

Former Skyview High School teacher appears on suspected sex charge

By RUTH BROWN September 17, 2015 Idaho Press-Tribune

CALDWELL — A former Skyview High School teacher who was arrested after accusations of having sex with a student appeared in court Wednesday and waived his preliminary hearing. Tomas Michael Fisher, 28, was a Spanish teacher at the school before he resigned July 17. Fisher's case was moved to district court, and he is set for an arraignment and change of plea at 1:30 p.m. Sept. 25. He is charged with sexual battery by lewd and lascivious actions with a child 16 to 17 years old. He was arrested Sept. 1 and remains in custody at Canyon County Jail. Defense attorney Michael Larsen requested a reduction of his client's \$100,000 bond. It is the second time Larsen has requested the bond reduction. Magistrate Judge Brian Lee told Larsen that a prior judge had already denied the request and he would not hear a new argument for the same motion. At Fisher's next court appearance, he will go before District Judge George Southworth. "(Southworth) may entertain a subsequent motion, but I'm not going to do that," Lee told Larsen in court. According to court documents, the student told authorities that Fisher had consensual sexual contact with her two to three times a week for more than a month. The girl said she would meet with Fisher at his home, his mother's house or other Nampa locations. He taught at the high school from 2012 until the 2014-2015 school year. During fall 2014, Fisher coached girl's varsity soccer. He also worked security for Skyview High School's night school.

Idaho prisons halt treatment program that actually was leading to more recidivism

Spokane Eye On Boise September 18, 2015

Idaho state prisons chief Kevin Kempf has immediately halted all "therapeutic community" programs in Idaho prisons, after an assessment by the Council of State Governments Justice Center found that offenders who go through the programs actually are slightly more likely to re-offend, the AP reports. Inmates who are in therapeutic communities have a 28 percent recidivism rate, compared to a rate of 23 percent for other inmates. "We have been wringing our hands over what to do with the TCs," Kempf told AP reporter Rebecca Boone. "We know it's going to make some judges mad and we know it's going to make some people mad. But why would we keep putting our money into something that isn't working?" The inmates currently in therapeutic community units will still take part in treatment programs, but they will be more like the programs given to general population inmates, without the rigid and often confrontational community structure used in the TCs. Kempf said the switch won't change the length of an inmate's sentence. Both inmates and judges were notified of the changes on Thursday, Boone reported. Bree Derrick of the Council of State Governments Justice Center, who led the assessment, told the AP, "The way that therapeutic communities are running here are ineffective. It's a bit of a shaming culture, and the research shows, we know, that's just not effective at all." She commended the Idaho Department of Correction for seeking out the assessment and being open to change. The assessment found that Idaho's prisons are doing a good job of selecting which inmates need low, moderate or intensive programming. It also found the workers providing the programs are performing well and care deeply about the work.

New era for Idaho Department of Correction

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Twice a month the Idaho Department of Correction's in-house SWAT team — called Correctional Emergency Response Team or CERT — heads to the shooting range to hone its skills. It is a tight-knit, 20-member group that must always be at the top of its game even though it rarely gets any game time. "They are my insurance plan. If something goes bad, they are the first team I am calling," said Idaho Department of Correction Director Kevin Kempf. Last week Kempf dropped in to watch the unit practice its crowd-control procedure — a tactical maneuver in which members move with surgical precision to gain control of an unruly prisoner or rioting inmates. After completing the maneuver, the members gathered to remove their gear and discuss how the drill went. "So is it a new era at the prison? Are things changing?" a Statesman reporter asked the unit. The response: A rousing "Yes!" Changing of the guard The Idaho Department of Correction has its first new director in seven years and its first new prison board chair in nine years. In December, the Idaho Board of Correction selected Kempf to replace retiring director Brent Reinke. Gov. Butch Otter in January appointed Debbie Field chairwoman of the Idaho Board of Correction, replacing retiring chair Robin Sandy. Field declined to be interviewed for this story. Kempf joined the department in 1995 as a correctional officer at Pocatello Women's Correctional Center. He went on to serve in a variety of positions including parole officer, investigator, section supervisor, district manager, warden, chief of prisons and deputy director. As director, Kempf oversees IDOC's operations including its nine prisons, four community re-entry centers and seven probation and parole districts. IDOC is the state's second largest department with 2,000 employees and an annual budget of \$228 million. Upon taking the helm, one of the first things Kempf did was gut headquarters. He cut 15 jobs — almost 10 percent — and moved them to the front lines of probation and parole where they are needed most. His next big move was to close Unit 24 — a warehouse converted almost 10 years ago to house 204 inmates. "It was

unsafe for inmates and staff," Kempf said. Eliminating beds is not something the prison wants to do right now. It is at near capacity and it has been trying to find a way to bring back the 200 Idaho inmates being housed in Colorado due to lack of beds in Idaho. But Unit 24's dangerous conditions could not be ignored. "It had to be closed," Kempf said. Last month Kempf banned "dry cells" – cells with no mattress, sink or toilet used for solitary confinement — because "it was simply the right thing to do." "Research is showing us that, in many cases, segregation doesn't work and is causing more harm than good," he said. On Thursday, Kempf announced that, based on an outside assessment, all prison "therapeutic community" programs would be halted immediately because the "shaming culture" is ineffective, outdated and yields higher recidivism than other inmate-treatment programs. While Kempf has wasted no time wielding his power, he downplays the magnitude of his position. When it comes to managing nearly 8,000 inmates and more than 14,000 probationers and parolees, Kempf said he knows full well who really gets that job done: the staff. 'Nothing to hide' Kempf also wants to pull back the curtain on IDOC. Over the past couple years, the state grappled with a private prison contractor scandal. While a federal investigation found Corrections Corporation of America's actions did not warrant federal criminal charges, U.S. Attorney Wendy Olsen noted a series of "miscommunications and uncorrected assumptions" between Idaho State Police and Idaho Department of Correction. Kempf said, and records confirm, he did not attend meetings between IDOC, CCA and ISP. Management of the private prison contract was not under his purview, he said. When problems with CCA surfaced, he said, "It was such a significant issue, it rose straight to the director." Kempf said he would have taken the same steps Reinke did upon learning CCA might be falsifying timesheets: Conduct an internal audit to verify discrepancies, hire an outside firm to conduct a full audit and ask the State Police conduct an investigation. That's when things started to unravel; ISP conducted no such investigation even though for nearly a year Reinke and other IDOC and state leaders assumed it was. The lesson, Kempf said, is increased transparency and keeping communications lines open, in hopes of avoiding similar screwups. One of the first things Kempf did to open communication lines is extend an open invitation to all 105 lawmakers to tour any prison facility any time, without notice. Sen. Cherie Buckner-Webb, D-Boise took Kempf up on his offer. She called him to schedule a tour and find out the protocol. There was none. "He said, 'You've got your ID, you want to go, you go.' And I did it," she told the Statesman. She showed up unannounced at the Pocatello women's prison. "I showed my Senate ID, put my stuff in a locker and we were off," she said. "I had access to staff and inmates alike. ... I had 500 questions." She was pleased with the candor and access, she said. "Women that were incarcerated were able to talk freely to me. I thought the facility looked good. I did not feel like anything covert was happening." Buckner-Webb said that was the first time she had received an invitation for unfettered access to the state prisons. "They did not put on their dress-up clothes for me. It was not a canned tour. ... I thought that was the height of transparency," she said. "I think we are going to see a new day around here." 'Facing off in court' One group that has been pushing IDOC to change its ways is the ACLU of Idaho, which is waging a legal battle against state prison conditions. Kempf recently took ACLU staff on a tour of the prison's segregation, death row and execution units. "Although we appreciate Director Kempf's efforts to increase transparency, and we have a growing relationship with him that we hope will continue to be productive, there are still very grave issues in Idaho's prisons that we are investigating," said ACLU of Idaho legal director Richard Eppink. "We hope IDOC's reluctance to work with the ACLU at the program and policy level will soon come to an end under this new director's leadership." Kempf said he is committed to the dialogue with ACLU and his recent decisions to ban dry cells and close Unit 24 are indicative of his commitment to inmate safety and humane treatment. "I want to partner with the ACLU instead of facing off in court," Kempf said. Idaho State Correctional Institution Warden Keith agrees with pulling back the curtain on IDOC. "I think we are trying to move in a direction of much greater transparency," said Yordy, who joined IDOC in 1986. "Our staff is very proud of the work we do. It is a difficult job. But we do it with professionalism." Yordy said that department realizes that much of the community doesn't understand what it does. "I appreciate the fact that our director is wanting people to come out and see what we do," he said. "Contrary to what some folks think, we really have nothing to hide." IDOC and Kempf acknowledge the dark clouds, and that the system is still reeling from the private prison debacle that resulted in the state taking over the privately run prison last year. The prison remains under court-ordered monitoring stemming from a three-decades-old lawsuit over inmates access to medical and mental health care. But Kempf is not cowering under those clouds: "I believe with transparency and a lot of hard work we are going to be OK." Q&A Kempf unplugged: 5 serious questions... and a couple fun ones (Answers lightly edited for space and clarity.) 1. One of the first things you did was reorganize and reduce positions at headquarters. Why? We needed to ensure our resources were where they needed to be and that our reporting structure was efficient. We discovered the need to eliminate some positions in our central office and move them to the front lines. We are statutorily driven to provide supervision to offenders in the community and it was clear we needed to dispatch resources there. The positions that we eliminated in central office became probation and parole officers, drug and alcohol counselors, and other positions that will focus on reentry in the community. We also found that our education, treatment and re-entry division was causing confusion with our staff and complexity with our decision making. We eliminated the division and moved those important functions under the divisions they were impacting. We have already seen significant improvements by making this decision. 2. IDOC has recently stepped up its social media game – it is active on Facebook and Twitter and has a more robust website. Why? First, I love social media. It provides us a way to show off what are staff are doing. When we post things to Facebook, Twitter, or YouTube our staff, their friends, and family get to see and share. Increased use of social media also allows us to communicate with inmate families. For instance if for some reason visiting is closed in Orofino, we are announcing that as soon as

possible on Twitter and Facebook so families don't drive several hours only to find visiting is closed. We also see it as a way to open up our agency to the public. To some degree our industry of corrections in the United States has suffered from being closed off to the public. When this happens we allow television or movies to define who we are. We have too many amazing people doing amazing things for us not to try and change this perception. Simply put, we're proud of what we do and think the public will be as well when the curtain is pulled back. 3. Soon after becoming director you extended an open invitation to lawmakers to drop in any time unannounced and tour the prison. You also took the American Civil Liberties Union, which for years has been challenging IDOC's prison conditions, on a prison tour. Why are you pulling back the curtain? We believe our stakeholders should have full access to the areas they provide funding to. Our statewide leaders have been given the expectation that these officials are to be given unfettered access to whatever they want to see. Why are we doing this? Because we are sure they will find three things when they visit: 1. We have confidence they will see things that will totally warm their hearts. They will see staff who are motivated by a deep purpose to serve. 2. They will see inmates, probationers, and parolees who are trying to change their lives. Overcoming addiction and changing the way you think requires significant work and help from everyone around them. 3. And lastly we know they will see areas within our system that need to be fixed and improved. Heaven knows we are not perfect. Our overall goal is to get our stakeholders, our inmates and our staff to have confidence that we will be transparent to our mistakes and committed to improving at all levels. 4. You have been known to show up at the prison at 2 a.m. and go on a walkabout or drive around the complex. You recently went on a ride-along with the Caldwell Street Crimes Unit. Why aren't you at your desk all the time? I can't think of a time that I felt any level of success while sitting at my desk. Even as I type this I am in the field. I'm sure when my tenure ends, people will be able to say a lot of things about me, but they won't be able to say that I didn't show up. Also, we have great leaders in place that get the job done. My job is to work closely with the Board of Correction in setting the course of the agency, provide the resources to get the job done, and stay out of the way. I will be measuring results on a monthly basis to ensure we are on track. 5. Every day IDOC correction officers deal with some of Idaho's most violent offenders. They also must contend with prison gangs and be constantly vigilant for threats. What is your strategy for addressing correction officer stress and burnout? Thank you so much for asking this question! A recent study of a neighboring corrections agency showed an alarming rate of staff suffering from PTSD. We know this is true and it can't and won't be ignored. We started with embedding staff wellness into our strategic plan and it's one of our three goals for the agency. Our human resources team created a senior level HR specialist who will have this as their sole responsibility. They have already developed a three-phased plan to address staff wellness that includes suicide prevention/detection, free resources to our staff and ongoing training and attention on this issue. Our Board of Corrections is on board 100 percent. We have a lot of work to do still but the future looks bright. OK, enough serious stuff. Give us a fun fact. And tell us your favorite movie. I know every single lyric to every single song by The Smiths. I am a huge Morrissey fan. (Lead singer of The Smiths and now a solo artist.) Ferris Bueller's Day Off. When you go on vacation, do you head to the big cities or the great outdoors? I am a city guy. Camping amongst bears stresses me out. I would rather walk the downtown of a cool city checking out the food and what's happening. You played college football. Tell us more about this. After high school I attended Ricks Junior College in Rexburg and played football there. I absolutely loved my time in Rexburg and it will always have a special place with me. After Ricks I attended the University of Arkansas and played football for the Hogs. For my senior season I transferred to Idaho State University. One of my closest friends was Gary Andersen. Gary was coaching there and it allowed me to come play for him and get back to the state I loved. Gary is now the head coach at Oregon State.

Idaho Public Defense Commission: New standards need teeth

By REBECCA BOONE, Associated Press Spokane Eye on Boise Sept. 22, 2015

BOISE, Idaho (AP) — Members of Idaho's Public Defense Commission say that without more authority, there's not much reason to keep working on statewide recommendations. Lawmakers created the commission in 2014, asking members to come up with quality standards to improve Idaho's problematic public defense system. Judge Molly Huskey told a group of lawmakers Friday that much of that work is done, but it's not worth much if it's not enforced. She asked the lawmakers to decide if they would give the commission or another entity the authority to enforce minimum standards for public defenders. "We're putting on the training, we're promulgating rules, and we've made the recommendations for contracts. But our work is only advisory," Huskey said. "...They can use all that paper to start a bonfire for all the value our opinions have. The state has known for years that the county-run public defense system was struggling, and a 2010 report found that many indigent defendants weren't getting a fair run in the courts because their public defenders were overworked, undertrained and underpaid. Three years later lawmakers created the Public Defense Reform Interim Committee to study the issue further, and in 2014 the commission was created. The Legislature also ended flat-fee public defender contracts. Previously, counties could hire a private attorney to handle all of their public defense cases for a flat annual fee, and critics said that led to excessive caseloads and other problems. "It really is up to the Legislature to decide what the role of the Public Defense Commission will be from here forward," Huskey said. "We can continue to make recommendations, but frankly that's not the best use of our time." A fix won't be cheap, however. Idaho Association of Counties executive director Dan Chadwick said many counties can't invest more money in their public defense systems unless the laws setting caps on levies are changed. Most of the counties have already phased out flat-fee public defense contracts — where a private attorney agrees to handle all the public defense cases in the county for a flat annual fee — after the Legislature disallowed the contracts

in 2014. Many of the counties are seeing their expenses go up by 20 percent and 30 percent as a result, Chadwick said. He urged lawmakers to come up with a funding solution. The state is facing increasing pressure to fix the system. In June, the ACLU filed a lawsuit on behalf of indigent defendants statewide, contending that the state has failed to take action to fix an unconstitutional system. A hearing on whether that case can move forward in court is scheduled for December.

Bujak resigns from Idaho State Bar Former Canyon County prosecutor admitted to violating the Idaho Rules of Professional Conduct

By RUTH BROWN September 22, 2015 Idaho Press-Tribune

Former Canyon County prosecutor and Idaho gubernatorial candidate John Bujak resigned from the Idaho State Bar on Thursday after a complaint seeking his disbarment was filed in July. The resignation came after a court-ordered stipulation to resign in lieu of disciplinary proceedings was signed. Bujak's listed office phone numbers in Eagle had been disconnected Monday afternoon when the Idaho Press-Tribune attempted to call him. A call to his cellphone was unanswered, but Bujak sent a statement via email later in the day. "Resigning from the practice of law was not something I had planned, but it became clear that it was the right thing to do given the circumstances," he wrote. "Had I chosen to continue the fight, I would not have been able to effectively practice law during the ethics proceedings and I would have spent the next year rehashing events from the past five years. I was tired of living in the past, and no one should have to live in a continual state of conflict. Resigning from the practice of law brings closure, allows me to finally put the events of the last five years behind me and move on. I feel a new sense of exhilaration as innumerable new paths have opened before me. I now see how limited the scope of my experience had become, and my resignation has allowed me to think outside the box as I ponder where I go from here. I cannot tell you which path I will take right now, but I can tell you that I have a new zest for life and am looking forward to the adventure of each new day." The Idaho State Bar outlined in its complaint two counts of violations of professional conduct rules. Count one was related to Bujak's time with Canyon County — the complaint details seven alleged professional conduct violations, including engaging in fraud or deceit, failing to promptly deliver funds or other property to a client and engaging in a conflict of interest. Count two stemmed from the bankruptcy fraud case and mentions Bujak's guilty plea to one count of contempt in July 2013. He was required to pay restitution of \$2,923 and placed on unsupervised probation for six months. This part of the count alleged Bujak violated conduct in five ways, including conduct prejudicial to the administration of justice. **ADMISSIONS** According to the Idaho Supreme Court's order granting his stipulation to resign, Bujak admitted to some violations of the Idaho Rules of Professional Conduct for the Idaho State Bar. While serving as Canyon County prosecutor in 2009-2010, by agreement of Canyon County and Nampa, funds for prosecution services for Nampa were received and deposited into Bujak's trust account with the expectation of reimbursement from the trust account to the county at the end of each fiscal year. According to the document, Bujak "removed funds from his trust account for personal use. At the conclusion of the fiscal year 2010, there were insufficient trust account funds to reimburse Canyon County for expenses related to the Nampa (prosecution)." Bujak admitted those circumstances violated the Idaho Rules of Professional Conduct regarding communication with a client, conflict of interest with a current client and safekeeping of property, according to the court exhibit in his resignation. Additionally, during Bujak's criminal felony prosecution for preparing false evidence as a computer crime, he admitted to violating contempt of court by willfully failing to disclose expert materials before the court's ordered deadline. Bujak admitted, according to the exhibit, that the circumstances violated the Idaho Rules of Professional Conduct regarding candor toward the tribunal, fairness to the opposing party and counsel and engaging in conduct prejudicial to the administration of justice. Bujak's resignation was a revocation of his right to practice law in Idaho and his admission to the Idaho Supreme Court. His name will be stricken from the records of those admitted by the Idaho Supreme Court. He will not be able to re-apply for admission to the Idaho State Bar for four years, four months, and 11 days from the date of his resignation. If he chooses to reapply, he must complete the same requirements as any other new member of the Idaho State Bar. **PAST ACCUSATIONS** Bujak's history of trouble with the Bar stretches back several years. In 2010, Bujak was accused of embezzlement from Canyon County that led to his resignation as prosecutor. Bujak was eventually found not guilty of those charges. Last year, he was charged with bankruptcy fraud, concealment of assets, making a false statement under oath, money laundering and obstruction of justice. Bujak was found not guilty of those charges in May 2014. Bujak's license was temporarily suspended in 2011, and a one-year suspension was ordered Sept. 23, 2014, when the Idaho Supreme Court determined Bujak violated four of the State Bar's ethics rules.

Moscow man sentenced for possession of child porn Receives two year minimum prison term, with retained jurisdiction

September 23, 2015 By Samantha Malott, Daily News staff

William M. Griffin was sentenced Tuesday in Latah County 2nd District Court to a minimum of two years in jail, with retained jurisdiction, for three counts of sexual exploitation of a child for possession of child pornography. Griffin, 64, of Moscow, pleaded guilty in June on all three counts and admitted he had downloaded images and videos of children involved in sexual acts. Judge James Judd, senior district judge out of Boise, sentenced Griffin to two fixed years in prison, with six years indeterminate and a maximum of eight years, with retained jurisdiction. Under retained jurisdiction Griffin will complete a treatment program while in the custody of the Idaho Department of Corrections. At the end of the program he will return to court for a performance review, and will either serve the prison sentence or be released on to probation. Judd said when Griffin returns for his review he will want to see a plan to regulate Griffin's Internet access and for Griffin to have reflected on how he came to possess the material and even making his own video with children he knew. Casey Hemmer, an Idaho deputy attorney general in Boise representing the state in the case, said investigators located a direct download of child pornography available from Griffin's computer and located pornography on his computer of children, ranging in ages from 3 to 16, involved in bondage acts. Hemmer said keyword search history found on his computer included searches such as "12-year-old bondage." "The notion that he just came across this stuff is a little hard to believe," Hemmer said. "It wasn't forced on him." Judd said he has been concerned by conflicting statements in the pre-sentence investigation about timelines of actions, including when items were downloaded, and Griffin's statements involving videos found of children he knew. Judd said there was a denial by Griffin, then a recognition of the videos he attempted to make of children he knew after evidence showed he already started downloading child pornography. That shows a possible progression, he said. In a statement to the court, Griffin said he did not fully understand other people's feelings or what they were thinking at the time he was viewing these videos. He said after participating in treatment he has learned this may have been due to post-concussion syndrome. "In many ways I didn't feel they were real," he said of the videos and images. Griffin said that did not excuse the material but it did affect his reasoning ability to say harm was being caused. Griffin said he now realizes what he was doing helped the material to be spread throughout the Internet. "It was frankly a horrible time in my life," he said. "I went through most of my life without exploring this kind of material and I hope the court understands it isn't going to happen again. I feel a great deal of shame." Hemmer said Griffin's lack of insight into his actions and his diminishment of the acts is concerning. Griffin's defense attorney, Charles Kovic, said the pre-sentence investigation shows Griffin is in the low-risk category to re-offend and he believes the recommendations for treatment and therapy outlined in the investigation could be completed through probation alone. Kovic said he believes the court can take Griffin on his word that he will not re-offend. "He has deep and lasting shame," he said. "I believe the worst kind of punishment is self-pain."

Still no decision on death penalty for suspect Lee

Daily News September 24, 2015

The Latah County Prosecutor's Office sought and received an extension on the deadline to declare whether or not the death penalty will be sought against John Lee, who is alleged to have shot and killed three Moscow residents on Jan. 10. Lee, 29, of Moscow, is accused of gunning down David Trail, Belinda Niebuhr and his adoptive mother, Terri Grzebielski, and shooting and injuring Michael Chin earlier this year. He faces three counts of first-degree murder and one count of aggravated battery by use of a deadly weapon or instrument. The Latah County Prosecutor's Office, representing the state in the case, filed a request for an extension on Friday and indicated more time was needed for both sides to review the case before coming to a decision. Judge John Stegner granted an extension and set a deadline of Dec. 1. Latah County Prosecuting Attorney Bill Thompson said his office currently doesn't have enough information to make a final decision on if the death penalty should be sought. The request states an extension was needed "to allow the parties to further investigate the circumstances of this case, and the defendant, so as to have sufficient information to better determine the scope and extent of potential statutory aggravating factors and mitigation thereto." Both the state and the defense are still actively engaged in reviews of "voluminous materials" in this case and additional investigations are underway, the request states. If the death penalty is not sought, Lee will still face a lengthy prison sentence if found guilty. First-degree murder carries a minimum sentence of 10 years in prison and a maximum of life in prison. The charge also carries an enhancement for the use of a firearm in the commission of the crime of an additional 15 years added on to the sentence. Aggravated battery carries a maximum sentence of 15 years, plus 15 additional years for the firearms enhancement. All four charges also have the possibility of a \$50,000 restitution and a \$5,000 civil fine to the victims. Lee's next scheduled court appearance is Feb. 16.

The Latest: Bergdahl hearing ends; atty calls it 1-day AWOL

Idaho Statesman.com: Sep. 18- Associated Press

SAN ANTONIO — The latest on the hearing to determine if Army Sgt. Bowe Bergdahl should face a court-martial on desertion and other charges for leaving his post in Afghanistan six years ago. All times are local.

3:55 p.m. Bowe Bergdahl's lead attorney says there is enough evidence to show that the Army sergeant's case should be treated as a one-day stint of being away without leave, not a more serious violation. Eugene Fidell's remarks came Friday toward the end of a hearing to help determine if Bergdahl should face a court-martial for walking away from his post in Afghanistan in 2009. Military prosecutor Margaret Kurz says that the Idaho native should face a court-martial because she says his decision led to a lengthy search that put other soldiers in danger. The presiding officer will forward his recommendations to the commanding general of U.S. Army Forces Command, who will decide whether it should be referred to a court-martial or be resolved in another manner.

2:55 p.m. A Department of Defense official who helped debrief Bowe Bergdahl after the Army sergeant was recovered in a prisoner exchange says Bergdahl was subjected to horrific abuse during his five years in captivity. Terrence Russell testified Friday that Bergdahl suffered under conditions worse than any American prisoner of war since the Vietnam War. He says Bergdahl's Taliban captors treated him like a "dirty animal," beat him with rubber and copper hoses, and gave him little food and water. He says Bergdahl had uncontrollable diarrhea for years and was kept in a metal cage for three years. Russell was the fourth and final witness called to testify at a hearing to help determine if Bergdahl will face a court-martial for walking away from his post in Afghanistan six years ago.

12:30 p.m. The Army officer who conducted the investigation into Sgt. Bowe Bergdahl's disappearance says he doesn't believe Bergdahl should go to prison for walking away from his post in Afghanistan six years ago. Maj. Gen. Kenneth Dahl testified Friday at a hearing to help determine if Bergdahl should face a court-martial on desertion and other charges. He says Bergdahl told him he felt there were serious problems among his unit's leadership that endangered his platoon and that he needed to tell a general about them. Dahl says Bergdahl's planned to head from his post to the forward operating base roughly 19 miles away and thought the attention from the resulting search would get a general to listen to him. He says Bergdahl was "completely off the mark" about his unit.

10:40 a.m. A nurse practitioner says Sgt. Bowe Bergdahl suffers from extensive injuries caused by his five years as a Taliban captive and he doesn't think Bergdahl is fit to remain in the military. Curtis Aberle works at Fort Sam Houston in San Antonio, where Bergdahl has been stationed since returning to the U.S. last year. He testified Friday at Bergdahl's Article 32 hearing in Texas that Bergdahl will need a lifetime of medical care. Aberle says Bergdahl suffers from muscular nerve damage in his lower legs, a degenerative disc in his lower back and an injury that has left him with limited movement in his shoulder. He says Bergdahl was kept in a crouched position for extended periods, which caused the injuries. Aberle also says Bergdahl suffers from post-traumatic stress syndrome.

10:20 a.m. Sgt. Bowe Bergdahl's former squad leader in Afghanistan says Bergdahl wasn't adjusting well to their deployment and that he suggested to higher-ups that Bergdahl speak to someone, such as a chaplain. Former Army Sgt. Greg Leatherman testified Friday that Bergdahl was introverted and didn't do many things with the other soldiers. He says he expressed his worries about Bergdahl to his first sergeant and that he was told to drop the matter. Leatherman said: "First-sergeant said he didn't want one of his guys telling him what was wrong with somebody in his company." Leatherman was the first witness called by Bergdahl's lawyers to testify during Bergdahl's Article 32 hearing. The hearing will help determine if Bergdahl should face a military trial on charges of desertion and misbehavior before the enemy. Note: This item has been changed to correct the spelling of Leatherman's name in the last paragraph. It had been misspelled "Leather."

9:30 a.m. Bowe Bergdahl's lead attorney says the Army sergeant won't be testifying at the hearing to help determine if he should face a court-martial for leaving his post in Afghanistan six years ago. Eugene Fidell said Friday before beginning his defense of Bergdahl that the lengthy sworn statement Bergdahl gave military investigators last year includes everything relevant he has to say about his situation. Bergdahl is charged with desertion and misbehavior before the enemy. If he's tried and convicted of the misbehavior charge, he could get life in prison. The Article 32 is being held at Fort Sam Houston in San Antonio, where Bergdahl has been stationed since being recovered in a prisoner exchange with the Taliban after five years in captivity.

Judge allows felon to move back to England

Lewiston Tribune: Sep. 19

MOSCOW - A former Washington State University professor was granted his request to serve the remainder of his probation unsupervised, allowing him to move back to England. Latah County 2nd District Judge John R. Stegner granted the motion filed by Andrew M. Appleton, 53, during a hearing Friday. The judge's ruling permits Appleton, who pleaded guilty to felony injury to a child as part of a plea agreement in 2013, to send the court monthly letters for the last year and a half of his probation. Appleton was accused in 2012 of sexually assaulting a woman - starting when she was 16 - for more than a year in Moscow. He was initially charged with felony rape, but pleaded guilty to the injury to a child charge as part of the plea agreement. Stegner suspended Appleton's initial sentence and placed him on supervised probation for three years after determining he successfully completed a prison rehabilitation program. Stegner said his decision to allow unsupervised probation resulted from Appleton's consistent compliance with the requirements of his sentence and probation, his being underemployed in the area since his release from prison, and family and retirement matters in London.

Idaho Legal Aid receives grant for pro bono services

Idaho Statesman.com: Sep. 19- Associated Press

BOISE, IDAHO — Idaho Legal Aid Services has received a \$276,000 grant to help create more pro bono opportunities which will go on to help serve some of the state's poorest residents. Legal Services Corporations announced the non-profit legal aid had been awarded the grant on Friday. The money will create an online portal that will allow residents to search for Idaho attorneys providing pro bono services. The goal, according to a news release, is to increase pro bono representation and expand the cases attorneys can volunteer. Idaho Legal Aid Services was one of 15 recipients across the country to receive funding for pro bono services.

Prosecutor: Transportation Group Broke Open Meeting Laws for 25 Years

MagicValley.com: Sep. 19- Nathan Brown

TWIN FALLS • A transportation committee may have been breaking open meeting laws for the past 25 years, the Twin Falls Prosecuting Attorney's Office says. The Greater Twin Falls Area Transportation Committee hasn't posted an agenda or meeting notice as long as it has existed but will from now on, Chairman Gary Young said. The prosecutor's office looked into it after Twin Falls County resident Jill Skeem contacted the office. She opposes a truck route the group has proposed to bypass Twin Falls to the south, which would run along her property. County Prosecutor Grant Loeb sent Young a letter on Thursday, briefly explaining open meeting and public records laws and saying the committee appears to be a "public agency" as defined by the law and must follow both. "There appears to have been some confusion about how this Committee was initially formed, and perhaps some confusion as well about how these laws apply to the Committee," the letter says. "Please take any steps necessary to ensure that the Committee is in compliance with Idaho law." Young said Friday that, as far as he knows, the committee had never advertised the meetings or agenda. He said the group would now, and would have started to sooner, had members known they were required. "To my knowledge, we have not done that, but we can start," he said. The committee was formed by county commissioners in 1990 to study and make recommendations on transportation issues in the greater Twin Falls area, and includes representatives from local government, highway districts and other interested stakeholders. It meets once a month at 7 a.m. at Idaho Joe's. The committee didn't draw much public attention before, but it has been in the spotlight since this spring when it came out with recommendations for three potential truck routes, surprising residents and some local elected officials who weren't aware the route was under discussion. Keller Associates did the study that led to the recommended routes, working with a smaller steering committee that included Young and two other GTFATC members. All three routes would go through some homes and businesses. After a presentation in May, the Twin Falls City Council preferred the option that followed 3600 North to 3300 East, which would affect 18 properties. The Kimberly City Council decided in July not to back any of the proposals. Skeem said Friday she is glad the committee will follow the Open Meeting Law moving forward. "To me, it's clear that the committee should be following the state Open Meeting Law to begin with," she said. Skeem said people should have known about the proposed route while it was being developed, and that the steering committee's meetings should also have been public. "That's why they have open meeting laws," she said. "That's why it's so strict." Loeb told the *Times-News* Thursday that any violations appear to have been due to confusion as to whether the laws applied to the group, rather than malice. "We're investigating it and we'll make sure it operates properly," he said. The idea of a route to steer truck traffic out of Twin Falls has been around for a while, and supporters say it is needed because of the area's industrial growth. There's no funding for one lined up, or a route that has been decided on, and Young has said it could be several decades before it is completed, if it gets built. Before this, it would have to be added to the Twin Falls Highway District's transportation plan. At the moment, Young said, the transportation committee is reviewing some revisions to the study that would not choose a route but would call for further study by the highway district.

Commercial general liability policies: Part 2

Idaho Business Review: Sep. 21- Randall Schmitz

In the first part of this three-part series on commercial general liability, I discussed whether faulty workmanship alone can constitute an "occurrence" under a standard CGL policy. Assuming there has been an "occurrence," this article will discuss whether the "your work" exclusion bars coverage for a contractor's faulty workmanship. Standard CGL policies typically exclude coverage for "property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard." This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on the contractor's behalf by a subcontractor. Accordingly, property damage to or caused by the contractor's own work is excluded, but property damage to or caused by a subcontractor's work is not excluded. Prior to 1986, contractors had to purchase an endorsement to eliminate the exclusion for work performed by subcontractors. The ISO revised the CGL policy in 1986 because policyholders wanted coverage for defective construction as long as it was performed by a subcontractor rather than the policyholder itself, and insurers thought the CGL would be a more attractive product. However, insurers soon began offering endorsements which eliminated the subcontractor exception. Typically, these endorsements exclude coverage for "property damage" to "your work" where "your work" is defined as: (1) work or operations performed by you or on your behalf; and (2) materials, parts or equipment furnished in connection with such work or operations. Accordingly, whether coverage is provided for a subcontractor's faulty workmanship will depend upon whether such an endorsement is part of the policy. "Products-completed operations hazard" usually includes all "property damage" occurring away from premises the contractor owns or rents and arising out of "your work," except work that has not yet been completed or abandoned. In other words, in order for the "your work" exclusion to apply, the contractor must have either completed or abandoned its work on the project. However, even if the work has not yet been completed or abandoned, CGL policies typically deem the work completed at the earliest of: (1) when all the work called for in the contractor's contract has been completed; (2) when all the work to be done at the job site has been completed if the contract calls for work at more than one job site; or (3) when that part of the work done at the job site has been put to its intended use by anyone other than another contractor or subcontractor working on the same project. Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will also be treated as completed. Most courts agree that a true claim for faulty workmanship is one in which the sole damages are for repair of faulty installation or replacement of a defective component. However, courts differ in their application of the exclusion. Some courts hold that faulty workmanship that has damaged otherwise non-defective portions of the project is covered as to the costs associated with repairing or replacing the non-defective portions only. Other courts find that even the damage to the non-defective portions are excluded if the contractor's work under the contract included installation of those portions. For example, assume a home builder who improperly compacts the soil which results in structural damage such as cracks in the foundation and walls. Some courts would find coverage excluded because the contractor's "work" included constructing the entire home. Other courts would find coverage for repairing the defects caused by the improperly compacted soil, but no coverage for repairing and re-compacting the soil itself. The Idaho Supreme Court has not yet evaluated the "your work" exclusion. However, damage to the insured's work alone would likely be excluded. Property damage to another's work on the project would likely be covered. How Idaho would apply the exclusion to damage to a contractor's non-defective work is uncertain. In part 3 we will discuss application of the "contractual liability" exclusion. *Randall Schmitz is a trial attorney at Gjording Fouser PLLC and his practice has an emphasis on construction litigation. Please can be reached at rschmitz@gfidaholaw.com or 208.336.9777.*

9th Circuit rules Idaho's anti-union law invalid

Lewiston Tribune: Sep. 21- Associated Press

BOISE - A federal appeals court panel has affirmed a lower court's ruling striking down a 2011 anti-union law in Idaho. Three judges from the 9th U.S. Circuit Court of Appeals unanimously upheld a U.S. district court ruling which found the measure conflicted with federal law, the Spokesman Review reported. The law, which never took effect, banned unions from using funds collected from workers to offset the cost of bids by union contractors on jobs. The Idaho attorney general's office warned lawmakers in 2011 that the law would likely be overturned because it clashed with the National Labor Relations Act. However, the bill passed the Idaho Senate 25-8 and the House 55-15. Gov. C.L. "Butch" Otter signed it into law. Labor unions later sued the state over the law and won. The state then appealed to the 9th U.S. Court of Appeals. "Construction unions have developed such programs to increase their members' access to work and stem the long-term decline in the percentage of construction workers represented by unions," Judge Marsha Berzon wrote for the panel, in a decision released Wednesday. "Under such programs, a union collects funds from workers it represents and then uses those funds to subsidize bids by union contractors, allowing the contractors to lower their labor costs and so more effectively compete with nonunion contractors," Berzon wrote. "It is well settled that most of the conduct prohibited by Idaho's statute is protected by the NLRA." James Piotrowski, an attorney for the unions, said they plan to seek attorney fees from the state.

Long embattled Canyon County lawyer John Bujak quits the law, ends disciplinary proceedings

Idaho Statesman.com: Sep. 21- Kristin Rodine

John Bujak's resignation last week from the Idaho State Bar ending the legal career, at least temporarily, of one of Idaho's most controversial lawyers. Bujak, 46, who survived four felony jury trials and a federal bankruptcy court trial without a guilty verdict, said he decided to give up his law license rather than continue to fight efforts to disbar him. Idaho State Bar Counsel Bradley Andrews filed a complaint against Bujak July 9, seeking disbarment and unspecified restitution. "The events of the last five years caused me to reopen and then close my private practice three times," Bujak said in an email to the Idaho Statesman. "The constant conflict caused more discontent than the satisfaction I derived from the practice of law. In the end, this is the best decision for myself, my health and my family. I have no regrets, and my family and I are very much looking forward to whatever life has in store." The Idaho Supreme Court accepted Bujak's resignation Thursday and it was effective that day. He can no longer practice law. If he later seeks reinstatement, he must wait more than four years and four months from his resignation date. That time span is based on a standard five-year period minus the time Bujak spent on voluntary suspension during his criminal prosecution. If he had been disbarred, that also would last five years. Bujak worked for a local attorney during his suspension but said Monday he doesn't plan to "continue to work in the legal field." A 2014 candidate for Idaho governor as an independent, Bujak said he doesn't have any immediate plans to seek public office again. At issue in the State Bar's complaint against Bujak was his handling of a \$600,000 annual contract for the Canyon prosecutor's office to handle misdemeanor cases for the city of Nampa. The contract began in July 2009, about six months after Bujak took office as prosecutor. He resigned in September 2010, unable to pay about \$300,000 county leaders said he owed from the contract. Prosecutors in a criminal case alleged Bujak appropriated the money for his own debts and expenses rather than forwarding the money to the county as promised. Acting as his own defense attorney, Bujak acknowledged that he took the money not required for contract expenses, but argued that the arrangement was understood and approved by county leaders. He noted that county leaders approved having Nampa deposit contract payments into a "trust account" only Bujak could access and contended they only accused him after they were embarrassed by public pressure, including a public records lawsuit. Between November 2012 and March 2013, one jury acquitted Bujak and two were unable to agree on verdicts concerning his handling of public funds. Another jury acquitted him of an unrelated grand theft charge stemming from his handling of an estate before he became Canyon County prosecutor. The bar association's investigation of Bujak's handling of the Nampa contract cites violations of 12 specific professional conduct rules for Idaho attorneys. "Had I chosen to continue the fight, I would not have been able to effectively practice law during the ethics proceedings, and I would have spent the next year rehashing events from the past five years," Bujak told the Statesman Monday. "Resigning from the practice of law brings closure, allows me to finally put the events of the last five years behind me and move on. ... I cannot tell you which path I will take right now, but I can tell you that I have a new zest for life and am looking forward to the adventure of each new day.

CASES AGAINST JOHN BUJAK John Bujak took office as Canyon County prosecutor in January 2009 and soon secured a contract to handle Nampa's misdemeanor cases. Over the next year and a half, that \$600,000 annual contract sparked a public records lawsuit about where the funds went and questions about why Bujak did not forward as much money to the county as city and county leaders expected. County commissioners expected about \$300,000 in contract funds from Bujak by Sept. 30, the end of fiscal 2010, but Bujak resigned on that date instead. He filed for bankruptcy protection that November, and Idaho State Police launched an investigation into his handling of contract funds. In December 2011, Bujak was charged with grand theft, later amended to misuse of public funds. The following July, he was charged with preparation of false evidence and computer crime in connection with the public funds charge. He also was charged with an unrelated grand theft in connection with his handling of a woman's estate before he became county prosecutor. Bujak faced four felony jury trials in state court, but none of those juries convicted him. Misuse of public funds and false evidence prosecutions ended in mistrials, the estate-handling theft charge yielded a not guilty verdict, and a second trial on misuse of public funds also ended in acquittal. In May 2014, a federal jury found him not guilty of bankruptcy fraud, money laundering and obstruction of justice in his bankruptcy case. His law license, voluntarily suspended during the prosecutions, was restored last August, and he has been practicing law in Eagle since then. In July, the State Bar file a 54-page complaint against Bujak seeking disbarment, and last week he resigned, avoiding any disciplinary action.

Idaho Public Defense Commission: New standards need teeth

Idaho Statesman.com: Sep. 21- Rebecca Boone/ AP

BOISE, IDAHO — Members of Idaho's Public Defense Commission say that without more authority, there's not much reason to keep working on statewide recommendations. Lawmakers created the commission in 2014, asking members to come up with quality standards to improve Idaho's problematic public defense system. Judge Molly Huskey told a group of lawmakers Friday that much of that work is done, but it's not worth much if it's not enforced. She asked the lawmakers to decide if they would give the commission or another entity the authority to enforce minimum standards for public defenders. "We're putting on the training, we're promulgating rules, and we've made the recommendations for contracts. But our work is only advisory," Huskey said. "...They can use all that paper to start a bonfire for all the value our opinions have. The state has known for years that the county-run public defense system was struggling, and a 2010 report found that many indigent defendants weren't getting a fair run in the courts because their public defenders were overworked, undertrained and underpaid. Three years later lawmakers created the Public Defense Reform Interim Committee to study the issue further, and in 2014 the commission was created. The Legislature also ended flat-fee public defender contracts. Previously, counties could hire a private attorney to handle all of their public defense cases for a flat annual fee, and critics said that led to excessive caseloads and other problems. "It really is up to the Legislature to decide what the role of the Public Defense Commission will be from here forward," Huskey said. "We can continue to make recommendations, but frankly that's not the best use of our time." A fix won't be cheap, however. Idaho Association of Counties executive director Dan Chadwick said many counties can't invest more money in their public defense systems unless the laws setting caps on levies are changed. Most of the counties have already phased out flat-fee public defense contracts — where a private attorney agrees to handle all the public defense cases in the county for a flat annual fee — after the Legislature disallowed the contracts in 2014. Many of the counties are seeing their expenses go up by 20 percent and 30 percent as a result, Chadwick said. He urged lawmakers to come up with a funding solution. The state is facing increasing pressure to fix the system. In June, the ACLU filed a lawsuit on behalf of indigent defendants statewide, contending that the state has failed to take action to fix an unconstitutional system. A hearing on whether that case can move forward in court is scheduled for December.

Wrong-way driver appears in court

Coeur d'Alene Press: Sep. 22- David Cole

COEUR D'ALENE — Ryan J. Turner made his first court appearance Monday for three counts of felony vehicular manslaughter relating to a head-on crash on U.S. 95 on Sept. 12. Turner, 27, who recently purchased a home in Spirit Lake and had been living in Hayden, was taken into custody on Friday, according to the Idaho State Police. He was being held Monday at the Kootenai County jail. Turner appeared by video link before Judge Eugene Marano, who set his bond at \$100,000. The prosecution sought a \$500,000 bond, based on the evidence against him and his risk to the community if he is released. Kootenai County Deputy Prosecutor David Robins told the judge a beer can was allegedly found in a 2011 Chevy Silverado truck Turner was driving at the time of the accident and he also allegedly confessed to drinking beer before the accident, which killed a father and his two young daughters. An initial blood alcohol test showed he was over the limit. Killed in the accident were Mathew-Michael T. Baroni, 33; Madilyn Baroni, 8; and Molly Baroni, 6, all of Spokane. Turner, who has no prior criminal history, faces up to 45 years of prison time. Turner was a foreman for Cobra Building Envelope Contractors, which has offices in Spokane. The Mt. Spokane High School grad is married and has 4-year-old daughter. Mike Baroni was driving his 1997 Dodge Caravan southbound on Sept. 12 when he encountered Turner traveling northbound in the southbound lane. They collided south of Athol at milepost 448. Turner was taken to Kootenai Health. Mike, Madilyn and Molly Baroni died at the scene. Turner's defense attorney said Monday that Turner suffered a fracture in his back and was on pain medication, but he was able to walk during his hearing.

Bujak resigns from state bar in wake of disbarment talks

Idaho Statesman.com: Sep. 22- AP

BOISE, IDAHO — Former Canyon County prosecutor and gubernatorial candidate John Bujak has resigned from the Idaho State Bar, effectively ending his ability to practice law in Idaho. Bujak announced his resignation Thursday. The move comes as the state bar was seeking to have him disbarred on ethical grounds earlier this summer. "This should mark the end of my five-year battle with the state and federal governments in Idaho," he wrote in a statement according to KTVB-TV (<http://bit.ly/1j3T5ng>). "The events of the last five years caused me to re-open and then close my private practice three times. The constant conflict caused more discontent than the satisfaction I derived from the practice of law. In the end, this is the best decision for myself, my health and my family. I have no regrets, and my family and I are very much looking forward to whatever life has in store." Bujak resigned as county prosecutor in 2010 after he was accused of embezzling from Canyon County and eventually found not guilty. A jury in 2012 found Bujak not guilty of misuse of public funds, though he pleaded guilty to a charge of contempt of court. His license to practice law was suspended in 2012 as that court case moved forward, but the Idaho Supreme Court reinstated it in the fall of 2013. He was acquitted again in 2014 of other charges including bankruptcy fraud and money laundering. His resignation agreement only stops him from practicing law in the state for four years. He would have to reapply at the end of that term.

Moscow man sentenced on child porn charges

Lewiston Tribune: Sep. 23- Elizabeth Rudd

MOSCOW - The brother of a retired Idaho judge will spend at least the next year in a prison rehabilitation program after he admitted this summer to possessing child pornography. Senior Judge James F. Judd of Boise sentenced William M. (Milo) Griffin to two to eight years in prison on three counts of sexual exploitation of a child, but opted to retain jurisdiction on the matter for the next 365 days and placed Griffin in the rider program. After which, Griffin will either be placed on probation or ordered to serve the remainder of his sentence. The 64-year-old Moscow man was taken into custody at the Latah County Jail Tuesday following his sentencing. He pleaded guilty to the felonies in June for willfully possessing an image and two videos depicting sexually explicit content involving girls ages 3 to 11. The charges stemmed from an investigation in May 2014 that showed direct downloads for child pornography to Griffin's computer. Griffin's case was delayed earlier this summer after Latah County 2nd District Judge John R. Stegner recused himself in the middle of Griffin's initial arraignment. Stegner's recusal occurred when the judge realized Griffin's brother, retired 2nd District Judge Michael J. Griffin, was his former colleague. Michael Griffin, who did not attend Tuesday's hearing, served as a magistrate and District Court judge for 32 years in Idaho, Lewis and Clearwater counties - three of the five counties in Idaho's 2nd Judicial District. Michael Griffin often presided over cases in Latah and Nez Perce counties during his tenure. William Griffin told Judd he feels bad for the harm he's caused by his actions, particularly to his brother, and expressed a desire to repair the damage he has done. He said he went most of his 64 years without "exploring this type of material" and does not intend to do so again. The man explained that he has sought counseling for the past 15 months to work through the incident and learn what caused him to download the explicit content. William Griffin said he has learned he was suffering from "post-concussion syndrome" and "in that state of mind" was unable to recognize the harm he was causing. "I don't use that as an excuse for the material," he said. William Griffin went on to apologize to the court and state for his actions, and said he does not respect the people who make the content or believe the material should be in circulation at all. "I feel a great deal of shame," he said. Idaho Deputy Attorney General Casey Hemmer said he had concerns with William Griffin's statements, primarily because the investigation uncovered specific searches indicating the content was found intentionally. Hemmer was appointed to handle the state's case after Latah County Prosecutor William Thompson Jr. requested a special attorney to avoid any appearance of conflict. Hemmer said he struggled to understand William Griffin's explanation of how his post-concussion syndrome factored into his possession of child pornography. He said a lot of people have suffered from concussions and do not seek out child pornography. William Griffin's "continued lack of insight and minimization is a concern," he said. William Griffin's attorney, Charles E. Kovis of Moscow, argued that his client is a low risk to reoffend, saying he is an intelligent man who is humiliated for himself and his family. Kovis said he believed William Griffin would be successful on probation and it would allow him to seek mental and sexual health treatment while working and being a "productive member of society." "His self-punishment will never end," Kovis said. "He thinks about it all the time."

Two minors already convicted of pot felonies

Lewiston Tribune: Sep. 24- Mary Stone

Two juveniles already convicted of felonies for possessing marijuana in Asotin County will likely see their guilty pleas vacated after Prosecutor Ben Nichols filed motions to reduce the charges to misdemeanors. Four other teens facing felonies for possession of small amounts of pot will see their charges reduced to misdemeanors as well. Nichols prosecuted the juveniles under a new Washington law he interpreted as requiring the more serious charge, but a representative from the Washington Association for Prosecuting Attorneys said Friday that, in his opinion, the law did not necessarily change the offense from a misdemeanor to a felony. "The best interpretation (of the law) is that simple possession of under 40 grams of marijuana continues to be a misdemeanor," said Tom McBride, the nonprofit association's executive secretary. "That doesn't change the fact that I think it's very confusing." Different opinions about what the law says have added to that confusion. An enforcement officer for the Washington Liquor and Cannabis Control Board said last week that the law seemed to increase the penalty from misdemeanor to felony. "It does appear it is a Class C felony, based on connecting the dots," Justin Nordhorn said after reviewing the legislation. Asotin County officials said last week that three juveniles, ages 14 to 17, were charged with the stiffer crime. Upon further review, Nichols said he filed paperwork Monday to reduce charges in six cases, including two in which the teens had already pleaded guilty to the felony. Asotin County felony public defender Rick Laws represents two of the teens, and one who has already signed a plea agreement that in effect accepts a felony conviction. As Laws explained, his client "will be allowed to take his guilty plea back." That client would then have the opportunity to plead to a misdemeanor offense, Laws said. "I think we as defense attorneys would have to do a lot more legwork if the state weren't so willing to make this all right, right now," Laws said. The statute Nichols cited in charging the teens was part of a law passed by the 2015 Washington Legislature in an attempt to reconcile the state's existing medical marijuana system with its recreational marijuana system. Representatives from both Gov. Jay Inslee's office and the Washington Liquor and Cannabis Control Board said last week that making possession of marijuana by minors a felony in a state where having up to an ounce is legal for adults was not the law's goal. "I can only tell you that this was not the intention that the governor had when working with legislators on this bill," Inslee spokeswoman Jaime Smith said. Nichols said he expects to see the Legislature revisit the law during its next session to make it more clear. "We need to bring attention to the fact that these laws are confusing," he said. "I hope to see the laws changed and fixed."

Suspect in Lewiston burglary spree released without bond

Lewiston Tribune: Sep. 24- Ralph Bartholdt

A 23-year-old Lewiston man accused in a burglary spree on the west side of the Lewiston Orchards was released on his own recognizance Wednesday after waiving his preliminary hearing in Nez Perce County Magistrate Court. Tevan Hildreth will appear next Thursday in 2nd District Court to face two felony burglary charges for allegedly looting cars parked in neighborhoods north of Bryden Canyon Road. After asking several times if Hildreth was certain he wanted to waive his preliminary hearing in the lower court, Magistrate William Hamlett accepted the waiver. "(A preliminary hearing) is a valuable device ... you're allowed to see and test the state's evidence," Hamlett said. Once the hearing is waived, "You will never come back to this lower level of the court system." Prosecutors and his defense counsel agreed Wednesday to allow Hildreth to be released from the Nez Perce County Jail without posting a bond. Hildreth was arrested around 6 a.m. Sept. 10 by Lewiston police, who allegedly saw him carrying a camera lens and a Bowie knife as he walked on the street after midnight, according to court records. He told officers the items were winnings from a poker game. Hours later, police received calls from residents reporting their vehicles broken into and items stolen. Officers tracked the goods to Hildreth's 1992 Honda Civic parked in the lot at the Lewiston-Nez Perce County Regional Airport, where they found the defendant asleep. Officers recovered a backpack, binoculars, digital cameras, power tools, camera lenses, marijuana and paraphernalia, police said. If convicted, Hildreth could face up to 10 years in prison for each count.

Commercial General Liability: Part 3

Idaho Business Review: Sep. 25- Randall Schmitz

In the second part of this series, we discussed whether the "your work" exclusion bars coverage for a contractor's faulty workmanship. In this article, we will discuss whether another potential exclusion, the "contractual liability" exclusion, bars coverage for faulty workmanship claims. A standard CGL policy typically excludes coverage for "property damage" "for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement." This is known as the "contractual liability" exclusion. There are certain exceptions to this exclusion, including those that bring back into coverage damages the insured would be responsible for in the absence of a contract or agreement, or assumed via an "insured contract." An "insured contract" is defined to include, among other types of agreements, contractual indemnity for torts. A majority of courts hold that the contractual liability exclusion only applies to instances where the insured has agreed to assume the liability of another by an indemnity or hold-harmless agreement. In other words, under the majority view, the exclusion does not apply to the insured's breach of its own contract. These courts generally reason that the term "assumption" must be interpreted to add something to the phrase "assumption of liability in a contract or agreement." Applying the exclusion to all liabilities sounding in contract renders the term "assumption" superfluous. Accordingly, the exclusion only applies where the insured has contractually assumed the liability of a third party, as in an indemnification or hold harmless agreement; it does not exclude coverage for all liabilities to which the insured is exposed under the terms of its own contract. Courts in the minority apply the exclusion broadly and extend its reach to a contractor's own work. They tend to find that any claim dependent upon the existence of an underlying contract, including the insured's own contract, and for any contract-like tort claim, is excluded. These courts usually refer to the policy language as clearly excluding from coverage breaches of contract and hold the policy does not apply to the insured's failure to perform a contract or agreement in accordance with its terms. Some courts have found a middle ground between the majority and minority views. These courts agree that the exclusion bars coverage for liability of a third party, such as that assumed by an indemnity agreement, but do not agree that the exclusion pertains to all breach of contract claims. These courts hold that the exclusion only pertains to breach of contract claims where the insured assumes an obligation in addition to those assumed under common law principles. Since the common law establishes a duty for contractors to perform work in a good and workmanlike manner, the contractual liability exclusion would not apply to bar coverage for a claim for breach of that duty. However, if the contractor contractually agreed to undertake obligations in excess of that required by the common law, such as by assuming liability for a third party, or by agreeing to prevent and repair damage to property adjacent to the job site, coverage would be excluded for breaching those duties. As usual, the answer to whether the contractual liability exclusion bars coverage for faulty workmanship claims depends upon which state's law applies. Idaho's case law interpreting the contractual liability exclusion is limited, but appears to follow the minority view. While the Idaho Supreme Court has not engaged in an in-depth analysis of the exclusion, it has indicated the exclusion applies to any assumption of liability in a contract when no other duty exists beyond that contractual liability, and to breach of contract actions in general. It has even applied the exclusion to a breach of implied warranty of workmanship claim because such claims sound in contract. Therefore, to the extent damages associated with faulty workmanship arise out of breach of contract or warranty claims, coverage would likely be excluded under Idaho law.

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Boise murder suspect ordered held without bail

Idaho Statesman.com: Sep. 24- John Sowell

Brandon T. Bahr nodded as Ada County Magistrate Henry Boomer explained the charges against him during an arraignment Thursday afternoon. Bahr, 24, is accused of fatally shooting Boise resident Zacheriah Neil Peterson outside the Boise Depot at 8:49 p.m. Wednesday. Peterson, 21, was taken to Saint Alphonsus Regional Medical Center, where he died about 40 minutes later from a gunshot wound to the chest. An autopsy report was issued Thursday by Ada County Coroner Dotti Owens. Bahr is charged with first-degree murder, aggravated assault with a deadly weapon, grand theft and use of a deadly weapon in commission of a felony. "These are some of the most serious charges one can be charged with," Boomer said. Witnesses told police that they saw Peterson arguing with another man when the dispute turned violent. The two men knew each other, police said. It's unclear why they were at the Depot. There were no scheduled events there Wednesday evening, said Doug Holloway, director of the Boise Parks and Recreation Department. Entering the Depot and surrounding grounds after dark is illegal unless attending a permitted event there, Holloway said. Wednesday's sunset took place at 7:40 p.m. Bahr was arrested at 12:30 a.m. Thursday at a home near the intersection of West Cherry Lane and Ten Mile Road in Meridian, where he resides. He was taken into custody without incident, police said. No details from the shooting were provided at the arraignment. Typically, a prosecutor explains what happened as part of a discussion about bail. In this case, Boomer ordered Bahr held without bail without input from a prosecutor or defense attorney. "It is within the court's discretion and I ask that he be held for now without bond," Boomer said. He scheduled Bahr to return to court Oct. 8 for a preliminary hearing before Magistrate Michael Oths. A motion for bail to be set could be heard at that time. Brenda Marosvari, who lives in a home several hundred feet from the Depot, said she was inside when the shooting took place. She didn't hear anything, she said, but learned of the shooting when her husband came inside and reported what he said sounded like a shot. A large number of police cars and other emergency vehicles arrived within minutes, she said. "I'm sorry it happened. I wish those boys had some different options in their pockets," said Marosvari. "It's sure sad and unfortunate that two people's lives have been impacted this way." Marosvari, who has lived in a house that overlooks the Depot and Downtown Boise her entire life, said she can't remember any incidents in the neighborhood other than a few traffic accidents. "It's a very safe place," she said. Bahr has another case pending in local court. He pleaded not guilty to a charge of petit theft, reportedly committed June 27, according to court documents. He was convicted of carrying a concealed weapon without a permit in 2013, purchasing alcohol as a minor in 2012 and possessing drugs with intent to use in 2011.

Twin Falls Attorney Who Flashing a Gun at Construction Workers is Back in Court

MagicValley.com: Sep. 25- Benton Smith

BOISE • The Twin Falls attorney who flashed a gun during a disagreement with construction workers was back in court Thursday. Joseph Rockstahl was granted a new trial last year by District Judge Jonathan Brody during an appeal filed by Rockstahl. Brody reversed convictions for the misdemeanor charges of brandishing a firearm and disturbing the peace. The state filed an appeal arguing Brody erred in deciding Rockstahl was denied a right to counsel of his choice and had character witnesses unfairly excluded from the trial. The Idaho Court of Appeals heard arguments in the case Thursday. On July 2, 2012 Rockstahl and his wife were drinking in their backyard while construction work was going on in their neighborhood, court document said. After his wife complained to the construction workers about the noise, Rockstahl returned with a gun and said, "Let's get this gunfight started." Rockstahl argued he was defending himself and his wife. Charges were filed in November and Rockstahl represented himself until another attorney took over. The trial was scheduled for May 2013. Before the trial, Rockstahl fired the attorney and hired Keith Roark instead. Rockstahl lost communication with his old attorney who didn't believe he would have to handle the trial, court documents said. When Rockstahl asked for a delay so Roark would have time to prepare, a judge denied the request. Rockstahl ended up being represented by his old attorney. With the new trial date, Rockstahl's list of 20 witnesses was given to the state two days before the trial, meaning they didn't have enough time to prepare, court document said. Even though Rockstahl filed the list within the time-frame agreed on in the pretrial conference, many of his witnesses were excluded from the trial. In Brody's decision, he said delays in the case weren't Rockstahl's fault. The exclusion of witnesses who would testify to Rockstahl's peacefulness could affect the way the jury saw the trial and whether they believed he acted in self defense, Brody's decision said. The state argues Rockstahl had between March 28 and May 15, 2013 for Roark to step in, but no intention of him taking over was filed. Instead Brown kept representing Rockstahl and they failed to respond to the states request for a list of witnesses filed back on Nov. 29, 2012, court documents said. The Idaho Court of Appeals will decide if the exclusion of witnesses was a fair sanction to impose or if Brody was right in granting a new trial. Rockstahl was sentenced to 10 days in jail and two years of supervised probation after the initial trial.