Idaho Comes of Age in High-profile 1907 Murder Trial

John F. Greenfield

The assassination of former Idaho Gov. Frank Steunenberg in 1905, and the subsequent murder trial of a national labor leader, William D. Haywood, in 1907, created international interest at the time. One hundred years later these events continue to fascinate us.

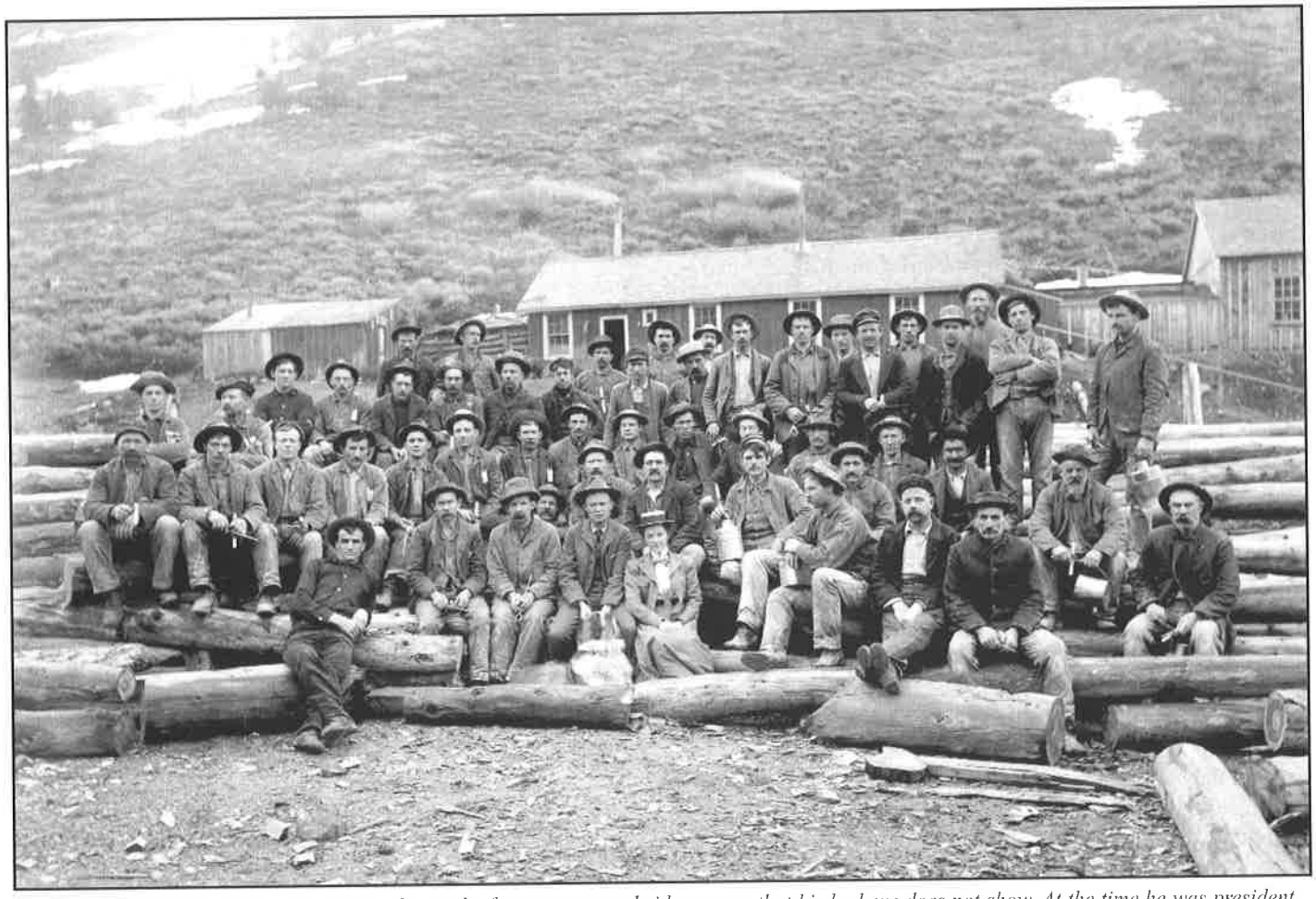
Steunenberg was killed by Harry Orchard, an itinerant sometimes miner who had once been a member of the Western Federation of Miners (WFM), which was headquartered in Denver. "Big Bill" Haywood was the secretary/treasurer of the union. By all accounts, Haywood was a tough, vociferous leader of a militant labor organization. Orchard confessed to the murder after he was arrested, then implicated Haywood and two other union officers, George Pettibone and Charles Moyer. Orchard claimed that they hired him to kill the governor. Idaho authorities believed Orchard's story and endeavored to bring the three men from Colorado to Idaho and try them as accomplices.

Emotions were high but the evidence was weak, consisting solely of the uncorroborated testimony of the assassin Orchard. The question was whether emotion would trump the evidence—that is, the lack thereof. The whole world watched, because the outcome of the trial had massive implications for the labor movement.

The Labor Insurrection and Governor Steunenberg's Actions

The assassination is commonly understood to have had its roots in labor unrest in the Coeur d'Alene mining district in 1899. Haywood's acquittal occurred seven years later in 1907—in the conservative capital of Boise, 400 miles to the south. It was delivered by a "jury of farmers."

The prosecution was led by U.S. Senator-elect William E. Borah and legendary Idaho "sagebrush lawyer" and future governor James H. Hawley. They argued that Haywood, Pettibone, and Moyer hired Orchard, who killed Gov. Steunenberg by rigging his front yard gate, in Caldwell, with dynamite. They did it, supposedly, to pay back Steunenberg for declaring martial law, and calling in federal troops to quell a labor uprising in Shoshone County seven years before. The legal defense team, headed by famed Chicago attorney Clarence Darrow, maintained that big business and its supporters in state government were trying to



Miners in Silver City, 1900. Bill Haywood is in the front row, turned sideways so that his bad eye does not show. At the time he was president of the Silver City Miners' Union. ISHS 596.

convict Haywood and the others of "ordering" the assassination in order to ruin the miners' union in particular, and perhaps slow down the growth of organized labor in general. Darrow contended that the labor leaders had nothing to do with it.

If Orchard was not acting alone, which is still unclear, the identity of the party retaining his services remains a mystery. Nonetheless, two undisputed facts remain: First is the miserable condition of the North Idaho miners at the time. Second is the acquittal of Haywood, then Pettibone. After these acquittals, the prosecution dismissed the case against Moyer.

Just as truth is stranger than fiction, reality is not always easy to explain with logic. Easy answers (or even just answers) are the stuff of fiction. Real life occasionally demands that we suspend disbelief and wait until we get to Heaven, God willing, to find out who really killed the Kennedys, who hired Harry Orchard, and who stole the apple pie from mom's windowsill.

The state's case advanced a motive of revenge. Prosecutors suggested that the Denver union leaders were exacting, in 1905, revenge for Steunenberg's decision, in 1899, to use military force to suppress rioting miners in the Silver Valley. The press and much of the public accepted this theory, but the jury didn't buy it. It is easy enough to see why. There is a disconnect in the idea that an ongoing union would conspire to assassinate a *former* governor for something he did in the relatively distant past. A union would have no instinctive interest in revenge. A labor union is a group of workers who seek to better their lives by standing together and bargaining with their employer as a cohesive unit. Such an organization is interested in the *present* and *future*, not the past.

The jurors looked closely at this motive. Their difficulty in accepting the motive of revenge on the part of the accused defendants probably steeled their resolve to look harder at the *evidence* (Orchard's accusation) and the jury instructions that would later be dispositive of the case.

In trying to understand how the labor insurrection and the eventual acquittal of Haywood could occur in the same state, at the same time, it helps to consider the dichotomy that existed, at the turn of the 19th Century, between the law of labor-management relations, and the law governing the rights of the criminally accused. At the time in question (1899-1907) there was literally no statutory labor law in Idaho or anywhere else in the country. If such law had existed, the 1899 labor unrest might not have occurred at all.

By contrast, in 1907, Anglo-American principles of criminal law were highly refined in every state, including Idaho. The absence of any labor-management law, as juxtaposed with the presence of a well-defined body of criminal law, helps explain how the jury's unanimous acquittal of the leadership of the union *that was at the very heart of the labor unrest* could occur in the same state, at the same time in history.

The verdict clearly surprised many representatives of the national and international press who covered the trial. The fact that twelve men in a brand new, rough-and-tumble state like Idaho could follow the law (as expressed to them in Judge Fremont Woods' jury instructions) also surprised the authorities who kidnapped the three labor leaders in Denver, side-stepped appropriate extradition proceedings, and brought them to Boise—evidently certain an Idaho jury would make short work of these defendants. Later, prosecutors would complain about the jury instructions but they took no appeal.

The authorities apparently underestimated average Idahoans, and also appear to have underestimated the power of the law. They did not appreciate the way common citizens, even in far-off, largely agrarian Idaho, respect the law, generally feel compelled to *obey* the law, and if called upon as jurors will feel just as compelled to *apply* the law as set forth in a judge's jury instructions.

The Exploitation of the Miners

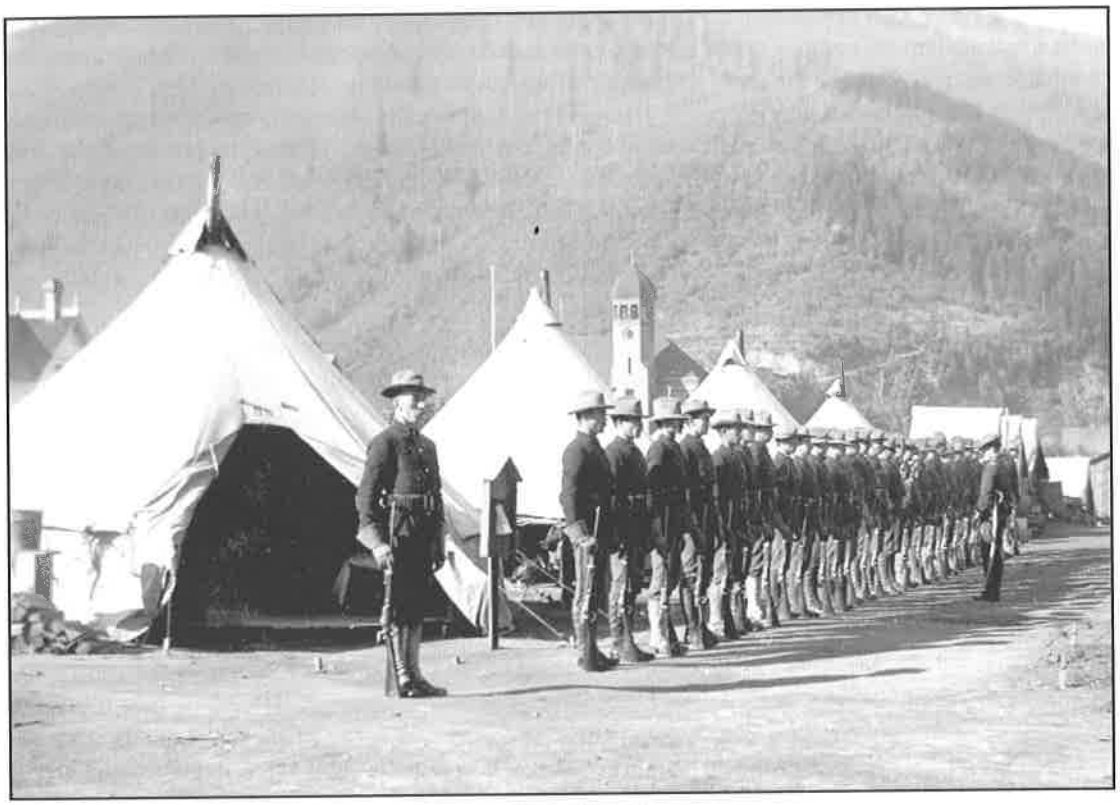
The labor unrest associated with the murder of a political figure as exalted as the fourth governor of the state of Idaho was "big trouble" indeed. It grew out of the unrestricted ability of mining companies, at that time, to exploit their labor force, and to use the power of wealth and government to fight the determination of the miners to organize in unions and have a say in their own lives.

At the time of the North Idaho labor troubles and the Steunenberg assassination, organized labor was in its infancy. Until the coming of the Industrial Revolution, in the 1800's, the need for labor unions was restricted to small manufacturing shops. This need was filled by small trade guilds, in both America and Europe. Unionization on a larger scale did not become necessary until machines and the internal combustion engine created "plant" employers, along with a group of workplace problems that evolved from growing concentrations of wealth and the profit system.

With regard to mining in the American West, unions were less relevant in the beginning. In the early days of the gold and silver booms in California, Nevada, Montana, and Idaho, most mining involved colorful individuals with picks, shovels, horses, and gold pans. Beginning around 1860, however, the prospector and small miner began to give way to corporate mining—accompanied by hefty infusions of capital, technological changes like compressed air drills, deep underground mine shaft operations, and large workforces. Once the province of go-it-alone frontiersmen, Rocky Mountain mining had become industrial in character.

With the advent of corporate mining came a natural inclination on the part of the mine owners to be dictatorial with their workforces, and a countervailing inclination on the part of the mining workforce to unionize and demand collective bargaining. Unfortunately, unionization in the late 1800s had no legal foundation or protection, and the mine owners took pains to keep things that way. They fought unionization with a vengeance—through economic leverage and their control of the state and federal governments, including the judicial branches. Their main legal weapon was the injunction—not so much against striking but against union organization itself.

Judges routinely enjoined labor organizing, misusing the anti-trust laws and common law doctrines like "criminal conspiracy" and "illegal purpose." This kind of governmental complicity in the high-handedness of big business was moving the entire nation in the direction of class warfare. State legislatures and even Congress recognized the problem and started enacting laws against such injunctions.



Troops lined up in camp in Wallace, Idaho, in 1899. ISHS 69-4.23.

There were other pro-union developments in the early 1900s. The Cantonment Agreement of 1917, which required union wage scales in all World War I construction of U.S. Army camps, was the forerunner of the Davis-Bacon Act. Also during World War I, the War Labor Board recognized and protected collective bargaining, but did not provide the kind of bureaucratic support and appellate review that would come later. Comprehensive statutory oversight of labor-management relations did not occur until the Great Depression resulted in the election of President Franklin D. Roosevelt in 1932 and a different kind of Congress.

The "New Deal" and Labor Policy

In 1935, the centerpiece of all modern labor law was enacted as part of Roosevelt's "New Deal." It was called the National Labor Relations Act, or the "Wagner Act." The Wagner Act created the National Labor Relations Board along with direct appellate review by the several federal circuit courts of appeal. It also created badly needed legal protections that somewhat evened the playing field between unions and business interests.

Immediately after World War II, in 1946, that change receded somewhat in favor of business when Congress passed the Taft-Hartley Amendment to the National Labor Relations Act. Among other things, Taft-Hartley revised national labor policy to give states the option to outlaw union security clauses in collective bargaining agreements. This change in federal law resulted in so-called "right to work" state laws—state statutes that generally weaken unions.

Whether to adopt such laws was left to the individual states. All southern states, and some prairie and Rocky Mountain states, including Idaho, subsequently enacted "right to work" laws. Northeast and Midwest states have steadfastly refused to enact "right to work" laws. In the West, historical mining states such as Colorado, Montana, New Mexico, Washington, Oregon, and California have also refused to adopt "right to work."

In a word, the American labor movement became "legitimate" in 1935 and further matured in 1946. In the sixty years that have passed since Taft-Hartley, labor-management relations, and the laws that help to govern them, have stabilized. It would appear that we got things about right. Since 1946, national labor policy has remained stationary and the United States of America has prospered, economically, like no country in the history of mankind. Undoubtedly, many of the anti-union activities of the North Idaho mine owners in the late 1800's and early 1900's would now be "unfair labor practices" under the National Labor Relations Act.

The Insurrection of 1899

Unions may have lacked legal protection in the late 1800s, and in all the years preceding the National Labor Relations Act, but they sprang up anyway – out of a need for economic fairness and an awareness on the part of working people that there was no alternative to self-determination.

No employer was going to *give* workers fair pay and decent working conditions. The primal nature of free enterprise regards the cost of labor as something to be minimized, as if labor were part and parcel of the competition. Workers would have to demand fair treatment, under threat of withholding their indispensable labor and skills. Moreover, they would have to do these things in an *organized* fashion if they were to be effective. Thus, the rise of unions. Companies instinctively challenged the very idea of unions and the battle was joined.

In the late 1800s, the hard rock miners of the Coeur d'Alene mining district objected to an array of inequitable activities by the mine owners. They particularly objected to the owners' attempts to stifle union organization, placing workers in the impossible situation of bargaining as individuals against organized business interests. They objected to the mine owners' legal challenges to unionization, to their use of strikebreakers or "scabs," to company stores, and to other bare-knuckled tactics devised to break the workers' will—in the way one breaks horses or trains dogs.

The miners became embittered over the owners' use of private detectives to assist in the suppression of their unions, like the hated Pinkerton's National Detective Agency. The chicanery

of the Pinkerton Agency (which tried to infiltrate the miners' unions with spies), and the brutality of some of the Pinkerton operations, which essentially terrorized the miners by gunpoint, fed the "labor unrest" in North Idaho. The miners fought back, but then the owners would retaliate. It was a vicious circle.

The labor unrest that caused Gov. Steunenberg to act militarily in 1899 was unusually violent. The scale of destruction and the numbers of men involved led Gov. Steunenberg to conclude that the Coeur d'Alene mining district was in a state of insurrection. This forced him to act militarily, by declaring martial law in Shoshone County and asking President William McKinley to send federal troops. The Governor had no access to the state militia. The entire Idaho National Guard had been appropriated for service in the Spanish-American War and was deployed to the Philippines.

Under these circumstances, it is difficult to argue with the Governor's decision to call in regular federal troops, but his actions had such a hard edge to them that they turned this governor into a pariah for mine workers. After all, Gov. Steunenberg, a Democrat, had been elected in 1896 and 1898 with labor support. Now miners by the hundreds were being rounded up by soldiers, incarcerated *en masse* in an unheated, vermin-infested concentration camp called a "bullpen," and prosecuted. The miners felt betrayed. Still, it is unfair to Steunenberg to ignore the seriousness of the situation that came to a head on April 29, 1899. On that fateful day, almost 1,000 miners descended on the Bunker Hill and Sullivan Mine near Kellogg and blew up the mine's concentrator, one of the largest in the world and worth the staggering sum (at that time) of $250,000. They used thousands of pounds of dynamite to destroy the concentrator. This remarkable act was directed at the only non-union mine in the Silver Valley, a mine that the union members felt was systematically undercutting their position, in various ways, with their own employers.

Keep in mind, however, that there is some evidence that the union members were aided and abetted by an *agent provocateur*—a Bunker Hill foreman who opened his own powder house and advised the miners where to set the charges in order to do the most damage. It is thought by some historians that the Silver Valley mine owners, including the Bunker Hill owners, aided the 1899 debacle in order to force Steunenberg to act —knowing that the kind of disaster that would result in martial law would wreck the WFM. With regard to the Silver Valley, this effort (if it occurred) was largely successful. The WFM mostly folded in North Idaho after 1899, although other unions stepped forward including, in modern times, the United Steelworkers of America.

Harry Orchard Killed Steunenberg, but Who Hired Harry?

The miners, who were the object of Steunenberg's military action, were angry. Many had served in the Civil War, and were appalled at the idea of being trampled by the U.S. Army, the tyranny of the mine owners being quite enough. They were also appalled about being incarcerated in the military "bullpen" and treated like animals, some for over a year. But whether a disgruntled miner actually decided to kill Steunenberg, in December 1905, over six years after the labor unrest of 1899, is in serious doubt. Also in doubt is whether the leaders of the WFM in Colorado, like William Haywood, really hired assassin Harry Orchard, six years after the fact, to kill the former governor. After Haywood's acquittal, one could fairly conclude that there was "reasonable doubt" about that proposition.

On the other hand, the mere arrest and trial of the secretary/treasurer of the WFM and the union's other officers meant that there would be no question that Steunenberg's assassination was going to be forever linked by the public, in one way or another, to the rise of organized labor. If, as union attorney Edmund Richardson suggested in his closing argument, the Pinkerton Agency itself hired former UFM member Orchard with the ultimate goal of scandalizing a union, the Pinkertons achieved their goal.

The Importance of Haywood's Acquittal

The events of 1899 aside, the trial of the labor leaders in 1907 involved criminal law, not labor law. While there was no real labor law in Idaho in 1907, there was a very well-defined set of legal principles involving the rights of the criminally accused. These principles had been developing in England since the Magna Carta, when the barons sat down with King John at Runnymede in 1215 A.D. and instructed him that the people of his kingdom were going to take part in their own governance. In this country, these ideas took greater shape with the American Revolution and the drafting of the Constitution and the Bill of Rights. By 1907, legal principles like the presumption of innocence and proof beyond a reasonable doubt were firmly ensconced in the law of every state. So was the rule that one cannot be convicted of murder on the uncorroborated testimony of an alleged accomplice.

When Idaho authorities kidnapped Haywood, Pettibone, and Moyer, and surreptitiously brought these union officers to Idaho to face trial for murder without seeking proper extradition from Denver, Colorado (where they lived), the nation gasped. It resembled a modern day "rendition." Everyone wondered whether these three men would get a fair trial, or be summarily found guilty by a jury of Idaho farmers and hung by their boots! People at home and abroad watched the trial carefully. They observed the tension between the righteous desire of laborers to be free to organize and bargain collectively for a decent living, and the right of the citizenry to be free from organized union violence.

The central question at Haywood's trial was whether the assassination of the former governor was truly an act of organized union violence, or—if Orchard did not act alone—essentially an act of terrorism sponsored by some individuals or entity that could not be reasonably identified. The assassination itself really did not make any sense as an act of a labor union. Someone was trying to make a statement, but who? And why? Frank Steunenberg was no longer governor. His demise would have no direct effect on any ongoing difficulties between business and labor in the Coeur d'Alene mining district. There was no military or revolutionary aspect to Orchard's cowardly assassination of Steunenberg.

Moreover, the WFM had been publicly and systematically distancing itself from violence. At its convention in 1902, the

WFM began suppressing even talk of violence, expunging the word "dynamite" from the record when it was used to describe an aggressive organizer. Indeed, nothing in the history of the union suggests that any union leader ever encouraged terrorism.

If Harry Orchard did not act alone, (and there is some evidence that he *did* act alone and wanted to be caught as well), who really hired him? Should it have been a foregone conclusion that the officers of the WFM arranged for the assassination? And could the government simply accuse a group of labor leaders of it, then successfully try them and hang them on the uncorroborated word of the assassin himself?

The entire world was looking at Boise, Idaho in 1907 to see whether this would be possible, and whether such trials would be the wave of the future. What the world saw instead was a criminal justice system, in a democratic society, functioning as intended. It was an impressive moment for this young state.

About the Author

John Greenfield *is a labor lawyer with the Boise firm of Huntley Park LLP. He is a graduate of Seattle University (1968) and the University of Idaho College of Law (1973). He served as an Assistant Idaho Attorney General and as counsel for the Idaho Department of Labor before entering private practice in 1975. Mr. Greenfield has represented the Idaho state AFL-CIO and a number of local unions over the years but the principal focus of his practice is workers' compensation. He has served on the Governor's Advisory Committee (1983-1995) and the Idaho Industrial Commission's Advisory Committee on Workers' Compensation (2000-present) and has appeared before the Industrial Commission and the Idaho Supreme Court on numerous occasions in workers' compensation litigation. He has been active in the political arena, serving as state chair (1977-78) and national committeeman (1988-2000) of the Idaho Democratic Party.*

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