

Man gets 15 years for child porn charges

Coeur d'Alene Press: Sep. 9

COEUR D'ALENE - A 43-year-old Spokane man received a 15-year sentence last week for three counts of sexual exploitation of a minor. The district court will retain jurisdiction in the case. Lee Warren Nelson was sentenced by District Judge John Mitchell, who ordered that for each count Nelson would be sentenced to one year fixed and four years indeterminate, to run consecutively. Judge Mitchell considered Nelson's lack of remorse and the need for additional rehabilitation, as well as the need for punishment in a case involving the exploitation of the abuse of children, according to a press release from the Kootenai County Prosecutor's Office. On Oct. 20, 2014, investigators from the Internet Crimes Against Children Task Force executed a search warrant on Nelson's apartment in Post Falls after discovering Nelson was sharing child pornography on an Internet-based peer-to-peer network. Investigators seized Nelson's computers and other digital evidence. A forensic analysis of the evidence revealed hundreds of images/videos of sexually explicit conduct including images of prepubescent children, the press release states. The forensic review also revealed that Nelson used computer search terms consistent with a person trying to obtain child pornography. The Idaho Internet Crimes Against Children Task Force is a statewide coalition of local, state and federal law enforcement and prosecution agencies. The task force is focused on apprehending and prosecuting individuals who use the Internet to criminally exploit children. Prosecuting Attorney Barry McHugh praised the task force and Deputy Prosecuting Attorney Jed Whitaker, who prosecuted the case. "This was a very disturbing case involving vulnerable children and highly offensive conduct," McHugh said. "The sentence was tailored to provide Mr. Nelson with programs designed to give him the tools necessary to avoid further inappropriate conduct. If Mr. Nelson cannot successfully complete the programs and provide the court with assurances that he can successfully complete a period of supervised probation, he will go to prison."

Prosecutor criticizes proposed Twin Falls refugee center ban

Idaho Statesman.com: Sep. 10- Associated Press

TWIN FALLS, IDAHO — Opponents of a Twin Falls refugee center are pushing forward with a measure to ban similar facilities, despite a county prosecutor calling it unconstitutional. Prosecutor Grant Loeb wrote an opinion last week saying no alteration or revision would make the measure constitutional, the Times-News reported. He says it encroaches on federal immigration powers, opens the possibility for lengthy litigation, and illegally attempts to block future attempts at repeal. "The initiative does not state a clear explanation as to why the prohibition of refugee resettlement in the county is necessary for the general welfare," Loeb wrote. Enforcement of the provisions of this proposed initiative would invite prolonged litigation regarding why its provisions are not 'arbitrary, capricious, and/or discriminatory.'" The College of Southern Idaho sponsors the refugee program. The Committee to End the CSI Refugee Center needs to collect 3,842 signatures to get the measure on the ballot in May. Rick Martin heads the committee and says his group is moving forward with the measure without making any significant changes. "It'll give the voters a chance to send a message to the (college) Board of Trustees on whether they want a refugee center or not," he said. The committee formed following an announcement from the college that some of the 300 refugees expected to start arriving Oct. 1 will be from Syria. A civil war broke out in the country over four years ago. The U.S. is looking at allowing more Syrians into the country as Europe grapples with an influx of refugees. The community college's Refugee Center has resettled roughly 5,000 people since the 1980s.

Idaho High Court Upholds Law Banning Horse Racing Terminals

MagicValley.com: Sep. 10- Kimberlee Kruesi

BOISE | Idaho's highest court says the state must enforce legislation banning lucrative instant horse racing terminals after ruling that Gov. C.L. "Butch" Otter's veto of the bill was invalid. The decision is a blow to the horse racing track industry, where officials have viewed the machines as a lifeline to keep their businesses afloat. In a unanimous decision issued Thursday, the court ruled that the ban must go into effect because Otter did not complete the veto within the required five-day time span. In Idaho, a bill automatically becomes law — even if the governor doesn't sign it — unless it is vetoed within the legal timeframe. The court then added that Secretary of State Lawrence Denney must certify the law, which will make the machines illegal. There are currently about 250 machines installed in three locations across Idaho. Otter issued a statement Thursday maintaining his actions were legal. "I stand by my word as well as my earlier decision to veto this legislation. It is clear the Senate took up my veto and voted to uphold it. While I disagree with today's ruling, I will continue working toward a solution that ensures a viable live horse racing industry in Idaho," Otter said. Known as instant horse racing, the machines allow bettors to place wagers on prior horse races with no identifiable information. The machines have spinning wheels, sounds and animations that mimic slot machines. Idaho lawmakers approved legalizing the machines in 2013. They passed the legislation banning them earlier this year with supermajority approval in both chambers after critics argued the machines were essentially illegal slot machines. However, once SB 1011 —the bill outlawing the machines— reached Otter's desk, the governor delayed releasing his decision, doing so after the five-day window had passed. Otter says he put off announcing the veto so he could talk to lawmakers over the Easter weekend about his decision rather than having lawmakers find out in the press. The Idaho Senate then failed to override the governor's decision on a 19-16 vote. Instead, three statements were entered into the Senate journal that day —submitted by the Senate's President Pro Tem Brent Hill, Minority Leader Michelle Stennett and Secretary Jennifer Novak— stating that the Senate failed to receive the governor's veto by the required deadline. Thursday's decision pointed to the statements and Senate journal as key pieces of evidence proving Otter improperly submitted his veto. "The Deputy Attorney General would apparently have us believe that the governor timely returned the original of the bill to some phantom senator, who gave the bill back to the governor, and then the governor later returned the original of the bill to the Senate Pro Tem," the court wrote. "There are certainly no facts supporting that fantasy." Denney did not immediately return calls from The Associated Press on if and when he will certify SB 1011. He has previously stated that he will comply with whatever the court decides.

Hearing Continued, New Attorney Sought for Man Accused of Burley Burglaries

MagicValley.com: Sep. 11- Eric Quitugua

BURLEY • A man accused of breaking into homes and vehicles over a two-day period in Burley in July is seeking a new defense attorney. Ruben Ortiz's preliminary hearing scheduled Friday morning was continued after Magistrate Judge Michael R. Redman granted a motion to withdraw the county's chief deputy public defender Timothy Schneider. Schneider requested to withdraw from the case because he is friends with one of the victims of a rash of break-ins that detectives say Ortiz took part in. "(The victim) and I have spent time at each other's houses on numerous occasions and do so frequently," Schneider said. "I play fantasy baseball with him. I consider him to be a very good friend." Schneider informed Ortiz of his connection to one of the victims prior to preparing for the preliminary hearing. He said Ortiz was not comfortable with him as representation and that he believed the attorney wouldn't "have his best interest at heart." Because the motion will delay the hearing, the request was initially denied when the judge received it on Thursday. However, when Schneider explained the conflict, Friday's renewed motion to withdraw was granted. "I think it would be foolish for me to do anything other than to reconsider the motion and grant the motion," Redman said. Cassia Deputy Prosecuting Attorney McCord Larsen had no objection, saying Ortiz's concern is a valid one. Ortiz, along with 18-year-old Ramon Flores, is accused of breaking into several vehicles and homes in July, taking money, laptop computers and tablets. One of the victims is Magistrate Judge Blaine Cannon, who reported a laptop missing in addition to \$300 from a purse on his kitchen counter. Ortiz is also accused of breaking into homes and vehicles in December 2014. The 19-year-old faces seven counts of felony burglary for the July break-ins in addition to three counts of grand theft and a felony burglary charge for the December break-ins. No date for a new hearing has been scheduled as the family of Ortiz seeks private counsel. "...I want Ortiz to understand the state has no dog in that fight," Larsen said. "We want to make sure he is comfortable with whoever he has planned as his attorney."

Judge: Brutality in Burley Woman's Killing 'Shocking'

MagicValley.com: Sep. 11

RUPERT • Calling the accusations "shocking," a judge set a \$5 million bond Friday for a Burley man accused of killing his wife. Ronnie Gene Kincaid Jr., 34, was arraigned in Minidoka County Magistrate Court on charges of first-degree murder, mayhem — a charge used when a person dismembers or disfigures a victim, two counts of penetration with a foreign object and concealing or destroying evidence. He is accused of killing his wife, Melissa Dawn Kincaid, 34. As the judge explained each count, Kincaid said he understood what he was being charged with. According to an affidavit of probable cause prosecutors filed Friday, deputies arrived at the couple's home Sunday morning to find five children there, ages 10 to 17. Investigators said the couple went on a date Saturday night and got home about 10 p.m. Ronnie Kincaid said the couple had sex around midnight and "it was bloody," the affidavit said. Deputies reported the children in the home could hear her screaming. About 20 minutes after the screaming stopped, Ronnie Kincaid asked the 17-year-old to check on Melissa Kincaid, saying "she isn't acting right," the affidavit said. Ronnie Kincaid told deputies that at 2 a.m., he and the 17-year-old took his wife to the shower to wash blood off of her and spray cold water in her face because she wasn't responding to them, the affidavit said. He called 911 just before 9 a.m. An autopsy revealed Kincaid bled to death from vaginal and anal trauma. The Cassia County Coroner said it was impossible that Melissa Kincaid's injuries were self-inflicted and they could not have been caused by sex, the affidavit said. She was likely held down, the affidavit said. Prosecutors said the charges warranted such a high bond amount because of the gruesomeness of the crime and because Kincaid has previously failed to register as a sex offender. Judge Rick Bollar granted the request. "The state's requested bond is an extreme amount," the judge said, "but the offenses are shocking." Kincaid's defense attorney, Anthony Valdez, said the amount was too high. "I don't know if \$5 million is appropriate," Valdez said. "It's an imaginary number to Mr. Kincaid at this point." Prosecutors did not say whether they will seek the death penalty. A preliminary hearing is set for Sept. 25. A registered sex offender, Kincaid has been held since Tuesday on a probation violation. He was convicted of third-degree rape in Klamath County, Ore., in 2001.

Rock quarry neighbor takes dispute to court

Lewiston Tribune: Sep. 12- Joel Mills

One of the most prominent critics of rock blasting east of Lewiston is taking his complaints to 2nd District Court. Brian Dunlap lives near the rock quarry at 3900 Industrial Way owned by Westcon LLC. He has claimed since 2006 that blasting has damaged his and other nearby properties, and presented a petition with 42 signatures to the county last year asking for action. But after being told by county officials that his concerns are a civil matter, Dunlap filed suit against the county and Westcon in an attempt to force the company to halt work, at least temporarily. "The declaratory judgment action asks the court to determine that the conditional-use permit is not valid, effectively ending the rock pit use and requiring that a new permit be applied for under the county's zoning code, not the city," said Lewiston attorney Ed Litteneker, who is representing Dunlap. The rock pit is operating under a conditional-use permit issued to then-owner McGregor Estate Revocable Trust by the city of Lewiston in 2002, even though the pit is outside the city limits. At the time, city and county ordinances in the area of city impact provided that the Lewiston Planning and Zoning Commission would hear applications for such permits. But those decisions could always be appealed to the Nez Perce County Commission. That changed this year when the county took over all planning authority in the thin band of land surrounding the city limits. Nez Perce County Deputy Prosecutor Nance Ceccarelli said that if the lawsuit is successful, it could call similar permits into question. "It would certainly force the county to revisit conditional-use permits," Ceccarelli said. "And it wouldn't just be Westcon. It would be all conditional-use permits, and our process therein." She interpreted Dunlap's action as seeking the establishment of a process for aggrieved citizens to have some recourse. "The difficulty that has existed for quite some time is that in order for somebody to have a remedy to complain, it required them to go back to the city," she said. "And the city has never had jurisdiction in the ACI. So there was just a big obstacle. The new ACI ordinance has fixed all that, but it still means that particular conditional-use permit was issued through the city." Dunlap is not seeking monetary damages in the lawsuit in order to focus on the conditions of the rock pit's use, and so the county has to deal with permitting its continued use, Litteneker said. Western Construction owner Case Stedham is listed as the registered agent for Westcon by the Idaho Secretary of State, and Frank and William Motley Jr. of Motley-Motley Inc., a construction firm, are listed as members of the company. Westcon attorney Ron Blewett said the rock pit has been in operation for 98 years, while Dunlap is a relative newcomer. "A lot of good, hard-working people depend on that rock pit to support their families," Blewett said. "Westcon will do whatever it needs to do to defend its business." Ceccarelli said all three attorneys are holding a conference call next week to discuss how to move forward with the case.

Commercial General Liability Policies: Part 1

Idaho Business Review: Sept. 14- Randall Schmitz

At some point, most contractors will face a claim for faulty or defective workmanship. When that happens, will the claim be covered under a Commercial General Liability (CGL) policy? The answer depends upon the factual nature of the claims asserted and which state's laws apply. This is the first of three columns addressing contractors' coverage issues under a CGL policy for faulty workmanship. For these articles we will assume the claim is purely for the contractor's faulty workmanship without any damage to other property. Most CGL policies provide coverage for bodily injury or property damage caused by an "occurrence." An "occurrence" is generally defined as "an accident." The Idaho Supreme Court has not yet determined whether a contractor's faulty workmanship constitutes an occurrence under a CGL policy. Of the courts that have addressed this issue, the clear majority have held that there is no occurrence for defective workmanship alone. Numerous cases have held that damage to one's own work is a business risk that can be anticipated and, therefore, is not an accident. Performance of the construction contract according to its terms is within the contractor's control and management and a failure to perform cannot be characterized as an undersigned or unexpected event. Rather, faulty workmanship is a natural and ordinary consequence of the defective workmanship and not an occurrence. The reasoning for the majority rule is based on the purpose of insurance coverage. CGL policies are not designed to provide coverage against claims for inferior work. The risk of repairing defective workmanship has generally been considered a business risk which is not passed on to the insurer. Coverage comes into play when the contractor's work causes injury to property other than the contractor's own work. Allowing recovery for contractual disputes regarding the quality of the work performed would convert a CGL policy into a professional liability policy or a performance bond. On the other hand, some courts have held the opposite. A minority of courts view faulty workmanship as neither intended, expected, or foreseen. After all, a contractor does not intend to perform defective work. Since the defective work is not intended or expected, it must be an accident and, accordingly, an occurrence. Some states have begun addressing this issue through legislation, such as Colorado, Arkansas, South Carolina, and Hawaii. Except for Hawaii, these states enacted laws defining faulty workmanship as an occurrence. Hawaii's legislation just requires that an occurrence be construed in accordance with the law as it existed at the time the policy was issued, which has always been construed as not including defective work. However, this may signal a trend for states to define faulty workmanship as an occurrence if the courts will not do so. Idaho has not ruled on this question, however, it is likely to follow the majority rule. Like the majority, the Idaho Supreme Court shares the view that a CGL does not act as a performance bond. Likewise, another difference between the majority and minority view is that those adhering to the majority rule maintain a distinction between contract and tort-based claims. Idaho maintains this distinction as well. While Idaho has not yet definitively addressed this question, it is likely to adopt the majority position. However, it is far from a certainty. Establishing whether faulty workmanship is an occurrence is only the first question when determining whether coverage applies. The next step is to determine whether any policy exceptions could preclude coverage. In my next article, I will address how the "your work" exclusion is implemented and whether it would bar coverage for faulty workmanship under Idaho law.

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Trial Court Administrator Retires after 23 Years

MagicValley.com: Sep. 14- Benton Smith

TWIN FALLS • After serving on 14 boards and committees and spending 23 years managing personnel, improving the court system and budgeting for eight counties, Linda Wright is excited for a break. Wright has worked for Twin Falls County since 1987 when she first became a jury clerk. Since then she has been jury commissioner, the elected clerk of the district court and in 1992 became the first full-time trial court administrator for the Fifth Judicial District. The position oversees the courts of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties and helps to implement Idaho Supreme Court mandates. "To work with that many people, set all those budgets and to be a liaison to all the counties, it takes a certain kind of someone and Linda did it for a number of years," said Twin Falls County Clerk Kristina Glascock. Over the last 14 years, Wright has helped open problem-solving courts in the Magic Valley and helped hire and guide the problem solving court coordinators. The courts address specific needs for offenders and Wright has helped to set up felony drug courts, juvenile drug courts, Mental Health Court, Family Reunification Court and DUI Court throughout the Fifth Judicial District, and a Veteran's Court is scheduled to open in October. "They're all very successful and we're just excited about them," Wright said. "That is one of the big accomplishments I think I've had with this." A large portion of Wright's job was to build uniformity between the courts by implementing new technology and holding quarterly meetings with the elected clerks of all eight counties. "That is extremely helpful for judges who travel," Wright said. One of the biggest changes in her career came when the law library of the Twin Falls County Courthouse was moved online. "The cost was just staggering to keep those books up to date," Wright said. "We've cut that cost by 50 percent." After decades of juggling so many responsibilities Wright is excited to have time to relax and to have some fun. "I go home at night and my husband will ask what I did today, but there is so much it's hard to remember sometimes," she said. In 2014, Wright received the Douglas D. Kramer Award, Idaho's top judiciary service award. Anyone who works within the judicial system from clerks to judges can be nominated. The award was presented to her at a judicial conference and she didn't know she had even been nominated. "Nominations come with several different letter of recommendations," Wright said. "It makes it special." Wright's coworkers described her as hard working and as a leader in the community. "I worked for her a couple different times," Glascock said. "She has definitely been a role model for me. Encouraged me to always further my education. As a boss and as a friend she wanted to make sure I was successful." Wright filed her resignation six months ago and her last day will be Sept. 30. Once she is done she looks forward to visiting with her grandchildren in Boise and catching some of their school events. "I guess I'm just going to hang loose for awhile," Wright said. The Idaho Bar Association and a state selection committee have named Wright's assistant of twelve years, Shelli Tubbs, as the next trial court administrator. "She is very well qualified," Wright said. "She's worked very hard." Though Wright said she plans to have fun in retirement, she said she would still serve on a state board or committee if asked to share her experience or expertise. "It's not a decision you come to lightly," Wright said. "I think it is the hardest part of retirement. There are so many people I will miss working with daily."

Retirement Celebration

A celebration will be held for Linda Wright from 4 p.m. to 6:30 p.m. Oct. 1 at the Turf Club, 734 Falls Ave., where friends, coworkers, and community members can come and visit.

Details in Bergdahl case could emerge at hearing beginning Thursday

Idaho Statesman.com: Sep. 13- Richard A. Oppel Jr. /New York Times

In the 15 months since U.S. commandos whisked Sgt. Bowe Bergdahl from an Afghanistan hilltop in a trade with the Taliban, he has been portrayed as both a traitor and a hero, even as most facts uncovered about what happened when he left his outpost six years ago have remained officially under wraps. Those gaps finally should begin to be filled Thursday, when the 29-year-old Idaho native reports to a preliminary hearing in San Antonio on charges that he deserted his post and endangered troops who searched for him. The hearing will lead to a decision whether to court-martial Bergdahl. Military experts expect the hearing to last a few days as witnesses are called. Lawyers will argue over the merits of the charges and could try to influence the narrative over the case, one that has become a cause célèbre for Republican presidential contenders and President Barack Obama's critics. Geoffrey Corn, a retired Army lawyer and now a professor at South Texas College of Law in Houston, said he expects that prosecutors "will show their hand pretty strongly" at the hearing — partly to try to influence the "background environment, the media and the public perception of what the evidence will show actually happened." Prosecutors including Lt. Col. Christian Beese, a top criminal-law instructor at the Army's legal academy, will argue that Bergdahl left his base in eastern Afghanistan on June 30, 2009, to shirk and avoid hazardous duties, leading to a manhunt that put many soldiers at risk. Beese and the other main prosecutor, Maj. Margaret Kurz, did not respond to a request for comment. Bergdahl's lawyers, led by Eugene R. Fidell, who teaches military justice at Yale Law School, also declined to comment. But in a previously disclosed memo written before the charges were announced in March, defense lawyers said Bergdahl had never intended to leave permanently and that he had been seeking a senior officer to report "disturbing circumstances" in his unit. After capture, they said, he behaved as a soldier should, making escape attempts that prompted his Taliban jailers to beat him. They also questioned whether he should have ever been allowed to enlist, given circumstances of his washing out of Coast Guard basic training. For now, his lawyers might have less incentive to reveal strategy, said Gary D. Solis, a former military judge who teaches law of war at Georgetown University. "If I'm the prosecutor, I'm going to lay it all out there, but if I'm the defense, I'm going to try to keep my mouth shut," he said. "What's the profit in showing my hand?" Lt. Col. Mark Visger, an Army lawyer, will conduct the hearing and recommend whether to convene a court-martial. The decision ultimately falls to Gen. Robert Abrams, head of Army Forces Command at Fort Bragg, N.C. The fate of Bergdahl is not all that is at stake. The outcome and revelations will stick to Obama, who approved the swap for five Taliban detainees in a deal attacked by lawmakers who complained that Congress was never properly notified. Critics also predicted the detainees could end up fighting Western forces and that terrorists would be emboldened to kidnap Americans to trade for others. Fidell has said prosecutors informed him that they will not offer evidence that soldiers died searching for Bergdahl. He has also said an investigation by Maj. Gen. Kenneth R. Dahl found no evidence of that, despite contrary assertions by some soldiers. Troops wounded during the search are another matter. One, Jimmy Hatch, now a retired member of the Navy SEALs, was hit in the leg by an insurgent's bullet during a rescue raid days after Bergdahl disappeared. He has undergone more than 30 surgical procedures and said he contemplated suicide during recovery. Hatch told CNN that Bergdahl deserves his day in court but that he needs to be held accountable and to understand "how much was risked." Fidell said he was not privy to details of that raid, "which are presumably still classified." But he said Bergdahl "is grateful to the military professionals including Senior Chief Petty Officer Jimmy Hatch who worked to rescue him" and has the utmost respect for their "sacrifice and his personal courage." Some experts also say that a plea deal is still likely. Any negotiations, they say, have probably included whether Bergdahl could be discharged dishonorably or allowed to keep back pay and veterans benefits, with the five years he was held in captivity possibly weighing against prison time. Frank Spinner, a former military lawyer who has defended many high-profile military cases as a civilian, said there "probably is a lot of incentive for a plea deal on both sides."

Twin Falls Child Pornography Case Moved to Federal Court

MagicValley.com: Sep. 14- Benton Smith

TWIN FALLS • A man charged in Twin Falls County with 51 counts of possessing material sexually exploiting minors has been charged with similar crimes in federal court. A federal grand jury indictment was filed Sept. 10 charging Stephen Roy Walker, 41, with three counts of sexually exploiting children, one count of transporting child pornography and one count of possessing child pornography. Between Dec. 23, 2010 and Aug. 13, 2011, Walker coerced a minor into engaging in sexually activity while he photographed it, the indictment said. Two more times between March 1, 2011 and Aug. 13, 2011 Walker made the same juvenile engage in sexual activity while he photographed it and recorded video footage, the indictment said. Walker then moved the materials he had produced himself or downloaded to Idaho about 2012, the indictment said. Walker was caught with the child pornography Feb. 20, 2014 when Twin Falls Police and U.S. Homeland Security investigators served a search warrant and found material sexually exploiting minors including a picture of a child under 12-years-old, the indictment said. The warrant was served at a room of the Old Town Lodge, 248 Second Ave. W., and Homeland Security reported Walker was distributing pornographic images of a relative and discussing possibly having sex with her. During the search, police reported finding more than 1,000 pornographic images of girls who were "clearly minors." Federal prosecutors plan to seize the sexually explicit material and any device that stored it including an Acer V5 laptop with a 500GB hard drive, a Western Digital "My Passport" 500GB external hard drive and an Acer Aspire laptop with a Toshiba 250GB hard drive, the indictment said. They will also seize a Canon Power Shot digital camera Walker used to produce child pornography, the indictment said. Walker's trial in Twin Falls County was postponed several times in anticipation of federal charges and his attorney Sam Beus said in June a plea deal that had been worked out was denied by the U.S. Attorney's Office. If found guilty, each charge of sexually exploiting children carries the possibility of a maximum sentence of 30 years in prison, transporting child pornography has a maximum of 20 years and possessing child pornography has a maximum of 20 years. Walker is scheduled to be arraigned Tuesday in Boise.

Woman receives forgery sentence

Coeur d'Alene Press: Sep. 15

COEUR d'ALENE - A 38-year-old Coeur d'Alene woman has been sentenced to serve up to 12 years in prison for forgery. This was Chanell Barto's second felony conviction, as she was also convicted of grand theft in 2012. The sentence for forgery - issued by District Judge John Mitchell - includes the first two years being fixed and the remaining 10 years being indeterminate. "This latest conviction involved Ms. Barto forging her husband's signature in order to obtain a loan from her employer," a press release from the Kootenai County Prosecutor's Office states. "When Ms. Barto failed to make payments on the loan, the employer contacted her husband and learned his signature as a co-signer on the loan was forged." Barto was booked into the Kootenai County jail on Aug. 5. Her charges were forgery, which has no bond, and petit theft, with a bond amount of \$5,000. The 2012 grand theft conviction stemmed from her embezzlement from the Elks Lodge, another employer of Barto. The court also considered additional documentation that showed Barto is suspected of continuing her theft activities even while awaiting sentencing in this case. Kootenai County Prosecutor Barry McHugh praised the work of his prosecutors and the Coeur d'Alene Police Department, and agreed with Judge Mitchell, stating that the sentence was appropriate in Barto's case as she has continued to victimize members of this community, and he hopes the sentence will deter this type of conduct in the future.

Lawsuits filed under landmark ADA law surge

Idaho Business Review: Sep. 15- Scott Baughman

The U.S. population is growing substantially older, and the signposts of that graying are easy to spot—literally so in the case of some towns that have begun installing oversized street signs to accommodate the rising number of older drivers. Elsewhere, the demand for caregivers is booming, and there are even dating websites devoted to the senior citizen set. The signs of a graying population are also showing up in the federal courts. In 2014, there was a surge of cases filed under Title III of the Americans with Disabilities Act, the section that bans discrimination in the accessibility of places of public accommodation, such as shops and restaurants. Although disabled persons are not necessarily old, an aging population is likely to lead to more folks with physical impairments experiencing the sort of obstacles that the ADA is designed to eliminate. The federal courts break down ADA cases into two categories: those related to employment and "other," the vast majority of which are public accommodation cases. Excluding employment cases, the number of ADA suits filed nationally grew incrementally from 2010 through 2013, and then accelerated markedly in 2014, climbing from 3,217 in 2013 to 4,920 in 2014—an increase of more than 50 percent. (See chart.) Employment cases, conversely, have fluctuated and are down slightly from a peak in 2012. Some of that is likely due to the increase in the number of disabled persons. According to the U.S. Census, 56.7 million people had some form of a disability in 2010, the most recent year for which data is available. That was an increase of 2.2 million over the number in 2005. As the ADA this year marks the 25th anniversary of its passage, ensuring access for the disabled has become an increasingly vital concern for businesses. Have a Coke and file. But attorneys for businesses that have found themselves on the receiving end of ADA lawsuits argue that the upswing has largely been driven by additional factors, particularly the enthusiasm of "testers"—plaintiffs who travel around to businesses to determine whether their facilities comply with the ADA, and then sue those whose businesses do not. A single "tester" and his or her attorney may end up filing lawsuits against dozens, or even hundreds, of businesses. In order to have standing to sue a business under the ADA, a plaintiff must show that the alleged violation is causing him a real and ongoing injury. Courts in different jurisdictions have applied this rule with varying degrees of leniency. Florida courts, most notably, have taken a very permissive position on standing questions in response to a 2013 ruling by the 11th U.S. Circuit Court of Appeals. The data from the federal judiciary does not break down the number of ADA cases filed in each state, but independent research published by the national law firm Seyfarth Shaw suggests that Florida was responsible for much of the increase in Title III suits last year, along with California, another state with law favorable to plaintiffs. Records show that Florida plaintiffs and attorneys have also filed a substantial number of Title III lawsuits in North Carolina in recent years. Lonnie Player, an attorney in Fayetteville, N.C., described the case of a Florida woman who filed ADA lawsuits against several dozen businesses in North Carolina, claiming standing to sue based on a single, small purchase made at each establishment. Courts in North Carolina, Player said, have been more skeptical about granting standing to such plaintiffs. "I think there has been an increase" in ADA lawsuits filed, Player said. "I think it has been reflected in North Carolina, though I think that the federal district courts here have done a good job being gatekeepers in terms of standing issues, and not allowing cases to proceed when the plaintiff is an out-of-state litigant who drives 500 miles to North Carolina and buys a Coca-Cola in order to show standing." Such lawsuits are typically resolved with a settlement, Player said, since businesses, especially one-off establishments, typically find it uneconomic to litigate cases to trial. Get proactive, attorneys say A search of federal cases filed in North Carolina does indeed show several serial litigants who have filed cases against multiple businesses. Most of the Title III lawsuits filed in North Carolina in the last five years could in fact be tied to a single plaintiffs' attorney, Christopher Lane of Clemmons. Lane declined to comment for this story. Some of the other plaintiffs' attorneys who were contacted also declined to comment for this story, but attorneys who did comment reported getting frequent inquiries from disabled clients frustrated by the legitimate difficulties they faced in accessing the businesses they patronize. Pete Monismith, a Pittsburgh attorney who has represented plaintiffs in several Title III cases filed in North Carolina, predicted that such lawsuits will likely continue to increase in frequency. Monismith noted that the increasing number of older Americans has created a market for transportation services tailored to their needs, so more disabled persons are able to get away from their homes more easily. "As they get out more and more, I think you will certainly see an increase [in Title III lawsuits] when they can't use a restroom, or they can't sit at a table at a restaurant with their friends," Monismith said. "On almost a weekly basis, I have someone call me and complain about issues they face, whether it's parking, or trying to get into a bathroom, or trying to get a seat at a restaurant." Monismith said that often clients will ask him to write letters to businesses asking them to address accessibility issues, but such letters often fail to produce the attentive response that a lawsuit does. Attorneys for both plaintiffs and businesses agreed that business owners would be well served to address ADA issues proactively by having a professional audit conducted to assess compliance issues. For businesses looking to spare the cost of a formal audit, the Department of Justice offers on its website a checklist of issues that proprietors should be mindful of. "Being proactive about this means not waiting for somebody to come in who experiences a problem," said Lisa Grafstein, managing attorney at Disability Rights North Carolina. "That kind of accessibility audit and checking compliance proactively is always a good idea. It's not just a way to avoid lawsuits but also to demonstrate your openness to the disabled community, and that goes a long way."

Prosecutor: Alleged Boise shooter showed up at victim's work, home

Idaho Statesman.com: Sep. 15- John Sowell

The man accused of shooting a Boise woman in her back yard on Saturday allegedly sent her a voice message in which he threatened to shoot her, a prosecutor said Monday. "He left a voice message in which he threatened to shoot her. Obviously, he carried through on that threat," Deputy Ada County Prosecutor Dan Dinger said at the arraignment for Christopher L. Wirfs. Boise police officers investigating the shooting listened to the message and verified it came from Wirfs, Dinger told 4th District Magistrate Theresa Gardunia. He didn't say when exactly the message was sent, only that it was in "the weeks leading up" to the shooting. Wirfs reportedly showed up Saturday at Ambitions Salon, where victim Makaela Zabel-Gravatt, 32, works. He was asked to leave and escorted out by another person, Dinger said. Later, he went to her North End home in the 700 block of West Resseguie Street and shot Zabel-Gravatt at least twice, Dinger said. "The defendant had been essentially stalking the victim for a period of weeks, had been harassing her, sending her threatening text messages and phone messages," Dinger said. In asking for bail to be set at \$1 million, Dinger said Wirfs "certainly poses a threat to her and the community." Gardunia agreed with the request and told Wirfs he would be required to wear a GPS monitor if he posts bail. Wirfs said he isn't likely to be able to raise that much. "No, I don't think I will be able to," he said. Gardunia also approved a no contact order for Zabel-Gravatt and another person who witnessed the shooting. Wirfs is charged with felony aggravated battery, use of a deadly weapon and unlawful possession of a firearm. If convicted, he faces up to 15 years each on the first two charges and up to five years on the firearm possession charge.

Boise man convicted in shaken baby murder denied new trial

Idaho Statesman.com: Sep. 15- John Sowell

A judge ruled against a Boise man seeking a new trial in the 2010 death of his 11-week-old daughter, saying there was no justification for setting aside the jury's murder verdict in the case. Fourth District Judge Patrick Owen said he carefully reviewed the case and said a new trial for Jeffery A. Baker, 55, would only have been warranted if the verdict was contrary to law or the evidence presented, if there was new evidence that wasn't available at trial or if a new trial was required in the interest of justice. Owen found that none of those conditions applied. "In the court's view, Baker received a fair trial and was found guilty on the basis of substantial although disputed evidence. In the end, substantial justice was done," Owen wrote in his 21-page decision. The Ada County jury ruled unanimously in 2013 that Baker inflicted fatal injuries on his daughter Gracelynn Baker by violently shaking her. He was convicted of first-degree murder and sentenced to 15 years to life in prison. Defense attorney Randall Barnum argued that the jury had no basis for ruling out that Gracelynn may have died from other than criminal means. He said the jury's decision was contrary to the evidence presented at trial. Owen disagreed. At trial, the prosecution presented six physicians with extensive experience handling child injury cases. "These experts all agreed that Gracelynn's death was caused by a nonaccidental head injury," Owen said. Two defense physicians testified that Gracelynn died from a blood clot in her head. "In reaching its verdict, the jury plainly rejected the defense expert testimony," Owen wrote. Gracelynn was not breathing and had a white substance running from her nose when Baker carried her to a neighbor's home on May 10, 2010. He told neighbors the girl had been drinking formula when she began choking. When paramedics arrived a few minutes later, Gracelynn was pale and unconscious, was not breathing and had no pulse. She was taken to St. Luke's Medical Center and died four days later, after life support equipment was removed. Doctors testified that Baker's explanation about what happened did not fit what they found. The six doctors attributed the girl's internal head injuries to a violent acceleration and deceleration, consistent with shaking. At trial, the state also presented testimony from Brian Keim, who shared a jail cell with Baker while he was awaiting trial. He said Baker admitted to shaking Gracelynn shortly before she lost consciousness. Keim said Baker told him Gracelynn had been acting up, crying and screeching loudly on a trip home from a babysitter's home but calmed down before they arrived home. He said Baker told him he tried to feed her but she would not cooperate. Baker said he became frustrated, put her on a bed and went into another room while the girl continued to cry. Keim said Baker told him he "snapped," went into the bedroom, slammed the girl on the bed and told her to shut up. She became unconscious after that. Baker tried to make it look like an accident, Keim said, forcing formula into her mouth and nose before taking her to the neighbors' home.

Slayings suspect wants separate trial

Lewiston Tribune: Sep. 16- Associated Press

BOISE - A man charged in a double homicide case wants to be tried separately after the co-defendant sent him a jailhouse letter. John Douglas wrote that co-defendant Anthony Robins should tell his lawyer Douglas was hired to kill 28-year-old Elliott Bailey and 27-year-old Travontae Calloway in May 2014, the Idaho Statesman reported. Douglas pleaded not guilty earlier this year to two counts of first-degree murder and one count of attempted murder. Robins pleaded not guilty to two charges of aiding and abetting first-degree murder and one count of aiding and abetting attempted first-degree murder. Police said Robins accused the two men of stealing 30 pounds of marijuana from him, and that he arranged for Douglas to kill them. Anton Raider pleaded guilty in December to aiding and abetting attempted murder in connection with injuries Calloway's girlfriend sustained in the shooting. Douglas wrote he would say Raider hired him. Robins said the letter could create unfair prejudice against him if it is introduced as evidence against Douglas during their trial set for Jan. 19. Deputy Ada County Prosecutor Shelley Akamatsu argued in a motion the letter does not mean separate trials are needed. The case is due back in court Sept. 23.

Bergdahl Lawyer Wants Interrogation Made Public

MagicValley.com: Sep. 15- Juan A. Lozano/ AP

HOUSTON • The lawyer for Sgt. Bowe Bergdahl, who was held prisoner for five years by the Taliban, is asking the Army to publicly release a transcript of Bergdahl's interview with military officials following his release in a controversial prisoner swap, saying it could help counteract negative publicity in the case. Bergdahl is facing military charges, including desertion, for leaving his post in Afghanistan in June 2009. He is facing his initial court appearance in the case starting Thursday at Fort Sam Houston in San Antonio, where he has been stationed since returning to the U.S. last year. His attorney, Eugene Fidell, has asked the military to publicly release the transcript and a summary of an investigative report before or during the Article 32 hearing, saying it could help counteract negative publicity. Fidell said Bergdahl may not receive a fair trial "given the prolonged barrage of opprobrium that has been heaped upon him over the last year." "Sgt. Bergdahl has been called every name in the book," Fidell wrote in the request, which he released to media outlets on Tuesday. "It is as if he had a target painted on him. It is preposterous for him not to be able to defend himself in the court of public opinion." Military officials say the Idaho native was captured by the Taliban after leaving his post in southeastern Afghanistan. He was released by the Taliban in a prisoner exchange for five Taliban commanders. The 29-year-old was charged in March with desertion and misbehavior before the enemy. If convicted, he could face up to life in a military prison. He could also be dishonorably discharged, reduced in rank and have to forfeit all pay. Fidell, a military justice expert who is also a visiting lecturer at Yale Law School, declined to comment on the case. But documents he released Tuesday show his unsuccessful efforts to get permission to release to the media the interrogation transcript and the executive summary of the case's investigative report. Fidell made the request in June with the Department of the Army Professional Conduct Council. He noted comments made by GOP presidential candidate Donald Trump, who has repeatedly called Bergdahl a traitor. The Article 32 hearing will detail the charges and evidence against Bergdahl, resulting in a report that will be forwarded to Gen. Robert Abrams, the commanding general of U.S. Army Forces Command. Abrams will decide at a later date whether the case should be referred to a court-martial, the equivalent of a trial in civilian court, or is resolved in another manner. Officials are aware of the request from Bergdahl's lawyers and will respond to it "in due course," said Colonel Daniel J.W. King, a spokesman for U.S. Army Forces Command, located at Fort Bragg in North Carolina. Professor Sean Watts, who teaches military law at Creighton University in Nebraska, said he doubts the requested documents will be released. He said such a demand "would strike the Army as an effort to litigate the case before a trial."

Hearing set to debate Sgt. Bowe Bergdahl desertion charges

Idaho Statesman.com: Sep. 16- Juan A Lozano/ AP

HOUSTON — Lawyers for Sgt. Bowe Bergdahl, who faces military charges for leaving his post in Afghanistan, are likely to argue at his initial court hearing that his years of being held captive by the Taliban were punishment enough, according to legal experts. The Army on Thursday is set to begin an Article 32 hearing in which military prosecutors and Bergdahl's lawyers will make their cases for why he should or shouldn't face a court-martial, the military equivalent of a civilian trial. The hearing will be held at Fort Sam Houston in San Antonio, where Bergdahl has been stationed since returning to the U.S. last year, and it could last several days. Bergdahl's lead attorney, Eugene Fidell, has said that the hearing will provide the public with details about what led to the Idaho native's disappearance from his post in southeastern Afghanistan on June 30, 2009. Before disappearing, Bergdahl had expressed opposition to the war in general and misgivings about his own role in it. And Fidell has cited an Army investigation that determined Bergdahl left his post, but not the Army, and that his "specific intent was to bring what he thought were disturbing circumstances to the attention of the nearest general officer." Fidell said he plans to call witnesses, but he declined to say whether Bergdahl would be among them or to disclose further details about his strategy. Military prosecutors declined to discuss the hearing. Officials say the Taliban captured Bergdahl after he left his post. He remained a prisoner for five years before being released in an exchange for five Taliban commanders being held at the U.S. detention center in Guantanamo Bay, Cuba. The 29-year-old Idaho native was charged in March with desertion and misbehavior before the enemy. If convicted of the misbehavior charge, he could face up to life in a military prison. He could also be dishonorably discharged, reduced in rank and made to forfeit all pay. Some members of Bergdahl's former unit have called for serious punishment, alleging that some service members died looking for him. While the Pentagon has said there is no evidence anyone died searching for Bergdahl, legal experts say the misbehavior charge allows authorities to allege that Bergdahl's actions put soldiers who searched for him in harm's way. Fidell has expressed concern that negative publicity which has been highly critical of Bergdahl could influence how the case is resolved. The GOP and some Democrats have long criticized the prisoner swap as politically motivated and a flagrant violation of U.S. policy against negotiating with terrorists. Among those who have publicly criticized Bergdahl have been GOP presidential candidate Donald Trump, who has repeatedly called Bergdahl a traitor. "I'm not going to dignify Mr. Trump's comments any more than I have," Fidell said. "The amount of abuse to which (Bergdahl) has been subjected to in the blogosphere and elsewhere concerns me greatly." Fidell has said his efforts to counteract the publicity by having the Army release documents, including an interview Bergdahl gave to investigators, have so far been unsuccessful. Eric Carpenter, a law professor at Florida International University who also worked as a military attorney, said he expects Fidell will focus on arguing that the charges should not be referred to a court-martial, presenting evidence of how difficult it was for Bergdahl while in captivity. He said Fidell might argue that Bergdahl should be given something called an "other than honorable discharge" and be allowed to go home. Larry Youngner, a Washington, D.C.-based attorney who specializes in military law, said he believes there is a "very strong case" by the prosecution. "We can't have soldiers abandoning their posts in a combat zone during a time of war," said Youngner. "This is a hugely serious offense." The Article 32 hearing will result in a report that will be forwarded to Gen. Robert Abrams, the commanding general of U.S. Army Forces Command. Abrams will decide whether the case should be referred to a court-martial or is resolved in another manner.

A look at Sgt. Bowe Bergdahl's Article 32 hearing

Idaho Statesman.com: Sep. 16- Juan A Lozano/AP

HOUSTON — The U.S. Army is set to hold an Article 32 hearing in the case of Sgt. Bowe Bergdahl, who was charged in March with desertion and misbehavior before the enemy for allegedly leaving his post in southeastern Afghanistan in June 2009. Bergdahl was a prisoner of the Taliban for five years until he was exchanged for five Taliban commanders being held at the U.S. detention center in Guantanamo Bay, Cuba. Many Republicans and some Democrats criticized the swap as politically motivated and a violation of the U.S. policy of not negotiating with terrorists. The hearing will review the charges against Bergdahl and determine if there is probable cause to conclude that he committed any offenses under the Uniform Code of Military Justice and, if he did, whether a court-martial would have jurisdiction over the case. The hearing, which could last several days, will begin Thursday and be held at Fort Sam Houston in San Antonio, where Bergdahl has been stationed since returning to the U.S. last year. Here's a more detailed look at the procedures involved in an Article 32 hearing and what happens after the hearing.

LIKE A MINI-TRIAL Article 32 hearings are often likened to grand jury proceedings, but legal experts say they are actually more like mini-trials. At Bergdahl's hearing, military prosecutors are expected to present evidence, including witness testimony, to detail the charges against him. Bergdahl's attorneys will get to cross-examine prosecution witnesses and to call their own witnesses and present evidence once the prosecution has concluded its case. A preliminary hearing officer, whose role is similar to that of a judge, will preside over the affair.

NO IMMEDIATE DECISION After the testimony and evidence has been presented, the two sides will make their arguments about how they think the case should be resolved. Prosecutors could argue that it should go to a court-martial while defense attorneys could argue that the charges should be resolved by less severe means. The preliminary hearing officer will consider the evidence and lawyers' arguments and will recommend a course of action in a report that could take several weeks to complete.

COMMANDING GENERAL The preliminary hearing officer's report will be forwarded to Gen. Robert Abrams, the commanding general of U.S. Army Forces Command in Fort Bragg, North Carolina. Abrams will ultimately decide whether to send the case to a court-martial, which is the military equivalent of a civilian trial. Abrams might refer charges to a general court-martial, which is reserved for the most serious offenses, or to a special court-martial, which handles offenses that would be the equivalent of misdemeanors in civilian courts. He may also dismiss the charges or take some other action, including discharging him.

First veterans court graduate sees sober success

Lewiston Tribune: Sep. 17- Ralph Bartholdt

When Dave Taptto was asked to say a few words, to recount his experiences, to play back the months and years for an audience, he was taken aback. The exercise awoke in him things he had kept underground even through the months of extensive counseling and rehabilitation he received as a participant in Lewiston's 2nd District Veterans Court. "I'm not one to shed tears," said Taptto a former U.S. Marine. "I mean, I'm 0311, infantry, but I shed some tears over this." When Taptto graduated Wednesday from the veterans court program - as the program's first graduate - he did what he learned to do as a Marine sergeant: He led the way for fellow veteran court participants. It wasn't a walk in the park. It seems long ago that he was in the Nez Perce County Jail's B-pod on yet another drunken driving charge - this one a felony. It was a Saturday, Taptto remembered. He was facing three to five years in prison. And the day seemed flat, like the other days, with the future just a gray cotton horizon that one walked into wearing jailhouse stripes or another uniform, maybe jeans and a shirt. "Nothing happens in there on a Saturday," Taptto said. Detention deputies brought news of a visitor. It wasn't something Taptto was accustomed to in his many stays in the county facility since his return from Iraq as a wounded combat veteran in 2006. Mostly, he had befriended alcohol and the car he drove to buy more. "I never got visitors in there," he said. The people he knew and identified with were scattered across the continent, all carrying their own memories of the Thundering Third - the First Battalion, Third Marine Regiment in Iraq. When Taptto stepped into the windowed visitor booth, he looked into two faces he had not seen before. Rhonda Strother, the veteran justice outreach coordinator with the U.S. Department of Veterans Affairs, was among them. Part of Strother's job is prison outreach, and Taptto had come up as someone who could use help getting on the right path. She explained the plan to start a veteran treatment court program in Lewiston, the resources available to veterans in legal trouble and the difficult road ahead if Taptto chose to join the program. "David was highly motivated to follow this," Strother said. At Wednesday's ceremony, Taptto's achievement was recognized by the Nez Perce Tribe honor guard, and a brief drum ceremony. He received kudos from veteran court administrators in addition to an award. Presiding Judge Gregory FitzMaurice commended Taptto's 75 weeks of sobriety and his mentorship to other veterans. He applauded Taptto for starting the first veteran alcohol anonymous program in the Lewiston-Clarkston Valley. And he lauded Taptto's achievements as a student at Lewis-Clark State College, where he is in his third year working toward a degree in social work. "He's given back to the community, and each one of you knows he's given back to you," FitzMaurice said. FitzMaurice signed a motion to successfully terminate Taptto's probation and close the felony case filed three years ago. Being the first to finish the Lewiston program is a privilege, Taptto said. But it is the program, not he, that should be lauded. Despite its rigor that includes regular meetings, counseling and psychiatric sessions, pointed rehabilitation, and a nucleus from the judiciary and the VA, he said the program opens a window to a better future that is hard to deny. "It's like the first day going into boot camp, when you ask what the heck did I get myself into?" he said. "I'm impressed with this program and what these guys are doing." The personal responsibility stressed in the program is not unlike what he found in the military, he said. And the result has directed his future. "We're always going to have people stepping up," Taptto said. "We're always going to have war. My focus is to help other veterans deal with the stuff I'm still dealing with and will continue to deal with." While he works toward his degree, Taptto said he will also continue working with veterans as a mentor in the 2nd District program.

Man sentenced for killing eagles, hawks

Lewiston Tribune: Sep. 17

COEUR d'ALENE - A Plummer man was sentenced Tuesday to three years of probation and 300 hours of community service for violating the Bald and Golden Eagle Protection Act. Visiting U.S. District Judge Terry J. Hatter Jr. also ordered Adrian Q. Brown-Sonder, 24, to pay \$4,000 in restitution and to forfeit all hunting permits, tags, stamps and licenses during the term of probation. Brown-Sonder pleaded guilty to the charge on Tuesday. According to the plea agreement, a confidential informant contacted Coeur d'Alene Tribal Police, who in turn contacted the FBI and the U.S. Fish and Wildlife Service. According to U.S. Attorney Wendy J. Olson, the informant stated that Brown-Sonder killed eagles and other migratory birds. Several witnesses were interviewed and explained that Brown-Sonder admitted to them that he had killed hawks and eagles. A search warrant at the defendant's residence resulted in the discovery of a large number of eagle and hawk feathers, as well as a wide array of bird skulls and feet. Two bald eagles, two golden eagles, two rough-legged hawks, two red-tailed hawks, and two unspecified dark-morph hawks were identified by a morphology examination. Brown-Sonder is prohibited from hunting and having possession of dangerous weapons during the term of his probation. The case was investigated by Coeur d'Alene Tribal Police, the FBI, and the U.S. Fish and Wildlife Service.

The Latest: Health Care Worker Describes Bergdahl's Injuries

MagicValley.com: Sep. 18- Juan A. Lozano/AP

SAN ANTONIO (AP) | The latest on the hearing to determine if Army Sgt. Bowe Bergdahl should face a court-martial on desertion and other charges for leaving his post in Afghanistan six years ago. 9:40 a.m. A nurse practitioner says Sgt. Bowe Bergdahl suffers from extensive injuries caused by his five years as a Taliban captive and he doesn't think Bergdahl is fit to remain in the military. Curtis Aberle works at Fort Sam Houston in San Antonio, where Bergdahl has been stationed since returning to the U.S. last year. He testified Friday at Bergdahl's Article 32 hearing in Texas that Bergdahl will need a lifetime of medical care. Aberle says Bergdahl suffers from muscular nerve damage in his lower legs, a degenerative disc in his lower back and an injury that has left him with limited movement in his shoulder. He says Bergdahl was kept in a crouched position for extended periods, which caused the injuries. Aberle also says Bergdahl suffers from post-traumatic stress syndrome. 9:09 a.m. SAN ANTONIO (AP) — Bowe Bergdahl will not be among the four witnesses that his lawyers plan to call to testify at the hearing to determine if the Army sergeant should face a court-martial for leaving his post in Afghanistan six years ago, his lead attorney said Friday. Eugene Fiddel began the second day of Bergdahl's Article 32 hearing by explaining that everything relevant Bergdahl has to say about the events that led to his 2009 capture by the Taliban is contained in the lengthy statement Bergdahl gave military investigators last year. Fiddel has repeatedly called for the military to release Bergdahl's statement to the public, saying it would help tell Bergdahl's side of the story and counteract the negative publicity he has faced since being exchanged last year for five Taliban prisoners after five years in captivity. Many Republicans and some Democrats have criticized the swap, saying it was politically motivated and contrary to the U.S. policy of not negotiating with terrorists. Bergdahl is charged with desertion and misbehavior before the enemy. The hearing at Fort Sam Houston in San Antonio, where Bergdahl has been stationed since his return to the U.S., is to determine if there is enough evidence to warrant a military trial for Bergdahl. Military prosecutors called three of Bergdahl's former commanding officers to testify Thursday. Each described the grueling search for Bergdahl and said it put other soldiers in danger. The search lasted 45 days, they said, beginning on June 30, 2009, the day Bergdahl walked away from his post in southeastern Afghanistan. Another of Bergdahl's lawyers asked Bergdahl's platoon leader, Capt. John Billings, if he was aware of Bergdahl's mental health history, including his psychological discharge from the U.S. Coast Guard and that an Army psychiatric board had concluded that Bergdahl possessed a "severe mental defect." Billings said he wasn't aware and Bergdahl's company commander during his time in Afghanistan, Maj. Silvino Silvino, said he also didn't know of Bergdahl's mental health issues. Billings and Silvino said Bergdahl had been a model soldier. Prosecutors on Thursday didn't mention the criticism that has surrounded Bergdahl since his return but focused on trying to substantiate the misbehavior charge. That charge, which carries a possible life sentence, would require them to prove that Bergdahl's actions put other soldiers in harm's way. If convicted, Bergdahl also could be dishonorably discharged, reduced in rank and made to forfeit all pay. The prosecution's three witnesses — commanders Bergdahl's platoon, company and battalion — testified Thursday that his disappearance from his post in Afghanistan put a strain on their forces and put his fellow soldiers in danger. Billings described the 45-day search for the Idaho native as grueling, saying soldiers got little food or sleep and endured temperatures in the high-90s. "Physically, mentally, I was defeated," Billings said, adding that he felt like he had "failed" his men. Silvino said some of the thousands of soldiers who took part in the search were angry about it because they felt Bergdahl had deserted. Military prosecutor Maj. Margaret Kurz said Thursday that Bergdahl had actually been planning for weeks to abandon the post. Finally, Bergdahl's battalion commander, Col. Clinton Baker, said that although no soldiers died as part of the search, there was a spike in improvised explosive device attacks because soldiers were going to places they ordinarily would have avoided. The Article 32 hearing will result in a report that will be forwarded to Gen. Robert Abrams, the commanding general of U.S. Army Forces Command. Abrams will decide whether the case should be referred to a court-martial or be resolved in another manner.

Prosecutors won't appeal dismissal of drug charges against Nezperce man

Lewiston Tribune: Sep. 18- Ralph Bartholdt

Nez Perce County prosecutors decided Thursday not to appeal a ruling to dismiss the case against a 27-year-old Nezperce man accused of trafficking more than 4 pounds of marijuana and 4 grams of black-tar heroin. Robert C. Kay was released from jail last month after 2nd District Judge Jay P. Gaskill ruled that the traffic stop leading to his arrest was illegal. Prosecutors had asked for an additional hearing to confer with the Idaho Attorney General's Office as they considered appealing Gaskill's finding, but this week decided against the appeal, and the case was formally dismissed in Lewiston's 2nd District Court. Kay was arrested May 12 after being stopped by a Nez Perce County sheriff's deputy on Nez Perce Road, which is owned by the Nez Perce Tribe. Deputy Nick Woods stopped the 1987 Honda with a flickering headlight, and a search by deputies allegedly revealed more than 4 pounds of marijuana in a duffle bag in the Honda's trunk and 4 grams of black-tar heroin in an eyeglass case in the glove box, according to court records. But charges of possession of a controlled substance and trafficking in marijuana were dismissed by Gaskill, who wrote in his opinion that the stop occurred on a private road, outside the jurisdiction of the Nez Perce County Sheriff's Office. Although the arresting deputy acted in good faith, his inexperience with road ownership in the county led to the illegal arrest, Gaskill wrote. "It is also evident that the mistaken belief about the roadway was most likely due to (the officer's) short time with the department," according to the opinion. Kay, who was in jail on \$50,000 bond before his release last month, had pleaded innocent to both felonies at an earlier hearing. A charge of trafficking heroin was also dismissed by prosecutors.

Feds reach \$940 million tribal settlement

Idaho State Journal: Sep. 18- Staff

The U.S. Department of Justice and the U.S. Department of the Interior announced Thursday that a \$940 million proposed settlement has been reached with Native American tribes and tribal entities that would resolve a 25-year-old legal dispute related to contract support costs for tribal agencies. It now must be approved by the federal court system. The Shoshone-Bannock tribal government on the Fort Hall Indian Reservation is a part of this settlement involving about 645 separate tribal entities nationwide. The Shoshone-Bannock tribal government is part of the class in the lawsuit that was composed of tribal governments and other tribal organizations, such as tribal school boards, that have contracted with the government during a 20-year time period to run federal programs under the Indian Self-Determination Act of 1975. The proposed settlement would address claims that the U.S. government contracted with tribes to run programs but did not pay the full amounts required by law. It claims that the government contracted with tribes and tribal agencies to run Bureau of Indian Affairs programs such as law enforcement, forest management, fire suppression, road maintenance, housing, federal education and other support programs but failed to appropriate sufficient funds to pay the costs under the agreements. Each class member that is eligible for a share of the settlement must file a claim form, according to the U.S. Department of Justice. Class counsel will retain a settlement administrator that will mail the claim forms to each class member. The parties have already agreed on the share to which each class member is entitled based on the member's past self-determination contracts, and the dollar amount is based on complex formula system for allocating the \$940 million. The exact amount to be paid to the Shoshone-Bannock Tribes was not available. "This landmark settlement represents another important step in the Obama administration's efforts to turn the page on past challenges in our government-to-government relationship with tribes," said Interior Secretary Sally Jewell. "Tribal self-determination and self-governance will continue to be our North Star as we navigate a new chapter in this important relationship, and we are committed to fully funding contract support costs so that tribal contracting can be more successful. Congress can and should make this happen." Thursday's announcement resolves past claims and allows money wrapped up in litigation to be used more productively, according to Jewell. "The Department of Justice is pleased that the parties have reached an agreement to finally resolve this litigation that has spanned four administrations," said U.S. Principal Deputy Assistant Attorney General Benjamin Mizer. "This agreement was long in the making — reached only after years of complex negotiations — and both sides can be proud of the result." This proposed settlement was filed Thursday in U.S. District Court in Albuquerque, New Mexico. The proposed settlement would resolve the government's liability and avoid years of tedious contract-by-contract litigation that would require tens of thousands of hours of work by federal and tribal attorneys as well as expert auditors and accountants. The claims arose because of a mismatch between federal self-determination laws and available appropriations. While the federal government has signed contracts that provided for certain amounts to cover administrative costs of implementing contracts — such as workers' compensation costs for tribal employees — Congress capped appropriated funds available to pay for these costs. This funding gap was one of the sources of the claims, which were raised in the class action lawsuit, which was originally filed in 1990.

Youth pot felonies 'slipped in under the radar'

Lewiston Tribune: Sep. 18- Mary Stone

A provision in a Washington law that makes it a felony for anyone younger than 21 to possess marijuana is an "unintended consequence," according to a representative from Gov. Jay Inslee's office, but three Asotin County teens face those charges nonetheless. Asotin County Prosecutor Ben Nichols said language in Senate bill 5052 stipulates that the level of offense for a minor caught with pot is now a felony, and three teens, ages 14, 15 and 17, have been charged so far. "I can only tell you that this was not the intention that the governor had when working with legislators on this bill," Inslee spokeswoman Jaime Smith said of the law that was written to clarify the state's medical marijuana laws and went into effect in July. "If prosecutors are finding that this language allows them to do this, that was not the intention." Asotin County felony public defender Rick Laws, who represents one of the juveniles, said he was taken aback by the new law. "I don't think any of us saw this coming," Laws said. "I get the sense that even a lot of people who voted for the bill didn't see this coming. It seems to have slipped in under the radar." Washington Liquor and Cannabis Control Board spokesman Brian Smith agreed with the governor's office that the legislation was not meant to increase the penalty for minors from a misdemeanor to a felony. That's especially true in a state where people older than 21 can possess as much as 28 grams of marijuana, and possession of as much as 40 grams is only a misdemeanor. "The intent of the legislation was not to increase penalties on minors in possession," Brian Smith said. But Justin Nordhorn, the board's enforcement chief, said that upping the severity for minors is what the new law technically does. "It does appear it is a class C felony, based on connecting the dots," Nordhorn said after reviewing the legislation. Whether prosecutors will charge minors with felonies for the offense is another question, he said. "They can choose to apply that," he said. "They can choose not to go down that road. It's really up to the prosecutor's office to decide the best course of action for continuing that line of accountability." Nichols disagreed with that assessment. "My job is to apply the law, not to make the law," he said. "The problem with the argument that there's prosecutorial discretion is that the law doesn't allow the prosecutorial discretion." Some laws do allow prosecutorial discretion, he said, but such language is not included in the marijuana law. "If you are a minor, a person under 21, it's a felony no matter what," Nichols said. "If somebody says that's not what he governor intended I believe them - but he signed the law as written." In fact, bill sponsor Sen. Ann Rivers, R-La Center, said Wednesday that the tougher penalty was designed to deter minors from trying an adult drug. "We have to send a message to our kids: This will hurt you in more ways than one if you decide to participate," Rivers said. As the bill was fashioned, all parties agreed that keeping marijuana out of the hands of minors was a priority, Jaime Smith said, "but there are other ways to do that without charging them with felonies." The governor has no power to change the legislation on his own, Jaime Smith said. But when there is confusion about a new statute, she said, it is not uncommon for the Legislature to clarify or fix it. Laws said that's of little comfort for his client. "That's great," he said. "But how many people are going to fall through this hole before we have a chance to get it patched? The answer should be nobody. That's an awfully high price for a few people to have to pay for faulty legislative work." Nichols said he expects the Legislature will change the law during its next session, but anyone convicted in the meantime would then have to return to court to have that conviction vacated. "I think that would be real good grounds," he said. "But it wouldn't be automatic."



Glenn McQuiston Lee

April 30, 1945-Sept. 5, 2015

Fruitland

Glenn McQuiston Lee passed away on Sept. 5, 2015, at his home in Fruitland. He was surrounded by his family who loved him dearly. A viewing for friends and family will be held from 6 to 8 p.m. on Thursday, Sept. 10, at the Haren-Wood Chapel in Payette. Funeral services will begin at 11 a.m. on Friday, Sept. 11, at the Church of Jesus Christ of Latter-day Saints in Fruitland. Glenn was born on April 30, 1945, in Salt Lake City, UT, to Cal and Mary (McQuiston) Lee. He was raised in Ontario, Oregon on the Lee family farm and attended school in Vale. Glenn was the baby of the family and was doted on by his big brother and sisters. Glenn grew up working on the farm with his family and was active in church, school and community programs and activities. After high school, Glenn served a mission for the LDS church in Southern California. While on his mission, he was introduced to Mary Rost, also an LDS missionary. After returning home from his mission in 1967, he quickly contacted Mary. It took a little convincing, but finally Mary agreed to a date, and the two became engaged later that year. They were married in the Salt Lake Temple on April 3, 1968. Glenn was always a good student and graduated from Boise State University in 1972. He attended law school at the University of Idaho and graduated with his Juris Doctor degree in 1975. He began his law practice in Malad, ID. The family moved to Fruitland in 1977 and Glenn opened his law office with LaMarr Kofoed. He loved being an attorney and was especially skilled in helping families with estate planning and complex probate issues. He was widely considered an expert in his field and advised many local attorneys on these issues. He cared deeply for his clients and many became close family friends over the years. He served as counsel for the Fruitland School District, Farmers Mutual Telephone Company, and many other organizations. Glenn was active in his community and was a member of the Fruitland Lions Club. He was also active in his church. He served as a member of the bishopric and also as youth leader for the young men in his ward for several years. He especially enjoyed designing and building the annual haunted house fundraiser for the young men's organization activities. Glenn loved the Oregon Coast and spent some time almost every summer with his family there enjoying crabbing, kite-flying and listening to the waves. He was a voracious reader and loved to try new things. He created beautiful stained glass pieces and was talented in landscape design and gardening. He also loved to cook and Sunday dinners at Mimi and Papa's house are a tradition for his family. He enjoyed making Baked Alaska, prime rib, lobster bisque and other intricate and complicated dishes as a way to share his talent and love of food with his family and friends. Glenn underwent kidney transplant surgery in 2004. He received a kidney donation from Justin Perry, whom he considered to be a son. That gift enabled him to enjoy more than a decade of love and laughter with his family. Glenn loved his family. He was a loving husband, father, brother and grandfather. Glenn was preceded in death by his parents; sister, Dixie Griffin; and sister-in-law Betty Lee. Glenn is survived by his wife, Mary; daughter, Marne (Paul) Marshall; sons, Brian (Abby) Lee; Trevor (Julie) Lee; and Justin Perry; grandchildren: Kennedy and McCall Marshall; Payton and Chance Lee; and Tanner and Challis Lee. He is also survived by his brother Gordon Lee, of Ontario; and sister Linda (Ralph) Ashby of Ogden, UT.



John M. Curney Jr.

August 6, 1960- May 1, 2015

John M. Curney, Jr., beloved husband, father, and faithful friend, passed away unexpectedly May 1, 2015, at the age of 54. He is survived by wife, Patty Curney; sons, Will and Zeke Curney, Boerne; parents, Barbara and John Curney Sr.; sisters, Bekki Curney, Cindy Cancienne, and Cecelia Neathery, San Antonio.

John received his BS from Texas Christian University in 1982, and in 1985, his Juris Doctorate from St. Mary's University School of Law. He began practicing law in 1985 in San Antonio, and was also licensed to practice law in Idaho. He was one of the principal founders of the firm of Curney, Farmer, House & Osuna. A longtime resident of the Fair Oaks Ranch, John was passionate about his family, community, fly-fishing, youth athletics, and TCU. He loved the times spent on the rivers in Montana and Idaho with his family and friends. He will be greatly

missed.

Memorials may be made to one of John's passions: BEST (Boerne Extracurricular and Sports Trust), 7411 Scintilla Ln., Boerne, TX 78015. To leave condolences, visit www.ebensberger-fisher.com.

Justices hear arguments in closely watched judicial confirmation case, GBAD v. Frazier

Spokane Eye on Boise September 3, 2015

Really interesting arguments at the Idaho Supreme Court this morning in the case of Greater Boise Auditorium District vs. David Frazier, in which the district is appealing a lower-court ruling denying judicial confirmation for a lease-back arrangement on a downtown convention center expansion. Judicial confirmation would rule that the lease doesn't violate the Idaho Constitution's debt restrictions. Numerous government entities have filed amicus briefs siding with the district, saying that if 4th District Judge Lynn Norton's ruling stands, it'll inhibit a wide array of normal business practices for local government entities. The question is the meaning of [Article 8, Section 3](#) of the Idaho Constitution, which is entitled, "Limitations on County and Municipal Indebtedness." It forbids any county, city, school district, or other subdivision of the state from incurring "any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof." Later in the same section, it says, "This section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state." It also makes provisions for bonds paid off by revenues, which require simple majority voter approval. "What this means is essentially that local governments need to operate on a cash basis," attorney Chris Meyer told the court on behalf of GBAD. "Plainly, the expansion of auditorium district facilities is not an ordinary and necessary expense within the meaning of the Constitution, and the district has never suggested otherwise. Nevertheless, the center lease does not require voter approval." That's because it contains a non-appropriation clause, allowing the district to walk away from the deal at any time with no liability, he said. John Runft, attorney for Frazier, argued that the lease deal is really "an agreement to acquire real property ... It's a long-term investment, that's what it is. ... I believe there the court must look at the intent of the transaction." Runft said, "The liability that you would lose your investment, I think, is a form of liability." Chief Justice Jim Jones said, "It seems to me that the framers of the Constitution were not intent on saying, 'We're just going to limit any long-term liability just for the heck of it.'" He cited an earlier decision from the court that Article 8, Section 3 "was designed primarily to protect taxpayers and citizens of political subdivisions. If we say that the lease before us is acceptable under Article 8 Section 3, what will be the harm to the taxpayers?" Runft said while taxpayers in the auditorium district wouldn't have to pay more, "I believe the harm to the taxpayers generally would be setting this case as a precedent." If the court followed that precedent in other cases, he said, "I think the taxpayers would lose their right to be involved." Justice Roger Burdick said, "You basically say they would lose all of the lease payments they have paid in the past. But on a daily basis, governmental agencies, districts, etc., make bad deals. They buy a lawnmower that's no damn good, and they've lost that amount of money. So I don't understand. The issue is risk to future generations. And if that risk has been assumed by some bank or some third party... ." He said, "That's one of the problems with judicial confirmation. The people who oppose judicial confirmation seem to come in and say the sky will fall because of these what-ifs, but there's no evidence to these what-ifs." Runft said the framers' intent was: "Pay cash, otherwise go to the people. That is the ultimate purpose of our being here, to defend the right of the people ... to have their voice heard." To that, Jones commented, "You go to the people to get their approval on something that they'll never have to pay either way." Said Runft, "I accede to your observation on this case, but if the precedent is set... ." Jones said, "Every state lease has these very same provisions. Every long-term lease made by every highway district, every school district, every subdivision of government in the state of Idaho has non-appropriation provisions, just so that they can get around the restrictions of Article 8, Section 3." Meyer said the district committed full funds to buy the facility within a year if judicial confirmation was denied, and it has the money. "That is a done deal, that will happen, and the funds are available to fund that if this court denies judicial confirmation," he said. The long-term lease agreement was a separate financing step after that, and is what requires the judicial confirmation. "The framers were concerned with solving a particular problem, which was that local taxpayers couldn't get out of obligations that had been made that ultimately proved to be economic disasters," Meyer told the court. He said that's not at issue here. "The Legislature has seen fit to specifically authorize the district to undertake the kinds of leases that it has undertaken in this case." If, as Runft argued, that would open a Pandora's box in other cases, Meyer said, the Legislature is the place to address that. The justices took the case under advisement, and will issue their written ruling later.

Man will go to trial in officer shooting death

Morning News September 4, 2015

COEUR D'ALENE (AP) — A northern Idaho man is being held over for trial in the shooting death of a Coeur d'Alene police officer. First District Senior Magistrate Barry Watson ruled Wednesday that there was enough evidence to take Jonathan Daniel Renfro, 27, to trial on charges including first-degree murder, The Spokesman Review reported. Sgt. Greg Moore's body camera recorded him stopping Renfro in May, and it shows the shooting as well, prosecutors said. "That evidence is compelling and powerful to establish it was the defendant who shot Sgt. Moore," Kootenai County Deputy Prosecuting Attorney David Robins told Watson. Moore was checking on a suspicious person while patrolling a neighborhood when he was gunned down, court documents say. He died later that evening. "Renfro is observed shooting Sgt. Moore," Idaho State Police Senior Detective Michael A. Van Leuven wrote in an affidavit that

describes images from the camera worn by Moore. "After being shot, Sgt. Moore falls to the ground, causing his body camera to point skyward. A short time later, Renfro's face comes back into the frame. Renfro is seen using a flashlight while searching Sgt. Moore's person." Renfro waived Miranda rights after he was arrested and talked about the shooting, police said. Robins said. Renfro told authorities he shot Moore because he didn't want the officer to find the gun in his pocket. Renfro in court documents said he told investigators he didn't want to go back to prison on a parole violation for being a felon in possession of a firearm. "That's his motive, your honor,"

Court records paint violent picture of kidnapping

By TOM HOLM Post Register September 4, 2015

Law enforcement believes a drug dispute led five people to kidnap a 32-year-old man and brutally attack him. Brandon Bykonen lost his pinkie finger after a savage attack with a sharp object he suffered after being kidnapped Aug. 27, court records show. The four people charged with kidnapping Bykonen, of Idaho Falls, could face the death penalty according to Idaho state statute, but Daniel Clark, Bonneville County prosecutor, said he does not intend to pursue capital punishment. A spokesman for the Eastern Idaho Regional Medical Center said Bykonen was discharged Monday. Four people have been arrested for Bykonen's kidnapping and one remains at large. The Bonneville County Sheriff's office is seeking the public's help in finding Faustino Angelo Anaya, 19, for his reported involvement. The Sheriff's Office has arrested Devan Crawford, 23, Ivan Sandoval, 19, Alvaro "Tito" Oseguera, 33, and Sarah Oden, 23, in connection with the incident. They all reside in the Idaho Falls area, except Sandoval, who lives in Wyoming. Each has been charged with first-degree kidnapping and mayhem. Crawford has an additional charge of robbery. His bond is set at \$300,000. Sandoval's bond is set at \$250,000, Oden's bond is set at \$120,000 and Oseguera's bond is set at \$125,000. Each individual has a preliminary hearing scheduled Friday. Law enforcement arrested Sandoval on Thursday after arresting the others Sunday. Bonneville County Sheriff's Office Detective Zeb Graham wrote in a probable cause affidavit that Bykonen's left pinkie finger could not be saved following the attack. Bykonen's right middle finger was also badly damaged, Graham wrote, and Bykonen will only have 40 to 50 percent functionality of his finger in the future. Graham said Friday that investigators believe Bykonen was injured by a "sharp object," but refused to say if a knife was found at the scene. He said the Sheriff's Office is still compiling information in attempt to locate Anaya. Graham would not say what role Anaya played in the kidnapping. "We're still in the early stages of this," Graham said. "We don't want to compromise anything." Deputies responded at about 7:23 a.m. Aug. 27 to a 911 call from a homeowner who said Bykonen arrived at their Lincoln Road residence on foot with badly cut hands. Graham wrote in the report that Bykonen's hands were wrapped in a blanket covered in a large amount of blood. Bykonen told the detective he was taken against his will by the individuals from a residence on the 800 block of North Lakewood Avenue. At the residence, Oseguera reportedly accused Bykonen of being a "narc" and a "rat" and told Crawford to bind Bykonen's hands and blindfold him, court records show. Oseguera claimed Bykonen spoke to law enforcement about Oden having drugs, which led to Oden being arrested for possession of a controlled substance June 14. Sandoval escorted Bykonen out of the home and put him in the backseat of Bykonen's car, court records show. Sandoval drove him to an open field on the north side of Lincoln Road where he was taken out and put face down in the dirt. Crawford then ordered Bykonen to extend his bound hands in front of him and proceeded to slash both of Bykonen's hands with an "unknown object," court records show. Crawford later told Graham that he was responsible for the attack. Crawford asked Graham to not "pin" anything on Oden, court records show. Oden drove in a separate car behind Crawford and Sandoval to the location on Lincoln Road. Mayhem is punishable by up to 14 years in prison. First-degree kidnapping carries a death penalty, if the prosecuting attorney intends to seek it, and is otherwise punishable by at least one year in prison with a maximum incarceration of 25 years. Prosecuting attorneys have 30 days after a defendant enters a plea to submit a notice of intent to seek the death penalty. The Sheriff's Office encourages anyone with information about Anaya to not approach or contact him. Anyone with information may call the Sheriff's Office at 529-1200 or contact Crime Stoppers at 522-1983 or www.ifcrime.org

BSU's summary judgment motion denied in lawsuit

By Katy Moeller Post Register September 4, 2015

A 4th District Court judge this week cleared the way for two former female athletes' lawsuit against Boise State University to proceed to trial. The women, who were on the school's track team during 2011-12, sued the university in 2014, alleging that they were sexually assaulted and harassed by a male teammate and that the university failed to immediately act because he was a star athlete. One of the plaintiffs "raised evidence that her report of the rape was largely ignored and she was left unsupported and forced to fearfully co-exist with (male athlete) on a daily basis," Judge Steven Hippler wrote in his decision. In May, attorneys representing Boise State filed a motion for summary judgment, seeking to have the judge decide the case without going to trial. Hippler issued a 36-page ruling on the motion Tuesday afternoon denying the motion. "We are very gratified by the judge's decision and we look forward to presenting our case to a jury on Jan. 5, 2016," nationally known attorney Gloria Allred said in a written statement to the Statesman on Thursday. The Statesman generally does not name alleged victims of sexual assault. The star athlete accused of rape and other sexual misconduct is not named in the lawsuit against Boise State. He has not been charged with any sex crimes in Idaho, according to online court records. University investigation Contained

within Hippler's ruling are details about the conclusions of two reports produced by university officials who investigated the allegations. One report focused on coach interviews, the other on student-athlete interviews. The university's investigation into allegations of sexual misconduct by male athletes on the track team was triggered by a 2013 email from a "concerned parent." The report based on interviews with coaches found:

- All the track coaches acknowledged that (male athlete) was a "skirt chaser," "ladies man" or that he "hits on women."
- Complaints by three female student-athletes were not forwarded to the university officials for investigation or record keeping. Coaches failed to report the incident relating to a fourth female athlete.
- A male athlete had sexually assaulted two female athletes.
- Four women on the track team were victims of sex-based discrimination.
- When complaints, allegations or common knowledge brought sex-based discrimination to the coaching staff, the matter was handled internally and more often than not favored males.
- Coach J.W. Hardy was not notifying the athletic administration of the complaints or taking necessary actions to remedy the effects of sex-based discrimination. The report based on interviews with athletes had these conclusions and recommendations:

- Three women were sexually assaulted by two male athletes after consuming alcohol.
- A male athlete sexually harassed one female athlete and threatened another with physical violence.
- A male athlete contacted one female athlete and tried to silence her reporting.
- Three male athletes should be referred to the Office of Student Rights and Responsibility for sanctioning intended to prevent future occurrences of discriminating behavior and to assist with personal decision making.

According to court documents, at least one of the track coaches thought the star male athlete should be kicked off the team — and told Hardy that. After an incident in which the athlete allegedly became angry and had to be restrained by two men from hitting a female athlete, then-assistant coach Kelley Watson told Boise State investigators that she wanted Hardy to suspend him, but the head coach thought it could be handled by talking to him. Prior to that incident, Watson "repeatedly" told Hardy that a female athlete who alleged she was raped felt threatened by him. The star athlete accused of rape and harassment was eventually kicked off the team and out of the university, and Boise State did not renew Hardy's contract. Watson and at least two other former Boise State assistants are now coaches for the women's track team at San Jose State University, according to Washington Square, the alumni magazine for SJSU . Former Boise State Athletic Director Gene Bleymaier was hired to be San Jose State's athletic director in 2012 . Bleymaier was fired by Boise State in 2011 after an NCAA investigation. Did Boise State have 'actual knowledge'? BSU is accused in the lawsuit of violating a federal law created to protect against discrimination in education: Title IX of the Education Amendments of 1972. Universities that receive federal funds have an obligation under Title IX to take steps to prevent sexual harassment and stop it when it occurs. In his decision, Hippler cited 9th Circuit rulings that peer sexual harassment complaints must meet four elements for Title IX actions:

- The school must exercise substantial control over both the harassed and the context in which the known harassment occurs.
- The plaintiff must suffer sexual harassment that is so severe, pervasive and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.
- The school must have actual knowledge of harassment.
- The school's deliberate indifference subjects its students to harassment.

Boise State's primary challenge was on whether the university had "actual knowledge" of the harassment, Hippler wrote. The defense attorneys argued that Hardy did not have authority to institute corrective measures — such as expelling a student-athlete from the university — so if he did know about the rape allegation, it wouldn't constitute "actual knowledge" by the university. Hardy denies that the female athlete told him that she was raped by a team member, court documents show. She said he told her that he couldn't help her because she had consumed alcohol, and he did not offer any referral to support services or information about pursuing charges. Hippler said the plaintiffs presented evidence that Hardy had wide-reaching remedial powers, including the ability to discipline athletes, suspend them from the team and address harassment. "A jury may find that these powers would be sufficient to end or control the harassment, depending on the degree of harassment the jury believes occurred," Hippler wrote. "Consequently, it cannot be held as a matter of law that Coach Hardy was not an appropriate person to impute actual knowledge of the harassment to BSU." The defense downplayed alleged sexual comments, leering and spanking of female athletes at practice as a "type of schoolyard conduct," Hippler wrote. BSU also contended that the alleged rape of one female athlete and the groping of another's genitalia did not meet the "severe and pervasive" criteria. The judge disagreed. "The majority of courts have found that a single act of sexual violence can be sufficient to state a claim under Title IX," Hippler said in his decision. Even though the alleged rape occurred off campus, "her allegations indicate the discriminatory effect of the rape occurred on campus at BSU's hands. She raised evidence that her report of the rape was largely ignored and she was left unsupported and forced to fearfully co-exist with (male athlete) on a daily basis."

Ex- BHS coach pleads not guilty

Morning News September 9, 2015 By LESLIE MIELKE

POCATELLO — Former Blackfoot High School soccer coach Alisha Yeates, age 27, pleaded not guilty to two counts of lewd conduct with a child under the age of 16 in Bannock County on Tuesday morning. Her arraignment took place before Sixth Judicial District Judge David Nye in the Bannock County Courthouse. In Bannock County, Yeates is charged with two counts of lewd conduct with a child under the age of 16. Both are felonies. Her jury trial is set to begin on Tuesday, Dec. 1. Her pre-trial conference is scheduled for Monday, Nov. 16. In Bingham County, Yeates faces five counts of lewd conduct with a child under age 16. All are felonies. A preliminary hearing is scheduled in Bingham County on Thursday, Sept. 17.

Canyon County sheriff under investigation

By John Sowell Post Register September 9, 2015

The Idaho Attorney General's Office has opened an investigation into possible misconduct by Canyon County Sheriff Kieran Donahue. The county was notified Aug. 17 by fax that Donahue was under investigation for unspecified allegations, Canyon County spokesman Joe Decker said Tuesday. The Attorney General's Office asked that office and cellular telephone records for Donahue and several other sheriff's employees from Nov. 12, 2012, to the present be preserved. Seeking records from the other employees, who Decker did not identify, does not mean those employees are also under investigation. "What we were told was that the sheriff is under investigation, not the sheriff's office," Decker said. Donahue, who is attending meetings in Blackfoot until Thursday, has not issued a public statement, Decker said. A call to Donahue's cell phone Tuesday afternoon went unanswered and it would not allow a message to be left. Later, Decker issued a written statement from the sheriff. "I was made aware by the Attorney General's Office that an anonymous complaint had been made alleging misconduct. We have been and will continue to cooperate fully with the AG's investigation," Donahue said in the statement. "We are confident that at the conclusion of the investigation the sheriff's office and I will be cleared of any wrongdoing." The investigation hasn't affected the operation of the office, Decker said. "The sheriff is still the sheriff of Canyon County," he said. Donahue became sheriff in January 2013. He previously served as the county's chief deputy. Decker said he is seeking an opinion on whether the fax from the Attorney General's Office is a public record. He said he would release the fax if it is considered a public record under Idaho's Public Record Law. Todd Dvorak, spokesman for the Attorney General's Office, said he could not confirm or deny whether Donahue is the subject of an ongoing investigation. The Attorney General's fax to the county says Donahue is being investigated under Idaho section 31-2002, Decker said. The public corruption statute covers preliminary investigations and actions against elected county officials. It says the attorney general shall conduct a preliminary investigation following an allegation of a violation of state civil or criminal law by an elected county official. Upon completion of the investigation, the attorney general can issue a finding that no further action is necessary, he can prescribe training or other nonjudicial remedies or issue a recommendation for further investigation or prosecution. The recommendation for further action would go to the county prosecutor, who would seek the appointment of a special prosecutor to handle the case, according to Idaho code.

District judge joins Court of Appeal

Idaho Press Tribune September 11, 2015

BOISE — Third Judicial District Judge Molly Huskey will officially be sworn in as the newest member of the Idaho Court of Appeals on Monday at the Idaho Supreme Court. Gov. Butch Otter appointed Huskey to the position in July after Judge Karen Lansing announced her retirement. The public is invited to a celebration at 10 a.m. Monday at the Idaho Supreme Court. "It is an honor to be appointed to the Idaho Court of Appeals," Huskey said. "Being a member of the Idaho Court of Appeals is a significant and serious responsibility. I am excited by the challenges of this position and welcome the opportunity to continue to serve Idahoans in Idaho's justice system." Huskey graduated from the University of Idaho College of Law and served as a deputy public defender and deputy prosecuting attorney in Bonneville County after receiving her diploma. She was appointed to the third judicial court in 2011. Huskey will serve on the Idaho Court of Appeals alongside Chief Judge John Melanson, Judge Sergio Gutierrez and Judge David Gratton.

Court orders state to pay tribe's attorney fees

Spokane Eye on Boise September 10, 2015

In addition to ruling in favor of the Coeur d'Alene Tribe in the instant racing veto case, a unanimous Idaho Supreme Court ruled that the tribe is entitled to attorney fees and costs in its lawsuit against Idaho Secretary of State Lawrence Denney, because Denney "acted without a reasonable basis in fact or law" by defending the case and refusing to certify the instant racing ban legislation as law. "Because the governor failed to return SB 1011 within five days, the Constitution makes crystal clear that SB 1011 automatically became law as if the Governor had signed it and therefore, the Secretary of State had a non-discretionary duty to certify it as law," the justices wrote. "Therefore, we conclude that the Secretary of State defended this writ without a reasonable basis in fact or law." Only the state must pay the tribe's attorney fees and costs; the other parties in the case, Gov. Butch Otter and three instant racing operators, all of whom filed friend of the court briefs offering arguments in the case, don't have to pay the tribe's costs because they weren't parties in the case, the court found.

Leroy: Instant racing decision 'a sweeping and significant precedent'

Spokane Eye on Boise September 10, 2015

David Leroy, who argued on behalf of Coeur d'Alene Racing LLC in the instant racing veto case, called today's Idaho Supreme Court ruling "a sweeping and significant precedent." The court rejected arguments, from him and others, that the Coeur d'Alene Tribe didn't have standing to sue over the issue, he noted. "It swept aside the traditional limits on standing to say that if the question before the court is ... of sufficient constitutional significance, the court will hear the case if any party complains, or perhaps no party at all," Leroy said. "It surprises me that they swept that aside so boldly today." In their decision, the justices wrote, "If the Tribe does not have standing to bring this writ, the question then becomes, who does? Neither the members of the Senate, the Governor, nor the Secretary of State appear ready or willing to challenge the constitutionality of the Governor's purported veto or of the Senate's actions in this case. Thus, if the Tribe could not bring this writ, there would be no one to enforce the important constitutional provisions involved in this case or to ensure that the integrity of the lawmaking process is upheld." The case, the court found, "involves a fundamental constitutional provision." Leroy said other precedents set by the decision include standards for examination of the contents of official Senate journals, and clarifying what the Constitution means when it says a bill must be "returned" by a certain date. "This court has now defined what 'returned' in the Constitution and statute means – actually physical delivery," Leroy said. "That was an open question prior to this case." He said, "They have said they will take a very activist role in being the constitutional referees in a battle such as this." Leroy said he had just reviewed the decision and hadn't yet had a chance to confer with his clients, who operate the Greyhound Park Event Center in Post Falls. "There's no appeal from this," Leroy said. "It's my belief the possibility of rehearing is available under the rules," but he said the parties hadn't conferred about that idea.

Idaho Supreme Court finds Otter instant racing veto invalid

Spokane Eye on Boise September 10, 2015

The Idaho Supreme Court has ruled that Gov. Butch Otter's belated attempt to veto legislation banning slot machine-like "instant racing" terminals in Idaho was invalid, because it came after the Idaho Constitution's required five-day deadline. That means the gambling machines are now illegal in Idaho; you can read the [court's decision here](#). "This Court has insisted upon strict adherence to the procedures outlined in our Constitution for enacting laws and in exercising the veto power," Justice Roger Burdick wrote in the unanimous decision. "Indeed, we have stated that the provisions are mandatory and that it is the imperative duty of the Legislature, and in this case, the executive as well, to obey them." Justice Daniel Eismann added in a specially concurring opinion that he found Secretary of State Lawrence Denney's defense in the case "frivolous" and "disingenuous;" Justice Warren Jones joined in Eismann's concurrence. The Coeur d'Alene Tribe, which filed the lawsuit, had requested Denney to certify the bill as a law, contending the belated veto was invalid; he refused, saying he didn't believe he had that power unless either the Senate or the court ordered him. Today's court decision orders him to do that. The Coeur d'Alene Tribe issued this

statement from tribal Chairman Chief Allan: "We are very pleased with the Supreme Court's ruling today. This pivotal decision reaffirms that even Idaho's highest elected officials must follow the Constitution. It's really too bad that a lawsuit was necessary to confirm this, but we are extremely happy with the result. More importantly, this is a big win for the Idaho Legislature because the Court is upholding a law that was passed by a supermajority of both the Idaho Senate and the House of Representatives. This is exactly why our government has checks and balances in place." John Sheldon, president of Treasure Valley Racing, which operates the machines at Les Bois Park near Boise, issued this statement: "Treasure Valley Racing is obviously extremely disappointed in the Court's ruling. It comes on the heels of a 32-day live race schedule at Les Bois Park that would not have occurred without the infusion that historical horse racing brings to this industry. A season that disbursed nearly \$2 million in purses to horsemen, employed 280 Idahoans, and contributed \$2.67 million in taxes. We are currently reviewing all of our options and assessing the significant impact that complying with the Court's order will have on the immediate and long-term future of Les Bois Park." The state and the three companies that operate the gambling terminals in Idaho argued that because the Senate treated the governor's veto as if it were valid, and took an unsuccessful veto override vote - it drew a majority, but not the two-thirds required for an override - that meant the veto was valid. The justices disagreed. "The duty of supporting the constitutional provisions is imposed upon all public officers by the solemn obligations of the official oath, which obligations cannot be discharged by disobeying, ignoring, and setting at naught the plain provisions of the Constitution," the justices wrote. Quoting an earlier decision, they wrote, "If either house can disregard one plain provision of the Constitution, then it may disregard all of its provisions, and the Constitution, instead of being the fundamental law of the land, is a mere sham, an idle mockery, a nullity." The state and the racing companies also argued that separation of powers should bar the court from telling the Senate or the governor how to interpret the attempted veto; again, the justices disagreed. "Each of the branches of government serves as a check against the power of the others to ensure that each branch is acting within the scope of its authority and consistent with the Constitution," Burdick wrote. "Thus, it is the this Court's duty to intervene to prevent the governor and the Senate from circumventing the Constitution and manipulating the veto power in this case." Otter issued this statement: "I am disappointed with the Supreme Court's decision. I vetoed the bill within the time allowed under the Constitution. As for the time of its return, I gave Senate President Pro Tem Brent Hill my word that he could be the first to inform his colleagues of my veto, instead of having them learn of it through press reports. Unfortunately the Senate already was adjourned for the long Easter weekend. I stand by my word as well as my earlier decision to veto this legislation. It is clear the Senate took up my veto and voted to uphold it. While I disagree with today's ruling, I will continue working toward a solution that ensures a viable live horse racing industry in Idaho."

Idaho high court upholds law banning horse racing terminals

Spokane Eye on Boise September 10, 2015

Greyhound Park and Event Center General Manager Doug Okuniewicz talked about the park's new instant horse racing terminals at the facility Jan. 20, 2015, in Post Falls.

Slot machine-like "instant racing" machines that have been operating at three Idaho locations – including the Greyhound Park Event Center in Post Falls – are illegal, the Idaho Supreme Court ruled on Thursday. Lawmakers this year repealed the authorization for the controversial betting machines, which Idaho's horse racing industry promoted as a way to raise money to support live racing. Amid heavy lobbying, Gov. Butch Otter issued a veto in April, but didn't return the vetoed bill to the Idaho Senate within the state Constitution's required five-day time limit. The high court said that means the repeal bill became law without the governor's signature on its effective date, July 1. Idaho Secretary of State Lawrence Denney, whom the court ordered to certify the repeal legislation as law, won't appeal, according to the Idaho Attorney General's office. "The Secretary of State has said all along that he will do whatever the court instructs in this case," said Todd Dvorak, spokesman for Idaho Attorney General Lawrence Wasden. "This is it." Otter said in a statement that he believed he'd properly vetoed the bill. "While I disagree with today's ruling, I will continue working toward a solution that ensures a viable live horse racing industry in Idaho," he said. Idaho lawmakers first authorized the machines as a new form of betting on broadcasts of horse races in 2013, but said they didn't expect the slot machine-like terminals that showed up a year later. The machines were touted as terminals showing "historical" or past horse races, but instead had spinning reels, flashing lights, and just a tiny screen showing a few seconds of the end of a horse race. Lawmakers said they'd been duped, and the Legislature voted overwhelmingly this year to repeal all authorization for the gaming machines. Idaho's anti-gambling laws are strict; they forbid most forms of gambling other than a state lottery, tribal gaming on Indian reservations, and pari-mutuel, or pooled, betting on horse races. Horse racing operators in Idaho contended their machines are just a new form of pari-mutuel betting. The Coeur d'Alene Tribe, which operates its own gambling casino on its reservation in Plummer and which was turned down by the state in 1998 in its bid to open one at the Greyhound Park, proposed the repeal bill, arguing that the expansion of gambling machines beyond tribal reservations directly undercuts the main funding source for tribal government functions, from schools to courts and law enforcement. When the question arose over the veto, the tribe sued. "This pivotal decision reaffirms that even Idaho's highest elected officials must follow the Constitution," tribal Chairman Chief Allan said Thursday. "It's really too bad that a lawsuit was necessary to confirm this, but we are extremely happy with the result." He added, "More importantly, this is a big win for the Idaho Legislature because the Court is upholding a law that was passed by a supermajority of both the Idaho Senate and the House of Representatives. This is exactly why our government has checks and balances in place." The state and

the three companies that operate the gambling terminals in Idaho argued that because the Senate treated the governor's veto as if it were valid, and took an unsuccessful veto override vote - it drew a majority, but not the two-thirds required for an override - that meant the veto was valid. The justices disagreed. "If either house can disregard one plain provision of the Constitution, then it may disregard all of its provisions, and the Constitution, instead of being the fundamental law of the land, is a mere sham, an idle mockery, a nullity," the justices wrote. They also rejected arguments that separation of powers should prevent the courts from telling the Senate or the executive branch how to handle the veto. "It is ... this Court's duty to intervene to prevent the governor and the Senate from circumventing the Constitution and manipulating the veto power in this case," wrote Justice Roger Burdick in the court's unanimous decision. The court also ordered the state to pay the tribe's attorney fees and costs. David Leroy, a former Idaho Attorney General who represented the Greyhound Park in the case, called the court's ruling "a sweeping and significant precedent." He said he planned to review the ruling with his client. "There's no appeal from this," Leroy said. "It's my belief the possibility of rehearing is available under the rules," but he said the parties hadn't conferred about that idea. The court sent a strong message in its ruling, Leroy said. "They have said they will take a very activist role in being the constitutional referees in a battle such as this."

Instant racing' machines go dark after ruling

Spokane Eye on Boise September 11, 2015

Slot machine-like "instant racing" machines have stopped their whirring, flashing and dinging and gone silent across the state today, as Idaho Secretary of State Lawrence Denney certified into law SB 1011, the bill that overwhelmingly passed the Legislature to repeal authorization for the gambling machines. The Idaho Supreme Court yesterday ruled that Gov. Butch Otter's belated attempt to veto the repeal bill in April, which wasn't delivered back to the Idaho Senate until after the five-day deadline set by the Idaho Constitution, wasn't valid. "Following notification this afternoon that the Secretary of State had certified SB 1011, Les Bois Park shut down its historical horse racing facility and laid off the 80 employees involved in those operations," John Sheldon, president of Treasure Valley Racing, operator of Les Bois Park near Boise, said in a statement. "While our Turf Club restaurant, bar and simulcast wagering area remain open at this time, we are assessing the future viability of operating Les Bois Park and conducting a live meet next year." Doug Okuniewicz, head of Coeur d'Alene Racing LLC, operator of the Greyhound Park Event Center in Post Falls, was out of the office until Monday and couldn't be reached for comment, but the 35 machines there have been turned off. The third location for the gambling machines, the Double Down Betting Bar & Grill in Idaho Falls, had its license suspended by the state Racing Commission less than a week ago for failing to obtain county approval before opening the off-track betting parlor. At the time, Double Down's operators said they planned to continue operating while they appealed the suspension, but that was before yesterday's court ruling. Melissa Bernard, co-owner of Double Down, told the Associated Press she laid off a dozen employees today, just hours after turning off the parlor's 40 instant racing machines. "We're devastated," she said.

Leonardson trial set for January

By LESLIE MIELKE Morning News September 16, 2015

BLACKFOOT — Russell Clark Leonardson, age 50, from Idaho Falls appeared for his pretrial conference on Tuesday before Seventh Judicial District Judge Bruce Pickett in the Bingham County Courthouse. He faces 72 felony counts—70 counts of forgery and two counts of grand theft. He pleaded not guilty to these charges. "This case has been pending for more than one year," said Judge Pickett. Leonardson was arrested on Dec. 5, 2014. His jury trial will begin at 9 a.m. on Tuesday, Jan. 18, 2016. His pretrial conference has been set for 1:30 p.m. on Tuesday, Dec. 22, 2015. Bingham County Prosecuting Attorney Cleve Colson anticipates a three week trial. The state has made Leonardson a plea offer, said Colson. If Leonardson does not notify the state by 5 p.m. on Tuesday, Sept. 29, that he accepts the plea offer, "at that point the offer will be revoked," he said. "If the case is resolved, contact the court," said Judge Pickett. This case was initially scheduled to go to a jury trial on Tuesday, Sept. 29. Defense attorney Curtis Smith said, "All parties want this resolved but I am asking the court to continue this trial. "The state has been good at getting us discovery material but we have not received the business computer or two personal computers," said Smith. "We would like access to the computers; we think this is a legitimate reason for discovery." The business computer and two personal computers are being analyzed by an out-of-state firm. "The company has completed the analysis from QuickBook files on the business computer," said Colson. "Emails have not been transferred from analyst to us or Mr. Smith." Smith asked if Leonardson could have access to tax files on his personal computers so he could file his tax returns. Colson said he will have a conference call with the analyst company. "If the evidence is not available, we will look into excluding it," said Judge Pickett. Allegedly, Leonardson took approximately \$1.6 million from Idaho Select Inc. and Select Express LLC. Idaho Select is a potato and packaging warehouse in Aberdeen; Select Express is a trucking company in Aberdeen. These businesses are owned by a conglomerate of farmers. It is alleged Leonardson also stole from a trailer manufacturing firm in Blackfoot where he was a co-owner. If found guilty and sentenced on all counts, Leonardson could face 14 years in the Idaho Department of Correction and \$50,000 fine on each count. These terms could be concurrent or consecutive.