

# Getting to Know the District of Idaho's Newest U.S. Attorney

Jeremy C. Chou

Jeremy Chou's interview of U.S. Attorney for the District of Idaho Bart M. Davis on July 11, 2018.

**B**art Davis was appointed as the United States Attorney for the District of Idaho on September 21, 2017. Prior to being appointed, Mr. Davis graduated with a B.A. from Brigham Young University in 1978 and went on to complete his J.D. at the University of Idaho College of Law in 1980. Following graduation from law school, he began his legal career in Idaho Falls, practicing commercial, construction, business, real property and bankruptcy law.

In 1998, Mr. Davis was elected to the Idaho Senate. Mr. Davis became Senate Majority Leader in 2002 and remained in that position until the end of this tenure. He was a member of the Judiciary and Rules Committee and the State Affairs Committee and influenced issues ranging from criminal justice reform to abortion legislation and gay rights. Through it all, his reputation of fairness and civility gained the respect of his colleagues on both sides of the political aisle.

Mr. Davis was born in Rapid City, South Dakota, but was raised in Idaho Falls, Idaho. He and his wife, Marion, have six children and fourteen grandchildren. He is active in his church, is a long-time Rotarian, and enjoys golf, although he plays very little right now.

I had the pleasure of first meeting Mr. Davis while working for the State of Idaho in 2003. Together, we worked on some of the most controversial legislation and legal issues facing Idaho at the time. It was then that I discovered Mr. Davis was



United States Attorney for the District of Idaho Bart M. Davis.

not just an astute legislator, but also an exceptional attorney. Ever since then, I have been proud to call him a friend and mentor despite recently being unfriended by him on Facebook.

He was kind enough to spare a few hours to discuss his current role as the U.S. Attorney for the District of Idaho.

**Chou:** U.S. Attorney, Senator, Majority Leader, what should I call you?

**Davis:** I'm a U.S. Attorney, but I still like being called Bart. My mother gave me that name and I've liked it. I've always been comfortable being called Senator. It just seemed that it was a reminder that I needed to be worthy of the title, so I still like it. But when all is said and done, Bart is just fine.

**Chou:** How long were you in the Idaho Senate?

**Davis:** About nineteen years. I was a year shy of doing my full twenty.

**Chou:** Have you found that your experience as Senate Majority Leader has helped you in your current role?

**Davis:** More than I really appreciated. A lot of the relationships that are important to me in this position were portable from the statehouse. My predecessor, Wendy Olson, her predecessor, Tom Moss, his predecessor, Betty Richardson, and work your way on back, have done a good job in trying to make sure the relationship with law enforcement is solid.

So understanding how the structure of the Idaho State Police works with federal law enforcement is helpful. It's important for me to know who the Colonel of the Idaho State Police is and to literally have watched his career as he moved from a patrol officer, to leadership, to being the Colonel.

Similarly, it has been helpful to understand how my office can work with the Idaho Criminal Justice Commission (ICJC), which was created when Dirk Kempthorne was Governor and Canyon County was experiencing drive-by shootings and gang violence. The mission of the ICJC is very similar to U.S. Attorney General Jeff Session's Project Safe Neighborhood initiative. Governor

Otter has honored my office by allowing me to be a member of the ICJC.

Each Governor since Dirk Kempthorne has kept the ICJC alive and now the U.S. Attorney's Office has a seat there. I have enjoyed continuing my relationships with those on the ICJC, and with many others from law enforcement and the judiciary. So I think that's one thing that pleased me; although I'm not involved in the policy-setting side of their conversations, I'm at least able to continue to work with the good people in our state, from both parties, to effect good and effective law enforcement.

**Chou:** How many attorneys and support staff do you have in your office?

**Davis:** Well, we were just approved by the Justice Department for two more Assistant U.S. Attorneys (AUSAs) and that will get us to about 31 attorneys. We have about a similar number of support staff, plus a few student employees. The number is a little fluid right now because we're in this time of hiring. But if you think in terms of sixty-five to seventy people that's a pretty good number.

**Chou:** Will you describe the structure of the office?

**Davis:** Mr. Rafael Gonzalez is my First Assistant U.S. Attorney and he is a long-time career federal prosecutor. Between Wendy Olson's departure and my assumption of responsibilities, Rafael also served as the acting U.S. Attorney—from February through most of September.

Then our office has several divisions. We have an Administrative Division, which is made up of a senior manager, human resources, budgeting personnel, purchasing, information technology and the like. They are responsible for the whole district, not just for Boise. They keep the trains running.

We also have the Criminal Division, which includes two branch locations. One in Pocatello and one in Coeur d'Alene. We have three full-time federal prosecutors in Coeur d'Alene and four slated for Pocatello. We are in the process of filling one of the spots in the Pocatello office. The Pocatello and Coeur d'Alene offices only handle criminal matters; they don't handle any civil cases. The branches are supervised by the criminal chief, Aaron Lucoff. Traci Whelan is our manager for our office in Coeur d'Alene and Jack Haycock for our Pocatello office. We also have three Special Assistant U.S. Attorneys in the Criminal Division.

Our office's third division is our Civil Division. Each of the attorneys in that division and their staff are housed here in our Boise office. In that division, we have a new division chief, Nick Woychick. This change allowed Syrena Hargrove, our prior civil chief, who also handled all appellate duties, to focus more of her attention on appellate duties and provide assistance to others regarding complex legal matters and cases. She is tasked to assist with both civil and criminal cases.

**Chou:** You recently got approved for two additional federal prosecutors?

**Davis:** Yes. We were given what's called an ACE position, affirmative civil enforcement, so that lawyer will work in the civil division. The focus will be affirmative civil enforcement particularly in the area of opioid addiction. This attorney will work with both state and federal resources to try to curve downward the ark of opioid abuse.

Then, in addition, our office received an additional violent crime AUSA who will be housed in the criminal division. This attorney will focus his or her attention on prosecuting violent crime—violent crime is increasing in this state, unfortunately.

**Chou:** Okay. That's a good segue. What are your priorities for this office?

**Davis:** My priorities are set by the administration and that is to help ensure the public safety for our state starting with terrorism—both international and domestic terrorism—as it may touch upon Idaho. Public safety also includes curbing violent crime that exists here in our state, especially as it relates to opioid abuse, drug trafficking and human trafficking. These are some of our priorities on the criminal side.

Generally speaking, about 70 percent of the work that we do is in the area of criminal prosecution and the balance is defensive civil litigation and affirmative civil litigation. Those percentages vary a little bit each year, but that is generally a pretty good ballpark.

**Chou:** Typically, when people think about terrorism, they think of large cities like New York or Los Angeles. I mean, you said that was one of the priorities for Idaho. Is there something specific that you're looking for?

**Davis:** To suggest that Idaho has not had terrorism matters in the past would be incorrect. Our office and Idaho will continue to be engaged to ensure that we are as aware as possible. We're serious-minded about it.

**Chou:** When you talk about violent crime, you briefly referred to an increase in Idaho. Can you talk a little bit more about what's happening here?

**Davis:** Well, Idaho's murder rate was up in 2017 over 2016. As you look at the Idaho Crime Report for the prior year, it shows a significant increase in violent crime in our state.

Anecdotally, I have been trying to go around visiting with each county prosecutor in the state. My goal between now and the first part of February next year is to visit each

county, and that includes spending time with tribal councils. During my visits, I'm asking them to tell me about what's happening in their county; what's going on in the way of criminal activity; what are they seeing. In most instances, my county counterparts are telling me they are overwhelmed with the amount of work. And I know that our office has experienced a significantly higher number of cases as well.

**Chou:** What do you think is the reason for the uptick in violent crime?

**Davis:** There is a more serious, organized criminal element, both in the world, in our country, in our region and in our state than some time ago. These criminals have become more capable, more sophisticated, in the use of their technology and of the criminal process, and they are serious-minded in pursuing their drug trafficking and other criminal efforts. And, our population continues to increase.

**Chou:** So when you say organized criminal element, are you referring to gangs or something like the mob?

**Davis:** Traffickers of fentanyl produced in China and Mexican drug cartels are heavily involved in wanting to pursue and enhance their presence throughout our country, including in Idaho.

**Chou:** Are you saying there is a significant problem with fentanyl and synthetic opioid-type drug abuse in Idaho?

**Davis:** Yes. We have a fentanyl problem in Idaho.

**Chou:** I know what fentanyl is, but do you mind just describing what fentanyl is?

**Davis:** Fentanyl is an opioid. It is a powerful synthetic that is so potent it is more likely to kill you than any other opioid on the streets today. It does not take a large dosage to take a life. It is being distributed and



Bart M. Davis answering questions at news conference.

peddled by individuals who I don't believe have even the slightest idea of what a miniscule quantity of fentanyl can do to a large population area quickly.

**Chou:** Do you see that in rural areas in Idaho too?

**Davis:** We are seeing more and more of the influence of heroin and fentanyl in our state. Methamphetamine, however, continues to be the leading drug that is trafficked in Idaho, as far as cases we're handling. But in 2016 a new Special Assistant U.S. Attorney position was created in Pocatello mostly to handle the increased heroin traffic coming up Interstate 15 out of Utah.

I'm continuing to hear more and more from some of our county prosecutors, not all, but many are finding an increase in heroin prosecutions in their areas. Generally speaking, Idaho's mandatory minimum sentencing standards are a stronger remedy than at the federal level. The State of Idaho has powerful, and I believe effective, statutes that are a gift to our capable county prosecutors—some very strong tools and stronger tools in many instances than what our office can provide.

**Chou:** Will your federal office also prosecute marijuana cases?

**Davis:** What kind of marijuana cases are you talking about?

**Chou:** Trafficking.

**Davis:** Trafficking? As appropriate, you bet we will.

**Chou:** Have you talked with your counterparts in California, Washington and Oregon, where marijuana is legal, about increased Idaho trafficking issues?

**Davis:** Yes. For many years and decades, each U.S. Attorney General has had what is called the Attorney General's Advisory Council or AGAC. The AGAC consists of different U.S. Attorneys from each of the circuits and from around the country intended to provide the diversity of opinions from both large districts and small districts so that the Attorney General has a sense of what's happening in the trenches around the country.

Then, in response to your question, there are two other groups worth noting. One is called HIDTA (High Intensity Drug Trafficking Areas), and there are different HIDTAs around the country. Three southern

Idaho counties—Ada, Canyon, and Bannock—are part of the Portland HIDTA. HIDTAs have the responsibility and funding resources to also provide Special Assistant U.S. Attorneys in high intensity drug trafficking areas, working with local law enforcement, local prosecutors, the DEA and the like, to target, identify and reduce drug trafficking.

Then there's another organization, you have what's called the OCDETF, which stands for the Organized Crime Drug Enforcement Task Force, and our OCDETF region includes many of our surrounding states as well. Nevada, Oregon, Washington and Idaho are part of the same region. OCDETF is intended, frankly, to focus on the more complex organized crime elements out there.

Both HIDTA and OCDETF members meet with our colleagues in different districts and their senior management teams. Among those efforts and conversations, we also talk about illicit growth and illicit transportation. We talk about joint efforts that can be made to try to address significant illicit marijuana problems.

**Chou:** Do you think your counterparts are doing enough to address the trafficking issue in Idaho?

**Davis:** They are serious-minded about it and they have heard from me as I have tried to provide a voice from local law enforcement as to some of the challenges they are facing. I believe that my counterparts are serious in wanting to provide resources and assistance as well. That includes resources and assistance across the entire spectrum, not just in the area of illicit marijuana growth or trafficking, but also to combat the collective partnerships providing methamphetamines, opioids and the like.

**Chou:** I hear your office has been successful in prosecuting doctors

and those in the healthcare industry for over-prescribing.

**Davis:** Yes, and we are not done.

**Chou:** There was a recent press release where you participated in a national effort to prosecute individuals in the healthcare industry for over-prescribing or intentionally abusing their abilities to prescribe. Specifically, there was a nurse here in Idaho who I believe was charged. Your response is 'we're not done yet.' Are you also looking at pharmaceutical distributors and pharmaceutical companies?

**Davis:** One of the duties for the new ACE attorney will be identifying what that problem is and where we can, from a civil point of view, make an impact in reducing opioid abuse. So the answer to your question is yes, that's something that we want to continue to do more of.

When I say we're not done, what I really want Idaho to understand is that whether they are a physician or a nurse or a pharmacist or anybody who may staff or support individuals in those professions, healthcare providers are in positions of great public trust. When you sit down with your physician and you say 'I am in pain,' and a healthcare provider gives you a prescription, we should have confidence that our trust in these healthcare providers is well-placed.

Idaho has great healthcare providers. We have hospitals that care. They are trying to do it right. We do, however, have a few rascals who have not been as careful as they should and others whose actions have been adjudicated criminal.

My office is committed to helping protect Idahoans because the DEA tells us that 80 percent of heroin users started with an opioid. Once addicted, it is hard to stop.

**Chou:** Some of the counties in Idaho have filed suit against large pharmaceuticals alleging that they knew

of over-prescribing, abuse or both. In the event these counties end up prevailing, would your office look at those cases and see whether or not you would implement your own case?

**Davis:** Our affirmative civil enforcement attorney, who we hope to have on board some time shortly after Labor Day, will be looking at a variety of options and alternatives.

**Chou:** How do you deal with partisan politics in your position?

**Davis:** The U.S. Attorney is a patronage position. Although I was confirmed by the U.S. Senate, I was appointed by and serve at the pleasure of the President of the United States. I think I know a little bit about partisan issues. I think I know what it's like to be involved in legislative skirmishes. I think I've got the bona fides on that. But I work with lawyers and staff who represent the entire political spectrum. They've been led by Republican and Democratic nominees alike. At the end of the day, my colleagues believe in the mission. They could leave and go into private practice and some came from private practice. They could be making more money than what they're making here, but they believe in the mission. It's not a partisan mission.

We don't make the public policy. We enforce the public policy. I have folks in my office who I know, I'm sure, are far left of center, and individuals who are to the right of me in their politics. When you have a group this large, that's just reality. But I really would hope that members of the Idaho State Bar understand that there is a diverse political and cultural body of legal professionals here. And I like that. I like different legal perspectives or points of view. I don't want them to be silenced. I need to hear from them and I hope that culture is maintained while I'm U.S. Attorney. I believe that was true for Wendy Olson. I believe that was true

for Tom Moss and his predecessors. I want to continue that. I'm not a Republican U.S. Attorney. I am Idaho's U.S. Attorney.

**Chou:** What's it been like for you individually?

**Davis:** My wife and I had decided that at the end of this legislative term, I was going to retire from the Idaho Legislature and maybe we would pursue some other things together. She's been retired for four or five years as a long-time school teacher. I had to go hat-in-hand and ask her if I could charge after another dream of mine.

You don't need to put this in your article, but I need to say this: I am the luckiest boy in the State of Idaho. I have lived a charmed life, with people I practice law with and against. Idaho has a great judiciary, state and federal, and it's been a great experience to get kicked around the courtroom by friends and colleagues and to have to defend your position to capable judges.

But I'm really lucky to have spent nearly forty-two years with the best friend I've ever had, who had to set aside another desire of hers for me to chase after this opportunity. And I guess I'm really lucky to have Marion as my partner, and I just hope someday that I am as great of a partner to her as she has been to me in letting me do this job. I really love her.

**Chou:** Okay. So why did you unfriend me on Facebook?

**Davis:** I closed my Facebook account down. It wasn't you. It was everybody.

**Chou:** Why was that?

**Davis:** That's a fair question. I don't mind answering it. I believe I was counseled at the front end of my service as U.S. Attorney to not engage in social media. What if in doing my job I got entangled in the definition of Facebook "friends"? A Facebook or social media "friend" is not the same as a friend in the traditional



Bart M. Davis speaks at news conference.

sense. A friend means more to me than the click of a button. Having been in elected office, I have social media "friends" who are dear friends and social media "friends" who are complete strangers who were more interested in monitoring my political speech—they were sorely disappointed to learn I rarely posted on Facebook and never about politics. But as U.S. Attorney, I took an oath to "well and faithfully discharge the duties of the office," regardless of whether the target of an investigation or the defendant in a prosecution or another party in a civil lawsuit is my actual friend or my "friend" on social media. I don't want to have to recuse myself or be recused because of a

false social media classification.

Also, it seemed like a lot of Facebook postings were political, and I'm not in that type of politics anymore. I have a different responsibility and Facebook is an easy magnet for political speech. It's hard to distance yourself from something such as politics that's been an important part of who you have been for nearly two decades, and I believed that I could do a better job as U.S. Attorney if I more firmly closed the door on that political part of my life. Besides, I just wanted to see pictures of my grandbabies and I couldn't ever find them on Facebook.

**Chou:** Well it's a relief to know it wasn't just me.

*Jeremy C. Chou's legal practice at Givens Pursley focuses on government relations and administrative proceedings. In the past, he worked as a staffer for U.S. Senator Steve Symms and U.S. Senator Dirk Kempthorne, and in 1999, he opened the first Washington D.C. Office of the Governor for the State of Idaho. In 2003, he returned to Idaho to work in the Office of the Attorney General, Civil Litigation Division. He joined Givens Pursley in 2008.*

