



Richard C. Tallman and Morgan D. Goodin***

TUMULT TO ORDER: The Federal Courts In North Idaho

The early years of the Idaho Territory featured power struggles between the different branches of government, uncertainty about the statutory code, and tensions between the burgeoning bar and the territorial bench. These conflicts were particularly acute in North Idaho, known to the locals as the Panhandle. But the early Idahoans persevered and laid a strong foundation on which the state has thrived, and, in a more literal sense, the grand federal courthouses of past and present represent the stability of government, the enduring authority of the judiciary, and the importance of the Rule of Law in settling the West.

Early Idaho Jurisprudence

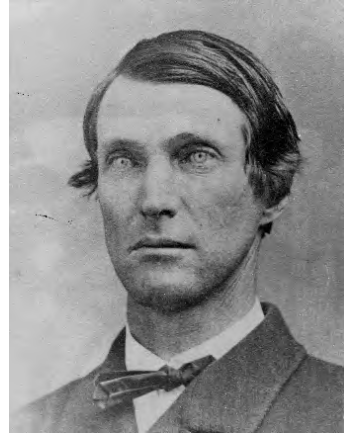
Soon after signing legislation making Idaho a territory in 1863, President Abraham Lincoln appointed the first three justices of the Idaho Territorial Supreme Court: Sidney Edgerton, Samuel Parks, and Alexander C. Smith.¹ The

*Judge Tallman is a United States Circuit Judge for the Ninth Circuit Court of Appeals with chambers in Coeur d'Alene, Idaho. He also served as a Judge on the Foreign Intelligence Surveillance Court of Review from January 2014 through January 2021. Judge Tallman thanks the judges of the District of Idaho for their gracious willingness to accommodate their new colleague in the U.S. Courthouse in North Idaho when he moved from Seattle in 2018.

**2020-2021 Term Law Clerk to Judge Tallman. The authors also thank law clerks Michelle Cornell-Davis and Riley Clifton; Emily Donnellan, the Boise Librarian for the United States Courts; and Stephen Shepperd of the Museum of North Idaho for their research assistance.

1. Hon. Merlin Young, "Territorial Days to Statehood: Pragmatic Beginnings," in *Justice for the Times: A Centennial History of the Idaho State Courts*, ed. Carl F. Bianchi (Boise: Idaho Law Foundation, 1990), 9; Bradley B. Williams, "Idaho's First Territorial Judges," Idaho Legal History Society, 2014, https://www.id.uscourts.gov/Content_Fetcher/index.cfml/Idahos_First_Territo

territory was divided into three judicial districts, and each justice sat as the trial court judge for a given district.² Sidney Edgerton, named the first chief justice, never presided over a term of court. As was typical of territorial appointments, he was an Eastern lawyer. He did not trek far enough west to even reach Idaho, stopping in the Montana Territory and becoming its first governor in May 1864.³ Justice Parks served only a brief stint before resigning his appointment in 1865. He swore in the Idaho Territorial Legislature in 1863 and convened the territory's first trial court in January 1864.⁴ Justice Smith, on the other hand, made his mark on early territorial legal history by playing a pivotal role in the heated dispute over the location of Idaho's capital.



Aleck C. Smith. P1963-51-30.
Courtesy of Idaho State Archives.

Where to Place the Capital

The congressional act organizing the territory empowered Governor William H. Wallace, the first territorial governor, to select a temporary location for the capital.⁵ Governor Wallace chose Lewiston—the nearest point to his home in Steilacoom, Washington.⁶ Lewiston's location at the confluence of the Snake and Clearwater Rivers had initially attracted miners, but the Clearwater's gold deposits had been largely depleted by 1863. Many miners moved to the Boise Basin to strike gold.⁷ The southern contingent in the legislature then set its gaze on moving the territorial capital south.

rial_Judges_1282.pdf?Content_ID=1282. Different sources refer to Judge Smith as Alexander, Aleck, and Alleck.

2. Organic Act of the Territory of Idaho, ch. 117, 12 Stat. 808 (1863).

3. James H. Hawley, *History of Idaho: The Gem of the Mountains* (Chicago: S. J. Clarke, 1920), 159, 587.

4. Williams, "Idaho's First Territorial Judges."

5. Organic Act of the Territory of Idaho, ch. 117, 12 Stat. 808 (1863); Eugene B. Chaffee, "The Political Clash Between North and South Idaho over the Capital," *Pacific Northwest Quarterly* 29, no. 3 (July 1938): 255.

6. Chaffee, "The Political Clash," 255; Merle W. Wells, "The Creation of the Territory of Idaho," *Pacific Northwest Quarterly* 40, no. 2 (Apr. 1949): 120.

7. Wells, "The Creation of the Territory of Idaho," 106; James Dawson, "How Did Idaho's Capital Move from Lewiston to Boise?," Boise State Public Radio, Jan. 2, 2018, <https://www.boisestatepublicradio.org/idaho-news/2018-01-02/how-did-idahos-capital-move-from-lewiston-to-boise>.

In December 1864, the Territorial Legislature moved the capital to Boise, and Governor Caleb Lyon approved the bill.⁸ After suffering defeat at the hands of the legislative and executive branches, the Lewiston contingent turned to the judiciary. A probate judge enjoined Governor Lyon from both leaving Lewiston and removing the territorial records.⁹ The injunction would be reviewed by the Supreme Court Justice designated to sit as the trial court judge for the district: Alexander C. Smith, a twenty-five-year-old whose father-in-law was close friends with President Lincoln.¹⁰

The outlook was good for Lewiston, as Justice Smith was a “rabid partisan of Lewiston.”¹¹ But the Lewiston contingent faced one hiccup. A successful prosecution of the “suit for the retention of the capital at Lewiston seemed to demand the arrest of the governor, but to arrest that dignitary meant, in the first place, to catch him.”¹² Getting wind of this plan, Governor Lyon engineered quite an escape. Under the pretext of a duck-hunting trip, armed with a shotgun, he embarked in a frail canoe, which “became unmanageable” in the current and carried him down the Snake River to White’s Ferry.¹³ From there, a carriage whisked him off to Walla Walla, Washington. That was the last time Governor Lyon was seen in Lewiston.¹⁴



Governor Caleb Lyon, portrait by Matthew Benjamin Brady. Courtesy of the Library of Congress.

Having made good his escape, Governor Lyon sent Major Sewall Truax, a retired U.S. Army officer, to Lewiston to remove the laws, seal, and archives to Boise.¹⁵ Because Governor Lyon sought sanctuary in Walla Walla, his absence from the Idaho Territory gave Acting Secretary Silas Cochran gubernatorial power.¹⁶ Cochran protected the public records in Lewiston.

8. Hawley, *History of Idaho*, 159; Chaffee, “The Political Clash,” 260.

9. Annie Laurie Bird, “A Footnote on the Capital Dispute in Idaho,” *Pacific Northwest Quarterly* 36, no. 4 (Oct. 1945): 344; Chaffee, “The Political Clash,” 260.

10. Williams, “Idaho’s First Territorial Judges.”

11. Chaffee, “The Political Clash,” 265.

12. Hawley, *History of Idaho*, 159.

13. *Ibid.*

14. *Ibid.*

15. Chaffee, “The Political Clash,” 262.

16. *Ibid.* The Act organizing the Idaho Territory established an executive branch consisting of a governor and a secretary. During the

Governor Lyon responded by sending Major Truax back with a document removing Cochran from his post.¹⁷ Cochran deemed the governor's order invalid because it was issued from outside the territory.¹⁸

The tug-of-war found its way to court, where Justice Alexander Smith denied Major Truax's application for a writ of mandamus to force Secretary Cochran to step down.¹⁹ Justice Smith ruled: "(1) that the governor had neither power to remove [n]or appoint a secretary, (2) that he had no authority over the seal or archives of the territory, [and] (3) that there was no office of custodian of laws either in the organic act that made Idaho a territory or in the laws passed by the sessions of the [territorial] legislature."²⁰

Meanwhile, President Lincoln appointed a new secretary, Clinton De Witt Smith, who arrived in Lewiston in March 1865.²¹ Despite the injunction to keep the seal and archives in Lewiston, Secretary Smith, accompanied by a ten-man armed escort from the U.S. Army, removed the seal and part of the archives in late March and arrived safely in Boise with these instruments of government on April 14, 1865.²² Because the Lewiston contingent still retained some of the archives, the capital dispute was far from settled.

Three days after Secretary Smith arrived in Boise, Justice Smith upheld the probate judge's injunction and declared, "The Capital of this Territory is at Lewiston."²³ Issuing a permanent injunction, Justice Smith found that all acts of the 1864 legislature were invalid because of procedural violations.²⁴ He ruled that when the legislature convened in late 1864, it began the legislative session on a day other than that fixed by law, thereby invalidating all enactments.²⁵ The federal government finally intervened and sent orders for the U.S. Marshal to remove the remainder of the territorial archives and

governor's vacancy or absence, the secretary took on the "powers and duties of the governor." Organic Act of the Territory of Idaho, ch. 117, 12 Stat. 808 (1863). The office of Lieutenant Governor was later established in 1890, when Idaho became a state. See Idaho Const. art. IV, § 12.

17. Chaffee, "The Political Clash," 262.

18. Ibid.

19. Bird, "A Footnote on the Capital Dispute," 344.

20. Chaffee, "The Political Clash," 262.

21. Merle W. Wells, "Clinton De Witt Smith," *Oregon Historical Quarterly* 52, no. 1 (Mar. 1951): 43.

22. Wells, "Clinton De Witt Smith," 45–46.

23. Chaffee, "The Political Clash," 265.

24. Ibid., iv.

25. Hawley, *History of Idaho*, 159, 587.

carry the records down to Boise.²⁶ The Marshal executed those orders in October 1865.²⁷

When the Territorial Supreme Court finally convened for its first session in 1866, it reversed Justice Smith and upheld the acts of the 1864 legislature in an oral decision.²⁸ Justice Smith stood by his earlier decision and dissented.²⁹ Due to miscommunication, the decision was never published. The local newspaper and the minute book of the Supreme Court retain the only records of this final chapter on the location of the capital.³⁰ The city of Boise has remained the capital of Idaho ever since.

Establishing the Code of Idaho

The Territory's statutory code experienced its own tumultuous start. Over the years, Congress had carved new territories out of previously existing territories as the country expanded westward.³¹ To bridge the gap in time before the citizens of a new territory could establish and elect representatives to a territorial legislature to enact local laws, Congress usually provided for the continuation of the earlier territory's laws. Idaho's boundaries encompassed land from various existing territories, including the Washington and Dakota Territories, each with its own laws, and Congress "neglected to make specific provision for which earlier territory's laws should [remain] in effect before the Idaho [T]erritorial [L]egislature could convene."³² Then the first Territorial Supreme Court ruled that no law was in force during those first few months of the Idaho Territory's existence.³³ As a result, an accused murderer was set free and several convicts were released.³⁴

26. Ibid., 160.

27. Ibid.

28. Bird, "A Footnote on the Capital Dispute," 344.

29. Ibid.

30. Ibid.

31. Monique C. Lillard, "The Federal Court in Idaho, 1889–1907: The Appointment and Tenure of James H. Beatty, Idaho's First Federal District Court Judge," *Western Legal History* 2, no. 1 (1989): 35.

32. Ibid., 38–39.

33. *People v. Williams*, 1 Idaho 85 (1866).

34. Dennis C. Colson, "Lawless Idaho: *The People v. John Williams*," *Advocate* (Idaho State Bar), 56, no. 9 (Sept. 2013): 50–51. Idaho did not have a prison until the Idaho Territorial Penitentiary opened in Boise in 1872. It originally housed up to forty inmates in a three-tiered cell house. The presidentially appointed U.S. Marshal served as its warden until statehood in 1890. Jerry Clapp, *The Warden's Son* (McCall: Hidden Shelf Publishing House, 2021), 5.

But the troubles didn't end even after the Idaho Territorial Legislature met and promptly adopted some statutory law based on the Code of California.³⁵ The first Territorial Legislature printed these codes. However, the second Territorial Legislature repealed them and enacted new codes in 1864. The Territorial Secretary, H .C. Gilson, responsible for printing the new codes absconded to Hong Kong with the entire treasury in early 1866, and the codes remained unpublished for some time, perpetuating the confusion.³⁶

Tumult in the Territorial Courts

To further aggravate the situation, the bar and the early territorial judges did not always see eye to eye on jurisprudential practices. The legal term known as a "demurrer" is the legal equivalent of the defendant saying, "So what?" in response to the filing of a civil suit. Today we know this as a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss for failure to state a cognizable claim. James H. Hawley, an early Idaho lawyer, tells of one of the first court sessions held in Idaho after long delays in getting the court established:

[The] learned judge...so the legend goes, without explanation, comment or reasons given, proceeded to decide the legal questions involved in the various cases by overruling the demurrer in the first case argued and sustaining it in the second;... and, with absolute impartiality, alternately so continued until all were disposed of. To the consternation of the members of the bar, the court provided no explanation for resolving the legal questions involved by each decision rendered. Attorney E. D. Holbrook, who afterwards represented the territory in Congress for two terms, and who was then one of the most prominent members of the bar, rose to address the court on behalf of all the lawyers present, respectfully asking the court for the reason behind its rulings upon the several demurrers so that the attorneys could have the benefit of the court's reasoning in preparing their amended pleadings and in the future conduct of their cases. The learned judge immediately responded, "Mr. Holbrook, if you think a man can be appointed from one of the eastern states, come out here and serve as a judge in Idaho on a salary of \$3,000 a year, payable in greenbacks worth forty cents on the dollar, and give reasons for everything he does, you are mightily [sic] mistaken."³⁷

35. Lillard, "The Federal Court in Idaho," 39; Young, "Territorial Days to Statehood," 7.

36. Wells, "Clinton De Witt Smith," 52-53.

37. James H. Hawley, "The Judiciary and the Bar," in Hiram T. French, *History of Idaho, A Narrative Account of Its Historical Progress, Its People and Its Principal*

The territorial bar often saw these presidential appointees, Easterners benefiting from the spoils system, as unqualified and unfamiliar with the challenges of life on the frontier.³⁸ So the bar took matters into its own hands. J. W. Hart, a Clerk of the Idaho Supreme Court, recounts that a young attorney did what every disgruntled lawyer yearned but lacked the courage to do: He “secretly wrote out Judge X’s resignation, signed his honor’s name, and forwarded it to [the nation’s capital]. The first notice Judge X had of the proceedings was when his successor appeared on the ground with the President’s commission in his pocket.”³⁹

But the internecine disputes between the branches of government were not the only source of turmoil contributing to the growing pains of the territory. Historical records of correspondence maintained by the Department of Justice document the territorial judiciary denouncing salaries as inadequate to cover the costs of riding circuit;⁴⁰ complaining of a lack of funds to pay jurors, witnesses, and other court costs;⁴¹ inquiring whether the judges’ meager federal salaries could be supplemented by territorial or other local sources;⁴² and disputing whether the territorial judges could be removed from office by presidentially appointed successors on change of political administration.⁴³ Indeed, justice was difficult and costly to administer in Idaho’s early days; as the Clerk of the Supreme Court of the Territory wrote to the Attorney General, at times cases were left in want of adjudication for extended periods, “[w]hich has been detrimental to the proper administration of law and equity in regard to the public interest—and that of individual

Interest (Chicago: Lewis Publishing Company, 1914), 1: 510–11.

38. Young, “Territorial Days to Statehood,” 9–10.

39. Clark Bell and J. W. Hart, “Judicial History of Idaho,” *Southern Bench and Bar Review* 1, no. 6 (1913): 405. The identity of Judge X has been lost to unrecorded history.

40. Clerk of the Supreme Court of Idaho Territory A. S. Downer to the Attorney General, Nov. 13, 1865, in *Letters to the Attorney General, 1809–1870: Western Law and Order*, ed. Frederick S. Calhoun (Bethesda: University Publications of America, 1996). (“There is no doubt that the pay of the Judges is too small for their services and the hearing expenses they are subject to in this Territory.” [Copy on file with authors.]).

41. U.S. District Attorney for Idaho Territory James Huston to the Attorney General, Apr. 18, 1870, in *Letters to the Attorney General, 1809–1870: Western Law and Order*, ed. Frederick S. Calhoun (Bethesda: University Publications of America, 1996). [Copy on file with authors.].

42. Chief Justice of Idaho Territory David Noggle to the Attorney General, July 18, 1869, in *Letters to the Attorney General, 1809–1870: Western Law and Order*, ed. Frederick S. Calhoun (Bethesda: University Publications of America, 1996). [Copy on file with authors.].

43. *Ibid.*

suitors, and is discreditable to the administration of the Federal Government, to whom only can the citizens of the Territory look for the administration of justice in the higher courts.”⁴⁴

Still, one cannot help admiring these early territorial judges. As the late James E. Babb of Lewiston observed: “When we reconstruct the conditions under which they discharged their duties, their small salaries, discomforts of life and travel, bareness of court-house accommodations, lack of library, the unorganized social and political condition...we cannot but feel the deepest sympathy for them in the...hardships they endured.”⁴⁵

Despite these early challenges, Idaho continued to grow and was admitted to the Union as a full-fledged state in 1890.⁴⁶

The Federal Presence in North Idaho

Western settlement of North Idaho in the Coeur d’Alene area began when Jesuit priests arrived in the region in the 1840s and founded the Mission of the Sacred Heart.⁴⁷ The mission church at Cataldo in Kootenai County remains to this day. The county seat at Coeur d’Alene got its start in the 1880s as Fort Sherman, a military post established for preserving the peace among farmers, miners, and the local Native American tribes. General William Tecumseh Sherman identified the advantages of the location on a tour of inspection in 1877, and the army post was fully garrisoned by 1879.⁴⁸ Originally named Fort Coeur d’Alene, the post was renamed after the General’s death in 1891.⁴⁹

Coeur d’Alene was very isolated until the construction of railroads to the area, spurred by the discovery of gold, silver, and other valuable metals in the region.⁵⁰ This led to rapid population growth and an expanding economy based largely on mining, the timber industry, and irrigated agriculture.⁵¹

44. Clerk of the Supreme Court of Idaho Territory A. S. Downer to the Attorney General, Nov. 13, 1865, *Letters to the Attorney General*.

45. Henry Z. Johnson, *A Pioneer Judiciary* (unpublished manuscript; excerpt on file with author).

46. Hawley, *History of Idaho*, 201.

47. *Ibid.*, 99; William S. Shiach, John M. Henderson, and Harry B. Averill, *An Illustrated History of North Idaho: Embracing Nez Perce, Idaho, Latah, Kootenai and Shoshone Counties, State of Idaho* (Western Historical, 1903), 756.

48. Shiach, Henderson, and Averill, *An Illustrated History of North Idaho*, 765.

49. *Ibid.*

50. Hawley, *History of Idaho*, 245.

51. These industries contributed to early growth but created over 75 million tons of toxic mine waste. Cleanup of that waste on the lake bed of Lake Coeur d’Alene continues to generate disputes even to this day between

Mining in particular boosted the economy, but the mine owners and their employees regularly disagreed, sometimes violently, over wages, bringing the federal court to Coeur d'Alene for the first time.

Trouble in the Mines

In the summer of 1892, trouble escalated between the miners' union and the mining companies to the point where armed miners took possession of one of the processing mills near Kellogg.⁵² Martial law was declared, and both the state militia and federal troops were deployed.⁵³ James H. Beatty, the first federal district judge for the District of Idaho, convened a special term of court in Coeur d'Alene in September 1892 to try the cases.⁵⁴ However, Moscow, eighty-five miles to the south in Idaho's Panhandle, was the designated court location in North Idaho,⁵⁵ and this change of venue angered attorneys and the local newspapers, who were used to court being held in Moscow.

During the special term of court in Coeur d'Alene, more than twenty of the leading unionized miners of the district were indicted. The ensuing trial lasted several weeks. Only four men were convicted, but the U.S. Supreme Court reversed based on insufficiency of the indictment,⁵⁶ thus ending the last federal court session north of Moscow for many years.⁵⁷

In 1899, conflict between the miners and the mine owners again erupted, culminating in almost one thousand miners commandeering a train and dynamiting the Bunker Hill and Sullivan Mine, the only nonunion mine

the EPA, the State of Idaho, and the Coeur d'Alene Tribe. Emily Benson, "A Dangerous Cocktail Threatens the Gem of North Idaho," *HighCountryNews*, June 24, 2019, <https://www.hcn.org/issues/51.11/pollution-a-dangerous-cocktail-threatens-the-gem-of-north-idaho>; Scott W. Reed, "Turn of the Century: A Time of Trial, Troubles, Travail and Triumphs," in *Justice for the Times: A Centennial History of the Idaho State Courts*, ed. Carl F. Bianchi (Boise: Idaho Law Foundation, 1990), 72.

52. Hawley, *History of Idaho*, 246.

53. *Ibid.*

54. *Ibid.*, 248–49; Claudia Druss, "Idaho's Federal Courts 1863–2010," Idaho Legal History Society, 2014, https://www.id.uscourts.gov/Content_Fetcher/index.cfm/Idaho_Federal_Courts_18632010_1978.pdf?Content_ID=1978; see Lillard, "The Federal Court in Idaho," 68–69.

55. "Organization, Jurisdiction, and Practice of United States Courts," in *Congress and the Courts: A Legislative History, 1787–1977*, comps. Bernard D. Reams, Jr., and Charles R. Haworth I (1901), 384.

56. Hawley, *History of Idaho*, 248–49; see *Pettibone v. United States*, 148 U.S. 197 (1893).

57. Druss, "Idaho's Federal Courts," 1–2.

in the Coeur d'Alene mining district, known locally as the Silver Valley.⁵⁸ Governor Frank Steunenberg responded by telegraphing President William McKinley and requesting federal troops be sent into the Silver Valley.⁵⁹ Governor Steunenberg subsequently declared martial law in the Coeur d'Alene district.⁶⁰ More than six hundred federal troops arrived and made more than a thousand arrests within a week.⁶¹ This aggravated the already-contentious relations between Coeur d'Alene mine owners and the Western Federation of Miners.

The grievances lingered. Six years later, on December 30, 1905, former Governor Steunenberg was blown up by a bomb wired to the gate of his Caldwell home—the “first successful use of dynamite in the assassination of an American.”⁶² After union miner Harry Orchard confessed to the murder and claimed that he was hired by the Western Federation of Miners to assassinate Steunenberg, Pinkerton detectives investigated which union officials hired Orchard to do the job. Western Federation of Miners Secretary Treasurer Bill Haywood and union officers George Pettibone and Charles Moyer were accused of conspiracy in the murder of the former Governor, but they were later acquitted after a lengthy trial in Boise.⁶³ Idaho’s “Trial of the Century” was prosecuted by U.S. Senator Bill Borah, James Hawley—“dean of the sagebrush lawyers and future Governor of Idaho”—and others.⁶⁴ The defense, including the famous Chicago attorney Clarence Darrow, prevailed in the case presided over by Judge Fremont Wood.⁶⁵

58. Hawley, *History of Idaho*, 252; John F. Greenfield, “Idaho Comes of Age in High-Profile 1907 Murder Trial,” *Advocate* (Idaho State Bar) 49, no. 11 (Dec. 2006): 23.

59. Hawley, *History of Idaho*, 252.

60. *Ibid.*

61. *Ibid.*, 253.

62. J. Anthony Lukas, *Big Trouble* (New York: Simon & Schuster, 1997), 64.

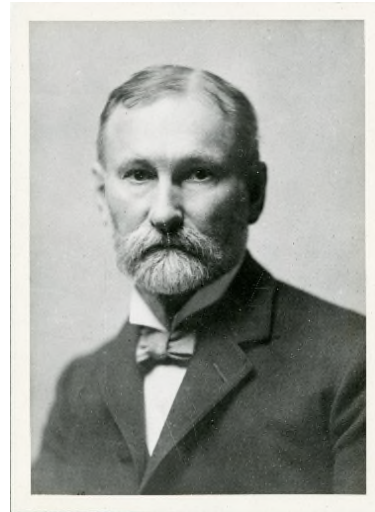
63. In 1900, Bill Haywood served as president of the Silver City Miners’ Union. Greenfield, “Idaho Comes of Age,” 20. He eventually took the number two spot, Secretary-Treasurer, of the Western Federation of Miners. In 1905, he helped found the Industrial Workers of the World, also known as the Wobblies. Although he was acquitted in the Steunenberg trial, he was later convicted of sedition in a Chicago trial. He jumped bail and defected to the Soviet Union. Jeffery R. Boyle, “Crime of the Century,” *Advocate* (Idaho State Bar) 49, no. 11 (Dec. 2006): 28, n. 4.

64. David H. Grover, *Debaters and Dynamiters: The Story of the Haywood Trial* (Corvallis: Oregon State University Press, 1964), 93, 169.

65. *Ibid.*, 207, 255, 283.

The Coeur d'Alene Courthouse

Except for the special session held in Coeur d'Alene in 1892, Judge James H. Beatty spent the early years of Idaho's statehood holding court sessions at Boise City, Pocatello, and Moscow, as well as handling judicial duties in California.⁶⁶ The first federal courthouse in the state was built in 1905 in Boise and did double duty as the city's U.S. post office.⁶⁷ Moscow's first federal building, also serving as the courthouse and U.S. Post Office, was completed in 1911.⁶⁸ James Knox Taylor, a prominent architect, oversaw the three-year project.⁶⁹



Judge James H. Beatty. P482.
Courtesy of Idaho State Archives.

Despite Judge Beatty's unwelcomed start in Coeur d'Alene, sentiment changed as the area rapidly expanded. By 1910, the members of the bar for the Northern Division of Idaho petitioned Congress to pass legislation for holding court in Coeur d'Alene, as "90 per cent of the litigation in the [N]orthern [D]ivision" originated from Shoshone, Kootenai,

66. Judge Beatty previously served as a Chief Justice of the Idaho Territorial Supreme Court following his appointment by President Benjamin Harrison in 1889. Bell and Hart, "Judicial History of Idaho," 405.

67. Druss, "Idaho's Federal Courts," 1.

68. Zachary Wnek, "The Federal Building of Moscow, Idaho," Latah County Historical Society, <https://artsandculture.google.com/exhibit/the-federal-building-of-moscow-idaho-latah-county-historical-society/LwKC5k7OYekCKA?hl=en>. Although that building has not served as a federal courthouse since 1973, the city of Moscow later purchased it and now uses it as its city hall. A second federal courthouse served Moscow from 1973 through 2017. Claudia Druss, "Moscow's Federal Courthouses," Idaho Legal History Society, 2014, https://www.id.uscourts.gov/Content_Fetcher/index.cfml/Moscows_Federal_Courthouses_1976.pdf?Content_ID=1976. Since September 1, 2017, the District Court conducts hearings on all North Idaho cases in Coeur d'Alene. "Notice: Moscow, Idaho Court Hearings to be Discontinued," District of Idaho, 2017, https://www.id.uscourts.gov/Content_Fetcher/index.cfml/Moscow_Court_Hearings_to_be_Discontinued_9/1_2764.pdf?Content_ID=2764#:~:text=Bankruptcy%20Court%3A%20Effective%20September%201,U.S.%20Courthouse%20in%20Moscow%2C%20Idaho.

69. "Happy 100th Birthday Moscow City Hall," *Preservation Moscow*, May 2011, 1, <https://www.ci.moscow.id.us/Archive/ViewFile/Item/276>.

and Bonner Counties.⁷⁰ In 1911, Congress responded and passed a bill creating a new division within Idaho's federal judicial district to serve Idaho's three northern panhandle counties—Shoshone, Bonner, and Kootenai Counties (Boundary County would not be carved out of Bonner County until 1915).⁷¹ Congress designated Coeur d'Alene as the place for holding court, and the local bar association held a large banquet to honor Judge Frank S. Dietrich, appointed by President Teddy Roosevelt to the seat vacated by Judge Beatty, and to celebrate the opening of the North Idaho federal courthouse in May 1911.⁷² Federal proceedings were originally held in the state district courtroom inside City Hall. Planning began in the early 1900s for building a dedicated U.S. courthouse near Lake Coeur d'Alene.⁷³

A site in the heart of downtown was purchased on 4th Street at Lakeside Avenue in 1912 for about \$13,000. By January 1914, the citizens of Coeur d'Alene—frustrated that a contract was already let for a new federal building in Pocatello to house the post office and federal court there—felt that “[no] other city in the state [was] more in need of a government building,” as the federal court building in Coeur d'Alene “[was] a necessity and not a chunk from the congressional pork barrel.”⁷⁴ A sum of \$10,000 was made immediately available by June 1914 to plan construction of the post office and federal court building, and actual construction was “expected to be underway before the end of the summer.”⁷⁵ However, due to intervening local and national events—including the death of Idaho's powerful Senator W. B. Heyburn and the intercession of World War I, when all public building construction was suspended—it would be more than fifteen years before money was appropriated and the courthouse could be built.⁷⁶

70. *United States Courts, Idaho and Wyoming: Hearing on S. 3315 Before the H. Comm. on the Judiciary*, 61st Cong. 3 (1911) (statement of Members of the Bar of the District of Idaho, Northern Division).

71. John A. Mallory, comp., *Compiled Statutes of the United States: Supplement 1911* (1912); “A United States Court for Coeur d'Alene,” *Coeur d'Alene Evening Press*, Feb. 7, 1911, 1.

72. “Will Celebrate Opening of Federal Court,” *Coeur d'Alene Evening Press*, May 15, 1911, 2.

73. “First Federal Court Held Here,” *Coeur d'Alene Evening Press*, May 22, 1911.

74. *Coeur d'Alene Evening Press*, Jan. 21, 1914, 2.

75. “\$10,000 Available for P.O. Building,” *Coeur d'Alene Evening Press*, June 8, 1914, 1.

76. Statement of Significance, National Register of Historic Places Inventory—Nomination Form for Coeur d'Alene Federal Building (May 26, 1977).

The first Coeur d'Alene U.S. Courthouse, 1928. Courtesy of the Federal Judicial Center (FJC).



Upon its completion in 1928, the new building housed a variety of U.S. government agencies. In addition to serving as Coeur d'Alene's main post office and the place for holding federal court, the original building also included the federal land office, the Bureau of Entomology, and the U.S. Forest Service. Long before the Forest Service moved into its space in the federal building, fires in the West had revealed the necessity of managing forests and preventing fires. In August 1910, a lightning strike sparked the largest wildfire in Western U.S. history, outside the railroad town of Avery, in Shoshone County. Despite the Forest Service's valiant efforts to fight the fire, it burned more than three million acres in North Idaho, Eastern Washington, and Western Montana.⁷⁷ The fire occurred shortly after President Teddy Roosevelt convinced Congress to establish the U.S. Forest Service under its first Chief Forester, Gifford Pinchot.

That old location on 4th Street served as the federal courthouse in Coeur d'Alene for about eighty years. The building was the subject of more recent history in September 1986, when a bomb planted by members of the Aryan Nations was detonated in a window well outside the courthouse.⁷⁸ While the bomb shattered windows as far as three blocks away, the explosion did little damage to the courthouse.⁷⁹ It did, however, underscore its poor security, and planning began to replace the structure with a more modern facility.

77. Timothy Egan, *The Big Burn: Teddy Roosevelt and the Fire That Saved America* (Boston: Houghton Mifflin Harcourt, 2009).

78. "Police Hunt for Bombs on Rooftops After 3 Explode at Coeur d'Alene," *The Times-News* (Twin Falls, ID), Sept. 30, 1986; see also "Bond Set in Bombings Case," *The Times-News* (Twin Falls, ID), Sept. 17, 1987.

79. "Police Hunt for Bombs."



United States Courthouse, Coeur d'Alene, Idaho (2009)
Photo courtesy of Shawn Toner, Explosive Illusions Photography, Spokane, WA.

In 2009, the federal courthouse on North Mineral Drive off Hanley Avenue opened. It currently houses Idaho's U.S. District and Bankruptcy Courts, Probation and Pretrial Services, U.S. Attorney's Office, U.S. Marshals Service, the U.S. Trustee, and Judge Tallman's chambers. It is unusual in that the building is owned by a private entity and leased to the General Services Administration, but it was built as a courthouse in anticipation of the construction and leaseback to the federal government.

Current Judges Serving Idaho

The United States District Court for the District of Idaho is currently authorized only two active federal judgeships. Chief U.S. District Judge David C. Nye and Senior District Judge B. Lynn Winmill cover the entire state from Boise and Pocatello.⁸⁰ Senior U.S. District Judge Ed Lodge retired in 2019 after serving as a state trial court, federal bankruptcy, and U.S. district judge in Idaho for more than fifty years. Two U.S. magistrate judges, Chief Magistrate Judge Candy W. Dale⁸¹ and Magistrate Judge Raymond E. Patricco, and two

80. Judge Winmill assumed senior status on Aug. 16, 2021. He has not reduced his caseload. As of November 19, 2021, the President has not yet nominated anyone to fill the now-open district judge position.

81. Chief Judge Dale will assume senior status on Mar. 31, 2022, and the District of Idaho has initiated the process to select her replacement. Chief Judge Dale is the first female federal judge to serve in the District of Idaho. She will also continue to assist on a recall basis.

U.S. bankruptcy judges, Chief Bankruptcy Judge Joseph M. Meier and Bankruptcy Judge Noah G. Hillen, also currently serve the Court and ride circuit throughout Idaho. Recalled retired Magistrate Judge Michael Williams and retired Bankruptcy Judge James Pappas also continue to assist on a part-time basis.

Beginning with Frank S. Dietrich in 1926, there have been eight Idahoans appointed to the U.S. Court of Appeals for the Ninth Circuit, and three Ninth Circuit judges currently sit in Idaho. Senior Circuit Judge Randy Smith has chambers in Pocatello, Circuit Judge Ryan Nelson recently joined the Court and has established his new chambers in Idaho Falls, and Judge Tallman moved over to Coeur d'Alene in the fall of 2018 after serving the Ninth Circuit from his chambers in Seattle since coming on the Court in 2000. Senior Circuit Judge Steve Trott recently retired from continuing service but had chambers in Boise for over thirty years.

Conclusion

Despite the Idaho Territory's less than auspicious beginnings, Idaho has thrived. As of the 2020 census, Idaho, now with a population of 1.8 million, is the second-fastest-growing state in the nation.⁸² Legislators have once again asked Congress to create a third district judgeship to address the burgeoning caseload.⁸³ As the state continues to expand, the federal judiciary serving North Idaho looks forward to continuing to develop the jurisprudence rooted in the State's rich historical tradition.

82. Brynn Epstein and Daphne Lofquist, "U.S. Census Bureau Today Delivers State Population Totals for Congressional Apportionment," U.S. Census Bureau, Apr. 26, 2021, <https://www.census.gov/content/dam/Census/library/stories/2021/04/apportionment-table-2-population-change.jpg>.

83. Ninth Circuit Court of Appeals Judgeship and Reorganization Act of 2021, H.R. 320, 117th Cong. (2021). This most recent proposal was introduced by Idaho Representatives Mike Simpson and Russ Fulcher, who were joined by Senators Jim Risch and Mike Crapo. Betsy Russell, "Idaho Delegation Introduces Legislation to Split 9th Circuit, Grant Idaho an Additional Federal Judgeship," *Idaho Press*, Jan. 26, 2021, https://www.idahopress.com/eyeonboise/idaho-delegation-introduces-legislation-to-split-9th-circuit-grant-idaho-an-additional-federal-judgeship/article_a1bc6fdd-3b15-56e0-80d9-ce0798aa5e58.html.
