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JOHN P. GRAY: 20TH CENTURY MINING LAWYER

by Scott W. Reed

John P. Gray (1881-1939) is Coeur d'Alene's most famous lawyer with an appellate record in state and federal courts probably still unmatched by any other Idaho attorney. The Coeur d'Alene Chapter of Inns of Court, now Bar and Bench, is named for John P. Gray.

Gray was born in Ketchum, graduated from Boise High School at age 13, and then from George Washington Law School in Washington, D.C. at age 19. Gray was in the nation's capital working as a page for U.S. Senator Weldon Heyburn after graduation and was admitted to the Idaho Bar in 1902 at age 21.

Gray began practicing in Wallace in 1902 in the office of Senator Heyburn. In his recent book, *The Big Burn* (2009), Timothy Egan writes that Senator Heyburn kept up his law practice in Wallace and:

...served his mining clients, using the power of his name on official stationery, his public duties nicely dovetailing with his private interests.

Practicing in the Coeur d'Alene Mining District, Gray soon became deeply involved in mining law. He moved to Coeur d'Alene in 1911 where he purchased a large tract of higher ground overlooking Sanders Beach and Coeur d'Alene Lake. After his death, the property was divided and developed into a number of homes.

One story about Gray that I heard after coming to Coeur d'Alene in 1955 was of an exchange with a client in the pre-title company days in the 1920s and 1930s. Part of the regular practice of Idaho lawyers was writing opinions on the marketability of property. Gray wrote an opinion and sent it with a bill for \$50 to the client. The client came to his office and protested: "The usual price charged by all other Coeur d'Alene attorneys was \$10 for this relatively simple task. Gray's response: "Yes, but their opinions would not have the name John P. Gray."

Never mind the fire; we have to hide the bootleg whiskey before the city firemen get here!
John P. Gray to W.F. McNaughton

A search of reported opinions uncovered an incredible record. Between 1902 and 1938, Gray participated as attorney in 190 cases in the supreme courts of Idaho, Washington, Arizona and Connecticut, federal district and circuit courts and the U.S. Supreme Court. Gray is identified in 29 cases in the Eighth and Ninth Circuit Court of Appeals and four cases in the U.S. Supreme Court. A list of case results from Westlaw



John P. and Stella Gray's Tudor Revival house at Coeur d'Alene. It was listed in the National Register of Historic Places in 1988.

identifies Gray in 16 cases in reported U.S. Supreme Court opinions. Twelve of these are one-paragraph memos of denial of *certiorari*. It is highly likely that a number of the identified appeals in state and federal court were dismissed or settled without argument.

Gray was the subject of a laudatory biography in the *Encyclopedia of American Biography* where he was described as "one of the nation's outstanding authorities on mining law..."

The biography credits a U.S. Supreme Court case, *Stewart Mining Company v. Ontario Mining Company*, as an historic decision clarifying the issue of extra lateral apex rights under federal law [237 U.S. 350 (1915)].

Gray's practice involved much more than mining. Within Idaho, his most notable non-mining victory was representing Potlatch Lumber Company in a private case to condemn 12 acres for a storage reservoir for logs. *Potlatch Lumber Company v. Peterson* [12 Idaho 769, 88 Pac. 426

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550 West Fort Street

A Message From the President Scott W. Reed



An Update on the Tents to Towers Project

The Idaho Legal History Society is currently in the midst of a very ambitious project to research, write and publish a history of the practice of law in Idaho, beginning in the territorial days through the present. This project is called "Tents to Towers: 150 years of Legal Practice in Idaho," and I thought an update on the

project might be of interest.

The ILHS has hired local historian Claudia Druss to research and draft the book. Idaho historian Judy Austin and local attorney Deb Kristensen are assisting. Ms. Druss has submitted a first draft of the book to Judy and Deb and they are in the process of reviewing the draft.

We are pleased with the first draft, and are focusing next on the development and importance of the federal court system in Idaho; the State Constitutional Convention and the significant role of lawyers at the convention; and the emergence of water and environmental law in Idaho. Additionally, the book will contain interesting "Stories of the Bar," which we hope will ensure that the tone of the book is warm and engaging.

A project of this magnitude is, as you can imagine, quite expensive, but well worth the time, effort and expense. Please consider making a tax-deductible contribution to help the ILHS with this worthwhile endeavor.

Feel free to contact Deb Kristensen (dkk@givenspursley.com) or Judy Austin (judyAustin40@yahoo.com) if you have questions about this important project.



*Hawley & Puckett Law Office, Thunder Mountain.
(Idaho State Historical Society)*

ILHS MISSION STATEMENT

- (1) To foster and promote public knowledge of, and interest in, Idaho's legal history;
- (2) To promote and encourage research of Idaho's legal history;
- (3) To collect and preserve records, relics, oral histories and other things of interest to Idaho's legal history, and to make the same accessible for public examination;
- (4) To encourage interest in Idaho's legal history through meetings, presentations, lectures and other public forums; and
- (5) To procure or publish and distribute historical material for educational purposes, the proceeds of which, if any, are to be used exclusively for the express purposes of the Association.

LONG LOST CORONER'S RECORD SHEDS LIGHT ON BUNKER HILL & SULLIVAN INQUEST

Sometime after moving to Coeur d'Alene, attorney John P. Gray apparently borrowed the bound record of the Shoshone County coroner's juries between 1893 and 1901 from the Shoshone County Clerk at Wallace, Idaho. This handwritten volume was kept in the office of the McNaughton & Gray law firm for many years until it was discovered by the daughter of one of the firm's partners. The coroner's reports in the volume began January 16, 1893 and ended September 12, 1901.

During the period covered by the record, inquests averaged about one per month, conducted for the purpose of establishing the cause of a death. The coroner selected a jury of five to seven men for each inquest. The exception to this was the major inquest into two deaths in the 1899 Bunker Hill mill unrest when 11 men were selected as jurors.

In Idaho Territory in the 19th century, and in the first decades after statehood, the coroner was an elected official who generally provided non-professional medical service. In rural, sparsely populated areas, a coroner's inquest by a jury who looked at the body and listened to witnesses was a quick and fairly uncomplicated method of determining if the death had been caused by a criminal action and, if so, making provision for arrest and prosecution.

The inquest process called witnesses to testify under oath, with the jury entering a verdict on the same day. In the Shoshone County volume, many of the juries returned verdicts on deaths in mining accidents. Often the jury would note that the mine owners were not at fault, but on three occasions during the period covered by the volume, the mining company was found to be at fault. The reports also included at least a half a dozen deaths from morphine overdose, suicides, drownings and unknown deaths from medical causes.

In November of 1898, Dr. Hugh France was elected Shoshone County Coroner. Unlike his predecessors, France was a medical doctor and company physician for the Bunker Hill & Sullivan Mining Company. Dr. France was a key player in the 1899 inquest into the deaths of two men during the riot at the Bunker Hill & Sullivan Mine at Wardner, Idaho in which the mill was blown up. Eleven jurors were sworn on May 3, 1899, four days after the men died. Unlike previous one-day inquests, this coroner's inquest took 40 days as 473 witnesses were examined.

The verdict of the coroner's jury on July 5, 1899 was highly critical of the Shoshone County Commissioners who had been warned by a Bunker Hill representative that serious trouble was intended by the union. According to the verdict, "neither one of said commissioners paid the slightest attention to such warning or request." Shoshone County Sheriff James D. Young was also warned of the impending danger and did not respond. The jury also accused the conductor and

the engineer of the Northern Pacific train of "moral cowardice and truculent subservience" in cooperating with the union leadership to divert the train.

It further noted that Edward Boyce, president of the Western Federation of Miners, was said to have been in Wardner during the week before the explosion, ". . . actively engaged in counseling and advising the local officers of the Wardner Miners Union." Attached to the jury verdict as Exhibit A was a



The mill at Wardner after the explosion. (Idaho State Historical Society)

list of the mine employees who were absent from their duty post that day and who formed "the riotous, masked and armed mob."

The report concluded:

We charge the murders of said Schmidt and Cheyne to have been perpetrated by the said Miner's Unions and their respective members who were present and participated in any of the deeds of that day. Said Miner's Unions and their aforesaid members, were aided and assisted by the said Sheriff Young, Moses S. Simmons, William Boyle and W. R. Stimson County Commissioner.

There were many coroner's inquests over the decades that related to mining accidents in Shoshone County. A 1936 inquest under coroner H.C. Mowrey investigated the death of 10 miners in an accident at the Morning Mine at Mullan, Idaho, owned by the Federal Mining & Smelting Company. The men were in a cage or elevator whose cable broke, dropping them 900 feet to their death, followed by 5,600 pounds of cable. The bodies were so badly mangled that it took some time to determine how many had died. State Mine Inspector Arthur Campbell called it "the worst accident in the history of Idaho mining."

An inquest was convened at Wallace, Idaho the next day at which pieces of the broken cable were examined and 20 miners who witnessed the accident were interviewed, among others. The inquest concluded that the accident had occurred because too many miners had crowded into the cage, making it too heavy for the cable.

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A.H. FEATHERSTONE, MINING JUDGE

Albert H. Featherstone was lawyer, legislator and judge who practiced law in the mining community of Wallace, Idaho. He was born on a Minnesota farm in 1869. After completing school, he worked as a teacher for several years before entering the University of Minnesota law school. Featherstone was admitted to the Minnesota bar and moved to Idaho in 1898, where he opened a law office at Wallace.

While developing a legal practice in mining law, he also had business interests in dozens of lead, silver, gold, zinc and copper mines in northern Idaho, and served on the boards of directors of many mining companies.

Featherstone was elected to multiple terms as a Republican in the Idaho legislature during the early years of the 20th century. There he was chairman of the judiciary committee and the committee on mines and mining.

During the 1920s, he argued mining cases before the Idaho Supreme Court, served on the boards of directors of mining and utility companies, and was active in the First District Bar Association.

Featherstone was a judge in the First

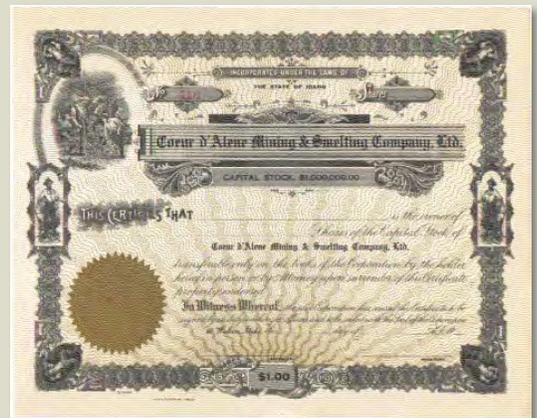
Judicial District in the 1930s. In a significant 1931 case, he rendered judgment in favor of the Idaho and Eastern Mining Company in a suit determining the ownership of the Stroble lode mining claim in the Lelanda mining district near Burke. The case had been in court for 26 years and was the oldest case on the docket at the time.

The Stroble claim had been located in 1901 and acquired by the Idaho and Eastern Company. Shortly thereafter, the St. Louis and Idaho Mining and Milling Company located a claim on nearly the same ground as the Stroble claim, hence the ownership issue.

Featherstone retired in 1950 after a 1947 Idaho law mandated that judges were not eligible for re-election beginning at age 70. He passed away in 1956 at Wallace.

Today, the University of Idaho College of Science awards the A.H. Featherstone Mines Scholarship in his memory.

Sources: *Idaho Mining News*, 1931;
History of Idaho, James F. Hawley, 1920;
Idaho Falls Post-Register 1950



J.P. Gray / McNaughton Partnership

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(1906)]. The Idaho Constitution allowed condemnation of land by private entities when such condemnation was “necessary to the complete development of the material resources of the state” (Section 14, Article 1).

The court affirmed the condemnation as of great importance to the state, a holding very practical in the first decade of the 20th century when the state and counties had only just begun to build roads, and mining, timber and irrigation companies had to use their own resources without any public money to carry out their projects.

In Coeur d’Alene, Gray became a partner with W.F. McNaughton in cases from 1915 to 1938. McNaughton was appointed to the Idaho Supreme Court in 1930 by Governor H.C. Baldrige, but resigned in 1931 to return to practice in Coeur d’Alene with Gray.

The reasons for the short term are open to speculation. Perhaps Justice McNaughton and his wife simply preferred Coeur d’Alene to Boise. Another possibility was political. At that time judicial races were partisan. McNaughton was a

Republican. He may have anticipated the Democratic landslide that brought in Franklin Roosevelt in 1932.

Dr. Mary Sanderson, a descendant of one of Gray’s law partners, recounted a family legend about Gray told by Judge McNaughton. On one evening in the 1920s, Gray frantically called McNaughton, who lived nearby, asking for help because a fire had started at his house. McNaughton came quickly to help fight the fire.

Gray’s response was:

Never mind the fire; we have to hide the bootleg whiskey before the city firemen get here.



Justice W.F. McNaughton
(*The Advocate* 1991)

WALLACE'S MAYOR TAKES REVENGE

Herman J. Rossi was a northern Idaho personality who was elected mayor of Wallace four times, was a state representative, a regent of the University of Idaho, chairman of the Idaho Board of Education, president of the Wallace Board of Trade, lieutenant colonel in the Idaho National Guard and a successful insurance executive and mine owner.

Rossi's powerful personality enhanced his prominence in the community, but his reportedly hot temper eventually resulted in the death of a man in 1916.

It was said that Rossi's young wife had an unresolved drinking problem. One night when he returned to Wallace from a Republican party meeting in Boise, he reportedly found her drunk. The family maid told Rossi stories of what had happened between his wife and another man while he was gone.

Rossi headed straight for the Samuels Hotel in downtown Wallace, where he accosted his wife's alleged lover and shot the man in the back as he tried to run away. Realizing the severity of his actions, Rossi went immediately to his attorney's office. There he was later arrested for murder. Rossi was released on \$10,000 bail put up by some prominent local citizens.



Herman J. Rossi (at left) in an Elk's Club boxing match in 1902.

At the murder trial a few months later, Rossi was unanimously found not guilty by reason of temporary insanity after the jury deliberated a mere 20 minutes. The court of public opinion, too, was sympathetic to Rossi who they felt had been wronged and had taken a just revenge.

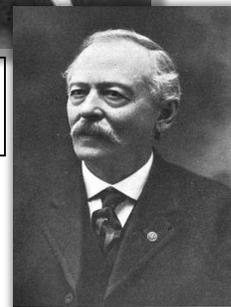
The judge in the trial, William W. Woods, was a fellow lodge member and mining company board member with Rossi. Woods had come to Shoshone County in 1884, where he practiced law for 36 years. In 1907 he was elected First District Judge, and was re-elected for many years thereafter.

Woods was one of the organizers and the first president of the Shoshone County Bar Association. He was also judge advocate of the northern Idaho veterans of the Civil War organization.

A little over a decade after his murder trial, Herman Rossi was involved in another high profile legal case that resulted in his resignation as mayor of Wallace. In 1930, Rossi was convicted of violating the Volstead Act in his open defiance of Prohibition in Wallace.

In 1929, federal and state agents had arrested 200 offenders, including Rossi, the county sheriff, and the county assessor in what became known as the "North Idaho Whiskey Rebellion."

Sources: *Historic Wallace Personalities*, *Wallace-id.com*, 2011; *Hawley 1920*.



Judge W.W. Woods (Hawley 1920)

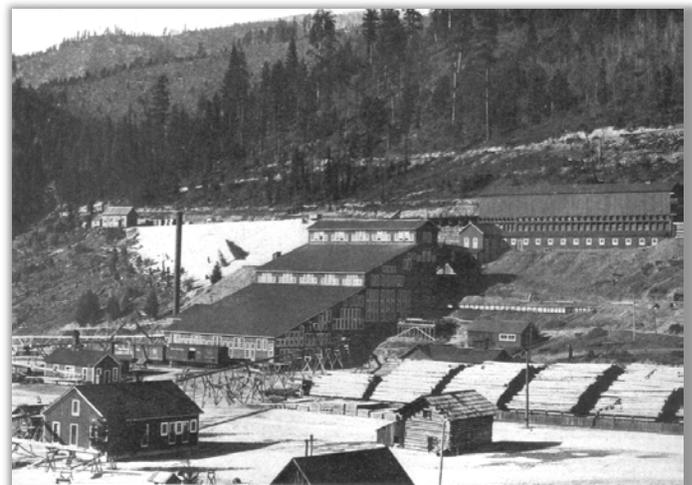
Morning Mine Inquest Report Challenge

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When the inquest report was released, the cause of the accident was disputed by the local miners' unions and the Wallace and Vicinity Trades and Labor Council. Union representatives subsequently filed a complaint with District Judge Albert H. Featherstone asking for a grand jury probe into the inquest.

The complaint named state mine inspector Arthur Campbell and the Shoshone County prosecutor John L. Fitzgerald in an alleged cover-up of the poor conditions of the safety devices at the mine. The unions also alleged that the prosecutor was "sitting idly by and letting the state mine inspector perpetrate...an outrage on the community."

Sources: *Unpublished Manuscript by Scott W. Reed*; *Spokane Daily Chronicle*, October 7 & 16, 1936;



Morning Mine, Mullan, Idaho, circa 1908. (U.S. Geological Survey)

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