

**U.S. District Court**  
**District of Idaho (LIVE Database)Version 5.1.1 (Boise – Southern)**  
**CIVIL DOCKET FOR CASE #: 1:12-cv-00255-EJL**

The Associated Press et al v. Otter et al  
Assigned to: Judge Edward J. Lodge  
Referred to: Judge Candy W. Dale (Settlement)  
Case in other court: Ninth Circuit Court of Appeals, 12-35456  
Cause: 42:1983 Civil Rights Act

Date Filed: 05/22/2012  
Date Terminated: 07/10/2012  
Jury Demand: None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff**

**The Associated Press**  
*a New York corporation*

represented by **Charles A Brown**  
PO Box 1225  
Lewiston, ID 83501  
(208) 746-9947  
Fax: 1-208-746-5886  
Email: [CharlesABrown@cableone.net](mailto:CharlesABrown@cableone.net)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Idaho Statesman Publishing, LLC**  
*a Delaware limited liability company*  
*doing business as*  
The Idaho Statesman

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Lee Enterprises, Incorporated**  
*a Delaware corporation*  
*doing business as*  
The Times-News

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**The Idaho Press Club, Inc.**  
*an Idaho corporation*

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Pioneer Newspapers, Inc.**  
*a Nevada corporation*  
*doing business as*  
Idaho Press-Tribune, Idaho State Journal,  
Standard Journal, Teton Valley News,  
The News-Examiner, The Preston  
Citizen, and Messenger Index

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**TPC Holdings, Inc.**  
*an Idaho corporation*  
*doing business as*  
Lewiston Tribune and Moscow-Pullman  
Daily News

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Bar Bar Inc.**  
*an Idaho corporation*  
*doing business as*  
Boise Weekly

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Cowles Publishing Company**  
*a Washington corporation*  
*doing business as*  
The Spokesman Review

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**Idahoans for Openness in Government, Inc.**  
*an Idaho non-profit corporation*

represented by **Charles A Brown**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**C.L. (Butch) Otter**  
*in his official capacity as the Governor of the State of Idaho*

represented by **Michael S Gilmore**  
OFFICE OF ATTORNEY GENERAL  
Statehouse Rm 210  
Boise, ID 83720  
(208) 334-2400  
Fax: (208) 854-8073  
Email: [mike.gilmore@ag.idaho.gov](mailto:mike.gilmore@ag.idaho.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Robin Sandy**  
*in her official capacity as the Idaho Board of Correction*

represented by **Mark Alan Kubinski**  
IDAHO DEPT OF CORRECTION  
1299 N Orchard #110  
Boise, ID 83706  
(208) 658-2097  
Fax: (208) 327-7485  
Email: [mkubinsk@idoc.idaho.gov](mailto:mkubinsk@idoc.idaho.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Michael S Gilmore**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Howard G. "J.R.qVan Tassel**  
*in his official capacity as the Idaho Board of Correction*

represented by **Mark Alan Kubinski**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Michael S Gilmore**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Jay L. Nielsen**  
*in his official capacity as the Idaho Board of Correction*

represented by **Mark Alan Kubinski**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Michael S Gilmore**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant****Brent D. Reinke***in his official capacity as the Director of  
the Idaho Department of Correction*represented by **Mark Alan Kubinski**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED****Michael S Gilmore**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED****Defendant****Kevin Kempf***in his official capacity as Division Chief  
of Operations of the Idaho Department of  
Correction*represented by **Mark Alan Kubinski**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED****Michael S Gilmore**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
05/22/2012	<u>1</u>	COMPLAINT <i>for Declaratory Judgment and Injunctive Relief</i> against All Defendants ( Filing fee \$ 350 receipt number 0976-886560.), filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Exhibits A, B, C, D, E, and F to Complaint, # <u>2</u> Cover Sheet, # <u>3</u> Summons C.L. (Butch) Otter, # <u>4</u> Summons Robin Sandy, # <u>5</u> Summons Howard G. "J.R." Van Tassel, # <u>6</u> Summons Jay L. Nielsen, # <u>7</u> Summons Brent D. Reinke, # <u>8</u> Summons Kevin Kempf)(Brown, Charles)
05/22/2012	<u>2</u>	MOTION to Expedite <i>Plaintiffs' Expedited Motion for Preliminary Injunction</i> Charles A Brown appearing for Plaintiffs Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. Responses due by 6/15/2012 (Attachments: # <u>1</u> Memorandum in Support of Plaintiff's Expedited Motion for Preliminary Injunction)(Brown, Charles)
05/23/2012	<u>3</u>	ORDER OF RECUSAL. Judge Ronald E Bush recused. It is therefore HEREBY REQUESTED that the above-captioned case be reassigned. Signed by Judge Ronald E Bush. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (krb)
05/23/2012		DOCKET ENTRY NOTICE of Case Number Change, Case reassigned to Judge Edward J. Lodge for all further proceedings. Please use this case number on all future pleadings, 1:12-cv-00255-EJL, re: <u>3</u> ORDER OF RECUSAL (krb)
05/23/2012	<u>4</u>	Summons Issued as to Kevin Kempf, Jay L. Nielsen, C.L. (Butch) Otter, Brent D. Reinke, Robin Sandy, Howard G. "J.R." Van Tassel. (Print attached Summons for service.) (Attachments: # <u>1</u> Summons issued, # <u>2</u> Summons issued, # <u>3</u> Summons issued, # <u>4</u> Summons issued, # <u>5</u> Summons issued)(dks)
05/23/2012		NOTICE: Pursuant to FRCP 7.1 you are required to file a Corporate Disclosure Statement with the Clerk's Office. You can do this by choosing the category Other Documents, then select Corporate Disclosure Statement. (dks)
05/24/2012	<u>5</u>	ORDER granting <u>2</u> Motion to Expedite the motion for preliminary injunction; Response ddl 5:00 p.m. on 5/29/12; Reply ddl 5:00 p.m. on 6/4/12. This matter is referred for a court ordered mediation with Chief United States Magistrate Judge Candy W. Dale on or before June 1, 2012.. Signed by Judge Edward J. Lodge. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (dks)

05/25/2012	<u>6</u>	NOTICE of Appearance by Michael S Gilmore on behalf of All Defendants (Gilmore, Michael)
05/25/2012	<u>7</u>	ORDER, (A Judicially Supervised Mediation Conference set for 5/31/2012 09:30 AM in Boise – Courtroom 6 before Judge Candy W Dale.). Signed by Judge Candy W Dale. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (dks)
05/29/2012	<u>8</u>	MEMORANDUM in Opposition re <u>2</u> MOTION to Expedite <i>Plaintiffs' Expedited Motion for Preliminary Injunction</i> filed by Kevin Kempf, Jay L. Nielsen, C.L. (Butch) Otter, Brent D. Reinke, Robin Sandy, Howard G. "J.R.qVan Tassel. Replies due by 6/15/2012. (Attachments: # <u>1</u> Declaration of Zmuda, # <u>2</u> Exhibit Exhibit 1 to Zmuda Declaration, # <u>3</u> Declaration of Blades)(Gilmore, Michael)
05/30/2012	<u>9</u>	SUMMONS Returned Executed by The Associated Press. All Defendants. (Attachments: # <u>1</u> Affidavit of Service – Sandy, # <u>2</u> Affidavit of Service – Van Tassel, # <u>3</u> Affidavit of Service – Nielsen, # <u>4</u> Affidavit of Service – Reinke, # <u>5</u> Affidavit of Service – Kempf)(Brown, Charles)
05/30/2012	<u>10</u>	Corporate Disclosure Statement by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc. identifying Corporate Parent The McClatchy Company for Idaho Statesman Publishing, LLC.. (Brown, Charles)
05/30/2012	<u>11</u>	SUPPLEMENT by Defendants Kevin Kempf, Jay L. Nielsen, C.L. (Butch) Otter, Brent D. Reinke, Robin Sandy, Howard G. "J.R.qVan Tassel re <u>8</u> Memorandum in Opposition to Motion, . (Gilmore, Michael) Modified on 5/31/2012 to create a relationship to Doc #2 (dks).
05/30/2012	<u>12</u>	NOTICE of Appearance by Mark A Kubinski on behalf of Kevin Kempf, Jay L. Nielsen, Brent D. Reinke, Robin Sandy, Howard G. "J.R.qVan Tassel (Kubinski, Mark)
05/31/2012	<u>13</u>	<b>Docket Text Minute Entry for proceedings held before Judge Candy W Dale: Judicially Supervised Mediation Conference held on 5/31/2012. Counsel/parties appeared and negotiated in good faith under the Court's direction and supervision. No resolution reached. Time in Court 4 hours. (Hearing not recorded.) (ah)</b>
06/04/2012	<u>14</u>	REPLY to Response to Motion re <u>2</u> MOTION to Expedite <i>Plaintiffs' Expedited Motion for Preliminary Injunction</i> <i>PLAINTIFFS MOTION TO FILE OVER-LENGTH RESPONSE TO DEFENDANTS OPPOSITION [DKT8] TO EXPEDITED MOTION FOR PRELIMINARY INJUNCTION [DKT2] &amp; STATUTORY SUPPLEMENT [DKT 11]</i> filed by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. (Attachments: # <u>1</u> Part 2 of Plaintiffs' Response)(Brown, Charles)
06/04/2012	<u>15</u>	REPLY to Response to Motion re <u>2</u> MOTION to Expedite <i>Plaintiffs' Expedited Motion for Preliminary Injunction</i> <i>Affidavit of Betsy Russell</i> filed by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. (Attachments: # <u>1</u> James A. Ellington – Hanged, # <u>2</u> Ed, Rice Dies on Scaffold, # <u>3</u> Connors Meets Death Bravely, # <u>4</u> Bond Pays the Death Penalty for Murder of Charles Daly, # <u>5</u> To Be Hanged By Neck Until Dead, # <u>6</u> Murderer Seward Goes to His Death Without a Tremor, # <u>7</u> Jurko is Hanged at State Prison)(Brown, Charles)
06/04/2012	<u>16</u>	MOTION to Take Judicial Notice Charles A Brown appearing for Plaintiffs Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. Responses due by 6/28/2012 (Attachments: # <u>1</u> PLAINTIFFS MOTION TO FILE OVER-LENGTH RESPONSE TO DEFENDANTS OPPOSITION [DKT8] TO EXPEDITED MOTION FOR PRELIMINARY INJUNCTION [DKT2] & STATUTORY SUPPLEMENT [DKT 11])(Brown, Charles)

06/05/2012	<u>17</u>	MEMORANDUM in Opposition re <u>16</u> MOTION to Take Judicial Notice <i>and Motion to File Overlength Response Dkt. 16-1</i> filed by Kevin Kempf, Jay L. Nielsen, C.L. (Butch) Otter, Brent D. Reinke, Robin Sandy, Howard G. "J.R.qVan Tassel. Replies due by 6/22/2012.(Gilmore, Michael)
06/05/2012	<u>18</u>	REPLY to Response to Motion re <u>2</u> MOTION to Expedite <i>Plaintiffs' Expedited Motion for Preliminary Injunction</i> , <u>16</u> MOTION to Take Judicial Notice <i>PLAINTIFFS RESPONSE TO DEFENDANTS OPPOSITION [DKT 17] TO 1) PLAINTIFFS REQUEST FOR JUDICIAL NOTICE [DKT 16] &amp;2) PLAINTIFFS MOTION TO FILE OVER-LENGTH RESPONSE, ETC. [DKT 16-1]</i> filed by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc..(Brown, Charles)
06/05/2012	<u>19</u>	ORDER denying <u>2</u> Expedited Motion for Preliminary Injunction filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company; Plaintiffs Motion to Take Judicial Review (Dkt. 16) is irrelevant to the determination on the motion for preliminary injunctive relief. The motion and Defendants objection to said motion will be taken up in the normal course of this litigation. The parties shall submit a joint litigation plan for the Courts consideration to allow for discovery and a full evidentiary hearing on the request for permanent injunctive relief.. Signed by Judge Edward J. Lodge. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (dks)
06/05/2012	<u>20</u>	NOTICE OF APPEAL as to <u>19</u> Order,, by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. Filing fee \$ 455, receipt number 0976-891327. (Notice sent to Court Reporter &9th Cir) (Brown, Charles)
06/05/2012	<u>21</u>	USCA Case Number 12-35456 for <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company. (dks) (Entered: 06/06/2012)
06/06/2012	<u>22</u>	ORDER of USCA as to <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company ; On Wednesday June 6, 2012, the parties simultaneously: (1) shall file opening briefs and any request for relief by 2 p.m. Pacific Time (PT); and (2) may file optional responses by 8 p.m. PT. The Court has read all district court filings so the parties are encouraged to file abbreviated briefs, focused upon the correctness of the district court's June 5, 2012 order. Oral argument is set for Thursday June 7, 2012 at 9:30 a.m. PT at the Richard H. Chambers Courthouse, 125 S. Grand Avenue, Pasadena, CA 91105. Counsel may appear in person in Pasadena, CA or may appear via video conference. A video conference link will be available at the U.S. District Court, 550 W. Fort Street, Boise, Idaho 83724. The Clerk's Office for the Ninth Circuit will be in contact with the parties regarding room locations. (dks)
06/08/2012	<u>23</u>	OPINION of USCA as to <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company (dks) (Entered: 06/11/2012)
06/08/2012	<u>24</u>	PLEASE DISREGARD-WRONG IMAGE PLACED ON DOCKET. CLERK TO REDOCKET WITH CORRECT IMAGE.MANDATE of USCA as to <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc.,



		Cowles Publishing Company (dks) Modified on 6/11/2012 to edit text (dks). (Entered: 06/11/2012)
06/08/2012	<u>25</u>	MANDATE of USCA as to <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company (dks) (Entered: 06/11/2012)
06/09/2012	<u>26</u>	ORDER of USCA amending <u>23</u> Opinion as to <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company (dks) (Entered: 06/11/2012)
06/10/2012	<u>27</u>	ORDER of USCA (en banc proceedings concluded) as to <u>20</u> Notice of Appeal, filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company (dks) (Entered: 06/11/2012)
06/11/2012	<u>28</u>	ORDER re <u>23</u> Opinion & <u>25</u> USCA Mandate, vacating <u>19</u> Order; granting <u>2</u> MOTION for Preliminary Injunction filed by Idahoans for Openness in Government, Inc., Idaho Statesman Publishing, LLC, The Idaho Press Club, Inc., Pioneer Newspapers, Inc., The Associated Press, Bar Bar Inc., Lee Enterprises, Incorporated, TPC Holdings, Inc., Cowles Publishing Company. The parties are directed to submit a joint litigation plan to the Court on or before June 22, 2012 in order for the Court to address the remaining issues in this case.. Signed by Judge Edward J. Lodge. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (dks)
06/20/2012	<u>29</u>	DOCKET ENTRY ORDER: Joint litigation plan shall be due by 7/9/2012. Signed by Judge Edward J. Lodge. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (dmc)
06/25/2012	<u>30</u>	STIPULATION re <u>28</u> Order,, <i>Joint Stipulation Requesting Extension of Time to File Joint Litigation Plan Pending Settlement of Matter</i> by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. (Brown, Charles)
07/09/2012	<u>31</u>	STIPULATION re <u>28</u> Order,, <i>Stipulation (in lieu of Joint Litigation Plan)</i> by Bar Bar Inc., Cowles Publishing Company, Idaho Statesman Publishing, LLC, Idahoans for Openness in Government, Inc., Lee Enterprises, Incorporated, Pioneer Newspapers, Inc., TPC Holdings, Inc., The Associated Press, The Idaho Press Club, Inc.. (Brown, Charles)
07/10/2012	<u>32</u>	PERMANENT INJUNCTION. The Idaho Department of Corrections, and responsible parties associated therewith, are hereby ordered to modify their procedures to allow the witnesses to the execution of a condemned inmate to observe the entire execution from the moment the inmate enters the execution chamberthrough, to and including, the time the inmate is declared dead. So Ordered and this case will be deemed closed. Signed by Judge Edward J. Lodge. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by (cjm)