause," according to the opinion.

## Tarnished deputy cuts a plea deal then resigns

Lewiston Tribune: Apr. 27- Kerri Sandaine

ASOTIN - Asotin County Deputy Gary Snyder resigned from the sheriff's office Tuesday after entering into a plea agreement on two counts of furnishing alcohol to minors. In exchange for an Alford plea, the 47-year-old law enforcement officer was given a deferred sentence in Asotin County District Court. The misdemeanor charges will be dismissed if he's crime-free for the next 12 months and completes an alcohol and drug education class. Immediately following Snyder's court appearance, Garfield County Prosecutor Matt Newberg filed three charges against another Asotin County sheriff's deputy accused of misconduct. Deputy Jef Polillo, who is on unpaid leave from the sheriff's office, is charged with failure to report child abuse and second-degree rendering criminal assistance, both gross misdemeanors, and third-degree rendering criminal assistance, a misdemeanor. Polillo, 40, is scheduled to appear at 1:30 p.m. May 11 in Asotin County District Court. Both cases are connected to the deputies' friendship with Kendall D. Webster, a Lewiston man accused of sexually assaulting a 15-year-old Pomeroy girl. Webster, 33, is facing multiple charges in Garfield County. During police interviews, Webster allegedly admitted to having sex with the underage teen on two separate occasions, according to an investigative report from the Washington State Patrol. Polillo allegedly failed to report Webster's criminal conduct to authorities. As a law enforcement officer, he is considered a mandatory reporter of abuse and neglect, Newberg said. Polillo is also accused of deleting Webster's incriminating text messages from the girl's phone. He and Webster were partners in U-chip, an electronic device repair business. The third charge stems from an unrelated case. In December, Polillo allegedly assisted a known criminal who had an active arrest warrant, Newberg said. The incident came to light during the state's investigation of the deputy's conduct. If convicted, the gross misdemeanors carry a maximum penalty of one year in jail and a \$5,000 fine. Webster is facing felony charges of third-degree rape of a child, sexual exploitation of a minor and communicating with a minor for immoral purposes. He is scheduled to appear May 19 in Garfield County Superior Court for a possible resolution to the case, Newberg said. The Snyder case dates back to the Fourth of July. He and Webster were hanging out at a barbecue when they reportedly left to purchase beer, vodka and cigarettes at a Clarkston Heights store. The items were given to two teens from Pomeroy, according to the state's report. Snyder's attorney, Luke Baumgarten of Pullman, said his client did not commit the crimes, but decided to enter an Alford plea and accept the deal to guarantee the case will be dismissed. By entering the pleas, Snyder does not admit guilt but acknowledges there is enough evidence to convict him. "He's very happy to have this behind him and move on and hopefully work in law enforcement again someday," Baumgarten said. Newberg said Snyder has no criminal history and the deferred prosecution is appropriate. It spares the young victims from testifying against a deputy in a courtroom. Mandatory resignation was included in the agreement because law enforcement officers are held to a higher standard, he said. Snyder was employed by the sheriff's office for about 11 years. He and Polillo were placed on administrative leave in mid-December.

## Lewiston man gets probation for felony injury to a child

Lewiston Tribune: Apr. 28- Ralph Bartholdt

A Lewiston man who had a relationship with a 14-year-old girl using social media was sentenced Wednesday to five years probation. Prosecutors and defense attorneys agreed with presentence investigators, who recommended probation for Austin Kuhn, 21, because he had no prior criminal record and took responsibility for his actions, according to testimony in Lewiston's 2nd District Court. Kuhn, who was 20 when he entered into the Facebook relationship, was charged with felony enticing a child in November after the 14-year-old's mother found correspondence between her daughter and Kuhn, including an exchange of photographs, according to court records. The Facebook exchange started months earlier, according to court records, and although the pair had no sexual contact, Kuhn allegedly told police he met the juvenile for sex and was inside her home without her parents' consent. The charge was later reduced to felony injury to a child as part of a plea agreement. At Wednesday's hearing, the 14-year-old girl told the court that the experience left her fearful and cautious. "I am sometimes fearful when I am home," she said. "I am more cautious about talking to people online." She wasn't fully aware of what was happening, she told the court, and she didn't know Kuhn was an adult. The girl asked the court for leniency for the defendant. "I don't want him to have a harsh sentence," she said. "I want him to learn, and not do this to anyone else." Second District Judge Jeff M. Brudie called the case unusual because Kuhn has no history of substance abuse, and a clean record. "Rehabilitation is not something I'm looking for in your case," Brudie said. Kuhn's sentence includes a withheld judgement, which means the charges could be dismissed if he does not violate the terms of his probation. If he does violate probation, he could face up to 10 years in prison. Defense attorney Gregory Hurn of Lewiston said the charge and arrest - Kuhn served 31 days in jail - were a wake-up call for his client. "He got the message," Hurn said. Kuhn will also serve 60 days in jail with credit for time served as part of his sentence, and will take part in a work-release program.

## Idaho Supreme Court candidate taps disgraced former lawmaker

Lewiston Tribune: Apr. 28- Kimberlee Kruesi/AP

BOISE - Idaho Supreme Court candidate Curt McKenzie has hired former state Sen. John McGee - who resigned several years ago following highly publicized scandals - to help with his campaign. McKenzie, a Republican senator, said McGee is a longtime friend and is proud to have him part of the team. McGee and his wife are assisting with McKenzie's campaign communications and personally helping him on the campaign trail. McGee quit the Legislature amid sexual harassment allegations in 2012. A female staffer accused the married lawmaker of propositioning her for sex and subjecting her to unwanted sexual advances. The Republican lawmaker stepped down before the Idaho Senate ethics committee could conduct an investigation. He later pleaded guilty to disturbing the peace - a charge Idaho state police said stemmed from the sexual misconduct allegations, and served 39 days in jail. The accusation was preceded by a 2011 Father's Day arrest on drunken driving charges after police pulled him over in a car that didn't belong to him after a night of drinking at a golf tournament in Boise. He pleaded guilty, had his license suspended and was ordered to pay a fine and restitution for damage to the vehicle. After lying low for two years, McGee became chairman of the Downtown Caldwell Organization in southwestern Idaho. The group focuses on revitalizing downtown Caldwell to attract businesses. "As we move forward, (McGee's past) has nothing to do with this," McKenzie said. "I'm glad to call him a friend." Idaho Supreme Court justices are nonpartisan elected positions. Four candidates are currently vying for an open seat after Chief Justice Jim Jones announced he isn't running for a third term: McKenzie, Robyn Brody, Clive Strong and Sergio Gutierrez. Candidates are bound by strict campaign rules to prevent showing political bias. McKenzie's hire has raised eyebrows, but in Idaho's close-knit political world, almost all campaigns are surrounded by well-connected advisers with partisan ties. Brody, an attorney from Rupert, has hired Republican campaign consultant Jason Lehosit to help her first-ever campaign. Lehosit, known for his ability to connect GOP hopefuls with donors, ran into trouble with the law several years back after getting his fourth DUI and violating his parole. Despite the legal tussles, candidates from Idaho's dominant Republican Party have continued to professionally embrace the political operator. Meanwhile, Strong - a longtime deputy attorney general - has hired Melinda Northern to help handle his campaigns communications. Northern helped Superintendent of Public School Instruction Sherri Ybarra win the statewide office after the first-time political candidate decided to run in a crowded four-way race in 2014. The campaign treasurer for Gutierrez, a judge for the Idaho Court of Appeals, did not immediately return requests for comment. Candidates will need to secure a majority of the vote in the May 17 election. If not, then the top two candidates will compete in a runoff election in November

## State Supreme Court Rules on Rangen Appeals

MagicValley.com: Apr. 28- Mychel Matthews

TWIN FALLS • The Idaho Supreme Court has issued rulings to appeals in a massive water curtailment order. In all but one ruling, the court affirmed decisions by Fifth District Court Judge Eric Wildman, tying up loose ends in the Rangen water delivery call. Rangen, a fish hatchery at the head of Billingsley Creek in the Thousand Springs area near Hagerman, filed a water call in 2011, alleging that junior groundwater pumping in the Eastern Snake Plain Aquifer was injuring its water rights, sourced from the Martin-Curren Tunnel. Gary Spackman, director of Idaho Department of Water Resources, then issued a curtailment order that threatened 500 junior water rights. But curtailment was averted after Idaho Ground Water Appropriators, in 2015, built a \$4 million pipeline that delivers 7.8 cubic feet per second from Magic Springs to Rangen's fish hatchery. With the pipeline in place, the curtailment order was considered satisfied, but legal maneuvering continued. Spackman had concluded that the benefits of curtailment diminished significantly if the order extended to pumping east of a volcanic rift zone in the ESPA known as the Great Rift, and mandated that junior groundwater users west of the Great Rift refrain from diverting water from the ESPA, water attorney Travis Thompson said Wednesday. Rangen and IGWA appealed Spackman's decision to the district court and Wildman vacated the use of a trim line at the Great Rift, concluding that the director did not have a legal basis to apply a trim line in this case. The Idaho Supreme Court disagreed, and, in March, reversed Wildman's decision. Included in the water call are the Minidoka County Fire Protection District, Idaho Power, J.R. Simplot Co., MillerCoors LLC, Moss Greenhouses, Valley and Jerome school districts, Amalgamated Sugar Co. and the Southern Idaho Solid Waste District. The water call had the potential to severely damage Idaho's dairy industry. Nine dairy processors — representing about 60 percent of Idaho's dairy processing capacity — are within the 157,000-acre curtailment area. Also affected are the cities of Heyburn, Jerome, Gooding, Burley, Rupert, Shoshone, Hazelton, Declo, Carey, Bliss, Dietrich, Paul, Richfield and Wendell, which banded and became known as the Coalition of Cities. One more ruling is expected soon from the state Supreme Court in the Rangen case.

## Nampa man gets 15 years to life for molesting children

IdahoStatesman.com: Apr. 28

Arion Diaz, 41, was sentenced Thursday for five felonies involving children younger than 16, including lewd conduct, sexual abuse and aiding and abetting lewd conduct. He must serve at least 15 years in prison before becoming eligible for parole, 3rd District Judge Christopher Nye ruled. Nye also ordered Diaz to pay a civil penalty of \$5,000 to each victim. "There is no court in the world that is equipped to right this wrong," Nye said during the sentencing hearing. "All I can do is sentence you as appropriate." Diaz was indicted by a grand jury in July 2015 after investigators alleged he had been sexually abusing six children, ages 8 to 14, at his home in Nampa over a period of several years beginning in October 2010. Police say Diaz used his position of trust to groom and manipulate them into performing sexual acts on him and each other. Police say Diaz also forced some of the victims to watch pornography with him, and would threaten and blackmail them in an effort to keep them from disclosing the abuse to law enforcement. "This is one of the worst cases of child sexual abuse that I've come across during my time as a prosecutor," Canyon County Deputy Prosecutor Erica Kallin said. "Mr. Diaz selfishly stole the innocence of these six young children for his own sexual desires, and they will have to live with those scars for the rest of their lives."

## Burley Man Sentenced to Probation in Sex Abuse Case

MagicValley.com: Apr. 29-Eric Quitugua

BURLEY • A 32-year-old man accused of sexually abusing a 13-year-old girl five years ago entered an Alford plea in Cassia County on Thursday. Kevin Donald Cox, 32, was originally charged with lewd conduct with a child under 16, which is punishable by up to life in prison. But the charge was reduced to felony injury to a child, which can carry a maximum of 10 years in prison. He was also charged with sexual abuse of a minor under 16, but that was dismissed in early April. On Thursday, Magistrate Judge Rick Bollar ordered Cox to two years of probation. Cox will also have to attend domestic violence court, and obey a no contact order that is valid through September. "I would ask that probation be as long as possible," Cassia Prosecutor Doug Abenroth said. The case was turned over to the Cassia County Sheriff's Office from the Rupert Police Department. The 13-year-old girl told police Cox began abusing her in 2011 in another state and that the abuse continued in Burley, court records said. Cox had sexual contact with the girl sometime between Sept. 1 and Sept. 30, 2011, police said. He was first charged in Minidoka County with two counts of lewd conduct with a child under 16 but that case was dismissed. Cassia County opened its own case in August. Cox entered a not guilty plea in November 2015 but changed his mind Thursday. By entering the plea, Cox doesn't outright admit guilt. Rather, the plea means he admits there is enough evidence to convict him of the crime. Dan Brown, attorney for Cox, said his client appreciates the opportunity to take advantage of resources of the domestic violence court and wants to attend required counseling. "The allegations in this case are very serious," Brown said.

## Adler to discuss Supreme Court

Coeur d'Alene: Apr. 29

COEUR d'ALENE — The fourth annual Coeur d'Alene Public Library lecture by David Adler will examine the issues surrounding presidential appointments to the U.S. Supreme Court. "The Supreme Court: Presidential Powers and Political Pressure" will be presented Thursday, May 12, at 7 p.m., in the library Community Room, 702 E. Front Ave. The doors will open for this program at 6 p.m. The free lecture is sponsored by The Coeur d'Alene Press and the Idaho Humanities Council with additional support provided by the Friends of the Library. Adler, president of Alturas Institute, a nonprofit organization created to promote civic education and civil dialogue, has previously lectured at the library on "The Second Amendment: Fundamentals and Myths," in 2015; "The Constitution and Religion: Origins, Challenges and Accommodations," in 2014; "The State of the Presidency: Constitutional and Political Challenges," in 2013; and "Holding Government Accountable," in 2012. Adler has taught courses on the Constitution and the Supreme Court at all three universities in Idaho. He has held the Andrus Professorship at Boise State University and the McClure Professorship at the University of Idaho, where he held a joint appointment in the College of Law and the Department of Political Science. Previously, he was professor of political science and director of the Center for Constitutional Studies at Idaho State University. He remains an adjunct professor of law at the University of Idaho College of Law. A recipient of teaching, civic and writing awards, Adler has published in the leading journals of his field, and has lectured nationally and internationally on the Constitution, presidential power and the Bill of Rights. He has delivered more than 500 public lectures throughout Idaho and writes frequent op-ed pieces for newspapers across the state. The author of more than 100 scholarly articles, essays and book chapters, Adler has published widely on the Constitution and presidential power. His books include the two-volume work, "American Constitutional Law," "The Constitution and the Conduct of American Foreign Policy," "The Presidency and the Law: The Clinton Legacy," "The Constitution and the Termination of Treaties," and the forthcoming book "Debating the War Powers of Congress and the President." His writings have been quoted and cited by federal courts, political scientists, historians and legal scholars, and invoked by both Republicans and Democrats in the legislative and executive branches of the federal government. He has consulted with members of Congress from both parties on a variety of constitutional issues, including impeachment, the war power and treaty termination. A frequent commentator on state and national events, Adler's lectures have aired on C-Span, and he has done interviews with reporters from the New York Times, Washington Times, Washington Post, Wall Street Journal, Los Angeles Times, Newsweek, National Review, The Nation magazine, Mother Jones, Fox News, NPR, NBC, CNN and the BBC. Adler has served as a member of the boards of directors of various academic, corporate and civic organizations. He earned a bachelor's degree from Michigan State University and a doctorate from the University of Utah. This program is made possible by the Idaho Humanities Council, the state-based affiliate of the National Endowment for the Humanities.

## Malek, Macomber debate issues

Coeur d'Alene Press: Apr. 29- Jeff Selle

COEUR d'ALENE — Incumbent Rep. Luke Malek and challenger Art Macomber squared off during a forum Thursday outlining clear differences on the issues they would face if they are elected to represent Idaho's Fourth Legislative District. The forum, hosted by the Kootenai County Reagan Republicans and held at Fedora Pub and Grille, was the first time Malek and Macomber have debated at a forum in this election cycle. The candidates started with opening statements, followed by questions from the audience. Malek, R-Coeur d'Alene, said in his opening statement that he wants to continue creating opportunities for future generations to enjoy. "I am not running because I think my ideas are necessarily better than anyone else's, but I am happy to listen to my constituents and take those ideas and insert them into the dialogue down there," Malek said. "Then I would advocate for them when we agree we have the best idea moving forward." Malek outlined some of his accomplishments since he took office in 2012. Each project, he said, makes Idaho a better place to live. Malek said he is proud to be part of the committee that is charged with ensuring every school in Idaho has access to broadband. He said the Legislature has created a five-year investment plan for education that is in its second year. Malek championed the mental health crisis center in the House of Representatives. He worked with firefighters to improve the delivery of emergency medical care, and worked with other lawmakers to create a four-year computer science degree program through North Idaho College and the University of Idaho. Macomber is a real property attorney who feels he is ready and prepared to become a state lawmaker. He said Idaho's laws can be a thicket that he now has the tools to fix. "I decided last year that I would run against Luke Malek," Macomber told the 60 people who were in attendance. "I think Coeur d'Alene and Idaho can do better than what we've been given." Macomber said he is a big reader, who can read up to 350 words per minute with good comprehension and that has partially prepared him for the Legislature. "I don't think being in the Legislature will be new to me in terms of analyzing and figuring out the law," he said, adding he was instrumental in penning legislation that calls for a constitutional amendment that would clarify the Legislature's authority to veto rules promulgated by state agencies, a practice the courts have already decided falls within their legislative powers. The amendment will be on the general election ballot for voter approval in November. A similar amendment failed to garner a majority vote in 2014. "I think Luke and I do present a pretty clear choice," Macomber said. "But I think during his term, Idaho has missed some opportunities and I am afraid the window for those opportunities is starting to close." When the candidates were each asked why they were running, Malek took the first crack at the question. "Nothing is more important to me than having a good community," he said. "I want my kids and grandkids to have every single opportunity that they could ever want." Macomber said he was fulfilling a promise he made to himself when Malek was first elected. He said he told Malek at that time that Malek reminded him of President Barack Obama. "Because you haven't done anything in your life," Macomber said. "You haven't dug a ditch, you haven't built a building, you haven't built a family, you haven't built a business, you haven't built really much of anything and you have worked for the government your whole life. "I am nervous about your ability to really represent people especially in Coeur d'Alene where they are primarily working people, who need year-round jobs." Then Macomber pointed out a half-dozen public sector union firefighters who are supporting Malek and asked "what about the other guys who are just as young and just as strong and just as capable as these guys? I think we are missing the boat here and so I decided to run because I think we could do better." Malek was given an opportunity to rebut Macomber's statement and said he wanted to set the record straight. "I am not sure what the relevance is to me not having a family," Malek said. "I mean I am a young guy, absolutely, but I have built things in my life. I have worked as a construction worker and built houses right over there in that neighborhood. That's what I did for a living and I shoed horses all the way through high school and college. "That's hard manual labor and if that qualifies me for office then awesome. There you go," Malek said, adding he feels what qualifies him for office is his track record of working collaboratively in Boise to create opportunities for the people of Coeur d'Alene. Macomber fielded a question about giving judges salary increases. He said he is not in favor of that because judges already make enough money and those tax dollars could be put to better use. Idaho has trouble recruiting good qualified candidates for judges, Malek said. He supports keeping the wages high enough to attract and retain good judges. The most pressing issue facing Idaho, according to Malek, is improving the education system. Macomber said his top priority is economic development and eliminating rules that hold the economy back. Malek countered, saying says he believes a strong education system is the best thing Idaho can do to build a foundation for economic development. "You can't do economic development if you don't have investment in education," he said. As far as federal overreach goes, Malek said he would continue to look for "Idaho solutions" to avoid federal intrusions. He also made the point that those federal tax dollars are paid by the people of Idaho too. "I am not running for Congress," Malek said, adding the Legislature should continue to strive for state control and solutions. Macomber said it is a 10th Amendment issue, and disagreed with Malek, saying continued federal spending is just adding to the debt future generations will have to pay for. As for Medicaid expansion to cover 78,000 Idahoans who cannot qualify for the state healthcare exchange, or Medicaid, Malek said he prefers a customized system that would give that population access to healthcare, while requiring them to pay a portion of the cost. "No one is going to expand Medicaid," Malek said. "We need to create an Idaho solution for an Idaho problem." Macomber said he prefers a free market approach to cover the so-called Medicaid gap. "We are losing our window to take market opportunities," Macomber said. "We need to get the market in place here because that is where we get food, water, shelter and every other core thing we need to survive. We need to do that with healthcare too." Malek said he was not sure Macomber answered the question, and added the way to help the 78,000 gap population is to "cover them."



## First-year law on track for Boise in 2017

By Shanon Quinn, Daily News April 22, 2016

University of Idaho College of Law officials plan to ask the state Legislature for more than \$700,000 during next year's session as the college continues to move toward offering a full law program in Boise. School officials would like to begin offering first-year courses in Boise during the fall of 2017. In 2008, the UI began offering classes to third-year law students there, and classes for second-year students started in 2012. According to a memorandum from Dean Mark Adams that was presented to members of the UI faculty senate Tuesday, the College of Law is asking university administration to seek a legislative appropriation of \$732,000 in ongoing funding and \$174,000 in one-time funding for fiscal year 2018. The ongoing funding includes cost of increased travel between Moscow and Boise, Internet connection cost, funding for a law library in Boise and expanded information technology needs, according to the memorandum. If state legislators approve a one-time funding request for FY 2018, the college plans to hire an associate director of admissions to handle campus tours and the like for potential students; a director of academic success whose responsibilities would include advising, academic planning and assisting first-year law students with study strategies; and a faculty member to teach legal writing and research, an intensive first-year course, UI Law Professor Elizabeth Brandt said Wednesday. Other hires would include a faculty member to teach non-legal writing courses; teaching assistants for the legal research and writing course; a faculty assistant; an IT specialist for each campus; and a director of student affairs for the Moscow campus. If state funding is not approved, Brandt said, the program could still be up and running with \$200,000 needed to hire an assistant director of admissions, director of academic success and an instructor for legal writing and research. "Other expenses are for upgrading technology," she said. "They could be funded incrementally." Brandt said while funding is always a question when expanding programs, the primary concern on the UI campus is that the law school's future in Moscow is secure. The question was often repeated when the school first announced its intention to add a first-year program to its Boise campus in late summer 2015. Adams was adamant in 2015 that the law school would not be completely moved to Boise. "It would be a real mistake to do that," he said at the time. "It's a faulty presumption that everybody wants to go to law school in Boise as opposed to Moscow." Brandt said the college's research came up with the same conclusion. According to a 2015 survey of current College of Law students, alumni, prospective students and students accepted to the college who did not attend - known as no matriculating students - the majority favored keeping Moscow the main law school campus with the option of enrolling in Boise. Respondents said Moscow's greatest advantages over Boise are its small town feel, location in the northern part of the state and its connection to the main campus of the University of Idaho. While those surveyed said they favored the option of enrolling in Boise, the fact is the majority of law students choose to remain in Moscow after their first year. "In our existing classes, only about 20-30 percent of students move down to Boise after their first year," Brandt said. "We feel very confident we'll have good demand."

## Inmates coming home: good news, bad news

Idaho Press Tribune April 24, 2016

You have to appreciate Idaho Department of Correction Director Kevin Kempf. If ever there was a job that demanded its holder to be a realist, it's this one, and Kempf couldn't be a better fit. The state's justice system has seen a return of many of its inmates from out of state. The reason for that is simple: more of the ones who have been incarcerated here, particularly for non-violent drug and property offenses, have been released. That has opened up beds for 173 inmates that had been sent out of state so they can return here. Looking at the issue from a strict cost-to-taxpayers perspective, it's a positive. Housing inmates isn't cheap — close to \$50 per day per inmate. That's the cost to incarcerate them in Idaho. Sending them to other states can, and usually does, cost even more. So from a strictly financial point of view, it saves the state money. In our case, Idaho inmates were being housed in Colorado, and IDOC staff were required to travel there a few times per month, staying there for two or three days each time, to ensure the contract was being upheld. On a national level, finding ways to reduce the incarceration rate has been a debate that has heated up, especially as our national debt continues to close in on \$20 trillion. The United States has just 5 percent of the world's population, yet it's home to 25 percent of the world's prison population. About half of those behind bars are there for drug offenses, leading those of a more Libertarian stripe to call for lesser penalties for more minor drug offenses. But that point of view hasn't played itself out in Idaho's lockups. Our state had the eighth-highest incarceration rate in the nation despite its relative low overall crime rate, and adults sentenced to prison for nonviolent crimes in Idaho were serving twice as much time as adults sentenced to prison for nonviolent crimes in other states. So the Legislature passed the Justice Reinvestment Act unanimously with the expectation of lowering incarceration rates to the tune of \$288 million in savings over five years. So the good news is we're lowering our lockup costs. But here's where Kempf's realism comes in — we're putting offenders back on the streets sooner, and drug and property offenders have the highest rates of recidivism. Those released for more violent, serious crimes, as a general rule, tend to be more compliant with the terms of their parole. So your celebration of the cost savings to taxpayers could be tempered rather significantly if one of these people goes on a car window-smashing spree in your neighborhood. Another reform of the legislation was to reform penalties for parole violations. This has decreased parole violators being housed at the prison but has increased the caseload for probation and parole officers. There is also concern about removing discretion from the parole commission based on the circumstances of each case. As Canyon County Sheriff Kieran Donahue and Canyon County commissioners continue to debate the need for a proposed expansion to the county jail, the debate over who should be locked up will continue. Some say the county doesn't need more jail space because it incarcerates too many nonviolent offenders. Others have said limited beds

have required officers to play catch-and-release with dangerous criminals because there's nowhere to house them. Calls for more treatment programs and alternative sentencing programs for drug offenders always seem to increase whenever anyone suggests building a new jail. Based on how the previous three attempts at gaining voter support for that new jail have gone, it's safe to say many in Canyon County are glad to see the reforms that are reducing the number of Idaho prisoners. But they should also realize that those statistics translate to more offenders with high recidivism rates out there on the streets.

## **Moscow man sentenced for rape of minor**

By Samantha Malott, Daily News April 26, 2016

Adrian Hernandez-Nunez was sentenced to a period of retained jurisdiction Monday morning in Latah County 2nd District Court after pleading guilty to raping a then-12-year-old girl in November 2014. The 33-year-old Moscow man was sentenced to a minimum of five years and maximum of 10 years in prison, with retained jurisdiction, by Judge John Stegner. He must also register as a sex offender. Hernandez-Nunez will complete an approximate six-month-long treatment program with the Idaho Department of Corrections. Upon completion he will either be ordered to complete the full prison term or be released on to probation, depending on his performance in the program. He was also fined \$5,000, which will be paid to the victim, \$1,500 in restitution to the Idaho State Police, \$245 in court costs and additional restitution to be determined at a later date. A 10-year-long no contact order was also issued to include the victim, her father and grandparents. Hernandez-Nunez pleaded guilty under a plea agreement in March. Stegner said an additional requirement in the agreement, that Hernandez-Nunez cannot live in Latah County while on probation, will have to be further researched as to its constitutionality. Hernandez-Nunez's co-defense attorney, James Johnson, said Hernandez-Nunez entered into the agreement in "good faith" and will follow through on moving out of the county while on probation, regardless if it is ordered or not. The now 14-year-old victim said during a preliminary hearing in December that she engaged in sexual intercourse with the then 31-year-old man inside his former home. The girl was reported as a runaway and was picked up later that night by police at his house. In a statement read in court Monday on her behalf, the victim wrote she has been damaged in many ways during her life through sexual abuse, and what made the incident different with Hernandez-Nunez was that "it was my final breaking point." "Everyday I look at myself, I feel ruined," she wrote. The victim's father said during the hearing that his daughter spent five months in the hospital following the incident. "He has changed my daughter's life forever. ... She feels dirty and taken advantage of," he said. "(Hernandez-Nunez) is a father himself. What will his daughter think of him when she gets older?"

## **Idaho court affirms ruling throwing out warrantless blood draw**

Spokane Eye on Boise April 26, 2016

Here's a news item from the Associated Press: BOISE, Idaho (AP) — The Idaho Supreme Court has affirmed a northern Idaho judge's decision to toss out blood draw test results in a fatal crash case because police failed to get a search warrant. The court in a decision released Tuesday ruled that Kyle Rios withdrew his implied consent to blood alcohol testing by refusing to sign a consent form. Rios was charged with vehicular manslaughter, leaving the scene of a fatal crash and drunk driving following the Dec. 1, 2013, crash that killed Paul W. Stuk of Peck. The blood draw found that Rios had a blood alcohol content of 0.263 percent, three times the legal limit. Rios has pleaded not guilty to vehicular manslaughter and leaving the scene of a fatal crash. You can read the court's full opinion online here; it's a unanimous opinion, authored by Chief Justice Jim Jones. Here's some background on the case.

## **Criminal justice reform conference set for June 6 in Boise at Concordia Law School; Labrador, Justice officials among speakers**

Spokane Eye on Boise April 26, 2016

An all-day conference on criminal justice reform has been set for June 6 at Concordia University School of Law in Boise, featuring Congressman Raul Labrador, Department of Justice Office of Legal Policy leader Jonathan Wroblewski, and an array of legal scholars, prosecutors, judges and criminal defense attorneys. The conference will "promote dialogue among policy-makers and practitioners to improve the criminal justice system," said Cathy Silak, dean of the law school. The conference is being hosted by the Concordia law school, the U.S. Attorney's Office for the District of Idaho, and the Federal Defender Services of Idaho. It's open to all members of the legal and law enforcement communities. Among the speakers will be U.S. District Judge B. Lynn Winmill, U.S. Attorney for Idaho Wendy Olson; S. Richard Rubin, executive director of the Federal Defender Services of Idaho; and law professors from Concordia, UC Davis, University of Michigan and Boston College Law School. "Those who have devoted their professional careers to the criminal justice system well know that we cannot just prosecute, convict and incarcerate our way to safer, healthier communities," Olson said. "At the federal level, Bureau of Prison costs have skyrocketed since 1980. We must be smart about who we incarcerate and for how long. We must work with all of our community partners to help offenders who have paid their debt to society re-enter our communities to become successful and productive residents. This conference will help Idaho criminal justice system participants identify challenges and explore how best to meet all of these goals." Registration is \$30 including lunch; there's more info online here.

## Brody wants to bring different perspective to Idaho Supreme Court

Spokane Eye on Boise April 26, 2016

Today is the second in my four-part, online series of profiles of the candidates seeking an open seat on the Idaho Supreme Court in the May 17 election; today's profile is of Robyn Brody, a Rupert attorney. Here's the full story: Robyn Brody's law office in downtown Rupert is right next door to the police station and not far from the courthouse and City Hall. "I get a lot of walk-in traffic," she said. It could be someone needing help appealing their unemployment decision, or seeking information on how to get a marriage license. Her law practice stretches from that to water law, includes an array of business clients, major real estate transactions, and representing a local hospital, several community health centers and two school districts. "I've spent my entire career serving people," she said, adding, "I think my rural ties bring a unique perspective." She's among four candidates seeking an open seat on the Idaho Supreme Court – which currently is all-male, and hasn't had a female justice in nearly a decade. "While I've never tried to make gender my issue, I think I would bring a unique perspective to the bench that's missing," she said, "and hopefully act as a catalyst for other women to join the Idaho judiciary." Currently, she noted, just 18 percent of Idaho's judges are women. "Frankly, I think it's time that a woman be back on the bench," Brody declared. "I'd also like to see someone from rural Idaho there." She said, "I speak rural Idaho. The first vehicle I ever drove was my grandfather's tractor." Asked what she thinks of the current court, Brody said, "There's one thing I'd like to be able to sit down with them and talk about, and that is the tenor and demeanor of the court. I think lawyers are frustrated, not so much with the decisions as the tone." It's not uncommon for lawyers arguing before the Idaho Supreme Court to face sharp questioning, and even to be targeted with direct criticism in opinions, particularly from outspoken Justice Daniel Eismann. In some decisions, justices have openly criticized each other or lower-court judges. "I think lawyers feel like some of the opinions have been overly personalized," Brody said. Brody, 46, grew up moving around a lot, because both her parents worked for United Airlines, her dad as a ramp man and her mom in a flight kitchen. The family landed in Denver when she was 12, and she attended the University of Denver on a speech and debate scholarship; by chance, because Spanish, which she'd studied for four years in high school, didn't fit into her schedule, she started studying Russian. Midway through her undergraduate studies, the Berlin wall came down, and a new era opened in international trade and relations. She graduated with a degree in international studies and Russian area studies, and spent a year in St. Petersburg, teaching 10<sup>th</sup> grade English and studying Russian. It was an experience that opened her eyes to a very different system and way of life. "We don't recognize what we have – we take it for granted," she said earnestly. In St. Petersburg, authorities routinely pulled people over and not only demanded ID, but also to know where a person was going, who they were with and why. People were hauled away at gunpoint. The only Western business in the city was a Baskin-Robbins. It was normal to walk along a sidewalk and suddenly come upon a big, deep hole, with no warning. "Nobody thought to put up a barrier to keep somebody from falling in," Brody said. "We take all these things for granted." By contrast, she said, we're all free to walk into any government building and demand to see public documents, and get them. "We don't recognize how powerful that is, and how blessed we are," she said. When she returned from Russia, Brody enrolled in a dual-degree program at the University of Denver to get both a law degree and a master's degree in international management. While in law school, she worked as a Russian translator for companies involved in uranium brokerage, building potato processing plants and more. Eastern Europe was opening to western investment. But her husband, a lawyer and University of Colorado grad, had worked in Idaho and fallen in love with the state; the couple moved to Twin Falls. Brody got her first job at a small but prominent law firm, Hepworth Lezamiz and Hohnhorst. "They were just pre-eminent lawyers and had an amazing practice," she said. "It was a small firm, so from the get-go I had the chance to work on high-quality cases with high-quality opposing counsel. I learned the craft." She said, "From the beginning I was taking depositions and arguing motions. It was an incredible place to be a lawyer." Within three years, she was a partner; she stayed with the firm for 13 years. But by that point, she and her family were living in Rupert and had two little boys; her mother, who had moved to Idaho when her first son was born, had breast cancer. Brody felt she couldn't spend two hours a day commuting any more. "I just needed to be closer to home," she said. "So I made the decision to open up my own firm there in Rupert." Her office is in the historic and restored Wilson Theater Building; she's built a thriving and broad practice over the past six years. Among her recent cases: Closing a \$3.5 million real estate deal for a FedEx cargo facility at the Twin Falls airport. She's never applied for an Idaho district or magistrate court judgeship; she notes that those are very different jobs from the role of a Supreme Court justice, which she said better matches her skill set. "People ask me: Why the Supreme Court? Why not the Supreme Court?" she said. "In my world, I feel like I was made for the job. Maybe in your life you would call it vocation or a calling, whatever word you use, it fits. It fits me." Brody said, "I love thinking about the law, talking about the law." In law school, she wasn't on the mock trial team, she said; she was on the travelling appellate team. "It's what makes my heart. When Chief Justice Jim Jones announced he'd retire after his current term, Brody decided to run for the high court. "An open court seat is such a rare opportunity," she said. "I feel like after 20 years, I've got something to offer." She's been running an active and spirited campaign, traveling all over the state, "literally from Porthill to St. Anthony," she said. She's spoken to Republican groups, Democratic groups, service organizations, "anyone who'll listen," she said. Her reception, she said, has been "amazing – the people of Idaho, they have welcomed me and wanted to talk." Coming from near Twin Falls County, the pilot county for the installation of a major new computerized court management system for the state, Brody has focused on that change more than the other three candidates, calling it the biggest challenge facing Idaho's courts. "We have 44 counties," she said. "We have one that is in the middle of it, and we're going to start on Ada County this summer. It is an enormous task. The staff is limited, the resources are limited. ...

You're asking people to change the way they've been doing it for decades, and we've got to do it in a timely fashion, otherwise the technology that we've paid for will be out of date." She said with the installation in Twin Falls County, things have changed quickly. "For my own practice, just the savings in postage is enormous, the savings in time," she said. "Technology is a powerful, powerful tool, and we have just been too slow to convert." Asked what kind of justice she'd be, Brody, after a pause, says, "Thoughtful, deliberate, even-handed and fair." She said her biggest surprise of the campaign so far has been the lack of information that people have, "Even just the election process itself – understanding that Idaho citizens have the right to vote for our Supreme Court justices," she said. A past president of the Fifth District Bar Association and 2014 recipient of the Idaho State Bar's Professionalism Award, she wrote in a recent campaign flier mailed out to Idaho homes, "I believe in the rights provided by our Constitution as well as due process of law. As your Idaho Supreme Court justice, I promise to always fairly apply the law, never legislative from the bench, provide accountability for taxpayers, and work hard to keep our families John Lezamiz, a retired Twin Falls attorney who worked closely with Brody for a dozen years at his firm, said, "Robyn is very much a stare decisis person." That's the Latin phrase for the doctrine of precedent – to stand by things decided. "She's definitely going to follow precedent. ... She would be somebody who would follow what the law has been, instead of going off into areas of what she would like it to be." He called her "intelligent, smart, hard-working, honest – she's just a very capable gal. ... I can't say enough good things about Robyn."

## **Man sentenced to probation, jail for sex crime**

Ruth Brown Idaho Press Tribune April 27, 2016

CALDWELL — A 43-year-old Caldwell man was sentenced Tuesday to 180 days in jail and seven years of probation for sexually abusing a 16-year-old girl. District Judge George Southworth ordered that Barry Blume, of Caldwell, have an underlying sentence of 10 years in prison with four years fixed and 180 days discretionary jail time that could be imposed if Blume violates his probation. Blume pleaded guilty through an Alford plea in January to sexual battery of a child ages 16 or 17 years old. An Alford plea means the defendant does not admit guilt but acknowledges there is enough evidence for a jury to possibly convict him. One count of lewd conduct with a minor younger than 16 was dismissed in his case. Initially, police accused Blume of having sexual contact with three underage girls. He only pleaded to the assault of one girl. While serving 180 days in Canyon County jail, Blume was granted work release. He will be allowed to leave for work release from 6:30 a.m.-7 p.m. Monday-Friday. Canyon County Deputy Prosecuting Attorney Erica Kallin said in court that while dozens of letters of support were filed with the court on behalf of Blume, sex crimes are not crimes that happen in public. Kallin said Blume's pre-sentence investigation found he had impulsive and narcissistic behavior with a high sex drive. Kallin accused Blume of not taking full responsibility for the crime and denying other allegations. Defense attorney Rob Lewis said his client had stable employment, a wife of 13 years who still supported him, job skills and a stable life, which made him a good candidate for probation rather than prison. With the exception of two very old misdemeanors, Lewis said Blume has no serious criminal history and no issues with drug or alcohol abuse. Kallin argued that it is not uncommon for a sex offender to have no prior criminal record. She compared the situation to the story of "Dr. Jekyll and Mr. Hyde," which references the story of a seemingly normal man with underlying demons. Blume apologized to his victim in court, saying he hoped he could learn to become a better person. "I am so deeply sorry and I accept this solely, and this was not your fault," Blume told the girl in court. Prior to sentencing, Southworth told Blume that sexual abuse will have lifelong effects on victims, and that the girl did not deserve the emotional trauma she has endured. Southworth said that while the defense claims Blume accepted responsibility for his actions, he questioned the validity of that claim. "There's a great deal of doubt whether he took responsibility," Southworth said in court. The judge said Blume previously said things such as he was only offering a back rub to the child, he was asleep or he was ill. Additionally, Blume pleaded guilty through an Alford plea, rather than a standard guilty plea. "Whether or not he admits it now, he did it for his own selfish decisions," the judge said.