

JUDGE ROBERT NEWHOUSE

CALENDAR

Idaho Legal History Society

Full Membership Meeting

May 24, 2016, 4:00 p.m.

October 18, 2016, 4:00 p.m.

January 24, 2017, 4:00 p.m.

Parsons Behle & Latimer

800 West Main, Suite 1300

Boise, Idaho

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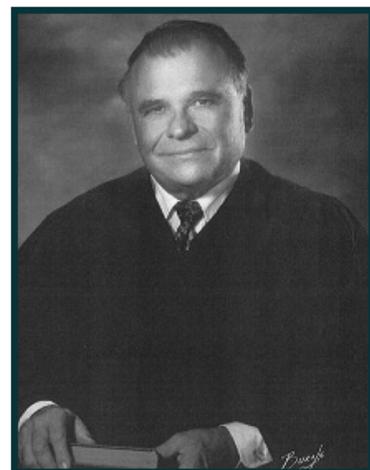
Samuel D. Hays: Payette Lake

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As the youngest law-school graduate from a class of nine Robert Newhouse entered a legal profession with no job openings—of his graduating class only one person could find a law-related job immediately.

Undeterred he started up his own practice in Payette, though that was short-lived because a fellow graduate said they needed another prosecuting attorney in Fairfield and so Newhouse took the opportunity—he became one of the youngest prosecuting attorneys in Idaho at the time. However, times were different back in the 1960's and as a prosecuting attorney he hardly ever prosecuted anyone. The role of the prosecuting attorney was primarily to advise people. After working as a prosecutor he was ready to try his hand at something new and so he went to Boise to apply for a magistrate position. It was unheard of for non-residents to apply for a magistrate position so he was initially turned down because of that. The Mayor of Boise called him up and offered him a position as a prosecuting attorney in Boise.

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HE BECAME ONE OF THE YOUNGEST PROSECUTING ATTORNEYS IN IDAHO AT THE TIME.

Two months later he was preparing to interview for the magistrate position again—before he could cross the street for the interview he saw one of the commissioners who asked if he was about to apply and when Newhouse said he was going to apply the commissioner responded: “Don’t bother, you’ve got it.”

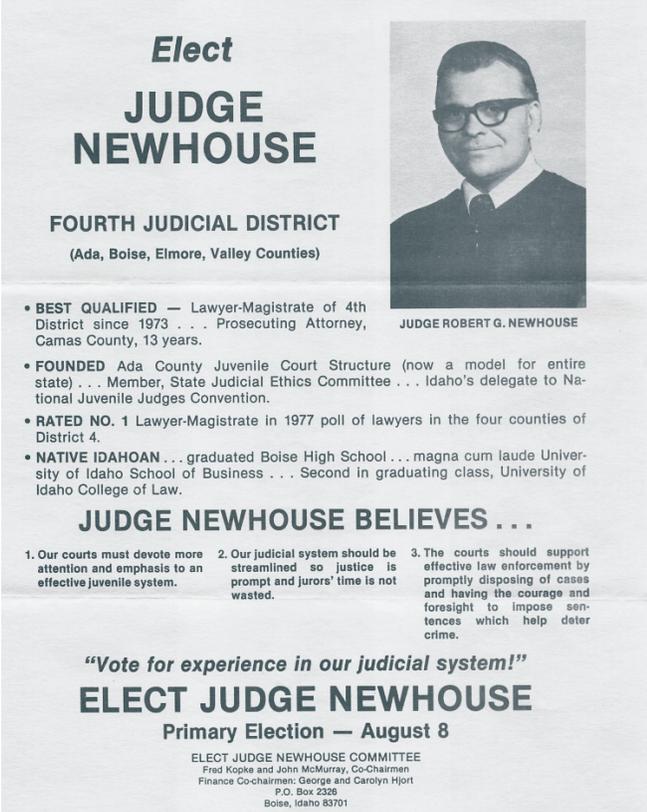
Having served five years as a magistrate judge, Newhouse applied for the district judge position, but did not get it. He applied again but was passed. He applied a third time and the group decided on someone else. Newhouse was done applying for the position—he decided to run for election. Back to the territorial days no one had ever run for the district judge position, so it sparked up a lot of media attention—it was a heated and bitter campaign. In the end Newhouse was elected as district judge.

As a district judge, Newhouse felt strongly about citizens serving on jury duty. He would often get jurors yelling at him because of it. No one was safe from jury duty when Newhouse was presiding over jury selection—not lawyers, not anyone. He would not even dismiss Justice Blistine of the Idaho Supreme Court from jury duty. Judge Newhouse was so adamant about people serving on jury duty that he went so far as to vacate a civil malpractice case because he himself had been served with jury duty—to his surprise he was selected for the jury and was not dismissed.

Judge Newhouse sparked even more media controversy when he ruled on the Lacey Sivak case and the Thomas Creech case. There was little to no law on the subject of death penalty cases in Idaho and so Judge Newhouse was the pioneer on that frontier when he sentenced them to death. Tensions grew between him and the Idaho Supreme Court when Judge Newhouse chose to notify Creech in jail that he was sentenced to death—he reasoned that it would be terrible to summon him to court, stand in front of him and then proceed to tell him that he is going to die. The Idaho Supreme Court disagreed and tensions escalated until Judge Newhouse summoned him to court and told him in person.

In 1999, after 20 years of being on the bench, Judge Newhouse retired and Judge Ron Wilper took over his caseload. With the position came the staff who told stories of Judge Newhouse and some recurring characters such as Sivak and Creech with ongoing court matters.

Source: *Oral History of Robert Newhouse 5/4/2009*, by Judge Ronald J. Wilper, and transcribed by Dianne Cromwell, Tucker & Associates.



Elect
JUDGE NEWHOUSE

FOURTH JUDICIAL DISTRICT
(Ada, Boise, Elmore, Valley Counties)



JUDGE ROBERT G. NEWHOUSE

- **BEST QUALIFIED** — Lawyer-Magistrate of 4th District since 1973 . . . Prosecuting Attorney, Camas County, 13 years.
- **FOUNDED** Ada County Juvenile Court Structure (now a model for entire state) . . . Member, State Judicial Ethics Committee . . . Idaho's delegate to National Juvenile Judges Convention.
- **RATED NO. 1** Lawyer-Magistrate in 1977 poll of lawyers in the four counties of District 4.
- **NATIVE IDAHOAN** . . . graduated Boise High School . . . magna cum laude University of Idaho School of Business . . . Second in graduating class, University of Idaho College of Law.

JUDGE NEWHOUSE BELIEVES . . .

1. Our courts must devote more attention and emphasis to an effective juvenile system.
2. Our judicial system should be streamlined so justice is prompt and jurors' time is not wasted.
3. The courts should support effective law enforcement by promptly disposing of cases and having the courage and foresight to impose sentences which help deter crime.

“Vote for experience in our judicial system!”
ELECT JUDGE NEWHOUSE
Primary Election — August 8

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Judge Newhouse served as a prosecuting attorney, magistrate judge, Fourth District Judge, and Administrative Judge.

Newhouse felt strongly about citizens serving on jury duty. He would often get jurors yelling at him because of it. No one was safe from jury duty when Newhouse was presiding over jury selection—not lawyers, not anyone.

HISTORY OF FEMALE JURORS IN IDAHO

1897 was a historic year for female jurors in Idaho:

Frances Wood was the first female to serve on a jury, and this was also the year that Idaho empaneled an all-female jury. In spite of this progress it would be 45 more years until females were undisputedly allowed to serve on juries in Idaho. Female jurors were strategically used by prosecutors in the 1920's in cases pertaining to prohibition violations. They were viewed as more likely to be morally opposed to alcohol consumption and prosecutors would try and stack women on juries for prohibition cases.

One such case was *State v. Kelley*, back in 1924. An all-female jury was empaneled and they convicted Kelley of unlawful possession of alcohol. After he was convicted by the all-female jury, Kelley appealed to the Idaho Supreme Court stating that women were not eligible to be jurors as per the jury statutes. The Idaho Supreme Court reversed and remanded the lower court, stating that the jury statutes clearly and exclusively referred to only men as being eligible to serve on a jury. The court based its reasoning on the statute itself and said that if the legislature wanted to change the law then it was for them to decide, not the courts. The statutes at the time read: “[A] jury is a body of men. A grand jury is a body of men.” This was repeated throughout the jury statutes, which restricted jury duty to only men that are citizens and electors.

State v. Kelley marked the end of women serving on juries in Idaho up until 1943 when the jury statutes were reformed. The reform was part of the women's suffrage movement and has since remained intact.

Women to Match the Idaho Frontier, Steven Branting; *The U.S. Women's Jury Movements and Strategic Adaptation: A More Just Verdic*, Holly McCammon.

(Top) In 1897 Idaho not only saw the first woman serve as a juror in the state, but also impaneled a jury of women.

(Right) In 1897 Frances Wood was the first female to serve as a juror in Idaho. She was an active proponent of women's suffrage and served as a Deputy Clerk for Ada County. Furthermore, she campaigned in support of the 19th Amendment.



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This newsletter published quarterly by:
Idaho Legal History Society
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A MESSAGE FROM PRESIDENT ERNEST A. HOIDAL

January is membership renewal month each year at the Idaho Legal History Society. Our dues have remained the same since our inception in 2005. We are looking forward to growing our membership in 2016, and encourage you to renew your membership if you have not already done so. If you would like to become a “Lifetime Fellow,” please send a one-time check for \$500 and we will mail this beautiful key fob to you.

Additionally, we have reached out to the University of Idaho College of Law and Concordia School of Law in offering current law students a membership rate of \$5.00 per year.

The ILHS is moving forward with several important initiatives, including publishing a “coffee table” book chronicling the history of the practice of law in Idaho, beginning in 1860 when some of the earliest frontier lawyers set up their tents in the mining towns of north Idaho and continuing through present day. The working title of this project is *Tents to Towers, 150 Years of Legal Practice in Idaho*.

The book outlines the establishment and growth of the federal and state courts in Idaho, introduces readers to some of Idaho’s pioneering lawyers and judges, and provides a significant textual and photographic context to follow the development of the practice of law in Idaho over the past 150 years. Our goal is to complete the book in time to sell it at the Idaho State Bar annual meeting in July.

Another large undertaking of the ILHS is the Oral History Project, spearheaded by Dianne Cromwell and Susan Gambia. The ILHS has sought to encourage the creation of recorded interviews that are as complete, verifiable, and usable as possible, and to discourage inadequate interviewing and the misuse of history. Dianne and Susan have spent countless hours transcribing these oral histories, while ensuring mistakes are not made. We are grateful for their organization, dedication and hard work. In addition, the ILHS, in conjunction with Dianne and Susan, are developing a master index of the oral histories taken, where they are stored, and how they can be accessed. We will advise when this is completed.

Your continued support helps us keep these important projects moving forward and helps us continue our mission of: **Preserving the legal history of Idaho for posterity.** Thank you for your renewed membership and for your participation in our mission.



ILHS President Ernest A. Hoidal



IDAHO AND THE INSANITY DEFENSE

In an effort to improve the treatment of mentally disturbed people who break the law, and to clear court calendars, the Idaho Legislature abolished the use of the insanity defense for crimes in 1982. Idaho was the first state to successfully do so without being deemed unconstitutional. Since then three other states have also abolished the defense. The effect of the change in the law would play a significant role in the case of James Delling.

James Delling was systematically killing his friends from a hit-list he had created. Delling believed that his friends were plotting to destroy his brain so he did what he thought he needed to do in self-defense. Doctors agreed that he suffered from paranoid schizophrenia and he was not in the proper state of mind. In forty-six states he arguably would have been found legally insane, and would have been sent to a psychiatric ward. However, Delling was in Idaho.

Although he couldn't use his condition to his advantage, any expert evidence on "any state of mind which is an element of the offense" could be considered by the court. Delling had attempted to kill one of his friends in Arizona, and had succeeded in killing two of his friends in Idaho before he was caught and tried in Idaho. The authorities found a list of four more names. Delling was convicted and sentenced to life in prison. He appealed the decision arguing that the elimination of insanity pleas had violated his right to due process. Delling was actually able to seek acquittal because his schizophrenia "preventing him from forming the deliberate intention to kill a person", thus making his right to due process adequately protected. The Idaho Supreme Court affirmed his life sentence due to the fact that his right to due process was in fact protected because he could challenge the *mens rea* element of the offense.

Although the United States Supreme Court declined the *Delling v. Idaho* case, there were three justices that believed that certiorari should have been granted. Justice Breyer suggested that the Supreme Court should review the case in order to consider whether Idaho's modification to the insanity defense complied with the Due Process Clause of the Fourteenth Amendment. Thus, since certiorari was denied, Idaho will likely continue to be one of the few states that tests out the intricacies that come with modifying the insanity defense for criminal matters.



Insanity in the State of Idaho, Marc W. Pearce and Lori J. Butts; *Abolition of the Insanity Plea in Idaho: A Case Study*, Gilber Geis and Robert F. Meier; *Idaho Moves to Bar Insanity as Legal Defense*, NY Times; *Delling v. Idaho*, 133 S. Ct. 504 (2012).

Photo: Pictured is the First State Legislature of Idaho.

SAMUEL D. HAYS: PAYETTE LAKE PROPERTY AND HIS GRANDFATHER

Samuel D. Hays, grandson of James Hays who served as Chief Justice for the Idaho Territorial Supreme Court, reflected on how his family came to acquire nearly 140 acres of land west of Payette Lake property as well as an unusual meeting that his grandfather had set in motion.

In the early 1880's a man who went by the name "Jews harp Jack" (also known as "Jewsharp") went westward and traveled to Idaho City to pursue mining opportunities. In 1887, once those opportunities dwindled, Jewsharp went and squatted on some land on the west-side of the lake. The land had yet to be surveyed by the government and Jewsharp hoped to acquire ownership of the land if he squatted there long enough. The government grew increasingly interested in surveying the land once mining picked up in the Thunder Mountain area. When this happened Jewsharp filed a homestead entry on about 140 acres of land by the lake.

In the early 1890's Jewsharp got sick but Samuel Hays's father, Samuel Hubbard Hays, helped pay Jewsharp's hospital bills and Jewsharp recovered. From this relationship Jewsharp eventually willed the property over to Samuel Hubbard Hays and when Jewsharp died Hays inherited it. The land did not come easily though—apparently Jewsharp had sons and a divorced widow who took legal action to recover the property—an issue that went all the way up to the Supreme Court. The court ruled in favor of Hays and as such he received title to the 140 acres of land.

Back in about 1885 the Idaho government was strictly enforcing anti-polygamy laws, which made it illegal not only to engage in polygamy, but also made it equally illegal to interfere with law officers seeking to enforce the laws against polygamy. A Mormon man by the name of Parkinson started a mercantile business in the Blackfoot area. Unfortunately, he was harboring a polygamist in his basement and when authorities discovered this he was tried and convicted in Hays' grandfather's court (James Hays who became the Chief Justice of the Idaho Territorial Supreme Court). Parkinson was in prison for about ten to fifteen years and when he was released he reestablished himself in the Blackfoot community as a model citizen and had a successful business.

Years later he was elected to the Board of Regents at the University of Idaho where Samuel Hays' mother was also serving as a board member. Parkinson would tease her about the fact that she was sitting on the Board with a criminal that her father-in-law had sent to jail.

In the 1930's, when Samuel Hays was serving in the National Guard, he was at a camp in the Boise area. During a training week Hays had the duty of taking army officers around the area showing them the town. After taking them to the Natatorium, Hays stopped and pointed out the penitentiary that had been established back in the 1800's. The officer next to him spoke up and said "you don't have to tell me about it, I used to go over there when I was a little kid; my father was in the penitentiary and the family would come over and visit him." There was a moment of silence before Hays looked over to the officer and said: "You're Major Parkinson, aren't you?" and the other officer looked back at Hays and replied: "Yes, and you're Hays."

Oral History of Samuel D. Hays (1970)



Samuel H. Hays, Chief Justice for the Idaho Territorial Supreme Court

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To foster and promote public knowledge of, and interest in, Idaho's legal history;

To promote and encourage research of Idaho's legal history;

To collect and preserve records, relics, oral histories and other things of interest to Idaho's legal history, and to make the same accessible for public examination;

To encourage interest in Idaho's legal history through meetings, presentations, lectures and other public forums;

To procure or publish and distribute historical material for educational purposes, the proceeds of which, if any, are to be used exclusively for the express purposes of the Association.

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