



IDAHO
LEGAL
HISTORY
SOCIETY
EST. 2005

October 8 - 10, 2009

ILHS Booth
Tri-State Conference
Idaho Chapter
Federal Bar Association
Sun Valley, Idaho

October 30, 2009

ILHS Booth
District Court Conference
Moscow, Idaho

November 13, 2009

ILHS Booth
District Court Conference
Boise, Idaho

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AVOIDING THE 'RAPIDS OF RUM'
... IDAHO'S DRY YEARS

The anti-saloon, 'dry' movement was well established in Idaho years before national prohibition. It was an Idaho case that helped solidify the U.S. Supreme Court's basis for national prohibition. As early as 1909, Idaho Governor James H. Brady worked to mobilize local communities in the anti-saloon movement with his support of a local option law.

Idaho Governor Moses Alexander



We shall advance step by step until we not only drive every saloon from our State but until we close the doors of every saloon in the Nation.
Gov. James H. Brady, 1909



Down the Rapids of Rum

then campaigned on a platform of alcohol prohibition and pushed through a constitutional amendment imposing state prohibition in 1916.

However, Idaho prohibition law was quickly challenged in the case of Ed Crane who was arrested for having a bottle of alcohol on his person.

The Idaho Supreme Court ruled against Crane, finding that there was "no abridgment of the privilege or immunities of the

citizen..." in his arrest.

The case was subsequently appealed to the U.S. Supreme Court as a 14th Amendment issue, and argued by T. A. Walters of Boise and Frank L. Moore of Moscow.

In its 1917 decision on the Crane case, the U.S. Supreme Court consolidated its foundation for national prohibition by affirming the decision of Idaho's court. Justice McReynolds read the decision, commenting that Crane "for some reason wanted to live in Idaho."

It must now be regarded as settled that...a State has power absolutely to prohibit the...sales or transportation of intoxicating liquors within its borders without violating the guarantees of the Fourteenth Amendment. We further think it clearly follows that...the right to hold intoxicating liquors for personal use is not one of the fundamental privileges of a citizen of the United States.

(Continued on page 4)

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This newsletter published quarterly by:

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A Message from the President

Deb Kristensen

After a successful inaugural issue featuring some of Idaho's earliest courthouses, (which can be viewed on the ILHS website at www.id.uscourts.gov/ilhs), the Idaho Legal History Society is proud to present the second edition of its quarterly newsletter.

Since our last issue, ILHS members have continued to gather, preserve and share some of Idaho's rich legal history.

Dave Metcalf recently gave a presentation to the first-year law students at the University of Idaho on "Zealous & Ethical Advocacy" using as an example James Hawley's representation of "Diamondfield Jack" Davis, a man who had been accused of murdering a sheepherder by prosecutor William Borah.

The trial pitted sheepmen against cattlemen, and Mormons against non-Mormons. Borah prevailed, but Hawley's zealous defense twice saved Diamondfield Jack from the gallows until the real killers were found.

The Oral History Project, headed by Ernie Hoidal, continues its efforts to interview lawyers and judges throughout the State. Judge Ron Wilper and Rita Ryan have interviewed numerous people in the past few months to add to the ILHS' ever-expanding library of oral histories, and more interviews are scheduled.

To that end, Scott Reed, Vice-President of the ILHS, gave a presentation on the oral history project in Coeur d'Alene in May and was successful in recruiting a number of north Idaho interviewers for this project.

If you attended the Idaho State Bar's annual meeting in Boise this summer, you likely saw the new display booth for the ILHS. This beautiful display contains historical photos and pictures gathered by ILHS members to highlight various people and events that have shaped the law in Idaho. The display includes a digital frame that allows ILHS members to load images specific to the event at which the booth is displayed.

The booth is on display at the Ada County Courthouse, but will travel soon to Twin Falls for the Idaho Judicial Conference, the Tri States Conference of the Idaho Chapter of the Federal Bar Association in Sun Valley on October 9-10, 2009, and then on to the James A. McClure Federal Building in Boise. Please stop by and take a look at this lovely and informative display.

As always, please visit the ILHS website to keep up-to-date with ILHS activities and information about volunteer opportunities.



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.

DEFENDING 'FERD' PATTERSON: THE MURDER OF SHERIFF PINKHAM

Among the 1862 mass migration of miners and others to Idaho aboard steamships from San Francisco to Lewiston, was a gambler named Ferdinand J. (Ferd) Patterson who traveled with a group of "sporting men and women" who spent their time gambling and carousing. Patterson was a large, boisterous man, over 6 feet tall and weighing more than 200 pounds, who was known for his fancy dress, heavy gold chain and quick temper.

When the steamship's captain asked the raucous group to retire late one evening, Ferd responded aggressively and the captain threatened to put him in irons. After the ship reached Portland, Patterson tracked him down shot him to death, and then surrendered to police. Patterson was found not guilty by a local jury and released.

Shortly thereafter, he was arrested for scalping his lover while trying to cut off her hair in a fit of rage. Once again he was released after trial and traveled to Idaho where he took up with a group of ruffians in Idaho City.

At that time Idaho Territory's three judicial districts had Union judges appointed by Abraham Lincoln, and one U.S. Marshal. The Marshal appointed deputies for each district, who tended not to be Union supporters, leading to a wide gulf in interests between the courts and law enforcement.

An exception to this was the first sheriff of Boise County, Sumner Pinkham, an outspoken Union supporter. Pinkham's actions brought him into conflict with secessionist Democrats in Idaho City and he was defeated for election to a second term. Among them, Pinkham came into conflict with Ferd Patterson who was an ardent secessionist. The reasons for the conflict depend upon who tells the story — both men were outspoken about their political allegiances.

According to Idaho Governor and Senator William McConnell, Patterson offered to get rid of Pinkham if others would testify that he had killed in self defense. Patterson encountered Pinkham at the Warm Springs resort on the road to Boise City in July of 1865 and killed him after a brief dispute. Ferd was once again arrested and jailed at Idaho City. Meanwhile, local vigilantes organized to exact the punishment they felt the courts would not provide.

The vigilantes intended to blow up the jail to get at

Patterson. When the sheriff learned of the plan, he mobilized local secessionists and the crowd dispersed without violence. Several skirmishes followed until Patterson went to trial.

During the six-day trial,

"Ganahl rode upon the field for the final charge in the chariot of war. Opening his case with a peroration of remarkable beauty, he turned with a burning sarcasm upon the receiving enemy..."



Sumner Pinkham
Idaho State Historical Society



Ferd Patterson
Idaho State Historical Society

his attorney, Frank Ganahl, a renowned orator, argued that

Pinkham was laying in wait for Patterson and that Patterson acted in self defense. Folks in the courtroom were moved to tears by Ganahl's closing oration in defense of Patterson. The jury deliberated for only 1 1/2 hours before acquitting once again.

Patterson quickly left Idaho City for Walla Walla, Washington where he met a violent end in early 1866 when he was shot by a local night watchman, Hugh Donahue, as he sat in a barbershop. Patterson staggered out with Donahue firing after him, eventually killing him on the floor of the saloon next door.

Ironically, Donahue claimed self defense at his trial. Seven jurors voted for acquittal, five for conviction, and Donahue was remanded to jail to await another trial. At some point he found his jail cell left mysteriously open and he disappeared into the night.

Early History of Idaho, W.J. McConnell
History of Washington, Idaho, and Montana, H.H. Bancroft
Idaho Statesman & Walla Walla Statesman 1866

GANAHL THE ORATOR

Attorney Frank Ganahl was renowned as a gifted orator whose eloquence and biting sarcasm benefitted many a client. He was a southerner who graduated from Harvard Law School and came to Idaho in 1860, practicing law in Idaho City, Silver City and Hailey, later moving to Spokane, Washington.

In the late 1800s, Ganahl participated in many high profile mining cases in the Coeur d'Alene area, including opposite U.S. Senator W.B. Heyburn. Once, accused of being fat by Heyburn (who was also a large man), Ganahl reportedly exclaimed,

I carry my fat under my belly band, where a gentleman should, and not under my hat band, where my friend does.

MOONSHINE ABOUNDS IN A DRY STATE

(Continued from page 1)

Subsequently, the 18th Amendment to the U.S. Constitution prohibited the manufacture, sale or transportation of intoxicating liquors, and Idaho ratified the *National Prohibition Act* (1920-1933).

It was widely presumed that prohibiting alcohol would reduce crime, achieve other social objectives and would be easy to enforce. However, many groups considered it their cultural right to consume alcohol, especially in the Italian, Basque and Jewish communities, and enforcement was all but impossible.

As soon as prohibition was in place, Idaho moonshiners moved quickly to supply the desired product, often bribing or otherwise involving law enforcement officers. Violations were ongoing and numerous throughout the state.

In a high profile 1923 case, Ada County Sheriff James D. Agnew Jr. and a deputy sheriff, the Boise police chief, Henry R. Griffith, a prominent local physician, and others were arrested and charged with conspiring to produce and distribute illegal alcoholic beverages. All were convicted except the sheriff.

In eastern Idaho, residents of Soda Springs and its environs played a lively role in flaunting alcohol restrictions.

Locals competed at "moonshine parties" to

see who could drink the most without getting sick. At that time moonshine could be purchased for \$5 to \$6 a pint jar from three stills north of town. The price of moonshine in Caribou County was said to be set at periodic meetings of the "Bootlegger's Union."

Other hotbeds of activity included nearby Star Valley, Wyoming on the Idaho border, where federal officers seized thousands of dollars in moonshine in one bust. One unlucky Bonneville County Idaho resident was arrested right after he purchased a large copper still, that made 40 gallons of liquor a night, from a Star Valley distiller.

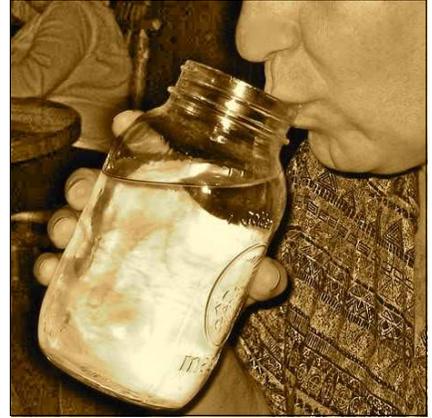
Mackay distillers also revved up with Idaho Prohibition in 1916 and "Mackay Moonshine" was known throughout the region.

A 1929 editorial in the *Soda Springs Chieftain* complained that Idaho had the "most drastic dry law in the Union, but it has not prevented drinking."

In northern Idaho mining towns such as Wardner, saloons proliferated and moonshine could be purchased anywhere. Local distillers sold their drink along with gambling, dancing and prostitution.

Finally, after years of struggles and repeated inability to enforce prohibition, the residents of Idaho called for the repeal of prohibition by a vote of 57% in September of 1933.

A few months later, the 21st Amendment to the U.S. Constitution repealing prohibition was ratified, ending Idaho's and the nation's long dry spell.



New York Times, Dec. 1917
Soda Springs Chieftain, 1920
Idaho Panhandle Oral History Project, 1979
National Prohibition and Repeal in Idaho, D.J. Hanson

Among the hot issues of the day in the western U.S. after the Civil War was paper money. Legal tender notes were printed by the U.S. government in 1862 to finance the war.

These greenbacks (printed with green ink on one side) were not backed by gold or silver and by the end of the war about \$450 million were in circulation as U.S. legal tender.

Greenbacks were intended to hold the same value as gold-backed notes, but met with mixed results.

In 1863, Idaho was flooded with greenbacks and many lenders denied credit to those who paid with paper. Idaho business interests pushed through a Specific Contract law that required debts to be repaid in gold coin. Idaho law denominated gold as "money" and notes as "currency," prohibiting debt repayment using currency for debts payable in gold coin.

Following the war, national and local merchants led an effort to retire greenbacks so businesses would not have to accept payment in cheap currency.

But later, when the wartime economic boom ended, farmers and others lobbied to keep greenbacks in circulation so it would be easier for them to pay off their debts. At the time, little or no gold coin actually circulated in Idaho, so greenbacks had more value here than in other states.

In 1865, the *Idaho Statesman* published a letter to the editor from New York suggesting that if Idaho repealed its *Specific Contract Act*, New York capitalists would bring their greenbacks to Idaho to invest in gold and silver mines.

The unnamed writer used grand rhetorical flourishes to paint a picture of the economic benefits these investors would bring to Idaho industry:

...and the steam whistle of a thousand mills [will] be heard screaming through your canyons, and along your creeks and mountainsides.



Gold to Greenbacks Idaho in the U.S. Currency Debate

After Nevada's Supreme Court made greenbacks the state's legal currency by repealing its own *Specific Contract Act* in 1865, Idaho began looking into repeal.

The Territorial Committee of the Idaho Legislature found that the Idaho law was in conflict with U.S. law, which declared greenbacks to be legal tender in payment of all debts, and called for repeal of the Idaho act.

In 1868, the Idaho Supreme Court struck down the Act. Justice John Cummins pronounced Idaho's Act to be in direct conflict with the U.S. *Legal Tender Act* and therefore void.



Idaho Statesman, 1865; *Journals of the Council and House of Representatives of the Territory of Idaho 1866-1867; Law in the West*, G.M. Bakken, 2001

Thomas Nast's 1876 cartoon "Milk Tickets for Babies in Place of Milk" explored whether an act of Congress could make something (like paper money) real simply by enacting it.

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