

# TITANS TUG OF WAR

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The decade leading up to the admission of the Idaho Territory as a state was characterized by considerable political turmoil and ostracism from political participation of one group of the early pioneer settlers, the members of The Church of Jesus Christ of Latter-day Saints, or "Mormons" as they were and are commonly called. This article attempts to capture some of the background and flavor of the times during that dramatic period leading up to statehood, especially as it relates in part, to some of the political leaders of that time and the consequences of the Idaho Test Oath to David Lloyd Evans, great-grandfather of the author, and other Mormon politicians of the day.

## POLYGAMY AND POLITICS

On August 29, 1852, Orson Pratt publicly announced the revelation that Joseph Smith received, over ten years earlier, that "the true marriage relationship: as God is polygamous, so then are men to be."<sup>1</sup> This doctrine was founded upon the Bible's example of the patriarchs of ancient Israel, Abraham, David, and Solomon. One historian commented, "Many Mormons accepted and defended polygamy, but few actually entered plural marriages. The majority of those who did were leaders in the church; presumably proven loyalty was an important consideration."<sup>2</sup> During the nearly 40 years that polygamy was an accepted practice of the Mormon church, less than 5 percent of all the Mormon men had plural wives. In Idaho, no more than 3 percent practiced plural marriage.<sup>3</sup>

Why then, were the "Saints" of Idaho persecuted for this culturally unorthodox doctrine, far beyond the measure of their brethren to the south in Utah? It was because the Mormons in Idaho were in the minority and they had become the swing votes for political control of the territory. This fact soon became quite apparent to a young, soon to be politician, who arrived in the territory in 1880. Fred T. Dubois landed at Blackfoot by rail from his native state of Illinois at the age of 31. He used the polygamy issue to cleverly catapult himself into a position of prominence in Idaho's local politics, and eventually became Idaho's United States Senator.

Dubois arrived in Blackfoot with his brother, Jesse Dubois, Jr., a new doctor, and both recent graduates from the esteemed Yale University. Jesse had just landed a job as physician at the Fort Hall Reservation. Dubois did not have a job lined up and went along with his brother for the adventure. The boys were American bluebloods with political connections from their father and grandfather, and were tried and true Lincoln Republicans. The boys' grandfather served under President William Henry Harrison in the battle of Tippecanoe and their father lived across

the street from Abraham Lincoln and served with him in the Illinois State Legislature.

When Dubois was a young boy, he and his friends tied a string between two trees where Mr. Lincoln customarily walked to his law office. The string was situated at hat level. When Lincoln walked by wearing his famous stove pipe hat, the string knocked the future president's hat to the ground, giving the boys a well earned laugh. The hat was full of Lincoln's law papers, which added to the rascals' delight to watch the tall man scramble about retrieving his papers.<sup>4</sup>

Fred Dubois was the perfect politician for frontier Idaho, which during the decade of the 1880s, was becoming more and

more inhabited by miners, loggers, cowboys and gamblers. He soon acquired the perfect job for such a politician. Despite Dubois' refined eastern upbringing, he was known to have earnestly cultured his reputation as a frontiersman, and many recite that he often enjoyed the wild and bawdy customs of the Idaho frontier.

When Dubois arrived in Blackfoot with \$34 in his pocket, dressed like a Yaley in eastern attire, the first place he ventured was a local saloon. He soon became acquainted with a stockman, who offered him a job as a cowboy on a cattle drive to Cheyenne, Wyoming. Being a dude from the East he received quite an education from the seasoned cowboys, who gained respect for his

grit and determination. Dubois later recalled that three months later he "drew my pay in a bunch, about \$120, bought a ticket to Blackfoot and stuck away \$10 for eating on the way. Then I proceeded to light up Cheyenne, with the help of hundreds of cowboys, who were there to let loose after the long season."<sup>5</sup> Although he was seeking adventure when he came west, he soon realized that being a cowboy was not his ticket to fame and fortune in frontier Idaho.

His next job took him to the Indian Agency at Fort Hall to look after the reservation livestock and brought him closer to his brother. In the fall of 1881, he came to know E.S. Chase, who was then the U.S. Marshal for Idaho. After spending some time with the marshal and learning about his duties, Dubois began to covet the marshal's job. When Marshal Chase left his position, Dubois told his brother, "I think I will take the marshal's place."<sup>6</sup> Sure enough the politically connected Dubois, with the assistance of Robert T. Lincoln, then Secretary of War, and Judge David Davis, a former Illinois Supreme Court Justice and then influential U.S. Senator, secured the appointment to the post of



*Fred T. Dubois, 1890. Courtesy Idaho State Historical Society (ISHS 1148-5)*

U.S. Marshall for the Territory of Idaho from President Chester A. Arthur.

Although he was fresh from the East, the new U. S. Marshal fit in well with most of the cultural factions that inhabited the Idaho frontier. Dubois was at home campaigning and spreading his propaganda in the saloons and hurdy-gurdies of Idaho. However, there were two factions that he didn't get along with, the politicians from Boise and the Mormons from the eastern section. In Boise, Territorial Secretary David Porter Baker Pride became his political nemesis. Pride was the leader of the "Boise Ring" and was a thorn in Dubois' side, constantly challenging him for political leverage in the Republican Party. In Dubois' eye, the Mormons were quite simply criminals. Upon taking office, Dubois said:

The Territory was infested with bandits, who frequently held-up stages and committed other crimes of this class. Their ranks had been added to by many lawless men who had been brought in through the building of the Oregon Short Line. But still more important than this was the fact that, through legislation by the congress of the United States, in March 1880, every member of the Mormon Church was guilty of crime, either as a principal or as an accessory.<sup>7</sup>

The Mormons in eastern Idaho were members of the Democratic Party and had been so since 1856 when the Republicans, with their famous campaign slogan, assailed polygamy, along with slavery, as the "twin relics of barbarism."<sup>8</sup> The Mormons had a tendency to vote as one block and carried considerable weight in Oneida County where they fit in quite well with B. F. White's Independent party. Dubois recognized their considerable influence in statewide elections, but in 1882 as U.S. Marshal, he felt he was in the driver's seat.

His first task as the new marshal was to enforce the Edmunds Act—the new federal law that made polygamy a crime. He recruited the most ardent anti-Mormons that he could find in the territory for his deputies. Prosecuting Mormons under the Edmunds Act was not the easiest process. The Act disenfranchised polygamists and increased the opportunity for criminal conviction, but the apprehension and prosecution of polygamists was difficult. The ambitious deputies not only had to catch the polygamist in the act of cohabitating with more than one wife, but then had to convince a jury of the culprit's guilt. The Mormons became skillful at hiding the few members of their religion with plural wives, and obtaining convictions with jurors drawn from the heavily Mormon areas was not an easy task.

However, after the United States Supreme Court ruled in *Rudger Clawson v. United States*, 124 U.S. 477 that the open venire system of jury selection was constitutional, Dubois' men were able to draw the jury pool from the mining camps around Hailey, Ketchum and Silver City and import them for trials in Malad.<sup>9</sup> The juries selected from this pool were much more inclined to convict. Dubois' men also became stealthier by conducting nighttime raids to achieve arrests. Gradually the territorial prison began to fill with polygamists. Eventually the prison

became so full that a number of them were hauled to Detroit, Michigan to serve out their terms.

When he became U.S. Marshal, Dubois received a "light top wagon with two seats and a magnificent span of dapple grays, Andy and Jeff," which he used to travel throughout Idaho. As he journeyed about the state, Dubois took every opportunity to spread his anti-Mormon propaganda and found many willing ears eager to hear the accounts of the depraved Mormons. Dubois was a likeable politician and enjoyed getting to know the Idahoans of the day. He personally summoned the jurymen and made sure they received extra compensation for their travel, by computing it from the "longest way around, paying no attention to shortcuts which they might have used."<sup>10</sup>

#### **D.L. EVANS ENTRY INTO POLITICS**

In 1882, when the author's great-grandfather D. L. Evans was elected to the territorial legislature, he was 28 years old and three years junior to Fred Dubois. He was the son of twice-widowed, Winnefred Lloyd Roberts Evans, a Welsh immigrant, who walked the plains with her three small children in the company of one of the many wagon trains that brought Mormon converts to the Salt Lake Valley in 1852. The prospect of obtaining more land under the Homestead Act brought Winnefred and her sons to the Malad Valley. D.L. Evans was the oldest child and was educated at the University of Deseret (now Utah) and became a teacher at Franklin. Later in life he attributed the sacrifice his mother made to finance his education as the single most important factor attributable to his success. Over his lifetime he became a successful merchant, banker, politician and prominent citizen of Malad City and the state of Idaho.

As were most members of the Mormon Church, Evans was a member of the Democratic Party and he, along with three other Democrats, was elected to the territorial House of Representatives from Oneida County. The Mormons knew that their influence in the territory rested on the success of the Democratic Party. As one historian noted, "in 1882 the anti-Mormons swept the territory, but lost the vital local election in Oneida County and did not capture the legislature."<sup>11</sup> The election of the four Democrats from Oneida County prevented the anti-Mormons from gaining control of the territorial legislature.

Dubois saw his chance in 1884 and declared it to be the most important election in Idaho History. The Democrats again nominated a similar strong ticket, including D.L. Evans, at their convention at Oxford. Marshal Dubois attended as an observer. As in 1882, the Mormons controlled the proceedings. Dubois then recruited the losing "gentile" faction. As Dubois recalled, "I used my position as United States marshal to summon to Malad, as witnesses and jurors, the leading Democrats and Republicans of the county, who were not of the Mormon faith.... We had called upon the gentiles in the various precincts throughout the county to send delegates to the convention, these being on the list of jurors, which enabled them to make the trip without personal expense."<sup>12</sup>

#### **VOTER FRAUD ON BOTH SIDES**

The election of 1884 in Oneida County was characterized by allegations of voter fraud on both sides. Both the anti-Mormon and Democratic candidates received certification and trudged on

to Boise to assume the seats to which they claimed to have been elected. Despite the protests of D. L. Evans and George C. Pratt to the territorial council, the anti-Mormon candidates were given the seats.

The political climate for Mormons began to change dramatically. As a noted historian wrote, "Cheerfully ignoring demands for an investigation of 'great frauds' responsible for their election to the council, Harvey Walker Smith and George N. Crawford (whose votes transformed the legislature into a radical anti-Mormon assembly) presented a proposal designed to make similar election irregularities unnecessary in the future."<sup>13</sup>

In 1882, under the federal Edmunds Act, all polygamists had lost their franchise. Now, in 1884, with the anti-Mormons in complete control of the territorial legislature, the plan was to disenfranchise all Mormons. According to Dubois memoirs, H.W. "Kentucky" Smith, a young lawyer and now newly elected member of the territorial council, drafted the famed Mormon Test Oath. Under the Test Oath, not only were polygamists banned from voting, but any member of any organization that recognized the teaching of the doctrine of plural marriage or polygamy were banned from voting and all were required to subscribe such test oath as a condition of voting. The act passed the legislature.

D.P.B. Pride orchestrated a plan where he would receive the support of the Mormons for the approval of construction bonds to build the capitol building in Boise and the insane asylum at Blackfoot in exchange for a governor's veto of the Mormon Test Oath. The construction bonds passed, but when "Kentucky" Smith got wind of the impending veto, he encouraged Governor Bunn to sign the Test Oath legislation with the help of a Colt revolver.<sup>14</sup> The net result was no member of the Mormon Church held office for a period of ten years.

### SECEDERS

Dubois resigned his position as U.S. Marshal in 1884 and ran for the Territorial Representative to Congress. He was elected in 1886 and 1888, and was influential in the admission of Idaho as a State in 1890. He was rewarded by being elected as the first full term United States Senator in 1890.

In 1888, a group of Mormons, including D.L. Evans, attempted to regain their political influence in eastern Idaho by resigning their membership in the Mormon Church just prior to the election, making them eligible to vote. They planned to rejoin their church the next day. All of this had the approval of church leadership. The Mormon Independent Party met on October 23 at Paris and endorsed James Hawley against Dubois for territorial representative. Soon thereafter resignations commenced. By October 24, resignations were also taking place at Rexburg and three days later D. L. Evans and a substantial group of Mormons from Malad resigned. Emotions were running high and the open violence seemed imminent "during the eight-day tempest preceding the elections." Both sides refrained from armed confrontation as the "Mormons registered in droves."<sup>15</sup>

The anti-Mormons were prepared for that and the Oneida County prosecutor, Drew W. Standrod, ordered the arrest of twenty "seceders" on November 3. Dubois' defenses held intact. Standrod's instructions to the Oneida registrars prevented the Mormon's from registering. The failure of the Mormon seceders

to vote in 1888 contributed to Dubois' successful re-election as representative to Congress.

Standrod's case against the Malad seceders was timed to commence just prior to the ratification election of the new Idaho Constitution. The constitution was adopted to include the Mormon Test Oath to insure a continuation of their disenfranchisement. The Mormon seceders had been indicted for perjury by a grand jury that contained no Mormons. Attorney Standrod hoped to discourage Mormons from their experiment of 1888 by demonstrating what would happen to Mormons if they attempted to vote again. "Drew W. Standrod's case against David Lloyd Evans, most prominent of the Malad Group, encountered a strong defense. Evans convinced five of the twelve jurors on September 7, that his withdrawal was permanent and part of no church conspiracy to nullify the test oath by subterfuge."<sup>16</sup>

The case against D.L.'s friend, Samuel D. Davis, resulted in a conviction and eventually made it to the U.S. Supreme Court. Davis appealed his conviction on the grounds that his conviction for conspiracy violated his free exercise of religion. In *Davis v. Beeson*, the Court upheld his conviction saying that because the matter arose as a habeas corpus proceeding, the Court ruled only on the issue of whether the district court at Malad had jurisdiction and avoided completely the free exercise of religion issue.

In 1890, Idaho was admitted into the union, sadly without the political participation of 25,000 Mormons that lived within its boundaries at that time. 1890 was also the year that church president Wilford Woodruff announced his famous "Manifesto" abandoning polygamy in the United States. With the "Manifesto" there no longer was a basis or need to utilize the Mormon Test Oath. The issue disappeared for a time and D. L. Evans was elected to the state legislature in 1898 to serve as the Speaker of the House of Representatives. He remained active in Democratic politics throughout his life.

Ironically, Dubois became a Democrat and was elected to the U.S. Senate in 1900. Eventually the enemies that he accumulated in both parties proved to be his demise. Dubois was ousted from the leadership of the Democratic Party by a decision of the Idaho Supreme Court in favor of the faction led by John Nugent.<sup>17</sup> D.L. Evans was among that faction. The famous "Lion of Idaho", William E. Borah, was elected to the U.S. Senate in his place.

In another irony, Drew W. Standrod became a business partner and confidant of D. L. Evans. Together, with some other partners they organized the D. W. Standrod & Co. Bankers of Blackfoot in 1898. Along with many others, the bank failed during the great depression.

The Mormon Test Oath remained in the Idaho Constitution until 1982 when it was officially repealed by the state legislature and ratified by the citizens of the state. The repealing legislation was signed into law by Governor John V. Evans, a grandson of D. L. Evans and the author's father.

### ENDNOTES

<sup>1</sup> A.J. Simmonds, *Idaho's Last Colony: Northern Cache Valley Under The Test Oath* pp. 4. *Idaho Yesterday* 1984 28(1): 24-30 Bennett, Dana, Mormon Polygamy in Early Southern Idaho. At 25, also Wallace Turner, *The Mormon Establishment* (Boston:

Houghton Mifflin Co. 1966, 180.

<sup>2</sup> *The Making Of A State* (Rexburg, Idaho: Eastern Idaho Publishing Co., 1971, Dubois' hand typed memoirs located in the special collection section of the Idaho State Historical Society. Hand typed memoirs at pp 5.

<sup>3</sup> Ibid, at pp12.

<sup>4</sup> Ibid, at pp14.

<sup>5</sup> Merle W. Wells, *Anti-Mormonism in Idaho, 1872-92*. Provo, Utah, Brigham Young University Press, 1978, xii.

<sup>6</sup> Ibid

<sup>7</sup> Dubois Memoirs, p 32

<sup>8</sup> Wells, p 66

<sup>9</sup> Dubois, p 66

<sup>10</sup> Wells, p 58

<sup>11</sup> Ibid, p 61

<sup>12</sup> Ibid, p 120

<sup>13</sup> Ibid, p 121

<sup>14</sup> Ibid, p 138

<sup>15</sup> Leo W. Graff, *Fred T. Dubois, Biographical Sketch*. Pocatello, Idaho State University, p 8.

<sup>16</sup> Ibid

<sup>17</sup> Ibid

#### ABOUT THE AUTHOR

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Mr. Clark serves as a private hearing officer, federal court discovery master, neutral arbitrator and mediator. He has successfully conducted more than 500 mediations. He received the designation of Certified Professional Mediator from the Idaho Mediation Association in 1995. Mr. Clark is a fellow of the American College of Civil Trial mediators. He is a member of the National Roster of Commercial Arbitrators and Mediators of the American Arbitration Association and the National Panel of Arbitrators and Mediators for the National Arbitration Forum. Mr. Clark is also on the roster of mediators for the United States District Court of Idaho and all the Idaho State Courts.

Mr. Clark served as an Adjunct Instructor of Negotiation and Settlement Advocacy at the Straus Institute For Dispute Resolution, Pepperdine University School of Law in 2000. He served as an Adjunct Instructor at the University of Idaho College of Law on Trial Advocacy Skills, negotiation Skills, and Mediation Advocacy Skills. He has lectured on evidence law at the Magistrate Judges Institute, and the District Judges Institute annually since 1992.

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