



CALENDAR

Idaho Legal History Society

Full Membership Meeting

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Parsons Behle & Latimer

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SUMMER 2016

THE FIRE THAT FORGED THE U.S. FOREST SERVICE

In 1910 the U.S. Forest Service was only five years old but was on the verge of being dismantled. There was widespread debate as to how to handle forest fires—whether to let them burn because they were expensive to fight, or to spend the money and make efforts to extinguish them. That debate ended on August 20, 1910.

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GIFFORD PINCHOT TOOK THE OPPORTUNITY TO FOCUS PUBLIC ATTENTION AND EMOTIONS TOWARDS CONGRESS IN A KEEN POLITICAL MANEUVER.

On the night of August 20, ships 500 miles off the Pacific coast could not navigate because the smoke from the Great Fire in Idaho clouded the starry sky. People in New York could see an ember-glow in the distance coming from Idaho. This was a fire so large and threatening that President Taft called in the U.S. Army to help combat its indomitable presence. The combined efforts of the U.S. Forest Service and the U.S. Army—over 10,000 men combined—came to no avail and the fire raged on.

Entire towns disappeared in the flames, never to recover or reappear again: Falcon, Idaho; Taft, Idaho; Grand Forks, Idaho—gone. Eighty-six human lives were lost. The forest-creatures were also decimated. As one Ranger described: “If you could see a little black bear clinging high in a blazing tree and crying like a frightened child, you could perceive on a very small scale what happened to the forest and its creatures.”

By August 21, 1910, a cold snap blew through the region bringing rains that extinguished the fire. 300 million acres of land was left scorched black. While most were silent regarding the tragedy that befell those in the northwest region, one man did not hesitate to speak up: Gifford Pinchot. Gifford Pinchot had just resigned from his position as Chief of the U.S. Forest Service in 1907 but was still vigilant about ways to protect forests.

Pinchot took the opportunity to turn mourning into anger and focused public attention and emotions towards congress in a keen political maneuver. He told a reporter from Everybody’s Magazine: “[T]he finest white pine forests in the United States were laid waste and scores of lives lost. It is all loss, dead irretrievable loss, due to the pique, the bias, the bullheadedness of a knot of men who have skulked and planted their hulks in the way of appropriations for the protection and improvement of these national forests.”

This chastisement was effective and the nation seemed united on one front: we could not risk a tragedy of this proportion ever again. Thus, it is of little surprise that the U.S. Forest Service obtained significant strength the following year with the passage of the Weeks Act. The



Weeks Act was crafted by Congressman John Weeks, a Republican-businessman with no history in agriculture—an unlikely candidate to craft such a bill. However, it was because of his lack of interest that made him a strong candidate to craft such a controversial Bill. House Speaker Joe Cannon chose John Weeks to craft the Bill in such a way that he—Weeks—a businessman, was willing to support.

An important provision of the Weeks Act was the cooperation between federal and state governments with respect to fire control. This provision received widespread support after the Great Fire in Idaho and it effectively expanded the power of the U.S. Forest Service. While legislation can never reverse the tragedies that befell Idaho and the 300 million acres of forestland that were ravaged with flames, the Great Fire in Idaho lit the path that led to the strengthening of the nearly dismantled U.S. Forest Service.

Sources: Steve Cohen and Donald C. Miller, *The Big Burn: The Northwest’s Forest Fire of 1910*; Stephen J. Pyne, *Year of the Fires: The Story of the Great Fires of 1910*; Becky Kramer, “A Region’s Baptism of Fire.”

HAL-HAL-HO-TSOT, LAWYER

They called him Lawyer. Hallalhotsoot, of the Nez Perce Tribe, was a well-built man with the eye of an eagle and the nose of a hawk. His father, Twisted Hair was in charge of the horses during Lewis and Clark's expedition while they made their way down the waters of the Snake River and from early on Hallalhotsoot observed the first waves of the "American Tide."

While Chief Lawyer tends to be forgotten in the shadow of Chief Joseph, Lawyer's sense of diplomacy and political prowess throughout his 25 years of leadership is unmatched among the Nez Perce Chiefs. Most notable was his involvement in the negotiations with Governor Stevens after the Great War of 1855. Even though Lawyer was the Chief, other influential figures opposed the treaty that Chief Lawyer was trying to secure—among these opponents were Owhi, Kamiakin, Peu-peu-mox-mox, and Joseph. However, while the others had much influence, none matched the persuasiveness of Chief Lawyer and through his eloquence he convinced a majority of his people to support and secure the treaty that established a reservation for the Nez Perce people.

While the treaty of 1855 provided a lot of land for the Nez Perce, the discovery of gold tainted the hearts of settlers and there was a vast reduction in the size of the proposed reservation—a 95% reduction in size, to be more precise. While Chief Lawyer could have opposed the reduction, he chose not to—a decision that has been greatly scrutinized due to the controversial nature of it. Chief Lawyer was aware of the crushing demise of other tribes that resisted such treaties, and while his legacy has been criticized for accepting the reduction in land, he helped his people avoid fates such as the Walla Wallas, the Cayuses, and Palouses—all of which were nearly annihilated for resisting.

Lawyer had dedicated his life to securing the best future for his people through peaceful means because he was cognizant of the danger that could befall his people if war arose. He honored the treaties that he entered and made efforts to influence both native and non-native people, to much success. However, due to internal pressure within the Nez Perce tribe Chief Lawyer voluntarily stepped down after twenty-five years of leadership and Joseph became the new Chief.

While some question the choices Lawyer made as Chief in retrospect, others maintain that he had the foresight and eloquence to save his people from genocide while securing as much land for them as he possibly could. He was aware of the inevitable "American Tide" that was rolling in and



Chief Lawyer of the Nez Perce, who believed that the best prospect for the future of the Nez Perce was through friendship with non-native people, and who participated in the 1855 Walla Wall Council and signed the Treaty of Stevens.

understood that military genius alone would not be enough to save his people.

It was Lawyer's custom to fly his American flag in front of his home. His descendants said that on the day of his death—sensing that the end was imminent—he asked that the flag be slightly lowered. Throughout the day he would continue to ask that it be lowered a bit more. As the flag neared the ground he asked once more that it be lowered and upon touching the ground Lawyer died. Perhaps he did not win great victories in battle, or lead his people into war, but Chief Lawyer, "The Talker," had the sagacity to realize that the greatest victories are not won with bloodshed but rather with words.

Sources: Clifford M. Drury, *Chief Lawyer of the Nez Perce Indians*; J.F. Santee, *Lawyer of the Nez Percés*

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A MESSAGE FROM PRESIDENT ERNEST A. HOIDAL

The Idaho Legal History Society has had the great fortune of having **Walt Sinclair** as its Treasurer since 2011; and **Susie Headlee** as Secretary since its inception in 2005.

Recently both Walt and Susie have announced their upcoming departure in October of 2016. They have made a great team through the years working, along with Walt's assistant Nancy Hammond, working tirelessly in planning historical programs, increasing memberships, and overseeing our long-term sustainability. On behalf of the Board of Directors, we wish to thank Walt and Nancy Hammond, (Holland & Hart), and Susie (Parsons Behle & Latimer) for their leadership, years of volunteerism, and boundless energy. They have been engaged in every aspect of the Society and we are eternally grateful for their hard work. Although their departures will leave a void, it also opens up opportunities for others to step forward. Please contact me at eahoidal@hoidallaw.com if you are interested in serving this terrific organization in the role of Secretary or Treasurer. We hope you will join us for our next ILHS meeting on Tuesday, October 18, 2016, where we will personally express our appreciation and gratitude.



J. Walter Sinclair



Susie Headlee

ORAL HISTORY OF RICHARD WAYNE SWENEY

**Interviewed by Nancy Stricklin; Reported by Debra Kinney Clark,
Coeur d'Alene, Idaho, July 18, 2013**

I have a Bachelor of Science degree in physics from what was Drexel Institute of Technology in Philadelphia. It's now Drexel University. And I received that degree in 1968. Upon graduation, I was employed at the U.S. Naval Ship Research and Development Center in Annapolis, Maryland, as a physicist. I attended graduate school part time in a program in mathematics and physics at the University of Maryland, College Park, Maryland. I did that for two years. And then in 1970, as a result of several considerations, I decided to apply to law school and attended law school at the University of Maryland and received my juris doctorate degree in 1974. I attended law school ~ again, on a part-time basis. I continued to work as a physicist at the laboratory.

In my work at the laboratory, it was ~ my field was underwater acoustics. I worked on the Navy ballistic submarine program, analyzing noise transmission through submarine structures. That's the easiest way to detect a submarine because sound travels faster and with less attenuation in the water. So the Navy was very focused on developing quieter submarines during the Cold War era.

In conjunction with my work at the naval laboratory, I was ~ I came out to Bayview because the laboratory was the parent facility of the experimental operation, naval operation, up at Bayview. And so that's how I developed contacts into Idaho. So that was about 1971. I worked up at Bayview during the summer and liked the area. Very attractive.

Upon graduation from the University of Maryland Law School in '74, I ~ in preparation for that, I began to develop a line of communication with Scott Reed here. I was interested in doing environmental law when ~ for an area of legal specialization. And, of course, he was very prominent in that field in the early seventies. So I made contact with Scott, and he was encouraging about practicing in Coeur d'Alene. And upon graduation, my wife and I came to Coeur d'Alene and contacted Scott; and he was very instrumental in helping me get started in practice and referred some long-time ~ well, which became long-time clients to me. And so that was a very significant start, and he was very helpful as a mentor as well as someone who gave me a basis to build a practice on.

I always felt when I was working with Scott in that early time that he kind of ~ he kept more of the environmental-related cases and gave me matters that he was not as interested in.

So in representing the health district, I was able to get involved in some extent into the environmental field. But that was primarily in regard to enforcement of the environmental



Wayne Sweney

“...ONE OF THE EFFORTS OF THAT BOARD WAS TO ABOLISH PLANNING AND ZONING IN KOOTENAI COUNTY AT THAT TIME.”

health code at the time. That comprised most of my work through the health district ~enforcing code regulations against restaurants and septic tank failures and that type of thing.

Then the other area of environmental-related law I got into on my own was in the late seventies ~ '77, I think, or so. I was hired as the attorney for the county planning commission. I represented the commission through two years of turmoil because, in 1978, conservative Republicans took control of the county commission; and one of the efforts of that board was to abolish planning and zoning in Kootenai County at that time. So they started a procedure abolishing the planning commission. The idea was to replace the planning department, as I recall, with an engineer, who would control all those matters ~ or I think the commission and then a planner. The commission fought back, and I represented the commission in that regard. There was litigation. There was a district court case. We were successful in keeping the commission alive until the election in 1980. Then a more moderate Republican board was installed at the courthouse, and the effort to abolish planning and zoning terminated. But I went through that.

What I found out in representing the health district and the planning commission was that these matters dealing with environmental law are very much political, and that was ~ I found out that was not to my liking. So I moved entirely away from my ~ at least as an area of legal practice. I still maintain a lay interest in that area. But insofar as a legal practice, I was more comfortable dealing with the Uniform Commercial Code, banking regulations, and being in the courtroom.

So I moved away from administrative lawsuits and, since 1980, focused on representing banks and lenders. Again, my work that Scott directed into my practice with the finance companies and bankruptcy gave me the background to handle banking work

because every type of credit transaction comes through bankruptcy court. So as a trustee, one of my ~ one of the responsibilities was to review claims of creditors in bankruptcy. Then it was a great learning experience for reviewing loan documentation and whether or not it was done properly. There's kind of a benchmark in loan documentation that if your loan documents can stand up to the acid test of bankruptcy, you've got good, enforceable documents. So again, that experience was effective in preparing me to represent lenders through the rest of my career. So, as I said, since 1980, most of my practice has been concentrated around representing banks.

Question: If we were to talk to, say, ten other attorneys in the area that may have practiced either with you or in opposition to you, what would you hope they would say about you?

Well, I hope they would say that they could trust me, that I did things right, followed proper procedure, and that I was responsive to their inquiries or communications; that I treated them with professional courtesy, which I try to do and have done. In my career, I've only blown up at one attorney and yelled at one attorney over the phone. That was probably about 1980. It was a long time ago. But I still remember it, and I still regret that I lost my temper. So I think I've been pretty good about that. I never had another attorney accuse me of being unprofessional. So I think sometimes in a dog-eat-dog world, that's maybe as good as it gets.

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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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