

CAPITOL RETORT

Weekly musings on government news from people in the know

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BREAKING THE ICE

The enthusiasm of freshman lawmakers drives cities' lobbyist

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AP PHOTO: STARTRIBUNE

Sam Hanson, the attorney representing Gov. Mark Dayton, delivers his oral arguments Monday before the Minnesota Supreme Court at the Capitol in St. Paul.

Jury awards \$20 million for sepsis death after childbirth

By Barbara L. Jones
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What is believed to be the largest medical malpractice verdict in state history was handed down Aug. 28 in a case where a 30-year-old woman died of sepsis six days after delivering a son.

A Hennepin County jury returned a verdict of \$20.6 million against Emergency Care Consultants in a case in which the plaintiff's attorney, Chris Messerly, had trouble completing his closing argument because the case was so sad.

Nicole Bermingham delivered her first child, Eddy, on Aug. 20, 2013. She returned to Abbott Northwestern's Emergency Department on Aug. 24 in constant pain and with a fever of 101.8 or 101.9.

She did not see a doctor because Emergency Care Consultants, which is contracted to provide emergency care to Abbott, staffed the department with a nurse practitioner.

Blood tests showed that Bermingham's platelet count was "alarmingly low," said Messerly in a trial brief. That is a sign of sepsis infection or an inflammatory response, Messerly wrote, but the nurse practitioner diagnosed a urinary tract infection and did not tell the on-call obstetrician about the low platelet count. Bermingham was discharged.

About 15 hours later she returned with more symptoms, which doctors recognized as sepsis. She was treated with antibiotics and an emergency hysterectomy but died on Aug. 26.

According to court documents,

Justices grill both sides in veto suit

Six justices on a hot bench skeptically probe arguments

By Kevin Featherly
Staff writer

Without waiting for either side to state its case, six Supreme Court justices barraged lawyers with questions Monday as they weighed whether Gov. Mark Dayton acted legally in vetoing the Legislature's \$130 million two-year budget.

Dayton had appealed a lower court's finding that his line-item veto was unconstitutional to the state Supreme Court. Justices heard the case Monday, Aug. 28.

"Can we just get to it?" Chief Justice Lorie Gildea said moments after Dayton's lead attorney, Sam Hanson, began laying out his case.

"If it is constitutional as you suggest for the governor to take away funding for the Legislature," she said, "why is it constitutional for the judiciary to give the money back to the Legislature?"

Her question revealed deep skepticism of an argument at the heart of Dayton's defense of his line-item veto, which cut off full 2018-19 funding for the House and Senate. The governor's defense rests partly on refuting

lawmakers' argument that Dayton "abolished" the Legislature.

Dayton said he used the veto to force lawmakers back to the bargaining table and a second special session, but only if they agreed to dump five policies that passed in three different bills.

It came, he acknowledged, as retaliation against a "poison pill" embedded in the state government operations bill. That provision would trigger automatic defunding of the Revenue Department and 1,300 layoffs if Dayton vetoed the session's tax bill, arguably the GOP's top prize of the

Veto | Page 9

Charged with impersonating a man in 1858

Joseph Lobdell suffered decades of legal persecution

By Zac Farber
Staff Writer

In the summer of 1856, a forlorn and friendless young man arrived in the Minnesota Territory by train.

Joseph Lobdell had been expelled from Bethany, Pennsylvania, by townsfolk armed with tar and feathers. His fiancée had warned him of the angry mob's intentions. And so he had fled.

The journey west, on the Hudson River Railroad, had taken several

months. He'd stopped three times in railway towns, earning money for his trip's next leg by teaching in singing schools.

Self-reliant and quick-witted, he was confident he could survive on the frontier. He was slim, dark-haired, good-looking and strong. He'd once tracked and killed a full-size panther and, taking aim with his rifle, he could sharpshoot everything "down to the rat."

In preparation for his new life, he'd

acquired a flashy new wardrobe: coat, vest, pants and hat, all patterned in calico.

And for the second time in his 26 years, he'd adopted a new name: La-Roi — "the King."

But Lobdell's troubles were far from over.

He lived in a time of rigid beliefs about sex and gender. Women were thought incapable of sexual desire, and even mildly transgressive behavior was met with confusion, revulsion, paranoia and fury.

Politics of the Past

Raised as a girl named Lucy, Lobdell maintained from early adulthood that he was "a man in all that the name implies," determined to wear men's clothes, court comely ladies and seek an "independent, free-thinking" life. Yet Lobdell's female anatomy would bring him endless torment.

From an early age, Lobdell had to contend with the knowledge that others saw him as "a strange sort of being." Again and again, he'd be rended from loved ones, mocked in the streets, tossed into lockup, branded a lunatic, banished

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Lobdell

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and exiled. Generations of journalists and historians would vilify him as “foul and unsexed,” a “maniac man-woman,” a “filthy, diseased fellow-being.”

In the face of these abuses, he sought meaning, not in the world of men, but in a progressive, nonsectarian brand of Christianity, which he preached, now and then, from soapboxes and in backwoods revivals.

Concluding a short memoir, written at age 25, Lobdell paraphrased the Gospel of Matthew: “Though your name may be cast out as evil, you can rejoice, knowing that if you but endure to the end you will be saved.” These words of consolation foretold a life biblical in its woe. By the time of his death, at age 83, in a state psychiatric hospital, Lobdell would amass miseries to match those of Job.

A girl in the forest

When Lucy Ann Lobdell was born, in December of 1829, her parents were still mourning their first-born infant daughter.

They “sorrowed as those without hope,” Lucy wrote in her memoir. “It was a bitter bereavement.” In their grief, they both pampered their second daughter and worried over her safety. “As I was the only living child, it is not strange that I became their pet — almost spoiled child,” she wrote.

Lucy spent her childhood in a cabin on the outskirts of Westerlo, New York, a small village south of Albany. A nearby forest teemed with weasels, minks and woodland flowers. Crisscrossing pathways begged to be explored. After “tying a bell on the little truant,” Lucy’s mother permitted her to freely roam the woods.

Lucy later recalled her sylvan wanderings as the “happy days of youth,” though her body ached with an inner melancholy. “Oft did I get lost,” she wrote, “chasing and searching for the little Robin red-breast as she warbled her lays at morn and eve ... till, tired and weary, I sank upon some mossy spot and cried myself to sleep.”

As Lucy grew, so, too, did the allure of the forest. Borrowing her father’s rifle, she practiced sharpshooting until she could pick birds out of the sky, and she befriended a Native American girl named Gelerama, who taught her how to fashion buckskin and survive in the wilderness. Lucy’s rugged hobbies, unusual for a girl of the 1830s, won her local fame and a nickname, “the Sure Shot.” “She could outshoot any of the men, and handled the ax with the ease of an old chopper,” wrote Abner Smith, a 19th-century historian.

Lucy’s marksmanship served a larger goal. At age 10 or 12, she decided she wanted to get an education and struck a bargain with her father. If she’d earn money raising and selling birds, he’d let her enroll at a schoolhouse 20 miles to the southeast, in Cossackie. “I had the charge of some hundred chickens, turkeys and geese,” she wrote. “In consequence of keeping my poultry, I learned to shoot the hawk, the weasel, the mink.”

While it was rare for a working-class girl to attain a full education, Lucy’s sharp mind wasn’t overburdened by the stresses of her studies. “I was ever and anon trying to get my lesson, and at the same time thinking and acting mischief,” she wrote. “I would frequently contrive, during the hours of study, to read from another book, which I would conceal from the teacher’s eye.”



SUBMITTED IMAGE

When she was a young woman, Lucy Ann Lobdell spent much of her time in the New York wilderness, learning to sharpshoot everything “down to the rat.” “I used often to go hunting to drive care and sorrow away,” she wrote in a memoir. “When I was upon the mountain’s brow, chasing the wild deer, it was exciting for me.”

‘His true character’

A few years after starting school, Lucy made the acquaintance of an illiterate young man named George Washington Slater. He quickly became infatuated with Lucy, entranced by her bright, warm ways, her hair in two long braids.

Lucy found him to be “an innocent sort of boy,” “quite agreeable,” and she was flattered when he “imprinted a wild kiss upon my brow.” But unlike her pale-faced suitor, Lucy wasn’t “love-sick.” “I pitied him because he had no home [and I] resolved to be his friend,” she wrote.

Her kindness made him stubborn.

A month after the Lobdell family moved away from Albany County, Slater appeared at their new home, a 100-mile journey, intent on marriage. Lucy was distraught. “My design for coming into the woods was to avoid him,” she wrote. “My heart had no joy in him.” But social conventions and family pressures weighed on her options.

She asked Slater to wait a year so she could “learn more of his true character.” He asked to speak with her father. “To cut the story short,” Lucy wrote, “we were married, and father and mother had given their consent.”

Lucy Slater tried to make peace with her undesired husband and, she wrote, “For a while things went on very well.” George took up Lucy’s interest in Methodism and Lucy soon became pregnant — but their relationship soured rapidly. George became jealous of Lucy’s devotion to her faith, and of her frequent conversations with their male boarder. “He said he had to work like a damned slave nowadays, and that I had got tired of him,” Lucy wrote.

The mounting tensions reached a breaking point when George refused to escort Lucy to a quilting bee. She insisted on going anyway. They fought and he left. Lucy wrote in a letter that her husband took everything but 10 cents in cash, a bushel and a half of potatoes and their 2-month-old daughter, Helen.

‘Female Hunter of Long Eddy’

In the short time since her wedding, Lucy’s parents and siblings had moved to a farm in Long Eddy, New York, where her father had established a small sawmill. With nowhere else to go, Lucy brought her daughter to live on the farm. “Times were hard,” she wrote, “and [the cost of] provisions high.” Her father was aging and she found he’d

“become decrepit” and “lame.”

Lucy threw herself into work. She plowed, planted and harvested the land, she cut logs into lumber on the sawmill and, most pleasurably, she traversed the New York woods with a rifle. “I used often to go hunting to drive care and sorrow away,” she wrote, “for when I was upon the mountain’s brow, chasing the wild deer, it was exciting for me.”

The “Female Hunter of Long Eddy” became a regional celebrity, with sensational accounts of her skill with a hunting-knife, her masculine style of dress and her “lady-like manner” appearing in newspapers across the northeast.

A Connecticut paper published a letter from a traveling salesman describing the “snug-fitting corduroy pants” encasing “her nether limbs.” The salesman watched as Lucy cut a four-inch circle into a tree and then fired a rifle ball, from a distance of 300 feet, into the target’s “very center.” Back at the farm, the salesman reported, “she brought a violin from a closet and played 15 or 20 tunes, and also sang a few songs.”

Lucy was gratified by the attention — she reprinted the salesman’s letter in her memoir — though she noted, half-humorously, that her forest was becoming “infested with hunters.”

Men’s work and men’s wages

Enjoying independence and working “by the sweat of her brow,” Lucy began thinking deeply about her future and about the world.

The life of a woman, she concluded, was dreadful.

She abhorred the need to labor “from morning till night” in return for “a scanty livelihood,” just “a dollar per week.” Looking at Helen, she was tortured by the knowledge that her “poor babe will be obliged to toil” for an “unequal sum.”

The reasons for her dismay went deeper than money. She felt she was cursed. She couldn’t bear “to see all the bondage with which woman is oppressed, and listen to the voice of fashion, and repose [only] upon the bosom of death.” She wanted better for Helen. And for herself, she yearned “to wear the pants and breathe the pure air of heaven.”

In October 1854, with these thoughts running through her head, Lucy received a letter from George Slater. He called her his “best friend” and wished to reconcile. She wrote back, telling him

he could come visit his daughter, but she was determined never again to see her husband’s face.

So she decided to escape. “I was capable of doing men’s work and getting men’s wages,” she wrote. “I resolved to try to get work away among strangers.”

Donning a men’s suit beneath her hunting outfit, she left home without saying goodbye. “I did not dare tell our folks my calculations, for I knew that they would say I was crazy, and tie me up perhaps,” she wrote. “I could not even kiss my little Helen, nor tell her how her mother was going to seek employment.”

The singing master

A few days after Lucy vanished from her family farm in Long Eddy, a stranger appeared on the streets of Bethany, Pennsylvania, about 35 miles to the south.

Joseph Israel Lobdell cut a dashing figure in the town. He volunteered to hunt down bears and wolves menacing the villagers and he quickly set up a music school, becoming known as a “singing master.”

In his fine black suit and crisp stovepipe hat, Lobdell “captivated more than one backwoods lass.” The Port Jervis Evening Gazette reported that many of the “young ladies of the best families of the village” enrolled in his classes and “fell in love with the teacher.” Lobdell enjoyed the romantic attentions of his pupils and took a number on dates. “He is the nicest fella I ever went out with,” one girl said.

Before long, Lobdell tired of bachelorhood and committed himself to one particular young woman, “the daughter of a leading citizen.” Although the woman’s name has been lost, it’s known that by the spring of 1855 they were engaged to be married.

Their relationship came to an abrupt end a few days before the wedding when an itinerant lumberjack recognized Lobdell as the famed “Female Hunter,” missing from Long Eddy.

It was stunning news. The singing teacher had a female body. The men of Bethany talked and fretted. Something had to be done.

A jealous suitor of Lobdell’s fiancée found it easy to transform the town’s feelings of bewilderment into those of vengeful rage, and plans were hatched to capture the “man-woman” and inflict mob justice with hot tar and feathers.

Tipped off by his would-be wife, Lobdell managed to elude this painful humiliation. He fled north toward Albany and a train headed west.

There’s no evidence he ever saw his fiancée again.

The frontier

In 1856, the Minnesota Territory still glimmered in the imagination as a land of outlaws and oddballs, the mythic West. Advertisements in eastern newspapers promised settlers fortune and adventure. Capable, self-reliant men were in high demand.

Newly arrived in St. Paul, La-Roi Lobdell befriended a garrulous, well-meaning frontiersman named Edwin Gribble. Gribble was living on the northern shore of Lake Minnetonka, and he helped Lobdell obtain an easy job guarding a neighbor’s land.

With few responsibilities, Lobdell often joined Gribble on explorations of the Minnesota wilderness. Lobdell was reluctant to share details about his past, but he listened patiently as Gribble told long stories about his former loves. “[They] got pretty thick, tramping together through the woods in pursuit of game, and sleeping together under the same blanket,” Smith wrote.

Lobdell

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In the fall, Lobdell was ready to move on. His employer had been absent for many months, so the land Lobdell was guarding now became his by law. He traded his “quit-claim” on the property to Gribble in return for a \$75 rifle, and headed off alone.

He spent his first Minnesota winter in a desolate stretch of Kandiyohi County. Some Minneapolis developers had hired Lobdell, and another man, to live on their property until spring. Conditions were harsh and food scarce. They subsisted, at times, on squirrel meat hunted by their cat, “Puss.” “The cat furnished squirrels when the rifle could not reach them,” Smith wrote.

When the snow melted, Lobdell set off in search of a more varied society. He surfaced in the town of Manannah, working odd jobs in exchange for room and board. He was “handy at anything,” Smith wrote, considered “good company and a ‘hale fellow well met’ with all the young people in the neighborhood.”

Minnesota melodrama

One summer day, about a year after he came to Manannah, Lobdell’s ordinary life dissolved into a scene from his nightmares.

It’s unclear exactly what happened, but it seems a woman Lobdell was pursuing told authorities about his female anatomy. “Satan, with the aid of original sin, discovered and exposed her sex,” Smith wrote.

Lobdell was arrested and charged with falsely impersonating a man “to the great scandal of the community and against the peace and dignity of the State of Minnesota.” For the second time in three years, a youthful gesture toward romance had been rewarded by public mortification.

The charge against him was rooted in an obscure provision of the blue code of Connecticut banning “elaborate clothing with lace, gold, silk, slashed sleeves, cutwork or embroidery” for being “prejudicial to the common good.”

Trying to appease his captors, Lobdell claimed he had dressed in “disguise.” He said he’d only worn men’s clothes “to better get away from home without detection by a drunken husband.” Smith, who worked as a federal attorney, agreed to defend him and entered a plea of “not guilty” on his behalf. (Smith would later include a biographical sketch of his client in his history of Meeker County.)

Surprisingly, Lobdell won in court. Impersonating a man was not a real crime. Nor were there laws on the books banning lesbian sex; the concept was unfathomable. After a brief trial in Forest City, a judge ruled that “the right of women to ‘wear the pants’ had been recognized from the time of Justinian.”

Lobdell was released from jail, but his life in Manannah was ruined. Shunned as a pariah, the “Wild Woman of Manannah” was subjected “to insult from the vicious on every hand,” Smith wrote. Lobdell became “an object of commiseration and sympathy,” though no one would give him work. To get by, he sold his pots and pans.

In a state of “mental shock,” he pined for home. Eager to expel the Wild Woman from “this land of steady habits,” the government of Meeker County agreed to pay Lobdell’s trainfare back east.

‘A mutual affection’

Rebuffed, then indicted, then ostracized, Lobdell returned to New York in a bitter mood.

Reunion with his family brought small solace. His parents and siblings, though happy he was home, couldn’t



SUBMITTED IMAGE

While living in Manannah, Minnesota, La-Roi Lobdell was charged with impersonating a man “to the great scandal of the community and against the peace and dignity of the State of Minnesota.” After a brief trial in Forest City, a judge acquitted Lobdell, ruling that “the right of women to ‘wear the pants’ had been recognized from the time of Justinian.”

see why he still insisted on wearing men’s clothes. His daughter, too young to understand why he’d left, resented his long absence. And his neighbors, still scandalized by his engagement to a woman, made his daily life a miserable ordeal. Fed up with Long Eddy, Lobdell again set off alone.

In the summer of 1860, destitute and depressed, he approached the welfare authorities of Delaware County and asked to be committed to the poorhouse. He was accepted, but the institution offered only humiliation and regular meals. Lobdell was forced to answer to the name “Lucy Ann,” wear women’s clothes and toil endlessly at women’s work, cleaning and cooking, which he believed to be “evil” drudgery.

Yet in the midst of this dull hell, Lobdell unexpectedly found love. Tall and bespectacled, her name was Marie Louise Perry. The 28-year-old daughter of a prosperous Massachusetts family, she was, like Lobdell, compassionate, educated, pious, clever and willful. And, also like Lobdell, she’d just suffered an undeserved fall from grace.

Perry had disobeyed her father and eloped with a man who turned out to be a deceitful playboy. On their honeymoon in Jersey City, her new husband had run off with the landlord’s daughter, abandoning Perry to her fate. Weak with sickness, penniless and ashamed to return home to her parents, Perry had surrendered herself to the poorhouse.

Lobdell nursed the pretty young bride back to health and, feeling himself useful again, he noticed his depression lifting. He “became full of life and was the most cheerful person in the place,” the *New York Times* wrote. “The two formed a mutual affection so strong that they refused to be separated.”

Loved and chastened

In early 1862, Lobdell and Perry decided to run away from the poorhouse.

Shortly after their escape, a justice of the peace pronounced them man and wife. For the next 17 years, they would live together, poor and persecuted, but ultimately free.

As a married couple, they were viewed as sideshow curiosities, “a couple of dilapidated specimens” in “torn and dirty” clothes who ate “roots, berries and the game killed by the man” and found entertainment by “dancing and singing in a lively, wild, and reckless manner.”

They were effectively banned from

civilization. For most of the 1860s and ’70s, they wandered across New York and Pennsylvania like nomads, sleeping in caves and erecting “rude cabins” for shelter. When they stayed too long in one town, Lobdell would be forced into women’s clothes or jailed for vagrancy or, like an animal, driven some distance out of town and told not to return.

They faced the abuse with a mixture of rebellion and resilience. Forced by a county sheriff to wear a petticoat, Lobdell tore the dress to shreds. Barred from performing ordinary labor, the Lobdells captured and tamed a bear cub, escorting it on a string leash into villages and passing a hat for donations. The little money they earned, they spent on necessities, such as rifle ammunition for Joe and a tooth extraction for Marie.

Despite the indignities of poverty and social exclusion, they continued to engage with the wider world. In a letter to a newspaper editor, Marie decried “the abuse and injustice [woman] often has to endure and which has such a crushing influence upon her existence.” “If woman has no voice in the making of the laws of our country,” Marie wrote, “she should, as recompense, be granted sufficient other privileges to preserve her equality of rights.”

Calling himself the Rev. Joseph Lobdell, her husband began preaching in the streets. He knew the Bible front to back and, in his memoir, he’d thought deeply about the relationship between faith and hardship. “Whomsoever the Lord loveth, He chasteneth,” Lobdell had written. “As the present day and age of the world appears to be black with iniquity, I would say take the Word of God for your counsel and guide.” In his sermons, he may have developed these youthful musings into a personal theology.

Unfortunately, Lobdell’s homilies went largely unrecorded, dismissed as “meaningless harangues on religious subjects.” According to one account, he would declare “he was a prophet of the new dispensation and that the bear had been sent to him by the Lord to guard him in the wilderness.” As with so many of Lobdell’s attempts at self-expression, his preachings were mainly treated as evidence of his madness.

‘Common decency’

Divided from her parents, Lobdell’s daughter, Helen, endured her own misfortunes during these years.

Raised first by her grandmother and

then by an aunt, Helen was finally “adopted” by a Honesdale, Pennsylvania, farmer and forced to work as his domestic servant. A few years later, she rejected a farmhand’s marriage offer because “his character was not good.”

The man’s response affirmed her judgment. At age 17, Helen was beaten, chloroformed, raped, thrown into the Delaware River and left for dead. She survived but could remember little. The farmhand, and two others, were arrested but nothing could be proved. “The fiendish abductor,” the *New York Times* wrote, “managed to escape the justice he deserved.”

In the aftermath of this brutality, Joe and Marie tried to provide Helen some stability by staying in the Honesdale area. But fulfilling their parental duties left them vulnerable to the force of the state. Wayne County authorities, unsettled by the presence of the “missing paupers from Delhi,” sent them back to the poorhouse.

They escaped the institution, returning to Honesdale, and as the official intimidation tactics continued, so did their determination to resist.

When Lobdell was arrested “out of common decency” in July 1876, Marie wrote a two-page petition requesting her “dear husband” be released. Not having a pen, she whittled a stick to a point-and-split and used pokeberry juice for the ink.

The missive covered two pages of foolscap paper and impressed the judicial officers of Wayne County. “It was couched in language which was a model of clear and correct English and was powerful in its argument,” the *New York Times* wrote.

Marie was allowed to visit her husband — accompanied by the jail’s commissioners and a newspaper reporter.

She brought with her a writing board, a bouquet of lilacs and a few apples. When she opened the grated iron door of Lobdell’s jail cell, the reporter noticed her face light up. Her husband rushed to the door and they held hands through the bars.

The couple were given privacy to talk and, soon after, Lobdell was released into his wife’s custody.

Marie’s indignant letter may have shamed the people of Honesdale into some feelings of remorse. The editor of the *Wayne County Herald* penned a rare sympathetic portrait of the Lobdells’ marriage. “Always gentle, always quiet,” he wrote, “defrauding no one, striving in humble yet honest ways to care for and protect themselves, they may well be left alone.”

A stroke of fortune

Temperamental George Slater grew up to serve as an officer of the Union Army and, in the second year of the Civil War, he was taken prisoner and died.

Slater’s death meant a financial windfall for his estranged spouse, yet Lobdell wouldn’t learn he was eligible for a pension until the winter of 1877 — 12 years after the end of the war. By then, the back payments amounted to thousands of dollars, a massive, life-changing fortune for an itinerant outcast.

Pulling “a roll of bills out of [his] vest pocket,” Lobdell bought a farm and a house outside of Honesdale. Then he bought a horse, a wagon, a watch and a fiddle. A reporter present for the spending spree noted that he “looked fully competent to manage a farm, including the chopping of a fallow or the swinging of a scythe.” (Perhaps wary of legal maneuverings, he had the deed recorded under the name of Lucy Slater.)

Living on the farm — free from prying eyes, protected by property laws — the Lobdells experienced the only

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Malpractice

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the plaintiff's expert was Dr. Harold Wiesenfeld, who testified that a proper diagnosis and treatment could have saved Bermingham's life.

The defense called Dr. David Eschenbach to say that Bermingham died of necrotizing fasciitis (flesh eating bacteria), which her treating surgeon refuted. The defense denied that a delay in admission or any negligence was the direct cause of Bermingham's death.

Elizabeth Fors, who also represented Bermingham's survivors, said that the defense stipulated to negligence but refused to take responsibility for her death. She said that Bermingham's sepsis started out as endometritis, a common infection after a vaginal birth. The infection then proceeded untreated and caused Bermingham's death, she said.

The jury found the nurse practitioner

negligent and the negligence the direct cause of Bermingham's death. The pecuniary loss was \$500,000 for lost earnings, \$50,000 for lost household services, and \$1.204 million for loss of companionship, guidance, comfort and other pecuniary loss.

The jury awarded \$4 million for future lost earning capacity, \$400,000 for lost future household services, and \$14.446 million for future loss of companionship, guidance, comfort and other pecuniary loss.

Fors said that the couple were very close and had dreams of raising their son amid his extended family in Minnesota. "But the defendant corporation chose to tear those hopes and dreams apart, and now Eddy is facing life without his mom," Fors said.

Appeals and post-trial motions are under consideration, said defense attorney Barbara Zurek. "It's an unfortunate tragic case and a very sad story," she said.



Edward (Eddy), Nicole and Edward Bermingham shortly after Eddy's birth.

SUBMITTED PHOTO

Lobdell

Continued from page 7

period of normalcy and peace in their marriage. Vagrancy charges and county jails and stints in poorhouses may have seemed hazards of the past.

But their farmhouse idyll would be far too brief. About a year after becoming a landowner, Lobdell traveled to Hancock, New York, where his daughter was living on his brother John's property. What exactly happened upon his arrival in the town is unknown, but Lobdell would never return to his farm.

A 'supposed lunatic'

John Lobdell believed his sister was insane for wearing men's clothes and "pretending to love a woman."

John seems to have persuaded Helen into sharing this view and, though it's not clear quite how, they kept Lobdell in Hancock, separated from his wife, for more than two years. At times, John would later recall, his sibling would become "quarrelsome and unmanageable," threatening to burn buildings and trying to run "off in the woods alone."

In May 1880, John petitioned the Delaware County court to issue a writ de lunatico inquirendo to investigate the sanity of Lucy Ann Lobdell.

The Delaware County sheriff summoned a jury and, according to courthouse documents, John was allowed to pick 12 "honest and lawful men of the county" to render a judgment on the "supposed lunatic."

All 12 honest men testified that Lobdell was mad. Dr. Ed L. Pettingill de-

clared insanity despite having met the "crazy female hunter" only once. Walter Peak's reasoning was that "she acts as if she was in love with another woman." Harry Walsh remembered seeing Lobdell at the family sawmill 20 years earlier. "She was dressed in men's clothes and had a gun and pretended to be hunting," Walsh said. "That woman was crazy."

In John's testimony, he speculated that lunacy may be induced by "excitement in religious matters." "She at times uses very bad language," he said. "She has been insane for more than 10 years. Her mother was insane before her. . . . She has a woman who she sometimes claims is her wife — this woman is also insane."

This was enough evidence for the law. At age 51, Lobdell was carted off to the Delhi poorhouse and given a certificate of insanity. "She is uncontrollable, indecent and immoral and insists on wearing male attire [and] calling herself a huntress," the certificate read.

With Helen's written consent, John was named executor of Lobdell's estate. For the privilege, John had to pay a \$1,000 bond; his motive for institutionalizing his elder sibling was nothing so simple as greed.

Lobdell's fate was kept a secret from his wife and from the world. A fake obituary released by Lobdell's family fooled the newspapers, which published tributes mourning the "death of a modern Diana" after "a brief illness."

Marie was barred from returning to the Honesdale farm, but stayed in the area for a time, picking and selling wintergreen berries.

She bristled when people referred to her as "the female hunter's wife," and

wrote a letter to the Wayne County Herald's editor asking she be called "his apparent widow." "I do not seek fame," she wrote, but "far prefer permission to work out unmolested my own 'problem of life.'"

Eventually, she moved back to Massachusetts, and spent her final years working in a Whitman nail factory. She died in 1890, likely never knowing what became of her husband.

In a closed ward

From the Delhi poorhouse, Lobdell was taken to the Willard Insane Asylum in Ovid, New York. (The institution's fees came out of his estate.)

Deeply dispirited and lonesome, Lobdell opened up about his life to Dr. P.M. Wise, a young sexologist. He reflected on his marriage to George Slater, explaining that he'd "never derived a moment's pleasure," and he told of his great love for Marie. "The attachment seemed mutual," the doctor wrote down.

In accordance with the medical understanding of the period, Wise believed female homosexuality was a mental disease, caused by heredity or childhood trauma. He treated Lobdell as an object of clinical curiosity, publishing an article in a psychiatric journal about a "case of sexual perversion."

Wise probed Lobdell's body as you would a lab rat's, noting that he could not "discover any abnormality of the genitals." "Her voice was course and her features were masculine," Wise wrote. "It appears that she made frequent attempts at sexual intercourse with her companion and believed them successful; she believed herself to possess virility and the coaptation of a male."

Under the care of Wise and other like-minded clinicians, Lobdell would spend the last three decades of his life in state mental institutions. His trials can only be imagined.

He died in a Binghamton asylum on May 12, 1912. The cause of death was given as "manic depression psychosis" and he was buried, without a funeral, in a pauper's grave.

He had outlived his wife and his brother and his daughter and the dozen honest men of Delaware County who'd declared him insane. His estate, worth \$3,850, was split between two grandchildren he probably never met.

A brave pioneer

In recent decades, Lobdell's reputation has been considerably rehabilitated.

Now scholarly debate blazes over how to classify a quietly brave iconoclast who lived in an age both distant and familiar. Was Lobdell an early feminist? A "trickster" character? The first lesbian?

All these terms would have been alien to Lobdell. But he may have been moved by the assessment of Bambi Lobdell, his biographer and his second cousin, thrice removed — now a professor of gender studies. "I see Joe," she wrote, "as a transgender pioneer who bravely lived life as authentically as possible, even though it brought him harassment, ridicule and incarceration."

Determined to follow his own path, he was prepared to pay the price. Lobdell often quoted a favorite verse from the Book of Job: "Man that is born of a woman hath but a few days, and they are full of trouble."