



IDAHO LEGAL HISTORY SOCIETY

EST. 2005

CALENDAR

ILHS Membership Meeting

Tuesday December 7, 2010

4:00 - 5:00 p.m.
5th Floor Judges'
Conference Room

Federal Courthouse
550 West Fort Street,
Boise, Idaho



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VOLUME II, ISSUE 4

FALL 2010

EARLY PROBATE JUDGES SCHOoled IN LIFE

The State of Idaho's first court system included probate judges elected in each county for two-year terms. Probate courts had original jurisdiction in all matters of probate; in civil cases where the claim did not exceed \$500; and concurrent jurisdiction with justices of the peace in criminal cases.

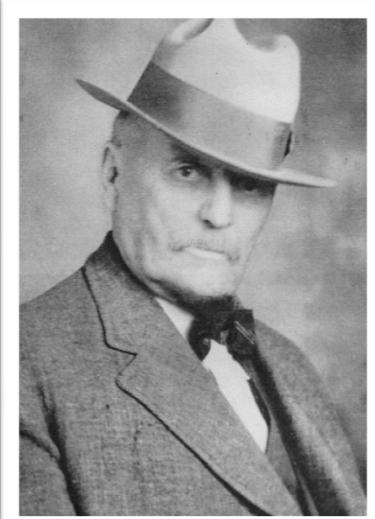
Many of the probate court judges had interesting backgrounds, usually not in the legal profession. They were men with practical experience, respected in the community, though not always with much formal education.

Those born in the middle of the 19th century brought with them a multitude of job experiences ranging from stagecoach driver to charcoal worker to teacher. Their wide array of life experiences, along with the drive that brought them west, made for a common sense, working man's approach to deciding the cases in their courts.

Here are the stories of some of the probate judges who sat on the bench in Idaho's counties during the early decades of the 20th century.

Judge Philemon W. Polly was born in Missouri in 1862. He moved to Montana in 1883 where he followed a variety of occupations including farming, clerking, mining and driving a stagecoach. He returned to Missouri in 1902 to complete his education at the College of Osteopathy at Kirkyville. Polly later moved back to Idaho and set up an osteopathic practice in Emmett where he worked until 1927. Dr. Polly was elected Gem County Probate Judge in 1930.

Judge Osa Bell was born in Ohio in 1852. After primary school, he worked in the lumber industry in Michigan before spending two years at the Normal School in Orwell, Ohio. Instead of teaching, Bell worked in the lumber and charcoal industries for several more years before moving west to Wyoming Territory in 1877. There, Bell drove a stage, worked for the government and hired on with



Probate Judge Clark Stanton
(Defenbach 1933)

the Union Pacific Railroad where he spent 15 years. Railroad work took him to southern Idaho where he was appointed the first Clerk of the District Court in Bannock County. After two years in office, he turned to ranching and mining before being elected Probate Judge in 1912.

Judge Clark T. Stanton was born in Illinois in 1858. His father brought the family to Idaho in 1870 to raise vegetables for the miners at Rocky Bar. Stanton and his father ranched near the Charles M. Black Ranch on Spring Creek in Alturas County. Stanton Crossing was named for the family. Clark Stanton served as a scout during the Bannock Indian War of 1878.

Stanton had few opportunities for education, attending class briefly at Rocky Bar and later at a school in south Boise. He was said to be a self-educated man. After he left school, Stanton worked as a cowboy, rancher and teamster in the Wood River Valley. During World War I, he served as Marshal of the City of Jerome. A respected citizen of the county, Stanton was elected Probate Judge of Jerome County in 1928, 1930 and 1932.

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A Message From the President

Scott Reed

In the decade before the Civil War, the Know Nothing party was active in national politics. Some of those direct descendants now serving in Congress have introduced legislation that would bar federal courts from relying upon or citing foreign law.

Although not core to our mission, Idaho legal history does include English law. Idaho Code 73-116 provides that the common law of England where not inconsistent to be the rule of decision in all Idaho courts. This common law catchall was originally enacted by the Territorial Legislature in 1864 probably to try to quickly grab a whole body of law which the territorial legislature hadn't had time to enact or even think of.

On rare occasions, the Idaho Supreme Court has cited the statutes: utilities placing its facilities on public right of way do not thereby acquire any property right, *State v. Idaho Power Company*, 81 Idaho 487 (1959); and the public may acquire custom rights to a private dry sandy beach, *Haman v. Fox*, 100 Idaho 140 (1970).

As with the federal courts, this foreign (England) law is rarely cited and then more often than not, declared inapplicable. However, it is part of our legal history. Seeing a reference to the common law in a decision reminds us of our roots.

“TENTS TO TOWERS” PROJECT NEEDS YOUR SUPPORT

by Deb Kristensen

Earlier this year, ILHS undertook what might be described as its most ambitious project to date. ILHS decided to research, write and publish a history of the practice of law in Idaho beginning in the territorial days through the present. This project is called “Tents to Towers: 150 Years of Legal Practice in Idaho.” While many resources exist on various aspects of Idaho legal history, no one comprehensive resource exists – particularly one that is engaging and full of pictures and personal histories of individuals who have shaped the practice of law in Idaho into what it is today. Our goal is to create a “coffee-table” book that lawyers and lay people alike will enjoy, while preserving important pieces of Idaho legal history.

ILHS hired historian Claudia Druss to research and draft the “Tents to Towers” book. Idaho historian (and long-time ILHS member) Judy Austin and I have devoted significant time to assisting Ms. Druss in her efforts. To date, Ms. Druss has successfully identified many of the resources that currently exist in this area and has drafted many of the book’s chapters (which, for those of us lucky to review these first drafts, are terrific). We expect that Ms. Druss will have a complete draft of the book by the end of year.

Publishing the “Tents to Towers” book is not a cheap or easy endeavor. While we have been lucky to find the volunteer resources necessary to support this effort, we still need significant funds to publish our final product. To this end, ILHS has undertaken fundraising efforts to ensure that “Tents to Towers” will become a reality. And, we’ve been successful in obtaining a grant from the U.S. District Court for the District of Idaho and donations from the Real Estate and Business and Corporate Law sections of the Idaho State Bar. But, much more help is needed. Please consider making a tax-exempt donation to ILHS to help support our efforts to bring the project to fruition. And, feel free to contact me if you have any questions about this important attempt to capture Idaho legal history.

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Henry "Bub" Meeks is thought to have met Butch Cassidy when Cassidy and a partner had a ranch on Horse Creek near Bub's father's ranch in Fremont County, Wyoming. The Meeks family, like the Cassidys, were Mormons. Meeks' father was one of the first midwestern converts to follow Brigham



Bear Lake County Prosecutor
Alfred Budge

Young west to Utah. The Meeks family moved to Wyoming in the 1880s with a large group of Utah Mormons who moved into the Big Horn Basin.

In 1896, Meeks, Cassidy and Elzy Lay took work bringing in hay at a ranch on the Idaho border near Cokeville, Wyoming while they checked out the surrounding countryside. They hired on at the ranch using the aliases of George Ingerfield, Marty Makensie and Willie McGuiness.

On August 13, the three rode into Montpelier, Idaho intent on robbing the bank just before closing time. Cassidy and Elzy, with bandannas over their faces, went in to take the money while an unmasked Meeks held the horses outside. The men scooped up between \$7,000 and \$16,000 (depending upon the report), mounted up, and rode for Wyoming. Bear Lake County Sheriff M. Jeff Davis and Deputy Mike Malone rounded up a group of volunteers and set out after the robbers. Afraid of a possible ambush in Montpelier Canyon, the volunteers held back and thought the lawmen had been killed in a gunfight in the canyon. However, they had actually found a fresh relay of horses left by the robbers and decided to return to town to organize an experienced posse.

The posse was unsuccessful in tracking down the gang, in what was a well-planned escape. It is thought that the men took the stolen money to Cassidy's attorney, Douglas Preston, in Rock Springs, Wyoming to pay for the



defense of two other gang members on another charge. When word got out, Preston denied the charge, and also denied that Cassidy had anything to do with the Montpelier bank robbery. Meanwhile, Cassidy and Meeks were hanging out in Utah acting the role of cattle buyers, while waiting for the results of their friends' trials.

"BUB" MEEKS & BUTCH'S GANG

ROB A BANK

Bub Meeks was involved in a number of other escapades with Cassidy and his group. He was finally

apprehended in 1897 at Fort Bridger, Wyoming on another robbery charge and brought to Idaho for identification.

When his identity was learned, he was put on trial in Bear Lake County for the Montpelier bank robbery, before Judge Drew W. Standrod. Alfred E. Budge, who would later serve on the Idaho Supreme Court, was the prosecutor in the case.

During the trial Meeks claimed he never got any of the money from the robbery. However, he was convicted and sentenced to 35 years for bank robbery.



Of the three who took part in the crime, Meeks was the only one ever brought to trial.

Bub Meeks was sent to serve his time at the Idaho State Penitentiary. Eventually his sentence was reduced to 12 years. However, Meeks attempted to escape twice – the first time in December of 1901. On December 24th, while working around the hog pens at the prison, he took off on a horse called Old Selam and headed for the foothills. Trackers followed in the snow and Meeks was re-captured the next day. His escape attempt and that of another prisoner were memorialized in the "Old Selam Endurance Ride," a horseback trail ride begun in 1976 at the Old Idaho Penitentiary.

In another escape attempt in 1903, Meeks tried to run out the front gate of the prison. He was shot in the leg by a guard

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ON LIMITING ORATORY IN COURT

Iaac N. Sullivan served on the Idaho Supreme Court for 26 years, from 1890 to 1916, during which time he heard nearly 3,000 cases.

Many years later he offered wise advice to young attorneys preparing to argue before the Court. He suggested first that "a clear, forceful statement of each proposition relied upon is appreciated by the court." Further, it was not necessary for counsel to repeat the proposition to the Supreme Court as often as they might do for a jury—once for each justice would suffice. He also cautioned young attorneys not to support elementary legal principles by reading from textbooks, as the justices already had a good grasp of the concepts.

To illustrate the consequences of repetition, Sullivan recounted the story of an incident that took place during the early statehood years when Sol Hasbrouck was Clerk of the Supreme Court.

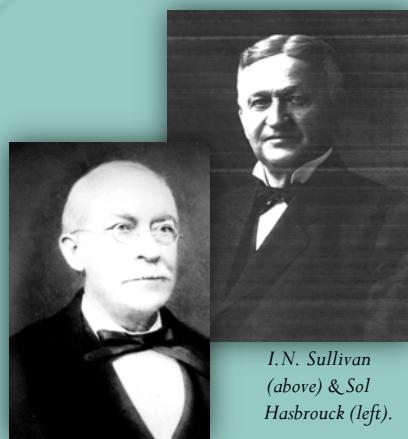
Once during an important case that included a very long argument, Hasbrouck grew weary. He left his desk and laid down

on a couch in front of the justices' desk. When the attorney was at the height of his flights of oratory, the courtroom was startled by a loud snore from the couch. The attorney took offence and gravely remarked, "I hope that my argument has not had the same effect on the Court that it had had on your Clerk."

Though the justices maintained their stern demeanor, Sullivan confessed that it was with difficulty. Hasbrouck, meanwhile, awoke and quietly left the room. When the attorney later took him to task for falling asleep during the argument, Hasbrouck replied:

I was very much interested in your argument, but you repeated it so many times I got tired. Now, I listened carefully until you repeated 10 times, but when you started to repeat the eleventh time, it put me to sleep.

Justice Sullivan also noted that some of his colleagues on the Supreme Court had such a sense of humor that it sometimes had to be removed from their



*I.N. Sullivan
(above) & Sol
Hasbrouck (left).*

opinions. In one irrigation case, Justice Joseph W. Huston offered the following commentary about the defendant:

Heroically setting aside the statute, the decision, and the evidence in this case, he assumes the role of Jupiter Pluvius and distributes the waters of Gooseberry Creek with a beneficent recklessness which makes the most successful efforts of all the rain wizards shrink into insignificance...

Source: The Bench and Bar as I Have Known Them, I.N. Sullivan 1927

PRACTICAL MEN OF THE PROBATE BENCH

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Judge Thomas A. Johnston was born in Canada in 1848 and learned the trade of shoemaker. At age 17, he moved first to New York and then to Pennsylvania to practice his trade. Johnston headed west to Nebraska in 1869 and lived there for seven years. His wanderlust took him to Wyoming in 1876 and finally to Pocatello, Idaho in 1888. In Pocatello, Johnston ran a cigar store and worked as a building contractor. He was elected Justice of the Peace and Police Judge, serving for six years before serving as Probate Judge of Bannock County for 12 years.

Judge James L. Fuller was born in New York in 1845. He served in the Civil War in 44 engagements and was present at General Lee's surrender at Appomattox. At the age of 19, he cast his first vote for Abraham Lincoln. Fuller headed west to Nevada in 1868, and then to Idaho in 1874. He first settled near Marsh Lake in Cassia County. In 1878, he moved to the town of Bliss, in Gooding County, to mine along the Snake River. He also ran a general store in Bliss throughout the 1880s. Fuller served as Alturas County Commissioner (1886-1887) and was appointed as Probate Judge for Lincoln County in 1905. He was re-elected to that position for more than 25 years until he retired in 1931.

Judge Samuel D. Davis was born in Salt Lake City, Utah in 1859

and received no traditional education as a child. He was still unable to read or write at age 24. At his wife's suggestion he began to attend the local primary schools and eventually went on to Brigham Young College in 1886. After college he taught school and studied law on his own. In 1899, he was appointed Probate Judge of Oneida County.

Judge Ezra E. Brandt was born in Ohio in 1861, the son of a farmer. He moved to Kansas where he prospered in the mercantile business. After 12 years as a merchant, he was elected county treasurer. Brandt moved to Gooding, Idaho in 1909 and purchased large tracts of irrigable ranch land in Lincoln and Twin Falls counties. There he became prominent in the real estate business. In 1913, Brandt was appointed Probate Judge of Gooding County.

Judge William W. Lovelace was the son of a Virginia farmer who worked in the Confederate iron mills. Lovelace was trained as a teacher in Virginia and Kentucky. He moved to Oregon in 1890 and taught school there. Lovelace began ranching in Idaho in 1914, acquiring a large livestock ranch near Weiser, Idaho. Lovelace was also the director and chairman of the Weiser Irrigation District. In 1930 he became the Probate Judge of Washington County.

*Sources: Idaho: The Place and Its People. B. Defenbach 1933;
History of Idaho, H.T. French 1914;
Justice for the Times: A Centennial History of the Idaho State Courts,
C.F. Bianchi 1990*

IDAHO LAW SCHOOL'S EARLY STRUGGLES

Lawyers played a prominent role in administering Idaho's new state university from its inception. Among them was the provisional president of the university, James H. Forney. Forney had served as a prosecuting attorney, district attorney and U.S. district attorney for Idaho. He laid the groundwork for establishing a College of Law at the university. In 1909, the law college became a reality when the Idaho legislature appropriated \$7,000 in seed money.

The law school's first class had 18 full-time students with one faculty member, Dean John F. MacLane. The University of Idaho College of Law was the 46th member of the American Association of Law Schools when it qualified for admission in 1914. It was accredited by the American Bar Association (ABA) in 1925.

Originally, admission required only a high school diploma. This changed in 1915 when applicants were required to have completed one year of college prior to admission. Along with the onset of World War I, this extra requirement resulted in a drastic decline in enrollment. Only 10 students graduated in 1917, and none in 1918. However, Idaho law graduates were often given preference in admission to the state bar, especially when it came to war veterans. For example, in 1917, the Idaho Supreme Court (Alfred Budge, John C. Rice and William Morgan) waived its examination procedures to admit four University of Idaho graduates who were in the Army Reserve Corps. The admission rules were later rewritten so that Idaho law school graduates were no longer automatically admitted to the bar.

The College of Law began slowly rebuilding its programs in the 1920s. When Idaho's new bar association conducted its first exam in 1925, the two-day test consisted of 60 questions along with some legal research. Of the 12 applicants who took the exam, eight were Idaho

law school graduates. All eight of the Idaho graduates failed the exam, and the bar was heavily criticized. However, the results of the test ultimately led to improvements in Idaho law school standards. As Bar President Richard Leeper put it, "a law school is no place for summer fallow athletes."

The quality and cost of Idaho's legal education came under frequent discussion during the 1930s. Lawyers debated the merits of hands-on versus theoretical courses. One graduate proposed that more classes should be taught by active lawyers and that graduates should serve internships in approved law offices.

At the state legislature, questions arose about whether it was even appropriate to continue the law college, given the cost to Idaho taxpayers during tough economic times. However, as the Depression deepened and jobs

continued to be scarce, enrollment at the College of Law increased to 53 students.

During the Depression, the Idaho Bar relaxed the requirement for college attendance prior to law school to ease the economic burden on law students. At the same time, the requirements for law office study, often used in lieu of college, were increased. A supervising attorney was now required to provide a very detailed account of an applicant's training in order for them to qualify for bar admission. Law office training was accepted in Idaho as an alternative to formal education until 1966.

Sources: From a Sagebrush Era to a Statewide Mission: Idaho's Law School Spans 100 Years, R. McCoy 2009; Building a Profession: A History of the Idaho State Bar, 1860s to 1950s, M. Buckendorf 1992



Mock trial at the University of Idaho, 1928.



Idaho Insane Asylum at Blackfoot. (Idaho State Historical Society)

MEEKS MEETS HIS END

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and the wound was such that his leg had to be amputated.

Over the next few months Bub twice attempted suicide. As his behavior became increasingly erratic, prison officials transferred him to the insane asylum at Blackfoot, Idaho, where he once again escaped. This time, Meeks ran to his family's ranch. His family checked him in to the Wyoming State Hospital in Evanston where he died in 1912.

Sources: Butch Cassidy: A Biography, R.M. Patterson 1998; Treasured Tidbits of Time, P. Wilde; Bear Lake Convention and Visitors Bureau www.bearlake.org

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