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Federal Bar Association Idaho Chapter

VOLUME 1 ISSUE 2

MAY 2006

Chief Judge Mary M. Schroeder

It is an article of faith with me that an individual is stamped with the identity of the environment that surrounds the individual at the age of four. Having lived the first half dozen years of my life on the other side of the Rocky Mountains, in Colorado, I am drawn to high mountains. Fortunately, I had the good sense to leave the Tenth Circuit and eventually make my way to the Ninth Circuit.



**Article Written by
Mary M. Schroeder
Chief Judge, U.S.
Court of Appeals,
Ninth Circuit**

I travel to Idaho whenever I have the chance, because it has so much beauty and such wonderful people.

We have had memorable Judicial Conferences in Idaho at both Sun Valley and Coeur d'Alene. Last year's conference was arguably the best ever, at Spokane, and also Justice Sandra Day O'Connor went fishing in Idaho.

Indeed the very first Ninth Circuit Conference I ever

attended was in Sun Valley, where I was overwhelmed by the magisterial presence of the now legendary Chief Judge Ray McNichols. (Just as I was later to be overwhelmed by the magisterial intellect of his brother, Bob, a District Judge in Spokane).

The Ninth Circuit knows how important District Judges are — our Chief District Judges meet twice a year. The current Chair of the Chiefs is Idaho's extraordinarily capable Chief Judge, B. Lynn Winmill, and our next meeting is set for June in Sun Valley.

Chief Judge Winmill serves with great distinction on a key committee of the Judicial Conference of the United States, the Information Technology Committee, known affectionately as "IT." He and your District Court Clerk, Cameron Burke, make up one of the great "IT" teams in the country. Cam is a true citizen of the Ninth Circuit, having been purloined by your District from my home base of Phoenix.

(continued on page 7)

BETTY RICHARDSON RECEIVES PRESTIGIOUS KATE FELTHAM AWARD

Idaho Women Lawyers recently named FBA member Betty Richardson as the recipient of the 2006 Kate Feltham award. Named after one of the first women to be admitted to the Idaho State Bar, the award honors individuals who have made extraordinary efforts to promote equal rights and opportunities for women and minorities within the legal profession in Idaho. IWL Board member Deborah Ferguson presented the award to Betty at the IWL annual meeting on March 9, 2006. Upon being notified of her selection, Betty said, "I am thrilled. It is an honor to join Cathy Silak and Deb Kristensen, both women I admire, as a Kate Feltham award recipient."

Committed to using her law degree in public service, Betty was the first woman to serve as U.S. Attorney for the District of Idaho (1993-2001), and the first woman to serve as a member of the Idaho Industrial Commission (1991-1993). During her time as U.S. Attorney, Betty hired 13 new Assistant United States Attorneys, six of whom were women.



Betty has also been very active in the legal education arena. A 1982 graduate of the Hastings College of Law, Betty was a teaching assistant for the Hastings Legal Education Opportunity Program, which helped minority and economically disadvantaged law students prepare for success with their course work and the California State Bar. Betty has taught Family Law, American National Government and Constitutional Law at Boise State University and has encouraged many of the women in her classes to pursue careers in law. Betty currently serves as the Idaho Law Foundation's program planner for Continuing Legal Education presentations and works to ensure that women attorneys more frequently serve as presenters.

On graduation from law school, Betty was named a Tony Patino Fellow, having received the Fellowship's merit based scholarship for three consecutive years. The Fellowship provides a generous merit-based stipend to selected law students at Columbia, the University of Chicago and Hastings College of the Law. For two decades, Betty has served on the Selection Committee, interviewing and selecting Fellowship recipients, many of whom are women and/or minorities.

(continued on next page)

KATE FELTHAM AWARD (continued from page 2)

Betty is a member of the Idaho Chapter of the FBA, the Idaho Women Lawyer's, the Idaho Legal Historical Society, the ADR Section of the Idaho State Bar, and the Board of Directors of Idaho Partners against Domestic Violence. During her tenure as U.S. Attorney, Betty served on the Judges and Lawyers' Representatives Committee, the Gender Fairness Committee, and the Criminal Justice Advisory Committee for the District of Idaho. Betty has received the Idaho State Bar's Pro Bono Service award for her work on a very challenging child custody matter. She also has received the Harold Hughes Exceptional Service to Rural Communities Award from the National Institute on Alcohol and Drug Abuse.

Now of counsel with Richardson and O'Leary PLLC, Betty's practice focuses on appellate law, with an emphasis on state and federal Constitutional issues. She also serves as a hearing officer, mediator, and case consultant. Betty is a member of the West Boise YMCA, the Assistance League of Boise and the City Club of Boise. This year, she was a regular contributor on the Public Television program, "Idaho Reports," covering the Idaho State Legislature.

In accepting the Kate Feltham award, Betty stated, "In the years to come, I look forward to finding ever more opportunities to promote and encourage women and minorities in the practice of law in Idaho."

#

NEW FEDERAL COURTHOUSE PLANNED IN COEUR D'ALENE

New Federal Courthouse Planned in Coeur d'Alene by Cameron S. Burke, Court Executive

After many years of hard work by the judges, the Northern Facilities Committee, and support from the Bar, it appears that a new courthouse will be constructed in Coeur d'Alene. The new facility will replace the historical building on Fourth Street, which was built in 1928 at a total cost of \$279,000.



The Court is working with GSA, the Office of the Circuit Executive and the Administrative Office of the U.S. Courts to complete this project by July 2008. When a third permanent judgeship is approved by Congress, the Court anticipates that one of the judges will chamber in Coeur d'Alene.

Local governmental officials have also been very helpful in working with GSA and the Facilities Team on this project.

The current courthouse has served the judiciary well, but it lacks adequate space to accommodate the growing needs of northern Idaho. The existing facility only has one courtroom with a seven-person jury box, has limited circulation throughout the building and does not meet new security criteria. The current facility is approximately 12,871 usable square feet while the new facility will be approximately 40,563 usable square feet.

The increase in the northern Idaho caseload over the past few years can be seen in the table on the following page.

(continued on next page)

Coeur d'Alene Courthouse (continued from page 4)

Workload Statistics - Coeur d'Alene							
	2002	% Change	2003	% Change	2004	% Change	2005
Civil Filings	69	9%	75	-1%	74	22%	90
Criminal Filings	31	19%	37	-24%	28	4%	29
Bankruptcy Filings	1479	5%	1547	-7%	1435	15%	1646
Total Filings	1579	5%	1659	-7%	1537	15%	1765

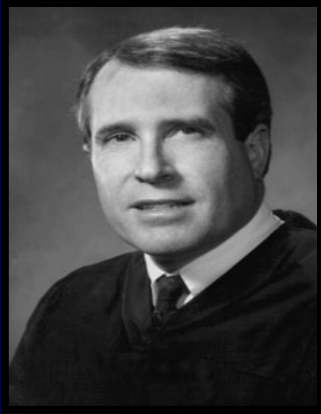
The new courthouse will include: two courtrooms and chambers; a grand jury/hearing room and jury facilities; as well as expanded space for the Clerks' Office and Probation and Pretrial Services. Other building tenants will include the United States Marshals Service, the United States Attorney, and the United States Trustee.

The General Services Administration is currently conducting a two-phase lease acquisition, which should be awarded by June, 2006. Phase I solicitation was sent to 29 potential offerors in January 2006 and Phase II solicitation was distributed by GSA in April 2006. The project schedule calls for occupancy no later than July 1, 2008.

The Court and other federal agencies are very excited about this project. Our goal is to build a facility that will leave an indelible mark on the community, promote public trust and confidence in the judiciary and assist the judges in resolving disputes under the Rule of Law.

Cameron S. Burke received a masters of science in judicial administration from the Denver College of Law in 1980. He has served as the Court Executive for the District and Bankruptcy Court in Idaho since 1991. He is a past President of the Federal Court Clerks Association, the Oregon Association for Court Administration and the Arizona Association for Court Management. He currently serves as the chair of the Federal Judicial Center's National Advisory Committee.





Chief Judge
B. Lynn Winmill
District of Idaho



Judge Edward J. Lodge
District of Idaho

Jury Verdicts, District of Idaho

United States v. Alfredo Rosales
CR-04-243-E-BLW
Judge Winmill, January 2006

Guilty: 2 Counts; Conspiracy to Possess with Intent to Distribute Methamphetamine; Possession with Intent to Distribute Meth.

For the Government:
Michael J. Fica
Assistant United States Attorney

For the Defendant:
Kevin C. Peterson, Blackfoot, ID

Sentence: 151 Months Prison

Crafton v. Blaine Larsen Farms
CV-04-383-E-BLW
Judge Winmill, March 2006

Jury Trial : Judgment in Favor of Plaintiff Crafton against Defendant Blaine Larsen Farms

**For the Plaintiff: James D. Holman
THOMSEN & STEPHENS**

For the Defendant:
Michael D. Gaffney
BEARD ST. CLAIR GAFFNEY
MCNAMARA CALDER

**Verdict: For the Plaintiff
Damages for Plaintiff: \$401,651.47**

United States v. (Sealed)
CR-04-(Sealed)-S-EJL
Judge Lodge, January 2006

Criminal Case (Sealed)

For the Government:
Kim Lindquist
Assistant United States Attorney

For the Defendant:
Leo N. Griffard, Jr., Boise, ID

**Verdict: Guilty on Some Counts;
Not Guilty on Others**

Performance Chevrolet v. Market Scan—CV-04-244-S-BLW

Jury Trial: Judgment in Favor of Plaintiff against Defendant

For the Plaintiff:
John N. Zarian and
Nicole C. Hancock
STOEL RIVES

For the Defendant:
Kevin C. Braley
HOLLAND & HART

Marc C. Kessler, Columbus, Ohio

**Verdict: For the Plaintiff in the
Sum of \$66,016.01**

Chief Judge Mary M. Schroeder (continued from page 1)

Also a true citizen of the Ninth Circuit is Judge Winmill's "air traffic controller" Susie Headlee, who has served elsewhere in the Circuit and recognized a good thing when she came to Boise.

The same can be said for Judge Stephen Trott of the Court of Appeals. He is a very talented musician. We were sorry to see him take senior status but we understand how much he enjoys his gigs in Boise. We are particularly grateful for the services of Senior Judge T.G. Nelson who served as the death penalty coordinator a few years back and who now continues to help out where needed.

Your lawyers become legends as well. Randy Smith served on our very first Circuit Rules Committee where he was universally liked and respected. More recently Joe Meier has done just about everything a lawyer can do to help the federal courts in the west. Andy Parnes of Ketchum is helping us with the difficult problem of establishing budgets for extremely expensive capital cases and Ted Creason of Lewiston has helped us with media relations. Also among your many rising stars is Candy Dale.

Our Circuit has an exemplary staff that helps the Chief Judge understand the needs in our Districts and to work with Washington, D.C. to try to serve them. We are well aware of the need for an additional district judgeship in your state, because of its uniquely scattered population centers and long distance driving demands. You have some unique courtroom needs as well.

At the present time there are acute financial needs for all courts however. The transition to electronic filing has not been painless and has not been cheap. We have had to lay off personnel in district and bankruptcy court clerks' offices. Federal courts have had to pay escalating rent costs to the GSA, causing us to seek emergency relief from Congress.

On top of all of this have come, from time to time, calls from your own representatives in Congress to split the Ninth Circuit in two or three parts. This would leave the new circuits without support staff, courtrooms, or libraries or court of appeals clerk's offices. All would have to be built from scratch from funding sources that are already inadequate.

The overwhelming majority of the district, bankruptcy, and circuit judges all oppose division. So do all of the state bar associations that have recently taken a position, including Washington and Alaska. All of our Chief Circuit Judges have opposed division because it makes no administrative sense.

As a resident of Arizona, occupant of a headquarters office in San Francisco, and a frequent visitor to Idaho, I want us all to stay together. We have too much to lose if we don't. Please take good care of your great state, your great district and your great judges. I hope to see you very soon.

#

News by Chapter President Ted Creason

FEDERAL BAR ASSOCIATION

A congressional solution to our District Court calendar challenges continues to elude us. One of the objectives for forming the Idaho Chapter of the Federal Bar Association was to create an organization of lawyers to educate our congressional delegation about the inherent unfair burden placed upon Idaho litigants and upon our Article 3 trial judges because of our geography. Our troubles have been compounded in recent years by an increasing criminal and civil case load.

Attention by the Congress to our State's basic need for adequate services of the federal judiciary has been confounded in the last few years by the notion adopted by the leadership of the House Judiciary Committee that a split of the Ninth Circuit can be leveraged by tying new judgeships to the Circuit split legislation. So far for Idaho this has delivered the worst of both worlds. We are high-centered to put it in civil terms.

In March while attending the FBA Mid-Year Meeting I met with our Congressional delegation with the exception of Congressman Simpson who was unable to attend our pre-arranged meeting due to some voting which was taking place on the Floor. Bruce Moyer, National's lobbyist, attended the meeting with me to lend his experience and expertise to our effort.

National has been very supportive and sympathetic. Although National has not retracted its opposition to a split of the Circuit, I would say it has softened its position considerably by adopting our Chapter's opposition to linking a Circuit split with new judgeships and suggesting that a Circuit split might be desirable if done for reasons consistent with sound long-term policy and with support in principle by a majority of the Circuit judges.

I did learn a few things from the meetings with our delegation. I will share them with you here. Perhaps some of you will know the way to untie the Gordian Knott.

All the members of our delegation are in support of a third Article 3 judgeship for Idaho. Senator Craig's comment to me was, "We've been trying to get this done for decades." My meeting with Congressman Otter took place at the very moment he learned Governor Kempthorne had been nominated to Interior. Understandably, we may not have had his full attention, but he expressed his commitment to a new judgeship for our district. At the same time, he recognizes that Congressman Sensenbrenner of Wisconsin is the architect of the strategy to split the Ninth Circuit. This is Mr. Sensenbrenner's last year as Committee Chairman, and it is not likely he will give up on splitting the Circuit. Congressman Otter did not give me much reason to hope that he has a way of getting Mr. Sensenbrenner to relent on this hiatus of new judgeships.

Chapter President's Message (continued from page 8)

Congressman Simpson's staff listened to us, but they believe the Circuit split is essentially a *fetê accompli*, and once that is done there will be judgeships approved by the score. Congressman Simpson has apparently made the Circuit split one of his highest priorities. I don't see him looking for a way to address Idaho's unique need if he believes it means giving up any ground on the Circuit split.

Senator Crapo met with us in the corridor between votes. He was gracious and sympathetic. He is very aware that the Senate has several times in the last few years approved legislation that would provide a third Article 3 judge for Idaho, only to be scrapped in Conference along with legislation for new judgeships in other districts and circuits. I may be misreading this, but I don't think either of our Senators see the split of the Circuit as anything close to a *fetê accompli*. With the hardline stand that Senator Feinstein (D) California has taken against a split of the Circuit, I can only imagine how skeptical our Senators might be. As long as California is prepared to hold its breath until it turns blue on the Circuit split issue, I think our judgeship quest is going to continue to be frustrated.

Here's what I think. You are welcome, no, actively challenged, to prove me wrong. I doubt if there will be any new judgeships created in this lame-duck session of Congress. If the Republicans retain the House and Senate in November, the Senate Judiciary during the next Congress will allow the Circuit split to get new judgeships, including Idaho's approved. If the Democrats get the House but not the Senate, new judgeships will be approved and the Circuit split will not. If the Democrats take the House and Senate, there will be no new judges until after the 2008 election. As long as the House Judiciary Chairman and Senator Feinstein are willing to use new judgeships as a weapon in the zero-sum game over a split of the Ninth Circuit, our struggle to achieve our objective through the appointment of an additional trial judge for the District of Idaho may remain unavailing.

The Executive Committee will remain vigilant and will follow a course it believes most likely to result in some help coming Idaho's way. If any of you have Congressman Simpson's ear, you might urge him to recognize the positive impact a new judgeship for Idaho could have. Perhaps he could be prevailed upon to use his influence in the House Judiciary Committee in a way that would get Idaho the Article 3 judgeship it has needed for decades.

Theodore O. Creason
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Lewiston, ID 83501
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tcreason@cmd-law.com



Chief Judge
Mary M. Schroeder
Ninth Circuit
Court of Appeals

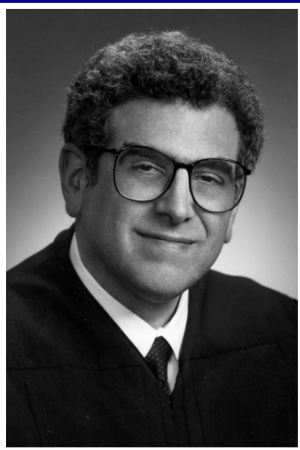
RECENT DECISIONS—NINTH CIRCUIT

Jespersen v. Harrah's Operating Company, --- F.3d ----, 2006 WL 962533 (June 2006) (C.A. Nev.) Judges Schroeder, Rymer, Silverman, Tallman, Clifton, Callahan, and Bea. Dissent: Pregerson, joined by Kozinski, Graber, and W. Fletcher. Dissent: Kozinski, joined by Graber and W. Fletcher

Civil Rights Matter, a female bartender at a casino was terminated for refusing to wear makeup. Employee sued employer for sex discrimination under Title VII, alleging both disparate treatment and disparate impact, and asserted claims under state law. The United States District Court granted summary judgment in favor of employer in part. Employee appealed. The Court of Appeals affirmed.

On rehearing en banc, the Court of Appeals held that:

(1) The requirement that only female employees wear makeup was insufficient to establish prima facie Title VII sex discrimination based on disparate impact; (2) Court of Appeals would not take judicial notice of asserted fact that it cost more money and took more time for a female employee than a male employee to comply with employer's grooming policy; and (3) grooming policy did not constitute impermissible sex stereotyping, as would establish that gender played a motivating role in employer's policy.



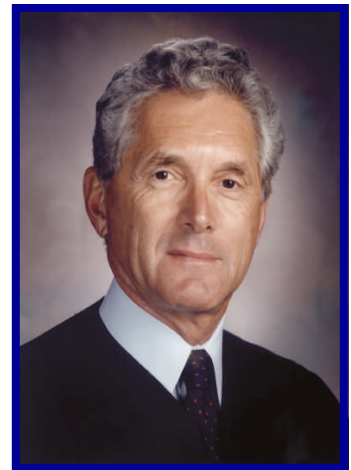
Judge Andrew J.
Kleinfeld
Ninth Circuit Court
of Appeals

Frederick v. Morse, 439 F.3d 1114 (C.A. Alaska) (March 2006) Judges Hall, Kleinfeld, Wardlaw. The panel vacated the district court's summary judgment and remanded in this 42 U.S.C. § 1983 action brought by a high school student who asserted that his First Amendment right to free speech was violated when he was suspended from school for displaying off campus, during the running of the Olympic Torch Relay, a banner that read "Bong Hits 4 Jesus." The panel first held that the punishment was to be reviewed under the standard set forth in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 514 (1969), and that under that standard the school failed to show a reasonable concern about the likelihood of substantial disruption to its education mission from the student's speech. Concluding that the student's First Amendment rights were violated, the panel also held that the school's principal was not entitled to qualified immunity because the student's right was clearly established and that it would have been clear to a reasonable principal that her conduct was unlawful under the circumstances.

Abrego Abrego v. Dow Chemical Co., --- F.3d ----, 2006 WL 864300, (C.A. Cal.) (April 2006) Judges McKeown, Berzon and District Judge King (per curiam). The panel affirmed the district court's order remanding to state court a class action by 1,160 Panamanian banana plantation workers allegedly exposed to a chemical pesticide distributed by the defendants. Joining the Seventh Circuit, the panel held that the Class Action Fairness Act of 2005, providing for jurisdiction over "mass actions" by more than 100 plaintiffs whose aggregated claims exceed \$5,000,000, did not shift to the plaintiff the burden of establishing that there is no removal jurisdiction in federal court; the statute's silence, coupled with a sentence in a legislative committee report untethered to any statutory language, did not alter the longstanding rule that the party seeking federal jurisdiction on removal bears the burden of establishing that jurisdiction. The panel held that the defendants did not meet their burden of establishing that the workers' action was a "mass action" removable under 28 U.S.C. §§ 1332 and 1453 because under any formulation of the statutory language, the defendants failed to establish jurisdiction over even one plaintiff by showing that any plaintiff satisfied the \$75,000 jurisdictional amount requirement of § 1332(a). The panel wrote that it need not and did not endorse any particular construction of the mass action provisions of § 1332(d)(11). The panel also held that the district court was not required to allow limited jurisdiction discovery before remanding the action.

Hulteen v. AT&T, 441 F.3d 653, (C.A. Cal.) (March 2006) Judges Trott, Rymer (dissenting), and Federal Circuit Judge Plager. Reversing the district court's summary judgment, the panel held that in making current retirement benefits determinations, the defendant employer did not discriminate in violation of Title VII against women who took pregnancy-related leaves before 1979, the year the Pregnancy Discrimination Act, an amendment to Title VII, took effect, even though such women were not given full service credit for their pre-1979 leaves. The panel held that crediting pre-Act leaves under post-Act rules would give the Pregnancy Discrimination Act impermissible retroactive effect because: (1) there was no clear Congressional intent to make the Act retroactive; and (2) the initial crediting of the leave periods, rather than the current calculation of benefits, was the relevant act for purposes of Title VII. This failure of the plaintiffs' "current violation" theory also meant that their Title VII claims were time-barred. On the basis of intervening Supreme Court case law regarding retroactivity, the panel declined to apply *Pallas v. Pacific Bell*, 940 F.2d 1324 (9th Cir. 1991), which on similar facts ruled pre-Act calculations non-compliant.

Dissenting, Judge Rymer wrote that *Pallas* controlled and was not irreconcilable with *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).



“Deserving as these plaintiffs would seem to be of some accommodation in determining their current benefits, the question before us is not whether the employer owes these plaintiffs an accommodation, but whether the law compels it.”

Judge S. Jay Plager
U.S. Federal Circuit

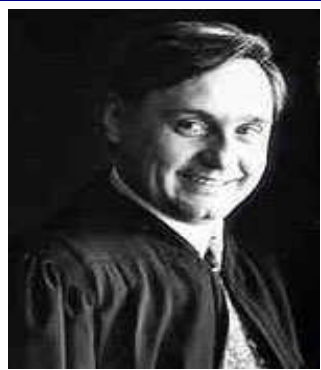
CRIMINAL DECISIONS—NINTH CIRCUIT COURT OF APPEALS



Judge Wm.
Fletcher
Ninth Circuit
Court of Appeals

United States v. Ligon, 440 F.3d 1182 (March 21, 2006)(D. Nev.)(W. Fletcher, Rheinhardt, Thomas). The Court reversed the defendants' convictions under 18 U.S.C. § 641, the theft of government property statute, finding that the government did not prove that the property stolen had a "value" within the meaning of § 641. Defendants had removed Native American petroglyphs from a mountainside. The Government introduced evidence that the petroglyphs had "archaeological value," which is based on the worth of archaeological information. The Court held that this evidence was insufficient because "archaeological value" is not encompassed by the definition of value in § 641 ("face, par, or market value, or cost price, either wholesale or retail"). The Court also noted that alternative methods of calculating value are permissible only where market value is not readily ascertainable. Here, the Government did have evidence of the petroglyphs' market value in a report prepared prior to trial that was not introduced as evidence at trial.

United States v. Littlesun, 2006 WL 1044222 (April 21, 2006)(D. Mont.) (Kleinfeld, Browning and Alarcon). The Court held that after *Crawford v. Washington*, 124 S. Ct. 1354 (2004), it remains appropriate to use hearsay testimony during sentencing, so long as it is accompanied by some minimal indicia of reliability.

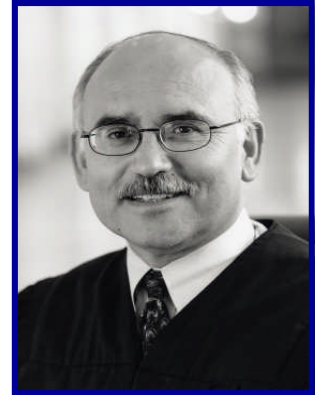


Judge Alex Kozinski
Ninth Circuit
Court of Appeals

Vazquez-Ramirez v. United States District Court for the Southern District of California, 443 F.3d 692 (April 6, 2006)(S.D. Cal.)(Kozinski, Canby, Siler). The Court granted a writ of mandamus because the district court improperly rejected a guilty plea that satisfied Federal Rule of Criminal Procedure 11(b). The defendant was charged with illegal re-entry and offered a fast track disposition plea to a conviction under 8 U.S.C. § 1325. The defendant agreed, but the district court rejected the deal. The Government then indicted the defendant under 8 U.S.C. § 1326 and renewed the fast-track offer. The defendant agreed to plead to two 8 U.S.C. § 1325 counts and the parties agreed to request imposition of the statutory maximum of 30 months. The district court rejected both the plea agreement and the plea itself because it did not want to get "mousetrapped" into losing its discretion to impose a longer sentence. The Court, in granting the writ, noted that pleas and plea agreements are treated differently under Rule 11. The Court held that Rule 11(a) does not authorize judges to reject unconditional guilty pleas once the requirements of Rule 11(b) have been met. The fact that the judge's discretion to impose a sentence was capped by the statutory maximum was irrelevant. The Court found that the district court simply cannot reject a plea to force the Government to pursue a greater charge that the government does not wish to press. ("It matters not that the judge feels the prosecutor's charging decision was too aggressive or too lenient.")

United States v. Salazar-Gonzalez, 2006 WL 1044216 (April 21, 2006)(D. Ariz.)(Fisher, Fletcher, Rymer). In an illegal re-entry case, the Court held that a Certificate of Non-existence of Record, used to prove that the defendant had not received the permission of the appropriate government official to re-enter the United States after having been deported, was not testimonial evidence under *Crawford v. Washington*, 124 S. Ct. 1354 (2004) and was properly admitted as a non-testimonial public record.

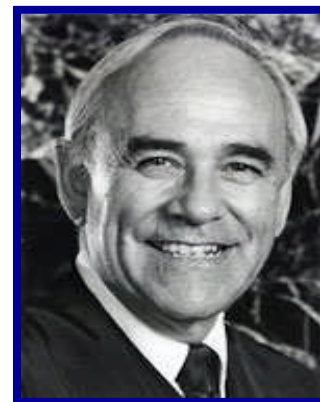
United States v. Huerta-Pimental, 2006 WL 1061968 (April 24, 2006)(S.D. Cal.)(Paez, Pregerson, Tashima). The Court upheld the imposition of supervised release and the decision to revoke it, finding that neither violated *Apprendi*, *Blakely*, or *Booker*. The Court concluded that supervised release did not expose the defendant to additional punishment because supervised release is part of the original sentence and also does not require any constitutionally impermissible judicial factfinding. The Court rejected the defendant’s argument that the revocation of his supervised release and the imposition of additional punishment based on the violation ran afoul of *Booker*. The Court reasoned that the imposition of additional punishment based on a supervised release violation is, and always has been, fully discretionary.



Judge Richard A. Paez
Ninth Circuit Court
of Appeals

United States v. Mix, 442 F.3d 1191 (D. Ariz.) (March 30, 2006) (Alarcón, McKeown, Holland). On a post-*Booker* remand sentencing, the district court again imposed a life sentence on the defendant’s convictions for kidnapping, aggravated sexual abuse and assault with a deadly weapon committed on the Navajo Reservation. After consideration of the United States Sentencing Guidelines and the sentencing factors set out at 18 U.S.C. § 3553(a), the district court imposed the same sentence, expressly finding that upward departures were appropriate for extreme cruelty and for extreme psychological injury and discussing factors in 3553(a), including the uncharged conduct as part of the defendant’s history. On appeal, the defendant argued that the upward departure should not be applied and that the district court failed to consider mitigating factors under § 3553(a).

The Ninth Circuit affirmed the sentence as reasonable. The Court noted that before imposing sentence, the district court must consult the guidelines and that as a part of consulting the guidelines, after *Booker*, correctly calculate the sentencing range, including application of the departure guidelines. The opinion states that the district court is first to calculate the guidelines, then consider the non-guidelines sentencing factors and to carefully differentiate between guidelines findings, including departures, and the application of non-guidelines factors.



Judge Arthur L. Alarcón
Ninth Circuit Court
of Appeals

Federal Court Staff Attorneys

Nancy Atkinson Baskin

Nancy is a career staff attorney to the Honorable Edward J. Lodge since 1993. She has earned her undergraduate degrees in Political Science and Business from the University of Idaho, and her Masters of Business Administration from Boise State University. She received her law degree from the University of Idaho Law School, graduated *summa cum laude* and was the Managing Editor of the *Idaho Law Review*. She worked for five years for Boise Cascade Corporation before attending law school and worked for two years in private practice before starting the clerkship for Judge Lodge. Nancy is married to Tom Baskin and they have two boys, Sam and Jim. She enjoys playing tennis and participating in activities with her children.

Claire Dwyer

Claire was born and raised in Philadelphia, Pennsylvania, and graduated from Suffolk University Law School in Boston, Massachusetts. For the next six years, she was an associate with the firm of Collins, Manly & Williams in Boise handling a general civil case load, including bankruptcy and commercial litigation cases. While taking an extended hiatus to be a full-time mother to her two children, she was deeply involved in volun-



Claire Dwyer
Staff Attorney, Chambers
of Chief Judge
B. Lynn Winmill

teering with her children's schools in various capacities and in several community fund-raising activities. After her children entered college, Claire began volunteering with the Court assisting with prisoner civil rights cases. Since August of 2004, she has been employed as a staff attorney in Judge Winmill's chambers handling primarily sentencings and § 2255 post-conviction relief cases. Claire occasionally handles civil cases for Judge Boyle and Judge Williams. She is a member of the Pennsylvania and Idaho State Bars and is a member of the American Inns of Court No. 130 (Boise). In her spare time, Claire enjoys skiing, gardening, and restoring their own North End bungalow with her husband.

Jeff Severson

Jeff Severson is a career staff attorney for Chief Judge B. Lynn Winmill. Prior to joining his staff, he was an associate in the litigation department at Stoel Rives, LLP in Boise, Idaho. Jeff received a B.A. in History from the University of California, Davis and his J.D. from the J. Reuben Clark Law School at Brigham Young University. After graduating from law school, Jeff served one year as a term law clerk for Judge Winmill. He also served for one year as a Fellowship Attorney for the Federal Defenders of Eastern Washington and Idaho. Jeff enjoys mountain biking (he commutes to work on his bike), golfing and spending time with his wife and two young sons.



L. Jeff Severson
Staff Attorney, Chambers
of Chief Judge
B. Lynn Winmill

Federal Court Staff Attorneys

Dave Metcalf

David L. Metcalf has been a career staff attorney for Chief District Court Judge B. Lynn Winmill since 1995. Before that, he was a law clerk to Federal District Court Judge Marion J. Callister for 14 years; an associate attorney in the Boise, Idaho, firm of Langroise, Sullivan & Smylie (now Holland & Hart); and a law clerk for Idaho Supreme Court Justice Allan G. Shepard.

Dave received his B.A. in economics, with honors, from the University of California at Davis, and his J.D. degree from U.C.L.A. He is a member of the Idaho State Bar (Member, Litigation Section) and the California State Bar.

Dave is a member and past-President of the American Inn of Court No. 130 (a mentoring organization), and has also served as Program Chairperson for the Inn. He has served as an Arbitrator for the Bar to resolve attorney fee disputes, and as Adjunct Faculty at the University of Idaho Law School teaching a course in Trial Advocacy. He has lectured on federal court litigation topics for the Idaho State Bar, the Fourth District Bar Association, the Citizen's Law Academy, and the National Business Institute, Inc.

In 2005, he received the Outstanding Service Award from



Elizabeth Schierman
Staff Attorney, Chambers
of Judge Larry M. Boyle

the Idaho State Bar. He and his wife Faye have six children, two adopted from India.



Dave has been working for the Federal Court over 25+ years, as evidenced by his "then and now" photo.

Elizabeth Schierman

Elizabeth Herbst Schierman began her two-year clerkship with Chief Magistrate Judge Larry M. Boyle in August of 2005. Elizabeth spent most of her school years in Europe, living in West Germany, England, and Belgium, with a three-year stint in the D.C.

area while her father worked at the Pentagon. She moved to Moscow, Idaho, in 1997, where she finished high school and met her now husband, Steven.

In 1998, Elizabeth entered the University of Idaho and, in 2002, graduated *magna cum laude* with a B.S. in Chemical Engineering. Thereafter, she remained at the University of Idaho, earning her law degree in 2005. While in law school, Elizabeth was on law review and the National Moot Court team, was the Federal Reporting Officer at Washington State University's Research Foundation, and was the Intellectual Property Intern at Schweitzer Engineering Laboratories, a Washington-based electrical engineering corporation.

Outside of work, Elizabeth enjoys fishing, tinkering on the piano, playing racquetball and tennis, drawing, knitting, and reading, with a particular interest in classic literature; however, having recently read the last of Jane Austen's novels, Elizabeth confesses that she has moved to the not-yet-as-classic works of Dan Brown.

As for her plans after her clerkship, Elizabeth is studying to take the patent bar and is beginning the search for a position at a firm in or near Idaho at which she can pursue her interests in intellectual property and litigation.

Federal Court Staff Attorneys

Kate Ball

Katie Ball is the career staff attorney for the Honorable Larry M. Boyle, Chief Magistrate Judge for the District of Idaho. She works part time for Judge Boyle and spends the remaining time with her husband and four children.

Katie earned her law degree from the University of Idaho in May 2002. After graduating from law school, Katie clerked for a year for the Honorable Stephen S. Trott with the United States Court of Appeals for the Ninth Circuit. During the following year, she worked as a staff attorney in the habeas/capital case unit at the United States District Court for the District of Idaho and also worked part-time for the Honorable Thomas G. Nelson with the United States Court of Appeals for the Ninth Circuit. Katie spent a year with the law firm of Holland & Hart LLP before returning to the Court to work for Judge Boyle.

While Katie enjoys her work, her favorite thing to do is spend time with her family, enjoying the many outdoor activities available in Idaho.

Lisa J. Mesler

Lisa Mesler has been employed with the United States District



Kate Ball
Staff Attorney, Chambers
of Judge Larry M. Boyle

Court for the District of Idaho since 1993. She was appointed as a career staff attorney for the Honorable Mikel H. Williams in 1995, and currently remains in that position.

Lisa earned her law degree in 1988 from the State University of New York (Touro College). She is admitted to practice in Idaho and Michigan and is a member of the American Inn of Court No. 130 at the Bencher level, serves as a member of the Board of Directors of the Idaho Women Lawyers Association, and is a member of the Idaho chapter of the Federal Bar Association. Lisa also volunteers for the Idaho State Bar and the Idaho Law Foundation.

She enjoys spending time

with her husband Ron and dogs, reading, riding her scooter, skiing and walking.

Craig Durham

Craig Durham is the Capital Case Staff Attorney for the U.S. District Court since 2003. His primary responsibility is to assist the district judges in resolving habeas corpus cases brought by Idaho state prisoners who have been sentenced to death. Before joining the District Court, he served for six years as an appellate public defender in Kansas and Idaho. He has also been in private practice as a solo practitioner. Craig graduated with honors, and as a member of Phi Beta Kappa, from the University of Kansas in 1992, and he received a J.D. from the University of Kansas School of Law in 1996. He is a member of the Idaho State Bar and is licensed in both Kansas and Idaho.

Craig's wife, Leslie, is a professor of Theatre Arts at Boise State University. When not chasing around their eighteen-month-old daughter, Kate, they enjoy going to plays at the Idaho Shakespeare Festival and the Boise Contemporary Theatre.

Congratulations New Bar Admittees

The Spring Admission Ceremony was held on April 27, 2006 for the new members to the United States Courts. Chief Bankruptcy Judge Terry L. Myers presided and made the opening remarks. The presentation of new attorneys was made by United States Attorney Thomas E. Moss, and the Administration of the Attorney's Oath was conducted by Court Executive Cameron S. Burke. Thomas Banducci of Greener, Banducci, and Shoemaker, P.A. was the guest speaker, and additional remarks were made from the members of the Bench. The United States District and Bankruptcy Courts hosted a reception for the new attorneys and their guests at the Jury Assembly Room on the 5th Floor of the James A. McClure Federal Building and United States Courthouse. The new attorneys eligible to be sworn before the United States Courts were as follows:

Douglas Gregg Abenroth
 Shawn Parker Bailey
 Sean Jeffrey Coletti
 Cleve Byrd Colson
 Charlene Winnette Davis
 Luke Waldron Davis
 Melissa Anne Finocchio
 Deborah Alison Gates
 Amanda Jean Glenn
 Eric Richard Glover
 Helaman Scott Hancock
 Nathan Joel Henkes
 Kevin Price Holt
 Michael Shawn Jacques
 Steven Carl Johnson
 Damian W. Kidd
 Holly Arendina Koole
 Heidi Katrina Koonce

Naomi Marie Leiserowitz
 Arthur Bruce Macomber
 Pamela Beth Massey
 Linsey Elene Mattison
 Ryan Thomas McFarland
 Adam Jay McKenzie
 Fatima E. Mohammadi
 Elizabeth Ann Mosey
 Tyson Kay Nelson
 Nathan Miles Olsen
 John Petui Osai
 Brenda Harmonie Quick
 Sally Jane Reynolds
 Jeffrey Thomas Sheehan
 James Richard Stoll
 Susan Ray Wilson
 Erin Jean Wynn
 John Naya Zarian

UPCOMING EVENTS

SAVE THE DATE!!!

**September 22 and 23, 2006
Sun Valley, Idaho**

**MULTI-STATE
FBA PROGRAM
including Local Chapters of Idaho,
Montana, Utah, and Wyoming**

Details Forthcoming!

NOTE OF APPRECIATION!

*Special thanks to
Jeff Boyle and Tanner Stellmon
Judicial Externs—University of Idaho
Semester in Practice Program
Spring 2006
for their generosity in
preparing case evaluations for
Federal Bar Association newsletters—*

Thank you very much!