

Defense questions Stone's credibility

Lewiston Tribune: Sep. 13- Elizabeth Rudd

MOSCOW - Attorneys for Charles A. Capone quickly cycled through witnesses Friday as they began making a case for the man accused of killing Rachael Anderson. D. Ray Barker and Mark Monson called 14 witnesses to the stand during their first day of evidence presentation in the 53-year-old Moscow mechanic's first-degree murder trial. The attorneys believe testimony in their case will conclude by the end of Monday, making it possible for jurors to deliberate as early as Tuesday. Witnesses were called one right after another Friday - including Capone's brother and sister - to answer a few pointed questions from his attorneys in an effort to tarnish the credibility of the state's key witness, David C. Stone. Stone spent two days on the stand this week, testifying that he witnessed Capone strangle Anderson on April 16, 2010 - the last time Capone's estranged wife was seen. Stone told jurors he was at his former friend's automotive repair shop, Palouse Multiple Services, that evening when he heard a loud thump and went outside to inspect the noise. He came around the corner of the shop to find Capone straddling Anderson with his hands around her throat. The 51-year-old former Moscow city employee described how Capone threatened him and his family and began giving him orders that eventually included cleaning the shop. Stone explained in his testimony how he helped Capone wrap the Clarkston woman's body in a tarp, secure it with chains and toss it over the Red Wolf Crossing Bridge near Clarkston into the Snake River. Stone testified to spending the next three years "living a lie" out of fear of Capone before coming clean about his involvement in Anderson's death late last year. Capone's attorneys queried a number of witnesses about specific details Stone included in his testimony regarding that night, including large black garbage bags he said they used to hide Anderson's body once it was in the back of his Dodge Durango. Capone's brother, Anthony, who lives in Phoenix, visited Moscow three months after Capone was arrested on firearms charges in 2010 to clean out his shop on the 2200 block of South Main Street. Anthony Capone said he did not find any garbage bags matching Stone's description. Daniel MacPherson and his wife, Stephanie Rath, testified separately during Friday's proceedings, saying they had also never seen the type of bags Stone mentioned. The couple work next door to where Capone's shop was once located, and said they would stop by the shop almost daily in 2010. Stone also told jurors that Capone cleaned out the white GMC Yukon Anderson was driving that night, tossing the garbage into a galvanized-aluminum can that Stone held for him. Capone later instructed Stone to dispose of the garbage in a Dumpster at a trailer park near his shop. When Stone returned to the shop, he found Capone mopping the floor and recalled smelling bleach. MacPherson and Rath said they only ever recalled Capone having plastic garbage cans with a hole cut in the lid and never saw or smelled bleach inside the shop. During his two days of testimony, Stone repeatedly cited his fear of Capone as the reason for why he did not intervene or call the police about the alleged murder more than four years ago. He said he didn't consider Capone a friend after that night. But Anthony Capone told jurors Stone visited him at Charles Capone's shop in July 2010 and introduced himself as Capone's friend. Stone then told Anthony Capone to give him a call if he needed anything, gave him a hug and left. Stone and Charles Capone also exchanged a number of phone calls during the summer of 2012, according to testimony from Capone's sister, Teresa Mullen. She said Capone was living with her that summer in Tacoma and would borrow her phone. Her phone records indicate both outgoing and incoming calls associated with Stone's number. Latah County Prosecutors William Thompson Jr. and Mia M. Vowels asked the witnesses only a few questions during cross-examination. Their primary objection was to the testimony of Daniel Evans, a friend of Monson's who was taken to Capone's shop on the evening of April 18 and talked about notes he made on the level of darkness and his ability to see late into the night. The defense plans to call law enforcement officers to the witness stand once the trial resumes at 9 a.m. Monday, as well as a forensic pathologist.

Groups eye lawsuit over predator control

Lewiston Tribune: Sep. 15- Keith Ridler/ Associated Press

This Jan. 14, 1995, photo shows a wolf leaping across a road into the wilds of central Idaho north of Salmon. BOISE- Four conservation groups that contend that federal officials in Idaho are violating environmental laws by killing predators and other wildlife to protect livestock and crops have taken the first step to file a lawsuit. Idaho-based Western Watersheds Project and three other groups sent a letter to the Idaho office of the U.S. Department of Agriculture's Wildlife Services as a 60-day notice of their intention to sue in federal court. The letter sent last week requests that the agency cease activities and conduct an environmental analysis or a more involved environmental impact statement, which includes public participation. "Idaho is so ecologically important for wildlife, particularly carnivores," said Kristin Ruether, an attorney at Boise-based Advocates for the West who is representing the environmental groups. "Central Idaho is one of the wildest places in the lower 48." A spokeswoman for Wildlife Services said she couldn't comment specifically about pending litigation. The groups contend that a biological opinion issued in July violates the Endangered Species Act. That opinion says the agency's proposal for wildlife damage management won't harm threatened bull trout, grizzly bears and Canada lynx. The groups also say that environmental assessments issued in previous years found no significant impacts that violate the National Environmental Policy Act. The documents, the groups say, contain conclusions based on outdated information. "Over the past decade, and especially in the last three years, there's been a lot of research that shows the benefits of having carnivores on the landscape," said Andrea Santarsiere, an attorney at Center for Biological Diversity, one of the groups that sent the letter. The groups said the agency is using a century-old mindset in killing wolves, bears, coyotes, beavers, badgers and other animals while ignoring information from recent studies, some stemming from the reintroduction of wolves in Yellowstone National Park. In fiscal year 2013, the most recent information available on the federal agency's website, the agency in Idaho killed 77 wolves, 2,700 coyotes, seven mountain lions, three black bears and 24 badgers. The agency's wildlife management policies are "based on antiquated ideas that don't recognize how important predators are to ecosystems," said Amy Atwood, also an attorney at the Center for Biological Diversity. Carol Bannerman, a U.S. Department of Agriculture spokeswoman, said the agency knows that people won't agree with agency at all times. "We understand that not everyone agrees with everything we do," she said. "But professional wildlife management agencies have identified that removal of animals causing damage is a responsible part of wildlife management." Bannerman also noted that the agency works to protect native species by eliminating those that are invasive. In Idaho, for example, the agency killed nearly 200,000 European starlings last year. "More than 50 percent of the animals lethally removed are invasive species," she said. The environmental groups also take issue with the killing of beavers in Idaho, 43 last year, because they say beaver ponds are rearing habitat for bull trout. They said the agency only studied the effects of the explosion of blowing up the dams on bull trout, not on the removal and draining of the ponds. Also participating in the potential lawsuit are WildEarth Guardians and the northern Idaho-based Friends of the Clearwater. "We'd really like to see Wildlife Services and its program ended all over the West," said Travis Bruner, executive director of Western Watersheds Project. "Idaho is a good place to start."

Judge orders Emmett church fires trial moved to Caldwell

Idaho Statesman.com: Sep. 16- John Sowell

Press coverage prompts the judge to grant a defense request for a rare change of venue. The Emmett man accused in two church burnings would be unable to get a fair trial in Emmett, a judge ruled last week in ordering the trial moved to Canyon County. "I don't want to say that Gem County citizens wouldn't do their best to try and be fair. But I think it would be almost impossible to have somebody come in when there's been this amount of information disseminated ... and truly be fair," 3rd District Judge Susan Wiebe said, according to an audio recording of the Sept. 8 hearing in Emmett. Bradley Ryan Thomasson, 42, is accused of torching the First Baptist Church and the Community Bible Church - two blocks from each other near downtown Emmett - on April 27, 2013, to cover up overnight burglaries at both churches. Authorities said Thomasson and another man hoped to find cash and other valuables in the churches. Thomasson is charged with two counts of first-degree arson, two counts of burglary, grand theft and petit theft. Potential Gem County jurors became aware through reporting by the Idaho Statesman that Thomasson was convicted of the 1989 murders of his parents in Lewiston, when he was in high school, Wiebe said. Thomasson was placed on parole and released from prison in January 2012. Although jurors won't hear about the murders, Wiebe said county residents who know about Thomasson's convictions in that case could form judgments about his possible guilt in the arson case. "Here in Gem County, there is a real cohesive feeling among the citizens," Wiebe said. "Everybody came together when this occurred. People who weren't involved with these churches, people from other churches stepped forward and had an interest in making sure that these churches were taken care of." Thomasson lived only a short time in Emmett, and most of what most residents know of him came from what they learned in news reports after the arsons. The other man, co-defendant Charles Dorahush Jr., 45, pleaded guilty in September to two counts of first-degree arson. Burglary and theft charges were dismissed in exchange for his pleas. Dorahush was sentenced in December to 25 years in prison with a minimum of five years to serve before he is eligible for parole. He is serving his sentence at the Idaho State Correctional Institution in Kuna. Gem County Prosecuting Attorney Richard Linville previously told the Statesman that Thomasson was more culpable in the crimes than Dorahush. Thomasson said he was in Caldwell from the evening before the fires until later that morning, after the fires had been discovered. He named two witnesses, a man and woman he said he stayed with, to corroborate his story. Thomasson pleaded not guilty and is scheduled to go to trial Dec. 2 in Caldwell. A pretrial hearing will take place Oct. 27 in Emmett. Idaho law requires a change of venue when there's a "reasonable likelihood" that pretrial publicity has "affected the impartiality of prospective jurors." Defense attorney Carter Winters, in his motion for the change, said there had been "extraordinary pre-trial publicity" that would make it impossible for his client to have his case heard before a fair and impartial jury. He also argued that statements to reporters by Linville emphasized the damage the fires did to the whole community, not just the members of the two churches. "The story of the church burnings and Mr. Thomasson's background has grown into what may well be considered the most highly sensationalized and emotionally charged crime in the history of Gem County," Winters wrote.

Defense rests its case without Capone taking stand

Lewiston Tribune: Sep. 16- Elizabeth Rudd

MOSCOW - Charles A. Capone remained silent Monday as his attorneys presented the final pieces of evidence and testimony in the Rachael Anderson murder case. The 53-year-old Moscow mechanic assured Senior Judge Carl B. Kerrick that he did not wish to testify regarding accusations that he strangled his estranged wife more than four years ago and, with the help of a friend, dumped her body in the Snake River. Capone made the declaration outside the jury's presence before his attorneys rested their case. Attorneys D. Ray Barker and Mark Monson wrapped up testimony on behalf of Capone about two hours into Monday's proceedings after calling 11 witnesses to the stand - including many who had already made appearances in the two-week trial. Evidence in Capone's case will go to the jury of nine women and five men today following closing arguments from Capone's attorneys and Latah County Prosecutors William Thompson Jr. and Mia M. Vowels. Of the 14-member jury panel, only 12 will deliberate with two alternate jurors selected at random. Capone's attorneys kept pace Monday with their testimony presentation set Friday, asking each witness just a few short, pointed questions in an effort to cast doubt on the state's case. Prosecutors spent eight days presenting evidence to outline the months and days leading up to April 16, 2010 - the last night Anderson was seen - as well as the events of that night and the days after it became known the then-40-year-old Clarkston woman was missing. The state alleges, based on eyewitness testimony from David C. Stone, that Capone strangled Anderson outside his automotive shop on the 2200 block of South Main Street in Moscow. Stone testified that he found Capone on top of Anderson with his hands around her neck. Stone told jurors that Capone threatened him and his family, scaring him into helping his then-friend "package" Anderson's body in a tarp. He said Anderson was secured with chains and dropped over the side of Red Wolf Crossing Bridge near Clarkston. He testified they later returned to Moscow to clean Capone's shop. Barker and Monson inquired about a range of specific details in the prosecution's case Monday. Moscow Police Lt. James Fry was called to address what types of bags the Third Street Market Place uses for customers. Charles Schoonover, a private investigator hired by the defense, also testified to the type of bag he received when purchasing Grolsch beer from the same location Sunday, and to locating similar snow chains as were shown in a photo of Capone's truck. Asotin County Sheriff's Detective Jackie Nichols and Capt. Dan Hally were asked about a receipt obtained from a car dealership in Pullman that showed Capone had a copy made of Anderson's car key. Schoonover also testified to retracing the routes Stone said he and Capone took between the shop and Lewiston-Clarkston Valley to dispose of Anderson's body and ditch the GMC Yukon Anderson was driving. Schoonover said he took mileage of the trips, but did not elaborate in his testimony on the chart he made displaying the various distances. Stone told jurors he and Capone parked the Yukon by the Dyna Mart in North Lewiston the night of April 16, 2010 - where law enforcement found the vehicle three days later. But Debbie Stamper, who worked the graveyard shift in April 2010 at the gas station, testified she didn't see the vehicle when she went to work at about 10:45 p.m. the night before police found it. The trial will resume at 9 a.m. in the Latah County Courthouse. A verdict could be returned from the jury as soon as today.

Counties want to hand off public defense to state

Lewiston Tribune: Sep. 16- Kathy Hedberg

MOSCOW - Handing over control of the public defender system in Idaho to the state is one of the top priorities of county officials gathered here this week at the annual Idaho Association of Counties convention. About 200 representatives from Idaho's 44 counties met at the Best Western Plus University Inn Monday for the first of three days of meetings, setting priorities to present to the Legislature in January. Nez Perce County Clerk-Auditor Patty O. Weeks, who is president of the organization, said it's rare for the entire association to meet in northern Idaho and it's expected to be the last time because of the dearth of convention space. Future association meetings, she said, will be held in Boise. County officials Monday, however, were getting acquainted, perusing exhibitors' displays and boring down on some of the issues that concern Idaho counties most. Weeks said by Wednesday, the group will have sorted out its priorities and is expected to vote on a resolution to present to the Legislature. "We've found over the years that we can't just have 25 different legislative changes because we're not effective," Weeks said. "And so we've scaled it back. We have our top 10 or so that we really try to push." The public defender system in Idaho is not constitutional, she said, because of the varying levels of support each county is able to give. "What we've found is throughout the state, different counties have been handling their obligation to handle public defense in different ways," Weeks said. "There is the fallback of, 'Oh, you're going to give up local control. You always want local control.' Well, we're not suited for local control in public defense." Many county commissioners in the state, she said, work only part time and most do not have a law degree. They lack the know-how of supervising an attorney who is providing public defense and making decisions about how money should be spent on trial witnesses or other investigation. "It becomes more of a money issue for the county as opposed to a constitutional issue," she said. "Ada County has an in-house public defense and they're proud of that and that seems to be working for them. But for some of the other counties it's a broken system and they're really struggling." The draft resolution the counties will vote on calls for the state of Idaho to take control of and fund the public defender system. This includes standards and training related to education, overseeing contracts and providing a method of handling cases where the primary attorney has a conflict of interest. The counties will continue to give the state what they are paying now for public defenders, not to exceed \$22 million. "We're saying: we'll give you the money that we're funding now - take that and the state will make a proper system," Weeks said. "So that's going to be huge." The association was also briefly addressed by University of Idaho President Chuck Staben, who committed the university to continue to "work on Idaho's problems." Deborah Cox of the National Association of Counties in Washington, D.C., talked about matters now being dealt with by Congress that concern counties. One of the biggies, she said, is funding for payment in lieu of taxes and Secure Rural Schools that provide support for counties that hold non-taxable public lands within their boundaries. Oregon Sen. Ron Wyden is expected to introduce a draft proposal in Congress Wednesday, Cox said, that would make the PILT and SRS payments permanent. Such a move would eliminate the uncertainty of funding that counties face every year, but Cox admitted approval of the proposal "could be pretty slim." Even so, she said, federal funding for public lands remains a top priority with the national association.

Community House, city of Boise settle 2005 suit

Idaho Statesman.com: Sep. 17- Sven Berg

After the city fought a \$1 million judgment, it reaches an agreement in mediation. The city of Boise will pay Community House, its former partner in a homeless shelter, to end a decadelong legal battle. Neither the city nor Howard Belodoff, the Community House attorney, would say how much money is in the settlement. City spokesman Adam Park said in an email that both sides signed a confidentiality agreement. But Belodoff said confidentiality applies only to the mediation process, not the settlement. Once the settlement is final, he said, its details will be public. Park said the settlement is "agreeable" to both sides. The payout won't cost the city anything, he said, because its insurance carrier will cover both the settlement and the city's attorney fees. Belodoff said the settlement also would pay for Community House's legal costs. In February, he estimated those costs at \$2 million. "I don't think anybody's happy about what happened, but we're satisfied with the resolution," he said.

HOW DID WE GET HERE? The dispute between Boise and Community House dates to the early 2000s. Community House formed in 1992 and partnered with the city in 1994 with the goal of providing shelter for low-income and homeless people. A few years later, Community House complained that the city was reducing the amount of money it sent to the shelter and wouldn't respond to its requests to solve the problem. The relationship soured by 2003, and the city began negotiating a deal to sell the shelter to Boise Rescue Mission, a Christian organization, with the idea of turning the shelter into a men-only facility. Community House complained to the federal government that the Rescue Mission deal would discriminate against families and women and children, which Community House traditionally served, as well as men who chose not to participate in Boise Rescue Mission's religious activities. In July 2005, Community House asked a federal judge to stop the deal. Less than two months later, the city signed a lease with Boise Rescue Mission that included an option to buy the building. The mission later did buy the shelter, which is now River of Life Men's Shelter. In October 2005, federal Judge Lynn Winmill denied Community House's request. Community House appealed the decision to the 9th Circuit Court of Appeals, which overturned the ruling. A civil trial in 2012 ended with a jury's \$1 million judgment against the city for discrimination and retaliation.

WHAT'S THE LATEST? In January of this year, federal Judge Candy Dale denied Boise's request to throw out the judgment. A few months later, the city appealed the case to the 9th Circuit, where a mediation program helped bring an end to the case. Because of the settlement, Belodoff said, Community House will get its money at least a year earlier than if the case had worked through the federal appeals system. The board of directors hasn't decided details, he said, but it will spend the money in a way that fulfills Community House's mission of helping homeless and low-income people, particularly women, children and families. Belodoff said the city is drawing up a written version of the agreement. He expects Community House's board of directors to approve it next week.

Capone trial: Jury deliberates after closing arguments

Lewiston Tribune: Sep. 17- Kerri Sandaine

Defense attorney Mark Monson explains evidence to the jury Tuesday that he argues shows that Charles A. Capone is innocent in the murder of Rachael Anderson. MOSCOW - The fate of accused killer Charles A. Capone now lies with a Latah County jury. After listening to more than three hours of closing arguments, a panel of seven women and five men retired to the jury room at 1:30 p.m. Tuesday to deliberate a case that's been in the spotlight since a Clarkston woman disappeared in 2010. Jurors were sent home at 6 p.m. and are set to resume deliberations at 9 a.m. today. Capone, a 53-year-old Moscow mechanic, is accused of strangling his estranged wife, Rachael L. Anderson, on April 16, 2010, and tossing her body in the Snake River near Clarkston. He is represented by attorneys D. Ray Barker and Mark Monson, who delivered the defense's closing remarks on the 11th day of the trial. "This case is rife with reasonable doubt," Monson said. The state's eyewitness, David C. Stone, said he saw the slaying at Capone's automotive repair business on the 2200 block of South Main Street and helped with the cover-up. Senior Deputy Prosecutor Mia M. Vowels and Latah County Prosecutor William Thompson Jr. are handling the case on behalf of the state. Anderson's family and friends were in the courtroom Tuesday wearing red ribbons and clothing. The color choice stems from Anderson's favorite song, "How You Live," by Point of Grace, said her best friend, Jennifer Norberg of Lewiston. Following jury instructions by Senior Judge Carl B. Kerrick, Vowels said Anderson was seeking a divorce because Capone choked her during an earlier altercation. After the split, Capone moved back to Latah County and Anderson stayed in Clarkston. For the next three months, Capone stalked Anderson, vandalized her car and sent emails of mutilated bodies to the terrified mother of four, Vowels said. Anderson borrowed a loaded gun, slept with the lights on and feared for her life. Capone tried to pin the harassment on someone else, but Vowels said the defendant was responsible for the scare tactics. His offer to help Anderson figure out who was making the calls was a ruse, she said. "He tries to be her hero, but we know he was her villain," she said. The last time Anderson was seen alive she was waiting at Capone's shop, Palouse Multiple Services, for her car to be repaired. Capone had given her a deadline to decide whether she wanted to stay married or go forward with the divorce, Vowels said. Anderson decided it was over, Vowels said, and Capone wouldn't let her go. Instead, he used an up-close-and-personal method to kill her, wrapping his hands around her throat. When she didn't show up to work the following Monday, Anderson was reported missing to Clarkston police. Her frantic family drove all night from South Dakota to help search the area for clues to her whereabouts. Vowels said everyone knew Anderson would never have willingly left her two sons, ages 5 and 10 at the time, or her daughters and their young children. Capone didn't help with any of the searches. After his arrest on federal firearms charges, Capone told cellmates he was confident he wouldn't be prosecuted for his wife's alleged murder because her body would never be found. "No body, no case," was what Capone had to say about his missing wife, Vowels said. Monson pointed out inconsistencies in Stone's statements and hammered the fact the state's star witness was a self-proclaimed liar, even under oath. Stone had numerous opportunities to go to police and tell them he saw Capone strangle his wife and dump her body in the river, Monson said. Instead, Stone told lies for more than three years. When he finally decided to "come clean" with authorities, Monson said he inserted another fabrication into his confession. Playing on Capone's last name, Stone tried to imply the defendant had gangster connections. Stone told authorities he had four mysterious visits from "friends of a friend," one with an East Coast accent, who wanted to make sure he was keeping his mouth shut. Stone later admitted he made that part of the story up, Monson said. There was no reason to lie at that point. Capone was behind bars and Stone's family was safe, yet he continued to be deceitful. Monson asked the jury how they could base any significant decision on Stone's words. "The state's case rises and falls with David Stone," Monson said. "The state is asking you to turn a deaf ear to these lies." After the alleged murder, Monson said there was no evidence Stone was terrified of the defendant. Stone remained in contact with Capone, treating him to breakfast the day after the slaying, inviting him to church and calling him in prison on his birthday. Stone and his family went to dinner with Capone a few days after Anderson disappeared and allowed his teenaged stepdaughter to ride home alone with Capone. "That's ridiculous," Monson said. "It doesn't make sense." In addition, the state's images of a pickup truck traveling near Dyna Mart in North Lewiston on April 16, 2010, don't match the defendant's vehicle, Monson said. "No stripe," the attorney said multiple times as he showed the jury each photo. Stone drove by the Moscow Police Department several times, along with the Nez Perce County Sheriff's Office, on the night Anderson was last seen. But Monson said he never stopped to tell police he'd witnessed a murder and needed help - or that a body was in the back of his Durango. "That's what a reasonable person would've done, but not David Stone," Monson said. Thompson said the defense's job is to advocate for its client. Justice is about the truth, and "not what that man wants you to believe," he said, pointing to Capone. He asked the jurors to use their common sense and look at the entire picture. Anderson is dead and the last time she was known to be alive, she was in the company of her soon-to-be ex-husband who was obsessed with keeping her and having ultimate control. Listen to your gut, Thompson said. Anderson is dead and the only person responsible is Capone. In addition, he said the first-degree murder charges were filed before Stone gave his eyewitness account. Yes, Stone waited three years to tell the truth. He is not the brightest star, Thompson said, but Capone is smart and calculating. "David Stone is no angel," Thompson said. "He did something horrific and covered it up for three and a half years. He will meet his judgment in a different courtroom with a different judge. That is a certainty." Thompson compared Capone's defense tactics to the chaotic flurry of a shaken snow globe. "Take time to let the snow settle and you're going to see this case is about justice for Rachael Anderson," he said.

Former Lewiston man's trial on arson charges will be moved

Lewiston Tribune: Sep. 17- Associated Press

EMMETT, Idaho - The trial of a former Lewiston man and convicted killer accused of setting fires that destroyed two churches to hide burglaries is being moved because of concerns about getting an impartial jury. A judge ruled that the December trial of 42-year-old Bradley Thomasson of Emmett will be held in Canyon County rather than Gem County. "The people of the community became involved with the churches," said 3rd District Judge Susan Wiebe in making the ruling last week. "I think it will be almost impossible to truly be fair with all the information out there," she said. "I believe he would not get a fair trial without a change of venue to Canyon County." The fires on April 27, 2013, destroyed the First Baptist Church and the Community Bible Church, located a few blocks apart in Emmett. Thomasson is charged with two counts of first-degree arson, two counts of burglary, grand theft and petit theft. Wiebe also said potential jurors in the county could have become aware that Thomasson was convicted of the 1989 murders of his parents in their Lewiston home, possibly tainting the arson and burglary trial. Thomasson was a 17-year-old high school senior when he shot Judith Ann Thomasson, 50, and Ray E. Thomasson, 57, on Sept. 22, 1989, at their Lewiston home. The teen initially told police he had argued with his parents over the use of the family's car. He spent 22 years in the state prison system for the killings and was released on parole in January 2012. "The story of the church burnings and Mr. Thomasson's background has grown into what may well be considered the most highly sensationalized and emotionally charged crime in the history of Gem County," Thomasson's defense attorney, Carter Winters, wrote in his motion to move the trial. Another man, 45-year-old William Charles Dorahush Jr., in September 2013 pleaded guilty to first-degree arson and conspiracy to commit arson. Prosecutors said Dorahush and Thomasson broke into the churches and took various items before setting fires in the buildings. Dorahush was sentenced to 25 years in prison in December, and will have to serve at least five years of his sentence before he is eligible for parole. Court records say Dorahush has previous arson convictions. Damage to the two churches was estimated at about \$1 million each.

Judge: Probable cause that Nampa man killed girlfriend Selena Thomas

IdahoStatesman.com: Sep. 18- John Sowell

Magistrate Robert Taisey ruled after a 90-minute hearing Thursday that there's probable cause that Alfredo Martinez killed his girlfriend Aug. 15 and later buried her body in a Canyon County cornfield. Martinez, who is charged with second-degree murder, destruction of evidence and failure to notify authorities about a death, was bound over to 3rd District Court, where he will face a Sept. 26 arraignment. Caldwell police Sgt. Joey Hoadley testified that Martinez told him he hit Nampa resident Selena Thomas with a closed fist, grabbed a hammer and raised it in a threatening manner and said "I should just" before the hammer slipped out of his hand and struck Thomas in the face at the residence the couple shared in the 1400 block of Acapulco Way near Middleton Road in West Nampa. Martinez told Hoadley that Thomas, injured and bleeding, lunged at him and he pushed her back, sending her into a dresser, where she struck her head. Hoadley has known the defendant for 10 years and played softball with him. He's also married to Martinez's niece. Martinez, 38, called Hoadley after learning Aug. 18 that police wanted to talk with him after Thomas, who was engaged to Martinez, was reported missing. Hoadley said he texted Martinez after learning an alert had been issued about Thomas' disappearance, but he did not receive a reply. Later, Martinez called and told him he was in Meridian and that he would meet with Hoadley at a Caldwell restaurant. Initially, he said he had been with Thomas in McCall but hadn't seen her since dropping her off that Monday. Martinez followed Hoadley back to the Caldwell Police Department, where Nampa police detectives interviewed him. He was initially booked into the Canyon County Jail on a probation violation while detectives built a case for the murder. The next day, Hoadley received a call from a Nampa police detective who said Martinez wanted to talk with him. At the jail, Martinez said he wanted to explain what happened, Hoadley said. "He said he had a bad dream the night before and he wanted to do the right thing," Hoadley testified. Martinez told Hoadley he put Thomas' body in a closet in her home, where it remained for two days before being moved to the trunk of a Chevrolet Monte Carlo owned by Thomas. On Aug. 18, Martinez and co-defendants Jose Cruz Flores and Jorge Luis Garcia drove around for "quite a while" looking for a place to dump Thomas' body. They dug a makeshift grave in the area of Can-Ada Road south of Melba. Afterward, they ripped out the bloody trunk liner and took other items from the trunk and buried them in a separate location off Southside Road, Hoadley said Martinez told him. Later that day, Thomas' co-workers went to her home, looking for her, and found her white Monte Carlo in the driveway with the keys in the ignition and her purse on the passenger seat. Thomas' mother called police, who found blood on the trunk. Flores, Martinez's nephew, is charged with accessory to murder, concealing or destroying evidence, burglary and a new count of failure to notify of a death. He appeared Wednesday for a preliminary hearing. That hearing will continue on Sept. 24. Flores also filed a motion to reduce his \$200,000 bond. That will also be taken up at the Sept. 24 hearing. Garcia is charged with concealing or destroying evidence and failure to notify of a death. He is scheduled for a preliminary hearing, also on Sept. 24. He has also asked that his \$200,000 bond be reduced. Daniel Francisco Sena, who is accused of driving Thomas' car back to her home after the body was buried, is charged with concealing or destroying evidence. He also appeared in court Wednesday for a preliminary hearing. It will also continue on Sept. 24. He is being held in the Canyon County Jail on \$250,000 bond. Canyon County Coroner Vicki DeGeus-Morris testified that positively identify Thomas from a tattoo she had on her leg with a photograph showing her with the same tattoo. An autopsy concluded Thomas died of blunt-force trauma to the head. Tera Harden, the chief Canyon County public defender who is representing Martinez, did not put on a defense Thursday. Three dozen people attended the hearing. A deputy warned the audience before the hearing started not to speak to Martinez. No one did. Martinez was dressed in an orange jail shirt and pants. He was handcuffed with a body chain around his waist. The left handcuff was removed for the hearing so he could take notes.

Constitution Day: Still fighting for equality

IdahoStatesman.com: Sep. 18- Bill Roberts

A young college student from Virginia found himself in the Supreme Court on the day black Americans argued for an end to segregated schools. As a boy growing up in Roanoke, Va., in the 1930s, Clarence Dunnville Jr. endured the brunt of segregation. "I hated it," he told an audience of 150 on Wednesday at Concordia University School of Law in Boise. More than that: Dunnville refused to give in to the white power structure that tried to define his life. He wouldn't sit in the back of city buses - a requirement for blacks in those days. "If there were people on the bus, I'd stand. If there were no people on the bus, I'd stand. I wouldn't sit," he said. If no one was looking, he would sneak a drink of water from the "Whites Only" public fountain. Dunnville, 81, a lawyer for 58 years who broke racial barriers in both government and corporate America, brought his story of a lifelong fight against racial inequality to Concordia as part of the law school's Constitution Day celebration. Wednesday marked the 227th anniversary of the creation of the U.S. Constitution. And 2014 marks the 60th anniversary of the U.S. Supreme Court's decision striking down segregated schools and the 50th anniversary of the Civil Rights Act. Dunnville's story of Ku Klux Klan bonfires in his front yard and three years of picketing to end segregated seating in theaters in Baltimore might seem far away both in time and culture. But his courage and willingness to volunteer so much of his time fighting injustice are examples to everyone, said Cathy Silak, Concordia law school dean. "I think his message here today is very reaffirming," Silak said. "It challenges us to say, 'What more can we do?'" Dunnville, who now practices law in Virginia, left the state as a young man to go as far north as he could. That was to Baltimore, where he attended Morgan State, a black college. His passion for equality brought him together with other young people, both black and white. They integrated all-white lunch counters with blocks of people - 10 white and 10 black - who would take up all the seats. If a server came to a white person and asked what he wanted, the white person would say the black person should order first. Servers couldn't wait on blacks, so the white person would order water. The students tied up the counter for lunch hour. "That day there would (be) no sales," Dunnville said. After repeated sit-ins at one lunch counter, Dunnville remembers a manager telling his staff, "Hell, serve 'em all." Dunnville was already interested in law when one of his college professors secured tickets in 1953 to hear arguments before the Supreme Court on *Brown v. Board of Education*, the consolidation of several cases seeking to end school segregation. The 20-year-old Dunnville waited outside the court on a cold December morning with his professor and another student in a line that snaked around the block with people hoping to get in. Dunnville got a front-row seat near the attorneys arguing to end segregation. During the arguments he remembered one lawyer arguing that blacks seeking to change the status quo were not only trying to improve their lives, but risked losing what they had in the process. He remembers attorneys - including Thurgood Marshall, who would later become the first black Supreme Court justice - argue that "an integrated society was better than a segregated society." "We are much stronger because of diversity," Dunnville said. Dunnville was admitted to the bar in New York in 1958. He said he went on to become the first African-American attorney for both the Internal Revenue Service and AT&T. But he was never far from stamping out injustices. He was part of the March on Washington in 1963, when Martin Luther King Jr. gave his "I Have a Dream" speech. He was run out of a Mississippi town by an armed law enforcement official. He hasn't stopped. He is working in Virginia to increase the number of minority judges. "The justice system should look like America," he said. His dream: "I'm hoping that racism will finally be gone. We've come a long way, baby. We have a long way to go." Attorneys for Civic Education, a service project of the Idaho State Bar's Government and Public Lawyer Section, co-sponsored the event.

Clarkston man who raped girls sentenced to prison

Lewiston Tribune: Sep. 18- Ralph Bartholdt

A 22-year-old Clarkston man who pleaded guilty to two counts of rape involving teenage girls will serve a minimum of three years in prison. At his sentencing Wednesday in 2nd District Court, Matthew B. Hepburn chose not to address the court and advised his attorney, public defender Gregory Hurn of Kwate Law Offices, to do the same. "My client has asked that I remain silent," Hurn told the court. That didn't stop prosecutors from discussing the rape charges. Nez Perce County Deputy Prosecutor April Smith cited Hepburn's lack of remorse and sense of wrongdoing in a presentence evaluation used by the court in arguing for a prison sentence. "He seeks out underage girls," Smith told the court. "He does not take responsibility. He does not understand that what he did was wrong, that what he did was hurtful." Hepburn was arrested on a warrant in March after a grand jury charged him with three counts of rape stemming from his alleged sexual contact with three teenage girls who ranged in age from 13 to 17, according to the grand jury indictment. Two of the girls were allegedly impregnated by Hepburn, according to the prosecutor's office. Hepburn pleaded innocent to the charges at his arraignment and asked for a jury trial, but he later pleaded guilty to two of the charges as part of a plea agreement that called for dropping one of the charges. Each count carries a maximum sentence of life in prison. According to court testimony, Hepburn minimized the charges as "just a big mistake," when Smith said "these were manipulative, ruthless interactions." Because of the defendant's seeming disconnect, examiners said Hepburn was very likely to re-offend and his amenability to treatment was limited. Second District Judge Jeff M. Brudie cited the report in his explanation for why he would not send Hepburn to a treatment program. "Given the fact there are multiple victims to these charges ... and in light of the adverse evaluation," Brudie called for a sentence of three to 12 years in prison and required Hepburn to pay civil penalties to the victims. The civil penalties will be determined later.

Boise attorney arrested for indecent exposure

IdahoStatesman.com: Sep. 18- Zach Kyle

Boise lawyer Joseph C. Miller was arrested Thursday morning on suspicion of two misdemeanor counts of indecent exposure. Miller, 44, is a partner at Boise criminal law firm Mauk Miller & Burgoyne LLC. Boise police responded to a citizen call that Miller had exposed himself while outdoors in the 5500 block of North Mitchell Street, Lt. Ron Winegar said. The incident did not involve public urination, Winegar said. A profile for Miller on a website about Church of Jesus Christ of Latter-day Saints mission alumni, last updated in April, listed an address in that block as Miller's home address. The site said Miller is a bishop in the Mitchell Ward of the church's Boise North Stake. Miller was released from custody on bond Thursday and awaits an Oct. 9 arraignment. Miller's partner, Grant Burgoyne, is a Democrat in the Idaho House of Representatives. Burgoyne said he was unaware of the arrest and declined to comment. Brad Andrews, counsel for the Idaho State Bar, said the bar wouldn't consider whether or not it would place sanctions on Miller unless he's convicted. "There is no typical (outcome)," Andrews said. "It obviously varies on the circumstance."

Capone guilty of murder

Lewiston Tribune: Sep. 18- Kerri Sandaine

Charles A. Capone, 53, of Moscow, stands after the jury renders a guilty verdict in the murder case against him in the disappearance of his estranged wife, Rachael Anderson, Wednesday in Latah County 2nd District Court. The jury found Capone guilty of first-degree murder, failure to notify a law enforcement official of a death and conspiracy to not notify law enforcement about a death. MOSCOW - Charles A. Capone showed little reaction Wednesday when he was found guilty of murdering Rachael Anderson. Standing by his defense attorneys, the 53-year-old Moscow man stared straight ahead when the verdict was announced in Latah County 2nd District Court following a 12-day trial. Anderson's family and friends quietly shed tears of relief and exchanged hugs in the crowded courtroom. "A lot of stress is gone," said Anderson's mother, Carolyn K. Reilly. "We are so grateful to the jury, the prosecutors, the detectives and everyone who worked on this case. I thought they really did a wonderful job." Capone was found guilty of first-degree murder and two additional felonies for covering up Anderson's death and scheming with his then-friend, David C. Stone, to hide her body. He is facing a maximum sentence of life in prison for killing Anderson, failing to notify a coroner or law enforcement officer of a death and conspiring to commit failure to notify a coroner or law enforcement officer of a death. Sentencing will likely take place in about three months, said Senior Judge Carl B. Kerrick. Anderson disappeared April 16, 2010, sparking a lengthy investigation, numerous searches and pleas from her family for justice. After spending more than three years denying his involvement, Stone told authorities he saw Capone strangle Anderson in Moscow and then helped throw her body over the Red Wolf Crossing Bridge near Clarkston. She has never been found. Stone is facing a maximum sentence of seven years in prison for his role in the cover-up. He testified on behalf of prosecutors for two days during Capone's trial, providing detailed accounts of what happened on the night of the slaying. A jury of seven women and five men took notes and listened intently as prosecutors and defense attorneys questioned numerous witnesses. Latah County Senior Deputy Prosecutor Mia Vowels and Prosecutor William Thompson Jr. represented the state, and Moscow attorneys D. Ray Barker and Mark Monson handled the defense. Following the guilty verdicts, Thompson said he was thrilled with the jury's decision. "This has probably been the most challenging case my office has ever handled," Thompson said. "The age of the case and no body presented huge obstacles to overcome. Everyone rose to the occasion, and I couldn't be more proud." Capone was taken back to the Latah County Jail after the jury determined he is a habitual offender with six prior felony convictions, including aggravated assault, attempted armed robbery and felon in possession of a firearm. He is facing an additional life sentence for being a habitual offender, Thompson said. Several law enforcement agencies have been working on the case since Anderson disappeared. Officers from throughout the region were in court for the verdict, which was delivered on the second day of deliberations. Outside the courtroom, Anderson's mother hugged Asotin County Detective Jackie Nichols and thanked law enforcement officials for their efforts. Nichols, who first responded to the missing person report, said she was pleased with the verdict and plans to continue searching for Anderson. "Even though this doesn't bring Rachael back to her family, it's a relief Charles Capone is finally being held responsible for what he did to her," Nichols said. During Capone's trial, all four of Anderson's children testified. The youngest boys, who are now 11 and 15, were living with their mom when she disappeared. For years, her two grown daughters - who also reside in the Lewiston-Clarkston area - handed out fliers and placed posters throughout the region in hopes of getting some closure in their mother's disappearance. Anderson's daughters, Amber Griswold and Ashley Colbert, were in court Wednesday, along with other relatives who traveled to Idaho from South Dakota for the proceedings. "There are no words for what I'm feeling," Colbert said after learning Capone was found guilty. "I'm very relieved." Anderson's close friend, Jennifer Norberg of Lewiston, was emotional. "It's been a long time coming," Norberg said. "It's everything we prayed for and everything he deserves." Latah County Detective Tim Besst sat with prosecutors throughout the trial. He has worked on the case since April 21, 2010. "Justice for Rachael Anderson and her family. That's what this is all about," Besst said. "It was time well invested." Asotin County Capt. Dan Hally praised the prosecutors for their handling of the case, saying their closing remarks earlier this week were "phenomenal." Barker said the defense was not pleased with the guilty verdicts. "We're just very disappointed," Barker said. "I'm going to leave it at that." Kerrick ordered a presentence investigation for Capone and said a sentencing date will be determined in the near future.

Barnes & Noble Won't Release Szanto Case Info

MagicValley.com: Sep. 19- Julie Wootton

TWIN FALLS • Barnes & Noble is refusing to turn over information sought in former College of Southern Idaho vice president Edit Szanto's lawsuit against the school. Attorneys for the company filed a notice of hearing Monday in Fifth District Court for its motion to quash and for protective order. A hearing is scheduled for 9 a.m. Oct. 20 before District Judge Richard Bevan, according to online court records. Tara Martens Miller, Szanto's attorney, said she's "very disappointed" that Barnes & Noble is refusing to disclose information. "We will oppose Barnes and Noble's attempt to what they call 'quash' the subpoena." Phone calls to Holland & Hart law firm in Boise — which is representing the bookseller — weren't returned by deadline Thursday. Paperwork hasn't been filed yet for Barnes & Noble's motion. Miller expects to see documentation about two weeks before the hearing. In August, Bevan issued a subpoena ordering Barnes & Noble to turn over information about a threatening email sent to Szanto from the bookstore. Bevan ordered the company to produce all identifying information and documents related to the email sent to her Jan. 9. An email from someone posing as former CSI President Jerry Beck and threatening Szanto was sent by private device via the Barnes & Noble store's guest-accessible Wi-Fi hot spot. The email demanded Szanto to "GO AWAY. GO FAR AWAY. NOW." The impersonator accessed the Gmail account again between 5:27 p.m. and 5:34 p.m. Feb. 18, court documents say. Barnes & Noble's attorneys have objected to the subpoena for a few reasons. Company attorneys argue Szanto and legal counsel should have sought information from CSI, Miller said. Also, Barnes & Noble has concerns about the privacy of their customers Miller she first sought the information from CSI, but learned the college wouldn't investigate the identity of the sender any further after confirming Beck wasn't involved. "That's disappointing to my client, obviously," Miller said. Another objection from the company is "they felt like it would be expensive to comply with the subpoena," Miller said. "Our client has agreed to pay the costs for production of that information," Miller said. Under the subpoena, the company must provide items such as surveillance footage, labor records, Wi-Fi data and financial records and receipts for Jan. 9 and Feb. 18 within two hours of when the gmail account was accessed. Szanto — who worked at CSI for 17 years — was put on involuntary paid leave Jan. 2. She claims she was the victim of discrimination based on her gender and national origin.

Steer away from liability with a cell phone driving policy

Idaho Business Review: Sep. 18- Karen Sheehan

Bring Your Own Device, or BYOD, programs allow employees to use personal cell phones for work-related purposes. Through BYOD programs, employers only purchase cell phone plans instead of cell phones. According to researchers, BYOD programs are beneficial to employers because they increase employee morale, boost productivity and collaboration, and help employers avoid purchasing costly devices. In addition, BYOD programs enable employees to conduct business far beyond the confines of the workplace, including while traveling in a car. While it may be convenient for employees to talk on the phone while driving, talking drivers increase the number of roadway accidents. This article encourages employers with BYOD programs to adopt cell phone driving policies because employers are subject to liability for the accidents of employees caused while acting in the scope of employment.

Cell phone misuse triggers employer liability Under a theory called respondeat superior, employers are held vicariously liable for the torts of employees committed while acting in the scope of their employment. Employees act in the scope of their employment when regularly using personal cell phones for business calls. As a general rule, if it appears that an employee caused an accident while making a work-related phone call, the employer—not the employee—will be liable. A Texas case, *Chatman-Wilson v. Cabral*, demonstrates how employers are held vicariously liable under respondeat superior and emphasizes the need for all employers to have strict cell phone policies. In *Chatman-Wilson*, a Coca-Cola truck driver struck a vehicle when the employee failed to yield to oncoming traffic. At the time of the accident, the employee was on her hands-free cell phone on a business call. Coca-Cola had a cell phone policy that complied with state law, which allowed employees to make hands-free calls while driving, but despite its policy, the Texas district court held Coca-Cola liable. This case sets an example for Idaho employers by demonstrating that the mere existence of a cell phone policy that complies with Idaho law may be inadequate to avoid liability.

Adopt a policy that fits your company's needs The first step to implementing a cell phone policy is ensuring that the policy complies with state law. Idaho law allows drivers to talk, but not text, while driving. To comply with this law, employers should, at a minimum, ban texting while driving. Second, Idaho employers should enact either a total ban or a partial ban on talking while driving. To determine which ban best fits your company's needs, employers should weigh the costs of reduced productivity versus the benefits of protection from motor vehicle accidents attributed to distracted driving. Because total bans are extremely restrictive and diminish productivity, it is generally recommended that employers with BYOD programs enact partial bans that allow employees to talk and drive under certain conditions. Some examples include allowing employees to make business calls beyond city limits, while parked on the side of the road, or when using hands-free technology. Employers can also choose to allow phone calls while banning texting, emailing, Facebook, and other tasks. However, keep in mind that employers with policies that ban texting do not automatically avoid liability. As *Chatman-Wilson* demonstrates, Idaho employers may be held liable under the theory of respondeat superior even if their policy complies with Idaho law. At a minimum, Idaho employers should enact a policy that complies with Idaho law and bans texting while driving. If enacting a partial ban, employers should clearly state when employees are permitted to use their personal cell phones for work purposes. Lastly, employers should make sure that employees sign written acknowledgements that they have received, read, understand, and agree to be bound by the policy.

Karen Sheehan is a trial attorney at Gjording Fouser PLLC. You can learn more about her practice and the firm by visiting gfidaholaw.com.

Gas 'n' Go faces federal lawsuit

Coeur d'Alene Press: Sep. 19- Keith Kinnaird/ Hagadone

SANDPOINT - The U.S. Department of Labor has filed suit against Sandpoint Gas 'n' Go & Lube Center and its owner for violating federal whistleblower protection provisions. An investigation determined that owner Sydney M. Oskoui fired a mechanic for raising safety and health concerns at the lubrication center, the department announced on Tuesday. The labor complaint against Oskoui and Gas 'n' Go was filed in U.S. District Court on Aug. 27. The complaint states that Daniel Kramer reported unsafe working conditions at the lube center, which does business as Shell Rapid Lube. However, nothing was done to address the issues. Kramer contacted the labor department's Occupational Safety & Health Administration in February 2012. Kramer reported there were no nets over open automobile service bays, which presented a fall hazard. There also were out-of-date fire extinguishers and exposed wiring near water leaks. Additionally, there were no first-aid kits, eye-wash station or hard hats, court documents indicate. A compliance officer from OSHA's Boise office conducted an inspection of the lube center. The inspection found five violations which presented a risk of death or serious bodily injury. Two additional violations presented an other-than-serious risk, the complaint states. Oskoui was advised on April 12, 2012, that OSHA would be issuing citations and penalties as a result of the inspection. Less than a week later, Kramer was discharged for filing the complaint, the government alleges. OSHA's website indicates it sought \$4,800 in fines from Oskoui for the fall and electrical hazards, but the sum was reduced to \$1,000 via informal settlement. Kramer went on to file a whistleblower complaint with OSHA, which determined Oskoui violated protections afforded to employees who raise questions about workplace safety. The complaint seeks \$921 in lost wages and benefits for Kramer, in addition to an award of \$140,000 in punitive damages due to the defendants' "repeated, reprehensible conduct in reckless disregard for others' health and safety." The suit also seeks to permanently enjoin Oskoui from violating the anti-retaliation provisions in the federal Occupational Safety & Health Act. "We are committed to protecting workers' rights to raise work-related safety and health concerns without fear of losing his or her job," Galen Blanton, OSHA's acting regional administrator in Seattle said in a statement. "We will not tolerate the reprehensible behavior exhibited by Sandpoint (Gas 'n' Go) in this case." Oskoui could not be reached on Wednesday. A message seeking comment was not immediately returned.

Fire guts Caldwell law office

IdahoStatesman.com: Sep. 19- Staff

A fire gutted Hammond Law Office at 811 E. Chicago Street in Caldwell early Friday morning. The Canyon County dispatch received a report of the fire at 3:09 a.m. Fire departments from Caldwell, Middleton, Star and Parma responded and extinguished the blaze in about two hours. Check back later for more details

Judge: CoiNuts owner violated laws

Coeur d'Alene Press: Sep. 19- David Cole

COEUR d'ALENE - A 1st District Court judge has agreed with state prosecutors and ruled that CoiNuts owner-operator Kevin Mitchell has violated consumer protection laws. "We are very pleased with the judge's decision to grant our motion for summary judgment," Idaho Attorney General Lawrence Wasden said Thursday. "There is some work for my office to do on this case, specifically establishing restitution for those consumers who have been damaged and suffered financial losses." The purpose of summary judgment proceedings is to eliminate the need for a trial when the facts are not disputed. Judge Lansing Haynes also banned Mitchell from selling gold and silver in Idaho. "The fact that years have passed and Mitchell has not provided his former customers with their purchased gold and silver shows that he has violated the (Idaho Consumer Protection Act) and (Idaho Rules of Consumer Protection)," Haynes wrote in his ruling Monday. Mitchell didn't bring forward any evidence which would have challenged the facts presented by the state. Mitchell was the owner and operator of CoiNuts from November 2007 through February 2013, Haynes said. From 2008 through 2012, Mitchell's shop accepted approximately \$978,000 from at least 17 consumers for metals. The customers have a total remaining loss today of \$595,000, Haynes said. Mitchell also is charged with felony theft by false promise in Kootenai County court. A trial is scheduled for Jan. 27.

Eastern Idaho judge won't reduce murder sentence

IdahoStatesman.com: Sep. 19- Associated Press

IDAHO FALLS, IDAHO — An eastern Idaho judge says he won't reduce a life sentence for a man convicted in the murder of Kristy Aschliman. The Post Register (<http://bit.ly/1yjt0Xg>) reports that 7th District Judge Jon Shindurling turned down the request from Adan Arroyo on Wednesday. Arroyo currently isn't eligible for parole until he serves at least 25 years in prison. He asked the judge to reduce that minimum term to 15 years. Arroyo originally faced the death penalty for the January 2013 murder. Prosecutors said Arroyo chased down his victim after she jumped from a moving car, and shot her four times in the head. Her body was left on the side of a road in the rural town of Ammon. Arroyo is now appealing his sentence to the Idaho Supreme Court.

Pew: States that put more people in prison actually cut crime less than states that didn't...

Posted by Betsy Sept. 12, 2014 Spokesman Review

A new analysis from the Pew Charitable Trusts shows that states like Idaho, which sharply increased its incarceration rate between 1994 and 2012, had no greater drop in crime than states like New York, which sharply cut its incarceration rate during the same time period. "States that decreased their imprisonment rates cut crime more than states that increased imprisonment," the Pew Trusts reported. New York's incarceration rate fell 24 percent from 1994 to 2012; its crime rate fell 54 percent. Idaho's incarceration rate increased 103 percent during that same time period; its crime rate fell 46 percent. Idaho saw the third-highest increase in incarceration rates in the nation during that time, exceeded only by North Dakota and West Virginia. New York had the biggest drop in incarceration rates, and tied with Florida for the biggest drop in crime rates. "Despite the conventional wisdom, states are showing that it is possible to cut incarceration rates without comprising public safety," said Adam Gelb, director of Pew's Public Safety Performance Project. The project looked at changes since the 1994 Violent Crime and Law Enforcement Act, which led to large increases in imprisonment. "The crime bill paid billions for new prisons but with nearly 1 in 100 American adults behind bars, we've reached a point of diminishing returns," Gelb said. "There's now broad bipartisan consensus behind alternatives for lower-level offenders that cost less and do a better job cutting recidivism." That's been the focus in Idaho's new Justice Reinvestment Project, which is seeking to remake Idaho's justice system to reserve prison space for the most dangerous offenders, find better alternatives for the less-dangerous ones, and reduce rampant recidivism, or repeat offense. That project, backed by all three branches of Idaho's state government, won legislative approval this past year; it's aimed at heading off the need to build a big new multimillion-dollar state prison in the next five years. Pew found that the five states with the largest drops in their incarceration rate saw an average 45 percent drop in crime over the time period. The five states with the largest increases in their incarceration rate saw an average 27 percent drop in crime over that same period. Every state except West Virginia saw drops in crime rates; Pew said leading criminal justice experts say factors other than increasing incarceration — including declining demand for crack cocaine, better policing, technological advances, and reductions in lead exposure — likely contributed to

Lawyer seeks dismissal in Walgreens shooting case Attorney: Client's demand for representation during questioning went ignored

By JOHN FUNK September 12, 2014 Idaho Press-Tribune

CANYON COUNTY — Joshua Wasserburger, the man police suspect of supplying the gun used to kill Pedro Martin Jr. in a Nampa Walgreens parking lot in July, faces a charge of aiding and abetting first-degree murder. But Wasserburger's attorney, Ed Yarbrough, wants Wasserburger's in-custody interview with Nampa police detectives thrown out — and with it, perhaps, the entire case against his client. Yarbrough filed a motion to suppress Wasserburger's interrogation from being used as evidence in court proceedings on the grounds that Wasserburger requested a lawyer during the interview and didn't get one. "In this case, he said, 'I want a lawyer.' Period," Yarbrough said. "When someone does that, it's probably the brightest of bright-line rules that I'm aware of. Effectively, all questioning must cease." And because arguments made at Wasserburger's preliminary hearing — which convinced Magistrate Judge Gregory Frates that Wasserburger's case should proceed to district court for jury trial — relied heavily on Wasserburger's own statements in that interview, Yarbrough filed a second motion to dismiss his client's case. Representatives of the Nampa Police Department could not comment on the specifics of unresolved cases, but Nampa Police Sgt. Joe Ramirez said it's not necessarily quite that simple. Investigators must stop questioning when a suspect invoked his right to an attorney, Ramirez agreed, but that doesn't mean they can no longer interact with the subject at all. They can continue investigating in other ways — such as checking for physical evidence on the suspect's person — and the subject can change his mind about wanting an attorney present at any time. "They can re-initiate contact," Ramirez said. "I don't know if that's what happened in this case, but that is an exception, I guess, to that standard." According to a brief Yarbrough filed in support of his motion, Wasserburger can be heard on audio recordings telling detectives, "I want a lawyer." Police stopped asking questions at this point, the document states, and began administering a gunpowder residue test. After a few minutes, Yarbrough writes, a detective can be heard telling the suspect, "I'll tell you one thing my experience tells me ... the person who (complains) the most about even being talked to and then has the least to tell about what happened is usually the one responsible." Then, the brief states, detectives began to ask Wasserburger general questions about his life — name, age, date of birth, hobbies and other things not directly relevant to the investigation — and then transitioned back to the homicide case without an attorney present. Detectives asked him a few more times during questioning if Wasserburger still wanted an attorney present, the document states, but never explicitly indicates how he answered. If Wasserburger wins the motion to dismiss, charges against him will be dropped, although prosecutors will still have the option to refile, Canyon County spokesman Joe Decker said. If he loses that but wins the motion to suppress, Decker said, the interview won't be used as evidence during his trial. Wasserburger will go before 3rd District Judge Thomas J. Ryan at 2:30 p.m. Tuesday to address this matter.

State rests case in Charles Capone murder trial

By Kerri Sandaine, Lewiston Tribune September 12, 2014

After eight days of testimony - including the prosecution's key eyewitness - the state rested its case against accused killer Charles A. Capone on Thursday in Latah County 2nd District Court. Now it's time for the defense to take over when Capone's trial resumes 9 a.m. today. The case is expected to go to the jury late next week. Capone, who maintains his innocence, is charged with first-degree murder for allegedly strangling his estranged wife, Rachael Anderson, on April 16, 2010, in Moscow. Anderson's body has never been found. Latah County prosecutors William Thompson Jr. and Mia Vowels called several witnesses to the stand Thursday - including Moscow city employees, investigators and a jailer - to provide evidence and establish timelines in the case. A few answered only one or two questions before being excused. The state's key witness is David C. Stone, 51, a former friend of the defendant. Earlier this week, Stone provided an eyewitness account of the alleged 2010 murder on the 2200 block of South Main Street. He was on the stand almost two full days. On Thursday, Stone's ex-wife, Alisa Anderson, verified the time frame of her former husband's whereabouts on the day Rachael Anderson disappeared. She said Stone had taken the couple's Dodge Durango to Palouse Multiple Services for repairs. At one point, he returned to their Britton Lane home for about 45 minutes. But he didn't tell his wife anything about a murder. Instead, Stone told her he'd just dropped Capone off at Mingles for a drink and he was going back to give his friend a ride. Stone has since said that was one of the lies he told before coming clean with authorities late last year. The owner of Mingles Bar and Grill said surveillance footage indicates neither Stone nor Capone were at his downtown Moscow bar on the night in question. Stone has told the court he actually went home to look for a chain, at the request of Capone, who stayed at his repair shop to clean and get rid of evidence. When Stone couldn't find what he was looking for in his garage, he went to the Moscow city shop - where he was employed in 2010 - and grabbed snow chains out of a scrap-iron pile. According to Stone, the chains were used to weigh down Anderson's tarp-wrapped body, which was thrown off the Red Wolf Crossing Bridge into the Snake River west of Clarkston. Stone and Capone transported "the package" to the bridge in Stone's Durango. Sgt. Earl Aston of the Latah County Sheriff's Office testified video footage from the Dyna Mart in North Lewiston shows two vehicles, both resembling the Durango, heading west on State Highway 128 late on the night of April 16, 2010. On cross-examination, Stone's former wife said he didn't appear agitated or upset when he came home that night. He and Capone went to breakfast the next morning at a Shari's restaurant, and Stone called Capone and invited him to his church in Pullman that weekend, she said. On April 18, 2010, Capone went to the Crossing church instead. The pastor has said he wore sunglasses that day and left abruptly during the sermon. Alisa Anderson said she attended the same church as Capone for several years, and she never saw him wear sunglasses or leave a service early. In fact, Capone has told her he thinks it's rude for people to walk out in the middle of a message. Several days after Rachael Anderson disappeared, the Stones had dinner with Capone at the Sandpiper restaurant in Moscow. Alisa Anderson said she had no idea he was a suspect at that time. She eventually blocked Capone's phone calls and told his sister to stop calling Stone. Detective Mike Mooney of the Idaho State Police was questioned about photos taken at Palouse Multiple Services. The courtroom went silent during a 10-minute video shot by Mooney after Rachael Anderson's disappearance, and Capone watched intently as images of his former business were shown to the jury. During the afternoon session, officer Brian Birdsell with the Lewiston Police Department went over phone records of Rachael Anderson, Capone and Stone. He explained to the jury how the cellphones hit certain nearby towers in the area, and when they were all out of service on the night of the alleged murder. Birdsell said the last call Rachael Anderson made was at 8:09 p.m. to her former husband, Dennis Plunkett of Clarkston. Plunkett has testified he received a voicemail from her on the night she disappeared. Defense attorney Mark Monson questioned Birdsell about several phone calls that have been mentioned during testimony. Some of the calls do not appear on any phone records produced by prosecutors. Latah County Coroner Cathy Mabbutt testified she's never been notified about the death of Rachael Anderson. And the state's final witness, a Latah County jailer, said he overheard Capone say something to Stone when the two were briefly standing by each other at the Latah County Jail last summer. After the preliminary hearing, the two inmates were waiting to have their handcuffs and shackles removed on the "search wall," said corrections officer Ethan Ogden. "I don't even know why you're here," Capone reportedly said to Stone. Capone is charged with first-degree murder, failure to notify a coroner or law enforcement officer about a death and conspiracy to commit failure to notify a coroner or law enforcement officer about a death. Stone faced identical charges before entering into a plea agreement and pleading guilty to covering up Anderson's death. He faces a maximum sentence of seven years in prison. the drop in crime. You can see Pew's

Man charged in cold-case killing held without bail

Idaho Press Tribune September 13, 2014

POCATELLO (AP) — An eastern Idaho judge has ordered a Pocatello man accused of killing a 25-year-old woman a decade ago to be held in the Bannock County Jail without bail. The Idaho State Journal reports that 39-year-old Brad Scott Compher appeared via video from the jail and looked confused during the hearing Thursday in 6th District Court, expressing concern about missing work. Compher, also known as Ralph Roy Compher, is charged with first-degree murder. He was arrested Wednesday after police said DNA evidence and a fingerprint linked him to the killing of Nori Jones. Her body was discovered Sept. 28, 2004, in her home by co-workers when she didn't report for work. Bannock County Prosecutor Steve Herzog says he might seek the death penalty. Jones had moved to Pocatello in 1999 and worked for the Job Service, which is now called the Idaho Department of Labor. At the time of her death she was engaged to be married. Jones had been renting the home and lived alone. Police said she had been brutally stabbed and suffered defensive wounds as well as the fatal injuries. Judge Robert Naftz told Compher there would be no bail, and he would meet with Bannock County Public Defender Randy Schulthies on Friday. "Please do not speak to anyone about the case," Schulthies told Compher via the video connection. Police said Compher became a person of interest in 2010 after the Integrated Automated Fingerprint Identification produced a positive hit. That system is shared by police departments nationwide and the FBI and CIA. Police said the hit came from a fingerprint found at the crime scene. Herzog, the prosecutor, declined on Friday to speak in detail about the case that's still being investigated. He also told the AP he couldn't comment specifically about why there was a span of four years between the fingerprint hit and Compher's arrest.

Court hearing postponed for murder suspect

Idaho Press Tribune September 13, 2014

CANYON COUNTY — A preliminary hearing for Alfredo Martin Martinez, who was charged in the death of Nampa resident Selena Thomas last month, was postponed until 8:30 a.m. Thursday, Magistrate Judge F. Randall Kline ruled Friday morning. Martinez is charged with second-degree murder, destruction of evidence and failure to notify authorities of a death in the case. Thomas, 36, was last seen Aug. 15 and reported missing three days later. Martinez turned himself in Aug. 19 after investigators announced they were looking for him. He remains in custody at the Canyon County Jail.

Roundabout lawsuit headed next to Idaho Supreme Court Nampa residents say property was undervalued by city officials

By CHRISTINA MARFICE September 13, 2014 Idaho Press-Tribune

NAMPA — A lawsuit brought by a pair of property owners against the city of Nampa over a proposed roundabout will be heard by the Idaho Supreme Court. Douglas Pfenninger and Katrina Yoder, co-trustees of Pfenninger Declaration Trust, own the property on the southeast corner of the intersection at Midland Boulevard and Lake Lowell Avenue, one of two properties in the right-of-way where the city proposed building a roundabout in 2008. They sued the city of Nampa in 2012, claiming that the city undervalued their property by more than \$750,000. According to earlier court documents, the city appraised the property at \$997,200 in 2008. But the city later evaluated the property in 2010 to be worth \$231,330 after roundabout plans. The property includes 9 acres, a house, a shop, a pasture and some corrals, according to court documents filed last year. When negotiations failed and the city was unable to attain the Pfenninger property, officials chose not to condemn the property for eminent domain. Still, the trustees of Pfenninger Declaration Trust claim the project prevented sale of their property and decreased its value. "Pfenninger claimed the city had acted 'oppressively, unreasonably, and capriciously' in placing a 'cloud of condemnation' on the property," court documents state. According to other court documents, the city claims it never restricted Pfenninger Declaration Trust's use or sale of the property, and that the trustees never attempted to sell or develop the property while the roundabout was being considered. In District Court, the judgment was given to the city of Nampa, and Pfenninger Declaration Trust was ordered to pay the city's court fees, totaling more than \$61,000. Pfenninger appealed that decision, and the appeal was dismissed by the District Court in March. Now, the case will head to the Idaho Supreme Court, Nampa spokeswoman Vickie Holbrook said. Holbrook said oral arguments will be held late this year or early next year. Nampa city attorney Terry White declined to comment on the pending legislation. Neither Kevin Dinius nor Michael Hanby, the attorneys representing Pfenninger Declaration Trust, could be reached for comment. In the meantime, city officials said, the \$1 million that had been allocated for the roundabout at Midland and Lake Lowell will be transferred to the next intersection on Midland that was scheduled for improvements: the intersection at Midland Boulevard and Lone Star Road, according to city engineer Lenard Grady, but that project is still in its very early stages. "We're just in the process of getting a consultant selection (and making) a recommendation to council," Grady said. "Until council approves it, we have no project. Engineering is in the process of preparing those documents and asking for council approval." Grady said the city's master plan calls for another roundabout at that intersection, but because the city has faced so much backlash for other proposed roundabouts, it may reconsider. "My suspicion is that it's going to be a light," he said. "Ultimately, that's a council decision — all we would do is make a recommendation." There are currently three "successful" roundabouts within city limits, Grady said. "Years ago, it seemed like roundabouts were the preference," he added. "Certainly, on the east side of town, they've been pretty successful. In this particular area, some neighbors have concerns over them."

Arson suspect trial moved to Canyon County Bradley Thomasson charged with burning two Emmett churches last year

By JANET MONTI September 13, 2014 EMMETT Idaho Press Tribune

EMMETT — Bradley Thomasson will be tried in Canyon County on five felony counts for Gem County crimes — two arson, two burglary and one grand theft in relation to two Emmett churches that were burned on April 27, 2013. Thomasson is one of two men charged with the crimes. Third District Judge Susan Wiebe heard arguments Monday from offices of Gem County Prosecutor Richard Linville and defense attorney Carter Winters before granting the defense request for a change of venue. Carter brought the motion to change the location of the trial because it was not possible to gather an untainted jury from Gem County residents, he said. "The town was shaken up by the fires at the churches. Even those who are not Christians were shaken up," Carter told the court. Carter said he thought there was a sufficient, reasonable likelihood Gem County jurors would be prejudiced and Thomasson would be unable to get a fair trial there. Carter outlined statements he claimed were prejudicial made by Linville during previous court proceedings against William Dorahush, who has already been charged and convicted in the crimes. The time elapsed between the crime and court proceedings were likely to bring up "anger and raw emotions from the jury," Carter stated. He also went over affidavits presented by the prosecution, in addition to similar case law rulings. Linville countered with his own reasons for keeping the trial in the community where the crimes occurred. "There has been nominal public appearing in court for Dorahush," Linville said. The passage of time has reduced the potential prejudice of a jury pool, Linville said. Wiebe said she looked at the examples cited by both attorneys on state law regarding her criteria for granting the defense motion. "The people of the community became involved with the churches," Wiebe said. "I think it will be almost impossible to truly be fair with all the information out there. I believe he would not get a fair trial without a change of venue to Canyon County." The jury trial date of Dec. 2-9 will remain unchanged under Wiebe. An Oct. 27 pretrial conference will likely be held in Gem County. Thomasson was remanded to the custody of the Gem County Sheriff's Office.

Transient pleads not guilty to sexual battery of a minor Kenneth Paul Tate, 32, to face jury trial in December

By JOHN FUNK September 13, 2014 Idaho Press-Tribune

CANYON COUNTY — Kenneth Paul Tate, a homeless man charged with sexual battery of a minor 16-17 years old, pleaded not guilty in 3rd District Court on Friday morning. Tate was confronted by police Aug. 19 after an employee at the Treasure Valley Marketplace store reported a suspicious transient near the store. According to court records, officers found Tate, 32, and a 16-year-old girl — who initially lied about her identity and age — in a sleeping bag near a Dumpster behind the business. Tate initially denied that he'd had sex with the girl, but changed his story when detectives told him they'd already interviewed the teenager. He's being held at the Canyon County Jail on a \$200,000 bond. Kelly O'Neill, Tate's attorney, argued for a bond reduction on the grounds that Tate has a bachelor's degree in writing and experience with computers, so he should be able to find employment. He plans to live at the Lighthouse Rescue Mission in Nampa, O'Neill told 3rd District Judge Gregory Culet. But Deputy Prosecuting Attorney Dallin Creswell pointed out that Tate is homeless and has few ties to the community — and therefore, Creswell said, presents a significant flight risk. Tate himself told Culet that while he hasn't been in Idaho long, he's made several friends to work at local businesses he frequents, and the staff of the Lighthouse Rescue Mission and Salvation Army know who he is and would notice if he fled the area. Culet, however, agreed with Creswell and elected to leave the bond unchanged. Tate is scheduled to appear at a pre-trial conference at 1:30 p.m. Oct. 30 before 3rd District Judge George Southworth, and then proceed to jury trial at 8:30 a.m. Dec. 2.

An uphill battle for Capone's defense

By Elizabeth Rudd, Lewiston Tribune September 13, 2014

Attorneys for Charles A. Capone quickly cycled through witnesses Friday as they began making a case for the man accused of killing Rachael Anderson. D. Ray Barker and Mark Monson called 14 witnesses to the stand during their first day of evidence presentation in the 53-year-old Moscow mechanic's first-degree murder trial. The attorneys believe testimony in their case will conclude by the end of Monday, making it possible for jurors to deliberate as early as Tuesday. Witnesses were called one right after another Friday - including Capone's brother and sister - to answer a few pointed questions from his attorneys in an effort to tarnish the credibility of the state's key witness, David C. Stone. Stone spent two days on the stand this week, testifying that he witnessed Capone strangle Anderson on April 16, 2010 - the last time Capone's estranged wife was seen. Stone told jurors he was at his former friend's automotive repair shop, Palouse Multiple Services, that evening when he heard a loud thump and went outside to inspect the noise. He came around the corner of the shop to find Capone straddling Anderson with his hands around her throat. The 51-year-old former Moscow city employee described how Capone threatened him and his family and began giving him orders that eventually included cleaning the shop. Stone explained in his testimony how he helped Capone wrap the Clarkston woman's body in a tarp, secure it with chains and toss it over the Red Wolf Crossing Bridge near Clarkston into the Snake River. Stone testified to spending the next three years "living a lie" out of fear of Capone before coming clean about his involvement in Anderson's death late last year. Capone's attorneys queried a number of witnesses about specific details Stone included in his testimony regarding that night, including large black garbage bags he said they used to hide Anderson's body once it was in the back of his Dodge Durango. Capone's brother, Anthony, who lives in Phoenix, visited Moscow three months after Capone was arrested on firearms charges in 2010 to clean out his shop on the 2200 block of South Main Street. Anthony Capone said he did not find any garbage bags matching Stone's description. Daniel MacPherson and his wife, Stephanie Rath, testified separately during Friday's proceedings, saying they had also never seen the type of bags Stone mentioned. The couple work next door to where Capone's shop was once located, and said they would stop by the shop almost daily in 2010. Stone also told jurors that Capone cleaned out the white GMC Yukon Anderson was driving that night, tossing the garbage into a galvanized-aluminum can that Stone held for him. Capone later instructed Stone to dispose of the garbage in a Dumpster at a trailer park near his shop. When Stone returned to the shop, he found Capone mopping the floor and recalled smelling bleach. MacPherson and Rath said they only ever recalled Capone having plastic garbage cans with a hole cut in the lid and never saw or smelled bleach inside the shop. During his two days of testimony, Stone repeatedly cited his fear of Capone as the reason for why he did not intervene or call the police about the alleged murder more than four years ago. He said he didn't consider Capone a friend after that night. But Anthony Capone told jurors Stone visited him at Charles Capone's shop in July 2010 and introduced himself as Capone's friend. Stone then told Anthony Capone to give him a call if he needed anything, gave him a hug and left. Stone and Charles Capone also exchanged a number of phone calls during the summer of 2012, according to testimony from Capone's sister, Teresa Mullen. She said Capone was living with her that summer in Tacoma and would borrow her phone. Her phone records indicate both outgoing and incoming calls associated with Stone's number. Latah County Prosecutors William Thompson Jr. and Mia M. Vowels asked the witnesses only a few questions during cross-examination. Their primary objection was to the testimony of Daniel Evans, a friend of Monson's who was taken to Capone's shop on the evening of April 18 and talked about notes he made on the level of darkness and his ability to see late into the night. The defense plans to call law enforcement officers to the witness stand once the trial resumes at 9 a.m. Monday, as well as a forensic pathologist.

Hearing for former Middleton City Council member postponed Bradley Spencer faces a charge of sexual abuse of minor

By JOHN FUNK September 17, 2014 Idaho Press-Tribune

CANYON COUNTY — Former Middleton City Council member Bradley Spencer, who resigned from his leadership position Sept. 8 in the wake of a sexual abuse of a minor charge, appeared before 3rd District Magistrate Judge Howard Smyser on Tuesday just long enough to postpone his preliminary hearing a few more weeks. He will appear before Smyser again at 10 a.m. Sept. 30. Spencer, 56, was arrested on the charge Sept. 4 after the 17-year-old girl's father reported evidence of the relationship to Idaho State Police. He was released from custody on a \$100,000 bond. According to an affidavit filed in Canyon County court, Idaho State Police detectives began their investigation when the girl's father discovered evidence that she and Spencer were "sexting" with each other. The chat logs indicated a physical sexual relationship, investigators reported. When police spoke to the girl, she told them she and Spencer had sex in the backroom of his business, Spencer's Music, and in his pickup truck. According to the document, Spencer admitted to detectives that he'd had an ongoing sexual relationship with the girl since June, and that he knew she was 17. They were in a relationship, Spencer told investigators, and loved each other. If convicted, he faces up to 25 years in prison.

Testimony concludes in Capone murder case

By Elizabeth Rudd, Lewiston Tribune September 16, 2014

MOSCOW - Charles A. Capone remained silent Monday as his attorneys presented the final pieces of evidence and testimony in the Rachael Anderson murder case. The 53-year-old Moscow mechanic assured Senior Judge Carl B. Kerrick he did not wish to testify regarding accusations that he strangled his estranged wife more than four years ago and, with the help of a friend, dumped her body in the Snake River. Capone made the declaration outside the jury's presence before his attorneys rested their case. Attorneys D. Ray Barker and Mark Monson wrapped up testimony on behalf of Capone about two hours into Monday's proceedings after calling 11 witnesses to the stand - including many who had already made appearances in the two-week trial. Evidence in Capone's case will go to the jury of nine women and five men Tuesday following closing arguments from Capone's attorneys and Latah County Prosecutors William Thompson Jr. and Mia M. Vowels. Of the 14-member jury panel, only 12 will deliberate with two alternate jurors selected at random. Capone's attorneys kept pace Monday with their testimony presentation set Friday, asking each witness just a few short, pointed questions in an effort to cast doubt on the state's case. Prosecutors spent eight days presenting evidence to outline the months and days leading up to April 16, 2010 - the last night Anderson was seen - as well as the events of that night and the days after it became known the then-40-year-old Clarkston woman was missing. The state alleges, based on eyewitness testimony from David C. Stone, that Capone strangled Anderson outside his automotive shop on the 2200 block of South Main Street in Moscow. Stone testified he found Capone on top of Anderson with his hands around her neck. Stone told jurors Capone threatened him and his family, scaring him into helping his then-friend "package" Anderson's body in a tarp. He said Anderson was secured with chains and dropped over the side of Red Wolf Crossing Bridge near Clarkston. He testified they later returned to Moscow to clean Capone's shop. Barker and Monson inquired about a range of specific details in the prosecution's case Monday. Moscow Police Lt. James Fry was called to address what types of bags the Third Street Market Place uses for customers. Charles Schoonover, a private investigator hired by the defense, also testified to the type of bag he received when purchasing Grolsch beer from the same location Sunday, and to locating similar snow chains as were shown in a photo of Capone's truck. Asotin County Sheriff's Detective Jackie Nichols and Capt. Dan Hally were asked about a receipt obtained from a car dealership in Pullman that showed Capone had a copy made of Anderson's car key. Schoonover also testified to retracing the routes Stone said he and Capone took between the shop and Lewiston-Clarkston Valley to dispose of Anderson's body and ditch the GMC Yukon Anderson was driving. Schoonover said he took mileage of the trips, but did not elaborate in his testimony on the chart he made displaying the various distances. Stone told jurors he and Capone parked the Yukon by the Dyna Mart in North Lewiston the night of April 16, 2010 - where law enforcement found the vehicle three days later. But Debbie Stamper, who worked the graveyard shift in April 2010 at the gas station, testified she didn't see the vehicle when she went to work at about 10:45 p.m. the night before police found it. The trial will resume at 9 a.m. in the Latah County Courthouse. A verdict could be returned from the jury as soon as today.

Jury set to determine Capone's fate in murder trial

By Kerri Sandaine, Lewiston Tribune September 17, 2014

The fate of accused killer Charles A. Capone now lies with a Latah County jury. After listening to more than three hours of closing arguments, a panel of seven women and five men retired to the jury room at 1:30 p.m. Tuesday to deliberate a case that's been in the spotlight since a Clarkston woman disappeared in 2010. Jurors were sent home at 6 p.m. and are set to resume deliberations at 9 a.m. today. Capone, a 53-year-old Moscow mechanic, is accused of strangling his estranged wife, Rachael L. Anderson, on April 16, 2010, and tossing her body in the Snake River near Clarkston. He is represented by attorneys D. Ray Barker and Mark Monson, who delivered the defense's closing remarks on the 11th day of the trial. "This case is rife with reasonable doubt," Monson said. The state's eyewitness, David C. Stone, said he saw the slaying at Capone's automotive repair business on the 2200 block of South Main Street and helped with the cover-up. Senior Deputy Prosecutor Mia M. Vowels and Latah County Prosecutor William Thompson Jr. are handling the case on behalf of the state. Anderson's family and friends were in the courtroom Tuesday wearing red ribbons and clothing. The color choice stems from Anderson's favorite song, "How You Live," by Point of Grace, said her best friend, Jennifer Norberg of Lewiston. In closing arguments following jury instructions by Senior Judge Carl B. Kerrick, Vowels said Anderson was seeking a divorce because Capone choked her during an earlier altercation. After the split, Capone moved back to Latah County and Anderson stayed in Clarkston. For the next three months, Capone stalked Anderson, vandalized her car and sent emails of mutilated bodies to the terrified mother of four, Vowels said. Anderson borrowed a loaded gun, slept with the lights on and feared for her life. Capone tried to pin the harassment on someone else, but Vowels said the defendant was responsible for the scare tactics. His offer to help Anderson figure out who was making the calls was a ruse, she said. "He tries to be her hero, but we know he was her villain," she said. The last time Anderson was seen alive she was waiting at Capone's shop, Palouse Multiple Services, for her car to be repaired. Capone had given her a deadline to decide whether she wanted to stay married or go forward with the divorce, Vowels said. Anderson decided it was over, Vowels said, and Capone wouldn't let her go. Instead, he used an up-close-and-personal method to kill her, wrapping his hands around her throat. When she didn't show up to work the following Monday, Anderson was reported missing to Clarkston police. Her frantic family drove all night from South Dakota to help search the area for clues to her whereabouts. Vowels said everyone knew Anderson would never have willingly left her two sons, ages 5 and 10 at the time, or her daughters and their young children. Capone didn't help with any of the searches. After his arrest on federal firearms charges, Capone told cellmates he was confident he wouldn't be prosecuted for his wife's alleged murder because her body would never be found. "No body, no case," was what Capone had to say about his missing wife, Vowels said. Monson pointed out inconsistencies in Stone's statements and hammered the fact the state's star witness was a self-proclaimed liar, even under oath. Stone had numerous opportunities to go to police and tell them he saw Capone strangle his wife and dump her body in the river, Monson said. Instead, Stone told lies for more than three years. When he finally decided to "come clean" with authorities, Monson said he inserted another fabrication into his confession. Playing on Capone's last name, Stone tried to imply the defendant had gangster connections. Stone told authorities he had four mysterious visits from "friends of a friend," one with an East Coast accent, who wanted to make sure he was keeping his mouth shut. Stone later admitted he made that part of the story up, Monson said. There was no reason to lie at that point. Capone was behind bars and Stone's family was safe, yet he continued to be deceitful. Monson asked the jury how they could base any significant decision on Stone's words. "The state's case rises and falls with David Stone," Monson said. "The state is asking you to turn a deaf ear to these lies." After the alleged murder, Monson said there was no evidence Stone was terrified of the defendant. Stone remained in contact with Capone, treating him to breakfast the day after the slaying, inviting him to church and calling him in prison on his birthday. Stone and his family went to dinner with Capone a few days after Anderson disappeared and allowed his teenaged stepdaughter to ride home alone with

Capone. "That's ridiculous," Monson said. "It doesn't make sense." In addition, the state's images of a pickup truck traveling near Dyna Mart in North Lewiston on April 16, 2010, don't match the defendant's vehicle, Monson said. "No stripe," the attorney said multiple times as he showed the jury each photo. Stone drove by the Moscow Police Department several times, along with the Nez Perce County Sheriff's Office, on the night Anderson was last seen. But Monson said he never stopped to tell police he'd witnessed a murder and needed help - or that a body was in the back of his Durango. "That's what a reasonable person would've done, but not David Stone," Monson said. Thompson said the defense's job is to advocate for its client. Justice is about the truth, and "not what that man wants you to believe," he said, pointing to Capone. He asked the jurors to use their common sense and look at the entire picture. Anderson is dead and the last time she was known to be alive, she was in the company of her soon-to-be ex-husband who was obsessed with keeping her and having ultimate control. Listen to your gut, Thompson said. Anderson is dead and the only person responsible is Capone. In addition, he said the first-degree murder charges were filed before Stone gave his eyewitness account. Yes, Stone waited three years to tell the truth. He is not the brightest star, Thompson said, but Capone is smart and calculating. "David Stone is no angel," Thompson said. "He did something horrific and covered it up for three and a half years. He will meet his judgment in a different courtroom with a different judge. That is a certainty." Thompson compared Capone's defense tactics to the chaotic flurry of a shaken snow globe. "Take time to let the snow settle and you're going to see this case is about justice for Rachael Anderson," he said.

Gambling with courtroom deals; Judge calls it a 'necessary evil'

By Samantha Malott, Daily News staff writer September 17, 2014

Attempting to get a murder conviction without a victim's body is a rare and difficult task for any prosecutor. "I've not had that experience, but I can imagine it would be difficult," said Denis Tracy, Whitman County prosecuting attorney. "That would be a particularly challenging prosecution." That has been the challenge presented to the Latah County Prosecuting Attorney's Office in the trial of Charles Capone, who is awaiting a verdict from a jury on charges of first-degree murder, conspiracy to commit murder and failure to notify law enforcement of a death. The charges stem from the alleged murder of Capone's estranged wife, Rachael Anderson, in April 2010. Since police have been unable to find Anderson's body, staff at the Latah County Prosecuting Attorney's Office were forced to rely on testimony from their star witness, David Stone, who just so happened to be an alleged accomplice in the disposal of the body. Prosecutors made a deal with Stone in exchange for his testimony against Capone, dropping his charges from murder to failure to notify authorities of a death. Under the new charges, Stone faces a maximum of only seven years in prison. Whitman County Superior Court Judge David Frazier said similar deals are offered rather frequently in the court system. "Sometimes it is necessary to make a deal with one person to be able to prove a case," he said. "Sometimes it is a necessary evil in the system. "... It's just so often that the only witnesses that can provide information and evidence are participants in the crime." While he'd rather not make such deals, Tracy admits sometimes it's a necessity. "That's one of the things I dislike about the job ... when I'm trying to convict a bad guy, having to hold my nose and give the less bad guy a pass in order to get the other bad guy," Tracy said. "I don't like having to do that, but I have to do it sometimes." It can become a matter of having to choose between co-defendants in a case, explained Aliza Cover, associate professor at the University of Idaho College of Law. "This leads to a prosecutor having to make a choice into which person they want to go after," she said. "That sometimes can lead to ethical dilemmas." Although Tracy has never tried a murder case without a victim's body, he said it is common to offer deals to accomplices in drug-related and murder cases. "In drug cases and murder cases I've worked, we had to convince some of the witnesses to testify," he said. "If they had not testified, they would have been prosecuted as accomplices themselves." For example, in a drug case, a person charged with possession of a controlled substance could get a break on their charge for testifying against the drug dealer who supplied the narcotics. The dealer would be more valuable behind bars than the user. "Giving people deals in exchange for their testimony, that is oftentimes what you end up with as a prosecutor," Tracy said. "Criminals hang out with other criminals." The majority of witnesses to major crimes are not inclined to perform their civic duty and truthfully testify unless they are offered an incentive to do so, Tracy explained. According to a report from the Lewiston Tribune, Stone said he saw Capone kill Anderson on April 16, 2010, in Moscow, and then helped his former friend dump the woman's tarp-wrapped body over the Red Wolf Crossing Bridge near Clarkston. In Stone's testimony Sept. 10, he openly admitted to lying to police and detectives for three years after allegedly witnessing Capone strangle his wife. During testimony, Capone's defense attorney tediously went over transcripts with Stone, repeatedly pointing out how his story has changed throughout the years, the Tribune reported. Stone said he was trying to make his testimony as clear as possible and the version he's offering now is the truth. Using an accomplice, such as Stone, as a star witness can be a major risk during trial because they don't come across as the most trustworthy or credible witness. "You always have a problem when you do that," Frazier said. "It opens up that person to be attacked during cross examinations — is he telling the truth or just getting a deal? Sometimes it backfires and they don't come across as truthful." It is up to the prosecutor to prove to the jury that the testimony is indeed credible. "There is an incentive to just please the prosecutor ... because ultimately the prosecutor is going to be the one who can get him a deal," Cover said. "It can present some serious credibility issues." Even if the prosecutor can show the credibility of a co-defendant's testimony, such as that by Stone against Capone, there is still the risk of that person just telling the story the prosecutor wants told, she explained. "I don't think juries always appreciate how strong the incentive is to tell a lie when you're facing prison time yourself," Cover said. Not telling the jury about the deal a witness is receiving is not a good option either, though, and can result in a re-trial if it comes to light later on, she said. The jury is almost always told that the witness is receiving a deal, as full disclosure is usually seen as better than trying to hide it, Frazier added. "To try and minimize the damage of the deal, the prosecutor, in direct examination, will bring it out usually," he said, adding the jury then has the whole story and it is a factor they can use in their final decision. It is up to the jury, ultimately, to determine the credibility of the witness, he said. "It varies in amount from case to case, but it can impact the jury," Tracy said. "If we can find a way to prove a case without using an informant testimony, then that is preferable, but it's often not available." In the charge of murder when a body has not been found, the lack of physical evidence is going to have an affect on the jury, Frazier said. "It's one of the facts that the jury is going to have to consider," he said. The more facts they have, one way or another, is what is going to sway them. If there is a body and it has been identified, it is going to be much easier, he said. Other factors that may help in proving the case without a body may be enough incriminating evidence or if the person has been missing long enough it is assumed they are dead, Frazier added. "I have never, that I remember, been involved where that has been a situation," he said. "It's obviously an issue, and the key problem (in the Capone case)." Without a body, the prosecutor is going to have to build a stronger case with the evidence and testimony available. "The prosecutor will often bring in autopsy elements, and without a body, that's not a source of evidence for them," Cover said. "There is obviously going to be some element of doubt without a body. "... There just needs to be proof beyond a reasonable doubt," she added. And with no body, she said, that can lead to less finality in the verdict. "If the body ever were found, that could lead to a re-opening of a case," she said.

UI speaker: We've taught men to rape and not call it that

By Samantha Malott, Daily News staff writer September 17, 2014

The problem with sexual assaults on college campuses is most people don't realize when they are actually taking place. That is the argument Dr. Keith Edwards, a national speaker on diversity, social justice and college men's issues, and founder the prevention organization Men Ending Rape, made at a presentation Tuesday night at the University of Idaho during the UI Campus Safety Week. "The problem is the miseducation of hook-ups and sexual encounters," he said. "We have literally taught men how to rape people and not call it that." According to statistics referenced in his presentation, 1 in 4 college women report surviving rape or attempted rape, and 84 percent of those women knew their attacker personally. "Stranger rapes do happen, but they're a very small percentage," Edwards said. Instead, the main issue is the game society has created out of intimacy and getting what one wants, he said. It's like a stoplight, he explained. Green means go, red means stop and yellow means slow down. In reality, everyone thinks yellow means "speed up and get through it," and sexual encounters are seen the same way. Yes means yes, no means no and maybe means try harder, Edwards said. "What we've been taught is if you're not sure, go really fast," he said. "Lack of communication is a disaster." The difference between rape and sex is informed consent, which can only be achieved through communication, he said. Sexual encounters are not going to be how the movies or TV show them, that is impossible, he said. Consent must be given at every step of the way, unambiguous, affirmative and freely given, he explained. "If you have to convince someone to be with you, that's a big red warning sign," he said. "We live in a rape culture, we just don't call it that. It is everywhere, and when it is everywhere we stop paying attention to it." On college campuses the environment presents the ideal opportunity for the line to be blurred between what one person thinks is the consent, while the other doesn't. "If you're drunk or high, you're not a good judge of how drunk or high you are, let alone someone else," Edwards said. People who are young, mentally disabled, drugged or drinking cannot legally give the informed consent needed to define that line, he explained. "We know that men rape," he said. "If we didn't know that men rape, we wouldn't be telling (women) how to protect themselves." Women have been taught from a young age how to protect themselves from sexual assault. They are told to not walk alone at night, to not set down their drink and to carry their keys ready to defend, he said. Men, on the other hand, have been taught they need to constantly defend their manhood, and degrading women is one of the easiest ways of doing so, he explained. "We teach people that how you prove your manhood is by propping it up," Edwards said. "We see men engaging in behavior they don't even want to just to seem more manly and puff up their manhood." But every man is perfectly capable of caring for women beyond their mother, grandmother, sister or girlfriend, he said. "Men rape, that is a true statement. All men rape, that is not," he said. "I will never know what it is like to be a woman afraid walking through campus, but I do know what it's like to be feared." Edwards said having someone afraid of him makes him feel little, nauseous, confused and angry. "My anger is at men who do rape and make that fear rational," he said. "It's important for us to realize that women do not want to be afraid." The evidence does not show that the number of sexual assaults on campuses are decreasing, it instead indicates they are actually staying the same, he said. "I am not optimistic, but I remain a prisoner of hopefulness," Edwards said. Optimism requires evidence that things are getting better, he said. Hope doesn't.

Arroyo sentence request denied

By LESLIE MIELKE lmielke@cableone.net Morning News September 18, 2014

IDAHO FALLS — Adan Arroyo, 24, a former resident of Blackfoot, was sentenced in June for first degree murder in the death of Kristy Aschliman in Bonneville County. Aschliman was killed in January 2013. Through his attorney, R. James Archibald, Arroyo asked for a sentence reduction on Wednesday. His request was denied. Arroyo was sentenced to 25 years to life. He requested his sentence be reduced to 15 years to life. This is was a Rule 35 request, said Bonneville Prosecuting Attorney Bruce Pickett. Rule 35 is common among prisoners who have been given lengthy sentences, said Pickett. In a Rule 35 case, the sentencing judge has an opportunity to review his original sentence. District Judge Jon Shindurling was the sentencing judge. "The state argued that the judge had already shown leniency in this case since the state requested a sentence of 27 years to life and [Arroyo] was given a sentence of 25 years to life," said Pickett. "In the sentencing phase of Arroyo's trial, Judge Shindurling said he knew Kristi and felt bad for her and her drug history," said Defense Attorney R. James Archibald. "This judge explained that he did not know Kristi personally but, in general terms, he knew people who get caught up in bad decisions and drug history." Archibald said he is working on filing an appeal in this case. "I can include the judge's comments in my appeal," said Archibald. After the appeal is filed, state appellant public defenders and the State Attorney General's office will take Arroyo's case, said Archibald. "Counties pay into this program but do not send a public defender to Boise to argue the case. "If the client has money, he can hire a private lawyer, should he so chose," said Archibald. Arroyo is presently incarcerated in the Idaho Department of Correction facility in Boise.

Man guilty of killing estranged wife

Morning News September 18, 2014

MOSCOW (AP) — A northern Idaho man charged with killing his estranged wife and dumping her body in the Snake River has been found guilty of first-degree murder. The jury on Wednesday also found 53-year-old Charles Capone guilty of failure to notify a coroner or law enforcement officer about a death. The 2nd District Court jury deliberated a day and a half before determining Capone of Moscow killed 40-year-old Rachael Anderson from Clarkston, Washington, in April 2010. The body of the mother of four hasn't been found. A co-defendant last week testified that he witnessed Capone kill Anderson and then helped dispose of the body in the Snake River.

Court date suspended for man charged with abuse Richard Ernest Disney ruled incapable of participating in his own legal defense

By JOHN FUNK September 18, 2014 Idaho Press-Tribune

CANYON COUNTY — Richard Ernest Disney — a 76-year-old man charged with sexual exploitation and abuse of a vulnerable adult — is unable to assist in his own defense, 3rd District Judge Christopher Nye ruled Wednesdayafternoon. Nye reached his decision after receiving a medical assessment filed in connection with the case. He suspended all pending court proceedings and assigned Disney to a 90-day mental health commitment. He'll appear in court again for a review hearing Dec 30. As Disney's attorney, Jon R. Cox explained Nye's ruling to his client. "Are you Jon?" Disney asked, his voice clear and even, but slow. "I am Jon," Cox replied. "Do you remember me?" Disney paused for a moment, then answered "No." According to an affidavit filed in Canyon County court, a staff member at the Cottages Assisted Living facility in Nampa — where Disney had been ordered to live by a previous court order — opened the door to Disney's room and found him and a female resident — who suffers from severe dementia — in a state of undress. When asked what was going on, witnesses told the responding officer, Disney replied "none of your business" before staff members led the woman away. Staff members notified law enforcement and cooperated fully with the Canyon County Sheriff's Office deputy who responded, court records state. Disney acknowledged to the deputy that he intended to have sex with the woman — and had talked to her about it days earlier. Her responses to the deputy's questions were mostly incoherent, but when asked if she'd had sex with Disney, she replied she had not. Then, Disney requested to speak to the female deputy again. According to the affidavit, he propositioned the deputy for sex, and quickly escalated to more graphic propositions after she declined. She placed him under arrest when he acknowledged during the second interview that he'd touched the other patient in a sexual manner.