ACLU seeks to help teen murder suspect

Coeur d'Alene Press: July 19- Taryn Thompson

COEUR d'ALENE - The American Civil Liberties Union is challenging a judge's decision to house a child accused of murder in adult solitary confinement at the Kootenai County jail. The Idaho ACLU on Friday filed a brief in support of Public Defender John Adams' petition seeking to return Eldon Samuel - who turned 15 a week ago - to the county's Juvenile Detention Center. "I don't think we've ever had to participate in a case like this before," said Idaho ACLU Attorney Richard Alan Eppink. "It's just so shocking this would happen." First District Judge Benjamin Simpson on July 1 ordered Samuel, charged with killing his father and 13-year-old brother, be transferred to the jail and held in solitary confinement. Jail and juvenile detention staff and Samuel's guardian ad litem - who described solitary confinement at the jail as worse than Guantanamo Bay - argued against the transfer. Though Samuel spent much of his time in solitude at the juvenile facility, he had contact with others his age during academic classes and physical education. According to Adams' petition for a writ of habeas corpus, Samuel is being held "in a small cell where the light never goes out, without ever having been convicted and despite his right to be free from cruel and unusual punishment." Idaho ACLU Interim Executive Director Leo Morales said keeping Samuel in solitary confinement at the adult jail is akin to punishment before conviction. "The amount of time that Eldon has been there and the amount of time that he could be is punishment," Morales said. "What the court has said in the past is that's not allowed. He's still on trial and accused of a crime, but he's not convicted." Though a hearing on the writ of habeas corpus has not been scheduled, Samuel will be arraigned in the criminal case Monday. He has a right to a speedy trial within six months of Monday's arraignment, but he could waive that right, adding to the amount of time in solitary confinement. Since his March 24 arrest, Samuel has spent about 70 days in solitary. "I see him almost every single day and he is deteriorating mentally, emotionally and physically being held in isolation," Adams said. "He's distinctly deteriorating, as would any human being, let alone a child." According to the ACLU court filing, Samuel is being held in a cinderblock medical holding cell that jail staff have turned into a "makeshift child isolation cell with only a steel bunk and a steel toilet-sink for amenities." Any time Samuel is let out of the cell, the entire jail goes into lockdown because he is the only child in the jail, according to the court documents. He is let out each day for "showers, exercise on a cement slab, and legal and religious visits." According to court testimony, Samuel's meals are slid through a slot in his cell door and he eats alone. Samuel cannot see out the windows of his cell, which are covered in blinds, and jail staff can't see in. He is checked on twice each hour. According to the ACLU, even adults suffer negative physical and psychological effects in solitary confinement, including hallucinations, increased anxiety, rage and irrational anger, fear, appetite loss and weight loss, heart palpitations, headaches, nightmares, dizziness and self-mutilation. Children in solitary confinement are at a high risk of suicide, too, according to ACLU research. "Courts time and time again have said holding children in conditions like this is not constitutional," Eppink said. He said it is "against the principals of justice and liberty and humaneness we expect in the United States." Adams said he is grateful that the ACLU is using its time and resources to fight Samuel's solitary confinement. "We as a people, we as a society do not torture our prisoners," Adams said. "We certainly don't torture our children."

Idaho defends fetal-pain abortion law

Idaho State Journal: July 19- Keith Ridler/Associated Press

BOISE, Idaho — A federal judge's ruling striking down Idaho's law banning abortions after 20 weeks of pregnancy should be reversed because criminal charges against the Pocatello woman who filed the initial lawsuit had been dismissed, Idaho attorneys said. The Idaho attorney general's office also told a three-judge panel of the 9th U.S. Circuit Court of Appeals in Pasadena, California, on Friday that the attorney who intervened on her behalf didn't have legal standing. Jennie Linn McCormack and Richard Hearn, an attorney and medical doctor, sued the state after she was charged with felony illegal abortion because prosecutors said she took an abortion-causing drug obtained over the Internet to terminate a pregnancy that was past the 20-week mark. Proponents of fetal pain laws contend that they believe a fetus can feel pain at that point. Opponents say that claim isn't scientifically accurate and that the U.S. Supreme Court has repeatedly upheld a woman's right to abortions before a fetus is old enough to live outside the womb. Idaho was one of seven states to adopt fetal-pain laws in 2011. Idaho called the Pain-Capable Unborn Child Protection Act. McCormack and Hearn argued that Idaho's restrictive pre-viability abortion laws were unconstitutional and placed an undue burden on a woman's right to have an abortion. U.S. District Judge B. Lynn Winmill in Boise ruled in their favor in March 2013, striking down Idaho's law. "Unconstitutional statutes, just like unloaded guns, can still threaten the people they're pointed at," Hearn said Friday in attempting to persuade the panel to uphold Winmill's ruling. The state appealed the ruling in November, saying McCormick couldn't argue the law put an undue burden on women because charges against her had been dropped and the case was moot. But Deputy Attorney General Clay Smith immediately drew sharp questions Friday, especially after it was determined the 5-year statute of limitations on the charge initially faced by McCormick hasn't expired. "At this point, your attorney general could change his mind at any time?" Judge Kim McLane Wardlaw asked. Judge Harry Pregerson said it appeared that Idaho prosecutors dismissed the charge against McCormick simply because they didn't have a prosecutable case. The prosecutor "thought, well, we'll go ahead and dismiss this case, we'll moot the case, and we'll live to fight another day. Is that right?" Pregerson asked. The state also argued that Hearn couldn't make the argument that Idaho's law placed an undue burden on women because he lacked legal standing. The panel questioned Hearn on that matter. "If not me and my client, who has been prosecuted, who can challenge these statutes?" said Hearn, who noted that doctors in the region won't provide abortions because they could face a felony charge. The state also contended that women seeking abortions would be harmed if Idaho's law wasn't upheld. The law has restrictions on where women can have an abortion. "Dr. Hearn's proposed provider plan is inconsistent with and antagonistic to the wellbeing of the class of individuals whose rights he's attempting to assert," Smith said. "The notion that he can therefore challenge ... the Pain-Capable Unborn Child Protection Act is simply incorrect." It's unclear when the panel will make a ruling.

Jefferson County prosecutor won’t be charged

Idaho State Journal: July 20- Jimmy Hancock

POCATELLO — Jefferson County Prosecutor Robin Dunn will not face any charges stemming from a May incident in Pocatello, Bannock County Prosecutor Steve Herzog said. According to reports, Dunn was accused of becoming irate when a horse was disqualified when he was attending Pocatello Downs at the Bannock County Fairgrounds on May 4. Dunn declined to comment on the incident or lack of a charge, directing the Journal to his attorney, Marvin M. Smith. But Smith, who was out of the office late this week, could not be reached for comment. Herzog said the Bannock County Sheriff’s Office conducted the investigation into the incident, during which Dunn is accused of having pulled a folding knife of some kind out of his pocket. Based on the information the investigation produced, there didn’t appear to be an assault,” Herzog said. “The knife that was displayed was closed.” Any potential for a misdemeanor charge was not pursued for lack of interest from the alleged victim. Herzog said it is common practice in the case of minor misdemeanors to move forward in consult with the alleged victim of the incident.

8 Idaho Attorneys Seek to Be Blaine County's Next Judge

MagicValley.com: July 21

HAILEY • The public is invited to comment on eight Idaho attorneys who applied to replace Magistrate Judge R. Ted Israel, who is retiring Dec. 31. The 5th Judicial District Magistrates Commission will meet to review and interview the applicants in mid-September. The applicants are: Samuel Beus, of Twin Falls; Bradley Chinn of Hailey; Mike Felton Jr., of Buhl; Jennifer Haemmerle, of Hailey; Randolph Neal, of Idaho Falls; Lary Sisson, of Middleton; Jay Sturgill, of Coeur d'Alene; and Ned Williamson, of Hailey. Questionnaires for public comment may be obtained from the trial court administrator’s office at the Twin Falls County Courthouse, 427 Shoshone St. N. in Twin Falls, by calling 208-736-4085; at the Blaine County clerk’s office, 201 Second Ave. S., Suite 106, in Hailey; or online at 5thjudicialdistrict.com. Comments should be returned to: Trial Court Administrator’s Office, P.O. Box 126, Twin Falls, Idaho 83303-0126, no later than Aug. 15. Any currently licensed Idaho attorney who is at least 30 and has practiced law for at least five years is eligible to submit an application for judge vacancies. After appointment a judge must reside in the county for which he or she is appointed. The Blaine County magistrate is a traveling position, and the appointee will be assigned to hear cases throughout the judicial district and may be assigned outside the district by the Idaho Supreme Court. The annual salary is $112,000 plus state benefits. Upon appointment, magistrates serve an 18-month probation after which they stand for retention election in the county in which they are seated. If retained, they serve a term of four years.

UPDATE: Idaho Woman Appeals NSA Surveillance Lawsuit

MagicValley.com: July 21- Associated Press

BOISE (AP) — The American Civil Liberties Union and the Electronic Frontier Foundation are joining in a northern Idaho's woman appeal over the National Security Agency's collection of cellphone information. Anna Smith of Coeur d'Alene sued the NSA last year, contending that the agency's collection of the data amounts to an illegal search and seizure, prohibited under the Fourth Amendment of the U.S. Constitution. In June, U.S. District Judge B. Lynn Winmill said Smith had the right to sue but that she wouldn't prevail under current court precedent. As a result, Winmill dismissed the lawsuit, but he also noted that the issue may end up before the U.S. Supreme Court. Smith has appealed her case to the 9th U.S. Circuit Court of Appeals. The national ACLU, the ACLU of Idaho and the Electronic Frontier Foundation announced last week that they were joining in Smith's case. Both the ACLU and Electronic Frontier have been part of lawsuits over the same issue in other states. ``The call records program needlessly invades the privacy of millions of people,'' ACLU deputy legal director Jameel Jaffer said in a prepared statement. ``Even the President has acknowledged that the NSA does not need to collect information about every phone call in order to track the associations of suspected terrorists. Dragnet surveillance on this scale is both unconstitutional and unnecessary.'' Smith, a nurse, is being represented by state Rep. Luke Malek, R-Coeur d'Alene, and Smith's husband, Peter J. Smith IV. She assumed she was being monitored because she had a Verizon cellphone and because the calls of vast numbers of Americans were collected, Malek said earlier this year. The NSA has said it collects the phone numbers of calls made and received and how long a call lasts, but the agency contends it does not monitor the contents of a call. Smith countered that her cellphone is her primary means of communication with family, friends, doctors and others, and that her phone calls are none of the government's business.

Cottonwood escapees earn two more years in pen

Lewiston Tribune: July 22- Ralph Bartholdt

Two Cottonwood prison escapees who made it as far as Asotin before being nabbed last month got an additional two years tacked on to their sentences. Tyler D. Davis and Dylan J. Ames, both 23, were sentenced Monday to an additional two to five years in prison during a change of plea and sentencing hearing in Grangeville's 2nd District Court. Idaho County Prosecutor Kirk A. MacGregor said the latest sentence will be added to the sentences both men are already serving for the Idaho Department of Correction. Davis was sentenced in Ada County in March to two to five years in prison on a charge of grand theft. Ames was convicted in 2013 and given a sentence of five to 10 years in Kootenai County on one count of possession of a controlled substance and two counts of illegal possession of a controlled substance with intent to deliver. "They have to finish that sentence," MacGregor said. "When that's completely done with, this will be added on top of that." The two inmates escaped June 4 from the North Idaho Correctional Institution at Cottonwood while helping to unload a delivery truck outside the prison, according to the Idaho Department of Correction. They were arrested three days later by Asotin County sheriff's deputies on the bike path south of Swallows Park in Asotin County after the sheriff's office received a tip from a passer-by. The two men were not charged with any additional crimes while they were on the lam, MacGregor said. "There is no evidence they committed any other crimes while they were out," he said. The maximum penalty for escaping from a correctional facility in Idaho is an additional five-year prison sentence.

Teen murder suspect doesn't enter plea

Coeur d'Alene Press: July 22- Keith Cousins

- Eldon Samuel III, a 15-year-old accused of murdering his father and brother in March, did not enter a plea at his arraignment hearing in Kootenai County District Court Monday. Kootenai County Public Defender John Adams told the judge he advised Samuel, who is being charged as an adult, to remain silent because he plans to advocate for the case to be moved to juvenile court. Judge Benjamin Simpson told Samuel, who is being charged with one count of first-degree murder and one count of second-degree murder, that he faces a fixed life sentence if convicted. If he is tried as a juvenile, he would be committed to a youth detention center until he turns 21. On March 24, Samuel allegedly used a gun to murder his father, Eldon Samuel, 46, and then a shotgun, knife and machete to murder his 13-year-old brother, Jonathan Samuel. According to police records, after the double murder, the boy called 911 and told the police dispatcher he had shot and killed his father and brother. The murders occurred at St. Vincent de Paul emergency housing in Coeur d'Alene, where the family was living. Adams said he will be filing as many as five "substantial" pre-trial motions in the case, including a challenge to Idaho's abolishment of an insanity defense. He told Simpson he would need three to four months in order to secure records, including a written transcript of the sealed preliminary trial, in order to file those motions. "You're telling me you're not going to be ready for five months?" Simpson asked. Simpson then called for a recess in order for the defense team to explain to Samuel the ramifications of waiving his right to a speedy trial. When court resumed, Simpson asked Samuel, who was wearing a red prison jumpsuit and had his jet-black hair slicked back, twice if he understood. "Yes," Samuel quietly answered both times. Simpson said his intention was to set a trial date as soon as possible. However, the judge added that he also understood Adams' request for more time, given the nature of the case.

Committee examines public defense in Idaho

Lewiston Tribune: July 23-Associated Press

BOISE - Lawmakers on a committee charged with fixing Idaho's public defense system were cautioned Tuesday that if they create new standards to ensure indigent defendants get a fair shake in court, the state could open itself up to lawsuits. Ada County Public Defender Alan Trimming told the Legislature's Public Defense Reform Interim Committee that everyone had better be ready to meet any guidelines the state issues, such as requiring publicly paid lawyers to have access to better resources. Otherwise, Trimming said, the standards would simply serve as a "launch pad for litigation." On the other hand, the American Civil Liberties Union of Idaho and other legal experts have repeatedly warned that Idaho's patchwork public defense system is unconstitutional, so it's already a potential target for lawsuits. In 2010, a report from the National Legal Aid and Defender Association found that Idaho isn't satisfying its Sixth Amendment obligations to defendants. Among the issues, public defenders' caseloads were too high, some defendants didn't meet their lawyers until they were in the courtroom, and defendants sometimes felt pressured to accept a plea agreement rather than go to trial. In the past four years, the Idaho Criminal Justice Commission and the lawmakers on the interim committee have studied the issue, and the Legislature has passed some bills designed to improve parts of the system. Earlier this year, lawmakers agreed to create a special Public Defense Commission charged with overseeing public defenders in Idaho and provide training to attorneys. Trimming told the lawmakers on the committee he doesn't oppose the state's move to create standards, but Idaho should avoid adopting anything that goes beyond the basic rights for criminal defendants enshrined in the U.S. Constitution. "If you adopt them (the standards), whether it be caseload or workload or what, then you have to pony up. You have to meet them," Trimming said. "Because if you don't, then you're not averting litigation - you're creating a launch pad for litigation." Trimming said he supports some guidelines to ensure that public defenders don't have more cases than they can handle, or lack the resources needed to hire forensic investigators and other specialized help when appropriate. "I recommend caution, and I'm not saying in any way there's not room for improvement in this state," Trimming said. Leo Morales, the communications director for the ACLU of Idaho, said Idaho is at a critical juncture and the decisions lawmakers make this summer will either put the state on a constitutional path or, possibly, force others to intervene through the courts. "Everyone knows we need statewide standards and more funding for public defense," said Morales, who attended the committee meeting. "And Alan Trimming is right: If the state adopts inadequate standards, or it does not follow through with the adequate resources it needs to come into compliance, it's begging for a lawsuit, forcing the courts to come in and fix this system." Dan Chadwick, executive director of the Idaho Association of Counties, told lawmakers there should be a sense of urgency to their work. Counties are responsible for providing public defenders to poor criminal defendants, and many of the counties in the state rely on contracts with private attorneys to do so. The new guidelines, once created, will effect what those contracts look like. Statewide, 65 percent of county public defense contracts will expire within the year, Chadwick said, so the commission has a lot of work to do and needs to get it done quickly.

Judge asked to rule on evidence in rape trial

Lewiston Tribune: July 23- Ralph Bartholdt

A judge could decide this week if an emotional 911 recording can be used as evidence at a rape trial that begins Monday. Peter H. Bakker, 19, is accused of raping a 17-year-old Lewiston girl and his attorney is arguing against using the tape as evidence. He wrote in a motion filed this week in 2nd District Court that the caller - the girl's father - made a series of unfounded allegations to police dispatchers in the recording. "The (father) states that the alleged victim was 'drugged' and on 'pills,' when there is no evidence supporting that conclusion," Lewiston attorney Anthony Anegon wrote in his motion. Prosecutors will present no evidence at Monday's trial that the victim was drugged or on pills, Anegon wrote. In addition, the father told dispatchers that the alleged suspect was "older" and that his daughter was "underage," implying that the two-year age difference is criminal. "It is not a crime in this state for a 17-year-old to have sexual contact or relations with a male who is less than three years older than the female," he wrote. Nez Perce County Deputy Prosecutor April Smith said she intended to use the 911 recording in her opening statements, during testimony, and again during her closing arguments. "It is relative," Smith wrote, "and its probative value is not substantially outweighed by the danger of unfair prejudice." She asked 2nd District Judge Jeff M. Brudie to rule on whether or not she will be allowed to play the recording for the jury before Monday's opening arguments. Bakker was indicted last July in Nez Perce County on the charges involving a girl he met on Facebook. He turned himself in and was released on a $25,000 bond.

Occupy Boise: Idaho should pay legal fees

Lewiston Tribune: July 24-Associated Press

BOISE - Members of Occupy Boise are asking a federal judge to order the state to pay more than $175,000 in attorney costs and legal fees after the group won a lawsuit over rules designed to curb protests and rallies around the Idaho Capitol. Under federal law, the winner of a lawsuit can generally seek to recover attorney's fees and costs from the losing side. The fees and costs must be approved by a judge and they can be appealed, just like the verdict itself. Occupy Boise and the American Civil Liberties Union of Idaho asked U.S. District Judge B. Lynn Winmill to order the state of Idaho to pay them nearly $176,000 to cover the cost of the attorneys on the case and another $2,400 for transcripts, audio recordings and other court costs. The payment is justified, Occupy Boise contends, because they won the case and because the lawsuit will protect the rights of those planning future protests at or near the Idaho Statehouse. The state attorney general's office has not yet filed a response to Occupy Boise's motion. Kris Bivens-Cloyd, a spokeswoman for Attorney General Lawrence Wasden, said the office did not have any comment on the case. The lawsuit stems from the state's response when protesters who took part in the Occupy Boise movement set up a tent city on Idaho's Capitol Mall near the Statehouse in November 2011. The tent city was part of a national movement of protests expressing discontent with the government's failure to protect U.S. citizens from the housing bubble's collapse while bailing out Wall Street. The tent city and protest were still underway in 2012, when Idaho Republicans began arguing that the prolonged event wasn't appropriate and that the encampment's occupants were creating a mess. GOP lawmakers tried to evict the protesters by passing a law allowing them to be forcibly removed, but the protesters immediately sued in federal court. Winmill eventually ruled that the Legislature's law violated free speech rights.
In 2013, the Idaho Legislature once again sought new laws targeting the Occupy Boise movement by putting time limits on overnight protests, and Winmill once again found the laws unconstitutional. The judge also ordered the state to comply with his decision forever, siding firmly with the protesters' free speech rights. In their motion requesting attorneys' fees and court costs, the ACLU attorneys noted that Occupy Boise prevailed "again and again" and the court ruling would benefit others in the future by protecting demonstrations and deterring the state from interfering with free speech rights.

CNN argues for Bergdahl police report

Idaho Statesman.com: July24- Times-News

A judge will decide if Blaine County has the right to deny access to the 1999 records. HAILEY - The Blaine County Sheriff's Office did release three reports about incidents involving the family of Army Sgt. Bowe Bergdahl in response to a public records request CNN filed in June. It hasn't released a fourth, saying the record is exempt from disclosure because releasing it would constitute "an unwarranted invasion of personal privacy," quoting exemptions in Idaho's public records law. The two sides argued their cases this week before District Judge Robert Elgee. Bob and Jani Bergdahl, of Hailey, have been in the spotlight since their son, Bowe Bergdahl, was kidnapped by a Taliban-affiliated group in Afghanistan in 2009. He was recently freed in exchange for five Taliban prisoners. His release sparked a political and media firestorm, with some people criticizing the Obama administration for making the deal, and some of Bergdahl's former comrades publicly accusing him of walking away from his post. The Army is investigating; Bergdahl is back on active duty, in a desk job in Texas. The Sheriff's Office declined to release a report from Nov. 4, 1999. Tim Graves, representing the county, said he couldn't argue the specifics of why the report doesn't have to be disclosed without revealing its contents. He said he was confident that, once Elgee reviewed it, he would side with the county. "I believe that once the court reviews the record, it'll become ... apparent," he said. Debra Kristensen, a Boise lawyer representing CNN, said she didn't see how a police report on what must be an inactive 15-year-old investigation could be exempt from disclosure on privacy grounds. The law isn't meant to protect people from embarrassment, she said, and it contains a strong presumption that records should be public. "I cannot think of an example, given the passage of time, that would fall under this extraordinarily narrow circumstance," she said. Both sides favored Elgee reviewing the report in private before making a decision. There is no timeline set for a ruling. The three reports the Sheriff's Office released were a March 1998 report on someone shooting at one of the Bergdahl's vehicles with a pellet gun; a January 2013 report when deputies checked on the welfare of children staying at the Bergdahls' home; and a road-rage incident from August 2013 involving Bob and Jani Bergdahl, where no charges were filed.

Concordia, lacking accreditation, seeks waiver for law students

Idaho Statesman.com: July 25- Bill Roberts

The uncertainly of eligibility to take the bar exam could hurt job prospects, the law school says. Concordia University School of Law in Boise has petitioned the Idaho Supreme Court to allow its 45 third-year law students to take the Idaho State Bar exam if the school has not been accredited by the American Bar Association by next spring. An Idaho Bar rule from the 1920s requires that students taking the exam have a law degree from a school either fully or provisionally accredited by the ABA. Concordia, which opened in 2012, is seeking provisional accreditation, a first step to full accreditation. Concordia's application will be considered by the bar association's governing council on accreditation during a closed session Thursday, Aug. 7, said a bar spokesman who asked not to be identified. Passing the bar is required for law students to get jobs as attorneys. "Concordia's third-year students will begin interviewing for job placement very soon," read the petition filed Thursday. "They will need to know whether they will be eligible to take the bar exam and represent as much to potential employers." Concordia law school officials say they were aware their application could be considered at the meeting, said Madeline Turnock, spokeswoman for Concordia University in Portland, which operates the law school in Boise. Accreditation means schools have met the American Bar Association's standards for legal education, including faculty and facilities. "The possibility that Concordia's students will not be able to sit for the Idaho State Bar exam following graduation creates uncertainty, even at this point in time, and will have a negative effect on the students' job prospects that must be addressed and dealt with urgently," Concordia wrote. The wavier would be for one year and extend to Concordia students taking the exam in July 2015 and February 2016. Concordia School of Law has 105 students and 24 full- and part-time faculty. In 2007, Concordia, a Lutheran university, considered Boise for its new law school. Boise was the largest metropolitan area in the country without a school of law. The University of Idaho has expanded its law-school offerings to Boise in recent years and hopes eventually to offer a full three-year program here.

Trial Begins in Case of Man Whose Throat Was Slashed

MagicValley.com: July 25- Alison Gene Smith

GOODING • A knife in his skull and his throat cut, Jason Givens was left for dead on the side of the road. He remained still, pretending to be dead while his captors removed the zip ties that bound his arms, took his shoes and washed the blood off themselves. A year later, the man who allegedly hog-tied Givens and tortured him with a stun gun went on trial in Gooding County District Court Thursday. Thomas Hooley, of Twin Falls, pleaded not guilty to aiding and abetting aggravated battery, and first-degree kidnapping. In the first day of testimony, Joseph Talbot said he found Givens on the side of Clear Lakes Grade July 13, 2013, while commuting to work. “I asked if he had been hit by a car and he said he’d had his throat cut,” Talbot said. Talbot, an EMT, removed his shirt and used it to place pressure on Givens’ neck before calling 911. The cut to Givens’ throat exposed his trachea, veins and muscle, Talbot said. Givens was in and out of consciousness but told Talbot he was “jumped” by two men he didn’t know. One of those men was Ryan Cunningham, of Wendell. Cunningham is serving time in prison for the July 2013 attack. In February, he pleaded guilty to a charge of felony aggravated battery. A count of first-degree kidnapping and a weapons enhancement were dropped as part of a plea deal. He is serving a 15-year sentence, but will be eligible for parole in less than four years. He was given 252 days credit for time served. In his opening statement Thursday, Hooley’s attorney Andrew Parnes said his client wasn’t there during the attack and barely knew Cunningham. Cunningham is a white supremacist, a felon and a meth user, Parnes said, who changed his story to avoid spending the rest of his life in prison. Givens is also a felon and a meth addict who was only connected to Hooley through doing odd jobs for him, Parnes said. Parnes said Givens changed the story of the attack each time he was interviewed by police or medical staff, only mentioning Hooley days later. “The state will present no fingerprints, no DNA, no blood evidence and no weapons” connecting Hooley to the case, the attorney said, describing his client as an “easy fall guy.” “Only Jason Givens and maybe Mr. Cunningham know why they’re setting Mr. Hooley up,” he said. Three Gooding County sheriff’s deputies testified about photos they took at the scene and described the scene of the attack. One deputy estimated Givens walked about 400 yards from where he was attacked to the road. Dr. Heather Ellsworth, a physician in the emergency department at St. Luke’s Magic Valley Medical Center said evidence of a skull fracture and a brain bleed led her to send Givens by air ambulance to a Boise hospital that had neurosurgical capabilities. She said the cut to Givens’ neck was about 18 centimeters (about 7 inches). She put five deep stitches and 25 superficial stitches in his neck before sending him to Boise, she said. Prosecutor Trevor Misseldine said his other witnesses, including Givens, were not present to testify Thursday, but he would continue his case Friday. The trial is expected to go into next week.

Retired Justice Walters filling in as Idaho Supreme Court Justice Warren Jones remains in hospital treatment in Utah

Posted by Betsy July 16, 2014 Spokane Eye on Boise

Idaho Supreme Court Justice Warren Jones is still being treated at a Utah hospital after taking ill June 6, just before the court was to hear oral arguments in Twin Falls, Idaho Statesman columnist Dan Popkey reports this morning; Jones, 70, plans to return to Boise July 25, but his return to duty on the court has not been set. In his absence, retired Justice Jesse Walters has been filling in for Jones. That's meant Walters had to listen to audio recordings of arguments in five cases heard in Twin Falls just after Jones became ill, to catch up and help decide them. Popkey reports that former Justice Wayne Kidwell also is filling in, sitting on a sixth case argued in Twin Falls last month on which he's been assigned to write the opinion, and handling two cases scheduled for argument in August. Walters, who is now assigned a total of 20 cases, including two scheduled for argument July 29 and a dozen to be heard in August, told Popkey he's been working mostly from home and going to the court about six hours a day, three days a week. "It wasn't what we were planning to do this summer, but I'm available to help out," he said. If necessary, he said, "I'm prepared to fill in for the rest of the year." The nature of Jones' illness hasn't been disclosed. Court administrator Patti Tobias told Popkey, "We all expect a full recovery and we expect him back on the court." Jones, a native of Montpelier, was appointed to the court by Gov. Butch Otter in 2007 and won election to a full six-year term in 2008. Rape conviction against former UI student upheld Daily News July 17, 2014 University of Idaho student Jesse Michael Vierstra, 21, previously of Twin falls, Idaho, failed in his attempt to appeal his prison sentence for raping a woman student at a fraternity event in October 2012. Vierstra was sentenced by 2nd District Judge Carl Kerrick in June 2013. The minimum sentence handed down was five years in prison, with a maximum of 15 years. The judges who heard the appeal noted in their decision, filed Wednesday, that their review standard for sentence appropriateness is "well established." "Sentencing is a matter for the trial court's discretion," the Court of Appeals decision stated. "...we cannot say that the district court abused its discretion." Vierstra was convicted in March 2013 of the crime. The prosecutor presented affidavits claiming Vierstra had committed similar crimes in the past and had been charged with four misdemeanor counts of battery against two other women, but these charges were pleaded down to one charge of disturbing the peace. He also refused to participate in a court-ordered psychosexual evaluation before sentencing, according to previous reports.

Lawmaker group looks into public defense Committee examines how to improve system but is cautioned about opening state up to lawsuits

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BOISE — Lawmakers on a committee charged with fixing Idaho's public defense system were cautioned that if they create new standards to ensure indigent defendants get a fair shake in court, the state could open itself up to lawsuits. Ada County Public Defender Alan Trimming told the Legislature's Public Defense Reform Interim Committee on Tuesday that everyone had better be ready to meet any guidelines the state issues. Those guidelines could include requiring publicly paid lawyers to have access to better resources. Otherwise, Trimming said, the standards would simply serve as a "launch pad for litigation." On the other hand, the American Civil Liberties Union of Idaho and other legal experts have repeatedly warned that Idaho's patchwork public defense system is unconstitutional, so it's already a potential target for lawsuits. In 2010, a report from the National Legal Aid and Defender Association found that Idaho isn't satisfying its Sixth Amendment obligations to defendants. Among the issues, public defenders' caseloads were too high, some defendants didn't meet their lawyers until they were in the courtroom, and defendants sometimes felt pressured to accept a plea agreement rather than go to trial. In the past four years, the Idaho Criminal Justice Commission and the lawmakers on the interim committee have studied the issue, and the Legislature has passed some bills designed to improve parts of the system. Earlier this year, lawmakers agreed to create a special Public Defense Commission charged with overseeing public defenders in Idaho and provide training to attorneys. Trimming told the lawmakers on the committee that he doesn't oppose the state's move to create standards, but Idaho should avoid adopting anything that goes beyond the basic rights for criminal defendants enshrined in the U.S. Constitution. "If you adopt (the standards), whether it be caseload or workload or what, then you have to pony up. You have to meet them," Trimming said. "Because if you don't, then you're not averting litigation — you're creating a launch pad for litigation." Trimming did say he supports some guidelines to ensure that public defenders don't have more cases than they can handle, or lack the resources needed to hire forensic investigators and other specialized help when appropriate. "I recommend caution, and I'm not saying in any way there's not room for improvement in this state," Trimming said. Leo Morales, the communications director for the ACLU of Idaho, said Idaho is at a critical juncture and the decisions lawmakers make this summer will either put the state on a constitutional path or, possibly, force others to intervene through the courts. "Everyone knows we need statewide standards and more funding for public defense," said Morales, who attended the committee meeting. "And Alan Trimming is right: If the state adopts inadequate standards, or it does not follow through with the adequate resources it needs to come into compliance, it's begging for a lawsuit, forcing the courts to come in and fix this system." Dan Chadwick, executive director of the Idaho Association of Counties, told lawmakers there should be a sense of urgency to their work. Counties are responsible for providing public defenders to poor criminal defendants, and many of the counties in the state rely on contracts with private attorneys to do so. The new guidelines, once created, will effect what those contracts look like. Statewide, 65 percent of county public defense contracts will expire within the year, Chadwick said, so the commission has a lot of work to do and needs to get it done quickly.

Teen charged in Idaho killings doesn’t enter plea

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COEUR D’ALENE (AP) — The attorney for a boy charged as an adult with killing his father and brother will seek to have the case moved to juvenile court. For that reason, 15-yearold Eldon G. Samuel III didn’t enter a plea at an arraignment in 1st District Court on Monday. The Coeur d’Alene Press reports that Kootenai County Public Defender John Adams also said he’ll challenge Idaho’s abolishment of the insanity defense. Samuel is charged as an adult with shooting Eldon Samuel Jr., 46, and shooting and stabbing 13-year-old Jonathan Samuel in Coeur d’Alene in March. Court records say that after the killings, Samuel called 911 and told a police dispatcher he had shot and killed his father and brother. The killings took place at St. Vincent de Paul emergency housing in Coeur d’Alene, where the family was living. Samuel faces life in prison if convicted in adult court. In juvenile court, he would be committed to a youth detention center until he turns 21. Adams said he will file as many as five “substantial” pre-trial motions.