



IDAHO
LEGAL
HISTORY
SOCIETY
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CALENDAR

Idaho Legal History Society Full Committee Meetings 2013

February 21, May 23,
August 22, November 21, 2013
3:00 pm - 5:00 pm
5th Floor Judges' Conference
Room
U.S. Federal Courthouse
Boise, Idaho

* * * *

Oral histories will be taken at
the Idaho State Bar
Annual Meeting
July 18 and 19, 2013
Coeur d'Alene, Idaho

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MONTANA LAWYER FIRST FEMALE BEFORE IDAHO SUPREME COURT

The year was 1904. Prominent Montana lawyer Ella Knowles Haskell (Montana's first female lawyer) was to be the first female attorney to appear before Idaho's Supreme Court. She arrived in May as counsel in the case of *Monida & Yellowstone Stage Company v. Sherman*. Her impending arrival sent the Supreme Court and its staff into a flurry of concern about the proper etiquette for such an important occasion.

Clerk of the Court Sol Hasbrouck was assigned the task of receiving Haskell in the proper fashion. Hasbrouck's assistant, Ola Johnesse, who was later the first female clerk of the Idaho Supreme Court, prevailed upon Hasbrouck to make this occasion a memorable one for Idaho. Hasbrouck was to escort Haskell from her hotel to the court and present her to the justices with an appropriate address.

Justice James F. Ailshie, a southerner who was known as a stickler for social propriety, supported Johnesse in making it a special occasion. Justice Isaac N. Sullivan suggested adding flowers to the courtroom in her honor and wearing a boutonniere. Justice Charles O. Stockslager, on the other hand, wanted to avoid embarrassing her with frills. He did however suggest that the members of the Court would "spruce up" for the occasion. He said:

The lady who is to honor us with a visit is an exceedingly clever woman and I shall enjoy hearing her argument. She will be heartily welcome, like all of her sex, in this court.

Despite this initial flurry of interest, the local newspaper did not report any further information on the occasion or on the outcome of the case, and the appearance of the first female lawyer before Idaho's Supreme Court ended without fanfare. Twenty-five years would pass before an Idaho woman lawyer, Adelyne Champers, would argue and win a case before the Supreme Court in 1929.

Ella Knowles Haskell
(Montana Historical Society)

Sources: *Idaho Statesman* May 25, 1904;
1895-1975 *The First 50 Women in Idaho Law*, Idaho State Bar, D.K. Kristensen, 2005.

IDAHO'S RAILROAD DEBATE

The advent of the railroads brought lucrative new opportunities for Idaho's lawyers in the 1880s and 1890s in corporate, injury, labor, right-of-way, water rights, and Indian tribal claims litigation.

Railways crossed the northern Idaho Panhandle in 1882 when the Northern Pacific connected the Great Lakes with Puget Sound. In southeastern Idaho, a Mormon cooperative built the Utah & Northern Railroad as far north as Idaho Territory in 1874. Jay Gould and the Union Pacific Railroad acquired the Utah & Northern and resumed construction in 1878, completing the north-south route across Idaho to Montana in 1880. The Oregon Short Line Railway entered Idaho from Wyoming in 1882, on an east-west route across southern Idaho that was completed in 1884. The settlement of Pocatello grew up at the point where the two rail lines crossed in the heart of the Fort Hall Indian Reservation on land purchased from the Shoshone and Bannock Tribes.

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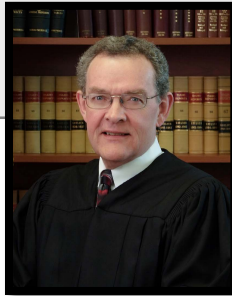
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A Message from the President Hon. Ron Wilper

Greetings to all of the loyal members of the Idaho Legal History Society. We are already well into 2013 and before you know it we will be busy with the oral history interviews in Coeur d' Alene. We are planning to report 24 oral histories this summer in conjunction with the annual Idaho State Bar Convention. Last year we were exceptionally ambitious in trying for 48 oral histories. It was a noble effort, but in the end it was too massive an undertaking. I believe we conducted 34 interviews over the three-day convention. Transporting the narrators from the convention hotel to the Ada County Courthouse took a good deal of planning and coordination. Next time we intend to conduct all of the interviews at the convention venue and that should make things much easier.

As I have said before, we are fortunate to be the only oral history project in the galaxy to have certified court reporters on our interview teams. Many of the oral history projects around the country struggle with transcription and cataloguing issues. There is admittedly still a great deal of work behind the scenes with the ILHS oral history project. In fact, we probably have more organizational issues than most, but that is only because the contemporaneous reporting adds another dimension to ours that is absent in all the others.

Thanks and congratulations to Chairman Ernie Hoidal and all of the court reporters and interviewers that keep us moving forward so thoroughly and relentlessly. I know that even as I write this Dianne Cromwell has taken a three-week "vacation" from her court reporting work to transcribe, edit, catalogue, organize, and otherwise tie up loose ends for interviews conducted last summer. That's dedication.

Please welcome Walt Sinclair to the office of Treasurer of the Society. Many of you know Walt through his work with our organization. For those of you who don't know him, Walt is a partner at Stoel Rives in Boise and is widely regarded as one of the finest litigators in the State of Idaho. Walt accepted the appointment after our long time Secretary/Treasurer Susie Headlee decided it was prudent to relinquish treasurer duties to a non-federal employee. Walt is hoping to increase our membership and perhaps help devise new categories of membership.

Speaking of membership, I believe dues for calendar year 2013 are already rolling in. Last year our former President Scott Reed brought a large number of new members to our ranks with his generous financial contributions, as did our Vice-President Ernie Hoidal. This is a wonderful organization. Not only is the work we do fun and interesting, but we are building a rich archive of first-person interviews that will be appreciated by lawyers, judges, and academics for generations to come. I hope you will remember to invite other people interested in Idaho legal history to join us.



*ILHS Treasurer
J. Walter Sinclair*



*Idaho Supreme Court Building at Lewiston circa 1910
(Nez Perce County Historical Society)*

ILHS MISSION STATEMENT

1. To foster and promote public knowledge of, and interest in, Idaho's legal history;
2. To promote and encourage research of Idaho's legal history;
3. 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;
4. To encourage interest in Idaho's legal history through meetings, presentations, lectures and other public forums; and
5. 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.

HASBROUCK AT CENTER OF IDAHO LAW & POLITICS

One of early Idaho's most popular legislators and lawyers, Solomon (Sol) Hasbrouck, was born in 1833 in New York. Like many young men of his generation, he followed the gold to San Francisco in 1854 and mined at Nevada City until 1860. Hasbrouck arrived at Granite Creek, Idaho, by pack train in 1861, mined there for a while, and then headed for the Owyhee County mines. While in Owyhee County he served as a County Commissioner and was elected to the Idaho Territorial Legislature as a Republican in 1864.

Hasbrouck was intimately engaged in early Idaho politics and accompanied Governor Caleb Lyon on the famed duck hunting trip that enabled him to escape arrest in the hotly-contested move of Idaho's capital from Lewiston to Boise in 1865. Hasbrouck later served as the first federal tax collector in the Territory.

Justice John Cummings appointed Hasbrouck Clerk of the Idaho Supreme Court in 1866. While serving as Clerk, he took up the study of law and was admitted to the Idaho Territorial Bar in 1871.

Hasbrouck later added merchandising to his many skills and served briefly as Mayor of Boise City until he moved outside the Boise City limits in 1885. Hasbrouck represented Washington County as a Republican at Idaho's Constitutional Convention and was appointed Clerk of the new Idaho State Supreme Court in 1890. He died of heart disease in 1906 while still in office.

*Sources: Illustrated History of the State of Idaho, Lewis Publishing Co., 1899;
Idaho Falls Register, September 14, 1906.*

'Duck Hunting' on the Clearwater with Governor Lyon

Territorial Governor William H. Wallace set up Idaho's first capital at Lewiston, where the first legislature met in December of 1863. When the Second Legislature met the next year, legislators from southern Idaho, which now had a larger population base, voted to establish Boise City as the capital instead of Lewiston. The vote set in motion a series of events that created enmity between north and south for decades to come.

Thomas M. Pomeroy, District Attorney in the First Judicial District, immediately challenged the vote to move the capital. He obtained a writ to stop the move to Boise, charging that members of the second legislature had violated the terms of their election by meeting before January 1, 1865. Probate Judge John C. Berry then issued a writ for the arrest of Governor Caleb Lyon and the territorial secretary.

Presumably to avoid arrest, Governor Lyon and then Owyhee County legislator Sol Hasbrouck left on a purported duck-hunting trip to the ranch of John Silcot on the Clearwater River. Hasbrouck and Lyon took to the river in a flimsy canoe that was soon out of control and began to drift in the current. The canoe was carried down the Snake River to White's Ferry, where the men managed to make it ashore on the Washington side of the river. At that point, Hasbrouck headed back to Lewiston, while Lyon took a carriage to Walla Walla, Washington, where he caught the stage to Boise City. Lyon did not return to northern Idaho. He left the Territory in 1866, taking with him more than \$46,000 from the Idaho Indian Fund.

Although, Hasbrouck was an advocate of moving the capital to Boise City, he was well-regarded in northern Idaho and was permitted to retire to his room without arrest when he returned to Lewiston after the ill-fated hunting trip. One participant in the events of the day noted that, in spite of his youth and inexperience, Hasbrouck was, "...one of the staidest and most exemplary members of the second session."

Meanwhile, Idaho's Acting Secretary, Silas D. Cochran, had remained at Lewiston where he was arrested in Lyon's stead and held under heavy guard in Nez Perce County. As one of the locals put it, "We kept close guard over Cochran day and night, leaving no opening for another duck-hunting disaster."

*Sources: History of Idaho Volume I, H.T. French, 1914;
Illustrated History of North Idaho, Western Historical Publishing Co., 1903.*

The Wit of Sol Hasbrouck



Sol Hasbrouck
(Idaho State Historical Society)

Courtroom Oratory Induced Sleep

Supreme Court Justice Isaac N. Sullivan told the story of an incident that occurred while Sol Hasbrouck was Clerk of the Idaho Supreme Court. Once during an important case that included a very long argument, Hasbrouck grew weary. He left his desk to lie down on a couch in front of the justices' desk.

When the attorney (said to be one of the most eloquent at the Bar) was at the height of his oratory, the courtroom was startled by a loud snore from the couch. The attorney paused and gravely remarked, "I hope that my argument has not had the same effect on the Court that it had had on your Clerk," and continued with his argument.

Hasbrouck eventually 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.

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

Vat of Rancid Butter in Contempt of Court

In late December of 1904, the workaday world of the capitol building was disturbed by a strange smell. Dairy inspector, Alex McPherson, who worked on the second floor of the capitol, was analyzing some butter sent to Governor John T. Morrison by mail from Silver City. The odor of the butter was such that workers in the mailroom immediately sent for a sewer inspector and the State Superintendent of Public Instruction fled from her nearby office downstairs to the Attorney General's Office.

At that time, the Idaho Supreme Court was seated in the capitol building. Justice Charles O.

Stockslager had his famous pointer dog, Mark, with him at work. Clerk of the Court Sol Hasbrouck observed that Mark came running upstairs as far as the second floor "sniffed once or twice, and dashed back down the stairway." Stockslager, puzzled, asked Hasbrouck what was going on and whether he had received a package of Limburger cheese for Christmas. Hasbrouck suggested that Mark had smelled the scent of rancid butter emanating from the second floor and beat a hasty retreat.

Eventually, McPherson, too, escaped from the second floor and put his head out a nearby window for a breath of fresh air. Hasbrouck asked about the kind of butter he was analyzing and McPherson replied,

Call it down and see for yourself. It will come if you whistle. How they got it here. . . without killing the mail clerk. . . is something I cannot understand.

In testing the alleged butter, McPherson found it contained vitrified brick and wagon grease among other non-dairy substances. Accompanying the butter was a note saying that it was being sold on the open market in Silver City.

Hasbrouck declared the butter to be in contempt of court and opened all the courtroom windows to let in the December air.



Idaho State Capitol circa 1908 (Idaho Capitol Commission)

Source: Idaho Statesman, December 22, 1904.

'Radical' Railroad Regulation Debated by Lawyers

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Establishment of the railroads led to a population boom in southern Idaho during the early years of statehood. The agriculture and mining industries were now connected to regional markets, expanding business potential.

The powerful presence of the railroads in Idaho was a focal point of debate among the lawyers at Idaho's Constitutional Convention in 1889. The Convention's Committee on Public and Private Corporations, headed by Shoshone County Democrat Alexander Mayhew, focused on aggressive regulation of railroads.

Mayhew, himself, had a reputation for hostility toward railroads, possibly for having been put off a train in Montana and having to walk 10 miles to his destination. Although he claimed to be less than familiar with railroads specifically, he was outspoken in his opposition to large corporations in general. As he said during Convention debate:

I am jealous of their rights, and I think it is prudent and necessary in our legislative bodies to throw such a safeguard around the people that they may not be imposed upon in any manner or form by corporations.

Other members of the legal community opposed the railroads as well, vowing to guard against railroad companies

encroaching on the rights of the people.

On the other side of the issue, Republican attorneys William H. Clagett, James H. Beatty, and others argued for the importance of railroads in the future commerce of the young state-to-be. Beatty argued that anti-railroad propositions would only "protect the people against what we haven't got" and discourage the building of railroads in the state.

Idaho's railroad debate was followed in newspapers as far away as New York. The *New York Times* (July 14, 1889) reported that Idaho's Committee on Public and Private Corporations had produced "a piece of literature directed against railroads and all other corporate bodies. It is radical

enough for an Anarchist."

The Convention also briefly debated whether the \$50 to \$75 railway passes provided to Idaho legislators constituted bribes that would compel them to advocate in favor of the railroad. In the end, most delegates were doubtful that the legislators could be bought for the price of a railway pass.

Sources: Idaho's Constitution, the tie that binds, D.C. Colson, 1991; Proceedings and Debates of the Constitutional Convention of Idaho 1889 Volume II, I.W. Hart, 1912.



Pocatello-area locomotive (Idaho State Historical Society)

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