

SUMMER 2019

Buhl Woman, One of the Oldest Human Skeletons Found in the Americas, Sparked Controversy over New Idaho Law, *page 1 - 2*

Texas Angel and Isaac Newton Sullivan, *page 3 - 4*

No Peace on the Boise Front: The Curious Case of Pearl Royal Hendrickson, *page 4 - 5*

BUHL WOMAN, ONE OF THE OLDEST HUMAN SKELETONS FOUND IN THE AMERICAS, SPARKED CONTROVERSY OVER NEW IDAHO LAW

BY RITCHIE EPPINK

On an average Tuesday in January 1989, the foreman for a team of Buhl Highway District workers spotted what looked like a human femur bone in a rock crusher after a front-end loader had dumped rock and sand into it. The foreman's wife contacted the College of Southern Idaho the next day. Nearby in the quarry was one of the oldest, nearly complete skeletons of a human found anywhere in the Americas. *Continued on page 2*



The “Buhl Woman,” sometimes referred to as “Buhla,” is estimated by radiocarbon dating done in Zurich to have lived at least 10,675 years ago. Geologic analysis of nearby sediments indicate that is a minimum age. Archaeologists believe that the Buhl Woman was an adult female who stood 5 feet and 2 inches, ate mostly bison and elk, and was somewhere between 17 and 21 years old at the time of her death. Found near her skeleton were four artifacts: a flaked obsidian point, a fragment of a bone needle, two fragments of a bone awl or pin, and a badger baculum (penis bone), together suggesting a ceremonial burial.

Less than five years before highway workers discovered the Buhl Woman’s remains, the Idaho Legislature had passed a Protection of Graves Act. Progressive for its time, the law was recommended by the Interim Committee on Indian Affairs, in consultation with representatives of Idaho tribes, the Idaho Archaeological Society, and Idaho State Historical Society. Still in force and codified at Idaho Code §§ 27-501 through 27-504, the law prohibits anyone from willfully injuring any grave and requires reinterment after any grave is inadvertently disturbed. The law further prohibits possessing artifacts taken from a grave in 1984 or later, prohibits selling any artifacts from a grave, and prohibits publicly displaying any human remains. Tribal members and others may also enforce these prohibitions through a private civil action for injunctive relief and damages, including punitive damages.

Significantly for the Buhl Woman, the statutes also require notice and, usually, prior consent of an appropriate Indian tribe nearby or related to a grave before the grave can be excavated. In the case of the Buhl Woman, because the quarry site where her skeleton was discovered would have rapidly eroded had immediate excavation not begun, an emergency provision at Idaho Code § 27-502(1) permitted recovery of the remains without prior consent from the appropriate tribe, which was determined in this case to be the Shoshone-Bannock Tribes of the Fort Hall Reservation.

Nevertheless, the law required all of the Buhl Woman’s remains and the artifacts found with her to be returned to the Shoshone-Bannock for reinterment. Though the law vaguely permits “scientific study” before reinterment, and the Shoshone-Bannock allowed a portion of the skeleton to be used for radiocarbon dating, controversy over the Buhl Woman’s remains caused tense relations between the Tribes and archaeologists. Litigation did not become necessary, as it did the following decade when the Kennewick Man remains were found near Kennewick, Washington, in a location governed by the federal Native American Graves Protection and Repatriation Act (NAGPRA). The Shoshone-Bannock reburied the Buhl Woman’s remains in the early 1990s at a secret location.

Idaho’s law today is undoubtedly long out-of-date and inadequate. Because the law does not sufficiently prohibit collecting human remains, one anthropologist has called out the legislation as “arcane,” saying that it “has no place in the modern American legal system any more than a poll tax or Jim Crow laws.” Efforts to repatriate remains and artifacts stolen from indigenous graves continue worldwide still. A professional archaeologist and member of the Tongva tribe of southern California, Desiree Martinez, recently explained in the *New York Times*: “As Native Americans, we are in a constant state of mourning, knowing that our ancestors’ graves have been disturbed and their remains and burial goods removed to sit on museum shelves, all over the world.”

Jenna M. Battillo, *A Critique of Legal Protection for Human Remains in Idaho with Suggestions for Improvement of Current Legislation*, *Journal of Northwest Anthropology*, Vol. 46, No. 2 (2012), pp. 189-201.

Chip Colwell, “As Native Americans, We Are in a Constant State of Mourning,” *New York Times*, April 4, 2019, <https://www.nytimes.com/2019/04/04/opinion/can-museums-heal-historys-wounds.html?smid=nytcore-ios-share>.

Thomas J. Green, Bruce Cochran, Todd W. Fenton, James C. Woods, Gene L. Titmus, Larry Tieszen, Mary Anne Davis and Susanne J. Miller, *The Buhl Burial: A Paleoindian Woman from Southern Idaho*, *AMERICAN ANTIQUITY*, Vol. 63, No. 3 (Jul., 1998), pp. 437-456 (20 pages).

Chris Webster, ArchPodNet, “Idaho’s Buhl Woman” (Sept. 11, 2017), <https://www.archaeologypodcastnetwork.com/all-shows/arch365-254>.

TEXAS ANGEL AND ISAAC NEWTON SULLIVAN

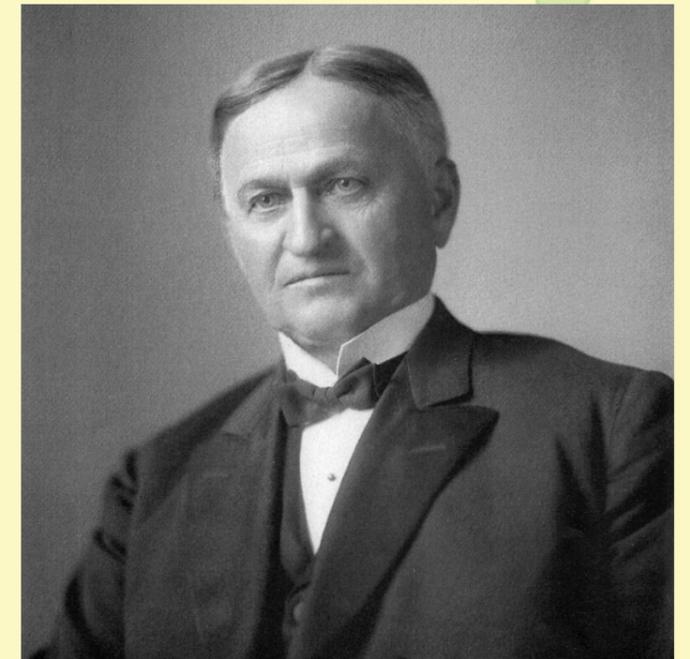


By Ernest A. Hoidel

Two of the most intriguing names and legal careers of early members of the Idaho bench and bar were Texas Angel and the Honorable Isaac Newton Sullivan.

Tracing his family genealogy to Mayflower-era arrivals from Wales, Texas Angel was born in Angelica, New York on October 10, 1839. Texas’ great-grandfather, Nathan Angel, relocated from Massachusetts to Providence, Rhode Island and was a follower of the religious leader, Roger Williams. Texas’ father, William Gardner Angel, was born in 1790 and practiced law in Otsego, New York. William Gardner Angel was twice elected to Congress during Andrew Jackson’s presidency and served as a county judge and surrogate for Albany County, New York.

While in Congress, William Gardner Angel befriended Sam Houston, of Texas independence fame, and thus, his youngest child, was given the Christian name of “Texas” Angel to honor Sam Houston.



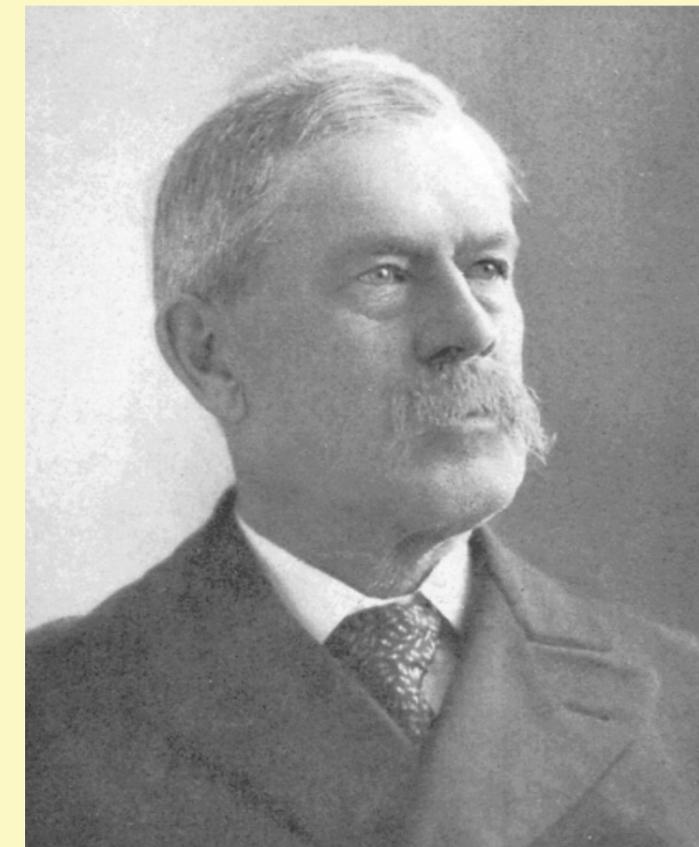
At age 22, Texas Angel enlisted in Company I of the 27th New York Infantry and fought in both of the Battles of Bull Run, West Point, Gaines’ Mills, Malvern Hill, South Mountain, Antietam, and Fredericksburg. Angel was commissioned as a second lieutenant and served as quartermaster of his regiment. His two-year enlistment ended in May of 1863, but he served as a recruiter for the Union Army until 1864.

Texas Angel traveled through the Isthmus of Panama to San Francisco in 1864 to “read the law” under Samuel M. Wilson and was admitted to the California Bar at Sacramento on April 3, 1866. Angel returned to Jamestown, New York to practice law until 1867 and then started a practice in Eau Claire, Wisconsin which lasted ten years.

Due to his second wife’s ill health, having married in Eau Claire in 1870, he moved to the much nicer climate of Hailey in 1881 and joined with Issac Newton Sullivan to practice under the firm name of Angel and Sullivan.

Angel’s son, Richard Angel, was born in Eau Claire on September 24, 1871, continued with Texas Angel’s practice after 1896 (Idaho Bar admission date). Richard was the first telephone exchange operator in Hailey and earned a

Continued on page 4



TEXAS ANGEL, CONTINUED

salary of \$50 per month prior to reading the law in his father's practice. Richard Angel served as a district attorney and prosecuting attorney and founded one of the first athletic clubs in the state.

Isaac Newton Sullivan was born in Delaware County, Iowa on November 3, 1848. His father, Aaron Sullivan's paternal grandfather, John Sullivan, was reputed to be a delegate to the first continental congress in 1774. John Sullivan's parents immigrated to America from the North of Ireland and were of Scotch-Irish descent. Aaron Sullivan married Jane Lipponcott in 1848 in Logan County, Ohio and they settled in Delaware County, Iowa on a section of land. Of this marriage, Aaron and Jane had nine children: three daughters (Mary Rebecca, Sarah Ellen, and Jane A. Sullivan) and six sons (Samuel Parker, Andrew Jackson, Isaac Newton, Aaron Rudolphus, Benjamin Franklin, and Lucius Matlock Sullivan).

Isaac Newton Sullivan began a teaching career in Delaware County, Iowa when he was age 17 and then attended Adrian College in Michigan prior to teaching once again in Coffeyville, Kansas from 1874-1875. Sullivan returned to Dehli, Iowa to teach and perform clerk of court duties while "reading the law." Isaac Newton Sullivan passed the Iowa Bar in 1878 and moved his family to Hailey, Idaho in 1881 to join Angel in law practice.

Isaac Newton Sullivan was elected to Idaho's first state supreme court and served as the first chief justice. Sullivan, a commentator wrote, "To him went credit for writing more opinions, interpreting the Idaho constitution, than any other man. To him also went much credit for shaping and interpreting the work of Idaho's constitutional convention" in an article published in the Idaho Statesman on February 1, 1938, noting his passing. After retiring from the Supreme Court on January 1, 1917, Justice Sullivan joined his sons in practice in Boise under the firm name Sullivan and Sullivan.

French, Hiram T., History of Idaho, Lewis Publishing Company, Chicago & New York 1914
Fennell, Syringa Blossoms 1914
Hawley, History of Idaho Vol. 2 1920
The Idaho Statesman February 1, 1938

 THE IDAHO LEGAL HISTORY SOCIETY 

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In November 1936, a property transaction between Charles G. Allen and the United States Forest Service left an African-American homesteader, Pearl Royal Hendrickson, in a legal gray area.

Fifteen years earlier, Hendrickson, new to the Boise area, obtained permission from Allen to occupy a small one room cabin on Boise Ridge Road in exchange for supervision of the open-ranged livestock Allen ran through the area. No titles changed hands nor was any contract signed outlining the terms of the agreement. Hendrickson lived a peaceful life in the small cabin, maintaining a small garden on the premise as well as four separate mining claims for the rare earth mineral gallium. However, in 1936, after a minor dispute over Hendrickson cutting trees in 1930, Allen transferred the land and cabin to the U.S. Forrest Service for the development of the Boise Peak Recreation Area. Despite repeated orders to vacate the homestead, Hendrickson refused prompting the government to bring legal action against him in October 1939. Seeing no other options, Hendrickson used his small military pension to hire an attorney and sued for his right to remain on the land. However, by July 1940, he left US District Court for the District of Idaho a defeated man. Judgement was handed down in favor of the government, granting the Forest Service quiet title to the land, and the court issued an order for Hendrickson to vacate the cabin. Despite the federal court order, Hendrickson refused to leave his home, vowing to his neighbors that the only way he would leave was "feet first." This prompted the court to hold

NO PEACE ON THE BOISE FRONT: THE CURIOUS CASE OF PEARL ROYAL HENDRICKSON

By Zane Francescato, a 2L at Concordia Law School

Hendrickson in contempt of court and issued an ouster order.

In the early hours of July 31, 1940, Deputy U.S. Marshal John H. Glenn and Captain George Haskin of the Boise Police Department were sent to arrest Hendrickson. What should have been a normal arrest turned deadly as two blasts from Hendrickson's 30-30 rifle fatally struck Glenn in the chest. Haskin, who was standing around the corner of the cabin from Glenn, later told reporters the shots came "right out of a clear sky." Haskin exchanged fire with Hendrickson before making a hasty retreat to Boise, frantically forming one of the largest posses in Idaho history. Within an hour of Glenn's death, fifty heavily armed lawmen from as far away as Moscow, Idaho and Montana, in Boise for a regional meeting of peace officers, made their way to Hendrickson's cabin.

Among the first to arrive on scene was U.S. Marshal George Meffan, a well-respected Idaho resident, former Mayor of Nampa, and former State Senator. As Meffan's car made its way up the mountain road, it stalled fifty yards from the cabin and directly in Hendrickson's line of fire. Within seconds, a single shot struck Meffan in the head, killing him. For the next three hours, the quiet serenity of the mountain road was interrupted by the sounds of automatic gunfire, explosions, and shouts of contradictory orders. Posse members relentlessly pounded Hendrickson's cabin with hundreds of rounds of lead, dynamite, flares, and tear gas from the safety of cover. The siege was described as disorganized and ineffective until Guy Bannister, unit director for the Butte, Montana division of the FBI, took control of the assault. After another hour of coordinated fire, Hendrickson's rifle fell silent and the posse stormed the cabin, finding Hendrickson unconscious. His body was riddled with several bullet wounds and he had a hole the size of a child's fist in his forearm. With the siege over, Hendrickson was dragged out of his cabin amidst calls for his immediate execution, and into an awaiting ambulance where he ultimately succumbed to his injuries en route to a Boise hospital.

But just who was Pearl Royal Hendrickson? In both the days and years following the standoff, relatively little has been written about the man behind the incident. Newspaper columns published after the incident claimed Hendrickson was nothing more than an obsessed and enraged "negro" hermit who gunned down two of Idaho's finest.

However, a December 2012 Idaho Magazine article titled "Gunfight on Boise Ridge," offered a unique perspective on both the standoff and Hendrickson. The author, Jim Fazio, who is the great nephew of the late Marshal Glenn, remarked that while he could not condone Hendrickson's actions that fateful date, three good men needlessly died. To the few who

Continued on page 6



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 JUDY AUSTIN 

is recognized for being a 2019 recipient of the Idaho Historical Society's **2019 Esto Perpetua Award.**

The Idaho Historical Society honored Judy with this award to recognize her work as an advisor and researcher to Idaho Public Television on shows like

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Her active membership in the Western History Association, and her lifelong efforts and reputation as an Idaho historian have been very much appreciated.

NO PEACE, CONTINUED

knew him, Hendrickson was a good-natured man who didn't hunt or work on Sundays and preferred to keep to himself. When his neighbors, Mr. and Mrs. Tom Muruaga, owners of the nearby Pineview Dance Hall, were told of the incident, they could not believe the nice "old fellow" who lived up the road would do such a thing. They stated that Hendrickson was always friendly and would often share the game he shot with them. Additionally, several cross-country skiers stated that Hendrickson would invite them into his cabin to warm themselves around the hearth of his fireplace after a day of skiing in the nearby hills.

Another aspect about Hendrickson that helps shed light on the man responsible for the deaths of two U.S. Marshals is his World War I service record.

In July 1918, Hendrickson was drafted into Company E of the all colored 805th Pioneer Infantry Division. After an accelerated basic training at Camp Funston, Kansas, the 805th was deployed during the last two months of the deadly Meuse-Argonne Offensive. Hendrickson's company was given the task of repairing roads and a railhead seven miles from the front. Given the proximity of the company's objective to both the front, and a nearby field hospital, the men were under constant bombardment by German aircraft and artillery. However gruesome and deadly the task, the company received high marks for professionalism and courage under fire. While Hendrickson received no commendation, his honorable discharge reflects his character as being "excellent."

After returning home to Topeka, Kansas from service in June 1919, Hendrickson found himself in a legal battle over property that had been brewing since 1916. Before shipping off to fight in France, Hendrickson and his neighbor, L.M. Fort, had joint ownership of a property in Topeka. For unknown reasons in August 1916, Fort was forced to forfeit his interest in the property after a third party, John Sheetz, successfully obtained judgement against him. Before execution of the judgement was issued, Fort quitclaimed his interest to Hendrickson in November 1916. However, in July 1919, a month after Hendrickson returned home from military service, Sheetz obtained not only Fort's undivided interest in the property, but a full controlling interest by purchasing the deed at a sheriff's sale. Hendrickson quickly sued, having his interest in the property reestablished in 1922 by the Kansas Supreme Court in *Hendrickson v. Sheetz*.

After winning his appeal before the Kansas Supreme Court, Hendrickson sought somewhere he could live the peaceful and quiet life of a miner. His journey took him to Colorado where he was again involved in a property dispute, this time being cheated out of a mining claim resulting from another man's dishonest claim of land titleship. Hendrickson then relocated to Idaho in 1925, which brings

us back to the beginning of this story.

In 1977, Idaho Statesman reporter, Karen Bossick, in her feature article "Grass Covers Grave but Legend Lingers On," asserted that Hendrickson lived and died under the impression that he was being persecuted. James V. Potter, the son of the Forest Service ranger responsible for managing the area Hendrickson occupied, stated in an interview with Bossick that his father refused to remove Hendrickson from his cabin because he was there in good faith. Potter noted that his father spoke of race playing a role in the eviction as there were other white squatters in the area who were bums and poachers yet were allowed to remain on the land.

Today, Hendrickson's cabin and the story of what happened on that deadly July day has all but faded into legend. As for Hendrickson's final resting place, it can be found in a secluded area within the Old Ada County section of Morris Hill Cemetery. His original cracked and faded gravestone has recently been replaced. Given what we now know of Hendrickson's story and his history of legal disputes over property, the assertion of persecution may carry more weight. Perhaps it's time to review the Hendrickson affair and re-frame the story as one with an unnecessary and unfortunate ending for two US Marshals and a respected veteran who fought for what he felt was the right to peace after a long life of conflict, war, and persecution.

¹ Dick d'Easum, "Negro Killer Had Humble Existence in Mountains," *The Idaho Daily Statesman* (Boise, ID), Aug. 1, 1940.

² *Id.*

³ Karen Bossick, "Grass Covers Grave but Legend Lingers On," *The Idaho Statesman*, (Boise, ID), Oct. 30, 1977.

⁴ *Id.*

⁵ Jim Fazio, "Gunfight on Boise Ridge: A Great-Nephew Asks, Who Shot the Marshal?," *Idaho Magazine*, December 2012, 53.

⁶ "Possemen Tell Complete Story of Double Killing and Man-Hunt," *The Idaho Daily Statesman* (Boise, ID), Aug. 1, 1940.

⁷ Clyde E. Summers. "Certificate of Death - Pearl Royal Hendrickson." Death Certificate, Idaho, 1940.

⁸ Jim Fazio, "Gunfight on Boise Ridge: A Great-Nephew Asks, Who Shot the Marshal?," *Idaho Magazine*, December 2012, 55.

⁹ Dick d'Easum, "Negro Killer Had Humble Existence in Mountains," *The Idaho Daily Statesman* (Boise, ID), Aug. 1, 1940.

¹⁰ Pearl R. Hendrickson, "Honorable Discharge from the United States Army." (Military Document, Kansas, 1919).

¹¹ Paul S. Bliss, *Victory: History of the 805th Pioneer Infantry, American Expeditionary Forces*. (Minnesota: Paul S. Bliss, 1919), 118.

¹² *Id.*

¹³ Pearl R. Hendrickson, "Honorable Discharge from the United States Army." (Military Document, Kansas, 1919).

¹⁴ *Hendrickson v. Sheetz*, 112 Kan. 296 (1922).

¹⁵ *Id.*

¹⁶ *Id.* at 297

¹⁷ Dick d'Easum, "Negro Killer Had Humble Existence in Mountains," *The Idaho Daily Statesman* (Boise, ID), Aug. 1, 1940.

¹⁸ Karen Bossick, "Grass Covers Grave but Legend Lingers On," *The Idaho Statesman*, (Boise, ID), Oct. 30, 1977

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