

DISTRICT OF IDAHO





U.S. DISTRICT & BANKRUPTCY COURTS

2017 District of Idaho Report

Boise Coeur d'Alene Pocatello Moscow

January 20, 2017: Ninth Circuit Selected Christine Salmi as Appellate Lawyer Representative for the District of Idaho



The Ninth Circuit judges selected Christine Salmi to serve as an Appellate Lawyer Representative for the District of Idaho commencing January 20, 2017 and concluding December 31, 2019. Christine is a senior counsel in Perkins Coie's Boise office, where she serves as head of the local litigation practice, as a member of her firm's Appellate and Labor & Employment practices, and chair of the Boise office's Diversity Committee. In practice, Christine represents clients in cases involving product liability, the First Amendment, trademark infringement, environmental resources, special education law and general commercial contract disputes. She is co-founder and the current chair of the Idaho State Bar's Appellate Practice Section; and co-editor/publisher of the *Idaho Appellate Handbook* (2015). In her first year as

Appellate Lawyer Representative, she brought substantive content to the Idaho District Bench Bar Conferences in Coeur d'Alene and Boise, Idaho on the topics of Briefing, Standards of Review (also preservation) and Oral Arguments with panelists the Honorable Randy Smith (Idaho) and the Honorable Morgan Christen (Alaska), from the Ninth Circuit Court of Appeals.

February 20-22, 2017: Ninth Circuit Conference of Chief District Judges and Lawyer Representatives Coordinating Committee in San Diego, California

Chief District Judge B. Lynn Winmill and Lawyer Representatives Lori Nakaoka and Nicole Hancock from the District of Idaho attended the February 20, 2017 Conference of Chief District Judges and Lawyer Representatives in San Diego, California. Co-chaired by Chief District Judge Ramona Manglona (Northern Mariana Islands) and Lawyer Representative Coordinating Committee ("LRCC") Chair Autumn Spaeth of the Central District of California, the conference included informative presentations on the evolution of eDiscovery and the differences in the selection and roles of Lawyer Representatives among the districts, as well as a discussion about "What Lawyers Wish Judges Knew." After the LRCC portion of the program completed, the remainder of the attendees continued their program through February 22, 2017.

March 9, 2017: District of Idaho's Libby Smith Named as Ninth Circuit Chief Executive



On March 9, 2017, Libby Smith was named Chief Executive of the Ninth Circuit following Cathy Catterson's retirement on February 28, 2017. Libby served as the clerk of the court for the federal courts in Idaho for eight years. As circuit executive, Libby reports directly to Chief Judge Thomas and serves as the secretary of the Judicial Council of the Ninth Circuit, the governing body for federal courts in the western states and Pacific islands. She leads the Office of the Circuit Executive, whose 38 employees provide a wide variety of services to all of the federal courts of the circuit.

June 19, 2017: Stephen W. Kenyon Appointed as New Clerk of the U.S. District and Bankruptcy Courts for the District of Idaho

On June 19, 2017, Stephen W. Kenyon became the new Clerk of the U.S. District and Bankruptcy Courts for the District of Idaho.

Steve comes to the District of Idaho after having served as the clerk for the Idaho State Courts since January 2005. Steve is an attorney and certified public accountant, holding degrees from the University of Idaho and Idaho State University. He was raised in Boise, Idaho and received his law degree from the University of Idaho College of Law. With his wife, they have four children and live in Boise.



Chief Justice Roberts Appoints U.S. Magistrate Judge Candy Wagahoff Dale to National Committee



Chief Justice John Roberts invited U.S. Magistrate Judge Candy Wagahoff Dale to serve as Judge Observer for the Judicial Conference of the United States. As the Magistrate Judge Observer, Judge Dale will represent the nation's Magistrate Judges as a non-voting member at the Judicial Conference. The Judicial Conference is a bi-annual meeting between the U.S. Supreme Court and the Circuit Courts, chaired by Chief Justice Roberts from the U.S. Supreme Court. Only one of the nation's 500 Magistrate Judges is given the honor.

June 15-16, 2017: Idaho Teachers' Institute on the Rule of Law and the Role of an Independent, Impartial Judiciary

Since the 2015 inauguration of the "Idaho Teachers' Institute on the Rule of Law and the Role of an Independent, Impartial Judiciary" in 2015, members of Idaho's federal judiciary, with the aid of its Lawyer Representatives and staff from the University of Idaho College of Law, continue to hold its annual meeting in Boise, Idaho. As with the preceding year, the Institute was a collaborative effort of the Idaho federal courts, the Idaho Supreme Court and the University of Idaho College of Law. The purpose of the Institute is to enhance the teachers' understanding of the judicial branch of government at the national, state and tribal levels and was organized as a combination of presentation by experts on selected topics together with a set of workshop discussions led by facilitators and master teachers possessing abundant classroom experience.

The Institute was attended by 40 teachers (an increase of five teachers over last year), with 60% of the teachers coming from outside the Boise and Treasure Valley area. A portion of the program included the opportunity for teachers and faculty to observe oral arguments at the Idaho Supreme Court followed by a Q&A session with the Justices. Based on the Institute's enormous success and the laudatory reviews received from its participants, the Institute will continue in 2018, and will be offering teacher grants to help facilitate the incorporation of a civics curriculum in the classroom.



July 17-20, 2017: Ninth Circuit Judicial Conference in San Francisco, California and the Joint Idaho-Montana Dinner (July 18, 2017)

The 2017 Ninth Circuit Judicial Conference was held July 17-20, 2017 in San Francisco, California. Lawyer Representatives Lori Nakaoka and Nicole Hancock served throughout 2017 as the Co-Chairs of the Idaho delegation of the Lawyer Representative Committee and participated actively in the planning of the 2017 conference.

Ms. Nakaoka worked closely with Montana Lawyer Representative Kiely Keane to plan a memorable Idaho/Montana district dinner at AT&T Park, home of the San Francisco Giants. The night, which included a dinner of hot dogs and Cracker Jacks, was a "hit" when the Giants beat the Cleveland Indians in the 10th inning. Idaho and Montana attendees had a wonderful, yet chilly, evening, and the event was highlighted by a visit from Ninth Circuit Chief Judge Sid Thomas, who generously took time out of his busy conference schedule to join the Idaho-Montana gathering.

August 1, 2017: Judge David C. Nye Sworn in as U.S. District Judge for the District of Idaho



Judge David C. Nye was sworn in as U.S. District Judge for the District of Idaho on August 1, 2017, after having been nominated by both President Barack Obama and President Donald Trump. Judge Nye is the first Article III judge to be sworn into office in Idaho in over 20 years. In 2007, Judge Nye was appointed by Idaho Governor Otter to serve as a District Judge for the State of Idaho. He served in that capacity from 2007 to 2017, and served as Administrative District Judge for the Sixth Judicial District of Idaho from 2009 to 2012. Prior to serving as a judge, he practiced law in Pocatello, Idaho from 1987 to 2007.

September 1, 2017: U.S. Magistrate Judge Candy W. Dale Awarded Lifetime Achievement Award



Judge Candy Wagahoff Dale was awarded the Lifetime Achievement Award by the Idaho Business Review ("IBR") Leaders in Law program. Judge Dale received her award on November 16, 2017 at the Idaho Business Review awards event with more than 250 people in attendance. Nominated by colleagues in the bar and peer reviewed, the Idaho Business Review said the Leaders in the Law "represent 'the best of the best.'" The IBR reported that after a "thunderous standing ovation," Judge Dale said in her acceptance comments that in her current role on the bench she feels that she is "an advocate for the process and the independence and the

impartiality of the judiciary," a role that can be at times "incredibly overwhelming ... every decision we make has an impact on a life, on many lives, and sometimes the entire country or the entire world."

U.S. Bankruptcy Judge Jim D. Pappas Announced Retirement as Full-Time Judge



Judge Jim D. Pappas announced his intent to retire as a full-time Bankruptcy Judge at the end of his term on March 22, 2018. With the support of Chief Bankruptcy Judge Terry Myers, Judge Pappas accepted a recall appointment from the Ninth Circuit. Judge Pappas has served on the District of Idaho's Bankruptcy Court since 1990 and throughout his distinguished career has been known as a skilled lawyer and as a widely respected jurist. He served as the Chief Bankruptcy Judge for 11 years, and has presided over 100,000 bankruptcy cases in Idaho. Known for his

"near-encyclopedic knowledge of the Bankruptcy Code and the case law interpreting it," according to one practitioner, Judge Pappas exhibited "[g]race and compassion for the debtors who have come before him for relief from their financial woes." In 2005, the Ninth Circuit appointed Judge Pappas to serve as one of six judges on its Bankruptcy Appellate Panel ("BAP"), deciding appeals from the bankruptcy courts in Alaska, Hawaii, Guam, Northern Mariana Islands, Washington, Oregon, California, Arizona, Nevada, Idaho and Montana. Judge Pappas served as chief judge of the BAP for three of his 10 years on the BAP. The Ninth Circuit decided to fill the vacancy created by Judge Pappas' decision to retire as a full-time Judge and solicited applicants to participate in a merit-screening process.

2017 Coeur d'Alene and Boise, Idaho Bench Bar Conferences

The court staff collaborated with the Lawyer Representatives and their offices, and with the Idaho Federal Bar Association, in planning the annual Idaho District Bench Bar Conferences held in Coeur d'Alene, Idaho on September 27, 2017 and Boise, Idaho on November 3, 2017.



Planning for these conferences was done by Chief U.S. Magistrate Judge Ron Bush and the Lawyer Representatives. The Coeur d'Alene Bench Bar conference had 64 attendees and the Boise Bench Bar conference had 217 attendees.

The conferences were presided over by Chief U.S. Magistrate Judge Ronald E. Bush, and included various topics relevant to the Bench and Bar, including (1) the "State of the Judiciary" presentations by Ninth Circuit Judge Randy Smith, Chief District Judge B. Lynn Winmill and Chief Bankruptcy Judge Terry Myers; (2) A presentation on implicit bias by Dr. Erik Girvan, Assistant Professor, University of Oregon School of Law; (3) Handling Ninth Circuit Appeals – Preserving and Successfully Presenting Federal Appeals; (4) U.S. Supreme Court in an Era of Divisiveness, and How it Affects Idaho Lawyers; (5) breakout sessions on Trial Practice and Electronically Stored Information in Discovery; (6) our Judges' Panel featuring audience survey using *Poll Everywhere with Wordle*; and (7) the Nisei Paradox of WWII Japanese American Draft Resisters.



The highlight of the conferences was the staged reading of the "Nisei Paradox," written and directed by Boise lawyer Jeffrey Thomson. See the attached playbill and summary for more details about this unique and interesting historical presentation.

November 9, 2017: U.S. Bankruptcy Judge Joseph M. Meier Receives Idaho State Bar's Professionalism Award



Bankruptcy Judge Joseph M. Meier was awarded the Idaho State Bar's Professionalism Award on November 9, 2017. The Professionalism Award is given to an attorney who practices in one of Idaho's seven judicial districts and who has engaged in extraordinary activity in his or her community, in the state or in the profession, which activity reflects the highest standards of professionalism. At the time of his award, Judge Meier had not yet been sworn in as the new U.S. Bankruptcy Judge for the District of Idaho.

District of Idaho Awards Community Grants

In support of promoting public trust and confidence in the Judiciary, the United States District and Bankruptcy Courts for the District of Idaho established a non-appropriated fund in 1989. The monies deposited into this fund are used for purposes that inure to the benefit of members of the bench and bar in the District of Idaho. Use of the non-appropriated fund was determined by the Court to improve communication and understanding of the judicial branch and provide information to the community we serve. In 2017 the District of Idaho awarded grants to the following:

Grantee Organization Name	Project Name	Amount Awarded
Idaho Law Foundation	Attorneys for Civic Education	\$3,000
Concordia Law School	Veterans Criminal Justice Clinic	\$11,500
Idaho Legal Aid	Enhancing Services to Idaho's LEP Community	\$15,000
University of Idaho College of Law	Teacher's Institute	\$25,745
TOTAL		\$55,245

Wendy Olson and R. Bruce Owens Receive 2017 Exemplary Lawyer Award from the Idaho Chapter of the Federal Bar Association

Wendy Olson and R. Bruce Owens both received the 2017 Exemplary Lawyer award honoring attorneys who have improved the quality of practice in Idaho's federal courts. As the former U.S. Attorney for the District of Idaho and a past Federal Bar Association Idaho Chapter President, Wendy is now a partner at Stoel Rives LLP in Boise, Idaho. She has more than two decades of experience prosecuting white collar crime cases and civil rights violations. Wendy also received the Idaho State Bar's Diversity Section's 2017 "Justice for All" award and the 2017 Idaho Business Review "Leader in Law" award.

R. Bruce Owens is a founding partner of Owens McCrea Linscott PLLC, with more than four decades of experience

handling large civil litigation cases. Bruce served as a Ninth Circuit Lawyer Representative from 2002 to 2004, President of the Idaho Law Foundation from 2000 to 2001, and President of the Idaho Trial Lawyers Association from 1991 to 1992.



Idaho Chapter of Federal Bar Association Active in Idaho Increases Membership

The Idaho Chapter of the Federal Bar Association ("FBA") is an active 159-member organization, with membership at a five-year high at the end of 2017. The Idaho Chapter of the FBA offers a student chapter, a quarterly newsletter, brown-bag lunch CLEs, and mentoring programs, and publishes judicial profiles to highlight the Idaho federal bench. It works with the Idaho Lawyer Representatives to provide administrative support for the two annual Idaho District Bench Bar Conferences. In 2017, J. Walter Sinclair served as the President of the Idaho Chapter.



New Lawyer Representative and Ninth Circuit Lawyer Representative Coordinating Committee Members



On December 31, 2017, Lori Nakaoka's three-year term as a Lawyer Representative expired, and Lawyer Representatives Nicole Hancock and April Linscott began serving as the Co-Chairs at the start of 2018 as the District of Idaho's Lawyer Representative delegation to the Ninth Circuit's Lawyer Representative Coordinating Committee.

Robert ("Bob") Faucher of Holland and Hart LLC in Boise, Idaho was selected by the U.S. District and Bankruptcy Courts for the District of Idaho as the newest Lawyer Representative for a three-year term

beginning January 1, 2018. As a bankruptcy attorney, Bob contributes to our bankruptcy programs. Howard Burnett generously continued his second year as a Lawyer Representative Emeritus, and continues to provide his support and input to the Bench and the Bar.

Attachment 1



AGENDA

Date: 15 September 2017
Coeur d'Alene Resort

Coeur d'Alene, Idaho

6.5 hours of CLE credits (including .5 Ethics credit)

8:00
a.m. **Registration**

8:30
a.m. **Welcome**
Chief U.S. Magistrate Judge Ronald E. Bush

8:35
a.m. **State of the Judiciary**
United States District and Bankruptcy Courts in Idaho

Honorable Ronald E. Bush, Chief U.S. Magistrate Judge
Honorable Terry L. Myers, Chief U.S. Bankruptcy Judge

United States Court of Appeals for the Ninth Circuit
Honorable N. Randy Smith, Ninth Circuit Court of Appeals

9:30
a.m. **Plenary Session: Handling a Ninth Circuit Appeal - Preserving and Successfully Presenting Federal Appeals**

Panelists:
Honorable N. Randy Smith, Ninth Circuit Court of Appeals
Honorable Morgan Christen, Ninth Circuit Court of Appeals
Syrena Hargrove, Civil and Appellate Chief U.S. Attorney, District of Idaho

Moderator: Appellate Lawyer Representative Christine Salmi

Ninth Circuit Judges Randy Smith and Morgan Christen and appellate specialist AUSA Syrena Hargrove will provide perspective, insight, real life practical tips, and links to resources, all to reveal best practices for success on appeal. Topics will include preserving appellate issues at the trial court level from discovery through trial; persuasively briefing appellate arguments; and mastering oral argument skills. Although Ninth Circuit appeals are emphasized, the information in this session will hone your appellate practice success before any court.

10:40
a.m. **Morning Networking Break**

11:00
a.m. **Plenary Session: The U.S. Supreme Court in an Era of Divisiveness, and How it Affects Idaho Lawyers**

Speaker: Richard Seamon, Professor of Law, University of Idaho College of Law.
Co-author of *The Supreme Court Sourcebook* (Wolters Kluwer 2013) (co-authored with A. Siegel, J. Thai, and K. Watts).

Moderator: Lawyer Representative Emeritus Howard D. Burnett

The recent battle over whether to confirm Judge Merrick Garland or Judge Neil Gorsuch as Justice Antonin Scalia's replacement shows that the U.S. Supreme Court is never far from a political spotlight. The Court is again in the spotlight this Term, as it takes up the politically divisive case of the so-called "travel ban," and a Colorado baker's refusal to fill a wedding cake order for a same-sex wedding. Professor Seamon's presentation will explore the future of the Court in an increasingly divided political landscape and explain how that new judicial landscape affects lawyers and citizens of Idaho and other places "outside the Beltway."

12:00 p.m. Luncheon (included with your paid registration): Whether you are just curious about or very glad for some new faces at the courthouse, this will be your chance to hear from the Honorable David C. Nye (nominated by both President Obama and President Trump), our new District Judge, and Stephen Kenyon, the new Clerk of the U.S. District and Bankruptcy Courts for the District of Idaho.

Rafael Gonzalez, Acting U.S. Attorney for the District of Idaho, will provide a short status report on the work of the U.S. Attorney's office under the new administration and the status of the nomination of Bart Davis to be the new U.S. Attorney. Afterwards, the Idaho Chapter of the Federal Bar Association will present its 2017 Exemplary Service Award.

1:15 p.m. Break-out Sessions

#1: Trial Practice - A Primer on Economic Expert Testimony in Federal Practice - A Necessary Evil or the Centerpiece of Your Case?

Panelists: R. Bruce Owens, of Owens, McCrea and Linscott, PLLC, and Peter C. Erbland, Ausey H. ("Rusty") Robnett, and Fonda L. Jovick, of Lake City Law

Moderator: Lawyer Representative April M. Linscott

The economics expert should never be an afterthought or an underprepared part of your case. Whether used for liability or for damages, the expert economist is a frequent and important element of myriad types of federal litigation. Watch and listen as experienced lawyers teach the art and the law of expert economic testimony, with interactive demonstrations of direct and cross-examination. Discuss how to protect your right to present expert testimony at trial through compliance with disclosure and other discovery requirements, and learn how to recognize and stay on the right side of ethical boundaries. Significant upcoming changes to the federal evidence rules on authentication requirements will be described.

#2: Electronically Stored Information (ESI) in Discovery – The %@\$X# Changing Technology and its Impact on our Discovery Practices

Panelists: Aaron N. Lucoff, Criminal Chief, U.S. Attorney's Office, District of Idaho, Nicolas Vieth, Vieth Law Offices, Kelly Roberts, Director of Litigation Technology Support, Stoel Rives, LLP, and Erika B. Grubbs, Winston & Cashatt

Moderator: Lawyer Representative Lori Nakaoka

Learn how to tame the ESI beast! Experienced lawyers and a technology specialist present a practical and interactive discussion on how to identify, preserve and extract ESI and how to avoid the pitfalls.

2:15 p.m. Afternoon Networking Break

2:30 p.m. Plenary Session: Judges' Panel – The Next Best Thing to a Grateful Dead Concert! Tips from the Bench, Questions from the Bar, and live interactive audience polling using *Poll Everywhere with Wordle*

Honorable Ronald E. Bush
Honorable Morgan Christen
Honorable Candy W. Dale
Honorable Terry L. Myers
Honorable David C. Nye
Honorable Thomas O. Rice
Honorable N. Randy Smith

Moderators: U.S. District Court Staff Attorneys Dan Gordon and Lauri Thompson, and Lawyer Representative Nicole Hancock

Yes, this mainstay of the Bench-Bar conference is back, but with a shot of high tech and a twist of rhyme. Nicole Hancock and two of the Court's career staff attorneys will bring a drone's eye view of the District Court and its inhabitants, along with a real-time, interactive opportunity for conference attendees to weigh in on the discussion and conversation. An added bonus – Chief Judge Thomas O. Rice of our neighbors in the Eastern District of Washington will join the sandbox!

3:30 p.m. Plenary Session: *Not Free to Go, but Required to Fight: The Nisei Paradox of WWII Japanese-American Draft Resisters* A Staged Reading

75 years ago, shortly after the bombing of Pearl Harbor and the entry of the United States into WWII, the federal government began a process which resulted in the identification and effective segregation of more than 100,000 Japanese-American citizens and lawful residents of Japanese ancestry living in the west coast states and territories. Their travel was confined to specific, limited areas. Soon thereafter, they were ordered to leave their homes, businesses and belongings behind, and then were moved into so-called "relocation camps," located primarily in interior areas of the western United States. More than 10,000 of those relocated were ordered into the hastily constructed wooden barracks of the Minidoka Relocation Center, intentionally placed in a windswept and forlorn rural area of Jerome County, Idaho.

Despite being at war, the armed services first refused to enlist volunteers from the ranks of those who had been relocated. Later, a decision was made to allow volunteer enlistment and then later still a decision was made to draft all eligible young men in the camps. A greater percentage of young men from Minidoka voluntarily enlisted than from any other of the relocation camps. But some refused induction. Dozens of young men were prosecuted as draft resisters in Idaho federal court. What does it mean to say "No" to your country when your country has said "No" to you? Our conference concludes with a theatrical presentation about a forgotten chapter in the history of the federal courts in Idaho, written and directed by Jeffrey Thomson, a partner in the Boise law firm of Elam & Burke.

5:00 p.m. Closing Remarks

Attachment 2



AGENDA

Date: 3 November, 2017
Boise Centre
Boise, Idaho

6.5 hours of CLE credits (including .5 Ethics credit)

8:00 a.m. Registration

8:30 a.m. Welcome

Chief U.S. Magistrate Judge Ronald E. Bush

8:35 a.m. State of the Judiciary

United States District and Bankruptcy Courts in Idaho

Honorable B. Lynn Winmill, Chief U.S. District Judge
Honorable Terry L. Myers, Chief U.S. Bankruptcy Judge

9:15 a.m. Plenary Session: What is the Real Sum of our Parts? – Understanding and Reconciling the Hidden Biases that Inhabit our Thinking and Decision Making.

Speaker: Dr. Erik Girvan, Assistant Professor, University of Oregon School of Law, Co-Director, University of Oregon Conflict and Dispute Resolution Program.

Moderator: Lawyer Representative Emeritus Howard D. Burnett

Can someone's race, sex, age, and other characteristics influence the way we see and treat them even when we are genuinely trying to be unbiased? What concrete steps can we take to help prevent this from happening? To help answer these questions, this workshop introduces the concept of implicit bias. Through a mix of short presentations, lively activities, and discussions, we will explore some harmful side effects of how our brains naturally perceive, categorize, and draw inferences about the world, including other people. We will examine when this kind of bias is most likely to occur. Learn practical steps we can all take to try to reduce or eliminate implicit bias from our decision-making. How you think, or how you think that you think, may surprise you.

10:45 a.m. Morning Networking Break

11:00 a.m. Plenary Session: Electronically Stored Information (ESI) in Discovery – The %@\$X# Changing Technology and its Impact on our Discovery Practices.

Moderator: Lawyer Representative Lori Nakaoka

Panelists: Aaron N. Lucoff, Criminal Chief, U.S. Attorney's Office, District of Idaho; Kelly Roberts, Director of Litigation Technology Support, Stoel Rives, LLP; Greg Johnson, Paine Hamblen LLP; and John R. Kormanik, Kormanik & Sneed LLP.

Learn how to tame the ESI beast! Experienced lawyers and a technology specialist present a practical and interactive discussion on how to identify, preserve and extract ESI, and how to avoid the pitfalls. What are the safe harbors under the Federal Rules of Civil Procedure? How do you use them?

Are there good ways to economize?

12:00 p.m. Luncheon (included with your paid registration): Whether you are just curious about or very glad for some new faces at the courthouse, this will be your chance to hear from the Honorable David C. Nye (nominated by both President Obama and President Trump), our new District Judge, and Stephen Kenyon, the new Clerk of the U.S. District and Bankruptcy Courts for the District of Idaho. Our new United States Attorney for the District of Idaho, Bart M. Davis, also will be introduced.

The Idaho Chapter of the Federal Bar Association will present its 2017 Exemplary Service Award.

Presentation of Idaho Legal History Society's Byron J. Johnson Award to Fourth District Judge Ronald Wilper.

Introduction of the new lawyer representative for 2018-2020.

1:15 p.m. Plenary Session: A Primer on Economic Expert Testimony in Federal Practice - A Necessary Evil or the Centerpiece of Your Case?

Speakers: U.S. Magistrate Judge Candy W. Dale; Kevin Bouilly, Persuasion Strategies; Keith A. Pinkerton, MBA CFA ASA; and J. Walter Sinclair, Holland & Hart LLP

Moderator: Lawyer Representative April M. Linscott

The economics expert should never be an afterthought or an underprepared part of your case. Whether used for liability or for damages, the expert economist is a frequent and important element of myriad types of federal litigation. Watch and listen as experienced lawyers teach the art and the law of expert economic testimony, with interactive demonstrations of direct and cross-examination. Discuss how to protect your right to present expert testimony at trial through compliance with disclosure and other discovery requirements, and learn how to recognize and stay on the right side of ethical boundaries. Significant upcoming changes to the federal evidence rules on authentication requirements will be described.

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Yes, this mainstay of the Bench-Bar conference is back, but with a shot of high tech and a twist of rhyme. Nicole Hancock and two of the Court's career staff attorneys will bring a drone's eye view of the District Court and its inhabitants, along with a real-time, interactive opportunity for conference attendees to hover in on the discussion and conversation.

Moderators: U.S. District Court Staff Attorneys: Daniel Gordon and Jeff Severson; and Lawyer Representative Nicole Hancock

3:30 p.m. Plenary Session: *Not Free to Go, but Required to Fight: The Nisei Paradox of WWII Japanese-American Draft Resisters* A Staged Reading

75 years ago, shortly after the bombing of Pearl Harbor and the entry of the United States into WWII, the federal government began a process which resulted in the identification and effective segregation of more than 100,000 Japanese-American citizens and lawful residents of Japanese ancestry living

in the west coast states and territories. Their travel was confined to specific, limited areas. Soon thereafter, they were ordered to leave their homes, businesses and belongings behind, and then were moved into so-called "relocation camps," located primarily in interior areas of the western United States. More than 10,000 of those relocated were ordered into the hastily constructed wooden barracks of the Minidoka Relocation Center, intentionally placed in a windswept and forlorn rural area of Jerome County, Idaho.

Despite being at war, the armed services first refused to enlist volunteers from the ranks of those who had been relocated. Later, a decision was made to allow volunteer enlistment and then later still a decision was made to draft all eligible young men in the camps. A greater percentage of young men from Minidoka voluntarily enlisted than from any other of the relocation camps. But some refused induction. Dozens of young men were prosecuted as draft resisters in Idaho federal court. What does it mean to say "No" to your country when your country has said "No" to you? Our conference concludes with a theatrical presentation about a forgotten chapter in the history of the federal courts in Idaho, written and directed by Jeffrey Thomson, a partner in the Boise law firm of Elam & Burke.

Stage actor and attorney Jeff Thomson will re-enact a Japanese-American draft resister's dilemma.

5:00 p.m. Closing Remarks

Attachment 3

The Nisei Paradox

*How Does One Know When the Vision of the Constitution is Blurred by Crisis?
The Memory of the Japanese-American Relocation and Internment in Idaho.*

by Chief U.S. Magistrate Judge Ronald E. Bush (Sept. 2017)

The dramatic production presented to you in this Bench Bar Conference, titled *The Nisei Paradox*, tells a story that many might find inconceivable. Young men were conscripted to serve in the United States Armed Forces. At the time they were conscripted, those same young men were living with their families under armed guard behind barbed wire fences, hundreds of miles from their homes, filling tight quarters with little privacy in hastily constructed wooden barracks shared with many other families. They had been forced to leave nearly all their belongings behind, their parents had been forced to give up businesses, homes, and farms. Before receiving their draft notices, they were labeled enemy aliens and told that they could not serve in the Armed Forces even if they wanted to volunteer to do so. They were not free to leave the place where they were incarcerated. They did not know when or if they would be permitted to leave -- unless, that is, if they reported for induction to the draft board located in Jerome, Idaho, the town closest to the internment camp in which they lived.

These young men were Nisei – born in the United States of Japanese immigrants, and therefore U.S. Citizens, their parents and grandparents had been living in the United States for many years, often decades. Their lives changed on December 7, 1941, when fighter planes of the Imperial Japanese Navy launched a surprise attack upon Pearl Harbor. More than 2000 American sailors and soldiers died, many more were wounded. Dozens of

ships were destroyed including much of the Navy's battleship fleet, along with more than 300 airplanes. The next day, the United States declared war on Japan, and three days later declared war upon Germany and Italy. For all Americans, any normalcy that existed before that infamous attack upon Pearl Harbor was gone. For the ethnic Japanese living on the west coast of the United States, their lives were turned upside down.

After Pearl Harbor, suspicious eyes turned upon people living in the United States who had Japanese ancestry, or Italian or German ancestry. Particularly on the west coast of the United States, where tens of thousands of American citizens and legal residents were of Japanese ancestry, rumors began to fly that there were spies and saboteurs everywhere plotting against the United States on behalf of the Japanese Emperor. Japanese were suspected to be in radio contact with the Imperial Navy to assist in a naval attack on the west coast. Local and state officials joined a chorus of ever increasing xenophobia directed against those of Japanese ancestry, and urged the federal government to remove all ethnic Japanese.

Almost immediately after the attack upon Pearl Harbor, Idaho's governor, Chase A. Clark, ordered that any Japanese nationals living in Idaho be confined to their homes until their "status" had been determined. That requirement was lifted after a few days, but with instructions to law enforcement to keep a close eye on them. On the west coast, the

federal War Department began implementing steps to single out and segregate all persons of Japanese ancestry, Japanese nationals, and U.S. citizens alike. Such actions stemmed from President Roosevelt's Executive Order 9066, signed 75 years ago, which drew upon his authority as commander-in-chief to exercise the war power of designating "exclusion zones," for the purpose of excluding persons from "military areas."

The military also was suspicious of the ethnic Japanese. Many in the War Department believed that there was a "Fifth Column" of Japanese living in the United States who intended to sabotage American military installations and to spy upon American operations. The War Department designated nearly the entire Pacific Coast to 100 miles inland as a "Military Area" from which persons could be excluded. In a series of orders issued by General John L. DeWitt, persons of Japanese ancestry were notified that they would be excluded from the Military Area, most assets of Japanese nationals were frozen, and a curfew was imposed for all persons of Japanese ancestry within the Military Area. Finally, General DeWitt issued Exclusion Order No. 346, by which all persons of Japanese ancestry, of whatever degree, whether citizens or non-citizens, were ordered to report to assembly centers on the west coast, where they would be detained until moved to permanent "Relocation Centers." The War Relocation Authority was created to oversee the relocation and detention process. Within nine months, over 100,000 people of Japanese ancestry were segregated, assembled, and transported to "relocation centers" in interior regions of the West and in Arkansas. One such facility was constructed in the sagebrush plain of rural Jerome County, Idaho. Its official name was the Minidoka Relocation Center, but it was sometimes referred to as the Minidoka Camp and locals called it the "Hunt Camp," named after the railroad siding next to its location.

Within nine months, over 100,000 people of Japanese ancestry were segregated, assembled, and transported to "relocation centers" in interior regions of the West and in Arkansas.

More than 10,000 people were incarcerated at the Minidoka Camp after its opening in August of 1942. More than two years later, in December of 1944, the U.S. Supreme Court ruled in the case of *Ex Parte Endo* that detainment of citizens who could be determined to be loyal to the United States was unconstitutional. The same day, the Court ruled that the exclusion process which led to that detainment was constitutional, in the case of *Korematsu v. United States*.

The *Korematsu* Court relied in part upon two earlier cases in which the Court rejected constitutional challenges to the curfew order as applied to American citizens. One case involved Gordon Hirabayashi, a student at the University of Washington until he turned himself in to the FBI because he refused to comply with the curfew order. He was convicted of that charge, later also convicted of failure to register for the draft, and ultimately served a federal prison sentence. The other case involved Minoru Yasui, who also turned himself into the FBI for violating the curfew order so that the constitutionality of the order could be tested. At the time, Yasui was a graduate of the law school at the University of Oregon, the first Japanese-American lawyer in Oregon, and a Second Lieutenant in the Army Reserve. When his conviction was upheld, he was sentenced to time served while he was in custody during the pendency of his case, and then was sent to the Minidoka Camp. At his sentencing hearing, Min Yasui told the judge that "as an American citizen, it was for...the preservation of [my fundamental civil rights] that I undertook this case, confident that the American judiciary would zealously defend those rights, war or no war, in order to preserve the fundamental

democratic doctrines of our nation and to perpetuate the eternal truths of America." Even after his conviction and serving nine months in jail, Min Yasui continued to speak about his confidence in his country, and encouraged young Nisei in the camps to volunteer for military service after the military reversed its stance about accepting Nisei volunteers.

Much has been written about the history of Executive Order 9066 and the events that followed, including about the extraordinary nature of the mass segregation and relocation of over 100,000 people, most of whom were U.S. citizens, because of suspicions over their loyalty to the United States based upon their ethnic heritage. Today, some of the events of that time seem difficult to understand, but the country was also in a state of shock and fear from the events which began with the attack upon Pearl Harbor. Paradoxically, President Roosevelt's words from ten years earlier, in his first inaugural address, seem far removed from the events of 1943, at least so far as those of Japanese descent were concerned. "The only thing we have to fear is fear itself," Roosevelt had said. But, at least on the west coast, many feared anyone who carried even so much as a drop of Japanese blood. Governor Clark issued a statement declaring that: "It is no secret that there are many men and women in our state today who owe first allegiance to the governments of Germany, Italy, and Japan," and "reports of actions that arouse suspicion of enemy activity should be promptly made by any citizen to the closest police officer."

"It is no secret that there are many men and women in our state today who owe first allegiance to the governments of Germany, Italy, and Japan," and "reports of actions that arouse suspicion of enemy activity should be promptly made by any citizen to the closest police officer."

Governor Clark

When it became apparent that the War Department upon going forward with plans to move coastal ethnic Japanese into Idaho over his opposition, Governor Clark then said that he would not permit any effort by such persons to lease or purchase land in Idaho. (Before their forced relocation, some coastal ethnic Japanese who were told that they had to leave the exclusion area began looking to move further inland.) "I can't see us sending Idaho boys out to fight the Japs in the Pacific," he said, "and then let them come back to find Japs in their homes and on their farms." One Idaho farm grange organization said in April of 1942 that its members were "heartily behind [Governor Clark] in his fight to preserve Idaho for the white people. ...If the trend toward leasing and sale of lands to the Japanese is not immediately stopped, Idaho will have the same Japanese problem that California has had. Japanese and Whites do not mix and commingle to the advantage of either race. Idaho should remain White and the Grange should join with the Governor in his fight to maintain it as such." The *Independent-Enterprise* newspaper in Payette editorialized against any Japanese ownership of land in Idaho, writing that "they do not maintain our standard of living" and "if [the Japanese] lend anything to a state or a community we are at a loss to know what it is."

There were few opposition voices at the time. In March 1942, the Twin Falls Chamber of Commerce unanimously resolved that if the "Japanese aliens" were permitted to enter Idaho, then they should be placed in camps and not be allowed to "roam loose" in the Magic Valley. U.S. Senator D. Worth Clark, the nephew of Governor Clark, reported that the Chamber's views had been conveyed to the War Department. But Senator Clark also told the businessmen that "the bulk of the Japanese on the coast are citizens and we cannot push them around like they were slaves." He told the chamber members, many of whom depended on the agriculture industry, that "a great many of the Japanese are excellent farmers" and maybe it would be

better to “put these aliens to work rather than locking them up.”

A letter writer by the name of A. Cornell sent an “Open Letter to Governor Clark,” published in the *Boise Valley Herald* newspaper. Cornell called the governor’s stance against any Japanese ownership of property in Idaho “one of the most un-American stands in the history of America,” and called on him to honor the rule of law to preserve “unprejudiced status for all citizens irrespective of race, language, color or ancestral conditions.” “Japanese-Americans are the victims of tax-levying,” just like everyone else, Cornell wrote, and “18 Japanese-Americans have been inducted into the armed services” in just his own community. “You, Governor Clark,” Cornell said, “are oath-bound and honor-bound to command the policing powers of the state to preserve constitutional rights to every citizen irrespective of who his ancestors might have been or what the color of their skin.”

On January 2, 1945, more than three years after it had been imposed, Exclusion Order No. 346 was rescinded in its entirety. The relocation camps began to shut down. Some of the internees left immediately. Others stayed for a period, having no place to return. Of those returning home, many lost their businesses, their homes, and their former lives were no longer recognizable. Some fortunate few had neighbors and friends who kept their homes, their businesses, their farms, and their belongings intact, awaiting their return.

The structural remains of the Minidoka Camp are now scattered across southern Idaho. Barracks were sold at auction and moved onto farms and into towns where they now house livestock, or families, or businesses. One barrack houses the Twin Falls Chapter of the Veterans of Foreign Wars. Most of the land was turned over to local farmers. A small portion of the original 950 acres of the camp has become a National Historic Site, administered by the National

Park Service. A group known as the Friends of Minidoka keeps alive the history of the camp and the history of those who were interned there. Each year, a pilgrimage is held to visit the site of the camp. On Bainbridge Island, Washington, a Japanese American Exclusion Memorial was erected to keep alive the history of the bleak March day in 1942 when all of the ethnic Japanese living on Bainbridge Island were forced to leave their homes. First, they were transported to the Manzanar camp in inland California, and then with many others to the Minidoka Camp. Only about half of those who left Bainbridge Island returned at war’s end.

Some who had been incarcerated in the Minidoka camp stayed in Idaho, or in eastern Oregon, even though their previous homes had been on the west coast of Oregon and Washington. Some had lost sons and brothers who had left to fight in the war and became casualties. (The Minidoka camp had the largest percentage of Nisei who voluntarily enlisted into the armed services of all of the relocation camps.) Most said little to family and friends about their experience – only as the succeeding generations set out to learn more about what had taken place with their parents and grandparents did the details of what had happened to the west coast ethnic Japanese become more widely known. Some of the most compelling writing about the events of those times is found in the research and publications of the late Dr. Bob Sims, a Boise State University professor who was a leading historian of the Japanese relocation experience.

“You, Governor Clark, are oath-bound and honor-bound to command the policing powers of the state to preserve constitutional rights to every citizen irrespective of who his ancestors might have been or what the color of their skin.”

A. Cornell

Dillon Myer, the Director of the War Relocation Authority, testified before the Senate Judiciary Committee in 1949. He said that when the War Relocation Authority was shut down in 1946, he wrote in his report that *"Most of us who have been closely associated with the WRA program throughout its active life are deeply regretful that it ever had to be undertaken and fervently hopeful that it will never have to be repeated."* He concluded that *"My experience leads me to believe that if there had been less separation between Japanese-Americans and the total American community, if we had known those people before the war as well as we know them now, there would have been no question in 1942 about their loyalty, and the 'military necessity' for evacuation would never have been broached."*

"My experience leads me to believe that if there had been less separation between Japanese-Americans and the total American community, if we had known those people before the war as well as we know them now, there would have been no question in 1942 about their loyalty, and the 'military necessity' for evacuation would never have been broached."

Dillon Myer

James Omura, the editor of a newspaper in Denver, Colorado that served the Japanese-American community, strongly spoke out against the forced relocation of the west coast ethnic Japanese, and supported those in the internment camps who chose to resist the draft. He was condemned by many, including many in the Japanese-American community, including the Japanese-American Citizens League. He continued to editorialize about the injustices of the relocation years, but he also wrote of the strength of what he hoped still remained intact underneath all of what he believed was wrong: *"We cannot condemn democracy for our present unhappy predicament. Democracy is not only a form of government, but it is also a spirit. If there is not spirit of democracy in our governmental leaders, we would not have democracy in action. Let us therefore not condemn democracy but the men who manipulate public affairs and the masses who sympathize and condone undemocratic ideals."*

Chase A. Clark was defeated in his bid for re-election to the governor's office in the fall of 1942 by C.A. Bottolfsen, the same man he had defeated two years earlier. Governor Clark already had a distinguished career in the law and public service by that time. He came to Idaho in 1884 at the age of one, when his father, an engineer, arrived to work in construction of Eastern Idaho irrigation canals. His father later became mayor of Idaho Falls, a position that both Governor Clark and his older brother Barzilla Clark

(who also had served as governor) would later hold. Governor Clark began the study of law at the University of Michigan, but did not graduate, choosing instead to read for the Bar. He was admitted to practice in Idaho at age 21. In 1904 he began

practicing law in Mackay, Idaho, which was then an active mining region. Soon thereafter he was elected to the legislature. He served in the Mexican Border War, and in World War I.

After his war service, he returned first to Mackay and then to Idaho Falls where he resumed his law practice and political career. In January of 1943, after losing his race for re-election, he and his family were preparing to leave Boise and return to Idaho Falls. His daughter Bethine was then a high school friend of her husband-to-be Frank Church, and Carl Burke, who later managed Frank Church's campaigns and became a scion of the Boise law firm which bears his father's name. While finishing the household packing on moving day, Governor Clark received a call from the White House to let him know of his nomination by President Roosevelt to the federal bench in Idaho. Bethine Church later told Judge Winmill and staff attorney Dave Metcalf that she had overheard the conversation. At the end of the call, her father

said “you’d better be sure about this, because I’m calling the movers to tell them not to bother to bring the truck!”

Governor Clark was confirmed by the U.S. Senate and received his commission in March 1943. His commission certificate, along with others, hangs in Courtroom 3 of the Boise federal courthouse. Judge Clark presided, including over the draft resister cases of Minidoka internees, as the only federal district judge in Idaho until 1954, when a second judgeship was added. His judicial career lasted until 1966, when he died at the age of 83.

In the 75 years that have passed since these events first began, efforts have been made to right the injustices of the relocation and internment of the ethnic Japanese, both in the courts and through Congress. But the story of the Minidoka Internment Center, and of the young men who chose not to fight in the Armed Forces even as many of their friends and family did so, remains a cautionary history today.

Attachment 4



Alexander Schloss: As a recent graduate from Boise State University's Master of Social Program and Makerspace enthusiast, I have always been interested in the impact that access to technology, education, and resources can have on our potentially limitless growth. As such, I would like to first thank the Special Collections and Archives at Boise State University, specifically for being able to access their space and see first-hand resources and materials from the Robert C.

Sim's Collection. Additionally, I would like to thank Meridian Library District's unBound for the use of their sound equipment, studio and assistance.

Growing up in Los Angeles, I first learned about this dark period in our history, but could not conceive of the lasting damage to individuals who experienced it firsthand. Being part of this production gives me the opportunity to present these experiences and increase our own access and understanding of America's Issei and Nissei.

Lance Taylor: I'm a baby boomer so all my World War II recollections were anecdotal until as a young adult I drove by Manzanar in the California desert. The story of how our government treated fellow citizens was disturbing to say the least. Then, as I became involved in this production and researched for the role, I discovered that Manzanar and Minidoka were the proverbial tip of the iceberg. Relocation centers dotted the American landscape as thousands of our fellow Americans were relocated and I was no longer disturbed, I was horrified. Never forget. History will one day judge us.



Jeff Thomson celebrated his 30th year at Elam & Burke. Before that he clerked for Judge J. Blaine Anderson, Ninth Circuit Court of Appeals. He has appeared before the Idaho Court of Appeals, Idaho Supreme Court or Ninth Circuit Court of Appeals over 30 times.

Before becoming involved in this project, Jeff was vaguely aware of the internment camp system and the Minidoka Camp, but was completely unaware of the sub-chapter involving Japanese American draft resisters and the serial trials that occurred in Idaho federal court with former Governor Chase Clark presiding as a newly minted federal trial judge. Nor was he aware of his own firm's connections to the defense of some of those accused. Once he began to talk about the issues, he was amazed at how many people he knew who had connections to Minidoka or other internment camps. Minidoka was not a footnote in Idaho history, it was a big deal and helped shape the Idaho we know today. It has been a real pleasure and honor to be involved in this project and to help tell the story of some of the internees affected most.



Special Thanks

Elam & Burke Buff Bates
Joan Cartan-Hansen Jackie Hildebrand
Robert Hirai Paxti Larrocea-Phillips
Cheryl Oestreicher Alexander Schloss
Susan Stacy
U.S. Magistrate Judge Mikel Williams
U.S. Magistrate Judge Ronald Bush

and Eric Muller for his excellent book:
Free to Die for Their Country: The Story of Japanese American Draft Resisters in World War II

University of Washington Libraries, Special Collections, PNW04818; Map from the Camp newspaper (Minidoka Irrigator)

The Nisei Paradox: Japanese American World War II Draft Resisters



Collection of Seattle Buddhist Temple, ca. 1943; "Camp Minidoka" painting, artist Hisashi Hagiya

A Staged Reading in One Act
by
Jeffrey Thomson

Presented at the 2017 Bench Bar Conference
United States District Court, District of Idaho

Cast of Characters

Jonathan Blake.....RAFAEL GONZALEZ
an Assistant United States District attorney/prosecutor

Chase A. Clark.....LANCE TAYLOR
the United States District Judge for the District of Idaho
and former Governor of Idaho

Matthew Kane WALTER BITHELL
a Prominent Boise attorney (appointed defense counsel)

Josiah Montgomery.....JAMES BALL
an FBI agent

James Mitsugu YamadaNICOLAS KAWAGUCHI
a Japanese American internee of the Minidoka (Hunt)
Relocation Camp, Idaho

Narrator, Court Clerk, Jury ForemanJEFF THOMSON

Audio and Visual Designer, Editor and Operator
.....ALEXANDER SCHLOSS

Voice Over Actors: Becky Kimsey, Idaho Supreme Court Justice
Joel Horton, Brad Frazer, Robert Hirai, Kevin Kimsey, Josh Evett,
Alex Schloss, U.S. Magistrate Judge Mikel H. Williams, Jim Hansen,
and Chief U.S. Magistrate Judge Ronald E. Bush

Scene

United States Courthouse
Boise, Idaho

Time

1944

About the Cast



Walt Bithell was a Senior Partner and Lead Litigation Attorney with Holland & Hart for over 30 years before he established Bithell Law PLLC. Walt's prior experience includes partnerships at Holland & Hart and Langroise, Sullivan & Smylie as well as Assistant Attorney General for the State of Idaho where he served as general counsel for the Idaho State Department of Insurance and the Idaho State Tax Commission. He has published and lectured extensively on trial-related subjects. He is a trained mediator and is on the approved list of mediators for both the Idaho Supreme Court and the Idaho Federal Court. He has participated in numerous mediations.

About the Cast

James Ball has been practicing law for over 20 years. He is a former Deputy Prosecutor for the Ada County Prosecuting Attorney, where he spent five years prosecuting drug and other crimes. Presently, Jim is a partner in the firm of Manweiler, Breen, Ball & Davis, located in Boise. He specializes in all areas of criminal defense throughout the state of Idaho and Pacific Northwest. Jim has argued cases before the Idaho Court of Appeals, the Idaho Supreme Court, and the Ninth Circuit Court of Appeals.



Jim's family immigrated from Germany and settled in Carroll County, Iowa before the outset of WWI. Shortly after the beginning of WWII, members of Jim's family were interviewed and questioned by the U.S. Government on an individual basis, but were not detained. Some members of his family became naturalized United States citizens because German immigrants had not been prohibited from doing so during the war. The Government explained that the large number of German Americans, and their resulting political and economical influence, was the reason they were spared large-scale relocation and internment. Two of Jim's great uncles joined the War effort and fought in the European theatre. Both survived the war.



Rafael Gonzalez professional experience: United States Attorney's Office, District of Idaho, 1995 - Present:
Chief, Criminal Division, May 2005 - August 2010
Unit Supervisor, October 2002 - May 2005
Former Anti-terrorism Advisory Council Coordinator
Former Lead OCDEF
Former Project Safe Neighborhoods Coordinator; Former Immigration Crimes Coordinator; Former Brady/Giglio Policy Coordinator
United States Attorney's Office, Eastern District of Michigan, Detroit, Michigan, 1991 - 1995 (General Crimes Unit and Drug Unit)
Assistant Prosecuting Attorney, Wayne County Prosecutor's Office, Detroit, Michigan, 1987 - 1991 (Appellate Division and Trial Division)
Intern: Wayne County Prosecutor's Office Summer 1986
Semester in Practice Externship: Wayne County Prosecutor's Office Fall 1986

Nicolas Kawaguchi: I heard stories about the internment camps when I was growing up in Hawaii, mostly from my father, Roy Kawaguchi. My father was nine when he was relocated, but he still remembers being told to pack everything he needed into only one suitcase and leaving everything else behind. My grandparents on my mother's side as well as my father and his family were taken to Minidoka Relocation Center in Idaho.



I am who I am because of the sacrifices of the Nisei. This generation has shaped my life and helped me find myself. I hope, in my own way, I can make the Nisei - and their parents, the Issei - proud by passing on their values of strength, honor, courage and loyalty to future generations.