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### ORGANIZATION OF THE IDAHO TERRITORIAL SUPREME COURT

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Idaho territorial administrative troubles were compounded in the early 1860's by the lack of an organized Supreme Court. The high court had been scheduled to meet several times since 1863, but never had two justices out of the three-man bench showed up at the same time to provide a quorum. Soon after the discouraging news of the 1864 election reached Republican candidate Samuel Oarks, that honorable member of the court resigned and returned to Illinois, a man saddened by defeat and at the same time by personal tragedy. Family illness had taken two of his children in the fall. Archy G. Turner told Wallace that Parks had gone east to contest Holbrook's victory, but that information was presumably false. On April 14, 1865--the day he was murdered President Lincoln, acting on the advice of his friend Delegate Wallace, penciled on the back of Wallace's recommendation for Park's replacement: "If it is definitely (sic?) concluded to accept Judge Park's resignation, as I understand it is, let the within appointment be made." The recommendation was for Milton Kelly, the firey Radical Boise attorney and one time editorial assistant for James S. Reynold's Idaho Statesman. Kelly's appointment theoretically filled the bench again, and optimists hoped that when Judge McBride arrived he was still on his way west after accepting the Chief Justiceship in place of Silas Woodson the court would at last have a session. It was particularly important to Boiseans that Kelly and McBride both be present at the first session, scheduled for August 5, for although Alex Smith would also be on the bench to test his own lower court capital decision--a procedure outlined by the Organic Act and fought bitterly throughout the territorial period--Kelly and McBride together could provide the margin of victory over the northerner. Kelly held district court in Idaho City in June and July, and when McBride finally arrived August 2, everyone rejoiced. Newspapers gave positive assurances that the court would open five days later. But further disappointment awaited anxious litigants. Although Kelly and McBride wanted to hold high court, they were stymied by an act of the second legislative session which changed the court's opening date from the first Monday in August to the first Monday in January. There was no use fighting that enactment no matter how big was the backlog of cases to be heard. Reluctantly the justices rescheduled the first court session for January 2, 1866, and went back to their district benches. The court actually did not begin its first session until

May 31, 1866. Kelly met with the United States Marshal January 2, but adjourned until the next day because no other judges were present. He followed the same procedure all that week, but on January 8, he postponed again, this time for the second Monday in May. The same thing happened when Kelly opened court May 14, he had to stall for 15 days until McBride and Smith arrived at last, May 31. McBride had been delayed by an unusually frigid winter. Trying to reach Idaho from Portland, he was stranded in the Dalles early in January after the steam boat on which he was riding gave up trying to fight the Columbia. Reports claimed that the river above that point was frozen so solid that heavy freight teams could cross on the ice.

References:

Kelly to Wallace October 27, 1864, Turner to Wallace December 9, 1864, Wallace papers (University of Washington Manuscript collection, Seattle), Box 1; Lincoln to James Speed, on back of letter, Wallace to Lincoln, April 12, 1865 in Basler Collected Works VIII, p. 412; Minute Book of the Idaho Territorial Supreme Court, I (Supreme Court Clerk's office-Boise), 5-15; Second Session Laws, pp. 404-5; Idaho Tri-Weekly Statesman, November 1, 1864, p. 2, c. 3, June 15, 1865, p. 2, c. 3, January 9, 1866, p. 2, c. 1, Idaho World, November 5, 1864, p. 2, c. 1; Owyhee Avalanche, November 11, 1865, p. 2, c. 1.

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