

What's worse – getting the flu, or getting sued?

Idaho Business Review: Sept. 12- Jaklyn Wrigley

If the goals for the health care industry could be distilled to a single word, that word would be “quality.” But the manner in which a provider achieves this varies widely. What works for a large system may not be appropriate for a smaller operation, and the best strategy for an ambulatory surgical center may not be a good fit for a skilled nursing facility. Regardless of size or type, a universal component in the quest for quality is the workforce, and many health care employers focus on the wellness of their workforce as a result. Each year, though, a pesky little virus – influenza – tries to derail these efforts. One way to combat the disease that infects up to 20 percent of the population each year? Require a flu shot.

Brace yourselves: Flu season is coming

Influenza, or the flu, is a serious disease that can lead to hospitalization or even death. In the health care industry, this presents a vicious cycle of cause and effect. On the one hand, your infected patients could pass the flu along to your uninfected employees. On the other hand, any employees who are already infected with the flu are at risk of passing it on to your uninfected patients (who are often more susceptible than the general population), which could start the cycle all over again. To break this cycle, health care employers increasingly require employees to receive an annual flu vaccine – the single best way to protect against the flu, according to the Centers for Disease Control. In theory, a flu shot requirement seems like a win-win, with health care providers able to protect both employee and patient populations. But in reality, what appears to be a “no-brainer” step in the quest for quality comes with its own perils. Thus, employers who are interested in mandating flu shots (or that already do) should consider a variety of factors – and quickly. While “flu season” peaks from December to February, it actually begins in October, which is just a few short months away. Legal considerations for every health care employer The health care industry is no stranger to the myriad compliance issues governed by state and federal laws. Mandatory flu shots are no exception. On the federal level, you must pay attention to the following non-exhaustive list: the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), the Occupational Safety and Health Act (OSHA), Title VII of the Civil Rights Act of 1964 (Title VII), the Health Insurance Portability and Accountability Act (HIPAA) and Medicare/Medicaid regulations. Additionally, several nurses’ unions have come out in opposition of mandatory flu vaccines. This may result in additional headaches under the National Labor Relations Act if your workforce is unionized (or even if it is not). Fortunately, at least for now, the National Labor Relations Board has not found that mandatory flu shot policies are unlawful. There are also legal considerations on the state level that apply to a health care provider’s patients, workers or both. Numerous states require a provider to assess the status of immunizations, to offer or even require immunization, or to require workers to wear surgical masks if not vaccinated. Not to mention, workers’ compensation requirements and state privacy laws must also be on your radar. Practical considerations for every health care employer If you are going to require flu shots, you should first implement a policy that specifies certain details: Who is subject to the policy? In the health care industry, the “who” can be quite extensive (all employees with direct patient access, volunteers, administrative staff, vendors, etc.). Moreover, this decision must be made with a variety of factors in mind, such as medical staff bylaws, physician contracts and the impact on a unionized workforce. Can an employee become exempt from the policy? No policy is complete without an exemption process. An employer will need to determine the types of exemptions it will offer (medical, religious, veganism, etc.), how an employee may request one and whether the request must be made by a certain date. You will also need to decide the types of accommodations you will offer if you grant the request. Common accommodations include requiring surgical masks at all times (or just around patients), providing paid or unpaid time off until the conclusion of flu season and transferring a worker to a different position or facility. How will the policy be enforced? Some employers may be inclined to take a hardline stance, threatening termination for noncompliance. Others may prefer to discipline in accordance with an existing progressive discipline policy. Others still may choose to suspend the employee for the remainder of flu season. Regardless of the choice made, you should always enforce the policy consistently so as to avoid running afoul of applicable state and federal laws. You will also need to decide how to obtain proof of compliance, such as requiring a vaccination record from the employee’s personal health care provider or administering the vaccinations to the employee yourself and whether you intend to pay or reimburse for the vaccine. It may also be prudent for any policy to provide information about the virus, the vaccine and why the vaccine is being required. Finally, you should have all subject employees sign and date the policy, evidencing they received, read and understood its contents. Almost as critical as the policy is the attendant training. You must thoroughly train supervisors who will be in line to receive a complaint or accommodation request. These frontline supervisors should be instructed to bring all inquiries to the attention of human resources (which should also be specified in the policy). Repeat this training often, and ensure new supervisors are trained at hire or promotion. You have options It may be that, upon consideration of all the above, you decide that a mandatory policy is too forceful. You are not foreclosed from engaging in a “strongly encouraged” approach in which you could use incentives like gift cards or bonuses instead of mandates. But even this approach comes with certain pitfalls, and you should obtain a blessing from legal counsel before implementing a voluntary or quasi-mandatory policy. With all the moving parts, it is critical to carefully evaluate what is important to your operation, your strategy in offering quality care and the corresponding legal issues. Reward is never without risk – mandatory flu shot policies are no exception. *Jaklyn Wrigley is an associate in the Gulfport, Mississippi office of national labor and employment law firm Fisher Phillips. She represents employers in state and federal courts, as well as claims pending with state and federal agencies, including the Equal Employment Opportunity Commission.*

Family of missing Idaho boy sues its ex-private investigator

Idaho State Journal: Sept. 12

IDAHO FALLS (AP) — Relatives of a 2-year-old reported missing from an Idaho campground in 2015 are suing the private investigator they hired to help find the boy. The parents and grandfather of DeOrr Kunz Jr. sued Klein Investigations and Consulting Tuesday in Bonneville County. KIFI-TV reports that the lawsuit alleges Philip Klein breached his contract by failing to share information. It also claims he made false statements about the boy’s parents Jessica Mitchell and Vernal Kunz, casting them in a bad light. Philip Klein said Friday that his firm had not yet received the suit and declined to comment on pending litigation. The parents were named suspects by the Lemhi County sheriff, but no charges have been filed. No trace of the boy has been found since his parents reported him missing July 10, 2015, from Timber Creek Campground near Leadore. The family fired the firm in March.

Law leaders voted in for 2016

Idaho Business Review: Sept. 12- Jeanne Huff

The votes have been tallied and leaders can now be named.

For the fourth year, *Idaho Business Review* is recognizing Leaders in Law, nominated and decided by their peers. Dozens took part in the process, both in the number of applicants as well as in the number of selection committee members, former honorees themselves. They took their jobs seriously. "You need to be a leader, not just have the potential to be one three or five or 10 years down the road," said Murray Feldman, partner at Holland and Hart and a 2014 honoree. "There are no bright line rules. But to me, anointing someone as a leader in law, even in the most basic category, who has only practiced for one year, is just premature and not warranted. In two years, it may be a no-brainer. But if something is to be of value than it still needs to be earned," he said, "even in this age of Twitter and instant everything." Those who did make the grade — 21 — wowed the judges. "Very impressive," said Anna Eberlin, an associate attorney at Holland and Hart and 2015 honoree. She cited examples of leadership and volunteer work in her batch of nominees, which she said "are amazing." An awards reception is slated for 5:30 to 8:30 p.m. Nov. 17 in the Idaho Room in the Eighth and Main building in downtown Boise. A magazine featuring the 2016 Leaders in Law will be published with the *Idaho Business Review* Nov. 18. The University of Idaho is the presenting sponsor. Look for more information about the event, including ticket information, that will be posted to the website at idahobusinessreview.com.

2016 Leaders in Law

Thomas J. Angstman, Partner, Angstman Johnson PLLC
A. Dean Bennett, Partner, Holland & Hart LLP
Michael Bixby, Educator, College of Business and Economics, Boise State University
Joe Borton, Partner, Borton Lakey Law & Policy
Matthew Bradshaw, Up & Coming Lawyer, Holland & Hart LLP
Bret Busaker, Partner, Holland & Hart LLP
Merlyn W. Clark, Partner, Hawley Troxell Ennis & Hawley
Bradlee R. Frazer, Partner, Hawley Troxell Ennis & Hawley
Gabriel Hamilton, Associate, Holland & Hart LLP
Jordan Heller, In-house Counsel, St. Luke's Health System
Julia Hilton, In-house Counsel, Idaho Power
Pam Howland, Partner, Idaho Employment Lawyers PLLC
Neil D. McFeeley, Partner, Eberle, Berlin, Kading, Turnbow & McKlveen, Chtd.
Krista McIntyre, Partner, Stoel Rives LLP
Christine E. Nicholas, Partner, Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
Allison Parker, Associate, Hawley Troxell Ennis & Hawley
Andrea J. Rosholt, Up & Coming Lawyer, Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
Norman Semanko, In-house Counsel, Idaho Water Users Association, Inc.
Timothy Tyree, Partner, Hawley Troxell Ennis & Hawley
Brian L. Webb, Sole Practitioner, Brian Webb Legal
Linda Copple Trout, Lifetime Achievement Award, Idaho Supreme Court

Oscar winner wants court to protect Bergdahl interview tapes

Idaho Statesman.com: Sept. 12- Associated Press

LOS ANGELES A lawyer for an Oscar-winning screenwriter says a judge should block a military effort to get hours of interviews he recorded with Army Sgt. Bowe Bergdahl. A judge in Los Angeles federal court took the matter under submission Monday after a government lawyer argued the case belongs in military court. Screenwriter and producer Mark Boal has invoked a reporter's privilege to protect 25 hours of recordings of Bergdahl discussing abandoning his post in Afghanistan in 2009 and being held in enemy captivity five years. Boal's lawyer says it's unprecedented for a military prosecutor to subpoena a civilian reporter, and a federal judge should block any subpoena. A lawyer for the government says Boal can challenge a subpoena in military courts and ultimately return to federal court if those efforts fail.

Who are the real killers? Lawyer says FBI shows 'absolute disinterest' in pursuing Gooding County murder investigation

MagicValley.com: Sept. 14- Alex Riggins

GOODING — A Gooding man initially charged with first-degree murder was sentenced Tuesday to five to 10 years in prison after pleading guilty to aiding and abetting voluntary manslaughter, but, his attorney told a judge, it appears the FBI is no longer working to catch the real killers. Marcelo Hernandez-Blanco, 36, was charged last May with the murder of Leopoldo "Polo" Cilio-Martinez, his friend and former roommate. But prosecutors in July amended the charge to aiding and abetting voluntary manslaughter, and Hernandez-Blanco admitted to helping dispose of Cilio-Martinez's body and van. Elko County sheriff's deputies found Cilio-Martinez's body Feb. 2, 2014, in the desert west of Jackpot. An autopsy revealed he was shot twice in the head and twice in the right shoulder with a .25-caliber gun. The Elko County Coroner determined the body was dumped about eight to 12 hours after his death. Detectives in Gooding County and special agents from the FBI's Boise field office later linked Hernandez-Blanco to the killing. But Hernandez-Blanco's public defender, Brad Calbo, laid out in court Tuesday the extent of his client's involvement. "Marcelo is responsible for moving the already dead body of 'Polo,'" Calbo told District Judge John Butler. "Marcelo is responsible for disposing of 'Polo's' van after the killing." But, as Calbo told the court at the beginning of his sentencing argument, "there was literally nothing Marcelo could have done to prevent the death of Leopoldo Cilio-Martinez." "Marcelo was not present when 'Polo' was killed," Calbo told Butler. "Marcelo had nothing to do with 'Polo's' death. At the point that Marcelo was brought into this killing, this unlawful killing of 'Polo,' it was over. There was no stopping it." But Hernandez-Blanco's plea to the lesser charge means the person or people who killed Cilio-Martinez are still free, and Calbo revealed Tuesday the FBI has not, and might never, follow up with Hernandez-Blanco about what he knows. In a plea deal signed in July, Hernandez-Blanco promised to give a full-disclosure interview with law enforcement and submit to a polygraph test. But two months after that deal was signed, neither has happened. "Marcelo was to be afforded the opportunity and ability to continue his cooperation with law enforcement," Calbo told the court. "He has been willing, ready and able to do that. He is still willing, ready and able to do that." But it became apparent soon after the deal was signed, Calbo said, that the FBI "wasn't interested or wasn't going to move forward quickly." "Within a week of his plea, I was informed that there would very likely be no polygraph, there would very likely be no full-disclosure interview, that he would very likely not be afforded the opportunity," Calbo said. "And I think there's some disagreement whether the Federal Bureau of Investigation is even interested in furthering this case. My very strong impression is that they are not. I hope that's not true." Gooding County Prosecutor Laverne Shull took over the prosecution of the case only recently after his chief deputy, Trevor Misseldine, left for a job in the Twin Falls County Prosecutor's office. Shull seemed unsure about whether the FBI planned to conduct the interview and polygraph test, saying only that the agent working the case is out of the country until Nov. 11. But Calbo did not mince words in expressing his belief that the FBI has no plans to pursue the case. "I believe that Mr. Misseldine tried very, very hard to set up the polygraph and the interview, and afford Marcelo the opportunity to continue his cooperation, but more importantly, to bring the people who are responsible for this killing to justice," Calbo said. "I know for a fact that Trevor tried to do that, and I know for a fact that he ran into a brick wall of disinterest. Absolute disinterest." As Calbo explained it, the interview and polygraph test not only would have helped investigators learn who the real killers were, but they also would have helped Hernandez-Blanco, a Mexican resident living here illegally, earn a more lenient deal, including possibly a visa to stay in the U.S. Instead, Calbo could only request that Butler sentence his client to a seven-year prison term with two years minimum to serve, acknowledging also that Hernandez-Blanco will be deported as soon as he is released from prison. Shull asked that he be sentenced to 15 years with a five-year minimum term. The judge, citing a lack of clarity as to what really happened — he too was expecting to have Hernandez-Blanco's sworn full-disclosure interview — imposed a sentence of five to ten years and a \$2,000 fine. Hernandez-Blanco has credit for 493 days in custody, meaning he'll be eligible for parole in about 3 ½ years. Butler said part of the reason for imposing the five-year minimum sentence was to ensure he's still in the country if charges ever are filed against others in Cilio-Martinez's death. "It's not really clear whether further charges will be filed, but certainly if such charges are filed, the testimony of the defendant here would be essential in the prosecution of that case," Butler said. "And given the fact that the defendant is subject to deportation, and that is a strong likelihood, there is a question as to whether the defendant would be available to law enforcement in the future." As for Hernandez-Blanco, he apologized to the judge and said he felt sorry for everything. "I know I deserve this (punishment)," Hernandez-Blanco told the court. "I'm sorry, and I ask forgiveness for everything that's happened."

AG: Idaho YMCA violated charitable trust laws

No charges will be filed, recommendations issued instead

Lewiston Tribune: Sept. 15- Kimberlee Kruesi/ AP

BOISE - Idaho's top legal officer says a YMCA chapter in Twin Falls has violated the state's charitable trust laws, but no charges will be filed. Instead, Attorney General Lawrence Wasden announced Wednesday his office would be issuing five recommendations to the YMCA to ensure better record keeping and contribution monitoring. "This is an important asset to the community and the recommendations I've made are designed to make sure this organization can continue making a positive impact on children and families far into the future," Wasden said in a prepared statement. Wasden's office launched an investigation into the YMCA chapter in June amid allegations that then-CEO Gary Ettenger had misappropriated more than \$1 million in restricted donations between 2011 and 2016. Allegations included that the former CEO had used donations designated for projects, such as an indoor water park, to cover the shortfall in the YMCA's operating budget. A February assessment conducted by the national YMCA showed that the nonprofit organization's local board asked for help when it realized Ettenger was providing false financial information. Ettenger stepped down in March. Wasden's report did not find that donations were used for private gain. The Twin Falls YMCA office did not immediately return a request for comment. The board has agreed to notify the attorney general's office of any missing assets that are reported by the financial professionals currently sorting through the organization's financial records.

Utah man sent to prison after rape charge changed to felony injury to a child

Lewiston Tribune: Sept. 14- Ralph Bartholdt

A Sunset, Utah, man accepted a plea agreement Tuesday that reduced charges of rape and lewd conduct with a minor to one count of felony injury to a child. The plea agreement allows Nicolis T. Barnes, 40, to be placed on supervised probation for seven years and takes into account the 13 months he has already been incarcerated while waiting for a trial. Second District Judge Jay P. Gaskill sentenced Barnes to between two and seven years in prison, suspended the sentence and placed Barnes on probation after both the defense attorney and the Nez Perce County Prosecutor's Office asked the judge to follow their sentencing recommendation. Barnes, who is alleged to have had involuntary sex with a 13-year-old girl, was in prison in Utah serving time for a felony DUI when he was indicted by a Nez Perce County grand jury in 2014 for the reported 2011 incident. Nez Perce County Deputy Prosecutor April Smith said the case was delayed as prosecutors waited for Barnes to serve his Utah sentence and arranged to have him transported to face the Idaho charges. Since arriving at the county jail more than a year ago, Barnes went through two attorney changes before an agreement was hammered out. "After considering the evidence and discussing the case with the victim, we felt having him plead guilty to injury to child and having him be under supervision for seven years was the best outcome," Smith said. Gaskill ordered Barnes to pay a \$5,000 civil penalty to the victim, and kept an order prohibiting contact between Barnes and the victim in place for the duration of the sentence. Barnes apologized to the victim and her family, who attended the Tuesday hearing in Lewiston, as well as the attorneys and the judge. "I apologize for all the problems I've caused," he said. Barnes' nephew, Taylor Q. Barnes, 20, is also charged for aiding and abetting the same crimes. A status conference in his case is scheduled for Sept. 22 in Lewiston's 2nd District Court. The original charges against Barnes were punishable by a maximum sentence of up to life in prison and a \$50,000 fine. Barnes told the court that he will seek to have his supervision transferred to Utah where his family lives, but that will require the permission from the Idaho Bureau of Probation and Parole.

Public defenders make their case for raises

Idaho County still in flux but Lewis and Clearwater counties approve contracts

Lewiston Tribune: Sept. 14- Kathy Hedberg

GRANGEVILLE - The Idaho County commissioners are working to develop a new public defender contract as Lewis and Clearwater counties have finalized agreements with their attorneys and put new pay structures in place. The Idaho County commissioners met Tuesday with Scott and Vicki Olds of Grangeville, who are the current public defenders, but failed to come to an agreement on a base salary or compensation for legal work that exceeds the regular contract. All Idaho counties are required to reform their public defender agreements to ensure all indigent criminal defendants receive adequate legal representation. New regulations, which have not yet been finalized, are the result of a lawsuit filed against the state in 2015 by the American Civil Liberties Union. Idaho County's existing public defender contract with the Oldses is for \$90,000 per year. A proposal has been made to bump that up another \$10,000, with an additional amount of \$4,900 for cases that require extra time. Scott Olds asked the commissioners to consider paying public defenders the additional amount whether or not they worked extra hours. Guaranteeing that sum, Olds said, would act as an incentive for attorneys to put in additional time on a case if it was needed but would also discourage them from working more hours than necessary just to collect more money. Commissioner Skip Brandt balked at that idea, saying if the \$4,900 was guaranteed, it would be the same as adding it to the base salary. The Oldses have been the public defenders in Idaho County for two years handled about 300 cases from October 2014 to October 2015. The matter was left unresolved Tuesday, but the subject will be discussed again at the commissioners' meeting next week. Elsewhere in the region, Paige Nolta of Lewiston signed a public defender agreement with Lewis County for a base salary of \$62,004 a year. The current contract is for \$50,004 a year. Cases requiring additional time from the usual contract will be billed at a rate of \$85 an hour. The county is also remodeling a vacant office space next to the sheriff's office where Nolta, who will be commuting from Lewiston, can work. Lewis county has applied for a \$25,000 grant, Commission Chairman Greg Johnson said, that would be set aside for a conflict public defense attorney when needed and to help with the office remodeling. Johnson said the public defender's office has handled an average of about 300 cases a year, including felonies, misdemeanors and child protective cases. Clearwater County has signed an agreement for felony public defender work with Charles E. Kovis of Moscow at a rate of \$5,500 a month for up to 80 hours and \$85 an hour after that. William J. Fitzgerald of Lewiston will handle the public defender misdemeanor cases for the same terms, Clearwater County Commission Chairman Don Ebert said. Those amounts are an increase from \$5,000 a month this year. The county also has retained Alison Brandt for \$3,500 a month for child protective and conflict cases, Ebert said. That is the same amount budgeted for the current fiscal year. The caseload for the Clearwater County public defender's office is about 375 cases a year. Another 54 cases are handled by the conflict attorney, according to the county clerk's office. Clearwater County is supplying the attorneys \$500 a month for increased reporting requirements that result from the public defender reform. It has also applied for a \$25,000 grant to help with some of those expenses, Ebert said.

Idaho Supreme Court debate set to air on statewide TV Oct. 28

Spokane Eye on Review September 15, 2016

Here's a news release from Idaho Public Television: The Idaho Debates will host a debate between the two candidates for the Idaho Supreme Court on Friday, October 28 at 8:00 p.m. MT. The debate will air on Idaho Public Television at 8:00 p.m. MT/PT. The candidates for the Idaho Supreme Court are Robyn Brody and Curt McKenzie; the position is nonpartisan. During the debate, candidates will answer questions from a panel of reporters selected by the Idaho Press Club. It will be the only debate in the series this fall, due to late or insufficient submissions from campaigns in other races. Idaho Public Television's Idaho Reports, which airs Fridays at 8:00 p.m., is working on plans to feature other candidates and races in programs this fall. The Idaho Debates is a partnership of the Idaho Press Club, the League of Women Voters of Idaho and Idaho Public Television, along with additional partners and sponsors. The consortium has hosted political debates in Idaho for the past three decades. As the president of the Idaho Press Club, and a regular on Idaho Reports, I'm disappointed that we won't be hosting formal debates in the other races as well – the Senate and two U.S. House races. But I'm also looking forward to the Idaho Reports programs, which, like the Idaho Debates, air statewide on Idaho Public TV. And I'm expecting the Supreme Court debate to be a good one. An Idaho Politics Weekly poll this week suggested that 61 percent of Idahoans still haven't made up their minds on that race, and among those who have, the race is close. The debate will be broadcast live in the Mountain time zone, and tape-delayed one hour to air at the same time in the Pacific time zone. It should be worth tuning in.

Suspects in shoot-out that injured girl set for trial

Ruth Brown Idaho Press Tribune Sept. 15, 2016

CALDWELL — Two men involved in a shoot-out that resulted in the unintentional shooting of a 10-year-old girl near the God and Country Festival now have their trial dates scheduled. The girl was shot June 29 when spectators were waiting for the fireworks show from the nearby God and Country Festival to begin. Shots were fired at the Walmart parking lot, near the northeast corner of the Idaho Center Chevron at 5950 E. Franklin Road, when the girl was struck in the shoulder. Police say the shooting was gang-related, and 19-year-old Mario Garza and 21-year-old Ezri Garcia were allegedly involved. The men appeared before District Judge George Southworth on Tuesday. Between the two suspects, they face more than 50 charges, and both could potentially see life in prison if convicted. The altercation began, according to police, when Garza reached into his waistband for a pistol and used it to hit Garcia in the head. Garcia then pulled out a gun, and the two men started shooting at each other. According to the probable cause affidavit, the girl was "standing up twirling around in the grass area" when a bullet hit her in the right shoulder. Neither Garza nor Garcia was shot during the fight. Garza's trial is set to begin at 9 a.m. Oct. 4. Garcia's trial is set to begin at 9 a.m. Jan. 10. Garza is charged with one count of aggravated battery, felony riot, 10 counts of aggravated assault by means likely to cause great bodily harm, 10 enhancements for use of a deadly weapon, and two enhancements for promoting criminal gang activity in the commission of a felony. Garcia is charged with aggravated battery, felony riot, one count of aggravated assault without the intent to kill, 10 counts of aggravated assault by means likely to cause great bodily harm, 11 enhancements for use of a deadly weapon, and two enhancements for promoting criminal gang activity in the commission of a felony. Garcia and Garza remain in custody at the Canyon County jail.

What would 'Honest Abe' do?

By BRYAN CLARK Post Register Sept. 16, 2016

Boise attorney David Leroy, who in the 1980s served first as Idaho attorney general and later as lieutenant governor, has announced the formation of a new institute dedicated to bringing the thought of Abraham Lincoln to modern politics. "I am modestly distressed, as are many Americans, about the lack of clear political thinking about issues that face the country today," Leroy said in an interview. Leroy is calling the new venture the Idaho Lincoln Institute. Leroy, a Republican, said he thinks Lincoln's thought will be salient because the former president, who won the Civil War and abolished slavery, is revered by members of both parties. "I think it's particularly relevant that politicians of both parties tend to wrap themselves in Lincoln," he said. Leroy said he feels modern politicians, particularly the two major parties' presidential candidates, "rarely answer questions or take clear positions." "There is far too much name-calling and too little focus on critical issues," he said. Leroy has been engaged in the study of Lincoln for about 25 years. He has assembled a set of quotations that Lincoln gave throughout his career that he thinks speak to modern issues such as immigration, federal lands and race relations. "His logic and virtue do show through on these issues," he said. Leroy said the institute hasn't yet decided how it will intervene in politics, but he plans to begin with public speeches and educational efforts. "I hope that it's a novel enough approach ... to get some dialog going in Idaho and perhaps in the rest of the nation," he said. Information on the institute can be found at looktolincoln.org.

Idaho Supreme Court hopefuls don't track their pro bono work

Spokane Eye on Review Sept. 20, 2016

Here's the full story from AP reporter Kimberlee Kruesi: BOISE, Idaho (AP) — When Chief Justice Jim Jones steps down from the Idaho Supreme Court come January, he'll leave a legacy as one of the state's biggest champions of promoting some free or reduced-rate work by lawyers throughout Idaho's judicial system. "It's part of the Idaho rules of professional conduct, it says lawyers should aspire to do at least 50 hours (of pro bono work) in a year," said Jones, who helped form Idaho's Pro Bono Commission in 2008. "A lot of lawyers do, but an even greater number of lawyers don't." The two candidates hoping to replace Jones also support promoting pro bono work. However, neither Rupert attorney Robyn Brody nor state GOP Sen. Curt McKenzie say they track how many hours of pro bono work they provide. Both candidates say they believe they clock more than the suggested 50 hours of free or reduced-fee legal services each year. Furthermore, neither candidate has ever reported providing legal services to the Idaho Volunteer Lawyers Program. The group recruits attorneys to volunteer on cases while also tracking how much pro bono work is being conducted across the state. As of 2015, the program reported more than 800 Idaho attorneys had given more than 16,000 hours of volunteer attorney assistance. Brody signed a pledge to meet the 50-hour annual goal in 2013, but she has not reported meeting it, according to the volunteer program. Pro bono refers to work done by attorneys on a volunteer basis for free or reduced rates. Idaho doesn't require attorneys to track the number of pro bono hours they provide each year, but they are heavily encouraged to do so. Brody says she accepted one case from the program in 2011 involving an adult who was mentally disabled. Brody added that she volunteers as a mentor for the Idaho Trial Lawyers Association and provides reduced rates as a mediator to a free legal clinic in Twin Falls. "It's not about taking a pledge, it's about much more than that," Brody said. "And that's the wonderful thing about a law degree. I can't save a life, but I sure can change it." McKenzie also estimated that he volunteers more than 50 hours of pro bono work a year. He stressed that he puts more emphasis on living a life of public service as a way to meet the pro bono obligation. McKenzie pointed to his service as a seven-term state senator and volunteering his legal expertise to charities and community boards. "I think it's important for justices to take a keen interest in the administration and perception of justice throughout the state," McKenzie said, adding that he wouldn't focus primarily on promoting pro bono work as justice but he would support more of it. Jones says judges can help create pro bono programs, ensure that legal service programs include standards for pro bono efforts and provide key leadership in making sure the state stays diligent in meeting the need for low-income clients. For example, during his two terms on the state's highest court, Jones helped change the rules to allow attorneys to provide free legal aid during only certain parts of a legal case rather than forcing attorneys to stay with a case in its entirety — which can be taxing to new attorneys and time-consuming. Jones also helped form policy suggestions for private and public law firms hoping to adopt standards involving pro bono work during his time overseeing the Pro Bono Commission. Come January, Jones will step down from his seat as chief justice, where he will be replaced on the Pro Bono Commission by former Supreme Court candidate and Idaho Court of Appeals Judge Sergio Gutierrez. "There are so many lawyers who have a good heart and they have been involved in the pro bono effort," he said. "I think they get a little burned out and we have to continue regenerating energy and enthusiasm."

Judge to rule on whether Tapp appeal can move forward

By BRYAN CLARK Post Register Sept. 20, 2016

Bonneville County prosecutors made their case Tuesday that an appeal filed on behalf of Chris Tapp, currently serving 30 years to life for the 1996 murder of Angie Dodge, ought to be thrown out of court. Tapp's appeal (technically called a "motion for post-conviction relief") is based on two primary claims. The first is that prosecutors never turned over video of three polygraph sessions. The second is that those videos tend to show Tapp isn't guilty of the crime to which he confessed. The courtroom was so packed that many people were turned away. The hearing wasn't focused on whether Tapp is innocent. Instead, it focused on whether he ought to be allowed to argue that prosecutors failed to disclose exculpatory evidence. A decision on the issue is pending. Deputy Prosecutor John Dewey argued to Judge Alan Stephens that Tapp's attorneys hadn't provided sufficient evidence to show that prosecutors hadn't turned over the videos. And he argued the issue was being raised too late — original defense files hadn't been preserved, memories had faded, and so Stephens shouldn't allow the defense to make the argument that the tapes weren't turned over. It's likely that the tapes were "in a defense file somewhere, in the original defense file," he said. Public Defender John Thomas argued that court discovery records show prosecutors released tapes of several interrogations and polygraph sessions to Tapp's original lawyers, but prosecutors hadn't turned over three key videos of polygraph sessions conducted in January 1997 by former Det. Steve Finn. "(Tapp) was coerced and tricked and manipulated," Thomas said. Thomas argued the court shouldn't get bogged down in procedural matters because the life of an innocent man is on the line. "You have the power to correct a horrible injustice and free an innocent man," Thomas told Stephens. "... Let's do justice here." A slew of outside experts, including one commissioned by prosecutors, have found that the polygraphs were performed improperly, even unethically, and that

key details of the murder that later showed up in Tapp's confession were fed to him by police during the sessions. They also found that the polygraphs were psychologically coercive, particularly when paired with repeated threats that 20-year-old Tapp could face the gas chamber and offers of immunity in return for implicating others in the crime. Experts who believe Tapp is innocent have pointed out that former Det. Jared Fuhrman told Tapp that many people, including police officers such as himself, totally repress memories of disturbing and violent events. The experts argue that officers tried to convince Tapp that his memory was unreliable, but the polygraph could ferret out truths that his mind had suppressed. Thomas argued that police had used the polygraph to "lead him down a path" that ended in a false confession. Much of the argument focused on a set of affidavits from former police and prosecutors, who made the case that Tapp's lawyers knew about the polygraphs and probably received video of them. Tapp's defense had no similar affidavits to back up the claim that the files hadn't been turned over, basing their case instead on court discovery records. Those records don't show that the three videos were turned over, but Dewey argued that other records and affidavits from those involved in the case at the time suggest the tapes were likely turned over. Dewey said the defense was asking the court to simply guess about whether the files were turned over. "What they want the court to do is speculate," Dewey said. Thomas attacked the affidavits filed by prosecutors, saying they lacked specific details and didn't provide any evidence the files were actually turned over. "That's not real evidence," Thomas said. "That's smoke. That's mirrors." In response to a section of former Sgt. Phil Grimes' affidavit saying that the Idaho Falls Police Department's policy and practice was to log and track evidence carefully, Thomas simply said, "Two words: Kimball Mason." Mason is a former Idaho Falls city prosecutor who became, in his own words, "the poster boy for public corruption." He pleaded guilty in 2007 to stealing two guns (though he admitted stealing 16) from the Idaho Falls Police Department's evidence locker and falsifying court records to cover his tracks. Some of those guns were found in the possession of an IFPD officer who also pleaded guilty. Mason served nearly four years in prison for stealing the guns and lying to prosecutors about the whereabouts of those firearms. Stephens asked Thomas if he had evidence beyond court discovery records to show the videos weren't turned over. Thomas said he didn't at present but may have more by trial. Stephens took the arguments under advisement without issuing a ruling. He is likely to publish a written ruling within days or weeks. The packed room rose for Stephens to exit. Tapp's chains and shackles clanked softly as he left the courtroom. The day before the hearing, in Bonneville County Jail, Tapp said he hoped "everything will go well" and Stephens would allow his attorney to make the case that he is innocent. He said he was heartened by growing support from the community. He jokingly asked if anyone would care to trade places with him. Tapp has spent 7,170 days in jail and prison. In August, he will have lived as long behind bars as he did as a free man.