



Federal Bar Association

Idaho Chapter

Sidebar

EXECUTIVE BOARD

Wendy J. Olson, President

Susie Headlee, Executive Director

Alyson Foster, President Elect

Dan Williams, Vice-President

Marcus Johnson, Secretary

Edward Dindinger, Treasurer

Rafael Gonzalez, National Delegate

Dana Herberholz, Immediate Past President

A MESSAGE FROM WENDY J. OLSON, CHAPTER PRESIDENT

AUGUST 2020

Much work remains. As I pondered what to say in this last newsletter message as President of Idaho's Chapter of the Federal



Bar Association, I was struck by how little I have done and how much work remains. So much of what is going on in our state, our country, and our communities demands the attention of lawyers, lawyers doing their very best work and lawyers fulfilling their role as a public citizen having special responsibility for the quality of justice. Yes, Idaho's Rules of Professional Conduct make such a demand of Idaho lawyers in the first paragraph of their preamble. In Idaho's federal courts and in Idaho's federal bar, we are fortunate to have outstanding and professional practitioners. We have judges, lawyers, clerks and staff who foster a collegial environment that demands excellence and facilitates resolution of disputes. That's not enough.

In 2020, the twin pandemics of Covid-19 and racial injustice demand that lawyers do more to fill that role of public citizen with special responsibility for the quality of justice. Lawyers are necessary not only as representatives and advisers on important questions of government authority to regulate public health and enforce penalties against those who fail to comply, but lawyers are also necessary to explain to our fellow citizens the validity and legitimacy of such laws and regulations. Indeed, lawyers necessarily must demonstrate their own compliance with such laws and regulations. Yes, I mean wear a mask at the very least when required by competent authority. That's not enough.

Lawyers are necessary to ensure that government actors scrupulously adhere to the constitution and not unlawfully infringe on civil liberties. And lawyers are necessary to explain to our fellow citizens the importance of requiring governmental actors to comply with the Constitution. Indeed, that might be the most significant thing lawyers can do in

their role as public citizen. Yet that's not enough.

Lawyers are necessary to translate protests of racial injustice into policy – through advice to mayors and city councils on budget decisions and mechanisms to lawfully transfer money and regulate police use of force, through litigation to enforce the constitutional rights of those against whom force was used unlawfully.

And lawyers are necessary to help our fellow citizens understand how some structures and institutions provide inherent advantage to those in our state and our country who have historically been in power. Women, people of color, and the LGBTQ community face structural disadvantages. Lawyers have played a central role in helping reduce those structural disadvantages. Yet that is not enough.

This is not a call to arms. I am not urging a "wall of Idaho Chapter of the FBA" to line up in Portland behind the wall of moms, and dads with leaf blowers – they already have their line of lawyers. This is a call to think.

This is a call to critically examine how we all have handled our professional duty to be a public citizen with special responsibility for the quality of justice. And then it is a call to act. Pick the place where you, as a lawyer, can help your fellow citizens beat Covid-19 and defeat the scourge of racial injustice. Yet that is not enough.

The last quarter of 2020 brings one more challenge. A national election. Throughout American history, there has been an unrelenting and unbroken campaign to expand the franchise. The challenges have been many. The right to vote is the right upon which all other freedoms rest. Elections determine who will make our laws and who will enforce them. Amid the twin pandemics of Covid-19 and racial injustice, how we vote, when we vote, protecting our election infrastructure, having our votes count and accepting the outcome of the election – particularly when the results may not be known for weeks – assume even greater importance. I do urge everyone to vote. But as lawyers, I also urge all of us to help others understand the law, recognize disinformation, reject voter suppression, evaluate any challenges to the outcome with an eye on the facts, and, ultimately accept the outcome. I am not sure that is enough. But I know that much work remains. Please join me in doing it.



REFLECTIONS ON OUR CIRCUIT COURT WORK SINCE COVID-19

Before I say much more, I must begin this article by giving you the same admonition that I have always given you. When I started the first grade, my parents hung a big paper sign around my neck as I went the first day. It said, “the opinions expressed by this kid are not necessarily those of his parents.” I am certain that my Ninth Circuit colleagues and the Ninth Circuit would want me to say the opinions in this article are not theirs, only mine. . . . Now I begin.



by Ninth Circuit Judge
N. Randy Smith

Oscar Wilde once said, “Some cause happiness wherever they go, others whenever they go.” We will all be happier when this Covid-19 thing is in the rearview mirror.

In early March, Judges Tallman, Bybee, and I were assigned a panel hearing in San Francisco to hear a tort case. We had heard the case previously, decided the issues on appeal at that time, and sent it back to the district court for further proceedings; now, it was on appeal again. Just as we were to board airplanes for the hearing, the court administration informed us that Covid-19 had struck San Francisco and that other panels were cancelling their “live hearings” and hearing the cases by video. We three held a telephone conference; we contacted respective counsel to ask their opinions on the matter; and we decided to carry on with the “live hearing.” We went; we heard the

arguments; and we decided the case. That event started my involvement with Covid-19 and our court. Since that day, our court has been involved in trying to deal with this new disease. Here are the things our circuit has done to deal with this situation:

1. On March 16, we closed all of our courthouses (Pasadena, Portland, Seattle, and San Francisco) to the public; they remain closed;
2. We set up a drop box in San Francisco for paper pleadings;
3. We established email addresses for general questions to the clerk’s office (instead of telephone calls) and to allow (and encourage) pro se filers to submit pleadings via email;
4. We sent all of our staff home the week of March 16, where they continue to work except for skeleton crews (who come to the courthouse to process incoming mail and produce and ship paper case materials to panels);
5. We offered automatic 60-day extensions of time to file briefs based solely on a notice from the filers that it was needed because of Covid-19, and we were not requiring the production of paper copies of electronic briefs and excerpts (these two measures ended on July 1);
6. All oral arguments have been held remotely beginning March 23 and continuing through today. These hearings are scheduled to continue to be held remotely until at least the end of September. Such hearings are held via Zoom and are live streamed on our YouTube channel and our website. All hearings are administered through our Pasadena and San Francisco courtrooms (regardless of sitting location) because our A/V staff and equipment are located in those areas;

7. Because we cannot have more than three courtrooms running simultaneously, we sometimes stagger the hearing times each day;

8. En banc hearings in March and June were postponed; we expect to have three en banc hearings go forward remotely in September;

9. The Ninth Circuit Judicial Conference in Portland was cancelled this year and other circuit administrative and court related meetings have been held virtually. The circuit law clerk orientation will be virtual as well.

As we began in March, most of the cases (not rescheduled because of the disease) were submitted without oral argument. In April, 69% were submitted; in May, 62%; in June, 50%; and in July, 47% of the cases were submitted without oral argument. Thus, you can see that, as time goes on, we are trying to hear as many cases as we can.

Panels in early March and all of April were either submitting the cases or rescheduling them; that practice seemed to end in June. In the last two weeks of March and all of April, 64 remote hearings were held during 51 sitting days. In May, 99 remote hearings were held over 39 sitting days; in June, 138 remote hearings were held over 42 sitting days; in July, 138 remote hearings were held over 38 sitting days.

Depending on how old a judge was, this “video era” has been a difficult one. However, it has saved on travel time. The judges, technology staff, and courtroom staff are all becoming more comfortable with the process. As the process has been used, we have discovered best practices to help all of us.

I do have some advice -- please read, if you don't read anything else:

A. Please read your emails when you get them. Two weeks before any hearing, you will be receiving an email from your courtroom deputy with detailed instructions concerning your hearing. Your courtroom deputy wants to give you individualized attention, and these instructions are the beginning of that attention. May I again emphasize: **READ YOUR EMAILS.**

B. You do not need fancy equipment to have a remote hearing. The only equipment you need are (1) a device with a webcam and (2) a terrific internet connection. Sometimes judges do not have both of these, and they are operating from home, so at times it is tiresome. Just don't you be the one without the webcam and the great internet connection.

C. Any questions (you may have) should be sent to questions@ca9.uscourts.gov. Really, people are ready to help you in any way they can.

D. People (judges, staff, attorneys) are getting used to this procedure. If you don't want it to continue, be a squeaky wheel. It is surprising how many love this new way to have appellate hearings. The government attorneys especially seem to like it. Personally, I loved (and still love) the “look you in the eye” and “shake your hand” approach, but times are “a changing.” Warning: “The squeaky wheel gets the grease.”

Ingrid Bergman said, “Happiness is good health and a bad memory.” I have the first and sincerely hope this is a bad memory, only to be seen in the rearview mirror. However, I cannot ignore that we are learning the best practices which make appellate work as good as it should be.

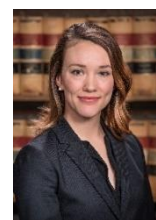
Best wishes to you, the best lawyers in this country (the Idaho lawyers)!

COMMUNITY OUTREACH

As part of our local Chapter's civic outreach program, members and friends came together on June 6, 2020 to volunteer at the Idaho Foodbank.



Volunteers, including federal law clerks Annie Henderson and Kyle Cole worked labeling, packaging and storing thousands of pounds of food.



Annie Henderson

The need for volunteer service at the Idaho Food Bank is great. Recently estimates reveal that the overall number of food insecure Idahoans has risen by 49 percent due to the Covid-19 pandemic. That means that 1 in 4 Idaho kids are food insecure.



Kyle Cole

Volunteering at the Idaho Food Bank is an important reminder that now, more than ever, our local community needs lawyers to fulfill their obligation to serve their fellow citizens.

Members of the Idaho Chapter of the Federal Bar Association look forward to continuing our efforts to answer that call.

For more information about the Idaho Food Bank, opportunities to volunteer, call (208) 577-2720, or go on line: volunteerservices@idahofoodbank.org.

GOVERNMENT RELATIONS

Article III Judicial Vacancies and Confirmations
 by Bruce Moyer,
 FBA Counsel for
 Government
 Relations



Pacer Litigation.

On August 6, the United States Court of Appeals for the Federal Circuit (Appeals Court) [affirmed](#) a lower court’s decision that the government was not authorized under federal law to spend \$192 million in Public Access to Court Records (PACER) system fees on court technology projects. The Appeals Court said the [District Court for the District of Columbia \(District Court\)](#) was correct in limiting the government’s use of PACER revenues to the costs of operating the system, and not additional expenditures. The Appeals Court’s decision remanded the case back to the District Court for further proceedings that could involve the [repayment of PACER fees](#) to the class action plaintiffs in the proceeding.

Federal Court Funding for FY 2021.

On July 31, 2020, the House of Representatives [passed](#) the FY 2021 Financial Services and General Government (FSGG) appropriations bill as part of a larger six-bill package ([H.R. 7617](#)). The House-passed bill provides the Judiciary with \$7.8 billion in discretionary appropriations, a \$287 million (3.8 percent) increase above the FY 2020 enacted level and \$54 million below the Judiciary’s FY 2021 re-estimated budget request. Throughout the Spring, the FBA devoted advocacy and support for the Judiciary’s request, as well as for a larger FY 2021 appropriation to the General Services Administration. The bill passed by the House on July 31

contains a bump-up in the FY 2021 GSA appropriation, including increased funding courthouse repair and alternation projects.

The FSGG appropriations bill is one of the ten FY 2021 annual appropriations bills passed by the House, with no funding measures yet passed by the Senate. This situation is likely to lead to Congressional passage of a stopgap measure in September, effective October 1, 2020, that extends funding for the Judiciary and the rest of the federal government at FY 2020 levels. With a CR in place and a pre-election October recess, Congress is unlikely to reach agreement on final FY 2021 funding numbers until after the November elections.

Covid-19 Supplemental Funding.

On July 27, 2020, Senate leaders released their “Health, Economic Assistance, Liability Protection and Schools Act” ([HEALS Act](#)), the Senate’s Covid-19 relief measure that would provide emergency assistance funding for individuals, schools, and businesses impacted by Covid-19, as well as [pandemic-related liability protection](#). The Senate proposal does not include any of the [Judiciary’s supplemental funding request](#) of \$37 million, nor any of the Judiciary’s proposals related to new judgeships and conversions, criminal justice, and other legislative matters. The [HEROES Act](#), passed by the House of Representatives in May 2020, did not include any of the Judiciary’s requests. Negotiations between House and White House leaders over the cost and final shape of legislation remain ongoing.

New Judicial Nominations. In July, President Trump nominated the following two judicial nominees: Louis Guirola, Jr., Southern District of Mississippi; and Victor J. Wolski, Court of Claims

FEDERAL JUDICIAL VACANCIES as August 10, 2020		
Jurisdiction	Vacancies	Nominees Pending
Supreme Court	0	0
Courts of Appeal	0	0
District Courts	70	41
U.S. Court of Intern’l Trade	1	1
Totals	72	42

With the inclusion of the United States Court of Federal Claims and the United States territorial courts, 78 of 890 active federal judicial positions are vacant. Forty-two judicial emergencies in vacancies remain based on caseload and/or the length of the vacancy, according to the Administrative Office of the U.S. Courts.

New Judicial Confirmations. In July, the Senate confirmed William Scott Hardy, Western District of Pennsylvania; and David Cleveland Joseph, Western District of Louisiana.

Nominations Hearings. On July 29, 2020, the Senate Judiciary Committee held a hearing to consider nominations of the following individuals:

- *Michael Jay Newman* to be United States District Judge for the Northern District of Ohio
- *J. Philip Calabrese* to be United States District Judge for the Northern District of Ohio
- *Aileen Mercedes Cannon* to be United States District Judge for the Southern District of Florida
- *Toby Crouse* to be United States District Judge for the District of Kansas

- *James Ray Knepp, II* to be United States District Judge for the Northern District of Ohio

Interestingly, all three Ohio nominees (Judges Calabrese, Knepp, and Newman) have served in national and chapter leadership positions within the Federal Bar Association.

CLERK'S CORNER

Greetings from the Clerk's office of the United States Courts! Two important items to address: First, Chief U.S. Magistrate Judge Ronald E. Bush has announced that he will be retiring effective June 10,



Stephen Kenyon
Clerk of Court

2021. The Judicial Conference of the United States authorized the District of Idaho to advertise the position of a full-time U.S. Magistrate to replace Judge Bush. The position has been posted and completed applications are due by September 18, 2020 at 5:00 PM (MST). Below is a link to the application:

https://id.uscourts.gov/Content_Fetcher/index.cfm/United_States_Magistrate_Judge_District_of_Idaho_3497.pdf?Content_ID=3497

Second, we are going forward with our 2020 Bench Bar Conference. It will be live-streamed on October 23, 2020 from 8:00 a.m. to 1:00 p.m. (no in-person attendance) and the judges have elected not to charge a registration fee for this year's conference. Speakers from across the country will participate in this conference, with the following general sessions:

A Brave New World: The Work of the Courts and the Practice of Law in a Pandemic – Finding Ways to Make Things Work and Adopting

Changes that Will Continue into the Future.

2020 is the year that change came to the courts and to the practice of law in the form of the COVID-19 pandemic that continues to rock our world. Concern for safety and health has required that we draw upon the tools of modern technology to do our work, albeit most often in a virtual world. Necessity has become the mother of innovation in our courthouses and our law firms in almost everything we do – hearings, trials, depositions, client meetings, mediations and more.

Hear from judges, lawyers, and law firm managers on how things are different, what “changes” are working well or not so well, what technology and software is most useful, how to protect the physical and mental health of our colleagues and our staff, and what will likely stay changed about the way we work even after the pandemic has passed. You won't want to miss this window into our brave new world.

“I Hadn't Thought of That, but I Will Now.” The Psychology of Legal Negotiation and of Legal Ethics. Important Insights into How You and Other Lawyers Think and Make Decisions.

The social science of psychology reveals interesting insights into how lawyers negotiate and how lawyers make decisions in the face of ethical conundrums. In this program, a leading academic in the world of psychology and the law will describe the psychological nuances of legal negotiation (you may be surprised) and the blind alleys that can lead us into ethical missteps (you may rethink).

This information will increase your understanding of the role of psychology in legal negotiation and will help you decide wisely, drawing

on your best instincts, in withstanding pressures that otherwise might lead to unethical decisions.

Shake, Rattle and Roll – The New Look of the United States Bankruptcy Court and this Year's Edition of “More Things Every Lawyer Needs to Know About Bankruptcy Court.”

Chief U.S. Bankruptcy Judge Joseph M. Meier and Lawyer-Representative Alex Caval will introduce the new U.S. Bankruptcy Judge and the new faces in the bankruptcy trustee ranks. Then you'll learn what you need to know when things get complicated in your civil case because of a bankruptcy filing – specifically, what happens when the plaintiff in a pending personal injury case files a Chapter 7 bankruptcy petition? How does the case proceed, who is the client, how does a plaintiff's lawyer get paid, who is entitled to receive any settlement proceeds? No one likes surprises dropping out of the sky in the middle of a lawsuit. This program will help you be less surprised and more aware about what to do.

The full program agenda will be completed soon, with break-out sessions in civil (environmental and employment); criminal law; and bankruptcy. We anticipate that attendees will earn 4.5 hours of CLE credits.

THE 19TH AMENDMENT CELEBRATION IS NOW VIRTUAL!

Please take note that the 19th Amendment celebration previously scheduled on September 11 will now be held virtually (via Zoom), with the program changing slightly.

We are delighted to welcome Professor Matthew Pinsker, an associate professor and historian from Dickinson College in Carlisle, Pennsylvania; and election security expert Suzanne Spaulding, senior adviser for Homeland Security at the Center for Strategic & International Studies.

For more information, call Susie Headlee at (208) 867-8169 or sheadlee@parsonsbehle.com

**The Unrelenting and Unbroken Battle to
Earn and Protect the**

**RIGHT
to
VOTE**

In celebration of the 100th anniversary of the 19th Amendment, join IWL and the FBA for a special 1.5 hour “virtual” program discussing the women’s suffrage movement in the United States and the efforts needed to protect that right to vote from attacks on election infrastructure.

Hear from our keynote speakers:

Matthew Pinsker
Historian of Dickinson College, work frequently featured on the History Channel



Suzanne Spaulding
Election Security Expert, Senior Adviser for Homeland Security at the Center for Strategic & International Studies, former top official at the U.S. Department of Homeland Security

There will be time for Q & A after the presentations.

Friday | September 11, 2020
12 pm • 1:30 pm
1.5 hours CLE Requested from ISB

Program Held via Zoom
\$10 for non-FBA members
*FBA / IWL / Student Chapter Members - No Charge

RSVP | (208) 867-8169 | sheadlee@parsonsbehle.com



2020 Idaho Chapter, FBA Members

Welcome new Chapter Members
Raymond Patricco

Alyson Acheson	Marisa Crecelius	Patrick Geile
Greg Adams	David James Cummings	Jack Gjording
Andrew Alder	Christopher Cuneo	Amber Goeden
Tyler Anderson	Hon. Candy W. Dale	Rafael Gonzalez
Maria Andrade	James C. Dale	John Goodell
Sam Angell	Bart M. Davis	Wendy Gordon, Student Member
Kendra Ankrum, Student Member	Jennifer Dempsey	Alexandra Grande
Payden Henry Ard	Edward W. Dindinger	Monte C. Gray
C. Tom Arkoosh	Teague Donahey	Daniel Green
Darrel R. Aubrey, Student Chapter	William Dryden	Richard "Dick" Greener
William F. Bacon	Keely Duke	Kevin Griffiths
Brenda Bauges	Yvonne Dunbar	Rebecca Gullett
Sara Berry	Kassadie Dunham	Blake Hall
Erika Birch	Wendy Earle	Brady Hall
Walter H. Bithell	Dylan Eaton	Nicole Hancock
Kacie Bitzenburg, Student Member	Michael Elia	Christina Hardesty
Katherine Bolton	Hailee Elledge, Student Member	Syrena Hargrove
Brook B. Bond	Jamie Ellsworth	Maria Hart
Joseph Borton	Ford Elsaesser	Dillon Haws, Student Member
Bennett Briggs	John Epperson, Student Member	Susie Headlee, Honorary Member
Garrett Brown, Student Member	Ritchie Eppink	Richard Hearn
Grant Burgoyne	Peter Erbland	Kara Heikkila
John Burke	Thomas Everson	Dana Herberholz
Hon. Ronald E. Bush	Joshua Evett	Noah Hillen
DeAnne Casperson	Robert Faucher	Ernest Hoidal
Bruce Castleton	Spencer Felton, Student Member	Kate Horwitz
Craig Christensen	Olivia Nicole Ford, Student Member	Regina Hovet
Matthew Christensen	Alyson Foster	Loren Ipsen
Merlyn Clark	Trudy Hanson Fouser	Bryce Jensen
Kyle Cole	Steven Arthur Friskel, Student Member	Andrew J. Johnson, Student Member
Aspen Compton-Hoyle, Student Member	William Fuhrman	Marcus Johnson
Gary Cooper	Jaclyn Gans	Samuel W. Johnson, Student Member
		Hon. Jim Jones (ret.)

Julie Kane	Grant Michael Patton, Student Member	Aubrey Thorne, Student Member
Stephen Kenyon, Clerk of Court	Eric Pedersen, Student Member	Greg Tollefson
Ron Kerl	Angie Perkins	Dawn E. Trivolis, Student Member
Gwen King, Student Member	James Piotrowski	Amanda Ulrich
Larsen T.J. Kohler	Michelle Points	Matthew Walters
Steve Kraft	Larry Prince	Elijah Watkins
Debora Kristensen Grasham	Sanja Prutina	Larry Westberg
Tamsen Leachman	Andrew Rawlings	Robert White
April Linscott	Morgan Reese, Student Member	Brandelle Whitworth
Jeremy Litster	David Risley	Daniel Williams
David Lombardi	Kyle Rozanski, Student Member	Max Williams, Student Member
Amy Lombardo	James Ruchti	Hon. Mikel H. Williams
Laird Lucas	John Runft	Jeffrey Wilson
Erika Malmen	Christine Salmi	Hon. B. Lynn Winmill
Tara Martens Miller	Kevin Scanlan	Brian Wonderlich
James Martin	Alan Schroeder	Peter Wucetich
Jason Mau	Benjamin Schwartzman	John N. Zarian
Hailey McClung, Student Member	Stephanie Michelle Scull, Student Member	
Kelly McConnell	Sydney Sears, Student Member	
Michael McIntyre	Norman Semanko	
Courtney McQuain, Student Member	Jeff Severson, Chief Deputy Clerk	
Hon. Joseph M. Meier	Cathy Silak	
Whitney Mestelle, Student Member	Hon. N. Randy Smith	
Serena Minasian, Student Member	Scott Smith	
Allan Moriarty, Student Member	William Lloyd Smith	
Tishra Murray, Student Member	Slade Sokol	
Jennifer A. Nelson	Newal Squyres	
Hon. Terry L. Myers	Craig Stacey	
Hon. Ryan D. Nelson	Sarah St. John, Student Member	
Bryan Nickels	Benjamin Stein	
Sonyalee Nutsch	Jordan Stott	
Hon. David C. Nye	Danielle Strollo, Student Member	
John Oborn	Jennifer Tengono, Student Member	
Wendy Olson	Stephen R. Thomas	
Tori Osler	Christopher Thompson, Student Member	
Nicole O'Toole, Student Member	Lauri Thompson	
Hon. Jim D. Pappas		
Raymond Patricco		