

**FEDERAL BAR ASSOCIATION  
EASTERN DISTRICT OF WASHINGTON**

**AND THE  
U.S. DISTRICT COURT, EASTERN DISTRICT OF WASHINGTON**

**PRESENT THE  
2005 DISTRICT CONFERENCE AND CLE**

**THE DAVENPORT HOTEL  
10 S. POST STREET  
SPOKANE, WASHINGTON**

**FRIDAY, SEPTEMBER 9, 2005**

## 2005 EASTERN DISTRICT CONFERENCE AND CLE\*

PRESENTED BY

THE FEDERAL BAR ASSOCIATION FOR THE EASTERN DISTRICT OF WASHINGTON  
AND THE  
U.S. DISTRICT COURT, EASTERN DISTRICT OF WASHINGTON

FRIDAY, SEPTEMBER 9, 2005

THE DAVENPORT HOTEL

9:00 a.m.	<i>Welcome</i>	David J. Groesbeck, <i>President, FBA</i>
9:10 a.m.	<i>State of the District Address</i>	Hon. Robert H. Whaley, <i>Chief United States District Judge</i>
9:20 a.m.	<i>E-Filing and Other Court Updates</i>	James R. Larsen, <i>Dist. Court Executive/ Clerk of the Court</i>
9:40 a.m.	<i>Panel Discussion: Should the 9<sup>th</sup> Circuit be Split?</i>	Les Weatherhead, <i>Witherspoon, Kelley, Davenport &amp; Toole, P.S.</i>
10:30 a.m.	<i>Break</i>	
10:45 a.m.	<i>Special Guest Presentation and Keynote Address: "The First Monday in October"</i>	Hon. Paul D. Clement, <i>U.S. Solicitor General, Department of Justice</i>  A discussion on recent decisions by the U.S. Supreme Court, a preview of the upcoming term of Court and a discussion of other issues affecting the Judiciary; Question and answer session to follow.
Noon	<i>Crisis in the Jails: Is the Cost of Incarceration and the Availability of Jail Space an Impediment to the Administration of Justice?</i>	Joint Federal Bar Assoc. and Spokane County Bar Assoc. Luncheon with Panel Discussion moderated by Chief Judge Robert H. Whaley
1:30 p.m.	<i>Break</i>	
1:45 p.m.	<i>Sentencing in the Post-Booker Era</i>	Tom Monaghan, <i>Senior Trial Attorney, Federal Defenders of Eastern Washington and Idaho</i>
2:45 p.m.	<i>Overview and Primer on the New Bankruptcy Laws for the Non- Bankruptcy Attorney</i>	Nancy I. Isserlis, <i>Winston &amp; Cashatt, P.S.</i> John W. Campbell, <i>Esposito, George &amp; Campbell, PLLC</i>
3:30 p.m.	<i>Break</i>	
3:45 p.m.	<i>Celebrating 100 Years of Justice and Professionalism in the Eastern District of Washington</i>	Special Video Presentation and Professionalism Discussion by members of the Federal Bench and Bar: Sr. Judge Justin L. Quackenbush, Chief Judge Robert H. Whaley, Smithmoore P. Myers, and Carroll Gray
5:00 to 7:00 p.m.	<i>Hosted Reception</i>	Don't miss the FBA's Annual Hosted Reception!

\* Applied for 6 General and 1 Ethics WSBA CLE Credit.



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**CLE APPROVAL**

The WSBA has approved the 2005 District Conference for 5.75 general CLE credits and 1.25 Ethics Credits. The following information will help you with your reporting:

Name: Federal Bar Assoc., ED of Washington

Title of Activity: 2005 District Conference

Activity ID: 144273

Date of Activity: September 9, 2005

Location: Spokane, WA



WELCOME

# Save September 9, 2005 for the Eastern District Conference and CLE in Spokane!



Judges, Clerk and Court Staff of the Eastern District



Officers, Trustees and Lawyer Representatives



Join the FBA



Questions? Contact us today!

### Mission Statement

The **Federal Bar Association** seeks to enhance bench and bar communications, provide specialized educational programs for federal practitioners and to serve as a liaison with the public.



Published and distributed without charge



Sign up here for the September 9, 2005 Eastern District Conference!



Links to Federal Courts



Other Links of Interest

The Federal Bar Association has established this internet site as a service to federal practitioners and the internet community. The representations herein only generally describe the United States District Court of the Eastern District of Washington and the Federal Bar Association for this district; this information is subject to change without notice and its accuracy cannot be assured.

Please do not send any confidential information through this website as the Federal Bar Association does not undertake to preserve the confidentiality of any such communication.

**FEDERAL BAR ASSOCIATION OF THE EASTERN DISTRICT OF WASHINGTON**

**APPLICATIONS SOUGHT FOR LAWYER REPRESENTATIVES TO THE NINTH  
CIRCUIT JUDICIAL CONFERENCE**

The Federal Bar Association is currently accepting applications for two openings for Lawyer Representatives for the Ninth Circuit. Each lawyer representative serves a three-year term and represents the Eastern District of Washington at the annual Ninth Circuit Judicial Conference. Representatives also attend FBA board meetings here in Spokane and help in the planning and implementing of various FBA-sponsored activities. There are five lawyer representatives in all, with two of the positions coming open. One position will be filled from outside the Spokane area (*e.g.* Tri-Cities, Wenatchee, Yakima, or Pullman areas).

Your letter of application should include background information about yourself, and your thoughts regarding improving the administration of justice within the District and Circuit. Please forward your application to: John D. Allison, FBA President, c/o Eymann Allison Fennessy Hunter Jones, PS, 2208 West Second Ave., Spokane, WA 99204; 509-747-0101.

Applications should be submitted no later than Friday, October 21, 2005. Applications will be screened and appointments to the position will be made by the Judges of the U.S. District Court for the Eastern District of Washington.





## Future of 9th Circuit Under Review

Wednesday, November 24, 2004

By Kelley Beaucar Vlahos

### FOX NEWS

WASHINGTON — For many conservatives, the words "9th Circuit" mean more than just a federal appeals court in California. The words embody everything they think is wrong with liberal activism, West Coast politics and the judges who tried to take God out of the Pledge of Allegiance.

Those same conservatives think their new clout following President Bush's re-election may help put some weight behind a movement to split up the **9th Circuit Court of Appeals** ([search](#)), leaving the 9th in California, creating a new 12th Circuit for neighboring Idaho, Arizona, Montana and Nevada; and a new 13th Circuit for Washington, Alaska and Oregon.

"Almost everything is going to be affected by the election," said Kay Daly, who heads the **Coalition for a Fair Judiciary** ([search](#)), a conservative group working to get Bush's judicial nominations through the Senate. She said conservatives will be pushing hard to split up the 9th Circuit.

"The 9th Circuit seems to wield an awful lot of power, and it is the most reversed court in the nation," she said. "There's some serious judicial activism going on there."

By a vote of 205 to 194, the House on Oct. 5 passed an amendment by Rep. Mike Simpson, R-Idaho, to the **Bankruptcy Judgeship Act** ([search](#)) that would divide the 9th Circuit into three parts. The entire bankruptcy bill passed the House shortly afterward.

Republicans largely voted for the measure while Democrats opposed it. But two California Republicans, Reps. Christopher Cox and David Dreier, voted against the amendment.

Retired Judge Robert Bork, a former **U.S. Solicitor General** ([search](#)) and federal appeals court justice, said the 9th Circuit "has always been a maverick court," but splitting it up is more complicated than it sounds.

"I don't know if it's such a hot idea to have a court confined to California," he told FOXNews.com. "You would still get a court full of activist judges, and a court that doesn't represent the whole of the state."

But the lawmakers who sponsored the legislation in both the House and Senate say the 9th Circuit is not only ideologically different from its own Western values, the court is overworked. They point to the judges' caseload and sluggish docket.

"It's the most overloaded circuit out there," said Dan Whiting, spokesman for Sen. Larry Craig, R-Idaho, who introduced the Senate companion bill with Sen. John Ensign, R-Nev. "We certainly have concerns over how the court works, but at the same time there are other concerns with the overload, with its workloads, that far outweighs any other concern."

"[Ensign] is as aware as many people are that the court is completely overloaded," said Jack Finn, spokesman for the senator.

But not everyone believes that workload is the overriding concern for GOP lawmakers, and a lot more senators will be needed to get a ringing endorsement. Senate sources say it has a glimmer of a chance of being brought up in the Senate, but not much more than that, at least for now.

Sen. Dianne Feinstein, D-Calif., who opposes the measure, has put a hold on the Craig-Ensign bill, basically bottling

it up in limbo, and has warned against attempts to slip it into larger bills.

"It would be inappropriate to undertake such a momentous transformation of our nation's judicial system with little opportunity for debate and consideration," Feinstein said in a letter to the Appropriations Committee Chairman, Sen. Ted Stevens, R-Alaska, on Nov. 15.

The chief judge of the 9th Circuit, Hon. Mary M. Schroeder of Arizona, and several of the court's judges have been vocally opposed to the effort. Schroeder was out of the country and could not be reached for comment, but has stated publicly that the measure would break up common interests among neighboring states.

Conservatives have not been shy about their dismay over what they consider to be the court's ideological slant. That dismay surfaced explosively in 2002, when the 9th Circuit declared the Pledge of Allegiance unconstitutional because it makes reference to God in one verse. The U.S. Supreme Court later overruled the court on technical grounds.

To conservatives, this was the culmination of years of "liberal" decisions on everything from environmental issues, to crime, drugs and sex.

"These contemptuous judgments tear at the moral fabric of our nation, disregard the will of the people and force a corrupt ideology upon our society," said Rep. Rick Renzi, R-Ariz., after the House passed an amendment that included language he introduced in April to split the court.

He said rural Arizonans were tired of the 9th Circuit ruling against their interests, and pointed to judgments concerning cattle grazing and preventing forest fires. "Based in San Francisco, the current 9th Circuit is out of touch with western values," Renzi said.

But not all Arizonans necessarily agree. The Arizona House delegation split its vote along party lines.

Rep. Adam Schiff, D-Calif., said the ideological drive behind the proposals in both the House and Senate have made lawmakers uncomfortable. "It's obvious what is going on, the other side is very clear that this is what they are doing," Schiff told FOXNews.com.

He said he heads a caucus with Rep. Judy Biggert, R-Ill., to work, in part, on solutions to the worsening relationship between the courts and Congress. "This just makes it worse."

But Finn said Ensign is confident that the enough bipartisan support exists in the Senate to split up the court.

"We're confident that it will go somewhere, the question is not if, but when," Finn said. "It's a commonsense bill and he intends to pursue it."

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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Randall & Danskin, P.S.

ROBERT H. WHALEY  
Judge

Post Office Box 283  
Spokane, Washington 99210-0283  
(509) 353-2170  
Fax: (509) 353-0526

***PRESS RELEASE – FOR IMMEDIATE RELEASE***

From: Chief Judge Fred Van Sickle; Judge Justin L. Quackenbush; Judge Alan A. McDonald; Judge Wm. Fremming Nielsen; Judge Robert H. Whaley; Judge Lonny Suko

Date: June 30, 2005

**Crisis in the Court**

One of the hallmarks of our constitutional system is the fairness of the criminal justice process. The fundamental fairness of the process is now being challenged by a jail overcrowding problem that must be addressed.

The federal courts in the Eastern District of Washington handle approximately 480 criminal cases on an annual basis. Of those cases, approximately 90 percent involve defendants who cannot afford counsel. The court is required to appoint counsel in these cases, and relies on the Federal Defender and volunteers from the legal community to provide representation. The rate of pay for volunteer lawyers is less than half of the prevailing rate charged by attorneys in the community. In some cases, the pay from the court does not cover the overhead costs of the lawyer who is assigned to the case.

Cases in the Eastern District are assigned to one of three locations: Spokane, Yakima, and Richland. About 91 percent of the criminal cases are Spokane and Yakima cases, with Spokane having about 53.5 percent of the cases and Yakima having about 37.5 percent. In the past, federal defendants were housed in jails operated by the local counties in Spokane, Yakima, and Richland (Benton County). Attorneys from the respective counties were appointed to represent the defendants housed in the county. Attorneys could visit their clients

conveniently because they both were located in the same city. An important part of representation consists of meetings between the attorney and client to go over release, discovery, legal issues, and possible resolution by plea or trial. As such, it is imperative that a lawyer have ready access to his or her client to develop a trusting relationship, to effectively discuss the various options and issues presented, and to ultimately decide how to proceed.

For some time, the Spokane County Jail has been overcrowded, and the Sheriff and county commissioners have been seeking solutions. As a result, the Federal Courts were advised by the Spokane County Sheriff that the county jail could no longer house all of the Spokane federal prisoners, and that the number of federal prisoners in the Spokane County Jail would have to be reduced to 50, which constitutes a reduction of about 50 percent. The closest jail now available for federal prisoners from Spokane is Benton County, a three-hour drive from Spokane. Some of the Spokane defendants are housed in the jail in Sunnyside. In Yakima, the local jail is overcrowded as well, and some federal prisoners from Yakima also are being housed in Benton County. The drive from Yakima to Richland is about an hour and a half. The United States Marshal, who is in charge of federal prisoners, advises that it may be necessary to send some prisoners to the SeaTac Federal Detention Center, pending trial.

The lack of adequate jail space for Federal defendants in Spokane and Yakima is causing a crisis. All defendants must appear in court for arraignment, pretrial conferences, motion hearings, plea or trial, and sentencing, if convicted. In addition to any initial consultation with the client, each of these events may require the attorney to meet in person with the client. These necessary consultations are extremely difficult, given the distance between attorney and client, as well as the low rate of pay for representation. Some attorneys have asked to withdraw as counsel because of these difficulties. Others are asking to be taken off the volunteer list.

The judges of the district and the Marshal are trying to facilitate better access between lawyers and their clients who are housed in a different location. Video conferencing capability between the federal buildings in Spokane and Yakima and the detention facility in Benton County are being investigated. Such conferences may be useful in some instances. However, given the nature of the attorney-client privilege, the necessity to develop trust and understanding between

attorney and client, and the need for face-to-face meetings to discuss documents and written discovery, the video conference cannot substitute for personal access.

The Marshal is trying to have federal detainees who are housed in another city brought to court at least a week before any scheduled hearings. Further, after arraignment, the Marshal will try to keep prisoners in the appropriate city for at least a week before transfer to another location. Finally, upon request of a lawyer, the Marshal will bring a prisoner back to the appropriate location for consultation with the lawyer. The timing of the transfer is subject to space limitations in the appropriate jail, and available transportation.

These arrangements may ease the crisis in the short run. However, the demands on the Marshal's resources, which are caused by the constant movement of prisoners, cannot continue indefinitely, and the willingness of attorneys to continue to volunteer in these circumstances may diminish. Long-term solutions must be found.

Similar problems exist in the state system. As noted, Spokane and Yakima counties are having jail overcrowding problems. A lawsuit is pending in King County challenging, on constitutional grounds, the housing of King County prisoners in Eastern Washington.

There are no federal detention facilities in Eastern Washington. The closest facilities are located in Oregon and Seattle. Without adequate jail space, people who should be in jail may be released to make room for others. Without adequate jail space, the right to counsel may be jeopardized because attorneys cannot properly consult with their clients. Certainly, the quality of representation for incarcerated defendants may be affected. This strain on public resources and the strain on the criminal justice system should not be permitted to continue. The legislative branches of the respective governments have the responsibility to provide adequate funding for jail space. Immediate action is required to prevent a constitutional crisis.



Materials for Tom Monaghan's presentation "*Sentencing in the Post-Booker Era*" are located at the FBA website, [www.fedbar.com](http://www.fedbar.com).



