

# 2018 District of Idaho Bench Bar Conferences

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**SAVE THE DATE!** Better even than last year's full solar eclipse, the Idaho U.S. Courts will present the **2018 Bench-Bar Conferences in Fort Hall on Friday, September 14** at the Shoshone-Bannock Tribes Convention Center and in **Boise on Friday, October 26 at the Boise Centre**. Read on for details.

**Change continues** in the air in the Idaho federal courts. Even as District Judge David Nye, Bankruptcy Judge Joe Meier, and Clerk Steve Kenyon are now fully settled in with their new duties, District Judge Edward J. Lodge has announced he will retire from the bench on July 3, 2019. **A new circuit judge nominee** is awaiting Senate confirmation to fill the seat of **Judge N. Randy Smith** who **takes senior status** in August. **Senior Circuit Judge Richard Tallman**, who has been chambered in Seattle, **will begin working from our Coeur d'Alene courthouse** in September. You will hear **State of the Judiciary** reports on these details, information about changing trends in our dockets, and the **prospects for a third district judgeship, including a report directly from Congressman Michael Simpson** (Boise conference). We will honor the memory of the late Judge Larry M. Boyle, who had a long and distinguished career as an Idaho lawyer, in the Idaho state judiciary, and in the Idaho federal courts. He was admired and respected, and he is missed.

During the Boise conference you will be astonished to learn about the amount of information gathered every day about you and your clients by passive surveillance. The view you will have into the privacy and security concerns, instances of malicious misuse of personal information, the extent of law enforcement electronic investigation and surveillance techniques, and other related subjects may have you typing *OMG!* in your Twitter account. We have two people who are among the most knowledgeable people in the country about such matters: **former Silicon Valley lawyer and former U.S. Magistrate Judge Paul Grewal, now Facebook's vice-president and general counsel** (and the public face of Facebook in responding to the controversy over the use of Facebook user information for voter profiling) , and **Jennifer Stisa Granick**, surveillance and privacy counsel of the **ACLU Speech, Privacy and Technology Project and former executive director of the Center for Internet and Society at Stanford Law School**. They will talk about legal and societal issues in the contemporary world of surveillance, cybersecurity, and why those issues are important to your life as a lawyer and your personal life. It is rare to hear from two such experts in one place, at a time when the nature of their work and expertise is front and center

in the world of law and society. You will be talking about this program long after the conference is over.

At the Fort Hall conference, attendees will consider the subject of **What is the Real Sum of our Parts? – Understanding and Reconciling the Hidden Biases that Inhabit our Thinking and Decision Making**, in a program presented by **Dr. Erik Girvan**, an associate professor of law at the University of Oregon School of Law and is co-director of the university's Conflict and Dispute Resolution Program. Dr. Girvan, who grew up in Pocatello, is a graduate of Pocatello High School, with a doctorate degree in Psychology from the University of Minnesota and a law degree from Harvard Law School. He reprises the provocative and well-received program first presented in last year's Boise conference, **examining the unconscious biases that each of us brings** to our work and to our interactions with other people – **in court, in our offices, and in our communities**. Prepare to be surprised, and to be glad for what you learn about the way you and others think about the world around you.

In a slight twist and addition to our usual program on civil rule changes, this year we will focus on **the differences between litigation and trial practice in Idaho federal courts and Idaho state courts**. Lawyers and judges with extensive experience in both arenas will talk about **nuts and bolts comparisons of motion and trial practice** and also about the more **nuanced differences of handling cases in the two different court systems**. Guaranteed to give you a leg up in your litigation knowledge, this program will be interesting and useful for every Idaho lawyer.

**It is unusual for a case to go to trial**, and there are many reasons that are offered up for why that is. Since 2005, **less than one percent of all civil cases go to trial**. What does that mean for our justice system and for our society? **Is the civil jury trial destined for extinction?** This year we have **partnered with the Civil Jury Project at the New York University School of Law** to talk about improving the civil jury trial. Trial jurors from recent trials in both state and federal court will participate, along with trial judges and conference attendees, in examining what we can do differently to protect and preserve the right to a jury trial. **Stephen D. Susman**, the Executive Director of the Civil Jury Project and **one of the country's most successful trial lawyers**, will lead the discussion. Mr. Susman is **an innovative thinker and implementer in identifying how to return the civil jury trial paradigm to its roots as an affordable and sensible means of resolving disputes**.

All of us know that **the Bill of Rights is perhaps the most important foundational source of the civil liberties we enjoy and celebrate. Less well known is the critical importance of the passage of the 14<sup>th</sup> Amendment in 1863 in bringing the Bill of Rights to all individuals.** Prior to passage of the 14<sup>th</sup> Amendment, the Bill of Rights acted as a restraint only upon the federal government. **It was the incorporation doctrine contained in the 14<sup>th</sup> Amendment that made the Bill of Rights largely applicable to the states.**

Over the last 150 years, the 14<sup>th</sup> Amendment has been the wellspring of the most important civil rights cases in the history of our country. **Shaped in the internecine political battles taking place during and after the Civil War, you will learn the almost unbelievable history of its passage and ratification by the states, you will hear from a noted Idaho historian about the sometimes proud but also often regrettable history of civil rights in Idaho, you will hear from lawyers involved in some of the most significant Idaho cases that are tied in some way to the 14<sup>th</sup> Amendment, and hear from a panel of lawyers and judges talk about what lies on the future horizon.**

Among others, we will have **Professor Aman McLeod, an assistant professor of political science and lecturer in law** at the University of Idaho, who will amaze you with the story of the passage of the 14<sup>th</sup> Amendment; **Professor Jill Gill, professor of history at Boise State University**, who has chronicled many of the proud and less than proud moments of Idaho civil rights history; **Norman Gissel, a Coeur d'Alene attorney** long active with the Kootenai County Task Force on Human Relations and co-counsel with Morris Dees of the Southern Poverty Law Center in the lawsuit which brought down Richard Butler and the Aryan Nations organization headquartered in Hayden Lake, Idaho; **Deborah Ferguson and Craig Durham, Boise attorneys** who represented the plaintiffs in *Otter v. Latta*, the Idaho case challenging the constitutionality of Idaho's ban on same sex marriage; and **David Metcalf, staff attorney in the chambers of Chief Judge B. Lynn Winmill**, who was working as the staff attorney with the late District Judge Marion Callister of the District of Idaho in 1981, while **Judge Callister was in the eye of the storm of a nationwide controversy when he ruled on a novel issue of constitutional law that the Idaho Legislature had the power to rescind its prior ratification of the proposed 27<sup>th</sup> amendment to the federal Constitution, the so-called Equal Rights Amendment.**

No doubt this look into the history and the future of the 14<sup>th</sup> Amendment will inspire and inform the work you do as a lawyer, and have you seeking out more information about the topics that we discuss.

**The traditional Judges Panel program will once again utilize the interactive “Wordle” software, allowing attendees to use their cell phones in answering poll questions about the functioning of the Idaho federal courts, and to submit specific questions for our judges.**

**Wow! CLE credit, a great luncheon (included in your registration fee), interesting and useful programs, good conversation, and connecting with old friends and new acquaintances. No wonder this conference continues to be the best CLE value and most interesting legal conference in the West!**

**Tell your friends, and we’ll see you there!**