

THE FIRST 50 MEN IN IDAHO LAW

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In 2005, I authored a book entitled *1895-1975: The First 50 Women in Idaho Law*, summarizing the personal and professional histories of the first 50 women admitted to practice law in Idaho. Ever since, people have asked me to do something similar for the first 50 men to practice law in Idaho. This article – while not as detailed as my previous book – identifies the first 50 men admitted to practice law before Idaho's Territorial Supreme Court. In particular, it highlights the accomplishments of the first two lawyers admitted to practice in Idaho – Hartwell Lytton Preston, a Harvard graduate from Ohio, who was an outspoken anti-slavery activist and successful lawyer; and Edward J. Curtis, a Princeton-educated lawyer, who served Idaho in many capacities, including as its long-serving and much beloved Secretary of the Idaho Territory. The remaining “first 50” men – including Idaho's first (serving) U.S. Attorney, Boise's first mayor and delegates to Idaho's Constitutional Convention – are also identified and discussed.



Debora K. Kristensen

In the beginning: Creation of the Territory of Idaho

The Idaho Territory was organized by Act of Congress on March 3, 1863, out of portions of Washington, Utah, Nebraska, and the Dakota Territory. This Act vested the judicial power of the Territory in a Supreme Court, district courts, probate courts, and justices of the peace.¹ The Act also provided that the Supreme Court should consist of a Chief Justice and two Associate Justices, appointed by the President of the United States for a four year term. The Territory was divided into three judicial districts.² In addition to serving on the Supreme Court, each justice was required to “ride circuit” as a district court judge in one of the three judicial districts.

On March 10, 1863, seven days after the organization of the Territory, President Abraham Lincoln appointed Idaho's first members of the Territorial Supreme Court: Aleck C. Smith and Samuel C.

These men were not chosen so much for their legal ability, as their political party affiliation (Republican) and close personal ties to President Lincoln.

Parks were appointed as Associate Justices, and Sidney Edgerton was appointed Chief Justice. These men were not chosen so much for their legal ability, as their political party affiliation (Republican) and close personal ties to President Lincoln. None of them was from Idaho.

Members of the Territorial Supreme Court

Aleck Smith was born in Jacksonville, Illinois around 1838 and traveled to the Washington Territory in the 1850's where he served for a short time as a prosecuting attorney. There, he met his future wife, the daughter of the surveyor-general of the Washington Territory, Anson Henry, and one of President Lincoln's closest

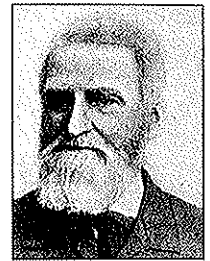


Justice Aleck Smith

friends. Henry was instrumental in the creation of the Idaho Territory and in getting his son-in-law appointed to the bench. Smith was only twenty-five at the time of his appointment and was assigned to cover the First District by Governor William Wallace. Inexperience and his reputation for hard-drinking led to Smith's removal from office in 1866.

Samuel Parks was a close personal friend of President Lincoln as the two had practiced law in the same Illinois courts years before. Parks's educational and legal credentials were stronger than those of Smith and Edgerton. He had a bachelor's degree from Indiana University, he studied law between 1838 and 1839, and had a master's degree from Illinois College. Parks administered the oath of office to the first Idaho Territorial Legislature on December 7, 1863. Governor Wallace assigned the Second District to Parks

who, in the absence of Justice Smith, held a special term of court in Lewiston in January 1864 for the high-profile trial of Lloyd Magruder's murderers. Shortly thereafter, Justice Parks convened the Territory's first term of a district court in Idaho City on February 23, 1864. After issuing a venire for thirty-six jurors and admitting a number of attorneys “having shown to the court that they had been admitted in other states and territories,” Justice Parks addressed those in his courtroom on that historic day:



Justice Samuel Parks

To some, and perhaps to a considerable extent, the property, the liberty and the lives of many men depend upon my action in this court. I do not think that a judge can always decide aright; I know that I cannot. All that I promise is that to the best of my ability I will discharge the duties incumbent upon me, and by so doing strive to secure the confidence of the bar and of the people. . . Amid the difficulty and embarrassments of an untried position, of an unfamiliar practice and heavy responsibility, I rely for success much upon your assistance and generosity. In some degree my reputation depends upon the result of this court; if it shall not succeed, I am sure the fault will not be yours. Hoping that it may not fail, and that the just expectation of the community may not be disappointed, I enter upon the discharge of the duties of the office assigned me.³

In April 1864, Parks returned east for a three-month leave of absence, later extended to four months because of faulty

stage service.⁴ Parks finally returned to Idaho in August 1864, but left for Illinois again in the fall when one of his children died. Parks resigned from the Territorial Supreme Court shortly thereafter. His successor, Justice Milton Kelly, was appointed on April 17, 1865.

Chief Justice Sidney Edgerton, Idaho's first Chief Justice, never performed an official act while on the Court. Edgerton was born in Cazenovia, New York in 1818. He attended country schools during his childhood and later the Genesee Wesleyan Seminary in Lima, New York. In 1844, he moved to Ohio and began working in the law office of



Sidney Edgerton

Congressman Rufus P. Spaulding, while teaching for an academy in Tallmadge, Ohio.⁵ He studied law and graduated from the Cincinnati Law School in 1845. In 1846, Edgerton was admitted to the Ohio bar and began practice in Akron, Ohio. In 1848, he married Mary Wright and was a delegate to the convention that formed the Free Soil Party. Edgerton was a successful lawyer, serving as prosecuting attorney of Summit County, Ohio from 1852 to 1856, whereupon he was nominated to be a probate judge (which he declined). Instead, Edgerton, who was an outspoken abolitionist, served as a delegate to the first Republican National Convention in 1856. Later, he served in Congress from 1858-1864 and as a colonel for the Union Army during the Civil War. At the time of his appointment to the Supreme Court in Idaho, Edgerton was a lame-duck congressman from Ohio.

Idaho's first territorial Governor, William H. Wallace, assigned Edgerton to the Third District, then composed of present-day Montana and eastern Wyoming. When Edgerton set out for Idaho, he was turned back by the snow in the Bitterroot Mountains (and the fact that his wife was pregnant). As explained by Bradley B. Williams in "Idaho's First Territorial Judges": "Stuck in what was to become Montana, Edgerton began working for the creation of that territory out of Idaho. Edgerton resigned before he heard a single case on the Idaho bench in order to accept his next appointment in 1864, governor of Montana Territory."⁶ His successor, Silas Woodson, was appointed on July 28, 1864, but also failed to qualify and enter on the duties of the Chief Justice. Thus, on February 14, 1865, Chief Justice John R. McBride⁷ was appointed to succeed him.

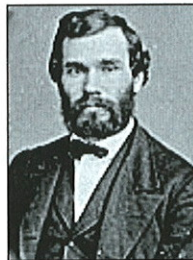
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admitted to practice law in Idaho.*

First session of Territorial Supreme Court

Convening a full Supreme Court proved as difficult as appointing each of its members. The first session of the Territorial Supreme Court was scheduled to convene at Lewiston (the territorial seat of government at the time) on August 1, 1864. However, because no justices were present, Court was adjourned from day to day by the Sheriff until August 8, 1864 when Justice Smith was present, and, even then, adjourned until December 4, 1864.

On December 4, 1864, the Supreme Court convened at Lewiston with Justice Smith in attendance. Once again, a quorum could not be reached so Court adjourned "until the next regular session unless sooner convened by law." No term of the Territorial Supreme Court was held during 1865. Although an attempt was made to hold a term in January 1866, only Justice Kelly was present and, therefore, he adjourned Court to May 14, 1866. On that day, Court was opened; however once again, only one justice was present and Court was adjourned from day to day until May 30, 1866. On May 30, 1866, Chief Justice McBride was present, but no court business was done.

On May 31, 1866, Chief Justice John R. McBride, Justice Milton Kelly and Justice Aleck Smith, sat together for the first time and convened Idaho's Territorial Supreme Court in Lewiston.⁸ The first order of business was to admit H. L. Preston as an attorney and counselor of the Court.⁹ Mr. Preston thereby became the first person admitted to practice law in Idaho.

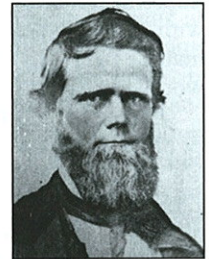


Chief Justice John R. McBride

H.L. Preston – First attorney admitted to practice in Idaho

Hartwell Lytton ("H.L.") Preston was born on June 20, 1821 in Campbell Coun-

ty, Virginia on a small farm his parents owned about 6 miles west of Lynchburg. Preston was the ninth child in a family of sixteen. His parents, Peter and Abi Hole Preston, were anti-slavery Quakers who moved to a farm near Hanoverton, Ohio in 1825. It is believed that Preston attended and graduated from Harvard.



Hartwell Preston

In 1845, Preston was a teacher in southern Ohio at Fort Soakum. There, he joined with other early anti-slavery activists and the Underground Railroad. Soon, it "became known that [Preston] was a prominent anti-slavery man, and he had the manhood to declare his sentiments in public."¹⁰ Preston regularly lectured on the subject of slavery and, on one particular night, aroused the anger of a mob who "all full of whiskey and with their best and only arguments, rotten eggs and scandalous and blasphemous language . . . took possession by force and besmeared the school room, books and many ladies dresses with rotten eggs, and gave Mr. Preston more than his share."¹¹ These types of incidents only seemed to harden Preston's resolve to speak out against slavery. Preston began traveling around the countryside to lecture against slavery. Indeed, according to the 1850 Census, Preston was engaged as a "Free Soil Lecturer" – he traveled around the country, advocating the political view that any new states admitted to the union not be allowed to hold slaves.

By 1854, Preston's travels had taken him to Crescent City, California where he began the practice of law and became a noted criminal lawyer. He continued his anti-slavery lectures and was very involved in politics. In 1853, Preston was appointed chairman of the Crescent City Democratic County Convention. In 1855, Preston's brother, Lindley Murray Pres-

ton, joined him in Crescent City to practice law. Preston continued to practice law and remained involved in local politics in California until 1863, when he and others in Crescent City organized a Union League to support the government in combating the southern rebellion. Although there is no record that Preston ever served in the military, he is often referred to as "Colonel Preston" after the Civil War.

In 1866 – three years after Idaho was admitted as a territory – Preston made his way to Idaho, presumably to continue his anti-slavery lecturing. On May 31, 1866, Preston was admitted to practice law in Idaho – becoming the first lawyer admitted to practice before the Idaho Territorial Supreme Court. Preston practiced law with J.B. Rosborough through approximately 1873. In 1870, Preston lived and worked in Silver City.

In April 1872, Preston – perhaps weary of traveling on the lecture circuit – and his brother purchased a vineyard near Cloverdale, California with the purpose of retiring there to grow grapes. After tying up his practice in Idaho, Preston moved to California in October 1872. The local paper reported the event:

H. L. Preston came down on Thursday from Idaho City where he had been to settle up the Vantine estate, and left Saturday morning for Silver City. He will travel thence to San Francisco where he will make his headquarters. He and his brother have purchased a vineyard in Sonoma County. Between the vineyard and the practice of his profession in San Francisco, we take it the Colonel will engage his time pleasantly. We are sorry to spare him from Idaho, but he has our best wishes wherever he may be.¹²

Preston practiced law in San Francisco from 1874 to 1876. During this time, he met Emily Lathrop Appleton Burke. Emily was well known and had a busy (unlicensed) practice as a spiritual leader and healer who prescribed her own home-brewed remedies and concoctions. They were married on May 30, 1875 and moved to the property near Cloverdale in 1877 or 1878 with plans to retire. But retirement proved difficult for Emily because her patients followed her seeking treatment. Concluding that it was God's will that she continue to work, the Prestons built a hospital and medicine house for Emily's practice and devoted followers were allowed to build houses on the Preston land. The Prestons held church services in their home and Preston gave spiritual lectures

Curtis urged legislators to devote their attention to correcting inconsistencies in existing laws rather than the enactment of new ones.

in the meeting house. Emily professed to be able to "read the words of God written on walls of light" and would present these messages to their assembled group. Preston fully endorsed his wife's calling and believed in the divine inspiration for her gifts. The Preston ranch grew and became known as the Preston community. Both H.L. and Emily were highly respected in Sonoma County.

Preston died at the age of 69 on December 12, 1889 in the town that came to bear his name, Preston, California.

Remaining "First 50" Men admitted to Idaho Supreme Court

During 1866, the Territorial Supreme Court admitted a total of twenty-nine attorneys to practice law in the territory. Some of them include:

2. Edward ("Ned") J. Curtis (admitted on May 31, 1866). Curtis was born in Worcester, Massachusetts in 1827. After graduating from Princeton University in 1848, Curtis went to Boston and studied law under the celebrated jurist Rufus Choate. While there, he received news of the discovery of gold in California and decided to head west, arriving in San Francisco in 1849. After a short time seeking gold, he resumed his legal studies with Judge Chipman in San Jose and Judge Murray in Sacramento. In 1851, he became the editor of the newspaper in Yreka and was twice elected to the Legislature from Siskiyou County. In April 1856, he was admitted to the California bar and began practice in Weaverville. Curtis also served as judge of the Court of Sessions in Trinity County for two years.

In 1856, Curtis married Susan L. Frost, a popular school teacher in Sacramento. They were the parents of five chil-

dren. Their eldest, Edward L. Curtis, later served as Secretary of the Territory and Acting Governor (like his father) and register of the land office, until his early death in 1890. Their remaining children were Anna, William R., John J., and Henry C. Curtis's oratory skills were unmatched, as exemplified by his being elected to the Oregon legislature after a brief stop in southern Oregon on his way to the Willamette Valley in 1856. Curtis heard that a democratic convention was being held there and dropped in to the hall where he met a friend who asked him to make a speech. Curtis complied and "so electrified the convention that although a non-resident, and really a republican in politics, he was nominated for the Legislature, stopped over and made the campaign, was elected and served the term."¹³

At the outbreak of the Civil War, Curtis was commissioned as a second lieutenant by Governor John L. Downey, in a company of the Second Brigade of California volunteers, but his command was never ordered to the front. When his property in Weaverville, California was destroyed by a flood, he moved to Virginia City, Nevada where he formed a law partnership with Thomas Fitch.

In 1864, Curtis traveled to Idaho with Richard T. Miller and Hill Beachy¹⁴ and set up a practice with Miller in the new and prosperous mining camp of Silver City. Curtis was admitted to practice before the Territorial Supreme Court of Idaho on the first day it convened, May 31, 1866. Thereafter, on July 1, 1868, Curtis's law partner – Miller – was appointed as one of the Associate Justices of the Idaho Territory.

On May 4, 1869, Curtis was appointed Secretary of the Territory by President Grant, whereupon he moved to Boise. Under Idaho's Organic Act, the Secretary of the Territory acted as Governor whenever a vacancy existed in the Governor's office or the Governor was absent. Given that the first few men appointed as Governor of the Idaho Territory failed to take



Edward J. Curtis

the office (e.g., Gilman Marston, Alexander H. Conner, and Thomas M. Bowen), Curtis had the distinction of holding the office of Governor longer than any of them (although never appointed to such office). One of Curtis's first acts as Secretary was to take steps to establish a working state library and, in a message to the Idaho Legislature on December 8, 1870, Curtis urged legislators to devote their attention to correcting inconsistencies in existing laws rather than the enactment of new ones.

In 1874, Curtis (as Secretary of the Territory) was directed by the legislature to compile the laws of Idaho, both general and special, from first to seventh sessions, inclusive. The legislature further instructed him to have 300 copies printed and distributed, provided Congress would make an appropriation to pay the expense of publication and distribution. Curtis compiled the laws as directed, but it appears that Congress failed to make the necessary appropriation for the printing. Curtis offered his manuscript to the eighth legislature for \$3,500. This offer was accepted and the legislature ordered territorial warrants to be issued in payment thereof. Before the end of the session, however, members of the legislature concluded that Curtis's compilation was not sufficiently complete and, therefore, passed an act creating a board of three members, to serve without pay, to make a thorough code revision. An appropriation of \$1,400 was made to cover the cost of printing the revised edition and the board was authorized to include all acts from the eighth session of the legislature, although not all of the acts of that session were included for some reason.

Curtis was appointed a delegate to the Republican National Convention in 1872 and served as Adjutant-General of the Territory at the time of the Indian War in 1877-1878, whereupon he secured several peace treaties with "hostile chiefs" in southern Idaho. Given his "excellent record," President Chester Arthur appointed him as Secretary of the Territory in February 1889 "entirely without solicitation on the part of Judge Curtis, and even without his previous knowledge."¹⁵ Curtis was reappointed by President Harrison in February 1889, holding the office until the state was admitted. From 1890-1893, Curtis served as Adjutant-General for the newly-formed State of Idaho.

Early lawyers in the Idaho Territory were known for their vast book collections, which were sometimes loaned out. Curtis was no exception, being the proud owner of a valuable law library that was,

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unfortunately, destroyed by fire in 1882. Undaunted, Curtis continued to advocate for libraries, traveling to Washington, D.C., to secure a \$5,000 appropriation to establish the Idaho Law Library. In addition, he donated a book collection in 1886 to start the territorial penitentiary's first library.¹⁶

After Idaho became a state, Curtis went back to the practice of law for a short time until his death on December 29, 1895. Governor Hawley referred to "Governor" Curtis as "one of the most distinguished members of the early Idaho bar."¹⁷ He is buried in Boise's Pioneer Cemetery.¹⁸

14. George Ainslie (admitted on June 6, 1866). Ainslie was born on October 30, 1938 in Boonville, Missouri. Shortly thereafter, his family moved to Scotland until 1844 when they returned to Missouri. Ainslie attended St. Louis University in 1856 and 1857 and graduated from the Jesuit College at St. Louis with a law degree and was admitted to the Missouri bar in 1860. Ainslie practiced law briefly in Boonville, Missouri but moved to Colorado in 1860. In 1862, Ainslie moved to Elk City, Idaho to mine. One year later, Ainslie moved to Idaho City.



George Ainslie

Ainslie married Sara Owens on March 27, 1866 in Boise, and was admitted to practice in the Territory of Idaho on June 6, 1866. Ainslie practiced with R. E. Foote in Idaho City, mined, and edited the *Idaho World* newspaper (1869-1873). He was elected to serve as a member of the Territorial Council (1865-1867) and as district attorney for the Second District from 1874 to 1876. In 1878 Ainslie was elected as the territorial representative to Congress, but was defeated for re-election in 1882. Given his political involvement and service as Chairman of the Democratic Party, Ainslie was elected to the Idaho

Constitutional Convention as a delegate from Boise County. According to Dennis Colson in *Idaho's Constitution: The Tie That Binds*, "Ainslie was an important spokesman for the Democratic caucus at the constitutional convention, even though he was more highly regarded for his writing than speaking. He was chosen to author the address encouraging the adoption sent by the convention with the constitution." Thereafter, Ainslie continued his active involvement with the Democratic Party and served on the national Democratic committee from 1896 to 1900.

Ainslie moved to Boise in 1890 where he worked to form the Boise Rapid Transit Company and the Artesian Hot and Cold Water Company. He was vice-president of the Artesian Water Company for 10 years and served as one of its directors until 1902. Ainslie and his wife had two children, Lucy and Adelm. Ainslie moved to California in 1908 and died in Oakland, California on May 9, 1913.¹⁹

22. Samuel A. Merritt (admitted on June 11, 1866). Merritt was a successful lawyer and politician prior to moving to Idaho and is perhaps best remembered as the last man to serve as Chief Justice of Utah's Territorial Supreme Court.

Merritt was born in Staunton, Virginia on August 15, 1827. He attended the Staunton Military Academy and graduated from Washington College (now Washington and Lee University) in Lexington, Virginia, in 1848. Merritt moved to Mariposa County, California in 1849 and served as county clerk and public administrator in 1850. He served as a member of the California State Assembly in 1851 and 1852, representing Mariposa and Tulare counties. Merritt studied law and was admitted to



Samuel Merritt

the California bar in 1852, when he began practicing. He continued his public service, being elected to the California State Senate in 1857-1862.

In 1862, Merritt moved to the Territory of Idaho and was admitted to the Idaho bar on June 11, 1866. As he did in California, Merritt continued to be involved in politics (as a Democrat). Merritt served as a delegate to the U.S. House of Representatives from the Territory of Idaho from March 4, 1871 through March 3, 1873. However, after losing his bid for re-nomination, Merritt moved to Salt Lake City, Utah and engaged in mining operations and the practice of law. There, Merritt continued to pursue his interest in politics, serving as city attorney from 1888-1890 and as a member of the Democratic National Committee in 1892.

Given his prominence in the bar and in democratic politics, U.S. President Grover Cleveland appointed Merritt to serve as Chief Justice of the Supreme Court of the Territory of Utah in January 1894. He held that position until Utah's statehood in 1896. Merritt died in September 1910 at the age of 83.²⁰

25. Henry E. Prickett (admitted on June 14, 1866). Prickett was born in England in 1839 and lived with his wife Martha and daughter Ida in Black River Falls, Wisconsin. In the 1860's, he served one term in the Wisconsin state legislature before moving his family west to Idaho City, then to Boise in 1865.



Henry Prickett

On June 14, 1866, Prickett was admitted to practice before the Territorial Supreme Court of Idaho. Prickett worked as a lawyer in Boise on tax matters and eventually opened a law firm with Joseph Miller – Miller & Prickett.

Prickett may be best remembered as the first mayor of Boise, but that distinction came about in an unusual way. On December 12, 1864, the Idaho legislature incorporated "Boise City" and required its residents to approve a city charter. In the election of March 21, 1865, the charter failed by twenty-four votes. On January 11, 1866, the charter again failed – fueled by anti-government sentiment of its residents. The legislature forced the issue by stipulating that a temporary mayor and council be named in the next charter. On May 7, 1866, the mayor-elect and newly-

In January 1868 – just two months after taking office – Prickett resigned as mayor of Boise, having successfully started the city's form of government.

elected city council refused to take the oath of office, having run against the charter previously. On January 21, 1867, the "anti-charter" party easily won, but city officials refused to organize. Eventually, the threat of losing land convinced the voters of Boise to approve a city charter (e.g., without a municipal government, it was difficult for Boise residents to secure title to city lots). Thus, the citizens of Boise "grudgingly" approved a commission form of city government in 1867 – although anti-charter leaders still refused to participate. Indeed, mayor-elect L. B. Lindsey refused to take the oath of office, leaving city leaders without a mayor.

By 1867, Prickett had become a distinguished member of the Boise community, being a practicing attorney with political experience. Accordingly, city leaders asked Prickett to step into the role of mayor of Boise when Lindsey refused to do so. Prickett accepted this appointment and was sworn into office in the chambers of Judge John Cummings, thus becoming the first mayor of Boise.

Prickett's first day in office was November 18, 1867, and his first official act as mayor of Boise was to establish a "Town Site Fund" for the purpose of running the city. The city council authorized Prickett to solicit up to \$600 in loans in order to pay for basic improvements. In January 1868 – just two months after taking office – Prickett resigned as mayor of Boise, having successfully started the city's form of government. Prickett returned to his law practice in Boise and later ran unsuccessfully for the territorial council of Ada County. Despite this election setback, Prickett was rewarded for his efforts with an appointment to the Territorial Supreme Court as Associate Justice on January 19, 1876.

On December 28, 1880, the Territorial Legislature passed an act, authorizing the publication of a volume which "shall contain all the decisions for the court from its organization to the present time." Previously, a small volume of de-

isions from 1867 had been published and called "Volume 1 of Idaho Reports." But, those decisions were out of print and hard to find. The Legislature authorized the publication of the Supreme Court's decisions "because the public interests and the spirit of public discussion and of freedom of inquiry require that everything that so closely concerns the community should be known and understood." 1 Idaho iii (1904). To distinguish the new reports from the previous publication, the new volume was designated "Volume 1, New Series." Justice Prickett was assigned the arduous task of pulling together all of the Supreme Court's decisions from 1866 through 1880 for publication. The result of his work, Volume 1, was published in 1904 with the following introductory remarks from Prickett himself:

The pressure of official duties has prevented the reporter from completing the work for the printer as early as he desired, and if he is entitled to any praise, it must be founded on the accuracy with which it has been performed; and we must remain content with the hope that, in this respect, the result of our labors will be found not entirely wanting.²¹

Prickett retired from the Court in 1884 and entered into private practice with Boisean John B. Lamb. Prickett was also a mason at Boise's Shoshone Lodge.

Prickett died in his sleep during a visit to Hailey on June 14, 1885. His body was sent back to Boise via rail to Kuna, where a delegation of officials (including Mayor James Pinney, John Lemp, John Lamb, and Adam Gasser) met him and took him to the Masonic Hall. Prickett was buried at the Pioneer Cemetery. His wife, Martha, died on August 13, 1890 and was buried at his side.²²

28. George C. Hough (admitted on August 6, 1866). Although President Lincoln appointed Richard Williams to serve as the first U.S. Attorney for the District

of Idaho on March 10, 1863, Williams declined soon thereafter and the U.S. Attorney's post sat vacant until February 29, 1864. On that day, President Lincoln appointed George C. Hough as U.S. Attorney for the Territory of Idaho. Hough was the only Idaho resident among the first batch of territorial officials appointed. He had been endorsed by Territorial Governor Wallace and by a number of prominent Idaho Republicans. Hough served as U.S. Attorney from 1864 to 1867, thereby having the distinction as the first person to serve as U.S. Attorney for the Territory of Idaho. Thereafter, Hough served as a Special Indian Agent in Idaho, dealing with the Nez Perce tribe. Hough is listed as "removed from Territory" as of 1881.²³

Of these 29 men, few remained in Idaho long. Indeed, by September 1881 (when the first Idaho Report was published): five had died; 19 had been "removed from the Territory"; one had been appointed to sit as an Associate Justice on the Supreme Court (Henry E. Prickett); and only four were still practicing law in Idaho (Edward J. Curtis, Albert Heed, George Ainslie and Frank Ganahl).²⁴

The Idaho Bar nearing statehood

The last term of the Territorial Supreme Court was held from January through March 1890 and adjourned on March 5, 1890. The justices comprising the Court at that time were Chief Justice James H. Beatty²⁵ and Associate Justices Willis Sweet and C. H. Berry. During its 27-year existence, the Territorial Supreme Court rendered 268 decisions – an average of about 10 cases per year (all of which appear in the 1st and 2nd Idaho Reports). In all, 141 attorneys were admitted to the Territorial Supreme Court before statehood on July 3, 1890.²⁶

Epilogue

Having spent a good deal of time researching the earliest practicing lawyers in Idaho, I have a great appreciation for the personal and professional challenges they faced along the way. While many interesting facts can be gleaned from these histories, perhaps one of the most interesting facts (and a reflection of the changing roles of men and women in society) is the amount of time it took for men and women to be admitted to practice.

Between May 31, 1866 and January 19, 1870, the newly formed Supreme Court for the Territory of Idaho admitted 50 men to the practice of law. In comparison, it took more than 100 years (e.g., until 1975) for 50 women to be admitted to the practice of law in Idaho. The first

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woman, Helen L. Young, a school teacher from Wallace, was admitted to practice before the Idaho Supreme Court on October 26, 1895. Ms. Young's admission is remarkable for many reasons, not the least of which is the fact that at the time of her admission, women did not have the right to vote in Idaho and an Idaho statute limited the admission of attorneys to "white males."

About the Author

Debora K. Kristensen, is a former Idaho State Bar President and a partner at Givens Pursley, LLP where she is a general business litigator in state and federal courts, with a particular emphasis in the areas of First Amendment litigation, copyright/trademark litigation, and public records and courtroom access.

Ms. Kristensen has a B.A. in psychology from the University of California at Berkeley 1987, and a J.D. from Santa Clara University School of Law 1990. She was the Editor-in-Chief of the Santa Clara Law Review. She was admitted to the California Bar in 1990; Washington 1991; Idaho 1996 and the U.S. District Court, District of Idaho in 1996.

Endnotes

¹ The Organic Act provided that probate judges would be elected in each county for 4-year terms, and justices of the peace would be elected in townships or cities for 2-year terms. The Territorial Supreme Court had appellate jurisdiction over all subordinate courts and each district court exercised appellate jurisdiction over the probate and justice courts in its district.

² After the Montana Territory was created in 1864, reducing Idaho to its present size, the First District was made up of all of North Idaho and court was to be held in Florence in Idaho County, Lewiston in Nez Perce County, and Pierce City in Shoshone County. The Second District was made up of Boise County which included all of the territory south of the Salmon River to the Oregon and Nevada border. The county seat was at Bannock (the present-day Idaho City). The Third District included all of southeastern Idaho. "The experience of a 600-mile ride on a horse or mule to hold court was not likely to encourage lengthy judicial careers for territorial justices." *Justice for the Times: A Centennial History of the Idaho State Courts* at 12 (Ed. Carl F. Bianchi, 1990).

³ James H. Hawley, Vol. 1 *History of Idaho* at 588-89 (1920).

⁴ After Justice Parks's departure in April 1864, George C. Hough, the Idaho U.S. Attorney and only Idaho resident among the territorial officials, wrote Governor Wallace a lament of Parks which typified local hostility toward non-resident appointees: "Great God can we not have judges from among ourselves or at least from Oregon, California or Washington who understand us & can stay with us. [Parks] gets \$2500 from Government, \$2500 from the Territory & a docket fee of \$10 – in each case 5 to \$7,000 more, & stays 8 weeks in fifteen or sixteen month[s]." "Absence of Idaho Territorial Officials -1864", Idaho State Historical Reference Series No. 376 at 2 (July 13, 1966).

⁵ Edgerton was a cousin of millionaire Anson Green Phelps, which may explain his connections with people in politics and power.

⁶ Edgerton was not well-received by the people of the Territory of Montana as they felt little loyalty to the United States. Nonetheless, Edgerton put together a quick census so that an election could be held. After a number of Democrats were elected, confrontations between Governor Edgerton and the Democrats frequently occurred, causing trouble for the Montana Legislature. In 1864, after numerous acts of lawlessness and with no help from the non-existent court system, Governor Edgerton and his nephew, Wilbur Sanders, began the Montana Vigilantes. This group met in secret and began trying and lynching suspected criminals. In 1865, Edgerton went east to get funds for his territory – he had previously given large sums of his own money to pay the expenses of the Territory. After his gubernatorial term expired in 1866, Edgerton returned to Akron, Ohio to practice law. He died on July 19, 1900.

⁷ Sixteen years later, on April 6, 1891, Chief Justice McBride – then a lawyer in private practice – earned the additional distinction of being the first attorney admitted before the newly-created U.S. District Court and Circuit Court for the District of Idaho (Hon. James H. Beatty, presiding).

⁸ During territorial days, from March 3, 1863 until July 3, 1890, eleven men were appointed as Chief Justice to the Territorial Supreme Court: (1) Sidney Edgerton; (2) Silas Woodson; (3) John R. McBride; (4) Thomas J. Bowers; (5) David Noggle; (6) Madison E. Hollister; (7) Williams G. Thompson; (8) John T. Morgan; (9) James B. Hayes; (10) H.W. Weir; and (11) James H. Beatty. During that same time, fifteen men were appointed Associate Justice: (1) Aleck C. Smith; (2) Samuel C. Parks; (3) Milton Kelly; (4) John Cummins; (5) Richard T. Miller; (6) John R. Lewis; (7) William C. Whitson; (8) Madison E. Hollister; (9) John Clark; (10) Henry E. Prickett; (11) Norman Buck; (12) Case Broderick; (13) C. H. Berry; (14) John Lee Logan; and (15) Willis Sweet. Most of these men were eastern and midwestern

lawyer-politicians who obtained their appointment as a result of service to the Republican Party. Indeed, only two justices were residents of the Territory when appointed – Henry E. Prickett and Willis Sweet. This can be explained in large part because the Republican administration in Washington, D.C., made the appointments, but Idaho was politically dominated by Democrats more sympathetic to the South during the Civil War.

⁹ The first case submitted to the Territorial Supreme Court was that of *Hill Beachy v. B.F. Lamkin*, 1 Idaho 50 (1866). Albert Heed represented the Territorial Treasurer in this matter, which was dismissed by the Court on consent of counsel.

¹⁰ C.E. Dickenson, *History of Belpre Washington County, Ohio* (1920).

¹¹ *Id.*

¹² *Idaho Tri-Weekly Statesman* (Oct. 3, 1872).

¹³ James H. Hawley, Vol. 1 *The History of Idaho* at 211 (1920).

¹⁴ Hill Beachy, the proprietor of the Luna House in Lewiston, is perhaps best known as the man who tracked down a group of outlaws who had murdered his friend and prominent Lewiston packer, Lloyd Magruder. Beachy followed the men to San Francisco and had them brought back to Lewiston where Justice Parks held the first district court proceedings in the Territory of Idaho for Magruder's murder. The men were found guilty and hanged.

¹⁵ *An Illustrated History of the State of Idaho* at 94 (Lewis Publishing Company 1899).

¹⁶ *Ned Curtis: Governor/Lawyer/Librarian*, Vol. II:3 Idaho Legal History Society Newsletter at 3 (July 2010).

¹⁷ James H. Hawley, Vol. 1 *The History of Idaho* at 596 (1920).

¹⁸ A number of the earliest men admitted to practice in Idaho did not stay in the territory long. For that reason, I have listed them in order of their date of admittance, but have not discussed them in any great detail herein. The third through fourteenth lawyers admitted in Idaho fall into this category: (3) William Law, Jr. (admitted on May 31, 1866) – listed as “removed from Territory” as of 1881; (4)

Albert Heed (admitted on May 31, 1866) – served as District Attorney for Ada County and in private practice; (5) John Landesman (admitted on May 31, 1866) – listed as “removed from Territory” as of 1881; (6) Theodore Burmester (admitted on June 1, 1866) – practiced with Scaniker & Burmester. Listed as “removed from Territory” as of 1881; (7) Joseph Miller (admitted on June 1, 1866) – practiced with Henry Prickett in Miller & Prickett in Boise. Listed as “removed from Territory” as of 1881; (8) Wyatt A. George (admitted on June 1, 1866) – practiced with Curtis & George. Listed as “removed from Territory” as of 1881; (9) James S. Reynolds (admitted on June 1, 1866) – listed as “removed from Territory” as of 1881; (10) I. N. Smith (admitted on June 1, 1866) – listed as deceased as of Sept. 1881; (11) Joseph Combs (admitted on June 2, 1866) – listed as “removed from Territory” as of 1881; (12) John C. Henly (admitted on June 4, 1866) – practiced with Gilbert & Henly. Listed as deceased as of 1881; and (13) J.B. Rosborough (admitted on June 5, 1866) – practiced with Rosborough & Preston. Listed as “removed from Territory” as of 1881.

¹⁹ The fifteenth through twenty-first lawyers admitted in Idaho are as follows: (15) N.T. Caton (admitted on June 7, 1866) – listed as “removed from Territory” as of 1881; (16) C.B. Waite (admitted on June 7, 1866) – practiced with Rosborough & Waite. He represented Appellant in first reported case in Idaho Reports, *J.B. Bloomingdale v. B.M. DuRell & Co.*, 1 Idaho 33-41 (1866) and served as District Attorney for Boise County. Waite is listed as “removed from Territory” as of 1881; (17) C. Sims (admitted on June 7, 1866) – listed as deceased as of Sept. 1881; (18) E. W. McGraw (admitted on June 8, 1866) – practiced with May & McGraw. He represented Respondent in first reported case in Idaho Reports, *J.B. Bloomingdale v. B.M. DuRell & Co.*, 1 Idaho 33-41 (1866) and served as District Attorney for Boise County. McGraw is listed as “removed from Territory” as of 1881; (19) D. W. Douthitt (admitted on June 8, 1866) – listed as “removed from Territory” as of 1881; (20) Charles H. Larabee (admitted on June 9, 1866) – listed as “removed from Terri-

tory” as of 1881; and (21) William H. Davenport, II (admitted on June 11, 1866) – listed as “removed from Territory” as of 1881.

²⁰ N.W.O. Margery (admitted on June 12, 1866) was the twenty-third attorney to be admitted in Idaho, although his admission is a bit of a question mark. His name has a strike mark through it on the original Roll of Attorneys without any further explanation and his name does not appear on the list of attorneys provided by the Supreme Court in 18 Idaho xxxiii-xli (1918). R. E. Foote (admitted on June 13, 1866) is the twenty-fourth man admitted Idaho. He is listed as deceased as of Sept. 1881.

²¹ 1 Idaho at iv.

²² Franklin Miller (admitted on June 14, 1866) was the twenty-sixth man admitted in Idaho. He is listed as “removed from Territory” as of 1881. Andrew Huggan (admitted on August 6, 1866) was the twenty-seventh man admitted in Idaho. He practiced as Huggan & Ganahl, but is listed as deceased as of Sept. 1881.

²³ Frank Ganahl was the twenty-ninth man admitted to practice in Idaho on August 7, 1866. He practiced in a firm called Huggan & Ganahl.

²⁴ The remaining “first 50” Idaho attorneys were: (29) Frank Ganahl; (30) George I. Gilbert; (31) V.S. Anderson; (32) S.P. Scaniker; (33) Edward Nugent; (34) Francis E. Ensign; (35) Henry Martin; (36) A. C. Isaacs; (37) Richard Z. Johnson (later, the first President of the Idaho State Bar); (38) John A. McQuaid; (39) J.C.N. Moreland; (40) Seth Weldy; (41) J.J. May; (42) Silas L. Howard; (43) Edward H. McDaniel; (44) Jeremiah Brumback; (45) E. T. Beatty; (46) P.E. Edmondson; (47) Jonas W. Brown; (48) J. W. Huston; (49) L.P. Higbee; and (50) R.H. Lindsay.

²⁵ Shortly thereafter, on March 7, 1891, Beatty was commissioned as a federal judge for the newly created District of Idaho and began holding court, although his appointment was not confirmed by the Senate until February 1892.

²⁶ At that time, lawyers could be admitted by the Supreme Court to practice as “attorneys and counselors” in all courts of the state, or they might be admitted by a district court to practice only in that court. See Revised Idaho Statutes §3990 and §3991 (1887). In 1909, the legislature removed the opportunity for attorneys to be admitted only before the district courts. See 1909 Idaho Session Laws at 109-110.

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