

Judge won't toss whistleblower suit

Lewiston Tribune: Nov. 1- Elaine Williams

A federal judge has ruled there is sufficient evidence to move forward with a trial in a whistleblower case against Clearwater Paper brought by the U.S. Department of Labor. The five-day trial is scheduled to start Jan. 5 in the federal courthouse at Coeur d'Alene. A telephonic pretrial conference is set for Dec. 17. The case involves allegations from 2010 that Clearwater Paper fired employee Anthony Tenny after he complained to the Occupational Safety and Health Administration about potentially life-threatening conditions at the company's Lewiston sawmill. The suit asks that Tenny receive lost wages and benefits, including interest, damages and reinstatement to an equivalent position, among other things. Clearwater Paper, which no longer owns the sawmill, refuted the allegations in court records and asked for a summary judgment, which U.S. District Court Judge B. Lynn Winmill denied. The suit alleges that Clearwater Paper's dust collection system was inoperable about 50 percent of the time in April and May of 2010, and that the mill sometimes processed red cedar even if the dust system wasn't working. "During these times, the dust was so thick in the air at the mill that workers had trouble breathing, visibility was difficult and surfaces became slick," according to court documents filed by the Department of Labor. Red cedar presents more than one kind of potential hazard, according to a sworn statement contained in the file by David Kearns, area director of the Occupational Safety and Health Administration at Boise. Exposure to red cedar "is known" to cause medical conditions such as asthma and pink eye, Kearns said. "A layer of wood dust as thin as a dime can, if dispersed into the air, cause an explosion. The force from dust explosions have been known to level entire facilities and kill workers and bystanders." OSHA inspected Clearwater Paper on a day it was not processing red cedar, Kearns said. No citations were issued in connection with that inspection, according to the Department of Labor. Clearwater Paper did a test and found red cedar dust was within OSHA limits when its dust collection system was working, Kearns said. Tenny didn't tell anyone at Clearwater Paper he complained to OSHA "because he feared that management would retaliate," according to court documents filed by the Department of Labor. Within two months of contacting OSHA, Tenny was fired, according to the court documents. The company's decision to let Tenny go followed a Friday night, June 18, 2010, where Tenny stayed after his shift was completed and redirected a night crew to run split gauge saws, according to a Clearwater Paper personnel action form for Tenny. Tenny maintains he shared with a night-shift production supervisor what a mill superintendent told him. Clearwater Paper's version is that a different call was made about when to run the split gauge saws after Tenny spoke to the mill superintendent. The company suspended Tenny the following Monday and sent him for a drug test, according to a court document filed by Clearwater Paper. The drug test was negative, according to a decision denying Clearwater Paper's request for summary judgment by Winmill. The drug test happened after the superintendent who told Tenny he was being suspended "perceived Tenny was becoming extremely agitated, beyond what he regarded as normal," according to a court document filed by Clearwater Paper. Later that week, Tenny emailed a Clearwater Paper vendor and contractor criticizing two of his supervisors, according to a court document filed by Clearwater Paper. The combination of Tenny's conduct June 18, 2010, and the post-suspension email to the contractor and vendor were the basis of Clearwater Paper's dismissal, "which seemed to be part of his increasingly aggressive and confrontational behavior" toward two of his supervisors, according to a court document filed by Clearwater Paper. The company didn't learn until after Tenny's dismissal that he was the one who registered the anonymous complaint to OSHA, according to a court document filed by Clearwater Paper. Some of how Clearwater Paper handled Tenny's last few months of his employment is cited by Winmill in his decision to allow the case to go to trial. Tenny "earned several promotions and received only positive performance evaluations" during his six years with the company, Winmill wrote. "Clearwater Paper did not follow its progressive discipline policy in deciding to terminate Tenny." The timing of when Tenny was terminated also raises questions, since it was within days of the company learning the results of its own testing of red cedar dust, Winmill wrote. At the same time, issues remain as to whether Clearwater Paper knew Tenny made the OSHA complaint. Clearwater Paper contends the mill manager who made the decision to fire Tenny wasn't aware of it, but Tenny has testified another supervisor was aware of the complaint the day he was suspended, Winmill wrote. Clearwater Paper didn't have written documentation from two supervisors for Tenny's drug test, even though its policy required such for drug tests based on employee behavior, Winmill wrote. Plus, it's not clear if the reasons the company presents for firing Tenny "actually motivated Clearwater Paper's decision, or whether Clearwater Paper merely seized on (them) as a pretext for retaliation," Winmill wrote.

Suit Claims Canyon County Jail didn't Aid Man who Later Died

MagicValley.com: Nov. 2

BOISE (AP) • A representative of an inmate who died last year has sued Canyon County Jail and its workers, saying they failed to provide him adequate treatment. The estate of Alfred Girrard Young, also known as Jeri-Alfred Cook, filed a lawsuit in federal court in Idaho on Friday seeking unspecified damages. The lawsuit alleges that Cook developed a treatable respiratory infection but due to inadequate care, he lapsed into a coma and died. It also alleges that jailers were aware of his medical conditions and retaliated against him in the past for filing complaints about poor medical care. A county spokesman declined to comment and referred questions to the county's insurer. The Idaho Counties Risk Management Program didn't immediately respond to a request for comment, the Statesman reported (<http://goo.gl/Ci0rEW>). Young, 46, was found unresponsive in a holding cell on April 3, 2014. He was taken to a hospital where he died three days later. Young had pleaded guilty to a DUI charge and was sentenced in 2012 to probation and ordered to attend drug court. He was sent to jail in February 2014 to serve 30 days of "discretionary" jail time ordered by his probation officer. While in jail, Young asked several times to be seen by a health care provider for breathing difficulties, nausea, headaches, bloody vomit and other problems, but nothing was done, the newspaper reported. Inmates alerted deputies that Young was having trouble breathing and experiencing chest pain on April 3, 2014, according to the lawsuit. He was examined by a jail nurse, who noted on the medical chart that Young's pain was "10" on a scale of "1 to 10" and placed Young in a holding cell for further assessment. Later that day, another nurse examined him and ultimately sent him back to his cell for later examination. No one checked on Young for four hours, according to the lawsuit, and when they did, they found him unresponsive in his cell. He was not seen by a doctor at the jail, the lawsuit alleges. In 2011, the American Civil Liberties Union sued the county on behalf of Young and others who alleged jail officers retaliated against them for complaining about jail conditions. The ACLU and the county eventually reached a settlement agreement, with the county agreeing to change how it processed grievances, the Statesman reported.

Man pleads guilty to involuntary manslaughter

Idaho State Journal: Nov. 2- Debbie Bryce

POCATELLO — Jesse Whitewolf Bruce, the man originally charged with second-degree murder in the June 5 stabbing death of Lric Elkins, pleaded guilty to an amended charge of involuntary manslaughter Monday. Bannock County Deputy Prosecutor Zach Parris said the second-degree murder charge was amended due in part to uncooperative witnesses in the case. Tyrell Owen Dixey was charged as a principal to murder in the Elkins' stabbing. But that charge was dismissed with prejudice after Crystal Martinez, Dixey's girlfriend and the state's primary witness, refused to answer questions on the stand. Martinez recanted statements made to police on the day of the killing and invoked her Fifth Amendment right not to answer. Dixey was then charged with failing to report a death and that charge was also dismissed. Parris said Monday that Elkins' family was disappointed with the outcome of the case. "The family was kept in the loop throughout the proceedings and they're disappointed, but they understand the situation," Parris. "This was a difficult case and our witnesses were less than cooperative." Bruce and Dixey were arrested after police were called to an apartment on North Grant on June 5 after someone reported seeing a man in a bloody bathtub. The caller also said individuals from the apartment were looking for a tarp. When officers gained access to the dwelling, they found Bruce, Martinez and Jessica CrookedArm in the kitchen of the apartment. Dixey was sleeping in a bedroom where Elkins' body was discovered stuffed into a trash can and covered with a sheet. Elkins bled to death from a stab wound to the lung. Parris said Bruce could be sentenced to 10 years in prison for involuntary manslaughter. Prosecutor Steve Herzog said he was happy with the outcome. "Witnesses say one thing at the time, another thing at the preliminary trial, and a lot of things can change in that time-frame," Herzog said. "It's a dynamic situation with witnesses. It always has been, that's one of the challenges of the job." Sixth District Judge Stephen S. Dunn ordered a pre-sentence investigation in the case and set sentencing for Dec. 21. Bruce remains incarcerated at the Bannock County jail. Bond in the case is \$1 million.

Bail set at \$1M for Boise man shot after fleeing traffic stop

Idaho Statesman.com: Nov. 2- John Sowell

Patrick Anthony Zavala, 37, made his first appearance in court Monday, nearly a week after he was shot in the thigh by Boise police following a traffic stop in which he allegedly jumped out of a car and fled. Zavala spent five days in a local hospital being treated for gunshot wounds to his thigh and hand. He was released from the hospital on Saturday and taken to the Ada County Jail, where he was charged with being a felon in possession of a firearm and resisting and obstructing officers. He was also held on a warrant for a parole violation stemming from a 2010 conviction in Ada County for felony driving under the influence of intoxicants. Abraham Mangrove, a lawyer from the Ada County Public Defender's Office, asked Magistrate Kevin Swain to set bail at \$50,000. Deputy Ada County Prosecutor Brian Naugle argued for \$1 million bail, saying the serious nature of the shooting incident, Zavala's extensive criminal record and a long history of parole and probation violations justified the higher amount. "The state believes the defendant is a significant risk to the community, as well as a flight risk," Naugle said. Swain agreed. Zavala appeared in court sitting in a wheelchair. His left hand, which police said was injured after Zavala shot himself, was heavily bandaged. Zavala has multiple previous convictions, largely in California, including battery of a police officer, possession of a controlled substance, taking a vehicle without consent, obstructing police and receiving stolen property. He also has a 2010 battery conviction in Idaho, along with the 2010 DUI conviction. Zavala was shot just before midnight after running through the backyard of a house on Peasley Street in the Depot Bench neighborhood. There, he allegedly fired at Officer Adam Crist. Crist, an eight-year veteran of the department, returned fire and struck Zavala. No one else was injured in the shooting, which happened a couple of houses down from the intersection of Rose Hill and Peasley. Crist was one of four uniformed Boise police officers working an ongoing investigation into reports of suspicious activity, possibly involving drugs and weapons. At 11:54 p.m., one of the officers pulled over a car at the intersection of Rose Hill and Peasley because its headlights were off. A passenger in the vehicle, later identified as Zavala, jumped out and ran north on Peasley, police said. Officers pursued the man on foot. They recognized him as the same person who jumped out of a car and fled during a stop the night before in another part of town. Officers rendered medical aid, including applying a tourniquet to the suspect's leg, which was bleeding heavily. The woman who was driving the car that the suspect jumped out of cooperated with police and was not charged. Investigators with the multiagency Ada County Critical Incident Task Force are investigating the shooting. The task force includes investigators from Boise, Garden City, Meridian, Idaho State Police and Ada County Sheriff's Office. Boise police and the Office of Police Oversight are investigating Crist's actions with regard to department policy and training.

Two deputy prosecutors join Asotin County staff

Lewiston Tribune: Nov. 5

ASOTIN - The Asotin County Prosecutor's Office has two new attorneys on its team. Elliot Thomsen and Robert Lehman have been hired as deputy prosecutors to help ease the legal workload. Thomsen is from Edmonds, Wash., and Lehman moved here from Spokane. They are both graduates of Seattle University. Thomsen has been a licensed attorney since Sept. 25 and began his new job last week. He is handling District Court cases for the county. "I love the valley," Thomsen said Wednesday. "I really enjoy hunting, fishing and the outdoors." Lehman started work Sept. 8. He most recently worked for the Spokane County Prosecutor's Office and has been licensed for a year. "I am enjoying the caseload and the work I'm doing here," he said. Lehman is handling juvenile cases and civil issues for the prosecutor's office. Prosecutor Ben Nichols, an elected official and department head, is focusing on high-profile felony cases, including several alleged homicides. Chief Criminal Prosecutor Curt Liedkie handles the majority of felonies, including drug-related cases and property crimes. Chief Deputy Prosecutor Jane Risley oversees child support cases and civil issues. Asotin County has filed 180 felony criminal cases so far this year. In addition, about 120 juvenile cases are making their way through the court system.

How to choose software for your small law firm

Idaho Business Review: Nov. 3- Nicole Black

I am often asked to speak to lawyers about mobile and cloud computing and when I do, members of the audience tend to have lots of questions. That was certainly the case last week when I spoke to a group of lawyers in Buffalo. At one point one of the attendees asked a question that typically comes up during my talks: how do you choose the right software for your firm? He then followed up on that question and wondered if there were any online sites that offer comparisons and whether any bar associations had pre-screened any software programs and deemed them to be ethically compliant. Unfortunately, bar associations are unable to give the green light to any specific software program since the way each firm intends to use software may vary, including the types of data that will be stored using the program. This is especially true when it comes to cloud computing software. But bar associations do sometimes offer guides that describe and compare different types of legal software, which can often be very helpful. For example, the American Bar Association provides a useful case/practice management comparison chart on its website. There are also software comparison sites that purport to offer accurate comparisons of all types of software, ranging from very general software such as word processing or website hosting platforms to very specific types including software for the legal industry. Although these sites tend to offer a fairly general overview of the different products and are often drafted by someone with little to no understanding of the particular industry, they nevertheless sometimes offer valuable information both in terms of the comparisons and the user reviews and ratings that are included for each product. Examples of these sites include capterra.com and getapp.com. Another way to research legal software is to frequent online forums for lawyers. You can ask fellow lawyers for their recommendations or experiences, in addition to searching the archives of the forums for past feedback. Your state bar association likely has a few relevant forums or listservs available, so that's a great place to start. You can also join Solosez, the American Bar Association's listserv for solos. The Macs in Law Offices Google Group can also be very useful for researching Mac or cloud computing software (since when you use cloud software the type of computer you use is irrelevant). Finally, the Lawyering Advisory Board forum is another good online site to consider. In fact, this forum recently conducted a poll to ascertain the most popular law practice management software. That poll received nearly 9,000 views, 108 comments and 540 votes. There's lots of great information there that will help you choose the right software for your law firm. So if you're in the market for new software for your law firm, never fear. There are lots of great resources available to help you choose the right technology tools for your needs. It's simply a matter of carefully researching your options, narrowing down your choices, and then test driving a few programs before committing to one of them. Follow those steps and you'll be on the right path to making software choices that work best for your law firm's needs.

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Idaho Lynching Murals in Old County Courthouse Spark Debate

MagicValley.com: Nov. 4- Kimberlee Kruesi/ AP

BOISE • Two murals depicting the lynching of an American Indian in a former Idaho county courthouse are once again at the center of a disagreement over whether they should be displayed or covered up as offensive. Historic preservationists and members of Idaho's tribes oppose covering the 75-year-old murals that were commissioned as part of a Depression-era program to help put artists to work, arguing that the public can learn from history's mistakes. However, the University of Idaho — currently leasing the building as a satellite campus of its law school — contends the murals create a negative learning space. State officials held a public hearing Wednesday to gather public input as they consider weighing in on the issue. The murals have been covered ever since the college opened up the law school earlier this year. "It may not be tasteful and it may not be art, but it displays some of the past history that happened in our state," said Blaine Edmo, a member of the Shoshone-Bannock Tribe. "These murals need to be openly displayed. The reasons behind these murals need to be discussed." The murals show an Indian in buckskin breeches, on his knees with his hands bound behind his back. He is flanked by one white man holding a rifle and another holding the end of a noose dangling from a tree. Twenty-six murals were painted in southern California and mounted in the former Ada County courthouse in 1940. Because the murals are installed as part of the historic building's staircase wall, the state is banned from tampering or destroying the paintings. "The history of art is the history of humanity in all of its complexity," said Michael Faison, executive director of the Idaho Commission on the Arts. "The murals should be displayed with the proper contextualized plaques." Much the same arguments about the murals were repeated nearly nine years ago when lawmakers began preparing to move into the courthouse while the Capitol underwent renovations. Lawmakers, historians and tribal members came to a solution by spending months — described as painful on Wednesday — working on appropriate explanatory language to post on plaques under the murals to offer historical context to the images. However, now that the law school is occupying the building, the debate has resurfaced. "Covering the murals is not erasing history," said Mark Adams, dean of the university law school. "The display of the murals says, particularly to our Native American and African American students, that people like you are not welcome here." Ty Simpson, a member of the Nez Perce Tribe, echoed support for covering the murals. "I don't see a vibrant history in the mural. I see pain. I see genocide that has long-reaching impacts on our people today," Simpson said.

Municipal court stops, but law doesn't

Lewiston Tribune: Nov. 5- Kerri Sandaine

Asotin police chief says department will continue to protect citizens. ASOTIN - Asotin's police chief said it's business as usual when it comes to enforcing the law here. Municipal court is no longer available because of a contract dispute between the city and Asotin County, but Police Chief Monte Renzelman said that doesn't mean it's OK to speed through town, drive impaired or assault your neighbor. "We will continue to do work as normal," Renzelman said in a memorandum issued Wednesday to his three-person police department. "The safety and well being of the citizens of Asotin are our No. 1 priority, and will always be our No. 1 priority." The deadline for the city to sign an updated agreement for municipal court services expired last week, according to the Asotin County commissioners and prosecutors. Without a contract in place, they said the county had no choice but to curtail court services. The issue had to do with how much the city paid in fees to file cases in the District Court system. A new agreement called for the city to pay a \$30 filing fee for each infraction handled by the court, and \$135 for criminal cases. The city previously paid \$20 per case. Commissioners have said the county is paying a filing fee of \$215 per case. "There is a lot of history to this, but long story short, (the county) feels the contract had expired," Renzelman said in his memo. "Our legal counsel advises it cannot expire until a new contract replaces it, arbitration supersedes it or both parties mutually agree to dissolve it. ... There is a lot of work being done to resolve this situation." County officials have said the drop-dead date was well known by the city attorney and council. Instead of coming to an agreement at some point during the past 19 months, the city was still angling for major revisions, county Commissioner Jim Fuller said. The issue finally came to a head Monday when the city was notified Asotin County District Court is no longer handling Asotin city cases. City Attorney Jane Richards said the county is way out of line and threatened to take legal action. The Asotin City Council will conduct a special executive session from 5 to 7 p.m. today to discuss contract negotiations. Whether the council takes action after the session remains to be seen, Richards said. While a resolution is being reached, Renzelman said the police department will be making arrests when probable cause exists and issuing citations. "We will still do the job we have been sworn to do; protect the life and liberty of the citizens, workers and visitors of Asotin," he said. Earlier this week, Asotin County Prosecutor Ben Nichols said citations are dismissed after five days if charges are not filed in court. Persons arrested for misdemeanors in the city of Asotin are still being accepted at the Asotin County Jail, but they cannot be held for more than 48 hours by law, unless an order is signed by a judge.

Lapwai woman pleads guilty in fatal crash

Lewiston Tribune: Nov. 5- Ralph Bartholdt

Bianca G. Sekayouma admits fault in April 5, 2014, crash that killed one daughter and injured another. A 40-year-old Lapwai woman pleaded guilty Wednesday in Lewiston's 2nd District Court for her role in a crash that resulted in the death of her daughter. In a voice that was barely audible in the Lewiston courtroom, Bianca G. Sekayouma said she pleaded guilty to one count of vehicular manslaughter because she was at fault in the fatal April 5, 2014, crash on U.S. Highway 95, in which her 2006 Jeep Commander struck a power pole. "I wrecked and killed my little girl," a weeping Sekayouma said. The 8:20 p.m. crash south of Lapwai resulted in the death of 5-year-old Maya Martinez, who was ejected from the vehicle. Maya's 7-year-old sister, Mia Martinez, was also ejected and suffered injuries in the crash. Sekayouma's blood-alcohol concentration was 0.102 at the time of the accident, according to court records. Prosecutors and defense attorneys had remained mum about the plea agreement because they were unsure Sekayouma was willing to accept it. The deal calls for sentencing Sekayouma to between three and 10 years in prison and dismissing a felony charge of injury to child and a misdemeanor DUI charge. It also allows defense attorney Richard M. Cuddihy to argue for the court to retain jurisdiction in the case and send Sekayouma to a prison rehabilitation program for up to one year, which would be followed by probation. Second District Judge Jeff M. Brudie will ultimately decide the penalty following a Jan. 13 hearing. Sekayouma remains in custody at the Nez Perce County Jail. Since being charged last year, court records indicate Sekayouma was arrested four times, including once on a DUI charge after being released from jail on a \$50,000 bond. She was again released and arrested on a warrant for failing to appear in court on a misdemeanor charge, and was arrested last spring on Nez Perce tribal charges of disorderly conduct for allegedly striking someone at the Clearwater River Casino. Following a release that stipulated her driver's license be revoked, Sekayouma was arrested for driving in Lapwai. The plea agreement was reached after a second round of mediation last month between prosecutors and the defense. An earlier court-ordered mediation last spring was unproductive. Nez Perce County Senior Deputy Prosecutor Justin Coleman was pleased to finally reach closure in the case. "I have always thought it was important that the defendant accept responsibility for taking the life of her child," Coleman said. "She finally did that today."

Man who pleaded guilty to sex crime sentenced to rehabilitation in prison

Lewiston Tribune: Nov. 5- Ralph Bartholdt

A 20-year-old Clarkston man who pleaded guilty to having sex with a 14-year-old girl will attend a prison sexual rehabilitation program, a 2nd District judge ordered Wednesday in Lewiston. Brendon M. Slusher is accused of taking part in the sexual abuse of the 14-year-old who lived with him in January at Lewiston after she ran away from home. According to court records, the girl allegedly sent revealing cellphone images to Slusher and the two had a sexual relationship that involved another man, 35-year-old Justin T. Squier. Squier has pleaded guilty to one felony count of lewd conduct with a child in the case. His sentencing is set for Dec. 10. Slusher, who pleaded guilty to one count of lewd conduct with a child younger than 16 and failure to register as a sex offender, both felonies, was sentenced to a minimum of three years in prison. But 2nd District Judge Jeff M. Brudie retained jurisdiction in the case, meaning Slusher will be placed in the prison rehabilitation program for up to a year. He could be placed on probation if he successfully completes the program. Brudie acknowledged that Slusher broke off the relationship with the girl after he learned of her age, and that the teenager allegedly encouraged the sexual acts. "Some of these situations you didn't create; they presented themselves to you," Brudie said. "You took advantage of them." A psychosexual evaluation showed Slusher was moderately amenable to community rehabilitation, Brudie said. One of the criteria measured was his ability to pay for rehab, but he lost his job and wasn't able to make the costly payments. Brudie said he felt Slusher was a risk "to some segment of the population out there." Slusher was taken into custody following the hearing and taken to the Nez Perce County Jail, where he will be turned over to the Idaho Department of Correction.

Judge hears arguments in former Lewiston business owner's lawsuit

Lewiston Tribune: Nov. 5- Joel Mills

A 2nd District judge didn't react enthusiastically Wednesday to a former Lewiston business owner's lawsuit alleging an urban renewal project in 2012 and 2013 forced him to close up shop. But Judge Gregory FitzMaurice at least put off a ruling on three motions for summary judgment without trial that were filed by the defendants in the case: the city of Lewiston, the Lewiston Urban Renewal Agency and engineering firm Thomas Dean and Hoskins. FitzMaurice told Darrel Aherin, the attorney for RV Parts Store owner Dan King, he faced an "overwhelming burden" to prove that defendants were liable for his alleged losses when traffic couldn't easily reach his business on Beachey Street. The three attorneys for the defendants argued that case law and Idaho statutes offer government agencies broad immunity from being sued for purely economic losses because of public works projects. FitzMaurice seemed to agree. But Aherin said his client's case was different than any that had previously been before Idaho courts. The actions of the defendants during the rebuilding of Fifth Street downtown were akin to condemnation, because they essentially took a regular intersection and left his business with a driveway ramp that was too small for convenient recreational vehicle access, he said. "This is where it dawned on me," Aherin said, alluding to wording in his complaint that called the actions a conspiracy. "This is intentional." King expressed his problems with the project design to all three parties, including the spacing of metal posts on the sidewalk that restricted access even further. "But it obviously fell on deaf ears," Aherin said. Boise attorney Andrea Fontaine, representing the city, said her defense centers on the application of the Idaho Supreme Court's "economic loss rule," under which the city doesn't have a duty to prevent purely economic loss. Urban renewal agency attorney Cynthia Mosher of Lewiston cited the Idaho Tort Claims Act, which says government entities can't be held liable for the acts of independent contractors. And TD&H attorney Carl Hueber of Coeur d'Alene said the broad governmental immunity in such cases is critical. Otherwise, important public works projects would never happen for fear of lawsuits, he said. "This appears to be a situation where the plaintiff believes he was wronged, but there is no remedy where this case sits," Hueber said. The RV Parts Store closed in May 2013, shortly after months of construction closed the two most heavily used routes to the business. City officials have maintained that they took numerous measures to alleviate King's concerns. Aherin said King is seeking damages that have not yet been specified. FitzMaurice said he would issue a ruling at a later date.

Idaho sees drop in prisoners' civil rights lawsuits

Lewiston Tribune: Nov. 5- Rebecca Boone/ AP

BOISE - The number of federal civil rights lawsuits brought by Idaho inmates is dropping, and could stay in the double digits this year for the first time since 2006. Some of the biggest reforms to Idaho's prison system, including court-ordered improvements to medical care, reduced overcrowding and increased staffing levels have come in response to inmate lawsuits. Inmate civil rights lawsuits give the public a rare window into the nation's penal system, University of Michigan law professor and prison litigation expert Margo Schlanger said. "Prison litigation is one of the very few ways that prisons are held to account," Schlanger said. "It really is important for the public to understand what goes on in prison for there to be some accountability." According to the U.S. District Court of Idaho's filing system, 104 of the lawsuits were filed last year, and only 81 have been filed so far this year. That compares with a 10-year high of 139 cases filed in 2009. Idaho Department of Correction spokesman Jeff Ray said the department doesn't track the number of lawsuits filed each year, and while officials have noticed the decline, they don't know what's behind it. In a state as sparsely populated as Idaho, it's tough to draw any conclusion from the numbers without reading each lawsuit. Filings can decrease for lots of reasons, including if a prolific inmate gets paroled, if inmates lose access to law libraries or mail service because of lockdowns, or if conditions change, said Ritchie Eppink, an attorney with the American Civil Liberties Union of Idaho. Still, spikes in inmate filings can tip judges off to the possibility of systemic problems, such as in the long-running lawsuit over conditions at the Idaho State Correctional Institution. That case began in the 1980s when so many inmates from the Idaho State Correctional Institution began filing lawsuits that the cases threatened to clog the courts. The judge presiding over the cases at the time noticed similarities and combined them into one class-action lawsuit, which became known as the "Balla case" after lead plaintiff Walter Balla. The Balla case led to several reforms that included strict limits on overcrowding, set dietary guidelines and widespread improvements to prison medical care. A series of lawsuits against private prison company Corrections Corporation of America prompted a judge to order increased staffing levels and tighter prison oversight. A lawsuit from Canyon County jail inmates led to a settlement spelling out improvements to the aging jail facility, including daily basics like well-laundered towels and uniforms for inmates. It's not easy for inmates to bring civil rights cases, Schlanger said. In 1996 the federal Prison Litigation Reform Act created new hurdles for imprisoned litigators, restricting the amount of money their attorneys can win in fees, making it tougher for them to get court-appointed attorneys and requiring them to pay filing fees that often are hundreds of dollars - a substantial financial burden for most inmates. The law was pushed as a way to reduce frivolous inmate lawsuits. Schlanger said the act means that inmates tend to lose cases faster and more frequently overall than other types of civil rights plaintiffs. Most prisoner civil rights lawsuits can be divided into three broad types, Schlanger said. "Most of them are small cases about small incidents - important to the people involved, of course," she said. "Then there are the dramatic cases involving grievous injury or death, but involving just one or two people. Then there are the big cases that are forward-looking, that say 'you need to change how these things are done.'" The last type tend to be class-action cases, like the Balla case, Schlanger said. In such cases, a "win" often comes when a judge tells prison officials to change the way they operate. Often a judge will keep an eye on the prison for a period of time to make sure the changes stick. "It's gotten harder to win those cases and harder to keep them, so the court supervision goes away faster," Schlanger said. "If you look at prisoner litigation like inventory at a store, the volume of stock is lower and it's moving out faster."

Ammon man charged with raping woman for years

Idaho Falls Post Register October 30, 2015 By TOM HOLM

Magistrate Judge Steven Gardner bound over an Ammon man charged with raping a woman over many years. Shane Newkirk, 49, is charged with rape when the victim submits with the belief instilled by the actor in using threat of harm or any other threat. Newkirk, through his attorney John Thomas, continued his preliminary hearing. Bonneville County Sheriff's Office deputies arrested Newkirk on Oct. 19 after he told an investigator he repeatedly molested and raped the victim from the time she was 10 until she was 24 years old, court records show. Newkirk has bond set at \$100,000. Court records show the woman told an investigator she decided to report the years of abuse fearing Newkirk was targeting a new victim. The woman told an investigator the most recent assault occurred in August. Court records show that over the years, the reported rapes were prefaced by inappropriate sexual touching. The victim told an investigator each incident happened in much the same way. The criminal complaint consolidates the years January 2009 to Aug. 29 into one count for charging Newkirk for the repeated rapes. Court records show at one point the woman tried to refuse Newkirk's advances and he reportedly threatened to molest a different girl. The investigator asked the victim to estimate a number of times she was reportedly raped. The investigator asked if it happened hundreds of times to which the woman agreed, court records show. In an interview with an investigator, Newkirk said he never had intercourse with the victim but said he sexually touched the woman. Newkirk told the investigator he never forced the victim into the sexual acts, but said he would be "persuasive, like any guy," court records show. Newkirk later told the investigator he had intercourse with the victim. Rape is punishable by up to life in prison with a minimum of at least one year of incarceration. I.F. man charged with rape while on parole I.F. man charged with rape while on parole Idaho Falls Post Register October 30, 2015 By TOM HOLM Magistrate Judge Mark Riddoch on Friday bound over an Idaho Falls man charged with forcibly raping a woman while he was on parole for a statutory rape conviction. Mitch S. Taylor, 25, is charged with rape when the victim resists but resistance is overcome by force or violence. Taylor's preliminary hearing was continued to Dec. 8. His bond is set at \$75,000. Court records show Taylor was sentenced in July 2009 in Madison County Court to 1 1/2 years to five years in prison for statutory rape. Taylor's recent rape charge stems from a domestic disturbance incident that occurred Aug. 21. Court records show the victim called Idaho Falls Police and said Taylor had reportedly punched and raped her. The victim had blood on her lips and face. The victim told an investigator she and Taylor got into an argument, and Taylor would only allow her to leave if she had sex with him first. The woman refused and then Taylor reportedly grabbed the victim by her neck and pinned her to a bed. The victim told investigators she kicked Taylor and tried to pinch him as he reportedly raped her. Court records show Taylor punched the victim multiple times in her face when she fought against him. A sexual assault exam was performed on the victim. The exam determined the victim had bruising to her lower arms, her back and forehead. The exam results also reportedly found evidence of sexual trauma. Taylor told an investigator he hit the victim but that they had consensual intercourse. Taylor told an investigator he argued with the victim and tried to shove her but missed and his hand hit her mouth. Taylor was also charged with misdemeanor domestic violence. The charge was dismissed Wednesday. Court records show Taylor had welts across his stomach; his knuckles were red; and he had scrapes on his chest. Past Post Register reporting shows Taylor, who was 19 at the time, was charged with two counts of statutory rape in April 2009. Taylor had sex with two underage girls and impregnated them, the paper reported. Rexburg Police detectives investigated Taylor and believed the two girls were among 10 to 15 underage girls Taylor had sex with. Most of the victims were between 15 and 16 years old. A detective told the paper in 2009 that Taylor was a "perfect example of a sexual predator." Rape is punishable by up to life in prison with a mandatory minimum of one year in prison.

Arraignment set for former cop

By LESLIE MIELKE October 30, 2014 Morning News

BLACKFOOT — Former Blackfoot Police Department Officer Paul Hardwicke appeared before Seventh Judicial Magistrate Judge James Barrett on Thursday for his preliminary hearing that lasted six hours. At the end of the hearing, the judge set Hardwicke's arraignment to begin at 8:45 a.m. on Friday, Nov. 20, before District Judge David Nye. Hardwicke, 45, was a former School Resource Officer (SRO) at Blackfoot High School. When charged in May with felony and misdemeanor counts, Hardwicke was immediately removed from his position as a SRO. He is no longer employed by the Blackfoot Police Department. When it was determined in May that a criminal action could have taken place involving Hardwicke, the Pocatello Police Department was asked to complete the investigation. Bannock County Assistant Chief Deputy JaNiece Price presented the state's case. The defense attorney is Justin Oleson. Witnesses called for the state from the Blackfoot Police Department included Detective Alan Bollschweiler, Lt. Scott Gay, Sgt. Todd Myler, Police Chief Kurt Asmus and Detective Bryan Harris from the City of Pocatello. As the Blackfoot Police Community Programs Coordinator in 2010, Hardwicke helped establish the drug drop boxes in Blackfoot. When this program was established, individuals are asked to properly dispose of prescription and over-the-counter medications in one of the three drop boxes. The drug drop boxes are located at City Hall, the Blackfoot Fire Department and the Courthouse. The goal of this program is to keep the medications from contaminating the water supply and to keep prescription drugs from illegal use. During Thursday's six hour preliminary hearing, it was established that the Blackfoot Police Department did not have any written policy or procedure for keeping track of the drugs that have been placed into the drug drop boxes. "The drugs put into the drop box are not regarded as

evidence,” said Police Chief Asmus. “The verbal procedure states that once the drop box is emptied, the drugs are boxed up and put in the evidence room until enough drugs are collected to transport them to Wasatch Disposal in Utah.” The Blackfoot Police Department is now working on a procedure to empty the drug drop boxes. Hardwicke faces two counts of felony possession of a controlled substance, oxycodone and morphine, and two counts of misdemeanor possession of a controlled substance, tramadol and legend drug. Each felony charge carries a maximum sentence of up to seven years and/ or a \$15,000 fine. Each misdemeanor possession of a controlled substance charge carries a maximum sentence of up to one year and/or a \$1,000 fine.

County faced with wrongful death suit Allegations state inmate Jeri-Alfred Cook should have been taken to hospital sooner

By DANIELLE WILEY October 31, 2015 Idaho Press-Tribune

CALDWELL — A lawsuit filed Friday alleges Canyon County officials ignored the pleas of a man held in the county’s jail to see a medical provider for a “serious respiratory infection” until he fell critically ill and ultimately died. The lawsuit filed in U.S. District Court against county employees and Sheriff Kieran Donahue states Jeri-Alfred Cook should have received care sooner. Cook was the man at the center of the American Civil Liberties Union of Idaho’s 2011 lawsuit against the Canyon County jail. Cook was found in his jail cell unresponsive and sitting in his own urine before he was taken to West Valley Medical Center on April 4, 2014. On April 6, Cook’s immediate family decided to take him off life support. He died the same day. Cook is also known as Alfred Girrard Young throughout the lawsuit. “One of the doctors at West Valley informed family and friends that if Mr. Young had been brought in to the hospital sooner, he likely would have survived,” according to the lawsuit. The 17 defendants include Donahue; Josette Murray, the health services administrator at the jail; Tiana Hernandez, a practical nurse at the jail; Carlotta Binns, a member of the jail’s medical staff; Arturo Macias, a registered nurse at the jail; K. Binns, a member of the jail’s medical staff; Alex Casebolt, a physician’s assistant working with the county; and 10 unidentified law enforcement officers and medical staff employed with Canyon County. The attorneys representing Cook’s estate are Craig Durham and Deborah Ferguson of Ferguson Durham PLLC. Herman Tiller is the plaintiff representing Cook’s estate. Durham did not return calls from the Idaho Press-Tribune seeking comment Friday. Canyon County spokesman Joe Decker referred to the county’s representative Michael Kane, an attorney from Boise. Kane gave no comment on behalf of the county as of press time. According to documents sent to the Idaho Press-Tribune from Durham, Cook successfully sued the county in federal court for punishing him because he filed grievances related to conditions inside the jail. For example, Cook said he was given improper dosages of his HIV medications. As a result of that lawsuit, a federal judge placed the county under a consent decree in 2012, which required jail officials to conduct things like transfers, reclassification and denials of privileges in specific ways. The lawsuit file claims Canyon County Commissioners and jail administrators, which included Donahue, knew of long-standing deficiencies in the jail relating to sanitation, ventilation and the delivery of medical care. The file also claims defendants Murray and Carlotta Binns never obtained any medical professional licenses even though they worked as medical professionals for the county. “Jail staff, including the defendants, made medical treatment decisions for which they were not licensed, trained or adequately supervised,” the lawsuit stated. The estate is seeking an unspecified amount in monetary damages. The lawsuit requests a set amount to be determined in trial to cover Cook’s injuries, present and future loss of income, pain and suffering, emotional distress and anguish. The file also seeks the courts to determine Cook’s estate an amount owed for punitive damages, reasonable attorney fees, expenses and other costs. **TIMELINE** The lawsuit listed a timeline of events regarding Cook’s situation and the deteriorating situation within the Canyon County Jail. In 2009: Six jail inmates filed a class action lawsuit, with assistance from the American Civil Liberties Union, alleging the living conditions at the Canyon County jail were significantly overcrowded, substandard and violated their constitutional rights. The plaintiffs also claimed the jail lacked a proper ventilation system. The jail was unsanitary due to mold and mildew on shower stalls, walls, ceilings and plumbing, according to the claim. The parties settled this case, and Canyon County entered a consent decree which maintained federal oversight of the jail and required the county to maintain certain basic standards at the jail. 2011: Cook was arrested for his third driving under the influence offense. He was detained in the Canyon County jail awaiting trial. During this time, Cook claimed the jail staff gave him improper doses of his prescribed medication. Cook, along with another plaintiff and the help of the ACLU, filed a class action lawsuit against the jail officials in federal court. The parties reached a settlement with Canyon County agreeing to change how it processed grievances. 2012: Cook pleaded guilty to his DUI charge and was sentenced to probation and drug court. During discretionary jail time for breaking his probation, Cook submitted grievances related to medical staff’s failure to provide him with his prescribed medication. 2013: Cook, while serving discretionary jail time, filed grievances alleging odor, sewage backup and unsanitary conditions in the jail bathrooms. Feb. 28, 2014: Cook suffered an addiction relapse and was sent to serve discretionary jail time in Canyon County. Cook was assigned the same jail pod he was placed in 2013. Conditions had not improved within that jail pod. Within a week, Cook began to experience diarrhea and breathing difficulties. The inmate filed grievances but was never personally examined by medical staff. March 11, 2014: Cook sent a concern form to jail medical staff informing them he had been choking on his own vomit at night and that his chest “felt like it was on fire all day.” March 17, 2014: Cook informed medical staff he was suffering “breathing problems, nausea, headaches and respiratory problems.” Murray, the health services administrator in the jail, responded to the

concern form saying Cook was receiving his HIV medication prescribed from his regular doctor and asked Cook if he wanted to be seen by the clinic. Murray did not follow up on Cook's symptoms after that, according to the lawsuit. March 24, 2014: Cook sent another concern form to medical staff saying he had started coughing up blood. A staff member referred to as K. Binns responded by prescribing Cook over the counter antacid medicine. K. Binns did not follow up afterward, according to the lawsuit. March 27, 2014: Cook filed another form, telling staff he was now vomiting blood. He also noted concern about his dentures. Murray responded in writing to Cook asking him to utilize the tooth brush provided to him to keep his dentures clean. She did address the bloody vomit issue, according to the lawsuit. April 2, 2014: Cook began experiencing diarrhea and notified medical staff. An unidentified staff member responded to Cook requesting diarrhea medicine to be administered again. April 3, 2014: Canyon County deputies were alerted to Cook's bunk by other inmates concerned Cook was having trouble breathing and was experiencing chest pain. Cook was examined by Macias, the jail's nurse. Macias noted Cook's pain levels were high but decided to place Cook in a holding cell for further assessment. Cook was checked on by Carlotta Binns, a staff member, but no further action was taken, according to the lawsuit. Later Murray examined Cook noting his pain has lessened while he was in the holding cell and he did not appear to be in distress. She had him sent back to his unit. Cook was sent back to the medical staff that afternoon with chest pain and breathing problems. Murray determined the pain was caused by anxiety and "musculoskeletal" issues. Murray took an electrocardiogram and called in physician's assistant Casebolt informing him Cook's blood oxygen level was at 88 percent. Casebolt asked Murray to contact him later that night if the oxygen level was still below 90 percent. By 6 p.m., Cook was brought in the medical unit by wheelchair with reoccurring symptoms. Hernandez, the practical nurse, examined him without reviewing the recent history of complaints, according to the lawsuit. She noted Cook's vital signs were normal and did not show signs of pain or distress. Cook was sent to a holding cell. After many hours Cook was found comatose, lying in a bed covered in urine. Deputies loaded Cook into a van and drove him to West Valley Medical Center. At the hospital, doctors noted Cook's situation as dire. April 6, 2014: Cook never regained consciousness. His family requested Cook be taken off of artificial life support. Cook died the same day at the age of 46. WHO WAS JERI-ALFRED COOK According to the lawsuit from Durham, Cook was an African-American male who was originally from Maryland. Cook and his domestic partner, Anthony Cook, lived in Canyon County while Cook was earning his master's degree at Boise State University. Before coming to Idaho, the lawsuit states Cook worked at the National Academy of Sciences for American Health Services Research organizations, and he taught grade-school. Cook also created computer databases for his employers. Cook was once a dancer at the New York School for the Arts. Cook also suffered addiction to alcohol, leading to his arrest and time in the Canyon County jail, according to the lawsuit. By 2014, Cook was finishing his degree and working in BSU's extended studies department. "By all accounts, he was a competent and well-liked student and employee," the lawsuit stated.

I.F. man sentenced to prison for rape, child porn

By TOM HOLM Post Register November 3, 2015

District Judge Dane Watkins Jr. on Monday sentenced an Idaho Falls man to 2 1/2 to 14 years in prison for raping a 15-year-old girl and possessing child pornography. Robert Curran, 21, pleaded guilty Sept. 14 to willful possession of child sexually exploitative material and knowingly distributing child sexually exploitative material by any means. Curran pleaded guilty May 19 to rape of a female victim younger than 16 when the perpetrator is 18 or older. The rape case stems from a June 2014 incident. Curran had sex with a 14-year-old girl after meeting her over a social networking app, court records show. While on pretrial release for the rape charge, Curran was found in possession of hundreds of images of child pornography May 28. Watkins sentenced Curran to two to 10 years in prison for the child pornography charge, to be served concurrently to his other sentence. Curran will be added to the sex-offender registry. Curran's attorney, Marvin Stucki said Curran's conduct was inexcusable, but that he did not need to be incarcerated. "I believe even in a rider program he would be at some risk given his stature and size," Stucki said, referring to Curran's small frame. A rider is a 90-day to yearlong rehabilitation program at a minimum security prison. Curran apologized for his actions prior to his sentencing. "I made a mistake," Curran said. "I would like to be on probation. I have counseling all set up, my first session is scheduled for tomorrow." John Dewey, Bonneville County chief deputy prosecutor, said a psychosexual report indicated Curran was at a high to medium risk to re-offend and Dewey recommended a two- to 15-year prison term. Dewey said there were many aggravating factors in this case, one being Curran creating an online profile claiming he was 14. "He disclosed to her (the victim) that he was 19 at the time ... he told her not to tell anyone because he could get into trouble," Dewey said. Dewey said Curran told the psychosexual evaluator he had for some time viewed child pornography and still did even after his arrest for rape. "There were literally hundreds of images, many involving children, animals and use of force; just terrible things," Dewey said. Court records show Curran initiated contact with the victim via the "MeetMe" mobile app. The app is a social networking and online dating service used to meet people, according to the MeetMe website. Curran invited the victim to meet him at a local Wal-Mart before taking her to his home and raping her. Curran later told a detective he had consensual sex with the victim. The victim told investigators she said to Curran that she was not ready to have sex which he replied "you can handle it," court records show.

Pearson pleads not guilty

By LESLIE MIELKE Morning News November 3, 2015

BLACKFOOT — The former Independence High School secretary appeared before Seventh Judicial District Judge Darren Simpson on Monday to plead not guilty to six felony charges. Danielle Pearson, 36, is charged with embezzlement and five counts of forgery. The maximum sentence Pearson could face for embezzlement is 14 years in the Idaho Department of Correction and/or a \$5,000 fine, plus restitution. The maximum sentence Pearson could face on each count of forgery is 14 years in the Idaho Department

Idaho Falls man sent on rider for statutory rape

By TOM HOLM Post Register November 3, 2015

District Judge Dane Watkins Jr. on Monday sentenced an Idaho Falls man to a rider program for a charge of raping a 14-year-old girl. Jose Diosdado Jr., 21, pleaded guilty Sept. 1 to rape of a female victim younger than 16 when the perpetrator is 18 or older. Watkins retained jurisdiction over Diosdado and placed him on a rider. A rider is a 90-day to yearlong rehabilitation program at a minimum security prison. Watkins gave Diosdado an underlying sentence of three to 10 years in prison. If Diosdado is unsuccessful in his rider program, Watkins could impose the underlying sentence. Diosdado said prior to receiving his sentence that he understood the consequences of his actions and asked for probation. "I know what I did and I regret it a lot," Diosdado said. Neal Randall, Diosdado's attorney, argued that his client was of low risk to be a repeat offender and could be rehabilitated through probation. "He is a young man and unfortunately he made a very, very stupid decision," Randall said. "But he turned himself in, he's not trying to get out of this situation." John Dewey, Bonneville County chief deputy prosecutor, recommended Diosdado receive a suspended two- to 10-year prison term and be placed on probation. Dewey argued the seriousness of the crime required imprisonment. "This is not just a mistake; it's disgusting," Dewey said. "He took advantage of a 14-year-old girl." Watkins said the largest aggravating factor was the age of the victim. Court records show Diosdado and a co-defendant, Daniel Mendoza, took the victim to a house Feb. 10 and began drinking. The victim became intoxicated. As Mendoza was driving the victim home she had sex with another juvenile in the back of the car. Mendoza stopped the car and Diosdado said "my turn," court records show. He entered the back seat and had sex with the victim. The girl later told a Bonneville County Sheriff's Office detective she did not say no to Diosdado's advances. Diosdado later told a detective that he knew the victim was underage. Mendoza has a sentencing hearing scheduled Dec. 14. He is charged with felony injury to a child. Reporter Tom Holm can be reached at 542-6746

I.F. man imprisoned for trying to hit officer with car

By TOM HOLM Post Register November 3, 2015

District Judge Joel Tingey on Tuesday sentenced an Idaho Falls man to three to 10 years in prison on charges of aggravated assault and battery after he threatened a woman with a hammer and, a month later, tried to hit an officer with a car. Charles Cortez, 27, pleaded guilty to the aggravated assault charge Aug. 13 and pleaded guilty to assault or battery upon certain personnel Aug. 24. Pursuant to a plea agreement, a charge of attempting to flee or elude an officer was dismissed. Tingey imposed a two- to five-year prison term for the aggravated assault charge to run concurrent to Cortez's other sentence. Idaho Falls Police detective Rome Stiffler spoke at the hearing and asked Tingey to impose a prison term because Cortez was a danger to society. Cortez nearly hit Stiffler with a car as Stiffler leaped into some bushes July 27. "I've had a few close calls in my career, but that was about the closest," Stiffler said. "I have no doubt he was trying to kill me." Cortez's attorney, John Thomas, said his client suffers from numerous mental illnesses including depression, post-traumatic stress disorder and bipolar disorder. Thomas recommended a rider program, a 90-day to yearlong rehabilitation program at a minimum security prison, so Cortez could receive mental health treatment. "We know his mental illnesses," Thomas said. "We can't say to Charles 'We don't know what to do with you, so we'll just put you in prison for however long.'" Tingey noted that Cortez scored a 43 on the Level of Service Inventory — a survey conducted on offenders used to determine their risk to re-offend. A score of 31 or greater is considered to be a high risk. "I can see the benefits of a retained jurisdiction, (rider program) but it doesn't outweigh my concerns about you in society," Tingey said. The assault charge stems from a June 14 incident. Authorities said Cortez threatened a 37-year-old woman with a hammer after getting into an argument. Cortez borrowed the victim's car without permission. During the argument, Cortez raised the hammer over his head in a threatening manner. The battery charge stems from the incident in which police officers arrived to find Cortez repeatedly hitting a car with a two-by-two piece of wood. Cortez bet the reporting party he could smash in the car's window. Stiffler talked to Cortez who entered a vehicle and fled, narrowly missing the officer. Stiffler ran into the yard of a nearby residence and leaped behind some bushes. Cortez drove over the sidewalk into the yard and ran through the bushes, almost hitting the officer.

Trial date set for man who threatened sheriff

By LAURA ZUCKERMAN Post Register November 3, 2015

SALMON — The trial for a Lemhi County man accused of threatening the life of Sheriff Lynn Bowerman with a loaded .22 rifle has been set for Dec. 8 before 7th Judicial District Judge Alan Stephens. Rancher Blair Kauer, 55, has pleaded not guilty to felony charges of assault on a law enforcement officer tied to allegations he pointed the rifle at Bowerman after trying to ram his pickup truck head-on into the patrol vehicle the sheriff was driving, court documents show. The incidents arose April 6 when Bowerman and Chief Lemhi Deputy Steve Penner responded to a report that Kauer was acting in a threatening manner toward people at an irrigation site outside Salmon. Just days before, Kauer had threatened to shoot a Lemhi County deputy, according to legal records. Bowerman was following Penner in a separate vehicle when they saw Kauer, whose license was suspended, driving a Ford 550 pickup on a county roadway. "I clearly observed in my driver side mirror Bowerman engage the emergency lighting on his patrol vehicle," Penner said in a sworn statement. "At this time I observed Kauer's vehicle move directly into Bowerman's traffic lane, and it appeared to me that Kauer would hit Bowerman's vehicle in a head-on collision." Kauer swerved out of the lane just before impact, triggering a high-speed, 20-mile chase to his Lemhi Valley home, according to the affidavit. There, Kauer threatened Bowerman with the rifle and the sheriff fired one round, striking Kauer in the left wrist. Outside police agencies later found the use of force by a peace officer justified in the incident, authorities said. Kauer in late May pleaded guilty to the felony assault charges and claimed during a court hearing he had fired on Bowerman. In July, he changed his pleas to not guilty and later suggested he would represent himself at trial, which initially was scheduled to begin this week. A public defender since assigned to represent Kauer, who remains jailed on a \$250,000 bond, did not immediately respond to a request for comment Tuesday. Kauer has been in trouble with the law before. He was charged this past January with felony aggravated assault in a pending case involving his son, according to court documents.

Hearing wraps up, no timeframe for decision on murals

Spokane Eye on Boise November 4, 2015

Today's public forum on controversial Depression-era murals at the new Idaho Law & Justice Learning Center, the former longtime Ada County Courthouse and the stand-in state Capitol for two years while Idaho's Capitol was being renovated, has wrapped up. "I deeply appreciate the courtesy that was extended from those who spoke on both sides of this issue," said state Department of Administration Director Bob Geddes. Geddes said he was the Senate president pro-tem when the Legislature met in the building and the murals were on display, with interpretive plaques. "During the two years that the Legislature occupied that building while this building was being renovated so well ... not a single person came into my office and complained about the display of those murals. That's my own personal experience," he said. "It will not be an easy decision, but here's my thought: If the news media didn't announce what that decision would be, how many of you would know? Would you come to the building and see? Have you been to the building to view those murals personally? I would just speculate that in most cases, the Idaho citizenry has not seen those murals, so I would invite you to do this." Geddes said, "The state of Idaho, you as citizens, have supported the renovation of that building, and that building has been very controversial," from the time that state officials decided to purchase it from the county. "When that decision was made to acquire that building, it wasn't based on the value of the building. In fact, the appraisal that was made indicated that bare land in that close proximity to this building (the Capitol) would be of much higher value, than that land with that building and that structure on it. I've always been fascinated by that appraisal fact." He said there's no time frame for the decision. "I will take all of those testimonies that have been provided today in very serious consideration and try to find a decision that will accommodate what I will view as a representative outcome," not just for those who spoke today, "but for all Idahoans. And I would encourage you to take the opportunity to go visit that building, look at the other murals that are there and displayed. Look at the effort and the energy that was put back into that building to make it a very functional and usable building for long, long, long into the future. I think it's worthwhile." He also invited additional comments by email, and said he'll also likely consult further with the tenants of the building, with staff, and with the governor. He told the crowd, "Thank you for being part of a public process, something that we all value and hold dear as citizens of the great state of Idaho."

Testimony: 'Show the history,' 'Try to sweep history under the rug,' 'Story of subjugation'

Spokane Eye on Boise November 4, 2015

Ted Howard, at right, cultural resources director for the Shoshone-Paiute Tribe, speaks at the state Capitol on Wednesday about historic murals depicting the lynching of a Native American man; at left are state Department of Administration Director Bob Geddes and state Historical Society Director Janet Gallimore. (Betsy Z. Russell) More testimony at today's public forum on controversial historic murals: Buster Gibson, vice chairman of the Shoshone-Paiute Tribe, said, "We support the display of the murals, in order to show the history that has happened." He said the tribe believes children need to know their cultural history and where they came from. Ted Howard, cultural resources director for the Shoshone-Paiutes, said, "We can try to sweep history under the rug, try to hide it, but it is what it is."

We cannot change it. What's happened has happened." He said both the people of the Shoshone-Paiute Tribe and the Shoshone-Bannock Tribes lived in the Boise Valley and were removed from it after gold was discovered in the area and sent to their current reservations; their language is the same. "There were quite a few Indian people hung on Eagle Island, just down the river here," he said. "So there were these kinds of things that happened. It's difficult to talk about, especially among our people." He said his grandmother told stories of bounties being offered for the scalps of Native Americans: \$100 for a man, \$50 for a woman, \$25 for a child. "We're still here," he said. "It may not be pleasant to talk about, but these are things that happened. Howard said with all due respect to those from other Native American tribes in other states who have spoken today, "I think the disposition of these murals should be between the affiliated tribes of this area and the state of Idaho. ... We support leaving the murals there, and I think we need to further discuss whatever kind of interpretive language that we may agree upon." Shaakirrah Sanders, a law professor at the University of Idaho who teaches classes at the new Idaho Law & Justice Learning Center, said, "I think that these are a poor effort to reflect the history of the atrocities against Native Americans." The lynching scenes are part of a series of murals that show happy settlers arriving and settling in Idaho, being threatened by fierce Native American warriors, and then, in the scenes in question, don't show the face of the man being lynched. She called that a "classic technique of art to deny the humanity" by not showing a face. "In my opinion the story that is told in these murals is one of subjugation," Sanders said. "These murals send a message to Native Americans to learn their place."

Testimony: 'It's genocide to me,' 'History offers valuable lessons,' 'Dehumanizes Native Americans'

Spokane Eye on Boise November 4, 2015

In continuing testimony on two controversial historic murals at the former Ada County Courthouse, now the Idaho Law & Justice Learning Center: Dallas Gudgell, a Lakota who grew up on a Montana reservation and has lived in Boise since 2006, called for removing the murals. "It's genocide to me, and it's really offensive for me," he said, "so I believe that they need to come down." He said Germans wouldn't display murals of Hitler's atrocities during the Holocaust. Stephanie Clarkson, a board member of Preservation Idaho, said, "The controversial images we are focusing on today depict what happens in the absence of the rule of law. ... In 2008 such a great effort went into providing these interpretive signs that so many people worked hard to put in place. We believe that the story that the mural is intended to tell is completely appropriate and fitting for a school of law. ... We ask that these murals be preserved and on display in the building, uncovered, with the appropriate interpretive signage. ... History may not always be packaged as what we'd like, but it enables us to learn valuable lessons." She added that if the state decides to keep the murals covered, it should update the existing interpretive signs to add small pictures of the offending murals, so people can see what they look like without having to lift a cover. Several other individuals, speaking for themselves, called for covering or removing the murals, some of them citing their own Native American heritage. Larry McNeil, a professor at Boise State University, said, "The mural dehumanizes Native Americans because of their race, and for that reason alone, the mural should be removed from public view and placed in a state museum."

Testimony: 'Citizens need to be reminded of this,' 'I see pain, racism,' 'A painful history'

Spokane Eye on Boise November 4, 2015

A section of a mural portraying white settlers lynching a Native American man is part of a series of Depression-era paintings in the former Ada County Courthouse, now the Idaho Law & Justice Learning Center. The two offending scenes are now covered by banners, at the request of the University of Idaho, which now has law students attending class in the building. (Associated Press / The Spokesman-Review) In continuing testimony on the lynching murals: Blaine Edmo, chairman of the business council for the Shoshone-Bannock Tribes, speaking by phone from Fort Hall, said, "They need to be openly displayed to remind our citizens of the state of Idaho of the history and the development of this state. This may not be tasteful and it may not necessarily be art, but it demonstrates some of the past history that has taken place in our state. Whether or not you can deem it genocide, but it was used against our native people, not only there in the Boise Valley but in other areas of the state. For whatever reason, we see that it was a method to remove our people. ... The citizens need to be reminded of this. These murals need to be openly displayed, and the reasons behind the depiction of these murals needs to be discussed among the public." David Leroy, former Idaho lieutenant governor and attorney general, suggested posting something like this above the scenes in question: "These apparent examples of injustice on the walls of this hall of justice challenge each of us never to compromise in seeking justice." Tai Simpson, a Nez Perce Tribe member and a Boise resident since 2005 who was speaking for herself, spoke in favor of covering the murals and uncovering them only for specific, educational events. "I don't see a vibrant history in the mural – I see pain, I see racism and I see a systematic genocide of our people," she said. "We are the people. Our blood is in the very soil on which the building was erected, this building and the courthouse. ... We were here long before the courthouse was, long before westward expansion and manifest destiny." She said, "It was at one point the rule of law that allowed for citizens of this country, pre-United States, to be lynched without justice. ... I believe that's what this mural represents, a picture speaks a

thousand words. By allowing its presentation to continue, we're accepting those atrocities committed against indigenous people." Ed Keener, a retired minister and human rights activist, said, "I like the solution that University of Idaho has presented. ... They can be used as teaching tools, but it takes a good teacher, and it takes a teacher knowing history and some time to use those particular panels as teaching tools. And just having them there uncovered does not provide that kind of opportunity." He said, "It's a painful, painful history, and yes, we do need to study our history.

Mural testimony: 'Not conducive to welcoming environment,' 'Offensive,' 'Visual censorship'...

Spokane Eye on Boise November 4, 2015

Among those speaking so far at the public meeting on the Depression-era lynching murals in the former Ada County Courthouse: Dean Mark Adams of the University Of Idaho College Of Law said his concern is whether the daily display of the murals, as law students, faculty and the public use the building, is "conducive to ... providing a welcoming environment." He said, "I believe ... that the answer is no. An open display of the two murals would be deeply troubling to the faculty and students at the law school," particularly to Native American and African American students and staff, he said, who would receive a "message that you're not welcome here. ... Faculty and staff would be subject to an unwelcome working environment." Adams said the scenes, which depict white settlers preparing to hang a Native American man, conflict with "our commitment to providing a welcoming and inclusive learning environment." He proposed that they remain covered, but be uncovered during special events that could provide context and dialogue, such as an April lecture by a distinguished visiting professor that will cover the history of the murals. Linda Copple Trout, former Idaho Supreme Court chief justice and current interim administrator of the Supreme Court, said the court voted unanimously to support covering the murals. "It's the court's view that the offensive murals are not deserving of public display," she said. "However, the court would leave it up to the Department of Administration to determine the means of carrying that out. The court's reasoning is that the murals in question are not accurately portraying actions which took place in Idaho, and thus their value ... for historical purposes is questionable." She added, "To display murals which demonstrate the very antithesis of the rule of law is inappropriate in a government-owned building." Michael Faison, director of the Idaho Commission on the Arts, said, "The Idaho Commission on the Arts supports unfettered access by the public to the old Ada County Courthouse's murals. ... The mural collection should be displayed as intended with the contextualized signage completed." He noted great works of art that document difficult and troubling scenes, such as Goya's 1808 painting of the execution of Spanish rebels by a firing squad, or Picasso's Gernika. "The history of art is the history of humanity in all of its complexity," he said. Idaho historian and author Cort Conley said "visual censorship" should not be part of the lease of the building to its occupants. "No resident should have to go into that building and lift up a vinyl curtain in order to share the content of the paintings with a visitor," he said. "We know between 1885 and 1965 that there were 20 documented lynchings in Idaho. ... Additionally, we know that Idaho was the location of the largest massacre of Native Americans in United States history, at Bear River, where somewhere between 350 and 500 Native American children, women and adults were killed." He noted that a mural about that event remains on display in the nearby Preston Post office, and has for more than 80 years.

Ririe man sent to prison for drugs, choking woman

By TOM HOLM Post Register November 4, 2015

District Judge Bruce Pickett on Wednesday sentenced a Ririe man to serve two to 15 years in prison on a charge of selling methamphetamine to an undercover agent. Juan De Dios Munguia-Medina, 20, pleaded guilty Aug. 27 to charges of attempted strangulation and possession of a controlled substance with intent to manufacture or deliver. The possession charge was amended down from trafficking in methamphetamine between 28 and 200 grams. John Dewey, Bonneville County chief deputy prosecutor, said Pickett imposed a sentence of two to five years in prison on Munguia-Medina for the attempted strangulation charge to run concurrent to his other sentence. The attempted strangulation charge stems from an April incident where Munguia-Medina tried to choke his girlfriend. Dewey said the plea agreement was binding on the court to impose the sentence. Court records show Munguia-Medina met an undercover agent at the WinCo Foods parking lot Feb. 12 and sold the agent about 1.02 ounces of methamphetamine stored in a plastic baggie. A warrant was issued, but Munguia-Medina was not arrested for selling the drugs until a later incident that occurred April 4. Authorities said Munguia-Medina tried to choke a 22-year-old woman in the crook of his arm. After choking her, Munguia-Medina left the Ririe residence and smashed the windows of the victim's vehicle with a shovel.

Idaho lynching murals in old county courthouse spark removal debate

By KIMBERLEE KRUESI The Associated Press Idaho Press Tribune November 5, 2015

BOISE — Two murals depicting the lynching of an American Indian in a former Idaho county courthouse are once again at the center of a disagreement over whether they should be displayed or covered up as offensive. Historic preservationists and members of Idaho's tribes oppose covering the 75-year-old murals that were commissioned as

part of a Depression-era program to help put artists to work, arguing that the public can learn from history's mistakes. However, the University of Idaho — currently leasing the building as a satellite campus of its law school — contends the murals create a negative learning space. State officials held a public hearing Wednesday to gather public input as they consider weighing in on the issue. The murals have been covered ever since the college opened up the law school earlier this year. "It may not be tasteful and it may not be art, but it displays some of the past history that happened in our state," said Blaine Edmo, a member of the Shoshone Bannock Tribe. "These murals need to be openly displayed. The reasons behind these murals need to be discussed." The murals show an Indian in buckskin breeches, on his knees with his hands bound behind his back. He is flanked by one white man holding a rifle and another holding the end of a noose dangling from a tree. Twenty-six murals were painted in southern California and mounted in the former Ada County courthouse in 1940. Because the murals are installed as part of the historic building's staircase wall, the state is banned from tampering or destroying the paintings. "The history of art is the history of humanity in all of its complexity," said Michael Faison, executive director of the Idaho Commission on the Arts. "The murals should be displayed with the proper contextualized plaques." Much the same arguments about the murals were repeated nearly nine years ago when lawmakers began preparing to move into the courthouse while the Capitol underwent renovations. Lawmakers, historians and tribal members came to a solution by spending months — described as painful on Wednesday — working on appropriate explanatory language to post on plaques under the murals to offer historical context to the images. However, now that the law school is occupying the building, the debate has resurfaced. "Covering the murals is not erasing history," said Mark Adams, dean of the university law school. "The display of the murals says, particularly to our Native American and African American students, that people like you are not welcome here." Ty Simpson, a member of the Nez Perce Tribe, echoed support for covering the murals. "I don't see a vibrant history in the mural. I see pain. I see genocide that has long-reaching impacts on our people today," Simpson said.

Inmate civil rights lawsuit numbers start to drop in Idaho

By REBECCA BOONE The Associated Press Idaho Press Tribune November 5, 2015

BOISE — The number of federal civil rights lawsuits brought by Idaho inmates is dropping, and could stay in the double digits this year for the first time since 2006. Some of the biggest reforms to Idaho's prison system, including court ordered improvements to medical care, reduced overcrowding and increased staffing levels have come in response to inmate lawsuits. Inmate civil rights lawsuits give the public a rare window into the nation's penal system, University of Michigan law professor and prison litigation expert Margo Schlanger said. "Prison litigation is one of the very few ways that prisons are held to account," Schlanger said. "It really is important for the public to understand what goes on in prison for there to be some accountability." According to the U.S. District Court of Idaho's filing system, 104 of the lawsuits were filed last year, and only 81 have been filed so far this year. That compares with a 10-year high of 139 cases filed in 2009. Idaho Department of Correction spokesman Jeff Ray said the department doesn't track the number of lawsuits filed each year, and while officials have noticed the decline they don't know what's behind it. In a state as sparsely populated as Idaho, it's tough to draw any conclusion from the numbers without reading each lawsuit. Filings can decrease for lots of reasons, including if a prolific inmate gets paroled, if inmates lose access to law libraries or mail service because of lockdowns, or if conditions change, said Ritchie Eppink, an attorney with the American Civil Liberties Union of Idaho. Still, spikes in inmate filings can tip judges off to the possibility of systemic problems, such as in the long-running lawsuit over conditions at the Idaho State Correctional Institution. That case began in the 1980s when so many inmates from the Idaho State Correctional Institution began filing lawsuits that the cases threatened to clog the courts. The judge presiding over the cases at the time noticed similarities and combined them into one class-action lawsuit, which became known as the "Balla case" after lead plaintiff Walter Balla. The Balla case led to several reforms that included strict limits on overcrowding, set dietary guidelines and widespread improvements to prison medical care. A series of lawsuits against private prison company Corrections Corporation of America prompted a judge to order increased staffing levels and tighter prison oversight. A lawsuit from Canyon County jail inmates led to a settlement spelling out improvements to the aging jail facility, including daily basics like well-laundered towels and uniforms for inmates. It's not easy for inmates to bring civil rights cases, Schlanger said. In 1996 the federal Prison Litigation Reform Act created new hurdles for imprisoned litigators, restricting the amount of money their attorneys can win in fees, making it tougher for them to get court-appointed attorneys and requiring them to pay filing fees that often are hundreds of dollars — a substantial financial burden for most inmates. The law was pushed as a way to reduce frivolous inmate lawsuits. Schlanger said the act means that inmates tend to lose cases faster and more frequently overall than other types of civil rights plaintiffs. Most prisoner civil rights lawsuits can be divided into three broad types, Schlanger said. "Most of them are small cases about small incidents — important to the people involved, of course," she said. "Then there are the dramatic cases involving grievous injury or death, but involving just one or two people. Then there are the big cases that are forward-looking, that say 'you need to change how these things are done.'" The last type tend to be class-action cases, like the Balla case, Schlanger said. In such cases, a "win" often comes when a judge tells prison officials to change the way they operate. Often a judge will keep an eye on the prison for a period of time to make sure the changes stick. "It's gotten harder to win those cases and harder to keep them, so the court supervision goes away faster," Schlanger said. "If you look at prisoner litigation like inventory at a store, the volume of stock is lower and it's moving out faster."