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School Liaison

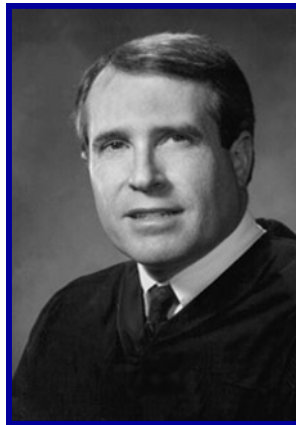
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Federal Bar Association Idaho Chapter

VOLUME 11 ISSUE 1

MARCH 2007

The Idaho Legal History Society— Preserving Idaho's Rich Legal History



B. Lynn Winmill
Chief Judge
U.S. District Court
District of Idaho

In 2004, Judge Ron Bush and I began working with a small group of lawyers, judges, court personnel, and other interested citizens to form an organization dedicated to preserving Idaho's rich legal history. One of our earliest and most enthusiastic members, Judge Bill Hart, passed away unexpectedly during this time. His passing reinforced the sense of urgency we felt to press forward in our efforts.

We soon discovered, to our great delight, that many Idahoans have been quietly preserving legal history on their own, and many more wanted to be part of that effort.

From these efforts, the Idaho Legal History Society (ILHS) was born. The ILHS's mission is to preserve Idaho's history by: (1) conducting oral histories of Idaho's judges, lawyers, and persons affected by the legal system; (2) preserving these oral histories for future generations; (3) making these oral histories available to historians, authors, and the public; and (4) to educate the public about Idaho's legal history. The Idaho Legal History Society has been organized as a not-for-profit organization, and application has been made for 501(c)(3) status with the Internal Revenue Service.

One of the primary missions of the ILHS is to educate the public about Idaho legal history. Our initial focus has been on one of the most famous trials in Idaho history — the trial of "Big Bill" Haywood.

PRESERVING IDAHO'S RICH LEGAL HISTORY

Haywood was accused of ordering the December 30, 1905 assassination of former Idaho Governor Frank Steunenberg on behalf of the Western Federation of Miners. The Haywood Trial had implications extending far beyond our state's borders. So much so, that it has been named by many historians and authors as "The Trial of the Century." Much of its significance stems from the fact that the Haywood Trial was an outgrowth of the violent labor and mining struggles in the western United States. It epitomized the changing social and economic environments of not only Idaho, but the West, and ultimately, the nation.



To commemorate the Haywood Trial, the ILHS has scheduled a number of activities. Co-Chair Judge Ron Bush (shown at left), and I commissioned local playwright Mike Silva to write a theatrical adaptation to commemorate the 100th anniversary of the Haywood Trial, which was conducted in Boise during the summer of 1907. Silva's play, *The Gate on 16th Avenue (A 1905 Murder and Trial of the Century)*, will be presented at the Boise Little Theater on March 15 - 17, 2007. Gary Anderson, who has obtained national prominence in presenting a one-man show concerning the life of Clarence Darrow, has agreed to play the part of Darrow.

The Gate on 16th Avenue, will be the centerpiece of our year-long observance. Relying heavily on the trial transcripts, Silva will explore the lurid allegations that "Big Bill" Haywood masterminded the murder of former Governor Steunenberg in retaliation for the governor's actions in quelling the labor unrest and violence in the Coeur d'Alenes. He will use the prism of the trial to examine the cataclysmic social and political events that were the backdrop of the murder and trial, including the labor insurrection of 1899, the military action taken by Governor Steunenberg against the miners, the assassination of the former Governor six years later, and the remarkable murder trial held in Boise in 1907. The play will briefly address the fascinating extradition and habeas corpus issues that arose out of the "kidnapping" of Haywood in Colorado and the midnight train ride that carried him back to Idaho. The play will also introduce us to the main protagonists in the trial, including Clarence Darrow, James Hawley, William E. Borah, and the trial judge, Fremont Wood.

PRESERVING IDAHO'S RICH LEGAL HISTORY

Finally, the play will cause us to reflect on the significance of the unexpected verdict, finding Haywood not guilty of the charges against him. Indeed, the play will remind us that these were both the darkest and proudest days in Idaho history.

Members of the Idaho Chapter of the Federal Bar Association have generously contributed financial resources to ensure the play's success, and will serve as hosts during our opening night reception on Thursday, March 15th. We hope you are able to attend.

But our activities in commemorating "The Trial of the Century" are not limited to *The Gate on 16th Avenue*. Members of the ILHS have assisted in organizing a number of activities. We have sponsored a series of public presentations to civic groups, bar associations, judicial conferences, and high school classes concerning the importance of the trial. A special effort has been made to work with the history and government teachers throughout the state to include segments about the Haywood Trial in their curriculum this year. Retired Supreme Court Justice Byron Johnson, has successfully undertaken a remarkable fund-raising drive to completely underwrite a documentary about the Haywood Trial. It will be produced by IPTV and will be aired on public television stations throughout the country in September 2007. The ILHS has worked with other groups to sponsor an exhibition at the Boise Art Museum of Scott Fife's work, "Big Trouble: The Idaho Project." Finally, the December edition of the Idaho State Bar Journal, *The Advocate*, was devoted entirely to articles about "The Trial of the Century," prepared by ILHS members. The response to that issue was so positive, that the ILHS has agreed to sponsor an issue each year that will be devoted to exploring and discussing our state's legal history. The ILHS hopes these events will increase the public's understanding and open a dialogue concerning the significance of the trial and impact that our legal system has upon Idaho's cultural, social, and economic institutions.

Another important component of the Idaho Legal History Society is the Oral History Project, chaired by Rita Ryan who recently retired as Communications Director at the Idaho State Bar. The process of taking an oral history is not only interesting, but also educational. It offers an opportunity for lawyers to learn from other lawyers and judges who have made a career and a life in the law. The ILHS Board has appointed a committee dedicated to the Oral History Project. Their job is to organize and implement a process that will appear "seamless" to volunteer interviewers who need advice and support as they plan and carry out their interviews.

Preserving Idaho's Rich Legal History

The committee has also identified over 50 Idaho lawyers and judges — those “narrators” whose compelling stories must be captured soon for the enlightenment, education and enjoyment of future generations.

The Society has purchased high-quality video and audio equipment. Troy Reeves of the Idaho State Historical Society and Ms. Ryan have trained more than twenty interviewers in various locations in the state, and there are opportunities for further training for lawyers and judges interested in participating in this worthwhile project.



Rita Ryan
 Chair, Oral History Project
 Idaho Legal History Society

With the support of their national organization, the Idaho Court Reporters have graciously agreed to transcribe oral history interviews to gain continuing education credit. Boise State University students and graduates of the legal secretary program, have also agreed to transcribe oral history interviews.

This has been an exciting and fascinating project. Judge Bush and I are so thankful for the support that has been provided to the ILHS by members of the Idaho Chapter of the Federal Bar Association. We are confident that your support will be repaid, with interest, as you see the significant legal history of our state brought to life for our citizens, and preserved for future generations of Idahoans.

We are all very grateful to Ms. Ryan for her dedication and the leadership role she has taken in this project. If you would like to volunteer in the Oral History Project, please contact her at rtarya@cs.com.

For more information about the ILHS and a calendar of other scheduled activities, go to our website at: [www.id.uscourts.gov/Community Outreach/Idaho Legal History Society](http://www.id.uscourts.gov/Community%20Outreach/Idaho%20Legal%20History%20Society). Additionally, special appreciation and thanks is given to our webmaster Gary Stallones, who has worked tirelessly on our webpage.

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AFFILIATE MEMBERSHIPS AVAILABLE TO UNIVERSITY OF IDAHO LAW STUDENTS

Former Chapter President Ted Creason (photo shown), and the Chapter's Executive Committee have initiated an Affiliate Membership program for law students at the University of Idaho College of Law. By becoming an Affiliate Member of the Chapter, a law student can enjoy the benefits of membership in the Federal Bar Association. In addition to receiving publications and opportunities to meet informally with other federal practitioners and judges, the Chapter will be offering student members participation in its newly-formed mentor program.



The mentor program will pair a student with a member who is willing to share insights and information about federal practice and protocol in the federal court system.

Several of our members have already indicated a willingness to be "paired," but we can use some more volunteers. If you can spare just a little time for this, please notify Susie Headlee at Judge Winmill's chambers, or contact an Executive Committee member right away.

These Affiliate Members are the future of our organization, and tomorrow's worthy adversaries, clerks and judges. This is a great way to get acquainted. The Chapter looks forward to your participation.

Contact Information for this Project:

Susie Headlee, Executive Committee Member
550 West Fort Street, 6th Floor
Boise, ID 83724
(208) 334-9373

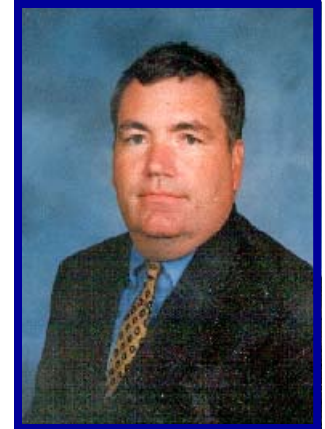
Susie_Boring-Headlee@id.uscourts.gov

A MARVELOUS OPPORTUNITY TO FULFILL OUR OBLIGATIONS AS LICENCED IDAHO ATTORNEYS

**By Bankruptcy Attorney
Joseph Meier**

This article was first printed for The Commercial Law and Bankruptcy Section's newsletter, and is reprinted with permission by Mr. Meier.

Are you an attorney that has wondered how to fulfill your obligation to represent indigent persons but have been afraid to get pulled into a large unending case? Do you enjoy that warm feeling from helping someone in need? Finally, have you wanted to volunteer to help in the Bankruptcy Section but have been unable to determine how? Now for the first time the Commercial Law and Bankruptcy Section of the Idaho State Bar and the United States Bankruptcy Court have an answer to each of those questions with the creation of the Bankruptcy Helpline.



Each month the United States Bankruptcy Court Clerk's office receives between 35 and 50 calls from people that are neither represented nor adequately representing themselves in filed bankruptcy cases. The calls come from both debtors and creditors. The clerks cannot answer legal questions and therefore usually are unable to provide assistance to these callers. The Commercial Law and Bankruptcy Section, the United States Bankruptcy Court and the Idaho State Bar now has the answer to not only this problem but also has created the opportunity for you to fulfill the obligations you promised to perform when you received your Idaho State Bar license.

The answer is the Bankruptcy Helpline. This Helpline has been established by the Idaho State Bar as a place that the clerk's office can refer the unrepresented parties for answers to specific legal questions. The responses are provided anonymously by attorneys that participate in the program who can answer the question either by phone or e-mail.

So now that you see the merits of the program how does it work and how do you volunteer? First let's see how it works.

The United States Courts have helped to fund a telephone number, which can be given out by the clerks or bankruptcy trustee offices throughout the state for a party (Debtor or Creditor) that has a pending legal matter before the U.S. Bankruptcy Court and has no representation. The caller calls the phone number and leaves a message providing general information about the case and the legal issue that is involved. The Idaho State Bar maintains a list of volunteer attorneys who are then put in contact with the caller. The caller is then contacted by the attorney, who can remain anonymous. The attorney contacts the caller within 48 hours. The volunteer attorney is given a protocol to use with the caller.

Bankruptcy Attorney Joseph Meier

The protocol is that the volunteer attorney: 1) is not representing this person; 2) is not entering an appearance; 3) will not appear in court; and 4) is attempting on the call to provide help to either answer the legal question or to direct the caller to pursue certain options. If caller's question cannot be readily answered, then there are three options to offer the caller. If the volunteer believes the caller needs additional legal representation that cannot be offered on the telephone call then the following procedure will be followed. First, the caller can be referred to the Idaho State Bar Legal Referral Service for consultation with an attorney that has signed up for that service. The referral service is a resource that helps individuals to find an attorney when they are able to pay for legal services but have been unable to locate an attorney. Second, if the caller is indigent, they can be referred to the Volunteer Lawyers Program run by the Idaho Law Foundation, which provides a qualified applicant with an attorney who has agreed to appear and represent indigent parties in Idaho. Third, the volunteer could decide to enter an agreement with the caller to take the case or issue on and appear for the caller after working out their own legal representation agreement.

Thus as you can see this program is designed to get specific answers to unrepresented parties in bankruptcy proceedings. If there is no simple answer then the procedure established giving individuals options will hopefully break the current log jam and the frustration that these people experience when they try to go it alone. Further, as this resource is only available to persons who have already elected to proceed without an attorney, the Consumer Debtor's Bar should not worry that this helpline is taking paying cases away from them.

So how can you volunteer? It is as simple as a telephone call or an e-mail to either Carol Craighill at ccraighill@isb.idaho.gov or Mary Hobson at mhobson@isb.idaho.gov, or telephone either of them at the Idaho State Bar at (208) 334-4500.

When you call to volunteer for the Helpline, think of the two other opportunities you have. First you can sign up with the Idaho State Bar as a referring attorney. As you might expect, referrals will grow under this program and you may want to be on the referral roster to get paying cases. Second, you can volunteer your services to take a case or a discrete issue as an Idaho Volunteer Attorney. If you have never done so you are missing out on one of the most personally fulfilling experiences you can have as a practicing attorney. I say this because the Idaho Law Foundation not only screens these individual clients but also ensures that they do not waste your time. Each of the cases I have accepted has resulted in very grateful individuals who had real but solvable problems. These people have been some of the most considerate individuals I have ever represented and nothing beats the end of your day when you receive a sincere thank you from someone whose life you know you have changed for the better. Does this sound too syrupy from someone who is a known cynic? Try it sometime and you will not regret it either!

Bankruptcy Attorney Joseph Meier

In conclusion, this new Helpline provides the type of assistance to people that all professionals can agree is not only necessary but also is the fulfillment of their oath. If you are more cynical and only want to look at the economics of the situation then consider that every unrepresented party that is helped frees up numerous court hours from navigating questions asked by unrepresented parties. The reduction of court time devoted to these issues will help you get your matters heard more timely. Finally, this gives those aspiring debtor's attorneys, disguised as creditor's attorneys, and vice versa, an ability to flex their legal talents on behalf of the public. Isn't that what most of us said we wanted to do when we applied to law school?

So please join me and the leaders of the Commercial Law and the Bankruptcy Section by signing up to be a volunteer on the Bankruptcy Helpline. The returns for your time investment will multiply for you and the organized bar well into the future.

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UPCOMING CLE — Friday, May 4 (Boise)

MAY 4, 2007—FBA CLE PROGRAM

On Friday, May 4, 2007, at the James A. McClure Federal Building and United States Courthouse in Boise, the Idaho Chapter of the Federal Bar Association will sponsor a one-day continuing legal education program. Cost will be \$50 for members, \$65 for non-members, and \$25 for court personnel (including staff attorneys). We are extending an invitation to all federal court legal externs to attend free. Registration information will be made available within the next month.

The program will begin with registration at 8:30 a.m., program kick-off by President Trudy Fouser at 9:00 a.m., and then start right up with a panel discussion of hot topics in the bankruptcy world with practitioners, moderated by Bankruptcy Judge Jim Pappas, who is also a member of the Bankruptcy Appellate Panel (BAP).

Included on the morning schedule is a panel discussion involving staff attorneys for our District and Magistrate Court judges discussing ethical considerations and potential problems that arise during communication with the staff attorneys.

A somewhat unique panel discussion regarding juror impressions and feedback will be moderated by Ninth Circuit Court of Appeals Judge Richard C. Tallman. The panel will consist of past jurors from civil and criminal trials conducted in federal court.

Wrapping up the day, and to make sure everyone stays to the end, Chief District Judge Lynn Winmill and career law clerk Dave Metcalf will discuss evidence issues and demonstrate the high tech evidence presentation equipment used in federal court.

Please spread the word in your firms and elsewhere. We have intentionally kept the costs low in order to make this program financially accessible to all practitioners.

Contacts: Wendy Olson, Program Director - (208) 334-1211
Barry McHugh, CLE Director - (208) 263-8517

Jury Verdicts, District of Idaho



Judge Mikel H. Williams
District of Idaho

**Bonner v. Union Pacific Railroad
And General Motors' Electro-
motive Division**
CV-03-134-S-MHW
Judge Williams, August 2006

Plaintiff: Pro Se

**Defendant Union Pacific:
Jeffery Devashrayee and
Kent Hansen, both Salt Lake City**

**Defendant General Motors:
Howard Burnett
Hawley Troxell Ennis & Hawley**

**Jury Found in Favor of the
Defendants**

Gomez v. Mastec North America
CV-03-421-S-MHW
Judge Williams, August 2006

**Plaintiff: Eric Rossman
Erica Phillips
Rossman Law Firm**

**Defendant: Christine Salmi
Richard Boardman, Perkins Coie**

**Jury Found in Favor of Plaintiff;
Damages in the amount of
\$466,039.00 (Breach of Contract)**



Judge Edward J. Lodge
District of Idaho

United States v. Michael Woods
CR-06-251-S-EJL
Judge Lodge, January 2007

**Defendant: J.D. Merris
Reardon, Merris and Herndon
Member, Federal Court CJA Panel**

**Government: Monte J. Stiles
Assistant United States Attorney**

**1/24/07—Defendant pled guilty the
morning of trial.**

**2/5/07—Defendant withdrew guilty
plea, which was denied on 2/12/07.**

**Sentencing set April 2, 2007 at
3:00 p.m. in Boise**

United States v. Paul Wm. Driggers
CR-06-173-N-EJL
Judge Lodge, February 2007

**Defendant: Kathleen Moran
Federal Defenders, Spokane, WA**

**Government: Joshua Taylor
Assistant United States Attorney**

**Charge: Murder for Hire
Verdict: Guilty of charges of
Causing Another to Travel in Inter-
state Commerce in the Commission
of Murder for Hire**

**Sentencing set May 21, 2007 at
2:00 p.m. in Coeur d'Alene**

JURY VERDICTS (continued)

United States v. Simon Hernandez
CR-06-194-S-BLW
Judge Winmill, January 2007

Defendant: Leo N. Griffard, Jr.
Retained, Boise, Idaho

Government: Aaron N. Lucoff
Assistant United States Attorney

Defendant pled guilty the morning of the trial, before the jury had been take to the courtroom

Sentencing set March 19, 2007 at 10:00 a.m. in Boise

Robinson v. Twin Falls County
CV-04-618-S-BLW

Jury Trial Conducted by the Honorable David O. Carter
Central District of California

Issue: Civil Rights Violation (Employment Discrimination; Wrongful Termination)

Plaintiff: Thomas D. Kershaw, Jr.
Twin Falls, Idaho

Defendant: Michael J. Kane
Kane & Tobiason, LLP Boise, ID

Case Settled the evening of the first day of Trial (1/16/07)

Loomis v. Heritage Operating
CV-04-617-S-BLW
Judge Winmill, January 2007

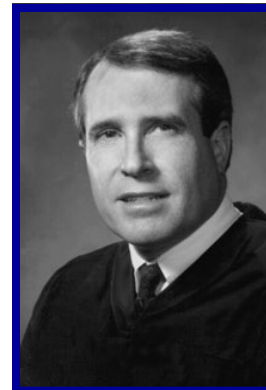
Plaintiff:
John Kormanik and Guy Hallam
Kormanik Hallam and Sneed Meridian, Idaho

Defendant: Gregory Tollefson and Brad Dixson
Stoel Rives Boise, Idaho

Kim Dockstader,
Dockstader Law Office
Boise, Idaho

Ralph Charles Wilkin, III
Glass Law Firm, Tulsa, OK

Case was dismissed by Judge Winmill the third day of trial



B. Lynn Winmill
Chief Judge
U.S. District Court
District of Idaho

Complaints Filed in Federal Court

UBI, Inc. v. Agristar, Inc., CV-07-07-S-LMB Breach of Contract; Diversity Jurisdiction

- Kenneth C. Howell, Hawley Troxell Ennis & Hawley, Boise, ID for Plaintiff
- Defendant's representation not know at this time.

UBI is a reseller of food products. Agristar manufactures potato flakes in Canada. In October 2006, UBI agreed to buy 2,200 metric tons of dehydrated potato granules at a price of \$0.47 per pound from Agristar. Shortly after this agreement the market for potato products took a significant improvement in price, with similar products selling at over \$0.90 per pound. Agristar has not delivered its product to UBI. UBI claims to have incurred as cost of over \$1,892,000.

UBI is suing for breach of contract and for intentional interference with economic expectancy.

CIT Group/Consumer Finance Inc. v. Hutt, CV-07-02-E-BLW
Breach of Contract; Diversity Jurisdiction

- Amy Catherine Bistline and Michael B. Hague of Paine, Hamblen, Coffin, Brooke & Miller, Coeur d'Alene, ID for Plaintiff
- Kevin B. Homer, Idaho Falls, ID, for Defendants

Hutt applied for a second mortgage on a house in Malibu, California in January 2002 with the house as the security. The house was valued at \$2,500,000. CIT is the junior lien holder and issued a 30-year loan for \$184,086 at 10.49 APR. Hutt agreed to pay \$1,682.53 monthly. CIT received payments from April 2002 until May 2003. CIT has not received any payments from Hutt beginning June 2003.

CIT sued for breach of contract, fraud, fraud conspiracy, and violation of business and professions code. The suit was filed in state court and has been removed to federal court based upon diversity jurisdiction.

Recent Complaints Filed in Federal Court

Schenck v. Motorcycle Accessory Warehouse, CV-07-08-S-EJL Breach of Contract and Diversity Jurisdiction

- Eric Rossman, Rossman Law Group, PLLC for Plaintiff
- Candy Dale and Karen Overly Sheehan, Hall Farley Oberrecht & Blanton for Defendants

Schenck brings an action for breach of contract in state court, and the action has been removed to federal court based upon diversity jurisdiction.

Richard Schenck entered into an agreement with Robert Salmon, CEO of MAW, for his employment as MAW's President commencing January 1, 2003. Pursuant to the employment contract, Schenck was to receive a salary of \$200,000.00 per year, plus a bonus of 25% of the annual net profits of the company should such profits exceeds \$550,000.00 in a year. On November 4, 2005 Schenck's employment with MAW was terminated by Salmon. Pursuant to the employment agreement. At the time of his termination, Schenck alleges that he is entitled to \$330,300.00 in severance, and \$165,150.00 which was to be paid upon termination with the balance to be paid over five years. To date, MAW's has failed to pay any portion of Schenck's deferred compensation, contractual severance, or buy-out of Schenck's 5% interest in MAW.

Lara v. Blades, CV-07-09-S-LMB Civil Rights; Federal Question Jurisdiction

- Juan Lara, Pro Se Prisoner
- As of February 2007, no Appearance has yet been filed on behalf of Defendants

Juan Lara is a citizen of Idaho presently residing at Idaho State Correctional Institution. Lara alleges that he has sustained further damage to his right wrist due to interference, and denial of treatment, by Randy Blades, Warden of ISCI. Therefore, Lara alleges that Blade's conduct (denying Lara of treatment) amounts to cruel and unusual punishment in violation of his rights under the Eighth Amendment to the United States Constitution.

Lara has sued in federal court alleging civil rights violations under Title VII of the 1964 Civil Rights Act. He is asking the court to enter preliminary and permanent injunctions ordering Blades, to provide Lara with treatment of his right wrist.

Complaints Filed in Federal Court

Olsen v. GF&C Holding, CV-07-10-S-BLW

Civil Rights; Federal Question Jurisdiction

- Steven Olsen, Huntley Park for Plaintiff
- Rex Blackburn, Blackburn & Jones for Defendant

Mike Olsen began his employment with GF&C Holding around December 1, 2001, as the Director of Human Resources. During the course of his employment, Mike Olsen consistently met or exceeded GF&C Holding's expectations. Olsen was promoted to Vice President of Human Resources in either April or May of 2002. GF&C Holding terminated Olsen's employment in May 2004. Olsen received an excellent performance review and a 7-1/2% salary increase approximately 6-1/2 weeks prior to Olsen's termination. Olsen alleges that he was terminated in retaliation for the stand he took against GF&C Holding's violation of state and federal laws prohibiting discrimination, retaliation, and harassment in the workplace and his refusal as Human Resources Director to allow GF&C Holding's discriminatory and retaliatory actions to continue towards GF&C Holding's employees.

Entchev v. Burch, CV-07-27-E-BLW

Negligence; Diversity Jurisdiction

- Reed W. Larsen, Cooper & Larsen, Chtd., Pocatello, ID, for Plaintiff
- M. Michael Sasser, Sasser & Inglis, P.C., Boise, ID for Defendants

Defendant Michael Clements was operating a 1993 Volvo truck and Defendant William W. Spence was operating a 1997 Peterbilt truck on U.S. Highway 30 at the Ranch Hand Truck Stop in Bear Lake County, Idaho. Spence made a left-hand turn from the Truck Stop onto U.S. Highway 30 in fog. Clements ran into the trailer being pulled by Spence. Immediately after the collision, Spence stopped his vehicle in the middle of the Highway and left it there while he examined the accident scene. Plaintiff Stoyan Entchev alleges he encountered Spence's unlit trailer in Entchev's lane of traffic. He alleges that he veered right but was unable to avoid side-swiping Spence's unlit trailer.

Entchev has sued in federal court, alleging negligence, negligence entrustment, and negligence per se.

Complaints Filed in Federal Court

Mountain Gold, Inc. v. Diamond Brand Potato, LLC, CV-07-03-E-LMB

Agriculture; Federal Question Jurisdiction

- David H. Maguire, Maguire & Kress, Pocatello, ID for Plaintiffs
- Marvin M. Smith, Anderson Nelson Hall & Smith, Idaho Falls, ID for Defendants

Mountain Gold entered into an agreement to ship produce in interstate commerce to customers of Diamond Brand Potato and DBP will pay the bill. Mountain Gold has shipped \$75,032.34 worth of produce but has not been paid by DBP. Under the Perishable Agricultural Commodities Act (PACA), Diamond Brand Potato is required to have a trust asset to pay suppliers for produce. Mountain Gold has made numerous attempts to collect the money and claims DBP has failed to have adequate money in its trust.

Mountain Gold is suing for enforcement of the PACA trust, a failure to pay promptly, breach of contract, and a breach of fiduciary duty to PACA Trust beneficiaries

Van Der Heijden v. Safeco Ins., CV-07-05-C-EJL

Insurance; Diversity Jurisdiction

- John R. Layman, Layman, Layman, McKinley & Robinson, Spokane, WA for Plaintiffs
- Ronald Gerald Morrison and Regina Michelle McCrea, Morrison & Assoc., PA, Spokane, WA for Defendant

Van Der Heijden and his wife are residents of Bonner County. They purchased a homeowners' policy from Safeco in 2000 and made yearly premium payments each year through 2006. Van Der Heijden claims the policy guaranteed replacement coverage up to 100%. In 2002 Safeco purportedly changed the homeowners' policy, which eliminated guaranteed replacement. In January 2006 a fire destroyed Plaintiffs' home. The cost to replace the home was valued at \$1,862,897.70. Safeco issued a payment to Van Der Heijden for \$1,154,600.

Van Der Heijden brought an action for breach of contract, breach of fair dealing, and a tort action of bad faith in state court. The action has been moved to federal court based upon diversity jurisdiction.

Complaints Filed in Federal Court

UBI, Inc. v. Agristar, Inc., CV-07-07-S-LMB Breach of Contract; Diversity Jurisdiction

- Kenneth C. Howell, Hawley Troxell Ennis & Hawley, Boise, ID for Plaintiff
- As of February 2007, no Appearance has yet been filed for Defendant

UBI is a reseller of food products. Agristar manufactures potato flakes in Canada. In October 2006, UBI agreed to buy 2,200 metric tons of dehydrated potato granules at a price of \$0.47 per pound from Agristar. Shortly after this agreement the market for potato products took a significant improvement in price, with similar products selling at over \$0.90 per pound. Agristar has not delivered its product to UBI. UBI claims to have incurred as cost of over \$1,892,000.

UBI is suing for breach of contract and for intentional interference with economic expectancy.

CIT Group/Consumer Finance Inc. v. Hutt, CV-07-02-E-BLW
Breach of Contract; Diversity Jurisdiction

- Amy Catherine Bistline and Michael B. Hague of Paine, Hamblen, Coffin, Brooke & Miller, Coeur d'Alene, ID for Plaintiff
- Kevin B. Homer, Idaho Falls, ID, for Defendants

Hutt applied for a second mortgage on a house in Malibu, California in January 2002 with the house as the security. The house was valued at \$2,500,000. CIT is the junior lien holder and issued a 30-year loan for \$184,086 at 10.49 APR. Hutt agreed to pay \$1,682.53 monthly. CIT received payments from April 2002 until May 2003. CIT has not received any payments from Hutt beginning June 2003.

CIT sued for breach of contract, fraud, fraud conspiracy, and violation of business and professions code. The suit was filed in state court and has been removed to federal court based upon diversity jurisdiction.

N. RANDY SMITH, JUDGE

Nominee to the U.S. Court of Appeals for the Ninth Circuit



Judge N. Randy Smith of Pocatello, Idaho, was recently nominated and confirmed to the U.S. Court of Appeals for the Ninth Circuit. Judge Smith is highly qualified to serve on the Ninth Circuit, having served as a respected state court judge for more than a decade. His nomination enjoyed strong bipartisan support.

Judge Smith was appointed as a district judge for Idaho's Sixth Judicial District in 1995. He won reelection in 1998 and 2002. From 2004 until his elevation to the Ninth Circuit, he served as the court's Administrative Judge.

As a trial judge, Judge Smith presided over more than 6,000 civil and criminal trials, including more than 50 trials and 100 appeals. He is well known for his excellent mediation skills, having mediated over 700 state and federal cases during his judicial career. The American Bar Association unanimously rated Judge Smith "Well Qualified," — its highest possible rating.

Richard Stallings, chairman of the Idaho Democratic Party, member of the Pocatello City Council, and former Idaho congressman (1985-93), describes Judge Smith as "a fine judge." Speaking of mediations that Judge Smith handled involving the City of Pocatello, Stallings stated, "In both cases, he served us very well . . . He had done his homework and was frank with people."

Fred Hoopes, an Idaho Democrat, well-respected lawyer, and former state bar president, has said that Judge Smith is "a great judge" and "a great guy," describing him as "ethical, consistent, [and] conservative."

Judge Smith has valuable experience as a corporate lawyer, appellate and trial litigator, and professor, in addition to his service on the bench. Following graduation from Brigham Young University Law School in 1977, Judge Smith worked as counsel for the J.R. Simplot Company. He specialized in handling corporate, business, and tax law matters. From 1982 to 1995, Judge Smith practiced as a civil litigator with the law firm of Merrill & Merrill, focusing on corporate civil litigation and insurance defense cases. As part of his appellate work, he argued two cases before the Ninth Circuit. Judge Smith has served as an adjunct professor in the management and political science department of Idaho State University, where he has taught courses in business law, legal environment, and judicial process. He previously taught accounting classes at Boise State University and Brigham Young University.

In 2005, Judge Smith received Idaho State University's prestigious "Statesman of the Year" award, which is presented each year to an Idahoan who makes a significant contribution to the welfare of Idaho. Judge Smith was honored for his efforts to reduce crime and prevent recidivism. In 2003, Judge Smith received the Idaho Court system's George G. Granada, Jr. Award for Professionalism as a trial judge, in recognition of his demonstrated professionalism and motivating and inspiring his colleagues on the bench by his character and action.

Judge Smith will be sworn in sometime in March 2007, and will chamber in Pocatello, Idaho.

RECENT DECISIONS—NINTH CIRCUIT



Judge Ronald M.
Gould
Ninth Circuit
Court of Appeals

Becker v. Gonzales, 473 F.3d 1000 (January 10, 2007)

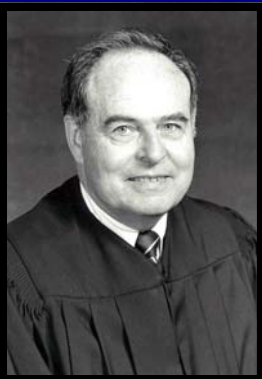
Hug, Tashima, and Gould

Petition for Review from: BIA

Argued & Submitted: 11/17/06

Subject Matter: Immigration

Holding: The panel denied a petition for review of the Board of Immigration Appeals' dismissal of petitioner's appeal of an Immigration Judge's denial of his application for cancellation of removal. The panel held that a conviction for an aggravated felony precludes eligibility for cancellation of removal even absent a charge and finding of removability on that ground. The panel held that the decision in *Lopez-Castellanos v. Gonzales*, 437 F.3d 848 (9th Cir. 2006) (concluding that depriving those eligible for a discretionary waiver at the time of their guilty plea of eligibility for cancellation would have an impermissibly retroactive effect), does not supercede the BIA's finding that petitioner here is ineligible to apply for cancellation of removal. The panel held that even were petitioner able to waive his 1978 marijuana sale conviction under former Immigration and Naturalization Act § 212(c), it would nonetheless remain an aggravated felony for purposes of excluding cancellation because he also had a 2004 drug possession conviction.



Judge Robert R.
Beezer
Ninth Circuit
Court of Appeals

Ward v. Circus Circus Casinos, Inc., 473 F.3d 994 (January 10, 2007)

Beezer, O'Scannlain and Trott

Appeal from: D. Nev. [Pro, J.]

Argued: 10/16/06

Submitted: 1/4/07

Subject Matter: Labor Law

Holding: Reversing the district court's summary judgment and remanding with instructions to remand the case to state court, the panel held that workers' state law tort claims against their employer, alleging the use of physical force by the employer's security guards, were not preempted by Section 301 of the Labor Management Relations Act because the state law factual inquiry did not turn on the meaning of any provision in the workers' collective bargaining agreement. The panel affirmed the district court's denial of the workers' motion for leave to amend their complaint. It declined to impose sanctions on the basis of the workers' violations of Fed. R. App. P. 28(a) and 9th Cir. R. 30-1 because the appeal was meritorious and the workers' procedural violations were not so egregious as to prevent the employer from meaningfully responding to the appeal.

Morales v. Gonzales, 472 F.3d 689 (January 3, 2007)

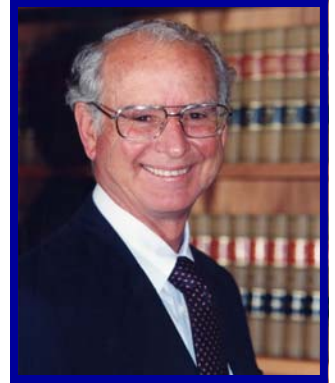
D.W. Nelson, Thompson, and Paez

Petition for Review from: BIA

Argued & Submitted: 10/17/06

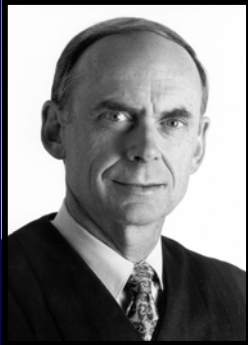
Subject Matter: Immigration

Holding: The panel granted in part a petition for review of the Board of Immigration Appeals' summary affirmance of an Immigration Judge's removal order and denial of asylum, withholding of removal and protection under the Convention Against Torture. The panel concluded that petitioner's conviction for communication with a minor for immoral purposes under section 9.68A.090 of the Revised Code of Washington is a crime involving moral turpitude ("CIMT"), and that the panel thus lacked jurisdiction to review the IJ's finding that petitioner was removable for conviction of a CIMT. The panel held, however, that it does have jurisdiction to review the denial of petitioner's applications for asylum, withholding of removal, and CAT relief, based on her treatment as a male-to-female transsexual, and the panel granted the petition for review of those claims. The panel held that it has jurisdiction over the withholding claim, because it involves a question of law regarding what an IJ may consider in determining whether a prior offense is a particularly serious crime. The panel held that it has jurisdiction over the denial of CAT relief on the merits under *Unuakhaulu v. Gonzales*, 416 F.3d 931 (9th Cir. 2005). The panel deferred to the BIA's statutory interpretation that only the record of conviction and sentencing information may be considered in determining whether petitioner's conviction was for a particularly serious crime. The panel concluded that the IJ improperly relied on a recitation of facts in the state appellate court's opinion affirming petitioner's conviction to find her conviction a particularly serious crime, and to find her ineligible for asylum or withholding. The panel concluded that a substantial portion of the facts the IJ relied upon applied to offenses for which petitioner had not been convicted. The panel remanded to the BIA with instructions to remand to the IJ for a redetermination of the "particularly serious crime" issue. The panel also concluded that the IJ applied the incorrect legal standard regarding government conduct to petitioner's CAT application, and remanded for a redetermination of that issue.

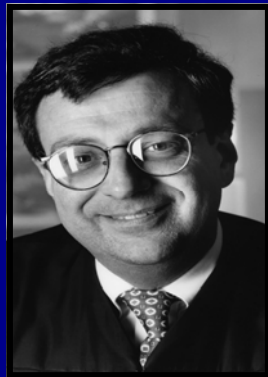


**Judge
David Thompson
Ninth Circuit Court
of Appeals**

NINTH CIRCUIT DECISIONS



Judge Raymond
C. Fisher
Ninth Circuit
Court of Appeals



Judge Barry G.
Silverman
Ninth Circuit
Court of Appeals

National Association v. Federal Labor Relations Authority,
473 F.3d 983 (January 10, 2007)(Gibson—Eighth Circuit, Fisher, and Callahan)
Petition for Review from: FLRA

Argued & Submitted: 10/16/06

Subject Matter: Federal Labor Relations Authority

Holding: The panel dismissed a petition for review of a decision of the Federal Labor Relations Authority which held that certain government employees, agricultural specialists, are not professionals. The panel held that where, as here, the FLRA makes an appropriate unit determination and in doing so adjudicates an employee's professional status to satisfy itself that the units selected are appropriate, the court lacks jurisdiction to review that status finding under the Federal Service Labor-Management Relations Statute, 5 U.S.C. § 7123(a)(2).

Garcia-Jimenez v. Gonzales, 472 F.3d 679 (January 3, 2007)

Pregerson, Silverman, Tallman
Petition for Review from: BIA

Submitted: 12/7/06

Subject Matter: Immigration

Holding: The panel denied a petition for review from the Board of Immigration Appeals' denial of cancellation of removal. The panel held that it had jurisdiction to review the question of law regarding whether 8 U.S.C. § 1229b(c)(6) bars petitioner from simultaneously obtaining a waiver of deportation under Immigration and Naturalization Act section 212(c) and cancellation of removal under 8 U.S.C. § 1229b(a). The panel held that 8 U.S.C. § 1229b(c)(6) bars an alien from obtaining cancellation of removal if he has ever received an INA § 212(c) waiver of deportation, even if the waiver was granted in the same proceeding in which cancellation of removal was sought. The panel held that the statute prohibits an alien from receiving both a waiver and cancellation.

**Conlon v. United States, No. 05-15238, 2007 WL 92678
(9th Cir., January 16, 2007) (Graber, McKeown, Tallman).**

In this case, a federal district court had previously granted Conlon habeas relief after finding that the United States Parole Commission had arrested and incarcerated him on a warrant for which it had no jurisdiction. Conlon then sued the Parole Commission under the Federal Tort Claims Act for his unlawful arrest and incarceration. During discovery, Conlon failed to respond to the government's Request for Admissions within the thirty-day time frame set forth in Federal Rule of Civil Procedure 36(a), and the Government deemed those admissions to be true as part of its motion for summary judgment.

The Ninth Circuit affirmed that the district court did not abuse its discretion when it denied Conlon's motion to withdraw his admissions under Rule 36(b), and affirmed the district court's summary judgment. Furthermore, the Ninth Circuit held that the district court conducted an appropriate analysis under Rule 36, properly considered both factors elucidated in the rule, and did not clearly err in concluding that the government's case would have been significantly prejudiced by the withdrawal of Conlon's sweeping admissions on the eve of trial. Therefore, the United States deemed the Request for Admissions admitted because Conlon failed to respond. The government then was able to rely on those admitted admissions when seeking summary judgment.



**Judge Richard C. Tallman
Ninth Circuit Court
of Appeals**

Dear Members of the Idaho Chapter of the Federal Bar Association,

The Idaho Legal History Society is presenting an original play written, produced and directed by Mike Silva, depicting the events and court presentations of the 1907 Haywood Trial, often called the “Trial of the Century.” “Big Bill” Haywood on trial for conspiracy in the death of former Idaho Governor Frank Steunenberg, was defended by Clarence Darrow and prosecuted by Idaho lawyers James H. Hawley and William Borah.

This play, entitled *The Gate on 16th Avenue*, will be held at the Boise Little Theater, 100 East Fort Street, Boise, on March 15, 16, and 17. There will be a reception on opening night, Thursday, March 15, at 6:30 pm, prior to the performance. Curtain is at 7:30 pm. Wine and beer will be sold each night. We particularly invite your attendance, because of your own interest and dedication to the legacy of the legal system in Idaho, as evidenced by your work with the FBA, Idaho State Bar Association and the Idaho Law Foundation.

Please join your colleagues and friends for this entertaining and educational presentation, offered to foster awareness and enhance understanding of the historical role and long term significance of Idaho courts, lawyers, judges and the legal system.

Tickets --\$17 for adults and \$12 for students and seniors—available through the Boise Little Theater website, boiselittletheater.org, or contact the BLT box office at (208) 342-5104. All proceeds will benefit the Idaho Legal History Society and help support its projects.

We hope you will join the Society in enjoying this performance. It will be a memorable evening.

With warm regards,

Ronald E. Bush

President, Idaho Legal History Society



The Gate on 16th Avenue (A 1905 Murder and the Trial of the Century)

The Idaho Legal History Society and Spontaneous Productions, in recognition of the centennial of the trial of Big Bill Haywood, will present *The Gate on 16th Avenue*, a re-enactment of one of Idaho's most famous jury trials.

The play, written and directed by Mike Silva, will be held March 15 - 17, 2007 at the Boise Little Theater. **Tickets are on sale now!** — all seats are reserved — \$17.00 each; \$12.00 for students and seniors (62 and older). Doors open 6:30 p.m.; play begins at 7:30 p.m. (See box office information below).

A reception will be held opening night (Thursday, March 15th) (not Saturday evening as previously announced).

In 1907, William "Big Bill" Haywood, secretary/treasurer of the Western Federation of Miners was tried for conspiracy in the death of former Idaho Governor Frank Steunenberg who was killed when a bomb was detonated as he opened his front gate in Caldwell, Idaho.

Clarence Darrow came to Boise to defend Haywood who was tried by prosecutors James H. Hawley and future Idaho U.S. Senator William Borah. In spite of the testimony of Harry Orchard who confessed to the killing and implicated Big Bill Haywood, Haywood was acquitted.

Boise Little Theater Box Office
(208) 342-5104
www.ticketleap.com



This play is made possible, in part, by generous contributions from:
The Idaho Chapter of the Federal Bar Association
Holland and Hart, LLP; Fourth District Bar Association
Byron Johnson, Idaho Supreme Court Justice (Retired)
Hawley Troxell Ennis and Hawley
Ernest A. Hoidal, Esq.; and a grant from Boise City Arts Commission



UPCOMING EVENTS

*FBA Idaho Chapter
CLE PROGRAM*

**Friday, May 4, 2007
Boise, Idaho**

**To Be Held at the
James A. McClure Federal Building
and United States Courthouse
550 West Fort Street
Boise, Idaho
(208) 334-9373**

NOTE OF APPRECIATION!

Special thanks to

*Externs Aaron Johnson
and Lance Stevenson*

*for preparing the case evaluations
for this edition of the Federal Bar Association newsletter—*

Thank you very much!