

# The Advocate

**Official Publication of the Idaho State Bar**

Volume 49, No. 11

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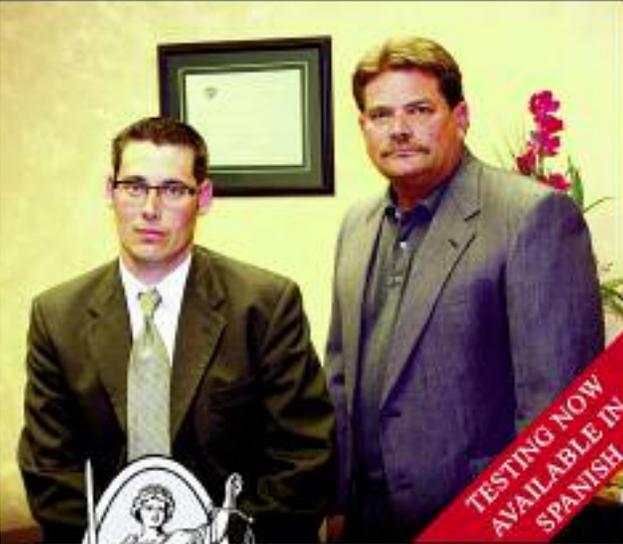
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## COVER

**On the Cover:** McCall photographed by Assistant United States Attorney **Monte Stiles**. Monte is an avid photographer who specializes in wildlife and landscape photography in his spare time. You can see more of Monte's pictures on his website: [www.montestilesphotography.com](http://www.montestilesphotography.com)

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# The Advocate

Official Publication of the Idaho State Bar

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### ISB CANNED FOOD DRIVE

The staff of the Idaho State Bar/ Idaho Law Foundation is coordinating a canned food drive to help benefit the Idaho Food Bank. You are invited to participate by dropping off any non-perishable food items at the Bar when you attend your section meetings and CLEs, or are stopping by to pick-up or drop off video rentals. The Donation Box is right by the front door. We are collecting items from 11/15-12/22/06.



BE POLITE

Jay Q. Sturgell



For those of you who keep track, I have a new addition to my list of Jay's Famous Last Words: "This column will practically write itself." It's time for my fourth column and yet, this has not written itself, nor has it accomplished anything else without me either. It's acting just like that brief I should be writing and by the way, none of my briefs have ever written themselves either. (\*sigh\*)

**Back to Be Polite...** Both of my parents have always been a great example of what excellent manners are. They have always modeled respect and consideration to everyone. Their example taught me more effectively than anything else ever could.

When I was a child I visited my father at work, at the time he was a Major in the Marine Corps. The drill field on the Marine Base can be a very loud and chaotic place as men form into platoons and companies. Amongst the yelling and confusion my father seemed an oasis of calm. I noticed that he didn't once yell or even raise his voice. I asked him why he wasn't yelling. He said, "Son that's why I have sergeants." People with real power don't yell, nor are they rude, they don't need to be.

"Courtesy is as much a mark of a gentleman as courage." Theodore Roosevelt said—he could have been describing my father.

I have noticed that competent professionals tend to radiate an aura of confidence, calm assurance, and dignity. They rarely appear out of control and are never rude. As attorneys, this is the image we should actively cultivate. Courtesy is the hallmark of a true professional. The best way to demonstrate respect for the court, your peers, and your clients is to be polite.

Bryant H. McGill said, "Courtesy is a silver lining around the dark clouds of

civilization; it is the best part of refinement and in many ways, an art of heroic beauty in the vast gallery of man's cruelty and baseness." I love that description—I strive to perfect that "art of heroic beauty."

Someone who is courteous is polite, well-mannered, considerate, civil, and chivalrous. I would like to stress three areas where we should practice courtesy. One should always be courteous to the court, colleagues, and to ALL staff members, not only your staff, but everyone else's too!

**Courtesy to the Court:** Not just in the courtroom, but to your entire out of court contacts. It means more than the judge... I'm talking about everybody in the court system, especially the clerks.

Attorneys and others who are so stupid as to be rude to the clerks constantly amaze me. The people who are clerks in our court system are skilled and dedicated professionals. Aside from the fact that these people deserve nothing but the best from those of us who are officers of the court, such rude behavior is foolish and self-defeating. The clerk is the person you must talk to in order to talk to or

see the Judge. Anyone who does not appreciate how much influence and power these people have has never been one. It is the height of folly to be less than polite and considerate to these people. If I could give just one secret to a happy and successful practice it would be this: Make the court clerks your friends. One of the best things I did as a squeaky new attorney was to go to each of the clerks' offices and introduce myself. I admitted to them that I knew nothing and that if they caught sight of something of mine that was dumb or just plain wrong, to please let me know.

**Courtesy to your Colleagues:** Courtesy is one of the most important ways that we as professionals can dis-

agree without being disagreeable. There is never any reason to be rude or impolite. There is nothing to be gained from such behavior. "Civility costs nothing, and buys everything." - Mary Wortley Montagu

**Courtesy to the Staff—yours and others:** I have already discussed why being polite to the court staff is important, but this applies to all staff, not only yours, but other attorneys' staffs as well. If you really want to talk to the attorney, being rude to their staff is no way to get there. Attorneys being rude on the phone ticks off my wife and Case Manager, "Oh yeah! Like he'll EVER get to talk to you!"

And Good Grief! Be polite to your own staff! An attorney who can't manage this, astounds me. Your secretary won't work for you for long if you don't appreciate what s/he does for you every day. I watch other attorneys and I judge them by the level of their staff's loyalty.

Oliver Wendell Holmes said, "Don't flatter yourself that friendship authorizes

*Courtesy is the hallmark of a true professional. The best way to demonstrate respect for the court, your peers, and your clients is to be polite.*

you to say disagreeable things to your intimates. The nearer you come into relation with a person, the

more necessary do tact and courtesy become." You know, this is important for family, friends, and most importantly your marriage. Don't take people close to you for granted.

Do not allow yourself or others to rationalize bad behavior by saying, "I only yell or lose my temper when I am stressed." Whoa! If you said that it is time to take a good hard look at yourself in the mirror. What you do or say under stress is the best indication of your true character - you need to change. Anyone can be polite and gracious when it's smooth sailing, but what really matters is how you act under stress. Reality Check "We're attorneys". Aren't we always stressed?



Von Clausewitz taught that, "Strength of mind or of character's the ability to keep one's head at times of exceptional stress and violent emotion." Grace under

fire is the best demonstration of true character. Never accept stress as an excuse for yourself, remember when the chips are down is when it really matters.

Fortunately there is a remedy if you ever find that you have been less than polite. It is really very simple. Find the person whom you have treated with less consideration and respect than you should have and APOLOGIZE!! There is no better way to show your regret and your respect and consideration for that other person than to say I'm sorry. There is no other way to make it right! It is a great opportunity for personal growth.

In my office there has been a lot of stress while I have been traveling on the Idaho State Bar Roadshow. I observed my wife and Case Manager lose her temper at the end of a long and rather bad day. Next morning, she picked up the phone and apologized to that clerk. She was wrong, and despite the bad day, there was no excuse. Later that afternoon, there was a phone

call from another clerk in another county who apologized for her behavior. Michelle laughed and said that folks must have been taking my articles to heart. I hope you do.

I know I'm probably just preaching to the choir. However, please show those who are not onboard that courtesy is the hallmark of the true professional. Please, practice it always and be an example. Thank you.

p.s. Hi Emily!

**Jay Q. Sturgell** is serving a six-month term as president and has been a Bar Commissioner representing the First and Second Judicial Districts since 2004. He received his B.S. from Utah State University and his J.D. from the University of Idaho College of Law. He is a Special Deputy Attorney General for the State of Idaho, Shoshone County Public Defender, and City Attorney for the cities of Pinehurst, Smelterville, and Mullan. Jay is the first attorney from the Silver Valley to be a Commissioner since 1965. You can reach Jay at (208) 784-4035 or [sturgellcs@usamedia.tv](mailto:sturgellcs@usamedia.tv)

## LETTERS TO THE EDITOR

Dear Editor:

Lawyers are not immune to scams or being victimized by con artists. There is an inmate in an Idaho Prison who is targeting lawyers.

This individual will call a lawyer and explain that he is the sole devisee of a very large estate and offer a large (six figure) retainer for a lawyer to manage his new wealth. His only request is that the lawyer send him \$150 or so to pay the postage so he can ship the boxes of records about the assets.

Beware. You should carefully check out his story before sending him any money. I have talked with one lawyer who sent money before checking the story out.

When the inmate called me he fabricated parts of the story but other parts were true. He did have a relative that died but the surviving spouse was the sole beneficiary of the will. A quick call to the appropriate probate court clarified the situation and saved me from being victimized.

Prison inmates may have a particular incentive to target lawyers for these scams because calls to lawyers are (rightfully) not monitored by the prison authorities.

If it sounds too good to be true it probably is.

Paul L. Clark  
Kirsch & Clark, PLLC

## REINSTATEMENT

On October 5, 2006, the Idaho Supreme Court issued an Order reinstating Jefferson Richard Jewell, Boise to the practice of law in the State of Idaho.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, PO Box 895, Boise, ID 83701, (208) 334-4500.



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# EXECUTIVE DIRECTOR'S REPORT

## IDAHO STATE BAR—CELEBRATING 81 OR 83 YEARS

Diane K. Minnich



The Idaho Legal History Society is sponsoring this issue of *The Advocate*. This group of lawyers and judges determined that the history of the legal profession in Idaho should be preserved. In part, their motivation was the extraordinary effort of past ISB president Deb Kristensen, who gathered the histories of and honored the first 50 women members of the Idaho State Bar. The first 50 women was a start; as you will find in this issue, Idaho has a rich and colorful legal history to be explored and documented.

The Idaho State Bar has been an integral part of the legal profession for over 80 years. Prior to 1921, there was a voluntary Idaho State Bar Association. The proceedings from the 1921 Biennial Bar Association meeting indicate the first bar president, Richard Z. Johnson, was elected in 1899. The presidents that served from 1909 to 1923 include some of the attorneys highlighted in this month's articles:

From 1921 until about 1970 the Bar kept verbatim transcripts of the ISB Annual Meetings. A few quotes from President Willis Sullivan at the 1921 Ninth Biennial Meeting indicate that the issues facing the Bar haven't changed much in 85 years:

*"These are times when attacks are being made upon our laws and constitution..."*

*"There is, beyond doubt, a feeling throughout the country, which is quite widespread, that the bench and bar ....are not now doing all in their power to the meet the demands of the present conditions, and thereby creating a distrust for our courts and the legal profession and disrespect for our lawyers."*

*"The one great fault of our judicial system is delay."*

Also at the 1921 meeting, a resolution was presented to the membership to recommend an act to the Idaho State legislature that would provide for the organization and government of the Idaho State Bar, thus creating a unified bar.

In 1923, the Idaho legislature passed the bill for organization of the Bar, which included setting the annual fee at a maximum of \$5.00! The 1925 Idaho State Bar proceedings state that the 1925 law "did not make an appropriation, the Commission was without funds and found it impossible to function." In 1925, an appropriations bill was passed and the current unified Idaho State Bar was formally established. The Idaho State Bar was one of the first unified bars in the country.

At the First Annual Meeting of the Idaho State Bar in 1925, President Judge John C. Rice said "The effect of the new organ-

<b>PRESIDENTS</b>	
RICHARD Z. JOHNSON, Boise	1899 - 1901
JAMES E. BABB, Lewiston	1901 - 1909
FRANK T WYMAN, Boise	1909 - 1911
FRANK MARTIN, Boise	1911 - 1913
FREMONT WOOD, Boise	1913 - 1915
KARL PAINE, Boise	1915 - 1917
JAMES H. HAWLEY, Boise	1917 - 1919
W.E. SULLIVAN, Boise	1919 - 1921
JAMES F. AILSHIE, Coeur d'Alene	1921 - 1923

<b>SECRETARIES</b>	
MILTON G. CAGE, Boise	*1899 - 1909
B.S. CROW, Boise	1909 - 1917
O.W. WORTHWINE, Boise	1917 - 1919
SAM S. GRIFFIN, Boise	1919 - 1923

<b>TREASURERS</b>	
SELDEN B. KINGSBURY, Boise	*1899 - 1909
O.O. HAGA, Boise	1909 - 1911
CHARLES F. KOELSCH, Boise	1911 - 1913
FRANK B. KINYON, Boise	1913 - 1915
P.E. CAVANEY, Boise	1915 - 1919
N. EUGENE BRASIE, Boise	1919 - 1921
Office consolidated with Secretary	1921

*\*The records of the Association show no more elections from 1901 to 1909. List of officers from 1899-1921 taken from Proceedings of the Idaho State Bar Association, Vol. 1, 1921.*

ization upon the bar of the state ought to be beneficial. It should lead to greater professional interest and the conducive to higher standards in the profession." The issues facing the legal profession haven't changed since the 1920s; neither have the goals of the Idaho State Bar.

Historically speaking, you are probably wondering how the pictures of my daughters relate to this article. On page 39, you will note the passing of Rei Osaki who, in 1943, was the 16th woman admitted to the Idaho State Bar. When I reviewed this issue, it occurred to me that all the historical pictures were of men. I hope that when my daughters are adults the historical photos and articles include women.

Happy Holidays  
from the  
Idaho State Bar &  
Idaho Law Foundation  
staff and leadership!

# INTRODUCING THE IDAHO LEGAL HISTORY SOCIETY

Hon. Ronald E. Bush  
Hon. B. Lynn Winmill



From 1863 to 1881, when the Idaho Territory Supreme Court opinions were first published, 82 lawyers had been admitted to practice before the territorial courts. The list of those lawyers contains the names of lawyers who went on to become noteworthy judges, who filled political office and who tried famous—and infamous—cases. Some surnames are still found in the rolls of practicing Idaho lawyers today. The procedural rules governing appeals before the territorial Supreme Court were not so different than those used in our federal and state courts today.

For over 150 years, the judges, lawyers and other participants in Idaho's justice system have been part of the winds and the calms of Idaho history. Our courts have been crucibles for titanic clashes of economic forces, social

upheaval and political tugs-of-war. Our courts have often been a refuge of justice for the oppressed and discriminated. Throughout, there have been remarkable men and women of real courage, extraordinary intelligence and colorful personality presiding in the courtrooms and dueling in the courtroom wells.

There have been noteworthy publications about Idaho's legal history. *Justice for the Times*, published as part of Idaho's centennial celebration in 1990, is a terrific compendium of the history of our courts and the Idaho State Bar. A particularly noteworthy edition of *Idaho Yesterdays*, the quarterly historical journal of the Idaho State Historical Society, then edited by Judy Austin, contains scholarly articles about the courts and the bar, as part of the centennial commemoration. Other articles have been written in recent decades about particular events or cases. But, until now, there has not been an organized, ongoing effort to document and preserve the legal history of our state.

In 2004, we began working with a small group of lawyers, judges, court personnel and other interested citizens to form an organization dedicated to preserving Idaho's legal history. We discovered, to our great delight, that many people have been quietly preserving legal history on their own and many more wanted to be part of the effort. From that, the Idaho Legal History Society was born.

This issue of *The Advocate* is part of our efforts. It contains articles about the 1907 trial of "Big Bill" Haywood, accused of masterminding the murder of former Governor Steunenberg in retaliation for the governor's actions in quelling the labor unrest and violence in the Silver Valley at the turn of the 20th century. A short description of the trial, previously published in *Idaho Yesterdays* and authored by the late Merle Wells, helps set the stage. Justice Byron Johnson writes about extradition and *habeas corpus* issues related to the notorious train ride that carried Haywood from Colorado to Idaho. John Greenfield tells us about the labor strife and the labor movement that were a central part of the economic class and social upheaval occurring at that time. Judge Ron Wilper writes about Fremont Wood, the native of Maine and Bates College educated trial judge who presided over the Haywood trial. Wood moved west as a young adult and served as the last U.S. Attorney for the Territory of Idaho and the first U.S. Attorney for the state of Idaho. Judy Austin contributes an article about John Nugent, who defended Haywood along with Clarence Darrow.

Rita Ryan, the talented former editor of *The Advocate*, and Judge Duff McKee, who has also written about Idaho legal history, lent their considerable skills to the review and editing process, with the terrific assistance of the *Advocate* editorial advisory board and Managing Editor Jeanne Barker. Judge Gaylen Box shaped and directed the process of planning the issue and shepherding the work from start to finish, as the capable chair of our publications subcommittee. The Idaho Legal History Society logo was created by Ward P. Hooper, Hooper design studio. The logo incorporates the statue of Governor Steunenberg, which faces the Capitol Building in Boise. And Susie Boring-Headlee did her usual inimitable work as the glue that held everything together.

In the context of the cataclysmic social and political events that were the backdrop of the Haywood trial, these articles describe some of the darkest and proudest days of our fair state. As you will perceive, each author sets out a different description of the events that framed the Haywood trial. Such disparate recounts of the seminal events illustrate the fact that even today, 100 years after the maelstrom, fair-minded and intelligent people still see the story of those times through different lenses.

Regardless of your own assessment of the extraordinary events of the assassination of Governor Steunenberg and the trial of Bill Haywood, there is no doubt that those events made an imprint upon our state and the state of the law. The social and political frictions at play then are still at play today.

We hope you enjoy these thought-provoking articles.

Justice Johnson is also deep at work with Idaho Public Television on a production about the Haywood trial, with the support







*Bunker Hill Mill and other buildings were destroyed by dynamite and fire set off by strikers on April 29, 1899. Reprinted with permission of University of Idaho Library Barnard-Stockbridge Studio.*

## THE HAYWOOD TRIAL

Merle W. Wells

*Idaho State Historian Emeritus*

A series of notable labor cases involving Western Federation of Miners' leadership brought international attention to Idaho courts for a decade after 1898. Following destruction of large mine plant in a dynamiting incident at Wardner, April 29, 1899; Governor Frank Steunenberg imposed martial law. When he was assassinated six years later, hostilities between miners and mine owners were continued in litigation in which union leaders were charged with conspiracy in that crime. A vast and growing literature deals with the series of trials that ensued. William Dudley Haywood, a Silver City miner who had gained prominence as Federation secretary, finally was acquitted after an exciting Idaho trial, July 24, 1907, and other efforts to convict union leaders failed. As major applications of Idaho law, these cases upheld an important legal principle that no defendant should be sentenced unless adequate evidence for conviction had been presented in a regular court proceeding. Judge Fremont Wood was convinced of Haywood's guilt, but he insisted that evidence to corroborate Harry Orchard's confession of joint guilt with Haywood be supplied. (Orchard proved to be a brilliant witness in explaining that Haywood and other Federation leaders had hired him to dynamite Steunenberg; but after more than a year of thorough investigation, Pinkerton detectives had not succeeded in providing corroborative evidence demanded by Idaho law to support testimony of a states' evidence witness.) Rather than have Haywood convicted under such circumstances, Wood provided instructions under which any reasonable jury would have

to follow Idaho law and bring in a verdict of not guilty. Such conscientious adherence to legal requirements brought a lot of unfavorable reaction to Judge Wood's actions in a time when other states lacked such high standards of justice in notable labor cases. Along with Charles H. Moyer and George Pettibone, Haywood was released to pursue a career that continued to attract international attention until he finally escaped to Russia in 1921. Idaho's courts; however, had shown that radical labor leaders could receive the fair trials to which anyone, no matter how unpopular, is entitled.

### ABOUT THE AUTHOR

*This brief essay on the Haywood trial and its context was published (unsigned) in Volume 25, number 1 (Spring, 1981), of the Idaho State Historical Society's quarterly journal, Idaho Yesterdays, a special issue devoted to the history of the law in Idaho. Its author was Idaho's longtime state historian Merle W. Wells. Merle was first a consulting historian, then a state historian and archivist and state historic preservation officer for the Idaho State Historical Society. He created the state archives, rescuing long hidden records from nooks and crannies in the state-house. He was founding editor of Idaho Yesterdays. Merle passed away in 2000. This article is reprinted here with the permission of the Idaho State Historical Society.*

-- Judith Austin

# JOHN FROST NUGENT

Judith Austin

On August 25, 1919, United States Senator John Frost Nugent, democrat of Idaho, rose to speak in favor of Senate ratification of the League of Nations Treaty. On the other side of the chamber and on the other side of the issue was his colleague William E. Borah, republican of Idaho.<sup>1</sup> The two men had been friends for decades despite their parties' differences; Nugent's father had been a mentor to Borah when the latter moved to Idaho, and in turn the younger Nugent had read law in Borah's office.

But the fight over the League of Nations was not the first time that Nugent and Borah had found themselves on opposite sides in a major controversy. In the spring and summer of 1907 they had served, respectively, on the defense and prosecution teams in the trial of William D. Haywood for conspiracy in the assassination of former Idaho governor Frank Steunenberg. Borah's chief colleague as special prosecutor was James H. Hawley, a democrat and future governor of the state—and leader of the wing of the democratic party in which Nugent was most active.

In a state as young and as thinly populated as Idaho, it is not surprising that people of different persuasions on one issue might find themselves allied on another. Still, on the surface Nugent might seem an unlikely choice to defend officers of the Western Federation of Miners (WFM) from a charge of conspiracy in the murder of a former Democratic governor. He was undeniably “establishment” and had managed mines, albeit in Australia. His father, Edward Nugent, (who died during jury selection in the Haywood trial) had been both a distinguished attorney and a distinguished district judge. And John Nugent himself had served from 1899 to 1906 as prosecuting attorney of Owyhee County.

Nonetheless, on July 10, 1907, lead defense attorney Clarence Darrow read the following telegram into the court record:

January 7, 1906.

R. J. Hanlon, Sec'y Miners' Union,  
Silver City, Idaho.

Employ John F. Nugent at the expense  
of the Western Federation of Miners to  
protect the interests of the organization  
at Boise. Answer.

Wm. D. Haywood,  
Sec'y-Treas., W.F.M.

and the telegram in response:

“Silver City, Idaho, Jan. 7, 1906.

Wm. D. Haywood,  
Sec'y-Treas. W.F.M., Denver.

Wire at length in what manner you wish  
Nugent to proceed. He wants full par-  
ticulars to what is the attack on the  
organization, and what is the com-  
plaint.

R. J. Hanlon,  
Sec'y Silver City Miners Union.



*Haywood's defense team. Left to right: Edgar Wilson, Leon Whitsell, John Nugent, Fred Miller, Clarence Darrow, Edmund Richardson. ISHS 2298.*

Darrow read further, from a telegram Haywood sent to Hanlon the next day outlining his concern that “a conspiracy... to connect the Western Federation of Miners with grave crimes” was afoot. “So,” Haywood wrote, “have Mr. Nugent take up the defense of any member of the organization, so that if innocent, they may be discharged.”

Hanlon's response was a letter, dated January 9, outlining Nugent's immediate concerns: “Mr. Nugent, after considering the matter over, thinks it would be a dangerous thing for him to agree to go to Caldwell at this time as the man in custody for the crime above stated has obtained counsel himself. It has been scattered broadcast that John Nugent has been retained as counsel for Harry Orchard. I denied [it] to press representatives in Boise tonight. Mr. Nugent says that he is willing to be counsel, if the authorities are going to endeavor to fasten the guilt on the Federation.”

Hanlon went on to express the concern of “a number of us here”—presumably fellow members of the WFM local in Silver City—that employing counsel at this point would give the WFM's enemies “the opportunity they are waiting for, that is, by an aggressive act of ours [hiring counsel] they would implicate the organization, and poison public sentiment against us.”

Haywood in turn acknowledged Hanlon's concerns and the “delicacy of our position,” but, “[b]eing well acquainted with John Nugent and knowing his ability and integrity as a counselor, I...am very glad that he is willing to be counsel for the organization in the event of the authorities attempting to connect the Federation or fasten the guilt upon the organization.”<sup>2</sup> Six weeks later Bill Haywood, George Pettibone, and Charles Moyer, the chief officers of the WFM, were removed from Denver to Boise without benefit of warrant.

While the odds are that the Haywood–Hanlon exchange was part of a much larger plan by WFM leadership, their expression of Haywood's wish to have Nugent a part of the defense counsel

is certainly legitimate. As Haywood noted (quite unnecessarily if the letter was intended solely for Hanlon, who knew them both), he and Nugent knew each other well.<sup>3</sup>

At the time of the exchange, Nugent was in his fourth term as prosecuting attorney of Owyhee County. His parents had lived in Silver City from 1864 to 1890, when his father—a graduate of Georgetown University who had come West to San Francisco in 1856, was admitted to the Oregon bar in 1859, and came to Idaho City in 1863—was elected a district judge for most of southwestern Idaho (the same district in which Haywood would be tried). Nugent was born in La Grande, Oregon, reputedly because the medical care was better there, in 1868; but Silver City was home. He left school at 16, worked for a time in the mines, and served as a court reporter in his father's courtroom. There he presumably first met Borah. In 1896 he moved with his wife to Western Australia, where for a year and a half he managed British-owned mining properties in a newly booming area.<sup>4</sup>

When Nugent returned to Silver City, he set up a law practice (including counsel to the local miners' union), became active in democratic politics, and was soon elected prosecuting attorney.

He was not a supporter of the Steunenberg wing of the democratic party, and for a time he worked on party matters with Senator Fred Dubois—also opposed to Steunenberg. Eventually, Nugent parted company with Dubois because of the latter's continued and virulent anti-Mormon positions, and in 1908 he sought his party's nomination for the senate against Dubois. He won control of the democratic party for its progressive wing, and would serve for the next four years as the chairman of the state central committee, but lost the election in the Idaho Senate to Weldon Heyburn.

In his work for the democratic party, Nugent was closely allied with James Hawley, Borah's prosecutorial colleague, and he was a major force in Hawley's election to a two-year term as governor in 1912. Two years later, no longer the party chairman but still a significant presence among Idaho democrats, Nugent played a major role in the election of Moses Alexander as governor. After the death of Senator James Brady in January of 1918, in Alexander's second term, the governor appointed Nugent to Brady's Senate seat. That fall, Nugent won the right to the last two years of Brady's term despite the fact that the League of



*The John Nugent House in Silver City as it appears today. It has been restored by Dave Wilper (brother of the Hon. Ron Wilper) who has owned it with Pete and Cheryl Burrell for the past 30 years. Photo is of an original painting by Cindy Lee. The Wilper's great-uncle, R.J. Hanlon, was the secretary of the Silver City Miners' Union in 1906 and the liaison between Haywood and Nugent.*

Nations was already a lively issue and Borah was highly respected in his home state.

Two years more, and circumstances had changed radically. Nugent ran for re-election in 1920 and was caught up in a Republican sweep across the country. His opponent was former governor Frank Gooding, who had been in that office during the Haywood trial. Nugent resigned from the senate in January of 1921, shortly before his and President Woodrow Wilson's terms expired, because Wilson had appointed him to a seven-year term on the Federal Trade Commission (FTC). In 1926, while chairman of the FTC, Nugent ran again for the senate seat he had previously held and was again defeated; in this case, democrats and progressives split a majority of the vote and Gooding was reelected.

When his term on the FTC was completed—under continuing republican administrations, he was not reappointed—Nugent set up law practice in Washington, D.C., with his son, George Ainslie Nugent (named for his maternal grandfather). He did some speaking around the West in behalf of Al Smith's campaign for the presidency in 1928, but it appears that he quite intentionally avoided further involvement in Idaho politics. When he returned to Idaho in the summer of 1930, there were rumors that he might address the state democratic convention, but he did not appear at all.

On September 18, 1931, John Nugent died at his home in Washington, D.C. He was only 63. An accident during his time in Australia had damaged his heart and his health had thereafter been somewhat frail. Boise's *Idaho Statesman* carried a front-page story about his death, complete with tributes from former governor Alexander and then governor C. Ben Ross. "Cato the Censor," the *Statesman's* political columnist, wrote a long column as well about Nugent and also about the various factions of the democratic party in Idaho during Nugent's involvement.<sup>5</sup> Three years later, the *Statesman* published a lengthy biographical sketch of Nugent written by historian Edwin Melvin Williams and published in the new *Encyclopedia of American Biography*. Williams borrowed from the *Statesman* to some extent, and he too set Nugent's life in the context of politics at both the state and the national level.<sup>6</sup>

As in both the *Statesman* obituary and Cato's column, the *Encyclopedia* biography includes brief reference to Nugent's role in Haywood's defense. Like the earlier writers, Williams suggests a far greater, or at least more visible, role during the trial itself than Nugent in fact played. Clarence Darrow and Edmund Richardson were the chief counsel for the defense, and they conducted the examination and cross-examination of witnesses. Before the trial, however, and behind the scenes during the trial, Nugent was a very active participant in the defense. He traveled with Darrow and Richardson to interview people around the area who might have useful knowledge. He kept a close eye on jury selection. Neither of the definitive accounts of the trial, J. Anthony Lukas' *Big Trouble* and David Grover's *Debaters and Dynamiters*, suggests that Nugent might have played any role as examiner, but both document his active participation in the defense planning and gathering of information.<sup>7</sup>

There appears to be no record of Nugent's own assessment of his role in the Haywood defense, nor of his views of either his

fellow defense counsel or the prosecution team. Given his various involvements after the trial was over, it seems likely that Nugent would not have given that episode in his career very great prominence in his life. In the small Idaho legal community of the 1900s, it cannot have been easy to be on the opposite side from two people with whom he worked closely in other settings. Though his life was very much in the mainstream, Nugent's Silver City years put him unquestionably on the side of the WFM.

## ENDNOTES

<sup>1</sup> For a detailed account of Nugent's role in the treaty debate, see Leonard Schlup, "The Faithful Acolyte: Senator John F. Nugent and the Question of Membership in the League of Nations," *Idaho Yesterdays* 40/2 (Summer, 1996), 11-17.

<sup>2</sup> Trial transcript, copy in *James Hawley Papers*, MS 48, Idaho State Historical Society Library and Archives, Box 71, Folder 48, pp. 3884-3888.

<sup>3</sup> In his nearly encyclopedic study of the assassination and trial, J. Anthony Lukas describes the efforts of one of the prosecution's "operatives" to obtain copies of this correspondence in Denver and carry them to Boise. *Big Trouble: A Murder in a Small Western Town Sets off a Struggle for the Soul of America* (New York: Simon & Schuster, 1997), pp. 168-169.

<sup>4</sup> The author has not been able to find a good analysis of the relationship between mine owners, mine managers, and miners in Western Australia or Australia in general; the best available comparative study of mining, which discusses the late rushes in Western Australia, is Douglas Fetherling, *The Gold Crusades: A Social History of Gold Rushes, 1849-1929*, revised edition (Toronto: University of Toronto Press, 1997). It is a very readable book.

<sup>5</sup> "John Nugent Joins Idaho's Honored Dead," and Cato the Censor, "Former Senator's Death Stirs Idaho Democracy," *Idaho Daily Statesman*, September 19, 1931, both pp. 1, 2.

<sup>6</sup> "Idaho Solon's Biography Discloses Varied Career" and "League of Nation's [sic] Plan Causes Nugent's Defeat," *Idaho Daily Statesman*, October 14, 28, 1934. Clippings in John F. Nugent folder, vertical file, Idaho State Historical Society Library and Archives.

<sup>7</sup> Lukas, *Big Trouble*; David H. Grover, *Debaters and Dynamiters: The Story of the Haywood Trial* (1963; republished, Caldwell, Idaho: Caxton Press in cooperation with the Idaho Legal History Society, 2006).

## ABOUT THE AUTHOR

**Judith Austin** is retired from the Idaho State Historical Society, where she served as an editor and historian for 36 years. She received her B.A. in history from Duke University (1961) and her MA from Columbia University (1963) in history of education. She is a member of the board of the Idaho Legal History Society.



# NO HABEAS CORPUS FOR “BIG BILL”

Hon. Byron J. Johnson

*This article reviews the denial of habeas corpus for “Big Bill” Haywood and his co-defendants, following their kidnapping from Colorado to Idaho in February, 1906, by the Pinkerton Detective Agency on behalf of the state of Idaho. It also reviews the status of the law today on this subject.*

On the evening of December 30, 1905, former Idaho Governor Frank Steunenberg was assassinated by a bomb attached to the gate leading to his home in Caldwell, Idaho. Two days later, a man known as Harry Orchard was arrested and charged with the murder. Within a few days, Idaho authorities hired the famous Pinkerton Detective Agency to make a case against Orchard and to build a case that the militant miners’ union, the Western Federation of Miners (WFM), had hired Orchard to do the foul deed.

James McParland, a famous Pinkerton detective who, in the 1870’s, had broken the miners’ union in Pennsylvania known as the “Molly Maguires,” undertook the task of interrogating Orchard. In preparation for this interrogation, McParland had Orchard placed in solitary confinement in the Idaho State Penitentiary in Boise for ten days. Then he met with Orchard and told Orchard that he did not need Orchard’s confession to convict and hang him, but that if Orchard would implicate the “Inner Circle” of the Western Federation, McParland would do what he could to save Orchard’s life.

Three days later, McParland returned to interrogate Orchard, who inquired how McParland would be able to save his life. After McParland described his history in helping other criminals to escape the gallows by cooperating with investigations by the Pinkertons, Orchard confessed to killing Steunenberg and implicated four individuals who held positions of importance with the Western Federation—William D. “Big Bill” Haywood, Charles Moyer, George Pettibone, and Jack Simpkins.

After Orchard implicated the union officials in February, 1906, Idaho Governor Frank Gooding consulted with McParland and James Hawley, who had been hired as a special prosecutor in the case, about what procedures could be employed to secure the presence of these union officials in Idaho to stand trial. They concluded that the state should charge these officials with murdering Steunenberg and seek extradition. But, there was a problem.

In *Hyatt v. New York*,<sup>1</sup> the U. S. Supreme Court ruled that the extradition clause of the Constitution requires that anyone subject to extradition must have fled from the state where the crime was charged to have occurred. None of the union officials had been in Idaho on December 30, 1905, and, therefore, they had not fled to Colorado and become “fugitives from justice.”

Although Orchard implicated them only as accomplices to the assassination of Steunenberg, under Idaho law that has existed since the early days of the Idaho Territory, these union officials could be charged in the same language as if they were principals.<sup>2</sup> By charging them as principals, the union officials were alleged to have killed Steunenberg in Caldwell on December 30, 1905. The judge in Canyon County then issued arrest warrants



*Charles W. Moyer, William D. Haywood, and George A. Pettibone, photographed on the lawn of the Ada County Courthouse. ISHS 534.*

for the union officials. Governor Gooding of Idaho issued a requisition to the governor of Colorado for extradition of Haywood, Moyer, and Pettibone. The governor of Colorado granted the request for extradition of the three defendants from his state, allowing for their arrest there.

In preparation for the “extradition,” the Idaho authorities, with the assistance of McParland, secured a Union Pacific Railroad train to travel on a Saturday night from Denver to Boise on a track cleared of other traffic. In fact, when McParland and his cohorts learned that Moyer was leaving Denver on the very evening that the arrest of the officials was to be effected, the Pinkertons immediately took the three officials into custody and spirited them out of Colorado in what can only be described accurately as a kidnapping.

Through this procedure, the WFM officials were brought into Idaho to stand trial, without any opportunity to contact a lawyer to oppose their removal from their home state. As soon as they were in Idaho, however, the general counsel for the union, Edmund Richardson, filed an application for a writ of *habeas corpus* with the Idaho Supreme Court. In denying *habeas corpus*, the Court concluded:

“[W]hether or not a citizen is a fugitive from justice is one that can only be available to him so long as he is beyond the jurisdiction of the state against whose laws he is alleged to have transgressed.

...

“The jurisdiction of the court in which the indictment is found is not impaired by the manner in which the accused is brought before it.”<sup>3</sup>

The three officials of the union then sought a writ of *habeas corpus* from the Circuit Court of the United States, sitting in Idaho. That court also denied them relief.

The case then came before the U.S. Supreme Court, which on December 3, 1906, issued its decision denying *habeas corpus*. After an exhaustive analysis, citing prior decisions of the U.S. Supreme Court, the Court concluded:

“[T]he question now is... whether a circuit court of the United States when asked, upon *habeas corpus*, to discharge a person held in actual custody by a state for trial in one of its courts under an indictment charging a crime against its laws, can properly take into account the methods whereby the state obtained such custody. That question was determined in the negative in the *Ker*<sup>4</sup> and *Mahon*<sup>5</sup> Cases.”<sup>6</sup>

Justice McKenna was the sole dissenter from the Supreme Court’s denial of *habeas corpus*, stating:

“I submit that the facts in this case are different in kind and transcend in consequences those in the cases of *Ker v. Illinois* and *Mahon v. Justice*,....No individual or individuals could have accomplished what the power of the two states accomplished; no individual or individuals could have commanded the means and success; could have made two arrests of prominent citizens by invading their homes; could have commanded the resources of jails, armed guards, and special trains; could have successfully timed all acts to prevent inquiry and judicial interference.”<sup>7</sup>

In 1960, Adolph Eichmann was kidnapped from Argentina and brought to Israel to stand trial for his roll in the extermination of six million Jews in Europe during the Second World War. Those who supported the jurisdiction of Israel to try, convict, and execute Eichmann, relied, in part, on the principles that were the basis for Supreme Court’s decision in *Pettibone* in denying the officials of the Western Federation of Miners *habeas corpus* when they were kidnapped from Colorado to Idaho.<sup>8</sup>

Indeed, the rule stated by the Supreme Court in *Pettibone* is still the rule.<sup>9</sup> Almost all the state courts that have ruled on the issue also follow this rule.<sup>10</sup>

There is a slight modification of this rule in the Second Circuit, where in *United States v. Toscanino*<sup>11</sup> the court concluded that the concept of due process has evolved so that a court

must “divest itself of jurisdiction over the person where it has been acquired as a result of the government’s deliberate, unnecessary, and unreasonable invasion of the accused’s constitutional rights.”<sup>12</sup> In *United States ex rel. Lujan v. Gengler*,<sup>13</sup> however, the Second Circuit effectively limited *Toscanino* to that case’s “shocking governmental misconduct,” which involved allegations of brutality by government agents.

In *United States v. Alvarez-Machain*<sup>14</sup> the Ninth Circuit considered a claim that the district court lacked jurisdiction to try a Mexican physician, because of his forcible abduction at the hands of U.S. agents in violation of the United States-Mexico extradition treaty. The district court had ordered the physician’s repatriation to Mexico, and the Ninth Circuit affirmed. The Supreme Court reversed, holding that the *Ker-Frisbie* rule was fully applicable, even though the abduction may have been “shocking” and in violation of general international law.<sup>15</sup> In *United States v. Matta-Ballesteros*<sup>16</sup> the Ninth Circuit observed that, “[i]n the shadow cast by *Alvarez-Machain*, attempts to expand due process rights into the realm of foreign abductions, as the Second Circuit did in [*Toscanino*], have been cut short.”

Reaching a similar result, the Eleventh Circuit rejected the claims of General Manuel Noriega of Panama, when U.S. military forces invaded Panama 1989, captured him, and brought him to the United States for trial.<sup>17</sup>

## CONCLUSION

The lesson from these cases is that if there is some challenge to the extradition or kidnapping of a defendant from one state to another to answer criminal charges, it must be raised in the asylum state and not in the demanding state where the charges are pending. Hopefully, there is not a lot of state-supported kidnapping going on these days.

“Big Bill,” of course avoided the ultimate dire result from not being entitled to *habeas corpus*, because he was acquitted by the jury in the “Trial of the Century” that took place in Boise in the summer of 1907.<sup>18</sup>

## ENDNOTES

<sup>1</sup>188 U.S. 691 (1903).

<sup>2</sup>I.C. §19-1430 (2006); (prior codifications at Cr. Prac. 1864, §251; R.S., R.C. & C.L., §7697; C.S. §8845; I.C.A., §19-1330).

<sup>3</sup>*In re Moyer*, 12 Idaho 250, 256, 259, 85 Pac. 897, 899, 900 (1906).

<sup>4</sup>*Ker v. Illinois*, 119 U.S. 436 (1886).

<sup>5</sup>*Mahon v. Justice*, 127 U.S. 700 (1888).

<sup>6</sup>*Pettibone v. Nichols*, 203 U.S. 192, 215-16 (1906).

<sup>7</sup>203 U.S. at 217. (McKenna, J. dissenting)

<sup>8</sup>*See, e.g.*, Helen Silving, *In re Eichmann: A Dilemma of Law and Morality*, 55 Am. J. Int. Law, 307, 316-18 nn. 26-31 (1961).

<sup>9</sup>*See, Frisbie v. Collins*, 342 U.S. 519 (1952); *Gerstein v. Pugh*, 20 U.S. 103, 119 (1975).

<sup>10</sup>*See*, John E. Theuman, Annotation, *Modern Status of Rule Relating to Jurisdiction of State Court to Try Criminal Defendant Brought Within the Jurisdiction Illegally or As a Result of Fraud or Mistake*, 25 A.L.R. 4th § 3. 157, 163; *but see*, § 4, 172 and *Sneed v. State*, 872 S.W.2d 930, 937 (Tenn.Cr.App. 1993) (“if... the procedure is challenged in advance of trial and an evidentiary hearing establishes that the conduct of governmental authorities,

as opposed to that of any private individual, is so illegal and outrageous as to shock the conscience of the court, the law of the land clause [of the state constitution] provides a measure of relief.”).

<sup>11</sup>500 F.2d 267 (2d Cir. 1974).

<sup>12</sup>500 F.2d at 275.

<sup>13</sup>510 F.2d 62 (2d Cir. 1975), *cert. denied*, 421 U.S. 1001 (1975).

<sup>14</sup>946 F.2d 1466 (9th Cir. 1991), *rev'd.*, 504 U.S. 655 (1992).

<sup>15</sup>504 U.S. at 669-70.

<sup>16</sup>71 F.3d 754, 763 (9th Cir. 1995).

<sup>17</sup>*United States v. Noriega*, 117 F.3d 1206 (11th Cir. 1997).

<sup>18</sup>David H. Grover, *Debaters and Dynamiters*, 258-59 (Caxton Press 2006).

#### ABOUT THE AUTHOR



**Hon. Byron Johnson, A.B., cum laude, in American History, Harvard College, 1959; LL.B., Harvard Law School, 1962; practiced law in Boise, 1962-1988; appointed to the Idaho Supreme Court by Gov. Cecil D. Andrus on December 17, 1987, serving from February 1, 1988 to January 4, 1999; now a practicing poet and a member of the Idaho Legal History Society.**



IDAHO  
LEGAL  
HISTORY  
SOCIETY  
EST. 2005

### THE GATE ON 16TH AVENUE

The Idaho Legal History Society has taken note of the upcoming centennial of the Haywood trial by creating a year-long observance and commemoration. Among the events is a play, “The Gate on 16th Avenue,” commissioned by the Society to be presented March 15, 16 and 17, 2007, at Boise Little Theater. Mike Silva, president of Spontaneous Productions, is finalizing the play, which he will produce and direct.

Mike began work in November 2005, delving into a mountain of books and trial transcripts about the event. His references include the 800-plus page *Big Trouble* by J. Anthony Lukas, *Debaters and Dynamiters* by David H. Grover, and the lengthy Orchard confession published in serial form by the old *McClure's Magazine*. He also read all of the trial transcript dealing with the direct- and cross-examination of Orchard, the direct-examination of Haywood, and the closing arguments of Hawley, Borah, Richardson and Darrow, among other historical material.

Ticket information will be available in the January *Advocate*.



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# TRIAL JUDGE FREMONT WOOD: HE DECLARED THE LAW AS HE FOUND IT

Hon. Ronald J. Wilper

*“There has been a gross miscarriage of justice, to my mind, out in Idaho, in the acquittal of Haywood.” So wrote Theodore Roosevelt the day an Ada County jury found William “Big Bill” Haywood not guilty of ordering the assassination of former Governor Frank Steunenberg.<sup>1</sup>*

*The President was not alone. Almost everyone thought Haywood and the other executive officers of the Western Federation of Miners would be convicted. Haywood’s own lawyer, the great Clarence Darrow of Chicago, after delivering an eleven-hour summation at the end of the epoch 78-day courtroom battle, thought the verdict would go against him.<sup>2</sup> Future Senator William Borah, whose fiery oratory would earn him the title “The Lion of Idaho,” together with the legendary James Hawley, future governor, presented a prosecution case the New York Times called, “terrific, crushing, destroying.”<sup>3</sup> Even the trial judge, who would later sentence the state’s star witness, trigger man Harry Orchard, to be hanged, thought Haywood was behind the cowardly murder. But Haywood wasn’t convicted and neither was his co-defendant George Pettibone, whose trial was held a few months later. The third accused conspirator, Charles Moyer, wasn’t even tried. The state threw in the towel.*

*Who cares? In the whole vast scheme of things, with the state of the world the way it is now, who cares what happened in an Idaho courtroom 100 years ago? The trial of William Haywood has been called a struggle for the soul of America. Labor was at war with capitalism in the late 19th and early 20th centuries. The front lines were places like Haymarket Square in Chicago, the mining districts of Cripple Creek, Colorado and Coeur d’Alene, Idaho, and in Czarist Russia where radicals sought to end nation states and establish a worker’s paradise. It wasn’t just a little local trouble. It was war. Innocent people were killed. At Independence, Colorado seventeen men were killed when hit man Harry Orchard and his accomplice blew up the train depot. Governors and state supreme court justices were targeted for assassination. Tens of thousands of workers marched in New York and Boston and Chicago to protest the “kidnapping” of Haywood and his co-defendants when they were arrested in Denver and brought to Idaho to stand trial.<sup>4</sup> Socialist groups chanted the rhyme, “Will Moyer and Haywood die? If they die, here’s our cry: There are twenty million workmen who will know the reason why!” It was war. The winner got to write the history books.*

*At the Haywood trial in Boise in May 1907, the leading journalists in the nation were in attendance. The trial was front-page news all over the world. It was the biggest case ever tried in Idaho and its importance is still unsurpassed 100 years later. Almost everyone thought Haywood would be convicted. The judge conducted a fair trial, but the acquittal probably cost him his job.*

## THE TRIAL JUDGE

Fremont Wood, who was to become the trial judge for the Haywood trial, came to Idaho from his hometown of Winthrop, Maine in 1881. He was just 25. He read law and studied diligently. At the September 1881 session of the Idaho Territorial Supreme Court, he was examined and admitted to practice. Ada County had six or seven lawyers at the time,<sup>5</sup> and he became the Boise City attorney. A few years later, he was appointed Assistant U.S. Attorney for the Idaho Territory. When James Hawley was appointed U.S. Attorney by President Cleveland in 1886, Wood stayed on as an assistant under Hawley. In 1889 he was appointed U.S. Attorney in his own right. In 1892 he prosecuted the miners following the first outbreak of violence between organized labor and the mine owners in Shoshone County. He was responsible for selecting who of the 150 indicted miners should stand trial. (Coincidentally, one of the defendants then was George Pettibone whose defense attorney was none other than James Hawley.<sup>6</sup>)

In 1894, Wood resigned his position as U.S. Attorney and returned to private practice with his former partner, Edgar Wilson. Shortly after, Wilson was elected to Congress and, according to Wood’s own account, after Wilson went to Washington D.C. in 1895, the two never practiced law together again. Many years after the Haywood trial, Judge Wood was still troubled by what he perceived to be the appearance of impropriety of Wilson associating as co-counsel with Haywood’s dream team of Darrow, Richardson, Nugent, and others.

In November 1906, eleven months after the assassination of the former governor in Canyon County, Wood was elected district judge for the Third Judicial District which then comprised Ada and Boise Counties. At the time of the Steunenburg murder the district judge in Canyon County, which was then in the Seventh Judicial District, was Frank H. Smith, who had been appointed to the bench in February 1905. It was Judge Smith who denied Haywood’s motion for an immediate trial pending the appeal on the illegal extradition issue and the early motions to dismiss the indictments against the defendants. Judge Smith was defeated for re-election in November 1906, presumably because union sympathizers considered him unfriendly to the defendants.

Seventh District voters elected Edward L. Bryan, a democrat, to replace Judge Smith. Bryan, had been appointed to represent Harry Orchard at his initial arraignment back in January. Since he had once been the attorney of record for Orchard, who was now set to be the state’s principal witness against the accused conspirators, Judge Bryan was hesitant to preside at the trial. Judge Bryan paid a visit to his fellow newly elected judge in the adjoining county of Ada—Fremont Wood in Boise. Judge Bryan explained his dilemma and asked Judge Wood if he would be kind enough to preside if Smith were to disqualify himself. Wood agreed and the rest is...well, history.

Judge Bryan and Judge Wood decided it would be prudent not to mention their agreement to anyone until the opening of the Canyon County term of Court on March 12, 1907. On that day Judge Bryan announced he was disqualifying himself from the Haywood trial and that Judge Wood was to preside in his place.

Judge Wood's first order of business was to deny the defendants' motion to dismiss the case on speedy trial grounds. He did so because the appeal of the *habeas corpus* issue, which stemmed from the defendants' claim of improper extradition, had deprived the trial court of jurisdiction to conduct the trial any sooner. The defendants then filed a motion to change venue. There had been a great deal of publicity surrounding the case. Newspaper articles attached to defense affidavits in support of the motion to change venue were filled with personal opinions of "law and order" candidates for office such as Governor Gooding, who was running for re-election and who declared the defendants to be guilty, Secretary of War William Howard Taft, in Idaho to support Gooding's campaign, and President Theodore Roosevelt himself who had declared the defendants and others like them were "undesirable citizens." Judge Wood granted the motion to change venue to Ada County and that is why a Canyon County murder was tried to an Ada County jury.

#### THE APPEARANCE OF IMPROPRIETY

Writing about the case many years after the trial, Judge Wood carefully explained the circumstances of the appearance on the defense team of his former law partner, Edgar Wilson. He apparently wanted to put to rest any suggestion that Wilson had been improperly brought into the case to influence the Judge.

By the time of the trial, Wilson was a former congressman and a very prominent member of a very small Idaho bar. Clarence Darrow had asked Idaho Senator Fred Dubois to recommend an attorney of impressive local stature to join the already formidable defense team. Dubois suggested Wilson. A mere two days before the trial was to begin, Wilson told Judge Wood he had been asked to join the defense team but said he would not do so if Wood thought it would be improper. Since any business connection between Judge Wood and attorney Wilson had been severed many years earlier, Judge Wood said he attached no importance to Wilson's appearance with the defense team. In fact, Judge Wood said he was "somewhat stunned" at

the very suggestion that Wilson thought it necessary to get his okay to appear in the case.<sup>7</sup>

However, 24 years after the trial, Judge Wood admitted that he was "not uninfluenced" by Wilson's appearance in the case<sup>8</sup> He said he might very well have granted the defense motion for a directed verdict of acquittal and ended the trial at the end of the state's case in chief had Wilson not been a member of the defense team.<sup>9</sup> Had he done so, it might have *appeared* that he was improperly influenced by his esteemed former partner.

The reason Judge Wood may have granted the defense motion to acquit at "half time" was because the law was then, as it is now, that a defendant cannot be convicted on the uncorroborated testimony of an accomplice.<sup>10</sup> The state didn't have corroboration. Steve Adams, Orchard's former partner in crime, had once confessed, but later recanted and then disappeared. Orchard was portrayed by the state and by the press as a tool of the evil union bosses. He had found religion and repented. Trust him.

To the defense, Orchard was hardly the kind of man upon whose word people should be sent to the gallows. He had committed mass murder in Colorado by his own admission and was caught red handed for the gruesome murder of the good and decent former governor. Harry Orchard wasn't even his real name. When he was making his bomb in the Saratoga Hotel in Caldwell, he called himself Thomas Hogan. His real name was Albert Horsley. He was a cheat in the cheese business in Canada. When he drank and gambled away all his money there, and was about to be caught for "making up the weight," he burned down the business for the insurance money and skipped town, abandoning his wife and child. He ran away with another man's wife. When he was recognized by someone from his past, he ran away again, this time to the Coeur d'Alene mines where he got involved in the business of blowing things up.

The press had been given access to Orchard by the Pinkerton detectives who were guarding him before the Haywood trial. They published his entire sorry confession just in time for jury selection. Judge Wood was furious about this but, on the prosecutors' assurance that they were not responsible for the leaks, he took no action. As it turned out, having Orchard's entire confession was an advantage to the defense. Darrow was well prepared to use it to good advantage at trial. But he was not confident. Moments before the verdict was announced, Darrow looked at the jury and told his client to brace himself; it was going to go against him.

#### THE JUDGE'S INSTRUCTIONS

William Haywood was acquitted, and why not? The law is the law. Judge Wood instructed the jury: "...under the statutes of this state a person cannot be convicted of a crime upon the testimony of an accomplice unless such accomplice is corroborated by other evidence which of itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged."<sup>11</sup> And that was that.



Judge Fremont Wood and the Haywood trial jury. ISHS 2005a.



The Ada County Courthouse in which the trial was conducted. ISHS 64-157.4.

James Hawley told Judge Wood that it was Wood's instructions to the jury that had lost the case for the state. Governor Gooding was critical of Wood's jury instructions too. Judge Wood himself believed Harry Orchard was telling the truth when he testified that Haywood, Pettibone and Moyer hired him to murder Steunenberg and his other victims.

Harry Orchard withdrew his plea of not guilty and entered a guilty plea to the murder of Frank Steunenberg on March 10, 1908. On March 18, Judge Wood sentenced him to death. He had no choice but to impose that sentence, but he recommended clemency. He explained his reasons for believing Orchard was telling the truth and then added:

"I want to take the opportunity of this solemn occasion to say to the associates in crime of this defendant, that they cannot by such acts terrorize American executives and prevent them from performing their plain duties, and they cannot prevent American courts from declaring the law exactly as they find it..."<sup>12</sup>

Fremont Wood stood for re-election in 1910. He was defeated. Judge Bryan, the Canyon County judge who had asked Judge Wood to take the case, was re-elected in 1910 and four more times thereafter.

On the occasion of the 50th anniversary of his admittance to the Idaho bar, Fremont Wood was honored by his fellow attorneys at a dinner at the Owyhee Hotel in Boise. He talked about the early days practicing law in Idaho and remarked on how the bar association had grown to nearly 100 lawyers in Ada County. He called it his "happy privilege to preside over the bar for four years of the most strenuous period of the Idaho state courts." He "recalled no occasion for censure" and indeed there was none. He recalled only, "...faithful and efficient service to the court and protection to the interests of clients."<sup>13</sup>

Judge Wood died in 1940, and was laid to rest in the Pioneer Cemetery in Boise.

## ENDNOTES

<sup>1</sup>Lukas, J. Anthony, *Big Trouble: A Murder In A Small Town Sets Off A Struggle For The Soul Of America* (New York, NY: Simon & Schuster, 1997) p.729.

<sup>2</sup>Lukas 729.

<sup>3</sup>Grover, David H., *Debaters and Dynamiters: The Story of the Haywood Trial*. (Corvallis: Oregon State University Press, 1964) p. 253. (Citing *The New York Times*, July 27, 1970, p.3).

<sup>4</sup>The Idaho Supreme Court heard the *habeas corpus* petitions and ruled against returning the men to Colorado, *Ex parte Pettibone*, 12 Idaho 264, 85 P. 902 (1906), as did the U.S. Ninth circuit court in San Francisco, and finally, the United States Supreme Court, *Pettibone v. Nichols*, 203 U.S. 192, 27 S.Ct. 111 (1906). The federal case was cited by an Israeli court holding that the capture of Adolph Eichmann did not violate his civil rights. *The Attorney General v. Eichmann*, In the District Court of Jerusalem, Criminal Case No. 40/61, available on the internet at <http://wings.buffalo.edu/law/jlsa/resources/eichmann.htm>.

<sup>5</sup>"Greeley's Advice Brought Young Lawyer into Idaho 'Wilds,'" *The Idaho Statesman*, September 20 and 27, 1931. p.1. The fact that there were an exceedingly small number of attorneys in those days underscores the reality that the appearance of impropriety due to apparent conflicts of interest was inevitably an issue.

<sup>6</sup>Out of the 12 or 15 miners tried, four were convicted. The United States Supreme Court vacated the convictions a year later. *Pettibone, et al. vs. the United States*, 148 U.S. 197 (1893).

<sup>7</sup>Wood, Fremont. *The Introductory Chapter to the History of the Trials of Moyer, Haywood, and Pettibone, and Harry Orchard* (Caldwell, Idaho: The Caxton Printers, 1931) p.22.

<sup>8</sup>Wood, p.24.

<sup>9</sup>Wood, p. 24.

<sup>10</sup>Idaho Criminal Jury Instruction 313, available on the internet at [http://www.isc.idaho.gov/idaho\\_courts\\_e.htm](http://www.isc.idaho.gov/idaho_courts_e.htm).

<sup>11</sup>Lukas, p. 720.

<sup>12</sup>Wood, p.36.

<sup>13</sup>Greeley's Advice Brought Young Lawyer into Idaho 'Wilds.'

## ABOUT THE AUTHOR



**Hon. Ronald J. Wilper** is a District Judge in the Fourth Judicial District. He is one of the charter instructors for the Idaho State Bar's Citizens' Law Academy, and served as an ISB Board of Commissioner from 1993-1996, serving as president in 1996.

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# IDAHO COMES OF AGE IN HIGH-PROFILE 1907 MURDER TRIAL

John F. Greenfield

*The assassination of former Idaho Gov. Frank Steunenberg in 1905, and the subsequent murder trial of a national labor leader, William D. Haywood, in 1907, created international interest at the time. One hundred years later these events continue to fascinate us.*

Steunenberg was killed by Harry Orchard, an itinerant sometimes miner who had once been a member of the Western Federation of Miners (WFM), which was headquartered in Denver. “Big Bill” Haywood was the secretary/treasurer of the union. By all accounts, Haywood was a tough, vociferous leader of a militant labor organization. Orchard confessed to the murder after he was arrested, then implicated Haywood and two other union officers, George Pettibone and Charles Moyer. Orchard claimed that they hired him to kill the governor. Idaho authorities believed Orchard’s story and endeavored to bring the three men from Colorado to Idaho and try them as accomplices.

Emotions were high but the evidence was weak, consisting solely of the uncorroborated testimony of the assassin Orchard. The question was whether emotion would trump the evidence—that is, the lack thereof. The whole world watched, because the outcome of the trial had massive implications for the labor movement.

## THE LABOR INSURRECTION AND GOVERNOR STEUNENBERG’S ACTIONS

The assassination is commonly understood to have had its roots in labor unrest in the Coeur d’Alene mining district in 1899. Haywood’s acquittal occurred seven years later in 1907—in the conservative capital of Boise, 400 miles to the south. It was delivered by a “jury of farmers.”

The prosecution was led by U.S. Senator-elect William E. Borah and legendary Idaho “sagebrush lawyer” and future governor James H. Hawley. They argued that Haywood, Pettibone, and Moyer hired Orchard, who killed Gov. Steunenberg by rigging his front yard gate, in Caldwell, with dynamite. They did it, supposedly, to pay back Steunenberg for declaring martial law, and calling in federal troops to quell a labor uprising in Shoshone County seven years before. The legal defense team, headed by famed Chicago attorney Clarence Darrow, maintained that big business and its supporters in state government were trying to



*Miners in Silver City, 1900. Bill Haywood is in the front row, turned sideways so that his bad eye does not show. At the time he was president of the Silver City Miners’ Union. ISHS 596.*

convict Haywood and the others of “ordering” the assassination in order to ruin the miners’ union in particular, and perhaps slow down the growth of organized labor in general. Darrow contended that the labor leaders had nothing to do with it.

If Orchard was not acting alone, which is still unclear, the identity of the party retaining his services remains a mystery. Nonetheless, two undisputed facts remain: First is the miserable condition of the North Idaho miners at the time. Second is the acquittal of Haywood, then Pettibone. After these acquittals, the prosecution dismissed the case against Moyer.

Just as truth is stranger than fiction, reality is not always easy to explain with logic. Easy answers (or even just answers) are the stuff of fiction. Real life occasionally demands that we suspend disbelief and wait until we get to Heaven, God willing, to find out who really killed the Kennedys, who hired Harry Orchard, and who stole the apple pie from mom’s windowsill.

The state’s case advanced a motive of revenge. Prosecutors suggested that the Denver union leaders were exacting, in 1905, revenge for Steunenberg’s decision, in 1899, to use military force to suppress rioting miners in the Silver Valley. The press and much of the public accepted this theory, but the jury didn’t buy it. It is easy enough to see why. There is a disconnect in the idea that an ongoing union would conspire to assassinate a *former* governor for something he did in the relatively distant past. A union would have no instinctive interest in revenge. A labor union is a group of workers who seek to better their lives by standing together and bargaining with their employer as a cohesive unit. Such an organization is interested in the *present* and *future*, not the past.

The jurors looked closely at this motive. Their difficulty in accepting the motive of revenge on the part of the accused defendants probably steeled their resolve to look harder at the *evidence* (Orchard’s accusation) and the jury instructions that would later be dispositive of the case.

In trying to understand how the labor insurrection and the eventual acquittal of Haywood could occur in the same state, at the same time, it helps to consider the dichotomy that existed, at the turn of the 19th Century, between the law of labor-management relations, and the law governing the rights of the criminally accused. At the time in question (1899-1907) there was literally no statutory labor law in Idaho or anywhere else in the country. If such law had existed, the 1899 labor unrest might not have occurred at all.

By contrast, in 1907, Anglo-American principles of criminal law were highly refined in every state, including Idaho. The absence of any labor-management law, as juxtaposed with the presence of a well-defined body of criminal law, helps explain how the jury’s unanimous acquittal of the leadership of the union *that was at the very heart of the labor unrest* could occur in the same state, at the same time in history.

The verdict clearly surprised many representatives of the national and international press who covered the trial. The fact that twelve men in a brand new, rough-and-tumble state like Idaho could follow the law (as expressed to them in Judge Fremont Woods’ jury instructions) also surprised the authorities who kidnapped the three labor leaders in Denver, side-stepped appropriate extradition proceedings, and brought them to

Boise—evidently certain an Idaho jury would make short work of these defendants. Later, prosecutors would complain about the jury instructions but they took no appeal.

The authorities apparently underestimated average Idahoans, and also appear to have underestimated the power of the law. They did not appreciate the way common citizens, even in far-off, largely agrarian Idaho, respect the law, generally feel compelled to *obey* the law, and if called upon as jurors will feel just as compelled to *apply* the law as set forth in a judge’s jury instructions.

## THE EXPLOITATION OF THE MINERS

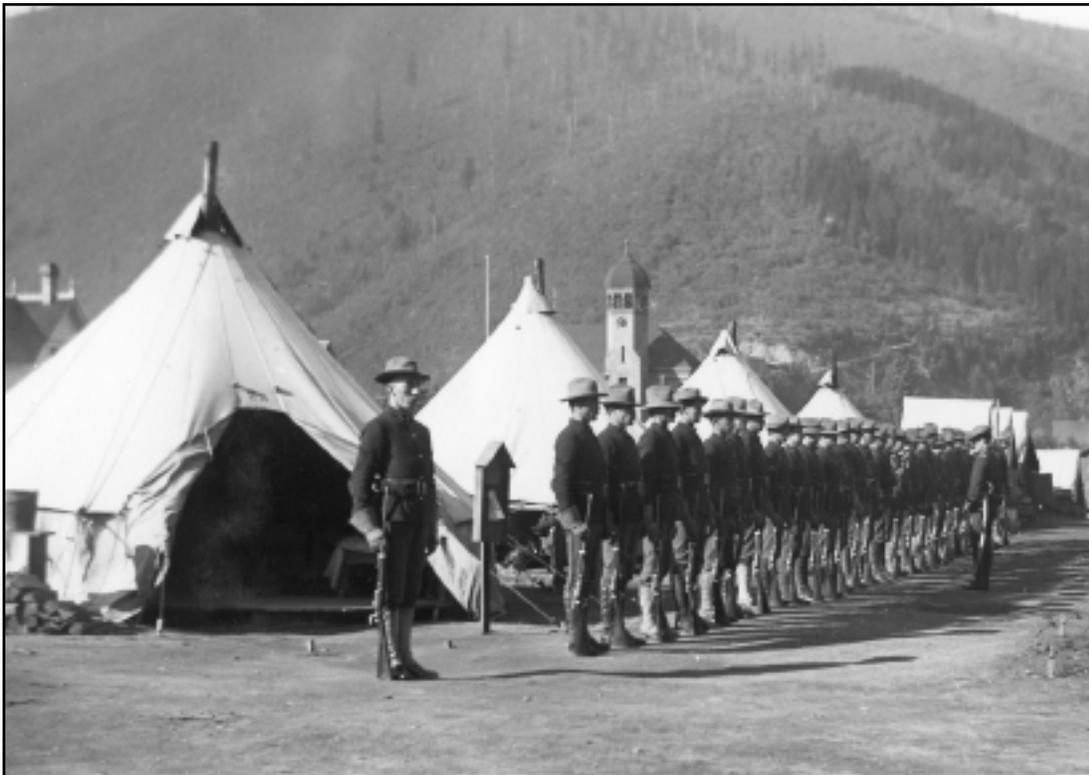
The labor unrest associated with the murder of a political figure as exalted as the fourth governor of the state of Idaho was “big trouble” indeed. It grew out of the unrestricted ability of mining companies, at that time, to exploit their labor force, and to use the power of wealth and government to fight the determination of the miners to organize in unions and have a say in their own lives.

At the time of the North Idaho labor troubles and the Steunenberg assassination, organized labor was in its infancy. Until the coming of the Industrial Revolution, in the 1800’s, the need for labor unions was restricted to small manufacturing shops. This need was filled by small trade guilds, in both America and Europe. Unionization on a larger scale did not become necessary until machines and the internal combustion engine created “plant” employers, along with a group of workplace problems that evolved from growing concentrations of wealth and the profit system.

With regard to mining in the American West, unions were less relevant in the beginning. In the early days of the gold and silver booms in California, Nevada, Montana, and Idaho, most mining involved colorful individuals with picks, shovels, horses, and gold pans. Beginning around 1860, however, the prospector and small miner began to give way to corporate mining—accompanied by hefty infusions of capital, technological changes like compressed air drills, deep underground mine shaft operations, and large workforces. Once the province of go-it-alone frontiersmen, Rocky Mountain mining had become industrial in character.

With the advent of corporate mining came a natural inclination on the part of the mine owners to be dictatorial with their workforces, and a countervailing inclination on the part of the mining workforce to unionize and demand collective bargaining. Unfortunately, unionization in the late 1800s had no legal foundation or protection, and the mine owners took pains to keep things that way. They fought unionization with a vengeance—through economic leverage and their control of the state and federal governments, including the judicial branches. Their main legal weapon was the injunction—not so much against striking but against union organization itself.

Judges routinely enjoined labor organizing, misusing the anti-trust laws and common law doctrines like “criminal conspiracy” and “illegal purpose.” This kind of governmental complicity in the high-handedness of big business was moving the entire nation in the direction of class warfare. State legislatures and even Congress recognized the problem and started enacting laws against such injunctions.



Troops lined up in camp in Wallace, Idaho, in 1899. ISHS 69-4.23.

There were other pro-union developments in the early 1900s. The Cantonment Agreement of 1917, which required union wage scales in all World War I construction of U.S. Army camps, was the forerunner of the Davis-Bacon Act. Also during World War I, the War Labor Board recognized and protected collective bargaining, but did not provide the kind of bureaucratic support and appellate review that would come later. Comprehensive statutory oversight of labor-management relations did not occur until the Great Depression resulted in the election of President Franklin D. Roosevelt in 1932 and a different kind of Congress.

### THE "NEW DEAL" AND LABOR POLICY

In 1935, the centerpiece of all modern labor law was enacted as part of Roosevelt's "New Deal." It was called the National Labor Relations Act, or the "Wagner Act." The Wagner Act created the National Labor Relations Board along with direct appellate review by the several federal circuit courts of appeal. It also created badly needed legal protections that somewhat evened the playing field between unions and business interests.

Immediately after World War II, in 1946, that change receded somewhat in favor of business when Congress passed the Taft-Hartley Amendment to the National Labor Relations Act. Among other things, Taft-Hartley revised national labor policy to give states the option to outlaw union security clauses in collective bargaining agreements. This change in federal law resulted in so-called "right to work" state laws—state statutes that generally weaken unions.

Whether to adopt such laws was left to the individual states. All southern states, and some prairie and Rocky Mountain states, including Idaho, subsequently enacted "right to work" laws. Northeast and Midwest states have steadfastly refused to enact "right to work" laws. In the West, historical mining states such as

Colorado, Montana, New Mexico, Washington, Oregon, and California have also refused to adopt "right to work."

In a word, the American labor movement became "legitimate" in 1935 and further matured in 1946. In the sixty years that have passed since Taft-Hartley, labor-management relations, and the laws that help to govern them, have stabilized. It would appear that we got things about right. Since 1946, national labor policy has remained stationary and the United States of America has prospered, economically, like no country in the history of mankind. Undoubtedly, many of the

anti-union activities of the North Idaho mine owners in the late 1800's and early 1900's would now be "unfair labor practices" under the National Labor Relations Act.

### THE INSURRECTION OF 1899

Unions may have lacked legal protection in the late 1800s, and in all the years preceding the National Labor Relations Act, but they sprang up anyway – out of a need for economic fairness and an awareness on the part of working people that there was no alternative to self-determination.

No employer was going to *give* workers fair pay and decent working conditions. The primal nature of free enterprise regards the cost of labor as something to be minimized, as if labor were part and parcel of the competition. Workers would have to demand fair treatment, under threat of withholding their indispensable labor and skills. Moreover, they would have to do these things in an *organized* fashion if they were to be effective. Thus, the rise of unions. Companies instinctively challenged the very idea of unions and the battle was joined.

In the late 1800s, the hard rock miners of the Coeur d'Alene mining district objected to an array of inequitable activities by the mine owners. They particularly objected to the owners' attempts to stifle union organization, placing workers in the impossible situation of bargaining as individuals against organized business interests. They objected to the mine owners' legal challenges to unionization, to their use of strikebreakers or "scabs," to company stores, and to other bare-knuckled tactics devised to break the workers' will—in the way one breaks horses or trains dogs.

The miners became embittered over the owners' use of private detectives to assist in the suppression of their unions, like the hated Pinkerton's National Detective Agency. The chicanery

of the Pinkerton Agency (which tried to infiltrate the miners' unions with spies), and the brutality of some of the Pinkerton operations, which essentially terrorized the miners by gunpoint, fed the "labor unrest" in North Idaho. The miners fought back, but then the owners would retaliate. It was a vicious circle.

The labor unrest that caused Gov. Steunenberg to act militarily in 1899 was unusually violent. The scale of destruction and the numbers of men involved led Gov. Steunenberg to conclude that the Coeur d'Alene mining district was in a state of insurrection. This forced him to act militarily, by declaring martial law in Shoshone County and asking President William McKinley to send federal troops. The Governor had no access to the state militia. The entire Idaho National Guard had been appropriated for service in the Spanish-American War and was deployed to the Philippines.

Under these circumstances, it is difficult to argue with the Governor's decision to call in regular federal troops, but his actions had such a hard edge to them that they turned this governor into a pariah for mine workers. After all, Gov. Steunenberg, a Democrat, had been elected in 1896 and 1898 with labor support. Now miners by the hundreds were being rounded up by soldiers, incarcerated *en masse* in an unheated, vermin-infested concentration camp called a "bullpen," and prosecuted. The miners felt betrayed. Still, it is unfair to Steunenberg to ignore the seriousness of the situation that came to a head on April 29, 1899. On that fateful day, almost 1,000 miners descended on the Bunker Hill and Sullivan Mine near Kellogg and blew up the mine's concentrator, one of the largest in the world and worth the staggering sum (at that time) of \$250,000. They used thousands of pounds of dynamite to destroy the concentrator. This remarkable act was directed at the only non-union mine in the Silver Valley, a mine that the union members felt was systematically undercutting their position, in various ways, with their own employers.

Keep in mind, however, that there is some evidence that the union members were aided and abetted by an *agent provocateur*—a Bunker Hill foreman who opened his own powder house and advised the miners where to set the charges in order to do the most damage. It is thought by some historians that the Silver Valley mine owners, including the Bunker Hill owners, aided the 1899 debacle in order to force Steunenberg to act—knowing that the kind of disaster that would result in martial law would wreck the WFM. With regard to the Silver Valley, this effort (if it occurred) was largely successful. The WFM mostly folded in North Idaho after 1899, although other unions stepped forward including, in modern times, the United Steelworkers of America.

### **HARRY ORCHARD KILLED STEUNENBERG, BUT WHO HIRED HARRY?**

The miners, who were the object of Steunenberg's military action, were angry. Many had served in the Civil War, and were appalled at the idea of being trampled by the U.S. Army, the tyranny of the mine owners being quite enough. They were also appalled about being incarcerated in the military "bullpen" and treated like animals, some for over a year. But whether a disgruntled miner actually decided to kill Steunenberg, in December 1905, over six years after the labor unrest of 1899, is in serious

doubt. Also in doubt is whether the leaders of the WFM in Colorado, like William Haywood, really hired assassin Harry Orchard, six years after the fact, to kill the former governor. After Haywood's acquittal, one could fairly conclude that there was "reasonable doubt" about that proposition.

On the other hand, the mere arrest and trial of the secretary/treasurer of the WFM and the union's other officers meant that there would be no question that Steunenberg's assassination was going to be forever linked by the public, in one way or another, to the rise of organized labor. If, as union attorney Edmund Richardson suggested in his closing argument, the Pinkerton Agency itself hired former UFM member Orchard with the ultimate goal of scandalizing a union, the Pinkertons achieved their goal.

### **THE IMPORTANCE OF HAYWOOD'S ACQUITTAL**

The events of 1899 aside, the trial of the labor leaders in 1907 involved criminal law, not labor law. While there was no real labor law in Idaho in 1907, there was a very well-defined set of legal principles involving the rights of the criminally accused. These principles had been developing in England since the Magna Carta, when the barons sat down with King John at Runnymede in 1215 A.D. and instructed him that the people of his kingdom were going to take part in their own governance. In this country, these ideas took greater shape with the American Revolution and the drafting of the Constitution and the Bill of Rights. By 1907, legal principles like the presumption of innocence and proof beyond a reasonable doubt were firmly ensconced in the law of every state. So was the rule that one cannot be convicted of murder on the uncorroborated testimony of an alleged accomplice.

When Idaho authorities kidnapped Haywood, Pettibone, and Moyer, and surreptitiously brought these union officers to Idaho to face trial for murder without seeking proper extradition from Denver, Colorado (where they lived), the nation gasped. It resembled a modern day "rendition." Everyone wondered whether these three men would get a fair trial, or be summarily found guilty by a jury of Idaho farmers and hung by their boots! People at home and abroad watched the trial carefully. They observed the tension between the righteous desire of laborers to be free to organize and bargain collectively for a decent living, and the right of the citizenry to be free from organized union violence.

The central question at Haywood's trial was whether the assassination of the former governor was truly an act of organized union violence, or—if Orchard did not act alone—essentially an act of terrorism sponsored by some individuals or entity that could not be reasonably identified. The assassination itself really did not make any sense as an act of a labor union. Someone was trying to make a statement, but who? And why? Frank Steunenberg was no longer governor. His demise would have no direct effect on any ongoing difficulties between business and labor in the Coeur d'Alene mining district. There was no military or revolutionary aspect to Orchard's cowardly assassination of Steunenberg.

Moreover, the WFM had been publicly and systematically distancing itself from violence. At its convention in 1902, the

WFM began suppressing even talk of violence, expunging the word “dynamite” from the record when it was used to describe an aggressive organizer. Indeed, nothing in the history of the union suggests that any union leader ever encouraged terrorism.

If Harry Orchard did not act alone, (and there is some evidence that he *did* act alone and wanted to be caught as well), who really hired him? Should it have been a foregone conclusion that the officers of the WFM arranged for the assassination? And could the government simply accuse a group of labor leaders of it, then successfully try them and hang them on the uncorroborated word of the assassin himself?

The entire world was looking at Boise, Idaho in 1907 to see whether this would be possible, and whether such trials would be the wave of the future. What the world saw instead was a criminal justice system, in a democratic society, functioning as intended. It was an impressive moment for this young state.

**ABOUT THE AUTHOR**



**John Greenfield** is a labor lawyer with the Boise firm of Huntley Park LLP. He is a graduate of Seattle University (1968) and the University of Idaho College of Law (1973). He served as an Assistant Attorney General and as counsel for the Idaho Department of Labor before entering private practice in 1975. Mr. Greenfield has represented the Idaho state AFL-CIO and a number of local unions over the years but the principal focus of his practice is workers' compensation. He has served on the Governor's Advisory Committee (1983-1995) and the Idaho Industrial Commission's Advisory Committee on Workers' Compensation (2000-present) and has appeared before the Industrial Commission and the Idaho Supreme Court on numerous occasions in workers' compensation litigation. He has been active in the political arena, serving as state chair (1977-78) and national committeeman (1988-2000) of the Idaho Democratic Party.

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# THE CRIME OF THE CENTURY

Jeffery R. Boyle

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With rampant lawlessness and class warfare raging out of control, much of northern Idaho was in danger of total chaos. Robber baron mine owners and violent labor unions put Idaho at center stage of America's media giants for a trial that would unfold to be one of the most fascinating criminal trials of all time. The trial would reveal a story of intense greed, one of the West's first mass murderers, warlike union leaders; feature a future defector to Lenin's Bolshevik Russia, a newly elected U.S. Senator, a future Idaho Governor, America's most famous detective; and mark unprecedented peacetime violence. The trial was so important that the White House, Idaho mine owners and union bosses from across the country all sought to manipulate the outcome in one way or another. America watched frontier capital Boise with fascination as a trial was to unfold that represented a "struggle for the soul of America."<sup>1</sup> The ten-week jury trial for *The Crime of the Century* would not begin until May of 1907, but the wheels of justice were already rolling 100 years ago this month.

Two teams of legendary lawyers were preparing for the murder trial of William D. "Big Bill" Haywood, the secretary-treasurer of the powerful Western Federation of Miners (WFM), as an alleged co-conspirator in the assassination of former Idaho governor Frank Steunenberg on December 30, 1905. Lawyers of legendary status and historical significance were created as a result of Steunenberg's assassination. Names like Borah, Hawley and Darrow were among the lawyers involved in the prosecution and defense of "Big Bill" Haywood. The legacies of these lawyers endure even to this day.

The *Trial of the Century* itself was of great interest to the entire country, but the events leading up to the trial were also full of intrigue, the stuff of which legends are made and which talented authors struggle to recreate. This was truly no "ordinary run-of-the-mill slaying nor even a particularly bizarre or atrocious crime of passion that attracted such worldwide attention to this trial. Instead, it was a cold and deliberate killing that had deep and complex social and economic roots. It was... a crime of considerable consequence to society."<sup>2</sup>

The events leading up to *The Crime of the Century* began decades earlier in the mining districts of northern Idaho. By the 1880s the days of the individual

prospector had passed and large national and international corporations were dominating mining operations throughout the west. As was the case all over America, big business spawned labor movement and Idaho was no exception. Thousands of wage earning miners were hired to work in the hard rock mines of northern Idaho. When the owners reduced the miners' daily wage from \$3.50 to \$3.00 per day, labor organizations were forced to consolidate into larger, more effective unions.

In 1890-91 technological advances added to the workingman's woes. Among the new technology introduced into hard rock mining in northern Idaho were compressed air drills, which allowed one miner to do work that previously required several men. Unemployment skyrocketed, tensions gathered and the underlying class conflicts began to percolate.

The situation intensified. On January 1, 1892, mine owners closed the Coeur d'Alene area mines because of high freight rates. On April 1, 1892 the mines were re-opened, but the miners went on strike because of low wages. All of this led to the *Coeur d'Alene Troubles of 1892*. Scab labor was brought in. Pro-union railroaders turned the switches to the wrong tracks and the strikebreakers woke up the next morning to find themselves as far away as Pendleton, Oregon.

The mine owners obtained court injunctions, and the situation became as volatile and explosive as the dynamite used in the mines. Mining operations and mills in northern Idaho were damaged or destroyed when dynamite was sent sliding down the flumes. Gunfights broke out in mining camps. Riots, lawless-



Chance Mine in 1905. Photograph by H. English Wallace.



*William Edgar Borah, Idaho senator and Hiram Warren Johnson California senator.*

ness, shootings, vandalism, robberies and murders were common in the northern mining towns. At the request of Idaho governor Norman B. Willey, President Benjamin Harrison ordered federal troops located at Fort Sherman on Lake Coeur d'Alene to assist. Martial law was declared in parts of northern Idaho and every union miner that could be found was arrested.

In 1899, a Northern Pacific Railroad train was forcibly commandeered by miners at Burke, Idaho. After stops at Gem and Wallace, more than a thousand miners, including Harry Orchard, were on the hijacked train. When they arrived in Wardner, Idaho, 3,000 pounds of dynamite were strategically placed throughout the Bunker Hill plant by demolition expert miners. Three massive explosions were heard twenty miles away when one of the world's largest ore concentrators was destroyed at a cost to Bunker Hill of \$250,000 (a vast amount of money at the time).

Governor Frank Steunenberg declared martial law in Shoshone County and President McKinley sent federal troops from Fort Boise and Army posts in Montana, Utah, Wyoming and Washington State. Hundreds of union miners were arrested and held in railroad boxcars, barns, sheds and outdoor stockades, essentially primitive concentration camps.

Governor Steunenberg's role in quelling the riots in the Coeur d'Alenes essentially destroyed the powerful Western Federation of Miners. Someone, Harry Orchard, "Big Bill Haywood," or others in the union, never forgave or forgot what Steunenberg had done to the union and the miners in 1899.

Six years later, the former governor had no reason to believe a professional murderer, a hit man, was shadowing him. Harry Orchard had been in Caldwell for several months posing as a sheep buyer and using the alias of Tom Hogan. The bomb Orchard used on December 30, 1905 to kill the former governor was a simple device, deadly and easily assembled by a ruthless man highly skilled in the use of powerful explosives.

On the night of the murder, Steunenberg was returning from a walk in freshly fallen snow. When Steunenberg opened the gate to his Caldwell residence a string of fish line pulled the lid off of a small vial and sulphuric acid poured onto blasting caps. The explosion was so powerful, it literally "shook the earth and could be heard for miles around,"<sup>3</sup> and sent Steunenberg ten feet into the air ripping the former governor's body apart.

In the hours and days following the assassination, "Hogan" was observed as being much too calm and collected in a town highly aroused by the violent death of a beloved former governor. He immediately became a suspect. In an impressive bit of forensics for the time, his hotel room was searched, and the investigating authorities found traces of dynamite and fishing line matching evidence from the murder scene. Also found in "Hogan's" hotel room were brass knuckles, a revolver and tools to set blasting caps. He was quickly identified by a Colorado sheriff as Harry Orchard, a man involved in the violent Colorado mining wars of 1903-04. Although initially Orchard remained silent about his motivation for killing Steunenberg, few believed he acted alone and speculation began immediately that the assassination was the payback of the powerful WFM.

Idaho authorities contacted the famous Pinkerton Detective Agency for help in conducting this high-profile murder investigation. The Pinkertons sent America's most famous detective, James McParland, to lead the investigation. McParland had made his reputation working undercover in Pennsylvania's anthracite coal mining region where he exposed and helped convict a secret gang of Irish thugs, the Molly Maguires. McParland's fame and notoriety were so great that the famous author Sir Arthur Conan Doyle invented a meeting of the legendary fictional Sherlock Holmes and McParland in *The Valley of Fear*, an unprecedented honor for a real detective.<sup>3</sup>

After days of "interrogation," Orchard, a known liar, thief, and cheat, began to crack. The information started as a trickle, but would soon turn into a flood as Orchard's house of cards defense eventually completely caved. After crying various times, Orchard began to inundate McParland with spectacular amounts of information. Orchard not only confessed to Steunenberg's murder, he also confessed to seventeen other killings and assassinations ordered by the inner circle of WFM. What started as an interrogation of a tight-lipped, cold assassin, turned into one of the most amazing confessions in the annals of American justice.<sup>3</sup>

Orchard implicated Haywood and other officers of the inner circle of the Western Federation of Miners as co-conspirators in a 64-page confession. Harry Orchard was sentenced to death for his involvement in the murder of Frank Steunenberg, but his sentence was later reduced to life in prison because of his cooperation in the future trial of Haywood. Orchard, the once brutal assassin for WFM who blew up trains, mills, and mines to intimidate mine operators, workers, and government agencies causing

a reign of terror, spent the rest of his life in the Idaho state penitentiary near Boise, raising chickens and growing strawberries as a prison trustee until his death in 1954.

With Orchard's confession in hand, Detective McParland put this damning evidence to work and the wheels of justice rolled into full speed. Six weeks later, in February of 1906, Haywood and three other alleged co-conspirators were spotted in Denver, Colorado, where the union's leadership had its headquarters. After obtaining extradition papers in Boise, the authorities and Pinkerton detectives boarded a special train to Colorado. At that point it became cloak and dagger, 1906-style, and secrecy was essential because of the war-like atmosphere surrounding the labor unions. The ne'er do well Haywood was found sleeping with his sister-in-law and was arrested. After the successful arrest of two other union men, the race to Idaho began. Rather than attempt an uncertain extradition process, Idaho and Colorado officials developed a scheme to seize the union officers and smuggle them to Boise.

The alleged co-conspirators were forced onto the special train as it sped at 30 miles per hour through Colorado and Wyoming towns to Idaho, too swiftly for legal challenges or encounters with union saboteurs. At the direction of the Pinkerton detectives, the train did not stop in any towns and took on water, fuel and changed crews only in pre-designated, isolated areas. A moment of anxiousness for the authorities and the Pinkerton detectives occurred in Pocatello, a strong union town, when a wheel oil box caught fire in the middle of the night. The hot box was repaired without incident and the special train continued on to Boise where the three prisoners were finally placed in the custody of the Idaho authorities.

Defense counsel, E. F. Richardson of Denver, immediately filed a *habeas corpus* petition with the Idaho Supreme Court. An appeal was taken to the federal courts in Boise by Richardson, and the case was further appealed by the defense team to the United States Supreme Court which also denied habeas relief to Haywood and the others.

Powerhouse trial teams were assembled. For the prosecution, the team leader was James H. Hawley, the widely respected dean of Idaho lawyers and future governor of Idaho. His co-counsel was flamboyant Boise attorney and orator, William E. Borah, newly elected to the United States Senate and who would become known as the "Lion of Idaho." For the defense, lead counsel were E. F. Richardson of Denver and Clarence Darrow, a relatively unknown Chicago labor lawyer who was about to earn a national reputation for his legal skills. Titans all, the battle lines were drawn and the trial venue was moved from Caldwell to Boise.

Even President Teddy Roosevelt got into the fray. During this uneasy time in our country's history, Roosevelt frequently issued thunderous criticism against radicalism. This murder was an excellent example of the damage radicalism created and was the target of various verbal tirades by the President. Roosevelt referred to "Big Bill" Haywood as an "undesirable citizen." With an outspoken President sending verbal volleys at the union leader, the Socialist press decided it was their turn and responded with sharp condemnation of Roosevelt. The explosive nature of the case was quickly traveled across the country.

The eyes of the world were on Boise as the trial date for *The Crime of the Century* approached. For ten weeks in the spring of 1907 Boise would become the news capital of the world with more than fifty correspondents from wire services, national newspapers and yellow journalism publications. Soon, 50,000 words a day would be sent from the Boise telegraph office to newspapers around the world.

On May 9, 1907, *The Trial of the Century* would begin with the selection of the jury. After weeks of intense courtroom drama and much to the surprise of the country and his lawyers, Haywood was found "Not Guilty" by the all male jury.<sup>4</sup> It is not truly known if the "Not Guilty" verdict was the result of the defense team's skill or whether the jury feared retribution by Haywood's thugs. Whichever the case may be, the trial of Haywood and the later trial of fellow union leader Pettibone, helped bring an end to nearly fifteen years of labor war in the western mines. This was a period, which illustrated the potential for open class warfare more clearly than any other in American history. Anthony Lukas wrote in *Big Trouble*:

Finally, the opposing camps in this nasty class war sputtering along the icy ridges of the Rocky Mountains had just about canceled each other out. Operative for operative, hired gun for hired gun, bought juror for bought juror, perjured witness for perjured witness, conniving lawyer for conniving lawyer, partisan reporter for partisan reporter, these cockeyed armies had fought each other to an exhausted standoff.

The lawyers who participated in the "Big Bill" Haywood trial 100 years ago all left their mark on the American legal system. The Hawley name is still synonymous with legal excellence



Clarence Darrow in 1922. Photo by Herzog.



Bill Haywood, Charles Moyer, George Pettibone are outside Boise, Idaho Sheriff's office awaiting trial or murder of ex-governor Frank Steunenberg in 1907. Photo by Myers.

throughout Idaho, Borah had mountains and schools named after him, and he was a giant in the U.S. Senate. Although not nearly as dramatic or high profile as the Haywood trial, many Idaho lawyers continue to represent businesses large and small, families and individuals with the same high degree and excellence as these two great Idaho legal icons. IQ Idaho is proud to recognize Idaho's legal professionals.

#### ENDNOTES

<sup>1</sup> *Big Trouble: A Murder in a Small Western Town Sets Off a Struggle for the Soul of America.* By J. Anthony Lukas. Simon & Schuster.

<sup>2</sup> *Debaters and Dynamiters,* By David H. Grover, 1964.

<sup>3</sup> *Big Trouble: A Murder in a Small Western Town Sets Off a Struggle for the Soul of America.*

<sup>4</sup> In 1918, Haywood was convicted under an espionage and sedition act and sentenced to thirty years in prison. In 1921, Haywood jumped bond and fled to Russia, where he was to become a confidant of the Bolsheviks. Haywood died in Moscow in 1928 where half of his ashes were buried in the Kremlin and the other half were shipped to Chicago for burial near a monument to the Haymarket rioters whose actions in 1886 inspired Haywood's life of radicalism.

#### ABOUT THE AUTHOR

**Jeffery R. Boyle** is the publisher of *IQ Idaho*, Idaho's premier business magazine. Jeff has written articles ranging from the merits of Idaho as a place to live through network marketing as a business. He received his Juris Doctor from the University of Idaho College of Law and uses this education combined with his business experience to grow *IQ Idaho*.

## ILHS ORAL HISTORY PROJECT

One of the most important components of the Idaho Legal History Society is the Oral History Project.

From territorial days until current times, Idaho's justice system has been peopled with extraordinary and colorful figures who exhibit great intellect, erudition and legendary exploits. Their stories—and the knowledge that they have about the great moments and occasional foibles of our lawyers, judges, clerks and others—deserve to be gathered and saved for the future.

The process of taking an oral history is not only interesting, but also educational. It offers an opportunity for lawyers to learn from other lawyers and judges who have made a career and a life in the law.

The Society has purchased high-quality video and audio equipment. The Idaho Historian has trained twenty-three interviewers, and there are opportunities for further training for lawyers and judges interested in participating in this worthwhile project.

With the support of their national organization, the Idaho Court Reporters have graciously agreed to transcribe oral history interviews to gain continuing education credit. Boise State University students and graduates of the legal secretary program, and, in the future, other university legal secretary students and graduates, have also agreed to transcribe oral history interviews.



James H. Hawley.  
ISHS 73-87.6A

The Society has a subcommittee dedicated to this project, whose job is to set up and organize a process that will appear "seamless" to volunteers who need advice and support as they design and implement their interviews. The subcommittee has also identified over 50 Idaho lawyers and judges --, those "narrators" whose stories we feel compelled to capture for the education and enjoyment of future generations.

If you are interested in participating in the Oral History Project, as an interviewer, narrator (story teller), or transcriber, please contact any of the following subcommittee members:

Rita Ryan, Chair: [rtarya@cs.com](mailto:rtarya@cs.com)  
 Cameron Burke: [Cam\\_Burke@id.uscourts.gov](mailto:Cam_Burke@id.uscourts.gov)  
 Dianne Cromwell: [dcromwell@cableone.net](mailto:dcromwell@cableone.net)  
 Teri Harbacheck: [tharbacheck@boisestate.edu](mailto:tharbacheck@boisestate.edu)  
 Ernie Hoidal: [eahoidal@hoidallaw.com](mailto:eahoidal@hoidallaw.com)  
 Glenda Longstreet: [glongstreet@cableone.net](mailto:glongstreet@cableone.net)  
 Katherine Moriarty: [katherine.moriarty@inl.gov](mailto:katherine.moriarty@inl.gov)  
 Scott Reed: [scottwreed@imbris.com](mailto:scottwreed@imbris.com)  
 Jess Walters: [waltersjess1@cableone.net](mailto:waltersjess1@cableone.net)  
 Ron Wilper: [dcwilprj@adaweb.net](mailto:dcwilprj@adaweb.net)

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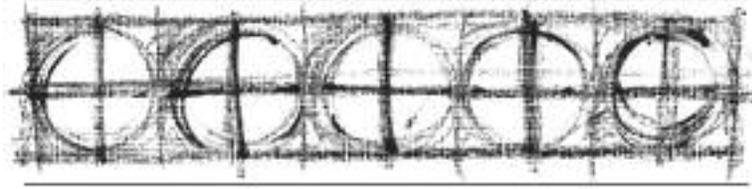


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# IDAHO LAW FOUNDATION



*Helping the profession serve the public*

In last year's holiday message I asked Idaho attorneys to answer this question: *How will you help make the important work of the Idaho Law Foundation possible?* One year later, I am grateful to report that Idaho attorneys turned a season of possibility into a year of giving. Here's some of what we were able to accomplish because of your support.

- **Idaho Volunteer Lawyers Program** served over 1,000 low income Idahoans who received some kind of legal help or representation. To help meet the needs of this population, IVLP launched the 6.1 Challenge in partnership with the Fourth District Bar Association to recruit law firms to undertake larger pro bono projects.
- **Law Related Education** provided engaging law-related instruction for 500 Idaho students at all grade levels. As part of this instruction, LRE also organized a successful Controversy and the Constitution workshop in Idaho Falls to prepare teachers for appropriate discussion of controversial issues in their classrooms.
- **Continuing Legal Education** created a new series entitled Lessons from the Masters in which Idaho "living legend" attorneys share their wisdom and advice as they talk about significant cases from their legal carriers. To better serve the needs of Idaho attorneys, CLE also launched a new and improved on-line CLE service hosted by Legalspan.com to expand and improve the course offerings of on-line CLE programs.

I am proud to be involved with the Board and Staff of the Idaho Law Foundation. Because of their talents and hard work these impressive accomplishments continue to be achieved. I am also proud to be a part of the community of Idaho attorneys who underwrite this important work through the generous donation of time and resources. On behalf of Board and Staff of the Idaho Law Foundation, thank you for all you do for the citizens of Idaho.

Even as we celebrate the work we were able to achieve in 2006, we continue to look forward to what we can still accomplish. At the Law Foundation we will discover and expand ways to assist Idahoans in crisis by matching those in need with volunteer attorneys through Idaho Volunteer Lawyers Program. We will provide resources to high school students participating in the 19<sup>th</sup> Annual Mock Trial season. We will coordinate positive part-

nerships between attorneys and teachers to help foster civic and character education for Idaho students at all grade levels.

We can't do this work without you. The Idaho Law Foundation relies on the charitable contributions of Idaho's attorneys. During December, we would like to encourage every member of the Idaho State Bar to contribute to the Idaho Law Foundation's *Foundation for Justice Campaign*. If every member of the bar gave at the Donor level (\$25 to \$100), we could raise over \$150,000 for Foundation programs. You can donate through a designation on your 2007 Licensing Form or by filling out and returning the pledge card you will receive during the first week of December.

By donating to the Idaho Law Foundation you extend the reach of our profession to the citizens of Idaho. You help create a positive image of our profession for Idaho's young people. You help disadvantaged citizens get the legal help they need. You allow us to continue making the important work of the Idaho Law Foundation possible to the many people throughout Idaho who benefit from these valuable services.

Thank you for all your support. May this holiday season bring you and your family all the joy and happiness you deserve.

## **About the Author**

**John A. Bush** is the President of the Idaho Law Foundation. He received his J.D. from the University of Idaho and was admitted to the Bar in 1988. He clerked for the Hon. Mikel H. Williams, U.S. Magistrate, District of Idaho. He is a partner in the firm Comstock and Bush, Boise where his practice areas are accident and personal injury law and bad faith insurance. He is a member of ISB, ABA, Idaho Trial Lawyers Association, American Inns of Court, #130, American Trial Lawyers Association, and the Idaho Law Foundation Board of Directors.



## IVLP SPECIAL THANKS



Participants in the Pro Se Clinic at IVLP. From left to right in the front row (seated) are Carol Venn and Amy Sullivan. In the , back row (standing) are Ralph Blount, Amanda Cravens, Emily Strong, and Al Gill.

On October 27th, members of the *Introduction to Paralegal Practice & Legal Ethics* class in the Paralegal Program at Boise State University used their weekly class-time at IVLP. The students participated in a Pro Se Clinic to help people prepare their family law cases for filing in Ada County Magistrate Court. Prior to the class meeting, IVLP screened applicants who wished to file a divorce or establish or modify custody orders for situations in which people could confidently represent themselves. With the help of volunteer attorneys Audrey Numbers and Angela Shapow and IVLP staff, the Paralegal Class students guided IVLP participants in choosing, completing, and preparing Family Law Forms. Students also helped with initial interviewing of IVLP applicants. Instructors Ralph Blount and Al Gill view experience at IVLP as very valuable in the education of future paralegals.

Special thanks go to volunteer attorney **Stan Welsh**, who donated 45 pro bono hours to close a difficult divorce case. Stan represented Sally who needed to file for a divorce to extricate herself from a marriage marked with escalating levels of domestic violence. Sally had filed for a 90-day protection order to have her husband removed from the home, but she came to IVLP after her husband served her with a divorce complaint. IVLP helped Sally file an answer to the case and recruited volunteer attorney Stan Welsh to represent her. Stan continued to help Sally throughout the case, which became drawn out over many months, and involved a protracted litigation on the part of the husband, who appeared in court pro se. Stan acknowledged the importance of having pro bono attorney represent IVLP clients and offered to mentor volunteer attorneys new to the practice of family law to better serve the needs of people like Sally.

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**OFFICIAL NOTICE  
SUPREME COURT OF IDAHO**

Chief Justice  
Gerald F. Schroeder

Justices  
Linda Copple Trout  
Daniel T. Eismann  
Roger S. Burdick  
Jim Jones

**2nd Amended - Regular Fall Terms for 2006**

**Boise**..... December 1, 4, 6, and 8

**Regular Spring Terms for 2007**

**Boise**..... January 3, 5, 8, 10, and 12

**Boise**..... January 29, 31, and  
February 2, 7, and 9

**Boise (Twin Falls appeals)**..... February 28, and  
March 2, 7, and 9

**Coeur d'Alene and Lewiston**..... April 2, 3, 4, 5, and 6

**Boise (Eastern Idaho appeals)**..... May 2, 4, 7, 9, and 11

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of setting of the year 2007 Spring Terms of the Idaho Supreme Court, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

**OFFICIAL NOTICE  
COURT OF APPEALS OF IDAHO**

Chief Judge  
Darrel R. Perry  
Judges  
Karen L. Lansing  
Sergio A. Gutierrez

**4th Amended - Regular Fall Terms for 2006**

~~**Boise**.....December 5 and 7~~

**Regular Spring Terms for 2007**

**Boise** .....January 9, 11, 16, and 18

**Boise**.....February 6, 8, 13, and 15

**Eastern Idaho**.....March 12, 13, 14, 15, and 16

**Northern Idaho**.....April 9, 10, 11, 12, and 13

**Boise** .....May 8, 10, 15, and 17

**Boise**.....June 5, 7, 12, and 14

By Order of the Court  
Stephen W. Kenyon, Clerk

**NOTE:** The above is the official notice of setting of the year 2006 fall terms of the Court of Appeals, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

**IDAHO SUPREME COURT  
ORAL ARGUMENT DATES  
As of November 9, 2006**

**—Boise Term—**

Wednesday, November 29, 2006 – BOISE

8:50 a.m.	Leader v. Reiner	#31843
10:00 a.m.	Severson v. Diaz	#31690
11:10 a.m.	University of Utah Hospital v. Ada County	#32217/32247

Friday, December 1, 2006 – BOISE

8:50 a.m.	Hopper v. Hopper	#31423
10:00 a.m.	Finholt v. Cresto	#32448
11:10 a.m.	Melichar v. State Farm	#31714

Monday, December 4, 2006 – BOISE

8:50 a.m.	State v. Heredia	#32249
10:00 a.m.	McKinney v. State	#29411
11:10 a.m.	Nation v. Dept. of Correction	#31110

Wednesday, December 6, 2006 – BOISE

8:50 a.m.	Jenkins v. State (Petition for Review)	#33347
10:00 a.m.	Spur Products v. Stoel Rives	#33054
11:10 a.m.	Bajrektarevic v. Lighthouse Home Loans	#32324

Thursday, December 7, 2006 – BOISE

9:00 a.m.	Idaho State Bar v. Pena	#32759
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Friday, December 8, 2006 – BOISE

8:50 a.m.	Piske v. Freeman	#31816
10:00 a.m.	Spelius v. Hollon	#32660/32661
11:10 a.m.	American Falls Reservoir v. IDWR	#33249/33311/33399

**IDAHO COURT OF APPEALS  
ORAL ARGUMENT DATES  
As of November 9, 2006**

The Court of Appeals will not be sitting in the month of December.

**ETHICS CREDITS - NEED MORE?**

If you still need ethics credits, consider completing a pre-approved online ethics course. Online courses are available 24 hours a day - seven days a week without worrying about tape availability or waiting for them to be sent to you. A list of our online courses is on our website at [www.idaho.gov/isb](http://www.idaho.gov/isb). Please remember online course credits are considered self-study and you are limited to 15 self-study credits during your reporting period. Please contact Jenay Hunt at (208) 334-4500 or [jhunt@isb.idaho.gov](mailto:jhunt@isb.idaho.gov) if you have questions about MCLE compliance.

**Idaho Supreme Court and Court of Appeals**  
**NEW CASES ON APPEAL PENDING DECISION**  
(UPDATE 11/01/06)

**CIVIL APPEALS**  
**PROCEDURE**

1. Whether the court erred in granting Brown's motion for dismissal with prejudice pursuant to I.R.C.P. 11(b) (3).

*Leodegario Martinez v.*  
*Kelly Brown*  
S.Ct. No. 32815  
Court of Appeals

**ATTORNEY FEES AND COSTS**

1. Is Hausladen entitled to attorney fees and costs under I.C. § 12-121 after the trial court ruled in favor of his directed verdict motion on the issue of change of custody?

*F. William Hausladen, Jr. v.*  
*Shari Knoche*  
S.Ct. No. 32610  
Court of Appeals

2. Did the court abuse its discretion as to the amount of attorney fees awarded?

*Cody L. Runyan v.*  
*John N. Bach*  
S.Ct. No. 32725  
Court of Appeals

**STATUTE OF LIMITATIONS**

1. Did the court err in ruling that the statute of limitations on Wilhelm's claims against Frampton were tolled from the time he first filed a complaint with the Idaho State Bar until fee arbitration was completed?

*Robert L. Wilhelm v.*  
*Steve P. Frampton*  
S.Ct. No. 32922  
Supreme Court

**SUMMARY JUDGMENT**

1. Whether the district court erred in giving deference to the liquidator's decision on disputed claims pursuant to I.C. § 41-3339 and I.R.C.P. 56(c).

*Grain Growers Membership v.*  
*Liquidator for the Universal Life Insurance*  
S.Ct. No. 31194  
Supreme Court

**POST-CONVICTION RELIEF**

1. Did the court err in summarily dismissing Baldwin's petition for post-conviction relief?

*Darrell Boyd Baldwin v.*  
*State of Idaho*  
S.Ct. No. 32696  
Court of Appeals

2. Whether the court erred by finding that Pate did not receive ineffective assistance of counsel and denying post-conviction relief.

*Jerry Pate v.*  
*State of Idaho*  
S.Ct. No. 32655  
Court of Appeals

**HABEAS CORPUS**

1. Did the court abuse its discretion when it dismissed Abbott's petition for writ of habeas corpus on his claim that his indeterminate life sentence is equal to a 30 year sentence?

*Dennis E. Abbott v.*  
*Randy Blades*  
S.Ct. No. 33012  
Court of Appeals

**CRIMINAL APPEALS**  
**PROCEDURE**

1. Did the court err when it denied Bunner's motion to compel disclosure of informants?

*State of Idaho v.*  
*Charles Jack Bunner*  
S.Ct. No. 31621  
Court of Appeals

**SEARCH AND SEIZURE—**  
**SUPPRESSION OF EVIDENCE**

1. Did the court err in ruling Bates did not meet her burden of going forward so as to shift the burden to the state to prove an exception to the warrant requirement?

*State of Idaho v.*  
*Dustin Rose Bates*  
S.Ct. No. 32585  
Court of Appeals

2. At the time the detective observed Greenway, did there exist specific and articulable facts which reasonably warranted the action taken by the detective?

*State of Idaho v.*  
*Matthew Greenway*  
S.Ct. No. 31834  
Court of Appeals

**SUBSTANTIVE LAW**

1. Did the district court abuse its discretion in denying Hebert's motion for new trial?

*State of Idaho v.*  
*James E. Hebert*  
S.Ct. No. 32627  
Court of Appeals

2. Did the court abuse its discretion in denying Kemmish's motion for a new trial based on his claim of juror misconduct?

*State of Idaho v.*  
*Kal L. Kemmish*  
S.Ct. No. 32812  
Court of Appeals

**EVIDENCE**

1. Did the state's closing argument to the jury prevent Cortes from receiving a fair trial?

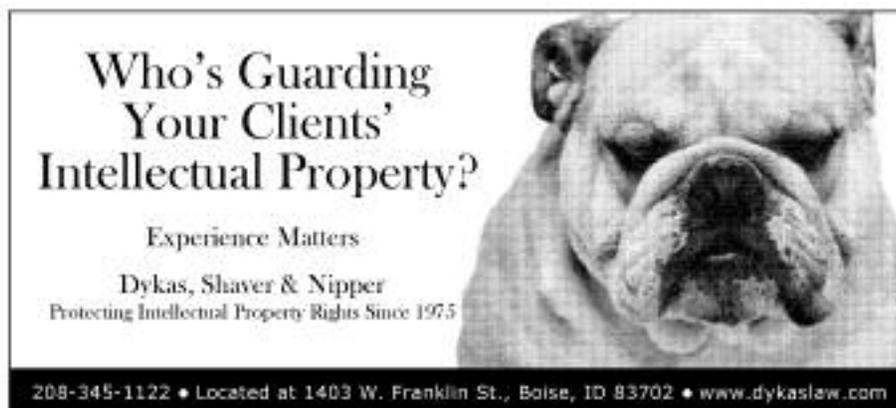
*State of Idaho v.*  
*Eustaquio Cortes*  
S.Ct. No. 32664  
Court of Appeals

**DUE PROCESS**

1. Were Picard's due process rights and rights against self-incrimination violated when on cross-examination the state elicited testimony about his post-arrest silence for purposes of impeachment and inferring guilt?

*State of Idaho v.*  
*Travis E. Picard*  
S.Ct. No. 32078  
Court of Appeals

**Summarized by:**  
**Cathy Derden**  
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# IDAHO'S NEW JUDGES IN 2006

Lowell D. Castleton, Senior Judge  
*Idaho Supreme Court*

## FIRST JUDICIAL DISTRICT

**Hon. Lansing L. Haynes** was appointed as a District Judge for the first Judicial District, effective September 5, 2006.

Judge Lansing Haynes "Landy" was born in Bozeman, Montana, and spent his childhood in North Idaho. In 1974, he graduated from Twin Falls High School. He received a Bachelor of Arts Degree from The College of Idaho (now Albertson College) in Caldwell, Idaho, in 1979. In 1982, he graduated from Willamette University College of Law in Salem, Oregon.

Judge Haynes practiced law with the Canyon County Prosecuting Attorney's Office in Caldwell, Idaho and the Ada County Public Defender's Office in Boise, Idaho. Before taking the bench, he practiced law at the Kootenai County Prosecuting Attorney's Office for 18 years, where he served as the Chief Criminal Deputy, specializing in major felony prosecutions and particularly crimes against children.

In addition to practicing law, Judge Haynes has been active in church activities at St. Thomas Church in Coeur d'Alene and is a member of the Knights of Columbus. He has been a member of the Kootenai County Republican Central Committee.

Judge Haynes is married to Lee Haynes, who is the director of Religious Education at St. Thomas Church. They are the parents of two children and grandparents of three grandchildren.

## THIRD JUDICIAL DISTRICT

**Hon. Jerold W. Lee** was appointed as a Magistrate Judge for Canyon County effective August 7, 2006.

Judge Lee received his undergraduate degree from the University of Washington and his law degree from the University of Idaho. He is a former Deputy Attorney General with the State of Idaho. Prior to becoming employed by the Idaho Attorney General's Office in June, 2003, Judge Lee was in private practice for nearly 5 years with Benoit, Alexander, Harwood, High and Butler in Twin Falls, Idaho. He also held a position as a deputy prosecuting attorney in Clearwater County, and he maintained a solo practice in Orofino.

**Hon. Gordon W. Petrie** was appointed as a District Judge for the Third Judicial District effective July 17, 2006.

Judge Petrie is a graduate of Idaho State University and received his Juris Doctorate from the University of Idaho in 1976. Judge Petrie was first appointed to the bench as a Third District Magistrate Judge in 1989. His tenure was interrupted with his deployment to Kuwait and Iraq from June 2004 until November 2005. He is a Colonel in the Idaho Army National Guard and is the Deputy Brigade Commander of the 116th Brigade Combat Team. He returned to the bench in Emmett following his tour of duty.

Prior to his appointment as a Magistrate Judge in 1989 Petrie was in private practice in Lewiston from 1983 to 1988. He also served as the Prosecuting Attorney for Nez Perce County from 1977 through 1982. Petrie was the President of the Idaho Prosecuting Attorney's Association in 1982.

**Hon. George A. Southworth** was appointed as a Magistrate Judge for Canyon County effective August 1, 2006.

Judge Southworth received his undergraduate degree from Idaho State University and his law degree from the University of Utah. Prior to taking the bench, since 1987, he maintained a general law practice in Pocatello with an emphasis on criminal defense. As part of his law practice, Judge Southworth provided public defender services in both Power and Oneida counties. He was actively involved in problem solving courts in the Sixth Judicial District including 2 drug courts and a juvenile school attendance court.

**Hon. Tyler D. Smith** was appointed as a Magistrate Judge for Gem County, effective November 6, 2006, filling the vacancy left by Honorable Gordon Petrie who was appointed to fill a new district judge position in the Third Judicial District.

Judge Smith received his undergraduate degree from the College of Idaho, now known as Albertson College of Idaho, and his law degree from Willamette University College of Law in Salem, Oregon. After graduation from law school, Judge Smith served an internship with the Ada County Prosecuting Attorney's Office, worked as a deputy public defender in Elmore County and was in private practice in Boise for 11 years where he handled a wide variety of both civil and criminal cases. Judge Smith has a significant history of working with youth in the community.

## FOURTH JUDICIAL DISTRICT

**Hon. Theresa L. Gardunia** was appointed as a Magistrate Judge for Ada County, effective October 2, 2006 filling a newly created position.

Judge Gardunia served as the Boise County Prosecuting Attorney from January 1997 until her appointment, where she was responsible for all felony, misdemeanor, juvenile criminal matters, child protection cases, as well representation on all civil matters on behalf of Boise County. Beginning in February 2004, she also served as the City Prosecutor for Horseshoe Bend City, where she was responsible for all misdemeanor criminal matters.

Judge Gardunia has been vital to the successes of community justice efforts in Boise County, including the development and implementation of juvenile diversion and intervention programs in Boise County, as well as a successful Victim-Offender Mediation Program.

She also previously served as Deputy Prosecutor for Ada County.

Judge Gardunia holds a Bachelor's Degree in Business Administration from Boise State University and in 1993, received her Juris Doctorate from the University of Idaho. She is a member of the Idaho Prosecuting Attorney's Association, Idaho Trial Lawyers Association and the American Bar Association. Ms. Gardunia serves on the Boise County Community Justice Steering Committee and the Idaho Training Cooperative. She is also active in the Idaho Autism Society and the Hemiplegia Society of America.

**Hon. William G. Harrigfeld** was appointed as a Magistrate Judge for Ada County, effective October 2, 2006 filling a newly created position.

From June, 1999 until his appointment, Judge Harrigfeld had been in private practice specializing in civil and criminal litigation, corporate, and personal injury law. He also has worked under contract with the State of Idaho, Bureau of Children Services and in 1997, he served as a deputy prosecuting attorney for Valley County, prosecuting criminal cases.

Judge Harrigfeld received a Bachelor of Arts degree from Pacific Lutheran University in 1983 and a Juris Doctorate from the University of Idaho in 1987.

**Hon. George G. Hicks** was appointed as a Magistrate Judge for Elmore County, effective September 5, 2006, filling the vacancy left by Honorable Aaron Bazzoli.

Judge Hicks holds a Bachelor's of Science Degree from the University of Idaho and a Juris Doctorate degree from the University of Idaho College of Law. He is a member of the Idaho State Bar (Business and Corporate and Real Property Sections).

From 2001 until his appointment, Judge Hicks was in private practice as a general practitioner with the law firm of Hoagland, Dominick and Hicks. His work included criminal defense, real estate, family law and business litigation practice. From 2000-2001, Judge Hicks practiced general law and criminal defense law. From 1987-2000 he served as a Deputy Boise City Attorney, working in both the criminal and civil divisions of the Boise City Attorney's Office. Early in his career, Judge Hicks also served as an Adjunct Professor at Park College, College of the Armed Forces in Mountain Home, Idaho.

**Hon. David D. Manweiler** was appointed as a Magistrate Judge for Ada County Juvenile Court, effective February 28, 2006, filling the vacancy left by Honorable John Vehlow, who retired.

Judge Manweiler holds a Bachelor's Degree in Political Science from the University of Colorado at Boulder and a Juris Doctorate from the University of Idaho College of Law. Prior to his appointment to the bench, Judge Manweiler was a member of the law firm Manweiler, Manweiler, Breen and Ball, PLLC, specializing as a litigation attorney. From 1986 to 1998, Judge Manweiler was a member of the firm Manweiler, Bevis and Cameron, PA, also specializing as a litigation attorney. Beginning in 1992, Judge Manweiler served as an Adjunct Professor at Boise State University, Department of Criminal Justice. He has also served as an Instructor for the Idaho Defense Lawyers, the Idaho Law Foundation, Inc., the Idaho Trial Lawyers Association and the National Business Institute.

#### SEVENTH JUDICIAL DISTRICT

**Hon. Penny Jo Stanford** was appointed as a Magistrate Judge for Clark County, effective November 20, 2006 filling the vacancy left by Honorable William Hollerich, who retired.

Judge Stanford was born and raised in Fremont County. She graduated from Utah State University in 1978 and from the University of Idaho in 1981. Judge Stanford served as City attorney for St. Anthony, Idaho from 1982 to date, and as Fremont County Prosecuting Attorney from January 1983 until January 2001, except for a period of time between January of 1987 and

November of 1988. She also served as an Ashton City attorney and as a Teton and Newdale City attorney. Judge Stanford has been in private practice since 1981. Her parents are L.W. Stanford (deceased) and Margaret Stanford, and she has 3 sisters and 1 brother (also deceased.)

**Hon. Stephen J. Clark** was appointed as a Magistrate Judge for Lemhi County, effective January 1, 2007 filling the vacancy left by Honorable Jerry Meyers, who retires in January.

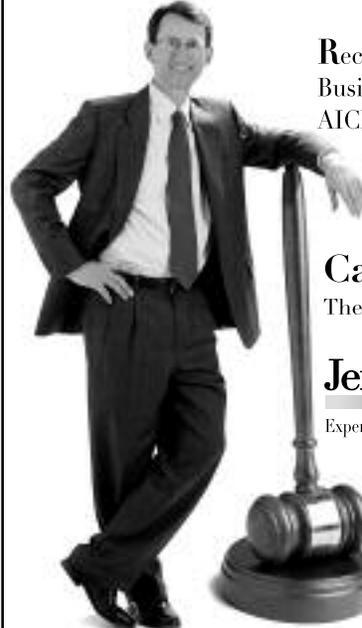
Judge Clark, who is a Jefferson County Deputy Prosecutor, will take the bench in January of 2007, replacing Magistrate Judge Jerry Meyers, who is retiring. He will sit on the bench in Bonneville County two times per week.

#### About the Author

**Hon. Lowell D. Castleton** is a Senior Judge and the Judicial Education Director for the Idaho Supreme Court.

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— IN MEMORIAM —

**BERNE KIMBALL JENSEN  
1922 –2006**

**Berne K. Jensen**, Boise, was born in Idaho Falls on March 19, 1922 to Grover and Clara Jensen. He graduated from high school in Idaho Falls and then attended the Southern Branch of the University of Idaho where he was student body president. It was there that he met his future wife, Evelyne Earle.

After leaving Pocatello, he held the position of principal, teacher, bus driver and janitor at the Mud Lake School for one year while awaiting his military service. He then traveled to Rockford, Ill. to marry Evelyne. During World War II he served in Louisiana, Missouri and finally Guam as an Air Force Police Sergeant. After Berne's service to his country he and his family, which now included daughter Bernie, moved to Moscow, Idaho where he graduated with a degree in Education and a degree in Law from the University of Idaho. After graduation, and the addition of his son John to the family, he accepted the position of executive secretary for U.S. Senator Henry Dworshak in Washington D.C.

After his time working in Washington, he returned to Idaho where he served as a Municipal Court Judge in Idaho Falls. Berne moved to Boise in 1953 when he was appointed State Director of the Federal Housing Administration. After his time at the FHA he took a manager position with Larry Barnes Enterprises where he worked for 13 years. Berne subsequently took the position of Executive Director of the Idaho Bankers Association where he served for 14 years. During his career Berne also served as president of the Western Bank Managers Association, president of the Idaho Manufactured Housing Association as well as serving eight years on the board of the Idaho Housing and Finance Administration. Berne loved his community and was continually involved in service and political issues. His various posts included five years with the Boise City Council, service on the Boise Redevelopment Agency, the Boise Municipal Airport Commission and the Governors Uniform Building Code Commission.

Outside the world of business and local politics, Berne served on the board of the Red Cross, the board of the First United Methodist Church, was president of the Greater Boise Chamber of Commerce, president of the Capital City Kiwanis and was president of the Hillcrest Country Club. Berne's life was filled with service to God, family, and community.

Berne is survived by his wife of 63 years, Evelyne; his son, John and John's wife Nicki; and his daughter, Bernie. He has four grandsons, Alex Jensen, Matt Fouch and (Michelle), Luke Fouch (Daiquiri), and Nick Fouch (Esther). He is also survived by his niece, Karen Arter, and his niece Sue Nixon. He has four great-grandchildren, Benjamin Fouch, Clara Fouch, Samantha Fouch (children of Luke and Daiquiri), Sydney Fouch (daughter of Matt and Michelle); and three special grandchildren, Sam Nixon and Tessa Nixon and Jacob Culver. He was preceded in death by his parents, Grover and Clara, and his only brother, Rulon.

**DAVID A. FRAZIER  
1940-2006**

**David A. Frazier** of Coeur d'Alene, died Oct. 29, 2006. He was born in Boise, Idaho on Nov. 30, 1940 to Al Frazier and Laura

Frazier Shaver. He graduated from the University of Idaho in 1962. He earned an LL.B and was on the Deans List. In 1966 he joined the Idaho State Bar, and began his career in law as an Assistant Idaho Attorney General in Boise.

In 1968, he moved to Coeur d'Alene and began practicing law in various partnerships. He spent the balance of his career as a sole practitioner. He was known and respected for his unselfish ways and loving personality, his constant good cheer and gentlemanly ways. He will always be remembered for his laugh and the twinkle in his eye. David was blessed with a golden voice, which he generously shared with many people. He performed in choirs and musicals, for funerals, weddings and conventions and enjoyed good sing-a-longs with family and friends. He was a member of the Sigma Chi Fraternity and truly treasured his brothers throughout his life.

He is survived by the love of his life, Cheryl Smith; his children, Sergeant Major Nathan Frazier and wife Lynne of Maryland, Daniel Frazier of New York City, N.Y., Joshua Frazier of Boise, Idaho; stepsons, Grayson and Evan Smith of Coeur d'Alene; grandchildren, Andrea Frazier and Devyn St. Ours; sister, Marilyn Dorman and her husband Rex of Boise, stepfather Carl Shaver of Boise; mother-in-law, B. Jeanne Barrett of Boise; sister-in-law Cynthia McBride of Bismarck, Va.; brothers-in-law, James Barrett of Middleton, Dale Barrett of Coeur d'Alene, and Stuart Barrett of Emmett; and numerous nieces and nephews.

**REI OSAKI  
1918-2006**

**Rei Kihara Osaki** passed away November 15, 2006. Rei was recently honored as one of the First 50 Women in Idaho Law. Part of this text was reprinted from *The First 50 Women in Idaho Law* by Debora K. Kristensen.

Rei was born on December 16, 1918 in Wapeta, Washington. The daughter of parents who emigrated from Japan, Osaki grew up on her family's farm in Harrah, Washington on the Yakima Indian Reservation. Her father was a farmer, and her mother a homemaker. Being educated people themselves, they placed great importance on education for their children. "Education," said Osaki, "was talked of matter-of-factly. Some people questioned the value of an education, saying 'Why get an education when you'll only end up working in a fruit stand?' My family believed there was value in education for itself."

When she entered first grade in Washington, Osaki knew only one word of English: elephant. But she quickly learned, speaking English at school and Japanese at home. From an early age, said Osaki, "I wanted to do good, to change things." Initially, she planned to become a medical doctor but switched to law when her mother, who had worked as a nurse in Japan, advised her that medical care was 'hard work.' "My family was unusual, now that I think about it," said Osaki. "It was not common for women in Japan to train for professional work, but my mother was a nurse, and my aunt was a teacher."

In 1936, Osaki began college at Washington State University and studied political science in preparation for law school. She eventually earned a Bachelor's Degree in Political Science 1940. Given how quiet Osaki was in class, never raising her hand to

— ON THE MOVE —

speak, one of her college professors suggested that she might be more comfortable at a small law school. As such, Osaki decided to apply to the University of Idaho College of Law. By attending college, Osaki escaped relocation during WWII because she was outside the internment area. Osaki said that while she was spared the "real fear, the anguish" her family experienced in being relocated from the family's farm in Washington to Wyoming's Heart Mountain Relocation Camp, she did feel guilty and offered to leave school. Her father refused, saying, "You're the only free person in the family. Take all my savings and finish law school." Osaki did just that and in 1943 became the fourth woman graduate from the University of Idaho College of Law and its first Japanese-American graduate.

Osaki recalls riding the bus from Moscow to Lewiston to take the bar exam in the Nez Perce County Courthouse. Osaki passed the bar exam and was admitted on September 15, 1943, as Idaho's sixteenth woman attorney, and the first Japanese-American woman admitted to the Idaho Bar. She is also a member of the Washington state bar.

After graduation, Osaki "had no home to return to" so she headed east and accepted a position with a real estate office in Elkhorn, Wisconsin. She was there when her father and brother were released from Heart Mountain. Her family had lost more than their freedom during the process of relocation, the family farm was gone. To help her father start over, Osaki not only returned what remained of his savings to him but also bought him a used tractor. Later, Osaki moved to Chicago to work as a lawyer for the Office of Price Administration. There she appeared in federal district court and the U.S. Court of Appeal—a position she held for nearly three years.

It was in Chicago that she met her husband, Harry Osaki, a silver and goldsmith. They settled in Pasadena, California. There she says, "pursuing law was no longer my interest." Instead, she set her "roots down by getting involved in various community activities, especially partisan politics." Over the course of 50 years, Rei raised her three children and became involved in local organizations like Mother's Club Community Center, YWCA Pasadena-Foothill Valley, Pacific Oaks College and School, and American Friends Service Committee, to name a few. Rei's activities extended to the national level where she lobbied as a member of the Nikkei for Civil Rights and Redress (NCR), culminating with then President Ronald Reagan signing into law the Civil Liberties Act of 1988, which included a national apology to all Japanese-Americans who were relocated to internment camps during WWII. In 2005, Rei returned to Idaho where she was honored by the Idaho State Bar and UI Law School as one of "The First 50 Women in Idaho Law."

After the death of her husband, Harry, Rei developed an interest in painting, especially watercolors, displaying her work in the Pasadena area. Rei lived a life with a deep sense of community and to assist the impoverished to have the opportunity to gain the skills and resources to succeed.

Rei is survived by her three sons, Dale (Ann), Harry Stuart (Daryl) and Charles (Sandy); seven grand children, Jessica Osaki Howell (Houston), Trent & Andrew, Harrison & Elizabeth, Jennifer & Trevor and great grandchild, Justus Chancellor Howell.

**Douglas W. Whitney** will be spending the next year in Afghanistan on a State Department Project to improve the justice system and train prosecutors. The Afghanistan Justice Sector Support Program (JSSP) is a program of the Bureau for International Narcotics and Law Enforcement of the State Department, implemented under contract with PAE Government Services, Inc., in partnership with the International Division of the National Center for State Courts (NCSC). This program currently consists of 18 Attorneys who act as advisors and trainers for the Afghanistan Attorney Generals Office, Ministry of Justice and Ministry of the Interior in Kabul. Nine of the attorneys are deployed in three attorney teams to act as trainers and mentors for prosecutors and police in the regional training centers in Herat, Mazar-el-Sharif and Jalalabad. The regional training program is designed to improve police and prosecution skills and communication. Currently the assessment and curriculum development phase is nearly complete and training has already begun with several seminars. Doug served 20 years as a Regular Army Field Artillery Officer, retiring in 1983 to attend the University of Idaho College of Law, after which he served as Deputy Prosecuting Attorney for Latah County for 17 years.

**Nicholas Mark Staley** has joined the firm of Blaser, Sorensen & Oleson in Blackfoot as an associate attorney. He received his B.A. degree from Idaho State University in 1999, and his J.D. from the University of Idaho College of Law in 2003. He plans to run a general practice including transactional work, estate planning, real estate law, collections, business law and family/domestic relations. He can be reached at P.O. Box 1047 Blackfoot, ID 83221 or (208) 785-4700.

**Matt EchoHawk** has joined the American Civil Liberties Union (ACLU) of Idaho as their first staff attorney. Matt was raised in Pocatello and Boise before earning undergraduate degrees in History and Native American Studies at Brigham Young University. He attended the University of Utah School of Law, graduating in 2004. As a student, he served as an intern with the ACLU of Utah, was a member of the Utah Law Review, and was awarded the law school's Civil Rights and Liberties award for legal writing in 2003. Before joining the ACLU staff he worked for two years as a deputy prosecutor in the criminal division of the Ada County Prosecutor's Office, and as an associate with EchoHawk Law Offices in Pocatello.

**Hannah Saona**, has joined the ACLU of Idaho as Legislative Counsel. Previous to joining the ACLU, she lived in Quito, Ecuador and worked for a legal non-profit. While there she worked on a project to create mediation programs around the country and also documented the living conditions in the Quito men's prison. Hannah graduated from Boise High School before attending Western Washington University where she received her undergraduate degree in Spanish. She received her law degree from the University of Washington School of Law in 2005, and her M.A. in International Studies from the Jackson School of International Studies the same year. While at the University of Washington, Hannah advocated for immigrant and reproductive

rights and authored a law review article on the protection of reproductive rights under international and domestic law. She also worked as a student attorney at a county prosecutor's office and just completed a year long term as law clerk to the Honorable Sharon S. Armstrong of the King County Superior Court in Seattle, Washington.

**Gretchen G. Stewart** has joined the law firm of Landeck, Westberg, Judge & Graham, P.A., in Moscow, as an associate attorney. She graduated from the University of Idaho College of Law in 2005, after which she worked as a law clerk for Latah County District Court Judge John R. Stegner.

**Paul S. Holdaway** has joined the firm of Wells St. John P.S. as an Associate. **Robert C. Hyta** and **D. Brent Kenady** have become shareholders of the firm. They can be reached at 601 W. 1st Avenue, Ste. 1300, Spokane, WA 99201-3828 or you can look on their website: [www.wellsstjohn.com](http://www.wellsstjohn.com)

— **RECOGNITION** —

**Peter C. Sisson**, of Sisson & Sisson, the Elder & Disability Law Firm was recently certified by The National Elder Law Foundation ([www.nelf.org](http://www.nelf.org)). It is the only organization approved by the American Bar Association to offer certification in the area of elder law. The NELF Board of Certification, has developed a certification program to identify those lawyers who have the enhanced knowledge, skills, and experience to be properly identified to the public as Certified Elder Law Attorneys. Peter's elder law practice focuses on comprehensive and holistic planning for seniors concerned about long-term care issues. He is a 1988 grad-

uate of the Washington University School of Law in St. Louis, Missouri, Order of the Coif, and has been practicing in Boise since 1992.

**Monica Moen**, a member of the Legal Department of Idaho Power Company has been selected to the Board of Directors of the University of Iowa Law School Foundation. The Iowa Law School Foundation works to secure private support for the College of Law. Ms. Moen is a 1997 graduate of the University of Iowa. Her practice focuses primarily on regulatory matters in Idaho and Oregon.

**Alan K. Hull**, senior partner in the Boise law firm of Anderson, Julian & Hull, has been selected by his peers for inclusion in the 2007 edition of "*Best Lawyers in America*." Hull has been selected for his work in representing employers and their worker's compensation sureties throughout the state of Idaho in matters involving worker's compensation law. Hull is a graduate of the University of Idaho College of Law, where he was editor in chief for the Idaho Law Review. He has been practicing in Boise since 1973. He is a founding partner of Anderson, Julian & Hull.

— **ANNOUNCEMENTS** —

The Idaho Association of Paralegals, Inc., recently elected a new slate of officers for the 2006-2007 year. New officers are: president—**Bernice Myles**, Idaho Office of the Attorney General; vice president of policy and public affairs—**Mary Beth Blair**, Ringert Clark, Chtd; vice president of membership—**Lori Peel**, Idaho Office of the Attorney General; vice president of education—**Lauren Paul**, Washington Group International, Inc; secretary—**Deb Taylor**, OfficeMax; treasurer—**Melody Whigam**, OfficeMax; national affairs representative—**Kim Schwisow**, Murphy Law Office, PLLC; board advisor—**Maryann Duncan**, Discover Real Estate Services.

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# DECEMBER

## CLE COURSES

**Friday, December 1, 2006 from 8:30 a.m. – 3:10 p.m. at the Coeur d'Alene Resort, Coeur d'Alene**

Headline News: The Year in Review (5 CLE credits of which 1 is Ethics)

Sponsored by the Idaho Law Foundation

Featured presenters include: Anne Solomon with a Family Law Update; Michael Schmidt on Real Property Law; Richard Eichstaedt on the Clean Water Act and recent environmental law cases; Dawn Peck of the Idaho State Police on the Idaho Sexual Offender Registry and Ken Howard with Ethics 2006.

**Friday, December 8, 2006 from 8:30 a.m. – 3:10 p.m. at the Doubletree Riverside, Boise**

*Headline News: The Year in Review* (5 CLE credits of which 1 is Ethics)

Sponsored by the Idaho Law Foundation

Featured presenters include: James Bevis with a Family Law Update; Mark Ryan on the Clean Water Act; David Ballard with Real Property updates; Dawn Peck of the Idaho State Police on the Idaho Sexual Offender Registry and Brad Andrews on Ethics.

**Monday, December 11, 2006 from 12:00 p.m. – 1:00 p.m. at the Law Center, Boise**

*Handling Your First or Next Matter Involving the Sale or Acquisition of a Small Business*

(1 CLE credit)

Idaho Law Foundation CLE Video Replay Series

Sponsored by the Idaho Law Foundation

Bring your lunch (or we will order one for you if you pre-register) and watch a replay of a past ILF CLE course.

**Thursday, December 14, 2006 from 8:30 a.m. - 11:45 a.m. at the Law Center, Boise**

*Using Paralegals to Enhance Productivity and Profit* (3 CLE credits of which .5 is Ethics)

Sponsored by the Law Practice Management Section

This seminar will discuss the utilization of paralegals to enhance firm profitability, increase productivity, and enhance client communication.

**Friday, December 15, 2006 from 8:30 a.m. – 3:10 p.m. at the Shilo Inn, Idaho Falls**

*Headline News: The Year in Review* (5 CLE credits of which 1 is Ethics)

Sponsored by the Idaho Law Foundation

Featured presenters include: Thomas Dial with a Family Law Update; Stephanie Altig on the Idaho Sexual Offender Registry; Kipp Manwaring with the Real Property Update; Raymond Swenson on the Clean Water Act and recent related court decisions and Fred Hoopes on Courtroom ethics.

**Wednesday, December 20, 2006 from 8:00 – 9:00 a.m. at the Law Center, Boise.**

*Building a Case from Discovery to Trial and Beyond Appeal Tips* (1CLE credit)

Sponsored by the Young Lawyers Section

Presented by Jeff Thomson, Elam & Burke, PA Boise.

### Coming in January

**Thursday, January 4, 2007**

*Intellectual Property Issues in the Courtroom*  
Law Center, Boise

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## COMING EVENTS

(12/1/06-1/31/07)



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These dates include Bar and Foundation meetings, seminars, and other important dates. All meetings will be at the Law Center in Boise unless otherwise indicated. Dates might change or programs may be cancelled. The ISB website contains current information on CLEs. If you don't have access to the Internet please call (208) 334-4500 for current information.

### DECEMBER 2006

(Dates may change or programs may be cancelled)

- 8 Idaho State Bar Board of Commissioners Meeting
- 8 **CLE: Idaho Law Foundation present: Headline News The Year in Review, Doubletree Riverside Hotel, Boise**
- 11 **CLE: Idaho Law Foundation present Video Replay Series: Handling Your First or Next Matter Involving the Sale or Acquisition of a Small Business**
- 14 **CLE: Law Practice Management Section present: Using Paralegals to Enhance Productivity and Profit**
- 15 **CLE: Idaho Law Foundation present: Headline News The Year in Review, Shilo Inn, Idaho Falls**
- 20 **CLE: ISB Young Lawyers Section present: Building a Case from Discovery to Trial and Beyond**
- 20 *The Advocate* Editorial Advisory Board
- 22 7th District Bar Christmas Party, Idaho Falls Country Club, Idaho Falls
- 25 **CHRISTMAS DAY, LAW CENTER CLOSED**

### JANUARY 2006

(Dates may change or programs may be cancelled)

- 1 **NEW YEARS DAY, LAW CENTER CLOSED**
- 2 *The Advocate* Deadline
- 3 Public Information Committee Meeting
- 4 **CLE: ISB Intellectual Property section present: Intellectual Property Issues in the Courtroom**
- 12 Idaho State Bar Board of Commissioners Meeting
- 12 Bar Exam Reexamination Deadline
- 15 **Martin Luther King Day, Law Center Closed**
- 17 *The Advocate* Editorial Advisory Board
- 19 Idaho Law Foundation Board of Directors Meeting

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