New trial set for Thomas

Lewiston Tribune: Mar. 7- Ralph Bartholdt

A new jury trial for a former Nez Perce County sheriff's deputy sentenced to prison after being convicted in the death of his ex-wife was set Friday during a status hearing in Lewiston's 2nd District Court. Joseph A. Thomas Jr., whose conviction was thrown out earlier this year, will get a second chance to prove his innocence at an Oct. 5 jury trial in Lewiston, the same place the alleged murder occurred and in the same courtroom where he was convicted and sentenced to 25 years in prison three years ago. Thomas, who was convicted in December 2011 of first-degree murder for the alleged strangling of Beth Irby-Thomas with a belt, argued his ex-wife accidentally strangled herself while engaging in the solitary practice of autoerotic asphyxia. Former District Judge Michael Griffin prohibited Thomas from presenting evidence of asphyxia during the first trial that the defendant said could prove his innocence. The Idaho Supreme Court in January overturned Griffin's ruling as part of an appeal and sent the case back to the 2nd District for a new trial. The high court ruled Thomas has a constitutional right to present his version of the facts. Justices agreed that the excluded evidence would have corroborated the defendant's testimony, "and was relevant to the issue whether he intentionally killed her." Judge Gregory FitzMaurice, Griffin's successor, was in Lewiston Friday to square his calendar for the proceedings. He scheduled an April 1 bond hearing and heard briefly from attorneys. In the nine-minute hearing, defense attorney Gregory Hurn said he would file a brief on his motion for bond, and the judge said he would review a motion by Nez Perce County Deputy Prosecutor Justin Coleman to prohibit contact between Thomas and Irby-Thomas' family, including his children. Thomas appeared at Friday's hearing via television from the Nez Perce County Jail, where he is being held pending the hearing to determine if he can be released on bond.

Judge puts limits on expert testimony in Hodges trial

Lewiston Tribune: Mar. 7- Ralph Bartholdt

Testimony from expert witnesses will be reined in by the court during the murder trial of Natasha N. Hodges, a judge ruled Friday, and jurors may be driven to the Lewiston residence where Hodges cared for the toddler who allegedly died while in her care. In a hearing that set parameters for Hodges' April 9 jury trial, 2nd District Judge Jeff M. Brudie said he will prohibit expert witnesses from voicing opinions on whether 2-year-old Rylee Mingo's death was a result of child abuse, or of intentional or accidental injuries. "There are a lot of opinions by all the experts, some of which the court may allow and some of which the court will not allow, based on foundational requirements," Brudie said. Hodges was indicted more than two years ago by a grand jury in connection with the death of the 2-year-old girl whom police said died of internal bleeding after an apparent injury to her abdomen while at Hodges' day care facility. Hodges' attorney, Richard M. Cuddihy, has argued the child died from a pre-existing medical condition. The 30-year-old Hodges has pleaded innocent to one count of first-degree murder. In response to a request by the defense, the judge said he may have the jurors travel to Hodges' home, where she runs a day care for children, in an effort to familiarize them with the size and layout of the residence. Cuddihy requested jurors visit the residence, he said, so they know how small it is and how difficult it would be to purposely injure a child there without being noticed. "This is about (allegedly) striking a small child in a very small area with other people present, and a jury should know how small of an area it is," Cuddihy said. Nez Perce County Chief Deputy Prosecutor Sandra Dickerson said photographs of the residence will be provided to jurors and argued transporting them to the scene is unnecessary. "This is not necessary in any way, shape or form," Dickerson said. "There simply is no reason for a jury view." Brudie said he will submit a ruling on the request later. The judge will also decide later whether there is relevance in testimony regarding pre-existing injuries the 2-year-old may have suffered. Both attorneys argued at length on if old or new injuries should be discussed at trial. Cuddihy said any old injuries are not relevant to the case, while witnesses for the prosecution referred to the child's death as having been the result of new injuries. Brudie said he will submit a pretrial order on the motions before March 27.

Idaho law students push to put state's code in public domain

Idaho Statesman.com: Mar. 8- Ryan Struyk/ AP

BOISE, IDAHO — Idaho law students Jordan Stott and Randi Schumacher have spent nearly three years poring over the nuances of many laws. Now they're trying to write their own. An Idaho House panel introduced a bill — drafted by Stott and Schumacher — that would remove Idaho's copyright on its state laws and add them to the public domain. The University of Idaho law students argue that if citizens need to follow Idaho's laws, then they should be free to access and reproduce it. And even though the unofficial text of the statutes is available online, the students say that it's more difficult to access the commentary that accompanies the code. "You're getting the words of the code, but you're not getting the annotations and notes that are so helpful for understanding," said Stott, who has previously worked with the U.S. Patent and Trademark Office. Democratic Rep. Ilana Rubel from Boise says she's not sure if the bill will move forward because of pushback from the Idaho Code Commission. Dan Bowen, who represents the Commission, says the public has ample access to the official code in county law libraries across the state. People must otherwise buy access to an online version of the code, the students say, or purchase the printed version, which costs more than $500. "I'm a little concerned about that because we have a big state, and a lot of people can't get to a law library," said Democratic Rep. Ilana Rubel from Boise. "I think it does impair the access somewhat." After Rubel recognized the concern, she asked the students to research what the policy should be — and then write the bill itself. But Rep. Richard Wills, who chairs the House Judiciary, Rules and Administration Committee says he's still uncertain whether he will give the bill a full hearing. According to the National Conference of State Legislatures, roughly 30 state governments surveyed — including Idaho— hold a copyright on their codes. Idaho has held the copyright on its official law since 1949. The state is currently under contract with Matthew Bender and Company, Inc. The business is tasked with organizing and maintaining the code, as well as updating its accompanying annotations. Without the financial incentive, Bowen says, there's no reason for Bender to keep updating the notes — which Bowen says the state doesn't have the capacity to handle. "I'm sure there was some sort of a reason whenever they originally did this, but I wouldn't know," said Bowen. "That's the way it has been set up, and that's the way it works." The contract shows that the state pays more than $400,000 per year for 1,025 copies of the full annotated code. But the students say that the copyright's repeal would allow people to come up with new ways to access the laws. "It's not enjoyable to read and not easy to search," said Schumacher, who plans to practice law in Boise after her graduation this spring. "If people were able to use the code to make apps or a website, I think that would be good innovation." Rubel says the students plan to meet with the Code Commission soon in an effort to hammer out a compromise.

It’s time to love technology

Idaho Business Review: Mar. 9- Jim Calloway

Lawyers tend to have a love/hate relationship with technology. Of course, that’s often true for any of us who use today’s technology for our work. But for many lawyers, those feelings are quite pronounced and, without offering any amateur psychological diagnosis, I feel many members of the legal profession evidence a split personality when using technology.

The early years On the one hand, law firms were early adapters of many types of technology. Fax machines made their way quickly into the law because lawyers needed to deliver documents quickly and were incurring significant expenses for couriers and overnight delivery services. Memory typewriters and early word processors were also embraced by law firms to avoid needless retyping. But, as anyone who does technology consulting for law firms will tell you, internal resistance to many aspects of technology implementation within firms is often significant. It extends to purchasing new technology, training staff on technology, training lawyers on technology and adopting new technological tools. That’s somewhat ironic when you consider that almost all parts of legal services delivery are information-based. Lawyers research online databases. They write. They prepare outlines and deposition summaries. They file pleadings with courts (increasingly by e-filing) that are prepared by word processing tools.

Arguments for and against technology Many businesses now exist that could not have existed without the Internet or computers. Other businesses have been eliminated by changes in information technology and consumer expectations. When computers were introduced into law offices, they were seen as a tool for secretaries to use — but certainly not for lawyers. A remembrance of the late Browning Marean, an expert in electronic data discovery and an active and beloved member of the ABA Law Practice Division who passed away last summer, included the fact he found himself “fending off complaints from his fellow partners that he had been seen by associates typing on his personal computer.” But now the lawyer who does not have a computer on his or her desk is a rare individual indeed. The ABA Model Rules of Professional Conduct were amended in 2012 to provide in Comment 8 to Rule 1.1 that knowledge of “the benefits and risks associated with relevant technology” is a part of lawyer competency. In August 2014, the Legal Tech Audit (legaltechaudit.com) was released by Kia America’s in-house counsel, Casey Flaherty, and professor Andrew Perlman of Suffolk University Law School’s Institute on Law Practice Technology Information and Innovation. The story behind the audit has been well told by now. Flaherty thought the outside counsel that Kia retained were quite good with substantive legal work but their efficiency in workflow processes left much to be desired. Examples of poor uses of technology that cost the client money included printing documents to paper and scanning them to create a PDF file rather than creating the PDF directly on the computer, and an associate billing for hours to manually make mathematical calculations that could be done with a spreadsheet. Now that the audit exercises have been released with affordable fees and the ability for clients to request their lawyer’s scores, no doubt by the time you have read this column, scoring well on the audit will have become a rite of passage for many associates at large firms. Those developments, combined with ever-increasing dependency of law firms on technology tools, have generated concerns for many so-called low-tech lawyers. They argue that they cannot learn everything there is to know about technology and still have the time to earn a living and remain competent in the substantive law of their practices. Of course, if pressed, they would have to admit that they do not know “everything” about the law either. The lawyer whose practice is limited to securities or real estate transactions does not need to know adoption law or how to handle a DUI case. But a lawyer does need to have a basic understanding of the technology tools he or she uses frequently. If you are billing a client for four hours to do something that could be done in 20 minutes, you are not doing right by your law practice or your client. We would all judge harshly carpenters or mechanics who are not familiar with the necessary tools of their trades. Technology tools are the lawyers’ tools of their trade. This is true now and will be increasingly true in the future. Whether the lawyer is truly technophobic or just thinks he or she is too busy to learn new skills does not really matter. The skills for a successful legal career increasingly include the effective use of technology tools. Some years ago, a lawyer told me that he just “could not” learn technology and it all eluded him. I knew him well and responded that he was a medical malpractice defense counsel; he had learned the details of many surgical procedures and drug interactions. Did he really expect me to believe that he was incapable of learning technology tools that were in wide use in offices across the country by people without college degrees? Or did he just not want to? He shot me a grin in response.

There’s no turning back It is far past time for any practicing lawyer to “want to” learn good technology skills. You need to embrace the technology tools that help you be more efficient in your law practice. Handwriting time entries on paper billing sheets for someone to interpret (or misinterpret) is not only inefficient but leaves the lawyer with a lot of billing proofreading. Enter your time into a billing system — or at least into a word processing document, if your firm is way behind the curve. If you don’t know how to do a simple technology task, ask Google or another search engine; you will almost always receive links to web pages with step-by-step instructions. Train your staff and lawyers in small increments. Not only is a day-long technology training session stupefying, but that much material at one time is impossible to retain. Have short training sessions and send the attendees back to work to exercise their new skills. Your technology skills represent your freedom and independence. Would a litigator really want to be unable to e-file a document without help (even though the best practice might be for staff to normally do the e-filing)? Should a lawyer’s work grind to a halt when flu season takes out several staff people at once? Even power technology users have a love/hate relationship with their technology at times. But for most lawyers, a key to future success is learning to love the electronic advancement of their industry for the time that can be saved and the stress that can be averted through good personal technology.

Jim Calloway is the director of the Oklahoma Bar Association Management Assistance Program. He publishes the weblog Jim Calloway’s Law Practice Tips at http://jimcalloway.typepad.com.

Protecting your brand online

IdahoBusiness Review: Mar. 11- Brad Frazer

Remember the Marlboro Man, that stalwart image of the American west? In addition to his iconic status as a symbol of ruggedness, he was used by the Philip Morris tobacco company to sell millions and millions of cigarettes from 1954 to 1999. For Philip Morris, the Marlboro Man was the brand behind the cigarettes. And that brand was tightly controlled: If someone printed advertisements or magazines or t-shirts that capitalized on that image without authorization, Philip Morris would act to shut it down—quickly. Philip Morris could do this, in large part, because back in the old days it was hard and expensive to copycat a brand, meaning that the universe of infringers was likely finite and quantifiable, and thus manageable. Fast forward to the Internet Age. Today, anyone with access to the Internet can find, copy, distribute and exploit for good or evil virtually any brand, photo, symbol, image or logo. For example, assume I wished to print up 100 t-shirts with the Nike Swoosh logo on them to sell at a flea market or on eBay. All I'd have to do is find the image on the Internet, right-click on it, "Save As" the image to my hard drive, print off an iron-on transfer, buy 100 t-shirts on Amazon.com and spend an afternoon ironing the images onto my supply of t-shirts. Total cost: less than $300, and never mind the potential illegality of my actions. Now multiply that by the number of people who have (a) Internet access, (b) a printer, (c) an iron and (d) nefarious intent, and you can see the problem created by the Internet in terms of policing and protecting your brand. Increased opportunities for mischief like this created by the Internet demand that businesses either adopt a laissez-faire attitude about such misappropriations of their hard-won brands, or adopt the following strategies to increase the odds they can remain sharp and competitive with strong enforceable brands: 1. Be vigilant. Monitor how your business' brands and images and names are being used by third parties on the Internet. You can do this with commercial services like MarkMonitor, or you can use Internet word and image search engines to periodically canvas cyberspace to see how your content is being used. Certain search engines allow you to set up customized "alerts" to send you emails when selected criteria (your names or brands, for example) are used on the Internet. 2. Register your trademarks and brands with the United States Patent and Trademark Office. Although trademarks can exist in the United States without registration as common-law trademarks, registration gives you enhanced remedies against online infringers. Many social media companies and search engines will turn a deaf ear to a plea for help addressing online infringements without a trademark registration. 3. Proactively register Internet domain names that invoke your brands and trademarks before someone else can. You've all heard stories of the guy who went out to check the availability of a domain name and when he went back later to register it, it was gone and he had to buy it back from the interloping registrant. That actually happens, and it has a name: "front running." Thus, to avoid front running, register domains at the same time you search them. 4. Proactively obtain social media usernames, handles and platforms that identify and support your brand before someone else can and preferably before launch. If you are getting ready to launch a new service in 2015 and it's going to be called, e.g., "NewServ," you want to secure the Facebook page "facebook.com/newserv" before someone else can get it. 5. Proactively register your copyrights in the elements of your brand that contain copyrightable subject matter. For example, if your logo is sufficiently creative and could function as a stand-alone drawing or work of art, register your copyright in it (assuming you can prove you own the copyright–but that's a different issue). This will give you the ability to use copyright law in addition to trademark law to enforce parts of your brand elements if they are misused on the Internet. Remember the converse of this issue is also true: the Internet has spawned multiple new ways for businesses to create common-law trademark rights, and so if you launch a new product or service without being fully cognizant of who might already have common-law rights in the chosen name for your new product or service, you could get sued for trademark infringement within weeks or months of your launch. A trademark search is thus recommended prior to launch. If you are vigilant and use these mostly very inexpensive tools to monitor, register and enforce your brand elements, you will be well positioned to make sure that consumers find you on the Internet and not your competitors, a scammer or a pornographer, any of whom might be using your brand elements without your permission.

Brad Frazer is a partner at Hawley Troxell, where he practices Internet law, publishing law and copyright law. He is a published novelist and a frequent author of Internet content. He may be reached at bfrazer@hawleytroxell.com.

Lewd conduct case remanded

Coeur d'Alene Press: Mar. 11- Keith Kinnaird/ Hagadone

SANDPOINT **-** The Idaho Court of Appeals is giving a Bonner County man convicted of lewd conduct another shot at reducing the lengthy prison term he is serving. Mark Richard Boncz was accused of molesting a 5-year-old girl in Priest River in 2005. He was tried and convicted in 2009. Boncz, 59, was given a life sentence, the first 15 years of which are fixed. Boncz petitioned for post-conviction relief on grounds that his defense attorney wrongly prevented him from testifying at his trial. Judge Jeff Brudie agreed that there was a question of material fact regarding whether Boncz had been prevented from testifying, but held that any exclusion of his testimony was not prejudicial. On appeal, Boncz argued that Brudie erred by finding that there was no showing of prejudice. Boncz further argued that Brudie improperly analyzed his claim that his constitutional right to testify was violated. The appeals court ruled on March 3 that Boncz demonstrated that his attorney's performance was deficient and was prejudiced by the deficiency. Appeals Judge Karen Lansing noted that there were "four major inconsistencies" in the alleged victim's testimony. The girl, for instance, told a pediatrician that Boncz strapped her to a bed with bungee cords, but testified at trial that she used her arms to push Boncz off her, which would have been impossible if they were restrained above her head by the cords. Other inconsistencies involved the number of times and how she was molested. Had he been allowed to testify, Boncz said he would have contradicted the child's testimony point by point. "Boncz's proposed testimony would have not only rebutted the child's testimony but also would have highlighted the inconsistencies in her reports concerning the use of bungee cords and the number of sexual acts," Lansing wrote in the 10-page unpublished opinion. Lansing also concluded that Boncz's prima facie showing that he was prevented from testifying and that he was therefore prejudiced, which raises genuine issues of material fact as to his claim of a direct violation of his constitutional right to testify. Judges Sergio Gutierrez and David Gratton concurred with Lansing. The ruling has no effect on Boncz's conviction, which was affirmed by the appeals court in 2011. Boncz's civil suit seeking post-conviction relief is being remanded back to district court for further proceedings. "Although we are certainly disappointed on the ruling, we will get another chance to defend this conviction and will vigorously do so," Bonner County Prosecutor Louis Marshall said.

Judge orders jail in vehicular manslaughter case

Coeur d'Alene Press: Mar. 11- Keith Kinnaird/ Hagadone

SANDPOINT **-** A Washington man was ordered on March 3 to serve 210 days in jail for accidentally killing a motorist in a head-on collision on U.S. Highway 2 near Oldtown last year. Christopher Dale Jewsbury tearfully apologized to the family of Amy Lynn Brady, a retired U.S. Navy veteran and single mother who was killed in the crash. "There's not a day that goes by where I don't think of Amy Lynn Brady," Jewsbury said as he turned to face the family. "I am so sorry." Idaho State Police said Jewsbury was driving westbound in a GMC Sierra pickup when he crossed the center line, sideswiped an oncoming sport utility vehicle and then crashed into Brady's Chrysler 300 sedan. Brady, 39, a Pend Oreille County resident, was instantly killed in the March 14, 2014, crash. Jewsbury, 50, of Spokane, was seriously injured and wheelchair-bound for nine months after the crash. Jewsbury told state police he fell asleep behind the wheel, crossed into the oncoming lane of travel and was unable to take evasive action when he awoke. Although cocaine and marijuana were detected in Jewsbury's system, the state lacked the evidence to sustain an allegation that he was under the influence of intoxicants at the time of the collision. "There was no evidence that I would have been able to present that directly linked those chemicals with any impairment of driving capacity," Bonner County Deputy Prosecutor Roger Hanlon said during the hearing. As a result, Jewsbury was charged with vehicular manslaughter at the misdemeanor level, a decision to which Brady's mother and brother have taken particular exception. Hanlon said the evidence of marijuana use was inadmissible because it was obtained through a urinalysis conducted by Kootenai Health instead of a state police-certified lab. Moreover, the urinalysis detected a metabolite of marijuana's psychoactive ingredient, which Idaho case law does not recognize as an intoxicating substance. A blood draw analyzed by an ISP lab detected a metabolite of cocaine in Jewsbury's system but that also happens to be the ingredient of a topical pain reliever, Hanlon added. Hanlon recommended a one-year jail term with six months suspended and a two-year driver's license suspension. Public defender Susie Jensen argued for a six-month term with all but 20 days suspended so Jewsbury does not risk losing his business or home. She emphasized that Jewsbury is genuinely remorseful about Brady's death and acknowledges the devastation it has caused. "Mister Jewsbury has to live with his actions. He lives with that every day," Jensen said. Jewsbury's friends and family described him as a caring person with a strong work ethic. "He didn't intentionally go off to hurt anybody," said Jewsbury's brother, William. "He's not a bad man." Brady's mother, Lesley Miller, tearfully described her anger and disbelief upon hearing of her daughter's death and ultimately learning that the state was not seeking a felony charge against Jewsbury. Miller appealed to state and federal officials to pressure for a more robust prosecution of Jewsbury. "It's about getting justice for Amy," said Miller. "I feel like this is our last shot." Miller has assumed guardianship of a Brady's 11-year-old son. Brady also has an 18-year-old daughter. Brady's brother, James, excoriated Hanlon's prosecution of Jewsbury and scoffed at a proposed six-month sentence, which he said undermines the public's trust in government and is an insult to his sister's service to the country. "This is half the time my family has been waiting for the wheels of justice to turn and bring Amy's killer to the point we find ourselves at today," said Brady. Brady's daughter, Jessica, did not attend the hearing, although a letter she wrote was read into the record. "I dream about my mom still being alive almost every night just to wake up and realize that she's not. It brings me back to that day every single time I dream of her and I feel like I lose her all over again," Jessica Brady wrote. Judge Lori Meulenberg said she spent a considerable amount of time thinking about the case and its effect on Brady's family and Jewsbury himself. "You are going to have to serve some time in jail because this is horrific and it was your actions that caused this," Meulenberg said. Meulenberg imposed a 360-day sentence with 150 days suspended. Meulenberg said she lacked the ability to elevate the charge against Jewsbury and explained that she was not imposing the maximum custodial sentence of a year in jail because it would deprive the court of its ability to require two years of supervised probation and 150 hours of community service. Jewsbury, who is now on crutches, will be furloughed from the jail for a month so he can undergo another surgery to repair a broken leg. Restitution and whether Jewsbury will be granted work release will be addressed at a subsequent hearing.

Federal Child Exploitation Case Delayed for Competency Review

MagicValley.com: Mar. 11- Alison Gene Smith

BOISE • The federal trial for a Shoshone man accused of sexually exploiting a child and viewing child pornography has been delayed indefinitely. William Roger Wilkinson, 53, was scheduled to go on trial April 7 on charges of sexual exploitation of children, possession of child pornography, access with intent to view child pornography and transportation of child pornography. On Feb. 10, a federal judge ordered Wilkinson be committed to a federal facility for a psychiatric or psychological examination. Court records say that he would not be held longer than 30 days unless the facility's director sought an extension. As of Wednesday nothing new on Wilkinson's status was listed in federal court documents. After a judge gets a sealed report from the facility's staff, the judge will decide if Wilkinson is competent to stand trial. Wilkinson's attorneys from the state Public Defender's Office asked for the review. "To date, the defense has had some concerns regarding Mr. Wilkinson's competency. Based on very recently discovered behavioral changes in Mr. Wilkinson, the defense now has sufficient cause to seek a competency hearing," their request said. Wilkinson's attorneys also argued the search of his house was illegal because of an incomplete warrant. "... the government notes the multiple references in the affidavit to 'Roger's house,' and ignores that the affidavit itself contains no facts that would allow a magistrate judge to conclude that, when referring to 'Roger's house,' the sources were identifying the address in question." In 2013, the Lincoln County Sheriff's Office began investigating Wilkinson after a girl told police he had touched her inappropriately at his home in 2012. Wilkinson was arrested Nov. 12, 2013, in Utah after fleeing, said Lincoln County Sheriff Kevin Ellis. A trial in Lincoln County that was set for August was vacated and has not been rescheduled. A status hearing on that case is set for April 27. The girl testified last March that a teacher and her grandparents became worried when she complained of nightmares, feeling sick and saying she "wanted a new body." If convicted, Wilkinson's combined charges are punishable by up to 90 years in prison, a fine of $750,000, and at least five years but up to lifetime of supervised release.

Judge faults Forest Service on Clearwater plan

Lewiston Tribune: Mar. 13- Eric Barker

A federal judge dealt a blow to the Clearwater National Forest Travel Management Plan Thursday, sending it back to the Forest Service to rework deficiencies related to elk habitat and motorized trail use. U.S. District Court Judge Edward Lodge ruled portions of the plan to be arbitrary and capricious. The controversial plan, implemented in 2012, closes about 200 miles of trail and 1 million acres to motorized travel. The plan was appealed by 26 different groups and individuals from both ends of the motorized use spectrum, including environmental groups that said it allows too much motorized use and others who said it closed too many trails. Those appeals were turned away by the agency but later spawned court challenges from environmental groups like Friends of the Clearwater, motorized user groups like the Idaho State Snowmobile Association and Idaho and Clearwater counties, in separate suits. Thursday's ruling applies to the suit brought by environmentalists in which Friends of the Clearwater, along with the Palouse Group of the Sierra Club and the Alliance for the Wild Rockies, alleged the plan violated the National Forest Management Act and a pair of decades-old executive orders implemented by Presidents Richard Nixon and Jimmy Carter. The environmental groups argued the agency violated its 1987 forest plan by allowing motorized use in areas it had vowed to protect as important habitat for elk. Lodge wrote motorized use of trails in the areas might be proper, but the agency failed to use the best available science when it studied how that use would affect elk habitat. Specifically, the agency used a 1985 document called "Guidelines for Evaluating and Managing Summer Elk Habitat in Northern Idaho," a road management assessment tool, when deciding to allow motorized use on some trails through elk habitat. The document was designed to measure how roads can alter the way elk use an area, but it was not designed to evaluate trail use. The plaintiffs charged the agency should have used motorized trail use guidelines developed by the Forest Service and Idaho Department of Fish and Game in 1997. The agency countered that the later document did not exist when the forest plan was approved in 1987 and the agency was obligated to use the older tool, even if it wasn't designed to analyze motorized trails. Lodge sided with the environmental groups. "The Forest Service's reasoning to use the outdated calculation because that was the standard that existed at the time the forest plan was drafted does not properly consider the best available science," the judge wrote. The environmental groups also said the agency's analysis of motorized trail use failed to show it considered the executive orders that compel the agency to try and minimize user conflicts and resource damage. The agency did consider the executive orders in its analysis, but Lodge ruled that the agency did so in only a cursory way and failed to fully explain how the orders were implemented. Similar to a math teacher marking down a student's homework for failing to show his or her work, Lodge said the agency needed to do the same. "It may very well be that the chosen routes were in fact selected with the minimizing criteria in mind," he wrote. "It is just not evident from this record that is the case." Lodge has remanded the travel plan back to the agency. Brett Haverstick of Friends of the Clearwater said his group is encouraging the Forest Service to do more than just clean up the shortcomings cited by Lodge and to close trails that could harm elk habitat and other resources. "It comes down to trying to protect some really critical habitat out there and to make it a better travel plan than it has ever been," he said. Last October, the Forest Service and the snowmobile association reached a settlement agreement over the group's legal challenge of the travel plan. Under the terms of that agreement, the agency said it would reconsider its ban on snowmobiles, motorcycles and mountain bikes in the Great Burn Roadless Area that has been recommended for a federal wilderness designation. The lawsuit filed by Idaho and Clearwater counties is on hold pending the outcome of the agency's reconsideration of trail closures related to the Idaho Snowmobile Association case. The counties claim the agency didn't sufficiently coordinate with county officials while writing the plan, didn't properly analyze the economic effects it would have on local communities and failed to back up its decision with site-specific data.

Barker may be contacted at ebarker@lmtribune.com *or at (208) 848-2273. Follow him on Twitter @ezebarker.*

Judge plans ruling in blasting case

Lewiston Tribune: Mar. 13- Ralph Bartholdt

A 2nd District judge will decide in writing whether Nez Perce County erred by not further lowering the assessed value of a Cougar Ridge home that the owners say is damaged goods because of nearby rock blasting. After listening to a day of testimony from the county's chief deputy assessor, the property owner, contractors and a Boise appraiser Thursday in Lewiston's 2nd District Court, Judge John R. Stegner called for a recess around 6 p.m., nine hours after the hearing began. Homeowner Barry Schultz succeeded two years ago in an effort to have the assessed value of his property lowered after appealing a county decision to the state's board of tax appeals. Schultz maintains that blasting at a nearby rock pit has caused damages to his 6319 Cougar Ridge Drive home, including cracks in the foundation, sheetrock and trusses. He alleges the damages are so extensive that his home is not sellable. The Lewiston plumbing contractor has twice been stymied in his efforts to have the county lower his property tax assessment, and has twice won an appeal at the state level. In 2013, the state board reduced the value of his home from $240,079 to around $204,067. In 2013, the state allowed another reduction in the assessed value. The county objected to the latest ruling and petitioned the court to set a value for the home. Nez Perce County Chief Deputy Assessor Brad Bovey stood by the appraisal methods used by his office to obtain the property value. He said the county has lowered the home's price category based on ongoing damages. "We lowered the market grade and the land grade," Bovey said. The Nez Perce County Assessor's Office follows strict state guidelines when it appraises property, he said. Individual properties are visited once every five years because of limitations that include time constraints and the number of appraisers employed by the county. Bovey visited the Schultz property in 2013, he said. But Schultz argues that recent damages from blasting haven't been acknowledged by the county, and the damages have resulted in a considerably lower value that the county has not adjusted. Calling the home stigmatized, Boise appraiser Jody L. Graham said she would tell a bank not to provide a conventional loan on the property. She concluded insurance companies are either reluctant to insure the property or would insure it only at a high premium. Given the difficulty in securing a loan on property that is hard to insure, Graham said the buyer pool would be cut in half as financing would be limited to cash buyers or an owner's financing. "It would typically reduce the value," she said. Stegner's decision is expected at a later date.

Bartholdt can be contacted at rbartholdt@lmtribune.com *or (208) 848-2275.*

Ex-zookeeper gets rider for sexual abuse

By ALI TADAYON Post Register March 5, 2015

Editor's Note: This story has been corrected. An earlier version listed an incorrect age for Raymond "Joe" Probert. A former Tautphaus Park Zoo animal keeper was sentenced to a rider Thursday for sexually abusing a 17-year-old "Junior Zoo Crew" volunteer. Raymond "Joe" Probert, pleaded guilty in November to sexual battery on a minor 16 or 17 years old. The victim, who is now 20, said the abuse started when she was 14 and Probert was 50. Seventh Judical District Judge Jon Shindurling sentenced Probert to a rider program with an underlying prison term of five to 20 years. A rider is an intensive treatment program at a minimum-security prison that runs from 90 days to a year. During that time, the judge retains jurisdiction. When Probert completes the program, he will again appear before Shindurling. If Probert successfully completes the program, Shindurling can allow him to serve the remainder of his sentence on probation. Probert also will have to register as a sex offender. Prosecutor Danny Clark had a different punishment in mind for Probert. He urged Shindurling to impose a fixed prison sentence of at least three to five years. "We felt prison was justified in this case," Clark said after the hearing. "But (the Prosecutor's Office) respects the prerogative of the court to ultimately decide what's best." The sentencing hearing was a tearful one. On one side of the courtroom sat the 57-year-old Probert. On the other side sat the victim's mother. She would speak for her daughter, who couldn't bring herself to attend the sentencing. "The most profound impact of the abuse has been on (her) personality," the victim's mother said. "She was once a carefree, animal-loving girl. She wanted nothing more than to grow up and work with animals.… She no longer has these passions and dreams and finds herself lost and struggling. The things that once gave her such direction and purpose now cause her pain and sadness." Probert offered an apology. "I can't believe I was that person," he said. "I want everyone to know how sorry I am. This is something I'll carry with me for the rest of my days." In an agreement reached Oct. 1, prosecutors said Probert would not be charged with any additional crimes in relation to the victim if he agreed to plead guilty to sexual battery on a minor 16 or 17 years old by lewd and lascivious acts, court documents show. Had he been charged for the reported conduct that occurred before the victim turned 16, Probert could have faced life in prison for lewd conduct with a minor younger than 16. During the sentencing hearing, Clark said Probert sexually interacted with the victim 20 to 30 times before she turned 18. Last August, Probert told Sheriff's deputies he had sexually touched the victim "multiple times" before she turned 18. Zoo officials told detectives they observed inappropriate behavior between Probert and the victim as far back as 2006, but Probert remained a zoo employee until Sept. 4. Probert was fired after the victim told Linda Beard, now interim zoo superintendent, that she and Probert had sexual encounters before she turned 18, court documents said. Upon receiving that information, Idaho Falls Parks and Recreation director Greg Weitzel contacted the Sheriff's Office, which launched an investigation. In December 2011, when the victim was 18, Beard said she walked into the saw Probert and the victim together in the tiger building and that they were "up against a wall" and that "it was obvious that something was going on" but she didn't see anything specific, court documents said. Despite complaints from other zoo employees about Probert's behavior, he remained in his job. Eventually, a "book-and-release" warrant was issued for Probert's arrest — another stipulation of the plea agreement. Probert surrendered Oct. 7 and was released to pretrial services. In court Thursday, the victim's mother said she, her daughter and family "have a lot of healing to do." "To find out that my daughter from a young age was groomed and victimized has shaken our family to the core," she said. "The hope is that (the victim) will come out of this a stronger person, but we are aware she will spend many years recovering and this will be a defining life event for her."

6th Judicial District seeks magistrate candidates

Morning News March 9, 2015

POCATELLO — The Magistrate Commission of the Sixth Judicial District is seeking applicants for the position of Magistrate Judge for Oneida County. Honorable Ronald M. Hart will be retiring effective, June 30 after serving over 20 years as a magistrate judge in the Sixth Judicial District with his resident chambers in Oneida County An attorney who has attained the age of 30years, has been admitted to the practice of law at least five years, and is currently licensed to practice law in the State of Idaho is eligible to submit an application for the vacancy. A magistrate judge shall also be a qualified elector of the State of Idaho and, after appointment, reside in the county for which the magistrate judge is appointed. The appointee may be assigned to hear cases throughout the judicial district and may also be assigned outside of the district by the Idaho Supreme Court. Salary is $112,000 per year, plus state benefits. Application forms are available from: Suzanne H. Johnson, Trial Court Administrator, Sixth Judicial District624 E. Center, Room220, Pocatello, Idaho

Janitor Jim' still works at UI after guilty plea for heroin possession

By Shanon Quinn, Daily News March 6, 2015

More than 30 days after University of Idaho custodian James Lane Eckelbarger pled guilty to felony possession of heroin, he remains employed there, although the future of his job is unclear. Eckelbarger, who admitted in November to selling heroin for Lee Thang and Jeannie Lee, was known to confidential informants as "Janitor Jim," according to court documents. He was the target of "controlled buys" set up by the Quad City Drug Task Force, led by Dustin Blaker of the Moscow Police Department in fall of last year. After being charged with possession on Sept. 3, 2014, Eckelbarger began taking part in controlled buys, purchasing heroin and methamphetamine from Thang and Lee with cash provided by the task force. Eckelbarger testified at a probable cause hearing in November he was not promised immunity from his charges of possession of a Schedule I controlled substance (heroin) and driving under the influence if he took part in the controlled buys. Eckelbarger said while he used methamphetamine, he did not personally use heroin, but sold the entire amounts he had purchased from Lee. He also expressed his displeasure at having to be involved in the hearing. "If I didn't have to be, I wouldn't," he said. "I consider (Thang) a brother." According to the University's website, Eckelbarger has worked as a custodian in the UI's Pitman Center for more than five years. His criminal history in the state of Idaho reaches back only to 2013, the year he testified he met Lee and Thang through mutual friends and began purchasing methamphetamine and heroin from them, but his criminal history in California, which includes charges of grand theft, trespassing and possession of controlled substances, dates back to 1992. Although the university performs background checks on potential employees, only convictions involving violent crime, crimes against children or vulnerable adults, crimes involving use or possession of a weapon or firearm and crimes of a sexual nature result in automatic exclusion of an applicant or termination of a current employee. Greg Walters, the UI's executive director of human resources, said there is no black or white answer of how the university handles employees with criminal charges, as they are dealt with on a case-by-case basis. "If a current employee is charged with a crime, including a felony, it's usually our office that consults with the Office of General Counsel, the supervisor and anyone else with a business-related need to participate in that conversation," Walters said. "An arrest or a charge is not a conviction - something we take into serious consideration. If an employee continues to work pending an outcome, we watch to see the disposition of the case and again, gather the right people to discuss the situation." Eckelbarger is scheduled to be sentenced April 13. A scheduling order recommends he serve 14 days in county jail with work release, 100 hours community service and substance abuse assessment.

Shelley man gets prison for ramming police car

By ALI TADAYON Post Register March 9, 2015

Shelley man was sentenced to four years in prison for driving a GMC pickup into his estranged wife's car, as well as a Shelley Police Department patrol car. David Wayne Griffin, 42, pleaded guilty to battery on an officer, two counts of malicious injury to property, aggravated assault and mistreating a police dog. Pursuant to a plea agreement, additional felony charges of injury to a child and aggravated battery were dismissed. Bingham County deputy prosecutor Jeremy Garner said the plea agreement stipulated that prosecutors recommend a punishment in line with the pre-sentence investigation. District Judge Darren Simpson sentenced Griffin to a four- to 10-year prison sentence. Griffin will be eligible for parole in 2019. The charges stem from an Aug. 30 argument between Griffin and his estranged wife, Kaylyn Carson. Griffin drove to a home where Carson was staying. After arriving shortly before midnight, Griffin drove his pickup into Carson's 2004 Chevrolet TrailBlazer as she stood nearby. Court documents indicated the collision caused more than $1,000 worth of damage to Carson's car. Carson's mother, who was inside the house when the incident happened, called 911, but Griffin was gone by the time sheriff's deputies arrived. Griffin was driving west on West Oak Street in Shelley when he spotted an eastbound Shelley Police cruiser driven by Sgt. Kent Swanson. Bingham County Sheriff Craig Rowland said in September that Griffin deliberately drove his pickup head-on into Swanson's car. Riding in the car with Swanson was the officer's 14-year-old son and a police dog named Myrra. Ambulances transported Griffin, Swanson and Swanson's son to Eastern Idaho Regional Medical Center. Rowland said nobody was seriously injured. The police dog also escaped injury.

What does the new DNA evidence mean for Tapp?

By BRYAN CLARK Post Register March 9, 2015

BOISE — News that DNA found at a 19-year-old Idaho Falls murder scene bears a close resemblance to DNA donated to the Ancestry.com database could have major implications for the conviction of Christopher Tapp and the search for a killer who presumably remains free. But those implications aren't known. Tapp was convicted of the 1996 murder of 18-year-old Angie Dodge in 1998. He has been in prison ever since, about half of his life. False confession experts, former FBI supervisory special agents, forensic experts and organizations dedicated to exonerating the wrongfully convicted have reached a common conclusion: Tapp falsely confessed after days of interrogation, threats of imprisonment or the death penalty if he did not cooperate, and promises of reward if he did. The Bonneville County Commission appropriated $25,000 on Oct. 22 to hire an outside expert to review the expert reports arguing for Tapp's innocence. County Prosecutor Danny Clark hasn't announced a selection of an outside expert. Carol Dodge, Angie's mother, has come to the same conclusion, becoming a leading advocate for Tapp's release and a tireless amateur

investigator seeking out the real killer. DNA samples — including semen, hair and skin cells — were found and collected at the crime scene. They don't match Tapp's DNA. But they all match one another, indicating that an as-yet unknown individual is the donor. But the partial match to a New Orleans man could narrow the number of possibilities. The type of DNA testing used to link the identity of the murderer to the Usry surname involves only the Y-chromosome — a chunk of DNA that is generally passed unaltered from father to son. But every so often there will be a mutation in the Y-chromosome that a father passes to his son. All of that son's progeny will bear the same mutation. So the fact that New Orleans filmmaker Michael Usry's Y-chromosome almost matches that of the DNA left at the crime scene means two things, said geneticist and Idaho Innocence Project director Greg Hampikian. First, Usry is absolutely excluded as the source of the DNA samples. It's not him. Second, someone related to Usry left the DNA evidence. How closely related? That's hard to say, Hampikian said. Genetic mutations happen randomly. Usry and the DNA donor could share a father, a grandfather, a great-grandfather, and so on. They probably share a common patrilineal ancestor within five generations, but it could be as many as 10 generations. And how far back they share an ancestor matters a great deal because the number of individuals related to a given ancestor grows exponentially with the number of generations. Assuming that each man in a family tree had two sons, there would be a pool of 32 possible donors if the common ancestor was five generations back. But it if were 10 generations, there would be more than 1,000 in the pool. And the impact on Tapp's case is even more uncertain. Jurors knew that Tapp's DNA did not match forensic samples left at the scene when he was first convicted. That could make it difficult to argue that the new DNA evidence tends to prove his innocence. The theory of the crime police and prosecutors have maintained is that three individuals were involved in Dodge's murder: Tapp, a man named Ben Hobbs who is currently imprisoned on a rape conviction in Nevada, and an unknown third who left all of the physical evidence. Hobbs never has been charged in Dodge's murder. But Hampikian argues that theory is grossly out of line with the physical evidence in the case. In forensics, investigators usually hold to the principle known as Occam's Razor: the simplest explanation is likely the true one, he said. And it's much more complicated to envision three individuals participating in the crime with only one leaving DNA evidence, and lots of it, than it is to think just one committed the crime. For Carol Dodge, who has long argued that Tapp was wrongfully convicted and that her daughter's murderer has escaped justice, the familial DNA match provides one of the few possible breaks in the case, which she has been pursuing for years.

Jefferson County prosecutor survives recall

By ALI TADAYON Post Register March 10, 2015

Embattled Jefferson County Prosecutor Robin Dunn survived a recall election Tuesday. "I will continue doing my duties as prosecutor and as an elected part-time official," Dunn said Tuesday night. To recall Dunn from office, a total of 9,167 votes were needed — the same number of votes Dunn received to win his last election. According to Idaho Code, the recall vote must equal or exceed the total number of votes that officer received in his or her last election. With all 17 precincts reporting, and all absentee ballots counted, 3,213 voted in favor of recalling Dunn. Another 733 voters opposed the recall. Dunn, who has served as prosecutor since 1982, was re-elected in 2012. He was unopposed in that election. As the longest-tenured county prosecutor in the state, Dunn said not everyone is a fan. "If you're doing your job as a prosecutor, it's unlikely that you will make everyone happy, especially after 32 years," Dunn said. According to Idaho code, an officer can be recalled after a "petition for recall" is filed. That petition must be signed by 20 percent of the county's registered voters. A group calling itself, "We the People of Jefferson County" filed a petition to recall Dunn on Dec. 15. The petition was signed by 3,246 voters, more than the required 2,824 signatures. That figures represents 20 percent of the county's registered voters who voted in the last general election. Once that was done, Dunn had five business days to decided whether to resign or stand for a special election. According to its website, the group was "frustrated with the quality of representation among county leadership." Lyndsay Goody, the group's treasurer and an organizer of the recall, said the group was disappointed, but not discouraged with the outcome of Tuesday's recall election. "We think the results we've seen tonight send a clear message," Goody said. " People are ready for a change."

Man who eluded SWAT team gets 5 years in prison

By JOHN FUNK March 10, 2015 Idaho Press-Tribune

CALDWELL — Fabian Salinas, a Canyon County man who escaped police after a long standoff with Caldwell police officers Aug. 11, 2014, will spend five years in jail with two years fixed for felony eluding and rioting in jail, 3rd District Judge Bradly S. Ford ruled Monday. Officers from Caldwell SWAT surrounded a home on the 10600 block of Gossamer Street in Caldwell, according to court records, after receiving reports that Salinas had holed up there. When officers entered the home after several hours, Salinas was nowhere to be found. He was arrested seven days later in Meridian on an outstanding warrant, according to court documents. The next month, Salinas was charged with rioting after he and two other inmates worked in concert to assault a fourth inmate in "Pod Five," a low-security, tent-like jail facility adjacent to the main Canyon County detention center. The victim suffered a split lip and several red marks on his face, according to a jail deputy who testified at an earlier hearing. Salinas pleaded guilty to the eluding and rioting charges in January. In exchange for his plea, prosecutors agreed to drop several other related charges and a persistent violator enhancement.

Emmett church arson trial begins Proceedings moved to ensure fair jury

By JOHN FUNK March 10, 2015 Idaho Press-Tribune

EMMETT — Jury selection began Monday in Canyon County for the trial of Bradley Ryan Thomasson, who faces multiple counts in connection with fires set at two Gem County churches. The fires were reported around 4:30 a.m. April 27, 2013, at Community Bible Church and First Baptist Church, according to court records, not long after Thomasson was released after serving 22 years in prison for the 1990 murder of his parents. Third District Judge Susan Wiebe ordered the trial moved to Canyon County after his attorney, Carter Winters, argued in September that it wouldn't be possible to assemble an untainted jury from Gem County residents. Winters told the court in September that nearly everyone in the Gem County community — even those who aren'tChristians — likely would harbor anger and raw emotion regarding the arson of two houses of worship. That, he argued, could deprive Thomasson of his constitutionally guaranteed right to a fair trial. And that may have already happened to William Dorahush Jr., Winters argued, who pleaded guilty to multiple charges in connection with the same two fires in September 2013. Dorahush was sentenced to 25 years in prison with five years fixed for his role in the fires.

Fairbanks files for new trial

By Samantha Malott, Daily News March 12, 2015

A Pullman dentist found guilty of medicaid fraud has submitted a request for a new trial and says he has conclusive evidence proving he provided the fillings the state argued were never completed. Alfred Fairbanks, 69, a dentist at Today's Dental in Pullman since 1971, was found guilty on Jan. 28 of four counts of provider fraud for providing false claims to Idaho Medicaid for teeth restorations in 2009 and 2010 that the state said he never completed. Fairbanks is scheduled to be sentenced March 31, but last week Fairbanks' defense attorney, Scott McKay, submitted a motion for a new trial that is currently under review by Latah County 2nd District Judge John Stegner. Fairbanks' memorandum of support for the new trial states Fairbanks attempted to contact two former patients, Allen Stacy and Joshua Gray, before the trial. He was reportedly unable to reach either man, but a long-time patient who lives in Bovill, where Stacy reportedly resided at the time of his treatment, reached out to Stacy after the guilty finding. "Dr. Fairbanks' patient located Mr. Stacy and persuaded him to come to Dr. Fairbanks' office for an examination on Friday, Feb. 6, 2015, in return for Dr. Fairbanks reimbursing him for the time and expense of traveling to Pullman for the examination," read the memorandum. At the dental exam, Fairbanks reportedly took intra-oral photographs and X-rays of Stacy's dental work. Intra-oral photographs provide significantly magnified pictures of teeth and, according to the memorandum, were not used by the state's expert in the trial, Lee Coppess, DDS. "Dr. Fairbanks' visual inspection of Mr. Stacy's teeth and the intra-oral photographs revealed conclusive evidence of fillings (restorations) for each of the teeth at issue," according to the document. The defense's expert, Dr. John Staley, reviewed the information from Fairbanks and "observed conclusive evidence that fillings (restorations) were placed in each of the teeth at issue and not sealants." The memorandum argues the evidence shows Fairbanks is not guilty of the first three counts related to Stacy, and "seriously undermines the reliability" of the guilty finding for the tooth related to Gray, who could not be contacted.