



IDAHO LEGAL HISTORY SOCIETY

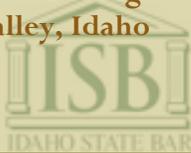
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CALENDAR

July 13 - 15, 2011

Watch for the Idaho Legal History Society presentation at the:

**Idaho State Bar
Annual Meeting
Sun Valley, Idaho**



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MARY SMITH OLDHAM DISTINGUISHED LAWYER

Young Mary Smith decided to become a lawyer at the age of eight when she sat in on a trial at Rexburg, Idaho. She attended the University of Idaho in the 1930s, but returned home to help her family through the Depression, working as a legal secretary and studying law under later Idaho Supreme Court Justice Clarence J. Taylor.

Smith graduated from the University of Idaho in 1935 and was admitted to the practice of law in Idaho that same year. The *Idaho Daily Statesman* announced Smith's admission with a story entitled "Pretty Mary Smith Becomes Member of Idaho State Bar."

Smith joined the Rexburg law practice of prominent attorney W. Lloyd Adams. In 1935, she was the first woman to address the Idaho State Bar at its annual meeting. Four years later, she became the second Idaho woman admitted to practice law before the U.S. Supreme Court.

Much of Smith's general practice work focused on family law. In an unusual divorce case for the time, she once represented a battered husband. The man came to her office bruised and bleeding, saying that his wife had beaten him up: "I even crawled under the bed, and she reached under and pulled me out!"

Smith also did trial work, which was unusual for a woman lawyer at the time. Her first murder trial took place after World War II, when she helped represent a Japanese-American veteran who had been at the front of the battle lines in Italy. After he came home from the war, he suffered from battle fatigue and had nightmares about his wartime experiences. One night he reached over in his sleep and killed his father, who shared the same bed.

Smith defended him successfully, using the relatively new insanity defense. She had several psychologists testify about her client's

state of mind and the young man was eventually sent to the state mental hospital in Blackfoot, Idaho.

In 1945, Smith became the first woman attorney to serve as a judge in Idaho (Justice of the Peace for Madison County). As Justice of the Peace, she administered the

Mary Smith, winsome lass from Rexburg, Thursday took the oath as a member of the state bar, before Justice Raymond L. Givens . . . The members and attaches of the court . . . kept their minds on the details of the ceremony with a certain degree of difficulty. But in spite of the extremely attractive appearance of the new member all the forms were complied with.

Idaho Statesman 1935



oath of office to

Idaho Governor Arnold Williams in 1945. Smith was also asked to serve on the Idaho Supreme Court by two different governors, but declined both times.

Mary Smith married Volney Oldham in 1949 and became the mother of his two children. The Oldhams also had two daughters of their own. Mary Oldham continued her legal work after the children were born, often having a baby with her in the office. One of her daughters later noted that she went to work in the law office at the age of 10 and worked there through high school.

In her 60 years of active practice, Oldham served as Rexburg City Attorney for 40 years, as Sugar City Attorney for 36 years and as legal counsel for the Fremont-Madison Irrigation District for decades.

She lobbied in Washington, D.C. for construction of the Teton Dam and later worked on the issues that arose when the dam failed in 1976.

After her death in 2002, the Idaho State Bar posthumously awarded Mary Smith Oldham its Distinguished Lawyer award, the first Idaho woman to receive this recognition.

Sources: The First Fifty Women in Idaho Law by D.K. Kristensen, 2005; Frances Oldham Murphy CV/Bio.

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A Message From the President Scott W. Reed

Recently, a program on legal *pro bono* work was given to the Kootenai County Bar. The program was both gratifying and inspiring to hear of those dedicated volunteer lawyers, and at the same time troubling about the much larger number of the poor or near poor who cannot obtain legal help. All this had nothing to do with history, but it sparked an idea. How about giving special recognition to those attorneys who, *pro bono*, have made a major change for the “Good?” Let me cite some historical examples:

In 1770, when no other Boston attorney would take the case, 34-year-old John Adams undertook the defense of eight British soldiers who had killed five men in a mob scene. Public outrage, heated by Samuel Adams, called the killing a “bloody butchery” and the “Boston Massacre.” After Adams’ “brilliant defense, six of the British soldiers were acquitted and the other two, found guilty, received as punishment only a brand on the thumb. In old age, after a life as a Constitutional delegate, foreign diplomat, Vice-President, and President, John Adams described his defense as:

...one of the most gallant, generous, manly and disinterested actions of my whole life, and one of the best pieces of service I ever rendered my country.

In 1962, 54 year-old Clarence Earl Gideon, imprisoned for the fifth time, filed a petition for *certiorari* claiming he had not had counsel. The U.S. Supreme Court accepted the petition and subsequently appointed Abe Fortas to argue the case. In *Gideon v. Wainwright*, the Court reversed prior precedent and held that the Sixth Amendment guaranteed the right to counsel for anyone charged with a crime.

Here in Idaho, in *Reed v. Reed*, the U.S. Supreme Court, in reversing the Idaho Supreme Court, held for the first time that discrimination against women was the “very kind of arbitrary legislative choice forbidden by the Equal Protection Clause of the Fourteenth Amendment.” The case began in a dispute between an adoptive mother and father over who would administer the estate of their deceased child. The value of the estate was near nil. The Idaho statute gave preference to men. The probate judge and the Idaho Supreme Court held the preference to be valid.

Boise attorney Allen Derr, representing the rejected mother, filed *certiorari*, which was granted. Allen enlisted Ruth Bader Ginsburg who persuaded the U.S. Supreme Court to void the statute as sexual discrimination. According to Bianchi, “This decision was one of the first of many cases which would follow giving women broader rights.”

So this is our invitation. Tell us of any major reported appellate decision coming from Idaho that has established what might generally be regarded as precedent for the “Good” (email: scottwreed@frontier.com). To give the proposal an historical patina, let me draw an arbitrary time line: decisions before 1990.



Attorney Allen Derr (l) and Sally Reed.

Sources: *John Adams* by D. McCullough, 2006; *Gideon’s Trumpet* by A. Lewis, 1964; *Justice for the Times* edited by C. Bianchi, 1990.

20TH CENTURY PROFILE:

Ray Rigby, Distinguished Lawyer

Ray Rigby was born on a farm near Rexburg, Idaho in 1923, the son and grandson of ranchers. His great-grandfather was William F. Rigby, one of the original Mormon pioneers to the area and a counselor to Thomas E. Ricks, who was sent by Brigham Young to settle the eastern Snake River Plain area.

Ray Rigby was active in public speaking as a young person, participating in debate, speech contests and plays. At the end of high school, he received a \$100 college scholarship from Sears Roebuck and headed for the University of Idaho to study agronomy and become a county agent. After his first year he decided to study law, instead.

Rigby was a freshman at the University of Idaho when the U.S. was attacked at Pearl Harbor. Shortly thereafter, his education was interrupted when he was called to active duty in February of 1944. He served until October of 1945. Rigby married Lola Cook while at home on furlough during the war.

He returned to the University of Idaho on the G.I. Bill in early 1946; received his bachelor's degree in 1948; and his law degree in 1950. Each summer he and his wife returned to work on the family ranch, living upstairs in his parents' home. Their first child was born in 1946.

In law school, Rigby was active in the Phi Alpha Delta law fraternity, helping to start the first chapter at the University of Montana Law School. Shortly after earning his law degree, he was asked to run for prosecuting attorney by the chairman of the Madison County Democratic Party. He moved back to Rexburg and was elected prosecutor as a Democrat in a largely Republican area. Rigby won election to that office seven times.

Ray Rigby began his career as prosecutor with a salary of \$150 per month and a one-room office in the courthouse. The office was lit by a single 40-watt bulb and furnished with a broken wicker chair, a table, and some outdated law books that had not been used in years. He shared a secretary with the probate judge and the sheriff. Rigby represented Madison County, as well as the state police and the City of Rexburg for felonies and state liquor law enforcement. At that time, there was only one Seventh District Judge, Henry S. Martin, for seven counties.

Local residents viewed Rigby's role as a sort of legal services office for the county. As Rigby noted:

The first great revelation I had was that everyone who came [to his office] thought if I were the county attorney and being paid by the county, and they were a county resident, they had the right to come to me for their legal problems.

Of course, such work could not be billed to the county and Rigby did much *pro bono* work for county residents. Rigby also established a private practice in 1950 — the Rexburg law firm that became today's Rigby, Andrus & Rigby. His private practice

expanded as he represented local school districts, farmers, water and electrical co-ops, and banks, becoming a recognized expert in water law and rural electrification.

While growing up, Rigby had not considered that some day he might become involved in politics. It began with his run for prosecutor, and led to service in the Idaho Senate starting in 1965.

At that time, the Idaho Legislature met biannually. During his tenure in the Legislature, it began meeting annually; adopted a state sales tax; created and funded the Public Employees Retirement System; created driver education and training requirements; and reapportioned the legislature.

In the Idaho Senate, Rigby served on the Judiciary Committee, handling court reform legislation, revisions of the Municipal Code, drug laws, and the first law allowing the use of deeds of trust in Idaho. His work on the Natural Resources Committee focused on water rights and he represented Idaho on the Interstate Council on Water Problems, the state's voice on the U.S. Water Resource Council.

Ray Rigby left the Idaho Senate at the end of 1972 to return to private practice. During his long legal career, he worked extensively on rural electrification issues. His interest stemmed from the work of the Rural Electrification Administration (REA) in the 1930s that extended affordable power to rural areas through electric cooperatives. Rigby worked for the co-ops to ensure that the large utilities could not take their customers or electricity, including working with the Idaho legislature to set standards and boundaries for service by competing Idaho utilities.

His interest in water law continued and he was one of the U.S. delegates to the United Nations World Conference on Water in 1977. He was also appointed by the governor to represent Idaho on the Western States Water Council, where he served from 1973 to 1988. Rigby was actively involved in drafting the 1994 Snake River Basin Adjudication legislation and was one of its leading proponents.

In 2001, he was awarded the Idaho State Bar's Distinguished Lawyer Award. In 2010, he was recognized by the Bar as a "60-Year Attorney" for his many decades of service.

Source: Interview with Ray Rigby, Brad Williams 2000 – 2001.



For Love of a Dog: The Murder of Howard LaGrange

Benjamin Franklin "Lucky" Crafton was a laborer from California who had met a drifter by the name of Howard LaGrange in a pool hall in Rexburg in 1953. LaGrange invited Crafton to share some wine that he had stashed in an old building nearby.

Crafton took his little dog and they headed out to share the wine. While they were drinking, Crafton's dog nipped at LaGrange's pants leg and he kicked the dog. In response, Crafton said he hit LaGrange with his fist and gashed him with a wine bottle. LaGrange's body was found in an empty lot the next day by some boys headed for a Fourth of July parade.

Crafton was tracked down by local police, who noticed that he had blood spots on his t-shirt. Under interrogation, he admitted to the murder and told investigators the story of his life.

Crafton was born in California to a mother who was in jail. According to the *Idaho Falls Post-Register* at the time, he was placed in a foundling home shortly after birth and spent most of his life "fighting and running away." As he grew up, Crafton went from one institution to another. While on the outside, he would find work, but then would be fired when it was learned that he had a record. At some point, he acquired the little white dog, which he loved.

Crafton was charged with second-degree murder. Local attorneys Lloyd Adams and Mary Smith Oldham were appointed by the court to defend him. Ray Rigby was the prosecutor in the case. Crafton was convicted of second-degree murder and sentenced to



Defense attorneys W. Lloyd Adams & Mary Smith Oldham.

life in prison in July of 1953 by Judge Henry S. Martin.

Ray Rigby was present when the officers were preparing to transport Crafton to prison in Boise. He later remembered seeing Crafton standing and holding the little dog on top of his handcuffed hands, "...crying, just crying to beat anything you ever heard" as the dog licked the tears on his face. Crafton wanted to take his dog to prison with him.

According to Rigby, officials found a good home for the dog and told Crafton that they would make sure it was cared for. Crafton responded that that he was born to lose and had nothing outside of prison but his dog.

Many years later, Prosecutor Ray Rigby recounted that he was touched by Crafton's story because:

*Nobody, not even his mother,
nobody loved
that boy. Nobody
cared about him.
He was a
nuisance to
everybody. The
only thing in this
life that cared for
him was that
little white dog.*



*Benjamin F. Crafton
(Idaho Falls Post-Register)*

Rigby remembered thinking how unfortunate it was that the system could not provide an environment to show Crafton that someone loved him. By 1970, Crafton was out of prison and had returned to California where he died in 1992.

*Sources: Idaho Falls Post Register July 14-29 1953;
Social Security Death Index; Interview with Ray Rigby by
Brad Williams 2000 – 2001*

Mining Town Court in Session

Between 1890 and 1910, the courts of the new state of Idaho dealt with a wide range of passionate and sometimes-violent disputes, including confrontations between sheep and cattlemen, water rights disputes, labor unrest in the mines and the assassination of a governor.

Experiences in the Idaho courts ranged from rustic to sedate, depending upon the location. Among the rustic court sessions were those held in the mining town of Silver City in the early 20th century. The District Judge, assorted lawyers from Boise and a motley crew of prostitutes and gamblers arrived at Silver City by stage from Murphy, Idaho, at the end of the rail line. During the 25-mile journey that took seven to 12 hours, the stage stopped for lunch at the Tuff Nuts lunch station.

Court opened the next morning around 9:00 a.m., with a shout from the balcony of the Silver City Courthouse by Owyhee County Sheriff Mike Rock:

Hear Ye, Hear Ye, Hear Ye. The Honorable District Court of the Third Judicial District of Idaho is now in session. Come up ye sons of bitches, Court's open.

The proceedings stopped for a midday meal, afternoon break, and



Tuff Nuts Lunch Station. The judge is on the running board below the driver. (MacLane 1953)

evening meal, continuing until around 10:00 p.m. each day.

According to District Judge John MacLane, breaks in the court session were accompanied by steady drinking throughout the day, beginning with a shot of straight whisky before breakfast. Nevertheless, court proceedings were taken seriously and MacLane reported that he had never seen a judge or lawyer who was drunk.

Source: A Sagebrush Lawyer by J.F. MacLane, 1953

Idaho's Territory's settlement by miners from California guided the direction of early water legislation. Miners claimed stream water along with their mining claims, recorded them in county offices, and posted the claims.

In 1873, the Idaho legislature proposed legislation that would have written into law the system of prior appropriation established by the early mining claimants. However, the bill did not pass. A

state Supreme Court decision in 1883 upheld the right of the prior appropriator and in 1887, the Idaho legislature included in its Revised Statutes the clause that "the right to the use of flowing water may be acquired by appropriation, and as between appropriations, priority in time shall secure priority of rights."

When the new Idaho state constitution was drafted in 1889, six sections dealt with the use and administration of water, including its relation to mining rights. In an organized mining district, water uses for mining had priority over agricultural or industrial uses. The constitution also defined stream water as belonging to the state, which would then set up a system to manage water appropriation. Water rights acquired before statehood in 1890 were to be adjudicated through the courts.

However, the new system proved to be inadequate: there was no central office of record where water claims or court judgments were filed; and the only way rights could be established was through the courts. In addition, the Idaho constitution implied that appropriation was unlimited by stating that the right to divert "the waters of any natural stream to beneficial uses shall

never be denied."

The way in which the water claims process played out along the Boise River in the 19th century eventually led to extensive litigation, as it did elsewhere in the state. For example, there were 151 claimants to water rights along the Boise River by 1898. Interestingly, they claimed a total of 6.4 million inches of river water, when the actual river flow was only about 35,000 inches. In addition, there was the legal baggage of 40 years, consisting of conflicting

to testify, producing more than 1,500 pages of testimony.

Finally, in 1906, District Judge George H. Stewart issued an opinion, which adjudicated the rights and determined the priorities for all appropriators from June 1, 1864, to April 1, 1904 – the "Stewart Decree."

On appeal to the Idaho Supreme Court, the case was affirmed as to priorities and acreage, and a new system for distributing Boise River water was

implemented. The new sliding scale permitted holders of senior water

STEWART DECREE SET STAGE FOR 20TH CENTURY WATER RIGHTS



Judge George H. Stewart

water claims and hundreds of legal decisions "granting first this farmer or ditch, and then that, rights of water priority."

Resolving the problem of insufficient water for all the claims led inexorably to the courts for adjudication in the early 20th century (*Farmers Cooperative Ditch Co. v. Riverside Irrigation District et al.*). All living irrigators who had any connection with the history of irrigation in the area were called

rights to receive 100% of their water until decreasing stream flow required shutting off the later rights. At that point, all rights were reduced to 75% and then to 60%.

The case was considered significant in Idaho history because it ended the abuse of excessive appropriation and partially solved the problem of water distribution.

Source: Early Irrigation in the Boise Valley by P.L. Murphy, 1953

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