



Arthur H. McCormick

# The BRAND BOOK

OFFICIAL ORGAN

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Every once in a while an organization seems to arise out of sheer need for a medium whereby men of common interests can gather and exchange ideas and experiences. For a number of years such eminent Colorado men of letters as Dr. LeRoy R. Hafen, Colorado Historian, Professor Levette J. Davidson, nationally known folklore authority, and Thomas H. Ferril, poet and writer, have recognized the need for an informal assembly of men interested in various aspects of western cultural history. Unfortunately, circumstances never seemed quite favorable until the summer of 1944, when Mr. Leland Case, editor of The Rotarian and a member of the Chicago group known as "The Westerners," visited Denver and suggested the organization of a Colorado affiliate of "The Westerners." The result was the organization of this chapter on January 26, 1945.

Our one and only purpose in this organization is to exchange information relative to the cultural background and evolution of the vast region referred to as the Rocky Mountains and "The West." Fortunately this geographical limitation is broad enough to encompass everything from the Mississippi River to California. And, strangely, this seemingly unlimited scope is thoroughly justified by history, for few regions in America have been so closely allied to their surrounding areas. Starting with the Spanish explorations emanating from New Mexico, the French explorations from the northeast, the fur traders, such noted expeditions as those of Lewis and Clarke, Pike, Long, and Fremont, the Santa Fe trail to the South and the California and Oregon trails to the North, Colorado has been crossed and recrossed north and

south, east and west by men seeking the wealth of other regions. When, after 1858, men began to stop using the region as a highway to New Mexico and the Pacific and began to settle in it's valleys and mountains, they soon discovered that they had overlooked one of the richest and most productive areas in the New World. "Like flys drawn to honey" the adventurous, the poor and rich, the laborer and the capitalist, the Scotsman, Irishman, German, Swede, Pole, Cornishman and Cockney poured into the Rockies. From Indiana, Illinois, Massachusetts, Virginia, California, and every other state and territory came the Americans. Each contributed his share to the culture of the region--to that already implanted by the Ute, Cheyenne, Kiowa, Apache, Navajo and Pueblo.

It is hoped that in the months to come The Westerners will explore not only the obviously important aspects of this cultural diffusion, but the by-ways, the side roads and detours of the highway of civilization that has made this region so outstanding. The two papers published herein are excellent examples of what we are seeking in our quest for knowledge. Sheriff Elmo Scott Watson of the Chicago Westerners was the speaker at our initial meeting in January, and his paper resulted in an active discussion that was ended only by the lateness of the hour. Posseman Levette J. Davidson, now on leave from the University of Denver on a Social Science Research Council grant, gave the February meeting many a chuckle with his sparkling examples of "Tall Tales of the Rockies."

It is unfortunate that the discussion which preceeded and followed each of these programs cannot be reproduced, for it is in such active participation that each member contributes to the meeting. At the February session, our dinner discussion elicited from Posseman William MacLeod Raine a lively and intimate picture of his friendship with Eugene Manlove Rhodes. It was wholly an unexpected thrill, and yet it is upon such features that The Westerners thrive.

Membership in The Westerners is by invitation, and due to wartime food restrictions the active membership is limited to forty. There is no limitation, however, on corresponding members. This latter classification is for those interested in this organization, but who live outside of the city and county of Denver.

## Pine Ridge 1890-1891

I am indeed honored to be the speaker at the first meeting of the Denver chapter of WESTERNERS and although I'm supposed to talk on the Battle (or Massacre) of Wounded Knee, with some additional remarks on the "Denver angle" of the Ghost Dance troubles of 1890-91--the work of Dr. Gilbert E. Bailey, correspondent for the Rocky Mountain News--I'm going to take the liberty of skipping one part of that assignment. The story of Wounded Knee has been told so many times and every phase of it has been so thoroughly covered that I could offer you very little which would be either new or significant. More profitable to you than to have me rehearse that story once more would be for you to read the report of the talk by Maurice Frink of the Elkhart (Ind.) Daily Truth main speaker at the December Round-Up of the Chicago WESTERNERS, which was devoted to that subject and which you will find in the January issue of our Brand Book.

So, tonight I shall not take you over the well-trodden trail that leads to Wounded Knee creek on the Pine Ridge reservation in South Dakota, to the place where "Chief Big Foot lies deep in his grave on the hill, Wovoka's dream hugged tight to his bloody breast", to the hill "where the gray stone ghost alone keeps guard"--the monument on which are engraved these pathetic words: "Many innocent women and children who knew no wrong died here".

Instead, I should like to give you a brief kaleidoscopic view of one aspect of the "last of the Indian wars" which, to my knowledge, has never been noted by any of the writers on that incident in Western history. It's a picture of the Pine Ridge reservation, and especially Pine Ridge Agency, as a sort of "last frontier" outpost, and, rather surprisingly, considering the time and locale, a kind of "international melting pot" in the American West. Many of the figures in this picture will be rather dim and shadowy. But, even so, I find it interesting as a "group portrait" of one of the most picturesque aggregations of men and women of all races and nationalities ever gathered together in one place on the Old Frontier.

I had my first clew to this angle of the story of The Gher Dance Indian "war" about two years ago when the widow of the Gen. George H. Harries presented to the Medill School of Journalism at Northwestern University, a collection of materials pertaining to his career as correspondent for the Washington(D.C.)Star in 1891. Among the manuscripts in this collection was a "List of White Persons Residing Upon Pine Ridge Reservation, June 30, 1891". Through subsequent interviews and correspondence with several persons notably Charles A. Nines of Washington, D.C., one of the corresponding members of WESTERNERS, who had first-hand knowledge of these "white residents" (and, as we shall see, "white" is something of a euphemism!), I have been able to make a start on the "group portrait", although I'm afraid it must always remain an unfinished canvas.

In that list I found names which are echoes of the old days of the fur trade (and perhaps Dr. Hafen, biographer of "Fitz the Broken Hand" and other notables of that era can help me round out the portraits of some of these men). There was Nick Janis "Young Nick", son of that "Old Nick" Janis (or Janiss, or Janis) who worked for the Bents when they had a post near Fort Collins and whose name appears so frequently in the chronicles of the Oregon Trail. There was Sam Deon (or Dion), a Frenchman who, according to one of my informants, "went to the Plains in 1838 with the American Fur Company".

There were other Frenchmen too,—or French half-breeds—John Bissonette, Oliver Morisette, Joseph Mousseau, Joseph Merival, (or Merivale) The Shangreaux (or Shangrau) brothers—Louis, William and John—, and, finally, Baptiste Pourier and Baptiste Garnier, "Big Bat" and "Little Bat" who had won fame as scouts for the army during the Sioux war of 1876-77. Incidentally, "Big Bat" Pourier had a daughter named Mary who later married a rancher named William Denver McGaa, who was the first white child born on the site of your city, hence his middle name.

Later when the soldiers came to Pine Ridge one of the cavalry regiments brought along another famous scout who had served with Crook—Frank Grouard (or Gruard). Some frontier historians have invested him with an air of romance by declaring that he was a Hawaiian, or "Sandwich Islander", but the Sioux will tell you

different story. They recall that "The Grabber", as they knew Grouard, was the son of one John Brazeau (or Brazo), a French Creole who had been a cook on the steamboats that plied the Upper Missouri, and who, at one time or another, had married several Indian women. So Grouard's dark skin was not due to any Hawaiian heritage but to the Negro blood in his veins.

There were two Germans--"Dutchmen", the other Pine Ridge citizenry called them--Joseph Rooks and Joseph Kocer, traders and sub-agents on the reservation. There was Sandy Williams, a Scotsman, and P.T. Johnson, a Norwegian, who became a well-known interpreter. There were two Irishmen--John Whelan, a veteran of the Union army "who always wore his blue uniform", and another known only as "Crazy Mike", who was "off" on account of a head injury suffered while serving in the army at Fort Abraham Lincoln in North Dakota. "The logs in his cabin were painted red, white and blue, as were the rocks around his house. No one molested him" (And, of course, least of all the Sioux who put a finger significantly to their foreheads as he passed by--"he has been touched by the Great Spirit".)

There was "a whole slew of Mexicans", most of them whackers for the bull trains that brought supplies across the prairie to the agency: Condelario Benavista, Emanuel Romero, Emanuel Marineze, and two known only as Arconia and Garcie [Garcia]. Then there was "Pablo the Barber"--"I never knew his real name but he was Spanish and often went courting with his mandolin and songs". (One wonders what the Sioux maidens in the lodges strung along White Clay creek thought of him and if they preferred the strumming of his mandolin to the trilling notes of the flutes played by the young Ogalalas.)

There was another barber, too,--Sam Goings, a mulatto, who was also an accomplished musician. His son, Frank C. Goings, who later became judge of the tribal court at Pine Ridge, married Julie, half-breed daughter of old John Y. Nelson, who accompanied Buffalo Bill's Wild West Show to England, where the little girl was presented to Queen Victoria and received at her hands a beautiful brooch. Her father, Old John Y., also received a gift. The Prince of Wales, later King Edward VII, after listening to some of Nelson's tall tales, is said to have presented him with a medal as the "Champion Liar of the World", although he had strong competition from Hank

Clifford, another Pine Ridge "squawman" and Buffalo Bill showman (Today the progeny of Frank Goings and Julie live on Pine Ridge, wonder what their "color" is: white, red or black!)

Besides all these there were also a number of Englishmen who were ranchers—either on the reservation or nearby—and, just to the international flavor of Pine Ridge there was a man named Steele, a half-breed Chinese, "the only one on the reservation" a well known and respected trader. He had formerly operated a general store at Rushville, Neb., 30 miles to the south, in partnership with one Samuel Lessert—"originally his name was Lessert he always claimed anything loose, so we nicknamed him Claimore Sam Claimore he was from that time on."

White men, red men, black men, men of mixed color and race—Frenchman, German, Englishman, Irishman, Norwegian and American—presumably they lived together peaceably at Pine Ridge, although one wonders if sometimes old Civil War hatreds didn't flame up out there on the Dakota prairies. For, to Tod Randall, son-in-law of Chief Red Cloud and an ex-Confederate, and another named William Hudspeth ("on quick leave from Texas—he came to Pine Ridge just ahead of the Rangers") the sight of John Whelan walking around the agency in his faded only blue uniform must have been a constant reminder of the "Lost Cause" for which they had fought in vain.

Perhaps, though, they were reconciled by now, as were certainly other ex-Confederates there, notably the telegraph operator at Pine Ridge. His name had once been carried on the rolls of a Georgia regiment as W.A. Foster. But that was before he became a "galvanized Yankee" and served as a second lieutenant on the Custer expedition to the Black Hills in 1874. Then he became W.A. Coffield, the name by which he was known at Pine Ridge.

Before leaving these Southerners and passing on to other "characters" at Pine Ridge I must mention another who could have boasted that he bore the name of one of the "First Families of Virginia" though I doubt if he ever did. He was Billy Garnett, son of a Col. Richard Garnett who, while serving at Fort Laramie in the '50's, took to wife a woman of Red Cloud's band of Ogalalas. When Fort Sumter was fired upon, Colonel Garnett resigned from the army, hastened back to his native state, put on the Confederate uniform and died in one of the early battles of the Civil War.

His son grew up among his mother's people, served as a scout for the army against his red kinsmen and when Dr. V.T. McGillycuddy was appointed agent for the Ogalalas in 1879, Billy became his most trusted interpreter and righthand man at Pine Ridge. Years later when Billy Garnett was old and disabled and pleading for a pension from the government which he had served so well, Dr. McGillycuddy sought the aid of the Garnetts of Virginia--one of them a congressman--in getting the pension bill through Congress. They refused--indignantly. "Acknowledge that a half-breed bears the proud blood of the Garnetts? Preposterous!" All of which is somewhat amusing and a bit ironical when one considers that some A.F.V.s are proud of their descent from a "half-breed"--the son of John Rolfe and Pocahontas.

There was another notable interpreter there, too, with Indian blood in his veins--Philip Faribault Wells, son of a former Hudson's Bay Company trader among the Santee Sioux and a half-breed girl, whose father was Duncan Graham of Scotland. Attached to the company of Indian scouts commanded by Lieut. Charles W. Taylor of the Ninth cavalry, Wells was destined to play an heroic role in the affair at Wounded Knee. He is still living out in South Dakota and at the age of 94 and still bears the scar of a knife wound he received from one of Chief Big Foot's maddened warriors at the outset of the fight. Recently the Chicago WESTERNERS honored themselves by honoring him, making him an Honorary Life Member of our organization.

There were many others worthy of mention as contributing to the flavor of Pine Ridge in that summer of 1890 when were heard the first rumblings of the trouble that was to lead to the last armed clash between the soldier and the Sioux with its tragic climax at Wounded Knee. But I must get on to our Dr. Gilbert E. Bailey, representative of the Rocky Mountain News, one of more than a score of newspaper correspondents who were sent to Pine Ridge to cover the impending "war". They, too, added to the "international" tone of the place, for Harries--the Washington Star representative--was a Welshman, and Dent H. Robert of the St. Louis Post-Dispatch, a Frenchman, brought with him a European tourist, K.V. Zilliacus of Helsingfors, Finland, who was made an "honorary correspondent".

Of course, as you know, the Ghost Dance "outbreak" was strictly a "phony war" and for the reasons for calling it that I refer you to a piece which I wrote for the Journalism Quarterly a year or so ago, called "The Last Indian War, 1890-91--A Study of Newspaper Jingoism". The newspaper men sent there realized it was a "phony war", but that didn't prevent their "retailing to their newspapers rumors, half-truths and outright lies--tales which were willingly supplied them by the army scouts, half-breeds and others around the agency who undoubtedly enjoyed perpetuating an honored Western tradition of 'stringing the tenderfoot'"

Bailey, however, was not a tenderfoot, neither was he a newspaper man. He was a geologist and widely traveled in Central America and the West, where he combined newspaper correspondence with his scientific work (He had been geologist for the Territory of Wyoming from 1883 to 1887 and professor of metallurgy for the South Dakota State School of Mines from 1888 to 1889). At the beginning of the Ghost Dance troubles he made arrangements with the Chicago Inter-Ocean and the Rocky Mountain News to represent them at Pine Ridge and he was apparently on the scene soon after the troops arrived there. Yesterday I spent several hours in the Western History Room of the Denver Public Library checking up his dispatches to the News and I found there ample evidence to support the belief that many of the correspondents sent the sensational dispatches they did because they were under considerable pressure from their home offices to provide exciting news whether the facts justified it or not.

Years later Bailey in a letter to the News wrote reminiscently of "those stirring days when Arkins (John Arkins, co-publisher of the News) was burning the wire yelling for 'More Blood' I found several of Bailey's dispatches which indicated that he was trying to satisfy Arkins' demand. Even when he didn't Arkins was equal to the occasion, as witness this headline, set in big type, half way down the column on page one in the November 26, 1890 issue of the News:

A CRY OF DISTRESS

\* \* \* \* \*

Pine Ridge Agency Last Night a Scene of Terror and the Country



raided

\* \* \* \* \*

War Has Begun in Earnest and Tomahawk Rule Prevails There

\* \* \* \* \*

Ranchers' Homes Raided and Their Stock Slaughtered in a Ruthless and Reckless Manner

\* \* \* \* \*

Mounted Couriers Flying South for Reinforcements and Light Artillery.

\* \* \* \* \*

Cavalry Moving Rapidly Across the Country to Head Off the Barbarians

\* \* \* \* \*

Ghost Dance Has Stopped and the Work of Devastation is in Order

\* \* \* \* \*

People Crowding Into the Small Towns and Gathering for United Action

\* \* \* \* \*

Military is Beginning to Realize That the Outlook is Grave and Fears are Entertained.

\* \* \* \* \*

All of this was based upon a rumor supplied by some unnamed government courier" that 200 lodges of Rosebud(Brule) Indians were raiding the homes of ranchers in the vicinity of Porcupine Creek, 25 miles north of Pine Ridge on the reservation. But this was typical of the kind of stuff sent out by many of the correspondents and printed in newspapers all over the country.

Three weeks later on December 17, the News carried another sensational head: "Fifty Killed", over a story retailing the rumor that a troop of cavalry and two officers had been wiped out by the Indians. Of course, no such disaster occurred but this headline was a curious prophecy of one which was to appear on the issue of December 30 when the News chronicled the one true story of the "war"—the fight at Wounded Knee. But it was not Bailey's story, for he was among the correspondents who decided to stay at the agency when Colonel Forsyth set out with a detachment of troops of the Seventh Cavalry to aid Major Whitside of that regiment in disarming Chief Big Foot's band on Wounded Knee creek.

Only three correspondents were present at that affair and it was the dispatch of one of these—William F. Kelley of the Nebraska

State Journal--which told readers of the News the first story of Wounded Knee under the headline (truthful, this time) of "Full Fifty Slain". Incidentally, it is rather ironical that the reporter who "scooped the world" on the story of Wounded Knee was not a reporter at all. Kelley was a young employee of the Journal business office who sought, and got, the assignment of "special correspondent" for the Lincoln paper at Pine Ridge. His story was put on the United Press wires and that's how the Rocky Mountain News got it.

After Wounded Knee the reporters continued to send out their sensational stories of impending conflicts with the hostiles but none of them ever materialized. During the last stages of the trouble Bailey seems to have been in the field with the troops which were pressing the Indians in toward the agency and the inevitable surrender and he established a chain of couriers from Battle Creek to Rapid City to expedite his dispatches to the News. But that soon proved to be an unnecessary precaution, for the "war news" quickly petered out. Soon after the surrender of the "hostiles" to General Miles on January 16, the "Indian war news" disappeared entirely from the columns of the News. Presumably Bailey had gone back to his geological work which was to bring him some fame as an author of scientific books, explorer of Death Valley in California, from 1901 to 1903 and professor of geology at the University of Southern California from 1909 until his death in Los Angeles on December 6, 1924.

---Elmo Scott Watson

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Tall Tales of The Rockies

The winning of the West was accomplished by people who gathered at nightfall around temporary campfires or before the relatively more permanent stoves and fireplaces of frontier dwellings. Here they enjoyed the stimulating warmth of the burning logs or buffalo chips and of human companionship; they cooked their food over the flames and the coals; and in the flickering light of the fire, while resting from their labors, they exchanged stories based upon experience, tradition, superstition, and imagination. These tales, whether designed to furnish pleasure, information, or guidance, embody the life of the times in which they were told; they also reveal much concerning the personalities of our forefathers, those who made frontier social history.

Prominent in the repertoire of the old-time campfire narrator was the tall tale; today it is the variety most frequently heard when Westerners swap yarns. But even tall tales are basically true—if not about nature, surely about the men who told them and the ones who listened to them for hours at a time. Amusing and harmless, they deceived no one, except—temporarily—the greenhorn. To some a tall tale is merely "a long-winded lie"; to others, it is an entertaining bit of fiction.

Like Jack's famous bean stalk, the tall tale starts naturally enough, for it is always based upon reality; but it too, grows to be unusually large. As Charles Russell once wrote; "A man in the States might have been a liar in a small way, but when he comes west he soon takes lessons from the prairies, where ranges a hundred miles away seem within touchin' distance, streams run uphill, and Nature appears to lie some herself." There is even a legend to the effect that whoever drinks of the Hassayampa River in Arizona, will never be able to tell the truth again. Surely men who live in the presence of tall mountains, deep canyons, broad plains, and limitless blue skies can not be expected to be happy when fenced in by a narrow corral of facts. With spirit and grace they leap over the top rails and high-tail it for the land

of the marvelous, guided by their instinctive love for the wide open spaces. In the hands of a good campfire narrator truth once elongated, like the Western horizon, stretches on and on.

Probably in gathering campfire tales, as happens when we go fishing, the best ones get away uncaught. Some that have been preserved may deserve the definition once given of "a yarn," "a tiresome story told by someone else"; but others seem worthy of being passed on. The following collection is an attempt to bring together from various sources representative examples of the fiction that once entertained fireside audiences.

#### A Cowpuncher Loses His Pup

(Hunting, fishing, and the study of natural phenomena have been outstanding vocation, avocation, or hobbies of the natives of the Rocky Mountain West since prehistoric times. Visitors to the region have been, and still are, instructed and entertained by the real or the imaginary exploits of veteran Nimrods, Jonahs, Burbanks, Munchausens, and Ananiases. Often the campfire Homer merely acclimatizes a universally popular folk story; sometimes, however, he produced a markedly original opus by drawing upon his own unique experiences and his own highly individual imagination.)

Large catches of trout are so common in the Rockies that they provoke little comment. At one time, according to tradition, the conductors on the railroad paralleling the South Platte River had only to cast from the platform of the moving train in order to pull in trout as fast as the fish could be counted. But when some of the old trout got so large that the sportsmen had to carry fishing clubs to beat them off so that the smaller, more tender ones could be snared--that was news. The following from an old Colorado newspaper, reports another kind of trouble with big fish.)

Some of the storage reservoirs for irrigation water in south-eastern Colorado contain catfish by the thousands, their size varying from the "fry" recently planted to as large, it is reported, as any ever hooked in the Mississippi River.

Ura Lyon, a well known cowboy of the "Bobtail" ranch, located in Otero County, reports the loss of his half-grown Airdale pup, Alkali, who, he says, was swallowed up as bait by a catfish in the Apishapa reservoir, where 10,000 "cat fry" were recently placed after irrigation officials had completed a three-foot crown on the dam retaining the water. (Lyon is truthful.)

"I had been riding all day," said Lyon, "and Alkali was following me. By mid-afternoon the pup was tired out. In order not to leave him behind, I took down my lasso, a half-inch, four-strand, closely-woven manila, and tied one end around the pup's neck and the other to my saddle horn. When we reached the reservoir the pup was hot and thirsty and before I could stop him he had plunged into the water to drink his fill and cool off.

"The rope was still around his neck. He was several feet from the shore, swimming in deep water. I was still in the saddle 'twisting' a smoke, when suddenly I was catapulted over my horse's head to the ground, and my horse, Sagebrush, was slowly being pulled toward the water.

"Sagebrush, one of the best 'roping' horses in the world, who can flip a thousand-pound steer and hold him without moving six inches, was straining every muscle in his wiry body, but was slowly being dragged toward the water. Suddenly, however, the rope line grew slack and I caught a glimpse of a long glistening, blackish body with an extremely large head, that looked like that of a catfish, and a mouth as wide as a door.

"There was a lightning-like plunge. Swish! Snap! The rope had parted and Sagebrush went down on his haunches, but my poor little Alkali and half of my lasso went down into their fishy tomb."

The Origin of Fur-Bearing Trout  
"Salmo con epidermis muskwrattis"

(The currently popular story given below recalls the boom days of Leadville, Colorado. It was published a few years ago in a Canon City paper.)

The fur-bearing trout or beazel is known to the trout streams of Colorado, Michigan, Pennsylvania, and Maine. The origin of this unusual trout in the Arkansas River of Colorado is a story peculiar in itself and follows thusly:

The town of Leadville was incorporated as a mining town in the year of 1878. It was during the winter of 1877 and 1878 that meat was supplied to the miners in the form of venison by professional game hunters. Now during those winter months the miners ate so much venison and fried potatoes that the venison tallow became caked in the roofs of their mouths to the extent that they were unable to taste their coffee and other beverages. This was indeed distressing and often they eliminated this handicap by wiring a bundle of pitch splinters on the top of their heads and setting fire to it. The result was that the tallow was melted and they again had the sense of taste, but the net result was that nearly 97 per cent of the miners in the camp became bald-headed.

About the middle of the spring a gentleman from Kentucky who had been in the hair tonic business in that state reached camp. He was a Republican and had left his state to avoid trouble with government tax agents who tried to collect the heavy tax on his product.

In time he started to manufacture his hair tonic from potatoes on a small creek south of Leadville and to sell his product to the miners of the camp.

It was on a rainy summer evening that he was coming to town with four jugs of hair tonic, one in each hand and one under each arm. It was necessary for him to cross a trout stream which empties into the Arkansas River on a footlog and in so doing he slipped and had to drop two of the jugs to retain his balance. The result was that the falling jugs struck rocks in the stream and were broken.

Not long after that the trout fishermen of that vicinity changed their methods. Instead of the usual rod and reel, they would go down to the creek on Saturday afternoon, stick a red, white, and blue pole in the bank, put on a white coat, wave a

copy of the Police Gazette in one hand, and brandish a pair of scissors in the other, and yell, "Next," until they had the limit of these fine fur-bearing trout with full beards, etc. The trout would leap up onto the bank after these tonsorial lures and were picked up by the fishermen.

This practice continued until the mill tailings from the mills riled the waters so that the trout could no longer see the barber poles.

### Fishing in a Wyoming Mirage

(The most remarkable of all types of fishing is that described in the following narrative.)

"Thar's some Cur'us things I've seen up our way," earnestly observed the old Wyoming frontiersman, as we watched the pinion boughs snap and crackle, one night in camp, in New Mexico, while waiting for the hour of eight and bed-time to come, after a hard day's work in the placer diggings on the Rio Hondo.

"These here desert meerages that look like groves, 'n' cricks, 'n' bunches o' green range set out on the desert sand, where they ain't nothin' o' th' kind in two hundred miles, air th' ~~werst~~ <sup>best</sup> up on Pizen Crick in our country, I ever seen. That was wneer I camped, in '84, when I hit that country, 'n' located my band o' cattle on the headwaters of Pizen. Up th' gulch about an hour's ride from my shack, I discovered, ez I thought, ez fine a water hole as y'ever saw, 'n' watered th' stock there for nearly a week afore I found we'd all bin worked fer suckers. There wuz no water at all. It was only a 'meerage.'

"Well, if I was fooled, you ought of seen a young feller that came up t' my place from Cheyenne onc't t' hev a good fish, ez he called it. He hed a reg'lar dude outfit o't tools fer fishin', an', jest fer th' fun of it, I sent th' feller up t' this here 'meerage' hole, while I jumped my bronk' an' rode up out o' sight behin' th' hogback, and watched him. The water looked s' natr'l like, 'n' appeared such a likely place fer trout, thet he took off his clo'es, 'n' waded out t' his waist. Then he begun whippin' th' stream, 'n' I'm blamed 'f thet chump did-

n't ketch sixteen whoppin' fish inside 'f half 'n hour! They was gamey, too, 'n' ud jump like a burned steer, clear out o' the water, t' ketch th' hook. When he hed his basket plum full, he waded ashore 'n' set down t' count 'is fish--'n' then y' ought of seen 'in look! He hedn't no fish, et all--he'd jest been ketchin' 'meerages'."

### The Snake and the Tenderfoot

(Hardly ever does a campfire circle of storyteller in the cattle country break up without at least one snake story. Some sessions are devoted entirely to this one variety of lively fiction. Not all of the stories about snakes are to the discredit of Eve's tempter. Witness the following.)

A brother from the east came to visit a cowboy working for John Iliff, the cattle king of Colorado in the '80's. One day the tenderfoot came upon a snake pinned down by a boulder which had rolled off a cliff. He released the rattler and won its eternal gratitude. It followed him like a pet dog. Even slept on the foot of his bed at night.

One night he awoke with a start, feeling that something was wrong. The snake was missing from its accustomed place. He went out in the kitchen, feeling a draft from that direction. Sure enough, the window was open and there was the snake with its body tightly wrapped around the burglar, with its tail hanging out the window, rattling for help.

### A Narrow Escape

(Only by a hair's breadth was tragedy averted in the following instance.)

A gentlemen who came in from the Tip Top country states that on last Sunday morning a well known prospector, who stands six feet in his stockings, and wears a Number 13 boot, was enjoying the genial sunshine of a hill when he stepped on the tail of a monster rattlesnake, which was also enjoying a sun bath.



The first intimation that the prospector had of the snake's presence was a sharp, angry hiss, quickly followed by a swishing sound, as the great snake threw himself into a whip-like semi-circle through the air, dashing its head against the prospector's left top vest pocket, which contained a large square plug of chewing tobacco, into which the snake sunk its fangs and from which it was unable to pull through the cloth vest, and there the snake hung, with its tail fast under the prospector's boot and its head within a few inches of his mouth, thrashing its body against his overalls with the sound of three hotel chambermaids beating a carpet.

The prospector stood like one mesmerized, inhaling the sickening odor which rose from the mouth of the hissing snake, with his eyes fastened on the bead-like orbs of the enraged reptile. But the snake's struggling grew weaker and weaker as the tobacco-colored venom oozed from the sides of his mouth, the tobacco making it sick. In a short time it hung limp, dangling from the prospector's vest like a great rawhide rope.

The Tobacco had made it deathly sick; a film passed over its eyes; the charm was broken. A spasmodic movement of the prospector's arm and the reptile's head was crushed against the plug of tobacco. Then the horrified prospector fell over unconscious, where he was soon afterward found by a companion, all tangled up with the dead snake. He was disentangled and restored to consciousness. He felt for his plug of tobacco, cut out and threw away a bright green piece from the middle of it, took a chew from the corner of the plug and told the above story.

### The Bear and the Lasso

(Cowboys liked to tell how they captured bear by lassoing them. Sometimes other weapons were needed to finish the job, as "Kansas" Wickwire discovered. The following is his version of what happened.)

We were all going up the river one morning on a circle for cattle for the round-up. When we went into a big bottom, Ten Mile Creek, we saw three bears. Two went across the river and One went up the river. We did not see the bear that went up the

river. He just disappeared. The river was a little high, but a bear is a good swimmer. We decided to follow the two that had crossed the river. Our horses were good swimmers and four of us made the trip nicely. When the bears got across the river, one went up the river and the other went into the hills. Two of us went after the bear in the hills.

I was riding a pinto horse named Mule Camp, and he was very much afraid of a rope. But as the other man was not a very good roper he told me I would have to rope him if he was roped. I told him my horse was shy of a rope, but I would try. I had run him but a short distance when I caught him. My horse was not only afraid of the rope, but also of the bear; so I was in a jack pot. I could hold the bear all right, but the horse was trying to run. I was like the man who roped the big steer and said: "Someone had better come here that knows something." The horse was about ready to lose his pack and I was about to lose my rope; so I yelled to the other fellow to shoot the bear. He came up and the first shot he made he shot the bear through the foot. I did not have a six-shooter with me, and if I had I would not have had time to shoot; so the only thing I could do was to turn my rope loose, which I did. I then took the other fellow's gun and finally killed the bear and got my rope.

That night when I went to camp and told of my experience, one of the men told me I was taking a big chance; that he roped a bear one day and the bear sat down and pulled him, horse and all, right up to him. I told him I saw the bear the next day, that he still had the rope, that he was walking on his hind legs swinging a big loop and tried to catch me. He never told me any more bear stories, but he did say he didn't think a bear would do that.

#### Weather Extremes

(No session of tall tale telling would be complete without some account of the extremes of weather to which Westerners are subjected. For example, Malcolm C. Duncan, "Little Dunk," often told in Rosita, Colorado, in the '70's, of his condition upon

his arrival at Bodito after crossing the Sangre de Christo Pass in mid-winter. Frozen stiff on his horse, he had to be hoisted off the saddle "like a clothespin," and had to be soaked "in snow and whiskey all night, before he thawed out enough for the blood to circulate so that he could hear, think or speak." Another narrow escape is recorded below. Adventure tales involving buffalo permeate the literature of the West; this one was told me by Edgar McMechen, member of the staff of the State Historical Society of Colorado.)

An ingenious hunter, caught out on the plains in a blizzard, was glad to find even one old stray bull, for it saved his life. At dusk, with a storm raging which threatened to freeze him to death before morning, he managed to kill the lone buffalo, to cut it open and, after disemboweling it, to crawl inside. He pulled the parts together and spent a fairly comfortable night; but in the morning he found the opening frozen and himself a prisoner, threatened now by starvation. Fortunately he was able to solve all of his troubles at one and the same time—he "let his way out."

#### Hot Times in the Far West

(For a story of extreme heat the Rocky Mountain narrator had to go outside his own region. After hearing about such an experience as the following, the auditors were in the mood to agree to the modern slogan, "'Tis a privilege to live in Colorado.")

The campfire burned briskly and brightly. We sat around it after supper smoking and talking--Someone remarked casually that it had been a very hot day and we had all granted our acquiescence.

"Hot! Hot? Did anyone say hot?" commanded the colonel in a contradictory sort of way. "Well, if you fellows call today hot, you would die in some places I have been. Why, I remember once being in Death Valley and it was 130 degrees in the shade, or would have been only there was no shade, so I suppose it must have been 150 degrees in the sun. In some places the rocks were cracking with the heat. That is a fact. There was a gentle breeze from the south. It just came along easily, and as we were

traveling west, it touched us on our left sides. I have been touched several times, but never as peculiarly as that. Why, do you know each one of us who had whiskers or a beard had the hair singed off on the left side. We did not dare to stop or turn for fear it would do the same on the right side. That was the hottest time I ever had. We had a dog with us, a fine nervy Scotch terrier, when we entered the valley, and when we came out he was a Mexican hairless."

-- Levette J. Davidson

University of Denver  
Denver, Colorado

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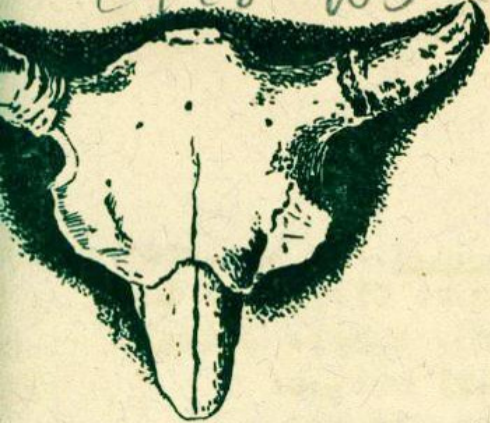
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Corresponding members pay an annual fee of \$3.00 and in addition to receiving the BRAND BOOK, published monthly, are entitled to attend the monthly meeting when in Denver. Regular members pay a \$5.00 annual dues of which one dollar is sent to the Chicago chapter and in return for which our members receive the BRAND BOOK of the Chicago Westerners. Notices of each "roundup" are sent to all regular and corresponding members one week before the scheduled meeting--the fourth Friday of each month.

[The March "roundup", set for the 23rd at the "Crow's Nest" (Brandford Robinson Printing Co.), will feature Dr. Colin B. Goodykoontz, University of Colorado, in a discussion of "Beadle's Dime Novels". Posseman Fred Rosenstock will display some of the original Beadle publications.

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# The BRAND BOOK

OFFICIAL ORGAN

## THE WESTERNERS

306 STATE MUSEUM BLDG.

DENVER 2, COLO.

D. BRAYER, REGISTRAR OF MARKS AND BRANDS

APRIL 1, 1945

No. 3

### THE WILD WEST OR BEADLE'S DIME NOVELS

Half a century ago dime novels were generally condemned by people of refined tastes because of their alleged sensational, trashy, and even immoral characteristics; today they are considered interesting and harmless relics of a by-gone age. "Yellowbacks" that then would have been denied a place on the marble-topped walnut table in the parlor are now carefully preserved in libraries; western thrillers that then sold for a nickel or a dime are now collectors' items, fetching prices that run as high as fifty or sixty dollars; lurid tales that then were on the Index Librorum Prohibitorum of parents, preachers, and pedagogues are now the subject of scholarly articles appearing in highly respectable periodicals. Perhaps dime novels do not deserve all the attention they are now receiving; but whatever we may think about these stories--most of which according to present-day tastes and standards are banal, dull, and lacking in literary value--they have a place in American social history.

One reason for such importance as may be attached to them was their wide circulation. They were among the best sellers of their day. They were printed and presumably read by the tens of thousands of copies. Within four years of the appearance of the first of the Beadle dime novels in 1860 more than four million copies of the various numbers had been

printed. One of the early favorites, Seth Jones, ran to more than five hundred thousand copies. These were Civil War days and a vast market had been found in the army camps. Edmund Pearson in his book on Dime Novels (pp.48-49) writes:

The Civil War was a fortunate event for the Beadles. Their books went to the soldiers by the million.....a generous number of these were given by the publishers, but there were also enormous sales. The little books were sent to the camps in bales, like firewood. They were shipped on freight cars, wagons, and canal boats. When bundles of them arrived in camp, the sutler had to distribute them quickly, or else they would be torn from him. Among the commodities which the Union and Confederate pickets exchanged between the lines the Beadle novels were in great demand.

But this was only the beginning. For more than forty years the Beadle establishment in New York City and its successors and rivals kept their presses busy turning out dime and half-dime novels at an astonishing rate. More than a hundred authors contributed to the various series; the titles ran into the thousands; a new one appeared regularly each week. The editions were large--the American News Company had a standing order for 60,000 copies of each number as it came fresh off the press--and the more popular items were issued again and again, some of them as many as thirty times.

Reasons for the popularity of these tales are not hard to find: they were cheap; they were written for the masses; they helped satisfy a natural longing for romance, mystery, and excitement; and for many youthful patrons they were contraband--probably part of the schoolboy's thrill in reading one of them hidden inside the covers of his big "jography book" came from the realization that while the fate of Dashing Doloras, who had just been captured by the Apaches, was uncertain, he himself might be in danger of a surprise attack from the rear by a watchful and light-footed schoolma'am. Parenthetically, it might be noted that in England similar tales, known there as "penny-dreadfuls" and "shilling-shockers," were also



widely read; in them romance was to be found, judging by the titles, on the sea or in the distant colonies.

Although the American dime novels fell into the general pattern of cheap thrillers with a setting usually on the frontiers, there were differences among them. Among the Beadle novels several series should be distinguished. The first known as Beadle's Dime Novels, issued between 1860 and 1871, were the original "yellow-backs," so-called because of their orange-colored covers. Many of these stories dealt with the Revolutionary War and life on the frontiers in the late eighteenth and early nineteenth centuries. Abraham Lincoln and Henry Ward Beecher were among the men who endorsed them, partly because of the popular interest they aroused in important phases of our national development. William Everett, writing in the North American Review in 1864 (July), said he had read through ten of them faithfully--and it had been uphill work. But he found in them nothing objectionable morally, "whatever fault may be found with their literary style and composition." He pointed out that the publishers, because of the enormous sales of their cheap books, had an opportunity "by publishing books of real excellence and interest, exact in statement, careful in style, and true in nature, ...[to] do much to form a correct public taste, and to supply with sound information a vast body of readers not likely to be reached by any other literature." (p.306)

Two later series, in both of which the settings have shifted largely to the Far West, were Beadle's New York Dime Library, with 1009 titles between 1878 and 1898, and Beadle's Half-Dime Library, 1877 to 1904, with 987 issues. Both appeared with black and white cover illustrations which suggested the thrilling nature of the contents: Perhaps a masked bandit holding up a stagecoach, or an Indian, dagger raised, bending over a white man and both about to fall off a narrow ledge into the abyss below. In the Dime Library appeared

most of the stories attributed to Buffalo Bill and those of the prolific Col. Prentiss Ingraham, author of more than six hundred novels. Other writers included Major Sam Hall (Buckskin Sam) and Edward Zane Carrol Judson, better known to his readers as Ned Buntline. The Deadwood Dick stories of E.L. Wheeler ran in the companion Half-Dime Library. Unfortunately the publishers had not followed Mr. Everett's suggestion that they use their cheap books to improve the reading tastes of the masses; on the contrary, the quality of the novels declined as the years passed. The evil effects of commercialization were being felt; the authors were writing faster--some were turning out tales at the rate of one a week and on one occasion Colonel Ingraham did one in a day and a night; there was more blood and thunder. There was still, however, careful adherence to the conventional standard of morals--but more about this later.

It is with the stories in these two series, the Dime Library and the Half-Dime Library, that this paper is concerned. They dealt with the Wild West of the Sixties, Seventies, and Eighties--the West of the High Plains and the Rocky Mountains, of the Pony Express and the Overland Mail; the West of Colorado miners and Texas cowboys, of Buffalo Bill and Sitting Bull. This paper attempts to answer one question: What impression of this West would have been gained by the person who read these tales?

One further preliminary question: Did their readers take them seriously? Probably no precise answer based on statistics can ever be given. It may be surmised that some of the more sophisticated read with their tongues in their cheeks; but the unsophisticated, the uncritical, the youthful were probably in the majority. Most of them knew nothing about the conditions under which the little books had been written. They probably did not suspect that the great Buffalo Bill had a ghost writer, or that it was rumored that the creator

of Deadwood Dick had never been west of Jersey City. And few of the readers could have detected or would have been disturbed by occasional incongruities and geographical inaccuracies, such as the location of the Black Hills in Colorado in one story and the carrying of greenbacks by Pony Express riders in another. In "This Believing World" it is easier to be credulous than sceptical.

The West of the dime novels was a combination of fact and fiction. There was an air of reality in that the scenes were often laid in and around real towns and mining camps, such as Omaha, Leavenworth, Deadwood, Cheyenne, Denver, Leadville, Santa Fe, Frisco, and Salt Lake City; or on rivers which could be found on the map: the Platte, the Republican, the Arkansas, or the Rio Grande. There were references to real institutions and companies, such as the Pony Express, the Overland Stage, to Russell, Majors and Waddell. Among the characters were real persons: Buffalo Bill, Pony Bob Haslett, Wild Bill Hickock, Calamity Jane, Kit Carson, and Jack Slade.

The setting seemed real; actually it was often very unreal. In many of the stories dealing with the mountains the physical features, such as peaks, canyons, precipices, were greatly exaggerated for dramatic effect. The chasms and canyons were not only deep--as some of them are--but they were made so deep, with walls so steep, and an opening so narrow that it was pitch-dark at the bottom even in the day time. The shelf-trails were not only narrow--as some of them are--but they were made so narrow that if a man on horseback wished to dismount he had to climb either over the head or rear quarters of his beast in order to find solid earth on which to set his feet. Then Nature continually furnished surprises to add to the excitement and uncertainty. Secret passageways through rough rock barriers, hidden trails, and underground streams

were introduced even under the most improbable or impossible conditions as the exigencies of the plot demanded. Caves were among the stock properties in western thrillers and they sometimes appeared in most astonishing places. Moreover, these caves were not ordinary holes in the ground—damp, dirty, disagreeable dugouts--they were cosy, commodious, comfortable compartments, conveniently divided into several chambers, especially if females as well as males found it necessary to tarry long therein. Thus by their pens the writers of these yarns gave their readers some of the surprises that are so generously furnished now to movie addicts through the devices of trick photography.

The principal characters one met in the West were more exaggerated in their qualities than the scenery around them. The bad men were the "baddest", the good men were the "goodest", and the fair women were the fairest that e'er the sun shone on. Three standard characters in every novel were, of course, the hero, the heroine, and the villain. They tended to be conventionalized in appearance and deportment. No one should have been deceived as to the identity of the villain; he had a dissipated face, a leering smile, and a shifty eye. He might have been, and if he were a professional gambler he surely would have been immaculately dressed, with all the standard accessories of a "plug hat", fancy flowered vest set off by a heavy gold watch chain, kid gloves and highly polished patent leather shoes. But foppishness of dress did not necessarily put the mark of Cain on a man; sometimes the dude from the East turned out to be a dead shot with his pistols and the hero of the story.

Another stock character was the scout. He represented the quintessence of frontier achievements. Not only had he uncanny skill in following trails, not only could he shoot with unerring accuracy, not only did he perform marvelous

deeds of valor, but he was picturesque in speech and dress. Buffalo Bill appears as a leading character in many of the stories, thus contributing, no doubt, to the development of the Buffalo Bill tradition among the youth of the land. Some authors used fictitious scouts in their stories; one of these, Mustang Sam, a leading character in the novel of that name, will do as well as any for an example of this sort of frontier hero. He introduced himself as follows:

You ax who I be. I'm Mustang Sam, the high muck-a muck of E. Pluribus Unum! ... I kin yell louder, run furder, ride faster, shoot straighter, jump higher, tell bigger lies, eat more poor bull, an' jump outside o' more chain-lightning than any other two-legged critter as was ever pupped. ...

He was wearing at the time

...A blue broadcloth jacket, ornamented with numerous silver buttons...; a velvet vest ... over a shirt-bosom of crimson silk, beautifully embroidered,...trousers of the same material as the jacket, slanted from the knees downward, laced with a golden cord, and thickly studded with silver buttons and Spanish coins;...Around his head was bound a silken sash... From beneath fell in wild profusion long curling locks of black hair, reaching half way to his waist. ...

But with all this finery our hero was not fully dressed until he had put on the usual arms of bowie knife and two Colt's revolvers.

There were not many women in the West, but those that were there were very good and very beautiful and usually unmarried. "Fair Edith" who graced the pages of Mustang Sam was of average pulchritude: she was:

slender and lithe, with a peculiar willowy grace in every movement, the perfection of delicate symmetry.

Her hair, luxuriant and waving, was a rich golden brown. Her complexion was one of dazzling clearness ...[She had]Large, lustrous eyes, softly shining, of a deep melting blue. Lips that needed no artificial coloring, ripe and moist. A purely oval face, with features of classic regularity. ...

Not the slightest shadow of suspicion of improper conduct according to the strictest Victorian standards was ever allowed to fall on one of these fair maidens. If the exigencies of the plot made it necessary for one of them to spend the night, without chaperon, in the company of men not her immediate relatives, a separate sleeping room would be provided for her in cabin or cave; or, her resting place, if by necessity in the open, would be carefully set at a proper distance from that of her male companions. There, in the flowery language of the period, she enjoyed sweet repose with fair Luna, mistress of the night, watching o'er her until a faint ruddy gleam that shot athwart the eastern sky heralded the coming of the dawn. If, on awakening, it was necessary for our heroine to mount a horse, riding habit and side saddle were provided.

Almost every woman in the West must have been at some time in grave danger or distress. Perhaps shrewd tricksters had schemed to rob her of the gold mine she had inherited; perhaps she had been taken captive by the Indians, with "a fate worse than death itself" in the offing; perhaps she had been lured from home by a villain who tried to force her to marry him; perhaps her true lover had been killed—or at least she thought so; but, fear not—in the West there was always a happy story-book ending.

Not infrequently one of the young men in the story—a quiet likeable fellow who had distinguished himself by courage, valor, good marksmanship, and daring deeds—turns out to be a woman in disguise. If so, you may be sure that she had put on man's clothes in order to escape from some

peril, or, more likely, to hunt down and secure revenge on someone who had injured or betrayed her in the East. If not through such a person in disguise, some other tie binding one or more of the characters to the old life back East almost always appears in the tales. Not infrequently the villain has left behind him back there a record of theft, or murder, or betrayed confidence; the avenger is on his trail and finally runs him down.

In order to live long in the dime-novel West, each of the principal characters needed the cat's nine lives; for it was a land of narrow escapes. Shot and left for dead in Chapter I, the hero reappears in Chapter IV with the explanation that the bullet, which had just missed a vital spot in his body, had been extracted by the old hermit, who was a surgeon of rare skill; thrown over the cliff in Chapter V and last seen hurtling through dizzy space to certain death on the rocks a thousand feet below, the hero turns up as well as ever in Chapter VIII; he had landed in the top of a big pine tree and had escaped with a few scratches. And so it goes through endless shooting, stabbings, and even more bizarre perils of snakes and lighted powder kegs. Superficially plausible explanations are always given for the seemingly miraculous escapes and the unusual and weird occurrences in the stories; but often it calls for as great a strain on the imagination to accept the explanation as the event itself.

Like the people in them, western mining camps were standardized. A typical camp consisted of a double row of rudely constructed shanties and discolored tents stretched irregularly along a winding canyon or gulch. The most pretentious structure was usually the combination saloon and hotel. The entrance was through the bar-room, and there

might have been seen most of the men of the camp. Among them one might have met Alkali Al, Blue Bob, Cool Carl, Diamond Dick, and so on down through the alliterative alphabet to Slick Sam, Tiger Tom, and Wiley Walt. They were rough looking fellows, dressed in red shirts with coarse dirty trousers stuffed in the tops of heavy boots. Whether smoking, gambling, or drinking, their conversation, so we are told, was interlarded with vile oaths; but these we never hear. Occasionally shots were fired as personal differences were settled directly then and there. In the second story of the inn were the sleeping quarters for travellers, but it was useless to go "to roost" even in the hostelry known as "Red-Eye Roost" until the small hours of the morning, since there was an unceasing racket below through the entire night. The West was Wild--no doubt about it.

Hard liquor--variously known as "Taos lightning," "tangle-foot," "p'ison," "forty-rod lightnin'," "double-distilled damnation"--flowed freely over the bars in the West, although Mr. Orville J. Victor, able editor of the Beadle dime novels, had tried with some degree of success to reduce the flow in the interest of morals. In discussing the Deadwood Dick series he said:

I kept urging the author to make the stories less terrifically forcible in the language of his rougher characters, and gradually the sulphurous nature of their dialogues became moderate enough to need but little editing, and at the same time the torrents of liquor that flowed like rivers through his earlier manuscripts, dwindled to rivulets under the influence of my appeal for less rum.

The language used in the Western saloons and gambling halls is often referred to as profane, but the gentle reader is never contaminated by it. The conversations in the stories, considering the time and place, are singularly free from objectionable language. The opletives recorded are nil.



certainly we might expect to hear from the lips of bandits, gamblers, cowboys, duelists, and stagecoach drivers "cuss words" stronger than "By Tartarus," "Jurpin' Jericho," "Jerusalem," and "Jehosaphat"—but we don't.

Did the men of the West who spent so much time in the saloons, at the gambling tables, riding on stagecoaches, and on horseback ever work? Not to speak of, in the dime novels. Reference to work are casual. Mention may be made of the fact that the miners have come to the saloon at the end of the day's work, but no attention is paid to the details of the digging, blasting, hammering, and pounding which someone must have done. Of physical exertion there was no end—scouting, fighting, horseback riding, mountain climbing, prospecting—but all this to men and boys on mid-Western farms must have seemed more like sport than work.

Indians naturally have an important part in novels dealing with the frontier. Dime novel Indians are usually engaged in or preparing for attacks on the whites. They are almost invariably referred to in derogatory terms: "red devils," "red niggers," "infernal imps," "sons of Satan," "varmints"; their camps are characterized as "nests of vipers," or "dens of wolves;" their innate cruelty, treachery and savagery are stressed. One chieftain, for example, is described as wearing a buckskin shirt ornamented with a fringe made of the hair of white women and children. Occasionally in the novels, and this is apt to be true only of these in which Indian fighting does not play an important part in the plot, a single Indian is depicted as friendly to one or more of the white characters. He is of course a good Indian, and might be characterized as "white". By way of contrast it is interesting to note that the Indians of the contemporary Currier and Ives prints belong to the "noble-red-man" tradition of Cooper; they are ordinarily depicted as gallant and inoffensive hunters and horsemen.

Negroes appear occasionally in the stories as cooks and body servants. They are sentimentalized faithful servants speaking a "massas-in-de-cold, cold, groun'" dialect.

In as much as there was so much violence in the West of the dime novels, the question naturally arises as to the administration of justice and the punishment of crime. Manslaughter is not necessarily a crime in the Beadle West. Shooting Indians and bandits, killing in self-defense, killing your opponent in a fair duel, shooting the other fellow in the split second before he shoots you--these are not acts for which one would be held accountable by his fellows. But if a man is shot treacherously, or under suspicious circumstances, or without a chance to defend himself, then the culprit will be made to stand trial before a hastily summoned miner's or people's court. In these courts the procedure as described was irregular according to the practices in the East, but it was speedy, simple, and effective. There were no clever lawyers scheming to defeat justice and no one had reason to complain about the Law's delays. Although there are sometimes references to the passions of the enraged mob hot on the trail of an evil-doer, the reader is left with the impression that essential justice was usually meted out. In spite of this roughness, the men of the West on the whole were honorable, lovers of fair play, and chivalrous in their treatment of women and all others not able fully to care for themselves.

What about the morals of the West? As to murder and robbery, very bad; as to the relations between the sexes, very good, prudish in fact. I do not recall having seen in all these I have sampled a single word or incident suggestive of indecency, or sexual impropriety. And insofar as morals have to do with the punishment for wrong doing, the dime-novel West was highly moral. Retribution always caught up with the evil-doers. At the end of every story might have been

the motto: Crime doesn't Pay.

However, if by morals we mean something more than a simple personal code having to do with such problems as sexual relations and the protection of life and property; if by morals we mean a long view with respect to the creation of a good society, then the answer is not so simple. It can be argued that the securing of personal revenge on the basis of the old rule--an eye for an eye, a tooth for a tooth--was just; that impromptu, "neck-tie parties" conducted by vigilantes reduced crime. But it can also be argued even more cogently that it is not in the long run conducive to the good life for men continually to take the law into their own hands when their object is, as it is in most of these stories, to secure immediate personal revenge. The Christian virtues of mercy and forgiveness receive little attention. There is little emphasis on social responsibility beyond the natural loyalty to the immediate group such as the family or wagon-train. In dime novels men went West for revenge, for adventure, for gain; as soon as they had achieved their objects they were taken back to the East to enjoy there a life of ease and peace. These stories are dated; they belong to the era of the robber barrons in American industry and the philosophy of laissez-faire.

The post-Civil War generation, busy as it was with money making, craved romance. Some found it in lodges, with their pass-words and grips, their elaborate rituals and gorgeous costumes. Others sought it vicariously in the pages of western thrillers. There were still others who found it at first hand in Leadville and Deadwood. In the real West of the period there was plenty of violence, but the murders and robberies represented only a passing phase of life there and were less important than the orderly processes of community building that were quietly at work.

Dime novels presented the unusual as though it were the usual, the spectacular as though it were normal. Even so, the stories were on the whole no more improbable than some present-day movies and no more inane than most of the comic strips. They helped arouse an interest in an important phase of American development and they put a high premium on certain qualities of character--courage, initiative, endurance, resourcefulness--highly prized in the days of rugged individualism. Students of the American frontier have often said that the West was the most American part of America; perhaps we can say the dime-novel West was the most Western part of the West.

-- Colin B. Goodykoontz

Department of History  
University of Colorado

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#### WESTERNER'S MARCH ROUNDUP

Meeting again at the "Crow's Nest" through the courtesy of Bradford Robinson & Company (abetted by Posseman Art Zeuch), the March roundup provided the Westerner's with their most unusual meeting to date. Dr. Colin B. Goodykoontz, Professor of History, University of Colorado, made a special trip from Boulder to address the posse. In order that the speaker could make returning bus connections the program was reversed so that Dr. Goodykoontz might present his paper--published herein--before the dinner. This change was providential. The quiet wit and subtle humor of the speaker brought many a chuckle--and not a few honest-to-goodness "belly-laughs." Through the courtesy of Posseman Fred Rosenstock, eminent

dealer in Western Americana, the members were able to examine an excellent collection of original dime novels while listening to Dr. Goodykoontz.

Throughout the dinner the discussion of the address continued unabated--and elicited from both the speaker and the posse a good deal of additional information. With the conclusion of the business meeting, following an excellent repast, Sheriff Bemis turned the meeting back to the program chairman. In the ensuing two hours--actually until the stroke of midnight--the posse was entertained by a description and discussion of the interests of each member present. Dr. Hafen described his present task of editing a new five volume history of Colorado, and preparing a new study of the Mormon Trail from Salt Lake City to San Bernardino, California. Charlie Roth astounded the group with his poignant comments on the history of the mustang, and his interest in the preservation of this typically American horse. Fred Rosenstock told of his publication of the Ferris volume, and the present work he is interested in--the publication of a book on mountaineer Philander Simmons, being edited by Corresponding Posseman Fred Voelker of St. Louis. Fred acquired the Simmons autobiography some years ago. Dr. George Curfman told of his interest in the western slope area, while Tom Ferril described his present work in editing a newspaper as well as the house organ for the Great Western Sugar Company. Forbes Parkhill surprised the posse by indicating an interest in early medicine in the Rockies--and in medicine shows; incidentally, Forbes' latest book, Troopers West has already gone into a second edition, and the movie rights have been purchased by Hollywood. Arthur Carnart explained his plans for a new book on the big game of the region. Other possemen had equally absorbing interests--so much so that the meeting was only concluded because of the midnight curfew.

The editor hopes to publish in a forthcoming edition a complete account of the interests (brands) of each member of the Denver Posse.

Two new members were elected at the March meeting: Dabney "Doc" Collins, who in addition to his advertising work has the profitable hobby of writing western stories for the "pulp"; and Ralph Mayo, Denver accountant with an archaeological and ethnological bend. Corresponding members elected up to April 1 were: Frederic Voelker, St. Louis; Chas. H. Leckenby, Steamboat Springs; L.G. Flannery "Pat", Cheyenne; John Charles Thompson, Cheyenne.



# *The* BRAND BOOK

OFFICIAL ORGAN

THE WESTERNERS

306 STATE MUSEUM BLDG.

DENVER 2, COLO.

HERBERT O. BRAYER, REGISTRAR OF MARKS AND BRANDS

MAY 1, 1945

No. 4

## THE MUSTANG AND THE WEST

"Observe here a creature, a dumb brute, that has saved some centuries of time. Indeed without this American horse, the American civilization perhaps could never have been. Without the horse there could have been no west. The hunter, the trapper, the traveler had been wholly helpless without the horse.

This paragraph taken from "The Way to The West," an early book by Emerson Hough, describes far better than I could the importance of the animal I want to discuss with you--The American Horse or Mustang.

The story I shall tell you, however, is more than a merely factual account of the Mustang, whence he came, how he served, where he has disappeared--it is a dramatic story of "squaring the circle"--the story of how it was the destiny of this horse to write history over half the world--a story painted on the large canvas of empires. For if ever an animal served history it was the horse I discuss with you now.

He wasn't a large animal and he wasn't pretty. He had no "style". No blue ribbons were ever pinned on his bridle in the show ring, and I am sorry to say that often he was abused. "He knew

no grain," continues Emerson Hough's account. "He knew no shelter. In winter his hay was the cottonwood bark. Where the ox would perish, the horse could survive." No, he wasn't appreciated, for he was taken for granted and used, and discarded when his days of usefulness were gone. But he was practical and he served his purpose.

Many persons believe that the horse is native to the West, at least to America. But there were no horses on the American continent when Columbus landed here.\* The Indians who lived in America lived without benefit of horse transportation--it was a continent of footmen. Hence it was comparatively unexplored and unknown; for if ever a continent was a "horse continent," needed the horse, it was America. And presently the horse came.

He came in the hatches of the vessels bringing the Spanish conquistadores to American shores. He came with the Spaniards because they were horsemen. They were warriors, and they knew that no man could fight unless he was mounted. To them a horse was as necessary as weapons. He was a weapon of war.

The account of the horses which came over with the Spaniards is well known to anyone who has read the history of the conquest, but many persons who are familiar with this account, and indeed many horsemen who have made a study of the horse, have erroneously concluded that the horses

\*Editors note: It is generally accepted that the horse had its birth in the New World and spread to other continents from here. This ancestor of the modern horse had died out, however, before the record of man began in the Western World.



which at one time teemed the western prairies as wild mustangs, all sprang from the sixteen horses which Cortez had with him when he landed in 1519 near Vera Cruz.

But that isn't true. The horses of Cortez are famous, because Cortez brought along his own public relations counselor, Bernal Diaz Del Castillo who wrote a minute description of the sixteen Cortez horses. I shan't take the space to describe all six, but shall let you taste the flavor of this "horsey" writing. "Captain Cortez had a light, chestnut stallion," he writes, "which presently died in San Juan De Ulua. Pedro De Alvarado and Hernando Lopez De Avila owned a very good chestnut mare, for sport and racing, and the half of which Alvarado bought or took forcibly upon our arrival in New Spain...Alonza Hernandez Puertocarreo, a silver gray mare of good racing qualities that Cortez bought with gold ornaments...Juan Velasques De Leon, another silver gray mare, very powerful, very restless and a good racer...Juan De Escalante, a light chestnut stallion with three white feet--no good...Francisco De Morla, a dark chestnut stallion, a great racer and restless."

Nobody knows how many horses the Spaniards brought with them--hundreds no doubt. Ojeda, who landed in 1509, had 300 men, 12 horses, and Diego De Nicuesa who landed on November 12, had with him six horses. In 1526, Pizarro brought horses, as did Onate in 1600. Navarez, who also landed in 1600, brought several hundred horses with him. And Coronado, the intrepid Captain, who wandered through New Mexico, Texas, Kansas, Oklahoma and perhaps southern Colorado from 1540-42 brought the first horses into our American West.

It was from these Spanish horses that the wild horse of America sprang. This mustang of the West, this "jughead" of cowboy lingo, this cayuse, this Indian pony, this useful animal who contributed so much to our civilization, received so little tribute or kind treatment in return.

For as the years went by horses would break loose from their owners, or would be turned loose to shift for themselves. They were prolific creatures. They roamed the woods and plains. They made their way across mountain ranges. They scattered until they were calling half the American continent their home. Here they found things to their liking--freedom, water, grass. They prospered.

Presently the Indian, conquered by men on horseback, for one Spaniard on a horse could hold hundreds of Indians in check, perceived that they likewise could profit by this animal. Gradually they mastered the art of the horsemen, and became a race which depended upon the horse for their livelihood. They rode him when they warred upon enemy tribes, rode him in the hunt, rode him when they went about their nomadic ways. And he was more than a convenience, a necessity to the Indian--he was also a symbol of wealth. To this day Indians compute the wealth of a man, not by the acres he owns or the money he has in the bank, but by the size of his horse herd.

The first white men who went West likewise needed this western horse, the mountain men, the explorers, the traders. Came then the Army and thousands of troopers rode thousands of rough western miles mounted on the backs of these sturdy little creatures that had been taken from the wild bunches that dotted the plains. The settlers riding over the Oregon, the Santa Fe and other trails

while they brought eastern horses with them soon learned that for endurance and intelligence this "native" horses was best.

So useful an animal must also form the basis of commerce, and as early as 1800 there were horse traders plying their business among the Indians, buying horses, herding them to the South where they were in demand as light cotton horses, or to the East, where there was a lively market for them. The trade was profitable, the life exciting so it attracted adventurous young men.

It was likewise a large trade. There is no telling how many horses were traded in the West, but we know of ranches in Wyoming, Montana--the two big horse states--with 6,000; 8,000, 10,000 head. I was reading of a horse roundup in 1905, one of the last, in which 27,500 animals were caught, branded, broken, and sold.

If the horse contributed to the service and the prosperity of the men of the West, he likewise contributed to their delinquency, for there soon arose a class of men called "hoss thieves," who gained their living precariously by stealing other men's horses--an art they learned no doubt from the Indian, who was adept at taking other people's property. Organized gangs of horse thieves would raid horse herds of early ranchers, drive the animals overland hundreds of miles and sell them. Or individuals would covet especially fine horses, and steal one or two to get "whiskey money". Because the horse was so necessary to a man's life in the West, the penalty for stealing a horse was the severest that could be imposed--hanging. Many a man lost his life because he couldn't tell the difference between his horse and his neighbor's--couldn't read a brand you know.

Now, if this horse, which numbered thousands in the West, came from the Spaniards' horses turned

loose in the late Sixteenth and early Seventeenth centuries, it is proper to go back farther and inquire where the Spaniards obtained the horses?

Remember I told you in the beginning of this discussion that there was a dramatic story of "squaring the circle" connected with the American wild horse. We started at the middle of that circle when I told you about the landing of the horse on American shores. Now we must go back to the beginning of this circle, and that takes us to the year 647 A.D. and the place to which we must return is Arabia. In 647, the Arabs, a nomadic people of the desert, became restive, ambitious for conquest, so that they began their westward expansion. Mounted on the fiery, magnificent little horses that they had loved and trained for several thousand years, horses still called "Arab Horses," these Arabian warriors rode West.

To Egypt they rode, then to Libya, then to Algeria and Morocco. In 710 they reached Spain. Fifteen years later (725) came the invasion of Gaul, also accomplished by Arab horses. But we need not go into that--we can stop in Spain in 710 and let the Arabs go on alone. But it is important that we stop with them in Spain, for they brought the horses to that country that were later to go to the New World and play such an important part.

What manner of horse was this that it had so much prepotency it could last for centuries and come down to us today, its blood lines unsullied its great qualities unimpaired. We do not need to question or quibble in answering that. All we need to say is this--"The Arab horse is the most remarkable horse the world has ever known, the most valuable, the most useful!"

Because that sounds like a hyperbole, let me explain why it is true. To begin with, the

Arabian strain is in every breed of light horse we know. It is in the Thoroughbred, the racing horse, for he was developed by crossing Arabs and English horses. It is in the Standardbred, the harness horse of your father, for he is an offshoot of the Thoroughbred, and the thoroughbred as I have told you, is an Arab descendant. It is in the Morgan, that doughty little horse of New England--one story says that Justin Morgan, founder of that line was, indeed, a half Arab. It is in the Saddlebred. It is in the Quarter horse, now so popular. It is in the Palominos; it is in every light horse that walks, this breed of the Arab. And that the Arab has improved them all there is no doubt.

The Arab horse today is just as he was in 647 when his masters rode out on their conquest. So we can study him and know what manner of horses were the ancestors of our mustangs.

Because he is desert-bred and raised, he is not large; no desert animal is. But he is thrifty. He can live on less, be happier on poorer care than any other horse alive. He is an animal of great endurance and although he is high strung, a patrician, he has more equine intelligence than other horses. And because he has literally shared the tent with his Arabian masters for years, the Arab horse is understanding. Also he has the look of eagles about him, because he is no mere dumb brute, but a fit companion of a warrior on the war path.

This then, is the kind of horse which carried the Spanish conquerors over the New World. The kind of horse which roamed the western plains when the first settlers to this region came--horses of royal blood, horses of royal quality.

But what has happened to this wild horse today. He is extinct or practically so. Oh, there are wild horses; several thousand of them, but they are an intermixture of all sorts of horses, cart horses, farm horses, shetland ponies, and I doubt if there are anywhere horses with the same strain of the original American mustang. And what a pity that is! America had a fortune on hooves yet destroyed it. With rifle and trap, with lariat and barbed wire fence, now with the approval and under the instruction of the Federal government, the wild horse was harried from one range to the other, killed for dog and fox food, all but obliterated from the earth.

It may be that when the government establishes its Great Plains National Monument, as is projected in Nebraska-South Dakota, some of the tag ends of the Mustang herds can be caught, turned loose on that million-acre refuge. They should be, for where in the West is there a more inspiring sight than a wild horse, head up, mane and tail flying, silhouetted against a blue western sky.

But I must finish my story of squaring the circle. Remember I told you to keep two dates in mind--647, the date of the Arab conquest westward and 1519, the date when the first Arab horses set foot on American soil. Keep now a third in mind--1889. For that was the year when the circle was squared and the Arab horse returned home after wandering 1242 years.

Living in New York there's a man named Frank Hopkins, a remarkable horseman, the last and the greatest of the endurance riders. Born on the frontier, reared on the frontier, a dispatch rider for General Miles, Crook, and Terry, Frank Hopkins has been a horseman all his life. It was inevitable that a man knowing horses so well should become an endurance rider. He did.

He rode in one race on a little buckskin stallion called "Joe," rode against picked riders of the world, and won. And then one day in Montana for three dollars he bought a little Indian mare he called "Whitey". Keep "Whitey" in mind, for she had a high destiny in helping square the circle.

In 1889, Hopkins was in Europe with the Buffalo Bill Show, in which he was a special rider. With him he had some notable endurance horses-- they were all sons of "Whitey". One of these, "Pardner" doesn't figure in our story, except that he won every race he entered, but "Pardner's" brother "Hidalgo," does.

When Mr. Hopkins was invited by some Arabian potentates to come to their country and bring his horses for a long endurance race, "Hidalgo" went on the boat with him. "Hidalgo," son of the three-dollar Indian pony, "Whitey" was going to race against the finest horses Arabia could produce.

Well, Frank Hopkins and "Hidalgo" won the race. Then the Arabians, horsemen and horse lovers for centuries, insisted that a horse so fine and enduring as that, must be left in Arabia. And with a fine graciousness that has characterized him all his life, Frank Hopkins left his friend and sailed for home.

More than one horse returned to Arabia in the form of "Hidalgo," don't you see, for this was the squaring of the circle--and the war horse that left Arabia 1242 years before, now returned, after conquering a continent, and was home again.

--Charles B. Roth

Denver, Colorado

Probably the most outstanding Westerners meeting to date was held on April 27---once again at the Crow's Nest through the courtesy of Bradford Robinson & Company. Following a superb dinner, Posseman Charles B. Roth, Colorado advertising man, discussed at some length the evolution of the western horse, with its various ramifications and the astounding coincidence of "squaring the circle". It is truly regrettable that side remarks, explanations, and exclamations which are not to be found in the formal paper published herein could not in some way be reproduced. It is these remarks and replies to questions which add so much color and information to the prepared address of Westerners' speakers.

Following the formal paper, which in reality was not formally given since Mr. Roth talked entirely from notes and did not read his contribution, Mr. J.M.F. Dubois, noted newsreel cameraman and film artist, projected his beautifully edited color film of a wild horse roundup on the Red Desert of Wyoming. These pictures, taken in cooperation with the noted horse "wrangler" Frank Robbins, graphically depicted the use of the airplane in rounding up some of the last of the wild horses in that region. It takes but little imagination for the reader to combine the magnificent scenery of the Red Desert country with its brilliant cloud effects, the swooping monoplane, the hard riding weather beaten faces of cow punchers, and the magnificent herd of wild horses streaking across the plains of southern Wyoming. The excellent condition of these horses, their sleek coats, proud heads, flowing manes and tails, as well as their varied colors heightened the interest of all who witnessed the motion picture. Important were the action shots of the score of mustangs caught in



the roundup. These last remnants of the Arabian breed which at one time covered a large part of the western plains lent emphasis to the address by Posseman Roth and convinced many of us of the efficacy of his plan to establish a national protected herd in the contemplated Great Plains National Park. Mr. Dubois also showed a motion picture of the killing of coyotes by the federal government, using the new cyanide method.

The meeting was concluded by Sheriff Bemis with the remark that all would agree that this was perhaps the most outstanding program of our group to date. Our sincere appreciation to Charlie Roth and Mr. Dubois were expressed by the Sheriff.

Present at the meeting were:

Sheriff Edwin Bemis	D.O. Collins
B.Z. Woods	William K. Raine
LeRoy R. Hafen	Forbes Parkhill
Levette J. Davidson	George H. Curfman
Lawrence V. Mott	Paul D. Harrison
Fred Rosenstock	Herbert O. Brayer
Thomas Ferril	Edward Milligan
Charles B. Roth	Arthur Zeuch
Mr. J.M.F. Dubois, Guest	

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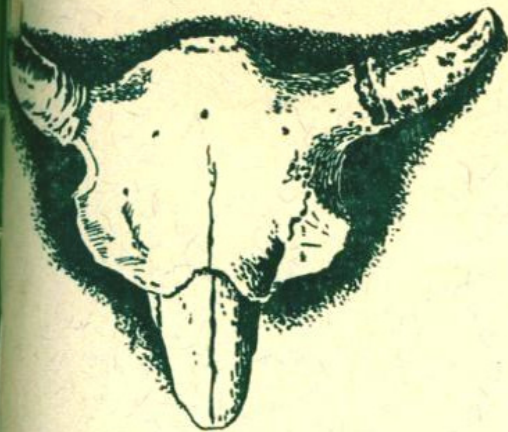
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HERT O. BRAYER, REGISTRAR OF MARKS AND BRANDS

JULY 1, 1945

No. 6

## THE RECORD VS REMINISCENCE

By William S. Jackson  
Justice, The Supreme Court of Colorado

The history of railroads in Colorado has for the most part been confined to rather short accounts of when the railroad was started, from what points it ran, and the extensions that were made in subsequent years. With few exceptions, the inter-relation and conflicts between one railroad and another have not been dwelt upon or brought into the picture. There has been no complete correlation of the railroad histories in this state.

The principal exception to this statement is the conflict between the Rio Grande and the Santa Fe for the control of the Royal Gorge, which deeply affected the future destinies of both of those roads. This armed conflict was finally resolved, in the late 70's, as many of you know, into keeping the Santa Fe out of the mountain country west of the Royal Gorge and deflecting the Rio Grande from its original intention of driving straight south to Mexico City. In fact, the majority of articles and monographs dealing with early Rio Grande history cover the period of its first decade, or, roughly speaking, the 70's. The reader of the history of the Denver & Rio Grande might well assume that after the Royal Gorge fight the mountain portion of Colorado was assured to the Rio Grande without any further contest. Nothing could be further from the truth.

The uncertain and tenuous existence of the D. & R. G., in its struggle for what is now the main line to Grand Junction, is continued in the story of the 80's; and another crisis in the affairs of the D. & R. G., almost as keen as the struggle for the Royal Gorge by the Santa Fe in the 70's, has been emphasized by an account of the founding of the Midland. I refer to a paper recently released by Percy Hagerman,\* the son of James J. Hagerman, the latter being one of the early presidents and sponsors of the Midland. It purports to be based upon an account written by James J. Hagerman himself in 1904-5, some 18 or 20 years after the happening of the events described. The Hagerman account begins with the year 1884 when he settled in Colorado Springs. That year brought significant and far-reaching changes not only in the affairs of the Denver & Rio Grande but also in the affairs of the Union Pacific.

The financial affairs of the Union Pacific were in a precarious condition verging upon receivership, with creditors--small and large--including the United States Government, threatening to take over. It was at this critical juncture in 1884 that Charles Francis Adams, Jr., was prevailed upon to take the presidency.

The D. & R. G., in the same year, had not only reached the verge but had gone over it into actual receivership. In July 1884 Judge Hallett, of the Federal Court for the District of Colorado, had appointed William S. Jackson, former treasurer of the railroad corporation, as receiver.

In the same year David H. Moffat, president of The First National Bank of Denver, who had been active in some of the so-called "Evans railroads"\*\*\* --having acted as receiver of the Colorado Central Railroad Company--terminated his relationship with all of the Evans roads and became a director of the D. & R.G.

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\* Reprinted as a supplement herein.

\*\* Denver Pacific Railroad, and Denver, South Park & Pacific Railroad.

The new president of the Union Pacific was a great grandson of the 2nd President of the United States, a grandson of John Quincy Adams--the 6th President, and a son of Charles Francis Adams, minister to England under Lincoln. Like many other members of his family, he was a graduate of Harvard. He was an officer on the Union side in the Civil War, for a number of years had been State Railroad Commissioner of Massachusetts, and had written a number of articles on railroad affairs including "A Chapter on Erie." Essentially a scholar and historian, in business affairs he took most pride in his presidency of the Kansas City Stock Yards Company which had developed into a profitable company.

Jackson, born in Pennsylvania just north of the Mason-Dixon line, within a few miles of where General William Jackson Palmer, founder of the D. & R. G., was born in Delaware just south of the line and in the same year of 1836, attended a Friend's school, and then was bound out by his father under the old apprenticeship system to a firm of machinists in Wilmington, Delaware. Later he became their confidential clerk, then engaged in lumber operations in western Pennsylvania. He was treasurer of the Duluth & Superior Railroad Company in Minnesota at the time when General Palmer, in the process of organizing the Denver & Rio Grande R. R., asked him to become its treasurer. He served in that capacity, later also as secretary, then as executive vice-president until the late 70's, when he resigned from all official connection with the railroad having in the meantime become the principal owner of the El Paso County Bank in Colorado Springs.

Adams, in his administration of the Union Pacific, soon found that road owned a narrow gauge railroad known as the Denver, South Park & Pacific, running from Denver in a meandering but generally southwesterly direction to Leadville via Dillon and Breckenridge.

At the time that Jackson became Receiver of the Rio Grande, he found himself administrator of a railroad whose main north

and south line, running along the eastern base of the mountains, was broad gauge, while its main east and west line, running from Pueblo to Grand Junction, through Salida, over Marshall Pass, through Gunnison, Montrose and Delta, was narrow gauge. At Grand Junction the line connected with the narrow gauge Rio Grande Western Railway--a separate organization of which General Palmer had been the head but which also had gone into receivership. There was also a narrow gauge branch line running northward from Salida up the valley of the Arkansas to Leadville and on over Tennessee Pass to Red Cliff.

Leadville was at that time in prosperous condition, and the Denver and South Park branch of the Union Pacific and the Leadville narrow gauge branch of the Rio Grande were both competitors for the booming mining trade. Every trip of Adams into Colorado involved conferences with Jackson in regard to the division of the Leadville business.

By 1885 Moffat had succeeded Frederick Lovejoy as President of the D. & R. G. W. S. Cheesman had taken Lovejoy's place on the board of directors, and the receiver, W. S. Jackson, was also elected a member of the board.

This was the situation when, in the same year of 1885, the new mining developments began to make the mountain community of Aspen a place of importance. Jackson early called the attention of the Rio Grande bondholders to the Aspen activity. The bondholders, a majority of whom were English and Dutch, were represented in New York by George Coppel, who served as chairman. Later the Scotch bondholders, hitherto part of the English group, appointed their own chairman, Mr. Fleming, who made a trip to Colorado during the receivership and made an independent report to the Scotch bondholders on the condition of the railroad property.

But the bondholders were slow to act. Their slowness was due not merely to time, distance, and general lethargy but also

to the fact that the Fleming report to the Scotch bondholders had pointed out that it was the branch lines of the Rio Grande that had been losing money and that the main lines had always more than paid their way. Receiver Jackson, however, was considerably disturbed by the activity of a new group--the Colorado Midland Company, headed by J. J. Hagerman of Colorado Springs--and took every occasion to urge the stockholders' spokesmen to approve action to protect the interests of the D. & R. G. in the new Aspen fields.

On March 23, 1886, Jackson wrote Coppell:

"Since my return from New York I have carefully watched the movements of the Midland Company and am fully persuaded they intend building the line from Leadville to Aspen, and that they will begin very soon. They have applied to some of our civil engineers to go to work for them; have been negotiating with Orman & Crook, large railway contractors, for grading their line; have bought depot grounds in Leadville; have secured an ordinance from the city of Leadville granting them the right of way through the city. I am still of the opinion if we could go to work at once forcefully, they would not build, though I have no advices to this effect. Whether they build or not, the Rio Grande interests should take possession of the valley of the Eagle and the Roaring Fork Creek at the earliest practicable moment."

On March 31st he wrote Coppell:

"I met Mr. Moffat this evening and he outlined his talk with you in New York referring to building the line from Red Cliff to Aspen, and, based upon this talk, we joined in the following despatch to you:

"After consultation we think it wise to prepare and file at once amended organization papers for both Railway and Construction Companies to be ready for work as soon as funds are provided.

Your Committee should announce publicly your purpose of building at once.'

"Mr. E. O. Wolcott, my counsel, is now on his way east to lay before you the exact situation,  
\* \* \* #

On April 7th he again wrote Coppell:

"After talking with Mr. Moffat and receiving your favor of March 29th, enclosing copy of your prospectus for subscriptions for building the line from Red Cliff to Aspen, I called on Judge Hallett and obtained his permission to have made an accurate survey of the line from Red Cliff down the Eagle to where it reaches the Grand River and from there down the Grand to Glenwood Springs. \* \* \* He consented to my going on with the work (spending \$10,000 on surveys, etc.) with the understanding that any new company organized to build will pay the expense when they get into shape."

On April 10, 1886, Jackson wrote to Howard Gilliat, Chairman of the reorganization committee in London, regarding the situation. After describing the route of the Midland and the proposed line of the Rio Grande, he writes:

"The Burlington Co. announce their intention of making further surveys this season, so there may be a conflict through what is known as the Cottonwood Canon (about eighteen miles of difficult work). Since the question of immediate construction has so suddenly been forced upon you, as a matter of protection to your interests, so far as I could do so, I have put four surveying parties in the field to make an absolute location of the line from Red Cliff to Glenwood Springs. In the Cottonwood, being the canon next Glenwood Springs on the Grand River, we will be forced to take the opposite side of the River from the Burlington location or have a conflict which might be costly and delay us with costly and damaging litigation. I am led to believe we can secure as good a location as they have without



interfering with what they claim is their acquired right in the least. \* \* \*

"An impulse has suddenly developed for building railways, and the Rio Grande Company may be -- nay, will be -- shorn of much of its tributary territory and traffic if it is not at once aggressive and forceful. I have several times been approached by outsiders wishing to make traffic contracts so that they could build from Montrose to Ouray."

The next letter discloses something that Hagerman's story completely failed to show, but which might have been suspected: that conversations between representatives of the Midland and the Rio Grande had been going on in New York. A rather long letter, dated May 15, 1886, from Coppell to Jackson contains the following pertinent passages:

"In the past few days I have had two or three interviews with a Mr. Joseph R. Busk of this city (the Busk mentioned in the Hagerman account as brother-in-law of Lord Lidderdale of the Bank of England), (formerly a merchant here in very high standing, but now retired altogether from active pursuits) who has a considerable interest for himself and his friends in the Midland Road. The interviews were brought about quite unsolicited on my part by Mr. Minturn, (who, you will remember is somewhat in the nature of a representative on our Committee of the English holders of the D. & R. G. Securities, and a warm personal friend of Mr. Busk). In the conversation I have had with Mr. Busk I have taken the ground that the D. & R. G. must in its own interest build from Red Cliff via Glenwood Springs to Aspen, -- he as strongly maintaining that the Midland Road would have to be built between Aspen and Leadville, but whether it should be continued eastward to Colorado Springs depended altogether upon the attitude we took. If inimical the Midland would be continued eastward, if friendly, and we could come to terms with them, in all probability they would stop at Leadville. \* \* \*

"Mr. Busk suggested at our last interview, that it might

be that an interest in the Midland Road from Aspen to Leadville could be assigned to the D. & R. G. Co., or parties in its interest, and a traffic contract made for a term of years, which would insure us the business from Leadville. \* \* \*

"Mr. Busk and his friends, with some ladies of their families, forming a party, leave on Monday morning in a special car, and I should be obliged if you would extend to them whatever facilities you think advisable in a journey over the D. & R. G. Road. Socially they are all of the highest standing, here and in London."

Jackson's letter of May 20th to Coppel further sets forth the D. & R. G. position:

"I have your valued favor of May 15 advising me of your interview with Mr. Joseph R. Busk and of his intended visit to Colorado. I shall be glad to meet him, and in compliance with your request, to extend to him such courtesies as I can. I had the pleasure of an introduction to him while in New York.

"The Midland question is a very troublesome and annoying problem. Considered as an independent enterprise with its initial point at Colorado Springs, it was and is regarded by practical railroad men as a very weak scheme, because of the unavoidable heavy cost of construction and excessively high grades, taken in connection with the amount of business it can, under any ordinary circumstances, hope to command; but once built it would be there and would cut a very important figure, if in no other way than in making rates for the other roads to do business on. Its strength has been and is (1) the presence at Colorado Springs of a rich, ambitious and restless invalid (Hagerman), (2) the fact that Hagerman, Wheeler, and Otis, and perhaps others who are subscribers to the Midland pool, are interested in Aspen mines, (3) the knowledge that the Rio Grande hasn't the money in hand to extend from Rock Creek to Aspen, (4) the belief that the Rio Grande is not governed by an aggressive policy, (5) the expectation that the prosecution of the

Midland Co's. work with vigor will tend to discourage construction by the Rio Grande and perhaps prevent it absolutely, (6) that in the latter event, the Midland will have a monopoly of the Aspen and Glenwood Springs business, with a choice of connections at Leadville, and, (7), that in the event of the Rio Grande building the Midland can connect with the South Park at Leadville.

"I fear that the unfortunate delay in raising the money for the extension from Rock Creek may prove very costly to the Rio Grande interests. The fact of there being no decisive action in that respect is well known and clearly understood by the Midland people, who are watching every movement we make. And what adds strength to the belief that they are banking on the advantage that a forced march will give is, that they let their contracts in advance of even a preliminary line over a considerable part of the route, and that they are now locating directly ahead of the graders in Frying Pan gulch. This is not the course for prudent men to follow except in pursuit of any object believed to be worth the extra cost it involves. I incline to the belief that if we could announce that we had the money in hand and that construction would be begun forthwith, we could control and stop an antagonist. It might be necessary to reimburse him for all expenditures, but this we could well afford to do in view of the amount at stake.

"It is difficult to convey to you the importance of this whole question, and perhaps impossible to impress those of the security holders who have never been in Colorado with the danger that threatens a considerable portion of our business.

\* \* \*

"As to doing anything with Mr. Busk, my position is such that I cannot contract with the Midland people even if I deemed it wise to do so. So far, my position has been identical with the one you name---that the Rio Grande interest must occupy the valley of the Grand whether anybody else builds into the same district or not. This position is, in my judgment, a

perfectly sound one. The Rio Grande system is large enough to compel such an aggressive policy in the defense of its extended interests. It cannot afford to endure even a thorn in its side without an effort to get rid of it, and certainly, it should be prepared to contest the ground with an enterprise that proposes to invade the territory from which its best income is derived."

On July 12, 1886 (just two years to the day from the time the Receiver had qualified) occurred the foreclosure sale under the mortgage of the Rio Grande bonds. The organization meeting of the new company, The Denver & Rio Grande Railroad Company, incorporated for the purpose of taking over the property at the foreclosure sale, was held in Denver on July 15, 1886, at which Jackson was elected President at a salary of \$20,000 and, among other officers, E. O. Wolcott was elected General Counsel at a salary of \$10,000, and David H. Moffat became a director of the new company.

Let us now examine Hagerman's statement where he says: "The time having come when the D. & R. G. could legally act (namely, had emerged from the court's jurisdiction in the receivership proceedings), we gave notice that we would like to have the proposed contract closed in legal form and asked that a place where and a time when we could meet should be fixed. I was soon asked to a meeting at the old Windsor Hotel in Denver." This alleged meeting, of which so far no one has been able to find any record, could not have been earlier than toward the end of July. He says that after that meeting he returned to Colorado Springs, told his story to the Midland directors, then wrote to Eastern friends, subsequently had a meeting in Burlington, Iowa, and that as a result of the Burlington meeting preliminary plans were made; that his Eastern friends then returned to New York, promising to bring William Lidderdale back with them in two weeks, which they did. They subscribed \$3,000,000 to the building of the line one Sunday morning in his house in Colorado Springs, and, to use Hagerman's words: "It was not long before the dirt and rocks were flying in Ute Pass and all

along the line."

What does the actual record show concerning the truth of this narrative? It shows that the dirt and rocks were actually flying in Ute Pass by the time Jackson became President. The Colorado Springs Gazette of Thursday, June 22, 1886, contains the following item:

"Within the past week the Colorado Midland has paid the Colorado Springs Company \$7,000 for real estate purchased for depot and yard grounds."

The Tuesday, July 27, 1886, issue adds the following:

"Work was begun in two places between this city and Manitou on the Colorado Midland yesterday. Mr. S. T. Wickes, who had a four mile contract between the city and Red Rock Canon, and Mr. W. S. Heckart, who has the contract from the canon through Manitou including the running of two tunnels, had men at work. It is expected that inside of one month 1000 men will be at work between here and Summit Park and the grade will be pushed right along to Leadville."

On Thursday, July 29, 1886, the paper contained an item that read:

"W. C. Bradbury, who has a contract on the Midland, arrived here yesterday with his force and will commence work immediately."

Another item in the paper for the same day referred to the action of the City Council:

"On motion, the ordinance granting the Colorado Midland Railway Company the right-of-way over certain streets within the city limits was taken up and read."

The Friday, July 30, 1886, Gazette contained the following:

"The first consignment of steel rails for the Colorado Midland road arrived in Denver yesterday by the Union Pacific, en route to this city."

The foregoing newspaper accounts are further confirmed by the correspondence of Jackson, who reported the situation to New York and London, and by Graves' account of the building of the Midland.\* It is apparent that there never was a time when Jackson was President of the D. & R. G. when there could have been such a meeting as Hagerman describes. A further cloud on the Hagerman account is gained from the reading of the memorandum diary kept daily by Charles Francis Adams. A close examination of that diary shows that Adams was not in Colorado during the summer of 1886!

The truth seems to be that any difference over freight rates had occurred earlier during the receivership. This is borne out by Graves' account of the Midland and also by the record of a directors meeting, held on May 8, 1886, of the Colorado Midland R. R. Co. wherein that company released the Midland Construction Co. from its obligation under a contract of January 28, 1886, and authorized the officers to enter into a new contract. The reason given for the release is because the railroad company has failed to carry out its agreement to secure for the construction company certain freight rates upon iron and other material from Chicago and the Missouri River to Leadville. The new contract between the railroad and the construction companies, executed in accordance with the action of the directors meeting, was dated June 1, 1886, and called for the construction of the entire road from Colorado Springs to Aspen via Leadville by June 1, 1887. So when Busk talked to Coppel in New York in May 1886 any freight rates which the Midland officials might not have thought low enough were **already** in effect!

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\* Carl F. Graves, The Colorado Midland. Bul. #36, The Railway & Locomotive Historical Society, Inc. Boston, 1935.

The true situation of the freight-rate situation is shown in a letter dated July 2, 1886, from Jackson to Dillwyn Parrish in London:

" \* \* \* The date that Moffat was trying to raise the money, say, a year or more ago, was the accepted time for building. The Midland would never have been born. What course to advise toward them now is very embarrassing. They are certainly going to build the western end of their line -- that is, from Leadville to Aspen -- and are now threatening to build from Colorado Springs to Leadville, should we not meet their demands as to freight rates &c on their material and supplies. They play their part very shrewdly; for up to this point I am confident they hoped and expected to trade with us on some basis."

It now appears, however, that even before the Coppell-Busk conversations in New York City, the Colorado Midland had entered into a contract with the Western Union Telegraph Co., dated May 7, 1886. This contract recited that the Railway Co. was constructing a line of railroad from Leadville to the Colorado and Utah boundary line, and also proposed to extend said railroad from Leadville to Colorado Springs. It called for the construction of a telegraph line along the railroad. There was a provision that the contract should become effective on June 1, 1886. So when Busk and his Midland associates took their free ride on the D. & R. G., the Western Union contract was already in existence and they had authorized the execution of the Midland Construction Co. contract, which was actually in operation when Jackson became President.

Does the Adams diary disclose that any meeting ever took place between Adams, Jackson, and Hagerman? The answer is in the affirmative. On Sunday, September 19, 1886, he made the following entry:

"Cheyenne. Got in at breakfast. Drove out to

hospital with Calloway and Dr. Gordon (probably his family friend from Quincy, Mass.) Met E. O. Wolcott at hotel. At 2 o'clock started special for Colorado Springs. Got there at 7 o'clock. Hotel full. Passed night at Mr. Jackson's."

"Monday, September 20, Colorado Springs. With Calloway, breakfast with Jackson. To see Hagerman at 10:30. Lunched at Jackson's. Off to Canon City at 4 o'clock. Passed night at hotel."

This is evidently what Hagerman refers to as the Colorado Springs meeting between Adams, Jackson and Hagerman, and in which he said that Adams had made a sophomorical talk on the sin of building duplicate railroads. Hagerman describes that meeting by saying: "The long talk ended in nothing. Work was in rapid progress. It was too late to stop, even if there had been such a desire, and there was none."

The record shows another big lapse in the Hagerman memory, for on the day of the meeting, namely, Sept. 20, 1886, Jackson wrote to Coppel as follows:

"The Union Pacific people and the Midland people **have** been together today and it now looks as if a formal meeting of all parties in interest would be called to meet in Kansas City on about next Monday night. I will telegraph you when the date of the meeting is determined upon. I wish you and Mr. Wilson and Mr. Welsh to come to Kansas City. \* \* \* "

The next day he followed up with a subsequent letter, in which he says, among other things:

"The U. P. are growing bold and strong and Mr. Adams says boldly unless a trade is made with the Midland by which they stop building from Colorado Springs to Leadville, that he will at once begin



constructing a line from Fort Steele on their main line 180 miles west of Cheyenne, to Glenwood Springs and thence to Aspen. This would damage us and the Midland as well. Should we decline to meet the conditions demanded by the Midland, my idea is Adams will deal with them without us, if conditions are at all within reason, then we are forced to build from Rock Creek to Aspen at once or be cooped up. Whatever the outcome we must attend the meeting and get a final settlement of the position of this Midland question. The reason of Adams and Hagerman agreeing upon Kansas City was that it was a half-way point for his people who are coming out, and yourselves. Mr. Adams is ready to act at once for the Union Pacific without consulting anyone."

On September 23 Jackson wrote Coppell:

" \* \* \* After the interview (with Hagerman) Mr. Adams told me it looked as though an agreement might be arrived at whereby the Midland would abandon so much of its line as lay between Colorado Springs and Leadville, and said he would put his ideas in writing in shape of a letter to Mr. Hagerman and send me a copy. On my return from Leadville tonight, I find his letter to Mr. Hagerman with a letter to me enclosing same; I send you herewith copies of both and also of my reply. You will readily see that Mr. Adams' proposal boiled down means, 1st, the abandonment by the D. & R. G. R. R. Co. of construction to Aspen, and the incidental advantages of occupation of the valleys of the Eagle and Grand; 2nd, the extension of the Union Pacific line from Fort Steele to Dillon and thence via South Park to Leadville. They propose to make a practical partnership with the Midland, proposing to give them an outlet to the west and north by the proposed line from Leadville via Dillon to Fort Steele, and ask the Rio Grande to give up its natural line and

to give up its valuable coal and coke business to them without a struggle."

On the same day, Jackson wrote to Adams stating that if Adams' letter to Hagerman embodied his views or anything approximating them, it would be useless for any of the Rio Grande officials to come to Kansas City. On the 24th Jackson sums up the situation to date in a letter to Gilliat in London, England:

" \* \* \* A year ago, at the time I first wrote of the necessities of the case, the game was in our hands had we started construction. We were reasonably sure of winning had we started as late as last April, when the Midland first took the field, and there has not been a day lost since that has not been of great harm to us. From the beginning, the Burlington has been a factor in the problem; the Midland followed as a disturbing element, and now the Union Pacific having got rid of its floating debt, and the President feeling strong in his position, comes in to still further complicate matters. The jig is not up by any means, but all our antagonists are encouraged by the listless, do-nothing policy we have shown, and the people of Colorado are fast coming to the conclusion that the D. & R. G. will allow itself to be flanked out of the strong position it has earned through years of persistent effort.

"Mr. Adams, President of the Union Pacific, never would have written such a letter unless he entertained views about the helplessness, weakness or sleepiness of the D. & R. G. equal to the coolness of his proposition."

A letter from Coppel to Jackson, dated October 2, 1886, reads:

"Yours of the 20th, 21st, and 23d ult., and telegram of the 24th, on the subject of the Aspen

branch came duly to hand, and I lost no time in calling a meeting of the Board of Directors to consider their contents. Your letter to Mr. Adams, of which you enclosed a copy, is dignified and proper, and his communication to Mr. Hagerman shows that we must depend upon our own resources and not look for any alliance beneficial to us there."

In the meantime, their letters apparently crossing, Jackson had written to Coppell, under date of September 29th, as follows:

"Enclosed please find the last correspondence between Mr. Adams and myself.

"There now is absolutely nothing for the Rio Grande Co. to do but to occupy the territory. If we agree to stay out, the agreement would probably not be respected. After the other lines were thoroughly established some pretext would be found for violating it. Nothing is much respected in railway matters but the absolute power to enforce your claim. Some controllers and managers will doubtless be willing to keep the agreements they make, but controllers and managers change and the corporations continue."

Now, by way of diversion, let us look at the entries in Adams' diary covering these days of final negotiations:

"Wednesday, Sept. 22, Leadville: Left Gunnison at 7:00 sharp and ran over Alpine Pass to Leadville. Drove round town in afternoon. Dined on Choates car. In evening we all saw Leadville by gaslight--an awful spectacle of low vice.

"Thursday, Sept. 23, Denver: Glad to leave Leadville at 8 o'clock. Ran over High-line and Breckenridge Pass to Denver, Jackson and Ricker of D. R. G. following

us on special. Got to Denver at 5 o'clock. Dined at club. Henry Emmons there (probably a friend of Quincy, Mass.)

"Friday, Sept. 24, Colorado Central: Off at 7 o'clock. and to Greymount met Richardson of Stockyards. Back to Denver at 6 o'clock. Drove round Idaho Springs - Dreary hole! Dined at Club with Wolcotts. Jackson of D. & R. G. flew off the handle in evening.

"Saturday, Sept. 25, Fort Collins & Stout: Sent Dr. Gordon off by D. & R. G. to Salt Lake. Started at 8 o'clock. for Boulder. Henry Wolcott with me trying to sell his D. U. & P. road. To Stout and charming ride ride to Buckthorn quarries and Loveland. Back to Denver. Met employes and Hagerman."

That last entry shows that Hagerman's memory again failed to record that, five days after supposedly making Adams call on him in Colorado Springs, he was slipping down to Denver to call on Adams. The September 20th and 25th meetings are the only meetings with Hagerman recorded by the Adams' diary; and the record of these meetings and the correspondence arising therefrom shows that it was Adams and Hagerman who had worked out a tentative deal, which was to be further developed in a subsequent meeting at Kansas City, and it was Jackson who, with the approval of his board of directors, wouldn't go into it. Another failure of the Hagerman memory.

So the race was on for Aspen--a race that in spite of the year's delay, so exasperating to Jackson and Moffat, still ended in the D. & R. G. actually reaching Aspen ahead of the Midland. And even in the following year there was doubt in some quarters concerning whether the Midland would finish the line. Witness the following letter from Coppel to Jackson, dated February 27, 1887:

"With reference to your letter of the 18th inst.,

enclosing copy of your correspondence with Mr. Clark (vice-president of Missouri Pacific), I think it worth while to mention to you that Mr. Gould told a friend of mine today (possibly intending it should reach me) that he would prefer to make an arrangement with the D. & R. G. than with the Midland, as he did not believe in the Midland's completion.

"From this I presume he refers to Leadville business (as you write he has secured the D. & N. O. road) and it might be worth the money it will cost to put down a third rail from Pueblo to Leadville.

"But I send you this in confidence to use for your information in dealing with Mr. Clark.

"P.S. Russell Sage, who was present, said he did not think the Midland would be completed; they would get tired of spending money."

One of the most ludicrous of the Hagerman statements is his reference to Moffat. Referring to the time following Jackson's resignation, he says: "It was then that Mr. D. H. Moffat was made president and Mr. Sil Smith, general manager. They realized that the Midland was bound to get its share of the business and that the best policy was to be friendly with it. There was little difficulty in dealing with them." Hagerman has apparently forgotten completely that Moffat was president of the D. & R. G. Ry. Co. during the whole time of the Jackson receivership's dealing with the Midland question. As has been seen, he was most active in cooperating with Jackson, both as receiver and president, especially in getting the line to Glenwood Springs and to Aspen built. Shortly after Moffat became president, the Midland was completed to Aspen and he was faced with a fait accompli. Naturally, his dealings with a road already in existence were different from his earlier dealings with one not in existence. But even so, Hagerman's words: "that there was little difficulty in dealing with him"

present a complete contrast to the following words of President Moffat in his annual report to the D. & R. G. stockholders for the year ending December 31, 1889: "Owing to the demoralization of Missouri River rates in effect during the last three months of the year 1888, shippers laid in heavy stocks of goods which resulted in a corresponding reduction of shipments in the first three months of the year. During the latter period there existed also a war of rates between this company and the Colorado Midland, resulting in a material reduction."

The Jackson receivership presents the unusual spectacle of a receiver not merely conserving and administering the assets of the bankrupt estate, but of being forced to go over on to the offensive and take the lead in further developing them in order to keep the estate from being rendered much less valuable by invading forces. It was another case of either going forward or being forced backward. This conclusion is reached by Smiley in his discussion of the Midland in his "History of Colorado," Vol. III, P. 124, when he says:

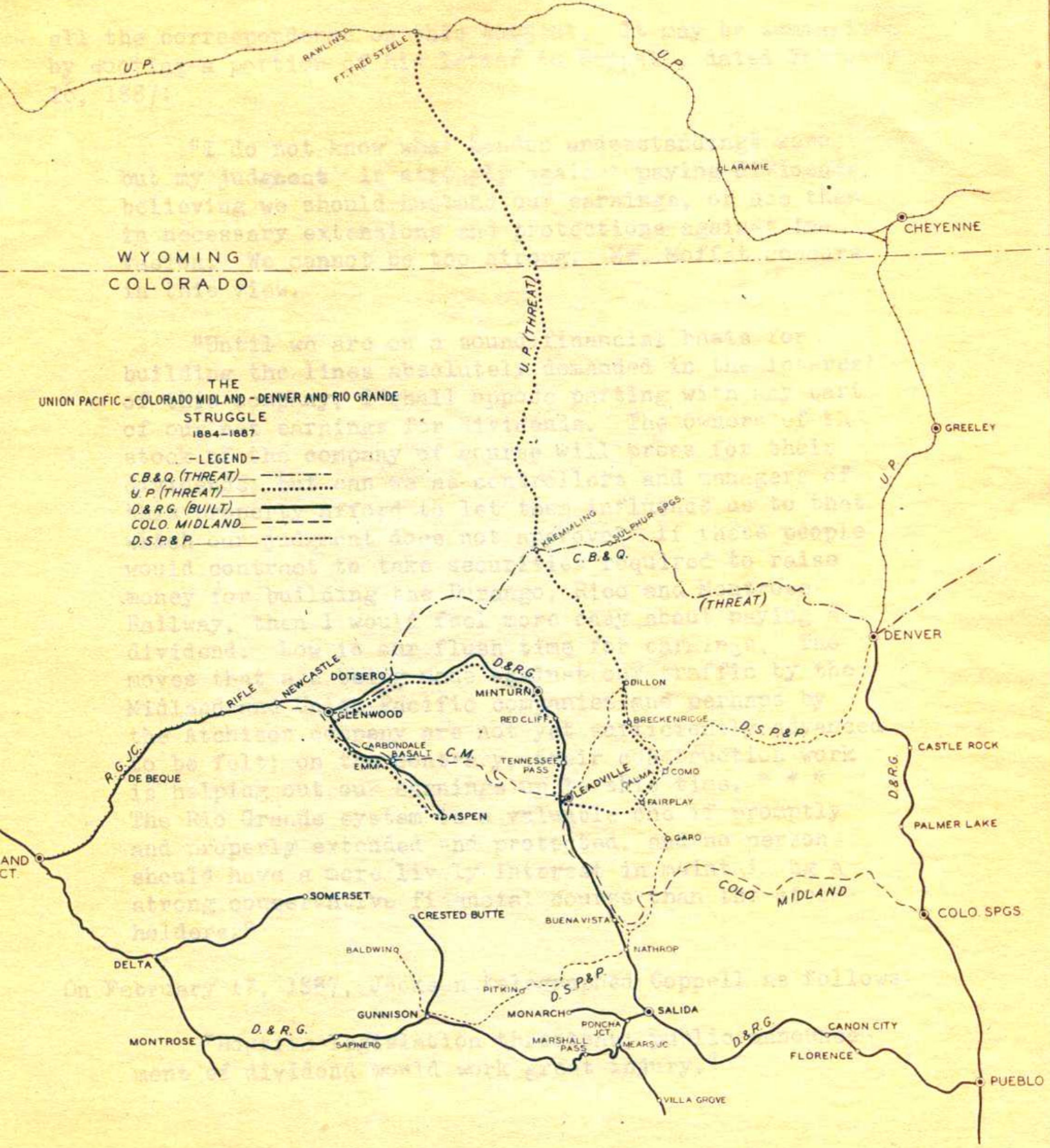
"Pending the events just recited a formidable rival, the Colorado Midland, a corporation composed of Colorado and New York capitalists was organized evidently upon the opportunity afforded by the prostrate condition of the Rio Grande and had begun the difficult and highly expensive enterprise of building a standard gauge road from Colorado Springs northwest across the mountains to Leadville and Aspen, thus invading some of the richest and most productive sections of the Rio Grande."

If you have seen no reason up to the present time for Jackson wishing to be relieved of a job that kept him on the spot so continuously for nearly three years, then three additional reasons may be suggested: (1) In January, 1887, there began correspondence between him and New York concerning the payment of dividends, which he strenuously opposed but which the majority of the directors, acting on pressure from the preferred stockholders, voted to pay. There is not space to give

WYOMING  
COLORADO

THE  
UNION PACIFIC - COLORADO MIDLAND - DENVER AND RIO GRANDE  
STRUGGLE  
1864-1867

- LEGEND -
- C.B.&Q. (THREAT) - - - - -
  - U.P. (THREAT) - ·····
  - D.&R.G. (BUILT) - - - - -
  - COLO. MIDLAND - - - - -
  - D.S.P.&P. - - - - -



all the correspondence on this subject. It may be summarized by quoting a portion of his letter to Coppel, dated February 16, 1887:

"I do not know what London understandings were, but my judgment is strongly against paying dividends, believing we should husband our earnings, or use them in necessary extensions and protections against invasion. We cannot be too strong. Mr. Moffat concurs in this view.

"Until we are on a sound financial basis for building the lines absolutely demanded in the interest of this company, I shall oppose parting with any part of our net earnings for dividends. The owners of the stock of the company of course will press for their dividends; but can we as controllers and managers of this property afford to let them influence us to that which our judgment does not approve? If these people would contract to take securities required to raise money for building the Durango, Rico and Montrose Railway, then I would feel more easy about paying a dividend. Now is our flush time for earnings. The moves that are being made against our traffic by the Midland and Union Pacific companies and perhaps by the Atchison company are not yet sufficiently advanced to be felt; on the contrary, their construction work is helping out our earnings up to this time. \* \* \* The Rio Grande system is a valuable one if promptly and properly extended and protected, and no persons should have a more lively interest in maintaining a strong conservative financial course than the stockholders."

On February 17, 1887, Jackson telegraphed Coppel as follows:

"Hostile legislation threatens; public announcement of dividend would work great injury."



(2) Early in 1887 Jackson's attention was also flagged by the Interstate Commerce law which, among other things, provided for the creation of the Interstate Commerce Commission, and in a letter dated Chicago, January 19, 1887, to Coppel, he stated that he came there to the pool meeting "and in the further hope that I might find some one able to explain fully the meaning of the provisions of the Inter-State Commerce Bill, which bill will now undoubtedly become a law."

In a letter dated February 17, 1887, to S. H. H. Clark, reference is again made to the Inter-state Commerce law, as follows:

"It may still come about that you will find it to your interest to connect with the Rio Grande line at Pueblo and share in the large business that it delivers to that point, gathered up in the various parts of the State of Colorado, and also in the through traffic to the Pacific Coast and Utah, if under the operation of the Inter-State Commerce Bill any of the through business is left to us."

A fuller discussion of what the Interstate Commerce Law might do to the D. & R. G. is seen in his letter of April 1, 1887, to Coppel:

"For the past two months we have been giving much time to finding out, as near as any one can, the meaning of the Inter-State Commerce Law, and trying to fit our traffic to it. It is a very difficult problem; and do the best we can we will be losers by it, because the through rates and our divisions of them are so much lower than our local rates. Our connecting lines are, we think, illiberal in matters of divisions, while, on the other hand they claim we are asking the lion's share. For immediate earnings I am of the opinion we would make more money to go entirely out of through business both to California and Utah, and maintain full local rates

on everything we do; but that would contemplate breaking up all of our positions and advantages. If we owned the Western there would not be so much difficulty; but, as we are cut in two at the State line, the interests of the two lines clash. After full consultation with our traffic manager we have determined to stay in all through business for the present and try it."

(3) A third factor appeared more definitely on the horizon, namely: the influence of Jay Gould. This is well evidenced by a letter from S. H. H. Clark to Jackson under date of April 4, 1887:

"We have decided to construct the line to Pueblo in accordance with our previous conversation, relying upon fair, equitable contract with the D. & R. G., by which an interchange of business may be effected, mutually advantageous to both companies. Mr. Gould is in full accord in this movement. He is quite anxious to make your acquaintance, and suggests, if agreeable to you, he would like, at the proper time, to have you in the Missouri Pacific Directory. He intends to visit St. Louis in the next few days, when I hope he will have an opportunity of meeting you, as he expects, while in the West, to make a trip to Colorado, and while there shall endeavor to have him see you."

The possibility that the Rio Grande might soon come under the Gould domination was very apparent, and Jackson was not of the temperament to wear any man's collar. He resigned in May 1887 to give more attention to his personal and banking affairs, and concurrently bought out another bank in Colorado Springs. As to the wisdom of Jackson's resignation, it is interesting to read the comment of Adams in his autobiography expressing his regret at not having resigned earlier from the Union Pacific:

"My first five years in control of the affairs of the company were most successful. I got its

finances in order; greatly improved the service; reestablished its credit; paid off the whole of its floating debt; improved its relations with the communities it served. I did not, however, succeed in effecting a settlement between it and the United States Government. Thus, when I ought, upon every possible consideration, to have resigned the presidency and retired from active management--for I was tired of it and had grown to long for other pursuits and more congenial associates--I went lumbering on, chasing the ignis fatuus of a government settlement;" \* \* \* p. 194.

Instead of resigning in 1889, as Adams wished he had, he waited until 1890 when Gould, who some time previous had achieved control of the Union Pacific, removed him. Moffat, of the D. & R. G., went out the following year, in 1891, and was succeeded by an out-and-out Gould man, E. T. Jeffrey; and to complete the record, some of the younger generations of Gould, a decade later, were sitting on the directorate of the Midland.

In addition to the branch from Glenwood Springs to Aspen, the branch from Montrose to Ouray and the extension of the north and south line to Trinidad were authorized, financed and started during the Jackson administration of nearly three years. That portion of the present main line that was definitely made secure during his administration was the section from Red Cliff to Glenwood Springs, following down the valleys of the Eagle and the Grand (now called the Colorado). The ensuing Moffat administration of four years (1887 - 1891) worked out the building of the remaining section of the main line by building its own line down the Colorado from Glenwood to Rifle and from Rifle to Grand Junction through the medium of the Rio Grande Junction Railway Co. And here again the Hagerman memory has failed, for in the Hagerman account the Rio Grande Junction Ry. is described as running from New Castle to Grand Junction. The stock of the Junction Company, owned jointly by the Midland and the D. & R. G.,

later became completely owned by the D. & R. G. That is another story, and there is not time tonight.

I find that I am on that kind of a subject where just "one more thing" keeps coming to mind which should be said -- but there is a limit to all things. I hope those of you who are interested in early railroad affairs in Colorado may have found something new. And all of you have had presented an excellent example of what a difference there is between the picture which is based on the actual records of what was said and done at the time, and that picture that is painted by the flaccid memory of a failing man.\* This divergence between the pictures gives point to the State Historical Society's eagerness to obtain actual records of current events as they have occurred -- both corporate and individual -- and thus obviating the need to rely on the treacherous memory of mortals.

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\* Ed. note: Hagerman, at the time he prepared his account, was already ill and in a somewhat financially weakened position. Within a few months he closed up his Colorado Springs affairs and left the state. He died sometime later in Italy still seeking to mend his failing health and fortune.

THE COLORADO MIDLAND

Address by Percy Hagerman to the Kiwanis Club  
of Colorado Springs, September 21, 1943

My father, Jas. J. Hagerman, came to Colorado Springs to live in the fall of 1884. Prior to that time he had made what was then a considerable fortune in the mining of iron ore in northern Michigan. He was the discoverer of the Menominee Iron Range and the organizer of the Menominee Mining Company, which opened up and operated with great profit a number of iron mines in that district. Then his health broke down. He sold out and came to Colorado, not really expecting ever to engage in active business again. He came here decidedly mine-minded at a time when many of our great mining districts were yet undiscovered, although he had never had much to do with anything but iron mining. The climate of Colorado soon put him on his feet and it was not long before he had acquired some mining interests in Leadville and in Aspen and other places on the western slope. This led him to become interested in the building of the Colorado Midland railroad in 1886 and '87.

When Mr. Armstrong kindly asked me to say something about the building of the Midland, I consented to do it because I happen to have in my possession a statement about that subject which my father wrote in 1905 or thereabouts, many years after he had severed his connection with the road. Just what was the occasion of his writing his narrative I am unable to state. I know that it was never made public. In what I have to say I shall quote at length from this statement. I was a young college student during the period of construction and without this statement I could tell very little. Although it deals with ancient history, it is an interesting story, and while the greater part of the Midland has long ago disappeared from the face of the earth, the building of the road in the late 80s was a great achievement, whose importance is hardly appreciated today. It

was the first broad gauge railroad to cross the continental divide in Colorado.

My father's narrative runs as follows and I quote from it freely, only stopping occasionally to make a few observations of my own.

"Because the doctors told me that I could no longer live on the shores of Lake Michigan, I left Milwaukee, Wisconsin, and went to Colorado Springs to live in October, 1884, without knowing whether we would remain long there or not.

"At that time the town was as dead as Julius Caesar. The old timers were blue and discouraged. There was no business worth mentioning and little hope for the future. Real estate could be bought for a song. The deposits in the two little banks were insignificant and few of their loans could be collected. Although I liked the climate, the town was so depressingly dead that we almost decided to try Denver, but we finally made up our minds to stay in Colorado Springs, believing it to be the best place from a health standpoint. In the spring of 1885, we started building a residence on Cascade Avenue.

"Up to that time, I had done no business in Colorado other than to buy some mining interests in Aspen, which had no railroad connection nearer than Leadville. Colorado Springs had no railroad connection with the mining business in the state excepting over the narrow gauge D. & R. G. through Denver and Pueblo. But there was a great desire for a railroad from the Springs up Ute Pass and on to Leadville and Aspen.

"Previous to 1884, a charter had been obtained for the Colorado Midland Railway by Irving Howbert, Ben Crowell, H. T. Rogers, Orlando Metcalf, J. H. Humphrey and others. They had made some preliminary surveys and collected some information, and had made several unsuccessful attempts to raise money in the east. They came to me to join them, which I did. In the winter of 1885-6 I went to New York, met friends there with whom I had previously had

large business transactions, and in a few days raised money to build a railroad from Leadville to Aspen with a branch to Glenwood and to the New Castle coal fields.

"The Aspen region had developed into an extremely rich mining camp. Not far from there were immense beds of excellent coking and non-coking coal. The largest smelting industry in the state was then at Leadville, and the consumption there of coal and coke was enormous. We knew, or thought we did, that a road connecting these mineral and coal regions with Leadville, and with the two railroads from that point to the east would pay handsomely.

"At that time, we had no notion of building between Colorado Springs and Leadville. Our sole purpose at the start was to give an outlet to the mineral, coal and other resources of the western slope. We bought large interests in the Aspen mines, the New Castle and other coal fields, and in the Glenwood hot springs. Our plans were sound from a business standpoint and all precautions were well taken, with one exception. We did not appreciate the kind of opposition we were going to get from the Colorado roads which connected Leadville with Denver and Pueblo and with the outside world in general.

"Before going to New York to raise the money, I saw in Denver some of the people connected with these roads and told them our plans which they seemed to approve. We agreed verbally on the main points of a traffic contract to be formally entered into by the three companies when the Denver and Rio Grande should be free from the hands of the U. S. Court. It had failed sometime previously and was being managed by Mr. W. S. Jackson as Receiver. As Receiver, he could not bind the new reorganized company, and making the tripartite agreement was by mutual consent postponed until the new Denver and Rio Grande Railroad Company could legally enter into it. That time soon came about and Mr. Jackson was the new Company's first president.

"But before that time, the Midland had let contracts for the

grading west of Leadville, bought much material and the work was going on rapidly. We had entered into obligations amounting to over two millions of dollars, depending on the good faith and good sense of the gentlemen at the head of the Denver and Rio Grande and Union Pacific Companies. The latter owned the Denver and South Park railroad. Mr. Charles Francis Adams was President of the Union Pacific and Denver and South Park railroads.

"The time having come when the D. & R. G. could legally act, we gave notice that we would like to have the proposed contract closed in legal form, and asked that a place where and a time when we could meet should be fixed. I was soon asked to a meeting at the old Windsor Hotel in Denver. In due time, I met there Mr. Jackson and other officers of his company and also Mr. Adams, President, Mr. S. R. Calloway, General Manager, and Mr. Kimball, General Traffic Manager, of the Union Pacific. We arranged for a meeting in the hotel in the evening. I was told that the gentlemen wished to hold a short preliminary conference among themselves after which they would send word to me in my room to join them, when the business which called us together would be taken up. I waited and waited for the expected summons until after midnight and then went to bed, feeling sure that morning would disclose something interesting.

"The next morning, Mr. Kimball came to my room and in his oily way said he was directed to present the regrets of Mr. Adams and Mr. Jackson for keeping me waiting the previous evening, and to inform me of the conclusions at which they had, after long discussion arrived. He said they thought that no contract between their two companies and the Midland was necessary; that they would be glad to receive in Leadville any ore and other freight and passengers the Midland might bring there, and to transport them to Denver and Pueblo at the regular tariff rates, and also to deliver to the Midland in Leadville any traffic going to Aspen at the regular tariff rates. Also that they would carry rails and other construction materials from the Valley to Leadville at regular rates. He regretted that their tariff sheets showed no rate on rails, but they would classify them as bar iron and carry them at bar



iron rates, which was one cent a pound from Denver or Pueblo to Leadville. He also sincerely regretted that they had no second class passenger schedule, but that they would carry our laborers from the Valley to Leadville at the regular first class passenger rate of twelve dollars per head. He also kindly informed me that the mountain roads had an arrangement with the roads running from the Missouri River to Pueblo and Denver whereby the latter could not make rates to Colorado common points without the consent of the former, but that they (Messrs. Adams and Jackson), wishing to promote development in Colorado, would consent that the river roads might make a rate of one cent per pound on rails from the Missouri River to Pueblo or Denver. I asked him what that would make the rate on rails from the Missouri River to Leadville and he replied that it would be forty dollars per net ton.

"That venerable but mild-mannered and astute twister of peoples' necks, who had had a life-long experience in traffic matters, gave me the above information with a straight face and in smooth words. Like Ah Sin's 'his smile was childlike and bland.' It is needless to say that I did not keep my temper as well as he did, and my reply was more lurid than I care to remember. Now, eighteen years later, I am glad to know that the two railroad presidents did not take the advice I sent them and emigrate to a climate which is too hot for comfort, if the old theology is true.

"I told him that they were practically ordering us out of the state; that if God Almighty had given them a quitclaim deed to the State of Colorado, I had not heard of it and would not recognize it, and that instead of quitting work west of Leadville as they evidently expected to compel us to do, we would build from Colorado Springs to Leadville and have our own broad gauge connection with the Burlington and other roads to the east.

"This drew from him only a bland smile as he replied that it would be impossible for us to raise money for such a road. I must admit that I feared he was right, but being more angry than

became a Christian, my talk did not agree with my real feelings. For a short time I feared we were ruined and that every dollar we had expended would be lost, but that feeling did not last long.

"Mr. Kimball was frank enough to admit before our interview closed that Messrs. Adams and Jackson felt that the western slope belonged to their companies and that they would build there when they were ready, but that in the meantime they did not want it invaded by any new interest. I replied that it would have been better morality to have said so before we had expended so much money and when we first laid our plans before them. To say that the situation was embarrassing is stating it mildly.

"I returned to Colorado Springs, told my story to the Midland directors, and there was consternation in the ranks. We knew that the money must be raised for the Colorado Springs-Leadville line or that we must throw up the sponge. At first it seemed to us that to raise the money was almost an impossibility. I at once wrote to my eastern friends who had subscribed largely to the Aspen line and asked them to meet me in Burlington, Iowa, where Mr. Perkins, President of the C. B. & Q. Railroad Company, resided. It was a convenient half way place and I wanted to see Mr. Perkins and get from him a fair rate on rails and other construction materials from the Missouri River. I did not think he would be a party to the policy of the men whose minds seemed to conform to the gauge of their railroads, and I was not mistaken.

"The New York gentlemen met me in Burlington, and we all met Mr. Perkins. Being a broadminded and honorable man, he treated us and the whole business in his characteristic manner. He gave us what we asked for and refused to be a party to any small squeeze-out methods.

"There never was a better party of men in any enterprise than those who associated themselves together to finance the

Colorado Midland. They were honest, loyal, high-minded and rich. They were just the men to feel indignant and outraged by the treatment of the presidents of the Colorado roads. The result of the Burlington meeting was that preliminary plans were made to raise about \$7,000,000 to build the Colorado Springs-Leadville line. As an original proposition they would not have gone into it, nor would I have done so. But being committed to the Leadville-Aspen line, having made large investments in Aspen mines and in the coal, and not being willing to be kicked out of Colorado, we voted unanimously to shoulder the new burden. Probably our indignation helped us to decide more than we then realized. Be that as it may, it was then and there that the Colorado Midland line, beginning at Colorado Springs, was born. Previous to that time, the eastern division had been talked about a great deal but we had decided unanimously that the larger project should be left for future consideration. The Colorado Springs directors and friends rose to the occasion and subscribed more than they were really able to. Not one of them showed the white feather.

"Our eastern friends returned to New York, promising to come to Colorado Springs within two weeks and to bring with them Mr. Wm. Lidderdale, Governor of the Bank of England, who was then on the ocean. He was a brother-in-law of Mr. J. R. Busk, one of our most active and helpful New York directors. In due time, they arrived in Colorado Springs. The crucial meeting was held in my house on a Sunday morning. About three million dollars were then subscribed, and Mr. Lidderdale took a short option on the remaining bonds, until he could return to London. He soon cabled an acceptance and the money for the eastern division was raised.

"The above is a short history of the financing of the Midland. From a strictly commercial standpoint, the line from Colorado Springs to Leadville never should have been built, and never would have been if men of wide vision had been in control of the other Colorado railroads at that time."

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I will interrupt my father's narrative here long enough to say that in later years I often heard him speak in most glowing terms about the men with whom he was associated in this enterprise. He always said he never knew a finer crowd. Wm. Lidderdale served several terms as Governor of the Bank of England and was a man of the highest type in the British financial world. Mr. Busk of New York was a banker of the same type. Among the other large stockholders were Wm. D. Sloane, the great merchant of New York, Chas. A. Otis of Cleveland, father of Wm. A. Otis of Colorado Springs, a lifelong friend of my father, Theodore M. Davis of Newport, Frederick Ayer of Lowell, Massachusetts, who made a great fortune in the manufacture of well-known patent medicines, Rathbone Bros. of London, a banking firm that was very well known at that time, and Mr. J. B. Wheeler of New York of Macy and Company who afterward lived for many years in Manitou. Colorado Springs also furnished a number of splendid men to the group. I would characterize them all by saying that they were a bunch of good sports who tackled a job of great difficulty, perhaps not too wisely, and carried it through to success against heavy opposition and in spite of well nigh insuperable physical obstacles. I remember many of them as a boy in my teens and how greatly many of them impressed me, especially Mr. Lidderdale who was a grand figure of a man. I believe that every one of the original group is now dead and I think that Mr. Irving Howbert was the last one to go.

Now, to continue my father's narrative--

"It was not long before the dirt and rocks were flying in Ute Pass and all along the line. When we had spent about \$800,000 on the eastern division, I received a telegram asking me to go to Denver to meet Messrs. Adams and Jackson to talk over railroad matters. I replied that they could meet my associates and myself by coming to Colorado Springs. They came, the same gentlemen whom I had failed to meet that night in Denver. Mr. Adams made a very sophomorical talk on the sin of building duplicate railroads, and said they were anxious to do anything which would stop the Colorado Springs-Leadville line. They

would give us almost any rates we pleased to ask and would interchange traffic at Leadville with the Midland on the most liberal terms. The changed of heart which had come to them in a few months would have amazed even Evangelist Moody. The long talk ended in nothing. The money had been raised, the work was in rapid progress and it was too late to stop, even if there had been such a desire, and there was none. And so the Midland was built and Colorado Springs was at once lifted into new life.

"I wish to say that Mr. S. R. Calloway, General Manager of the Union Pacific and its subsidiary roads, was displeased with and opposed the course of his associates, as I afterwards learned, and as I felt at the time to be true. If things had been left to him, no such mistake would have been made.

"Without the Colorado Midland, Colorado Springs would by this time be a much larger place than it was eighteen years ago, but I believe it and the towns near it, which are all one in interest would be nothing like their present size and importance if the Midland had not been built."

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I again interrupt my father to ask you to remember that his narrative was written nearly forty years ago, before the great developments given us by General Palmer in his later years were completed, and before most of the magnificent developments which were carried out by Mr. Spencer Penrose and Mrs. F. M. P. Taylor had been started.

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Again, quoting from my father's narrative--

"The Midland brought a large sum of money to Colorado Springs to be distributed; it put the town on an equal footing with Denver and Pueblo for the mountain trade. The deposits of the banks quadrupled in a year; real estate became actively salable at good

prices; the town was advertised all over the country because the building of the first broad gauge railroad across the Rocky Mountains in Colorado was a notable event. Without it, the Rock Island would not have been built to Colorado Springs, although it might have been to Denver. The Santa Fe Railroad was built from Pueblo to Denver in 1886 in consequence of a contract entered into between that company and the Midland, the purpose of which was to give the Midland a connection with Denver and Pueblo and also an eastern connection independent of the Missouri River lines which were friendly to the Denver and Rio Grande. That broad gauge Midland crossing the mountains, compelled the Rio Grande to get a hustle on itself and to reconstruct and broad-gauge its road from Denver to Leadville. That would have been done in time if the Midland had not been built, but it probably would have been delayed for a long time. The sudden and pressing necessities which grew out of the new situation were a very severe strain on the Rio Grande, coming so soon after its reorganization. It called for a very large sum of money and for men able to meet an emergency which wisdom would have avoided. It was then that Mr. D. H. Moffatt was made president and Mr. Sil Smith, General Manager. They realized that the Midland was bound to get its share of the business and that the best policy was to be friendly with it. There was little difficulty in dealing with them. Although the D. & R. G. had been extended to Aspen before Mr. Moffatt became president, the marvelous development of Aspen and the coal region made so much business that both roads made good earnings. The Midland's best year ended June 30, 1890. Previous to that time, it and the D. & R. G. had built a joint line from New Castle to Grand Junction, and the Midland thus became part of a through line to Salt Lake. Its importance was vastly increased and the President and Directors of the Santa Fe took it into their heads that they wanted to buy it. I could never understand just why they did. However, within a month after the subject was first broached to me by Mr. Allen Manvel, then President of the Santa Fe, the Midland was sold to the Santa Fe at a good profit to its owners and to their great joy and relief. The negotiations started with a suggestion to purchase from the Santa Fe people and not from me as a suggestion

to sell. However, when the opportunity was presented, we did not dawdle over it or wait to be twice invited to the feast."

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My father's narrative ends here. In regard to the sale to the Santa Fe, I may add that I have looked over a lot of my father's correspondence which shows that as soon as the news leaked out that the Santa Fe was negotiating for a purchase the D. & R. G. also became an active bidder for the property. What finally decided the Midland people to sell to the Santa Fe was that the Santa Fe agreed to guarantee the Midland bonds, principal and interest, which the D. & R. G. would not do.

I may add, also, that the correspondence shows that my father and some of the other large stockholders undertook to deliver to the Santa Fe a controlling interest in the stock at an agreed price payable part in cash and part in Santa Fe stock which was then on the up grade, with the agreement that all minority stockholders could put their stock into the deal on exactly the same terms. Many of them did so and it is pleasant to know that the original investors all either got out or had a chance to get out with a substantial profit.

I will add a few words about the subsequent history of the road. After 1890, it was operated for a number of years as the Midland Division of the Atchison, Topeka and Santa Fe and continued to make good earnings until the panic of 1893 hit the country. During this period of hard times, the silver mining industry in Colorado practically came to a standstill, and this had a devastating effect on all the Colorado railroads. In the latter part of 1893, the Santa Fe went into the hands of a receiver and about eighteen months later, George W. Ristine became separate receiver of the Colorado Midland. In September, 1897, the property was sold at receiver's sale and a new company was organized with Mr. Ristine as president, and in 1900, the stock of the reorganized company was acquired jointly by the Colorado Southern and the Denver and Rio Grande Western. This situation

continued for several years and in 1908, the Burlington became one of the Midland owners through having acquired a large interest in the Colorado and Southern. The road continued to make good earnings until hard times and panic conditions again struck the country and in 1912 the road went into receiver's hands for the second time with George W. Vallery as receiver, who operated it for about four years.

In February, 1917, the entire property was purchased at receiver's sale by A. E. Carlton and associates, among whom were Spencer Penrose and Charles M. McNeill for \$1,425,000, which was a small fraction of what the road had cost. The purchase included nearly 260 miles of main line besides a lot of sidings, the Busk or Carlton tunnel and a large amount of equipment. The Carlton group had plans for a complete reorganization and large expenditures for improvements with the idea of continued operations. However, within a year or so, the road was taken over by the Railway Administration under Mr. MacAdoo, who ordered stoppage of operations, which in the minds of a great many people was a very unfair procedure. In any event, on August 14, 1918, the last train was run between Divide and New Castle and so what had been one of the most colorful railroad enterprises in the history of the West came to an end. That part of the road between Colorado Springs and Divide was sold to the Midland Terminal and is still a part of the only remaining road running to the Cripple Creek District.

Within the next few years, the line between Divide and Basalt was junked and the right of way was turned over to the State Highway Commission and an auto highway was established on it. This highway, as you know, traversed what is now known as the Carlton tunnel west of Leadville. This tunnel, nearly two miles long, was originally called the Busk tunnel after Mr. J. R. Busk, one of the original investors. It was built by a separate corporation and finished in 1893 at a cost of about \$1,000,000 and leased for a long term to the Midland Company. Later on, it became the property of the Midland in one of the numerous reorganizations through which the road passed during its somewhat checkered history. When the Midland was first



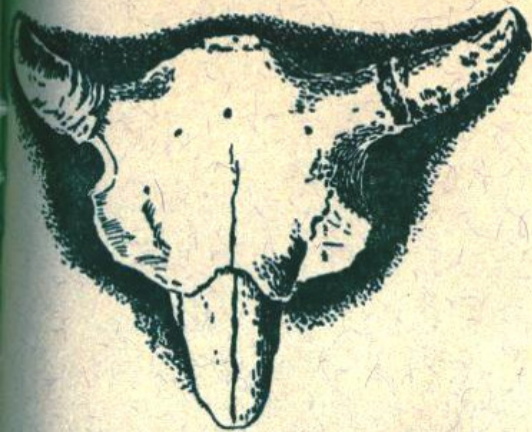
opened, it crossed the continental divide west of Leadville through what was known as the Hagerman tunnel which was located at an altitude of 11,528 feet and was only about 2200 feet long. The new tunnel eliminated about seven miles of very difficult road and nearly 600 feet of elevation.

In closing, I would like to say that the building of the Colorado Midland was a great piece of engineering and construction. The first contract for work west of Leadville was let in April, 1886, and 21 months later, or in January, 1888, trains were running to Aspen and Glenwood Springs. About 240 miles of road had been built and that included some of the toughest railroad construction that had ever been undertaken in America.

JUNE MEETING SETS WESTERNERS' RECORD

The largest WESTERNERS meeting to date was held on June 22 at the Crow's Nest (through the courtesy of Bradford-Robinson & Company) and present were Sheriff Bemis, Robert Eagleston, Herbert O. Brayer, John T. Came III, Virgil V. Peterson, George H. Curfman, Ralph B. Mayo, LeRoy R. Hafen, Thomas H. Ferril, Charles B. Roth, Levette J. Davidson, Dabney O. Collins, Lawrence V. Mott, Paul D. Harrison, Forbes Parkhill, Arthur Zeuch, and Henry Hough. Guests of the evening included Judge William S. Jackson, member of the Supreme Court of the State of Colorado and guest speaker of the evening; Houstoun Waring, Editor of the Littleton Independent; Hugh Glenn, Chief Draftsman, Denver Rio Grande Western Railroad; Henry Swan, trustee of the Denver & Rio Grande Western Railroad, and Vice-President of the United States National Bank; Charles Redd, pioneer stockman of Colorado and Utah; Morrison Shafroth, Denver Attorney; and Dr. Harold J. Merriam, of the University of Montana.

Following the address by Justice Jackson, it was decided to publish both the Jackson and the Hagerman accounts in the July number of the Brand Book. Mr. Henry Swan made a number of vital observations upon the thoroughness and accuracy with which Justice Jackson had approached his problem. The discussion which followed brought to light a number of interests in Western railroad development which had not been previously suspected.



# The BRAND BOOK

OFFICIAL ORGAN

THE WESTERNERS

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HERT O. BRAYER, REGISTRAR OF MARKS AND BRANDS

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MAY 1, 1945

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## EUGENE MANLOVE RHODES

By William MacLeod Raine

If one is going to talk about Western writers he can't get by without saying something about the West, which is a favorite setting for stories because it is less trammled than the East, because it has been the scene of one of the great adventures in the world's history, and, I am afraid, because the undiscriminating have been willing to accept jerry-built novels garnished with six-guns, bad grammar, and dreadful humor.

The winning of the West is a theme that has stirred the blood of millions who never left home but came here in their dreams--clerks who plodded back to and from the office and lived vicariously high adventure just as those do today who go to see moving pictures. But from the days when the Argonauts sailed in clipper ships around the Horn or tramped across the fever-swept isthmus, it drew in person the strong and the rebellious. As you know, they crossed untrodden plains, plowed unfurrowed fields, gutted mountains, built in the desert cities that sprang up like mushrooms. The West was not for them only a state of mind, a glamorous dream! It was a hard bitter grinding reality--a fight against drought and hunger, against Indians and blizzards. It often meant failure and despair and death. But the Westerner had the saving salt of humor. It carried him through.

The first white men did not come to settle. Trappers, soldiers, gold miners were here for a specific temporary purpose. But swift on their trail came the settlers to take up land, build stores, start newspapers--to bring civilization. Such were the Byers and the Ferrils. Some of the trappers lived to see--resentfully--the desert subdued to support cities and towns. Kipling succinctly described this phenomenon:

His neighbors' smoke shall vex his eyes,  
                    their voices break his rest;  
He shall go forth till south is north  
                    sullen and dispossessed;  
He shall desire loneliness,  
                    and his desire shall bring  
Hard on his heels a thousand wheels,  
                    a people and a king.

He shall come back on his own track,  
                    and by his scarce-cooled camp  
There he shall meet the roaring street,  
                    the derrick, and the stamp;  
There he shall blaze a nation's way  
                    with hatchet and with brand,  
Till on his last-won wilderness  
                    an Empire's outposts stand.

That, gentlemen, was early Denver!

One business that from the first had the intent of permanence was the cattle industry. It built no towns and plowed no furrows, but from its very nature it could not be transient. To most young people the glamour of the faraway West centered around this free, outdoor existence of the man on horseback. Even for those who were in it there was something fascinating about it, and later unforgettable memories. My father ran cattle. I still recall boyhood rides across the prairie under the sun, camp fires, tales of oldtimers, with some nostalgia. It was a period we shall never see again. A whole spate of novels have tried to express this

life--its nomenclature, its vernacular, its charm--many of them were poorly written, with nothing to recommend them except the flash of guns and stereotyped plots.

I have known a good many writers of the West, some of whom have done excellent work. But I think I had better confine this talk to one, the maker of stories who knew his stuff most intimately, the one who has come nearest to writing permanent literature about a king on horseback. I mean Eugene Manlove Rhodes.

It doesn't matter when Gene was born. In memory he shall always be young. He was indigenous. His father, an old soldier, went to New Mexico in 1881 as Indian agent for the Mescalero Apaches. At 13 Gene bought a saddle with soap coupons and went to work as a cowboy at Carrizo Springs. At 17 he was a government scout and spent eighteen months on the trail with the troops hunting Geronimo. He borrowed \$50 and went to the University of the Pacific for two years, doing janitor work and living largely on oat meal. Presently he had a ranch of his own in the San Andres Mountains, the most isolated section of New Mexico. The country was a great hideout for outlaws. Sam Ketchum, Bill Doolin, Little Dick, two of the Dalton gang hid out there. So did that bad Indian, the Apache Kid. Some of them were friends of Gene, though he was never one of them.

He was a turbulent man himself and he could pick out and appreciate the finer qualities in bad men. A deep love of the West was in his blood. His own personality expressed the individuality, the courage, the chivalry, and the lack of respect for formal law characteristic of the place and the time.

He lived gaily and vividly on a pattern all his own, yet never took a drink in his life! He was, as I have said, turbulent, also gentle, violent, carefree, a fighter for the underdog, the most generous of friends. Physically Gene was rather small, wiry, very muscular and strong. A cowboy once said of him that he was as hard as nails and as quick as greased lightning. He was deeply sunburnt and had blue eyes. There was in him a terrific capacity for indignation.

If I am to give you a picture of Gene Rhodes I think I had better tell some anecdotes about him, all well authenticated. I first met Gene here in Denver. We talked the moon down and the sun up. Gene once wrote, "Any time I can't say more in 300 words than 3000 I'll hang my rope up." Well, I never knew a man who could talk as long or better! He hated to write stories--he would rather have sat on a cracker box and talked to an oldtimer.

Once while in Denver Gene visited Emerson Hough who was ill in a hospital here. They were good friends--a circumstance which led to one of Gene's more heated crusades. In a very disparaging review Stuart Henry referred to Hough as a tenderfoot. Rhodes promptly started a backfire, a regular campaign in support of Hough. Before the heat subsided such authors as Webb (The Great Plains), Siringo, Lummis, and Knibbs had been drawn in. I did a two-page magazine reply myself. When Gene got mad he did something about it!

Gene had the cowboy's view about women. He idealized them--afraid to handle them realistically. He was likely to break out in a poem about his wife thirty years after their marriage. He was incurably sentimental, but sentimental in the way that the whole cattle country was. Oversweet, annoyingly chaste, inconceivably pure. There were other women in the cow country and the cowboys galloped in occasionally to raise hell with them. But these two types never took a good long look at one another. They lived in different worlds. If Rhodes' good women are not true to life, they are true at least to the ideology of the cow country.

One typical story concerns his first meeting with the future Mrs. Rhodes. Gene had gone East with a load of cattle--and had a knockdown drag out fight with a brakeman en route. (He later put the incident into a story for the Saturday Evening Post.) Gene's flippancy had annoyed the brakeman. Noticing the slim figure of the cowboy on top of a car the brakeman bawled, "By ---, are you supposed to be taking care of these cattle?"

". . .Why ain't you down here tending to these steers?" "Cattle doing fine as silk," Gene told him. "I looked after everything while we waited across the bridge--fed 'em, watered 'em, showed 'em the Falls and tucked 'em in bed." "Left a call for six A.M." The brakeman was still annoyed. In the caboose he used a fighting word. Gene took a bad beating--the brakee was a former prize fighter named Madden! Gene showed up at Appalachin, New York, with a black eye and a scarred face. He had brought the sweetheart he had never seen two presents, a copy of Kipling's Seven Seas and a pearlhandled revolver.

Gene did not have to be angry to fight. Once when the Appalachin baseball team was going to a neighboring town for a game everyone became somewhat anxious when the local blacksmith, the team's first baseman, failed to appear as planned. Gene went to investigate. Some time later he reappeared, his face and knuckles clearly bearing the evidences of a struggle. "He didn't want to come," Rhodes grinned, "but I convinced him."

Some cowboys were standing at the rail at Turquoise in 1891 when a head suddenly pushed through the swinging doors. "Hey, a tenderfoot's rentin' Lightning to ride out to a ranch. Come and see it." The cowboys went out of the saloon like pips squirted out of an orange. A slim young fellow in a derby hat and store clothes was getting into the saddle while a stablehand was holding the horse's head. When he turned loose Lightning went sun-fishing. The tenderfoot came down straightlegged, let out a "Hi-Yi-Yippy Yi" and slapped the bronc with the derby. "Hell, it's just Gene Rhodes come back from college," a puncher grunted disgustedly, and hurried back to be sure his drink was still there.

Rhodes was one of the best riders in New Mexico. He was famous also for his poker playing. In the book his wife wrote about him (Hired Man on Horseback), she says mildly, "Gene was considered wild." In a way he was an oddity. He had a passion for books. At one time the Bull Durham Company gave away short stories with their product. Gene always had one in his pocket. Once when Gene failed to return to the ranch on time a search

party found him pinned down by a horse which had fallen in a narrow arroyo from which it couldn't get up. They found Gene contentedly reading Browning while awaiting his release!

In his writings you will find many literary references--the Bible, Shakespeare, Poe, Alice in Wonderland. He loved words. Once he wrote to an editor of the Saturday Evening Post, "I have put quotes round the words, 'an ancient honor handed down to us from a misty island in the northern sea.' This was a grief to me. In my black heart, I do believe that I composed these words myself. Yet they seem too good to be the work of the Right Vulnerable E. M. Rhodes." (That, by the way, is from an article written by Eddy Orcutt after Rhodes' death.)

Just one more anecdote about Rhodes. He was at the time desperately poor--couldn't raise the money to bring his wife and child from New York. He owed everyone who would lend him money and was continuously harassed and hampered. He had, however, a herd of horses which nobody wanted to buy. Then, out of the blue, came a miracle, a buyer with cash. The deal was quickly concluded. Gene asked casually for whom the agent was buying. "For the British army in Africa." the purchaser replied. "Sorry," Gene retorted, "nothing doing. I'm for the Boers."

No, I must tell one more story--completely verified. The station agent at Tularosa, New Mexico, had prevented a homesteader from proving up by swearing that the man had not lived the full time on the place. The agent then filed on it himself, cutting some corners on the residence requirements. Gene was on hand to stop him, however, from proving up. One day he walked across the street to the station to get a newspaper. He and the agent promptly had words. Gene turned away and started to read the paper as he crossed the street. The agent was so mad he grabbed a rifle and shot at Gene, who with apparent calm continued to cross the street still reading. He later explained that the fellow was such a bad shot he was afraid he would be hit if he jumped around any.



Rhodes mixed the ordinary values about his villains too. His villains were bankers, politicians, mortgage holders, and those who supposedly preyed on the humble. He had a weakness for what society considers bad men--bandits, killers, rustlers. He told the story of how an outlaw fleeing from the law came upon a poor family stricken with diphtheria and stopped to nurse them through it. Well, Gene himself, fleeing from the law, did that very thing. A duplicate story is in a book by Doctor Gardiner of Colorado Springs. A man-wild, tough, hard, living outside the law--came on a family down with typhoid. Doctor Gardiner tells how the outlaw nursed the children with tenderness and cheerfulness, but treated the husband with curt bluntness. That outlaw had thousands of brothers in the old West, and Gene Rhodes recognized it.

Gene spent twenty years away from his beloved New Mexico. He had to get out of the state hurriedly on account of being outside the law. It is a characteristic Rhodes' story. He met a fellow--Kentucky Hargis of the feudist family--on the desert. Hargis was sick, hungry, and dirty. Gene fed, deloused, and nursed the fellow. To feed him Gene shot a calf that wasn't his. It belonged to T. B. Catron, Santa Fe lawyer, politician, and one-time U. S. Senator. Catron and Rhodes were on opposite sides politically and Rhodes had written some vitriolic stuff about him. Catron had offered a reward of \$500 for anybody who would give information leading to the conviction of anyone rustling his stock. Hargis thought this would be a good pick-up and went after the reward. Rhodes rode a long way to find Mr. Hargis and beat the tar out of him, so to say, ordering the man to leave the state. Rhodes made a hurried getaway himself. Pat Garrett (sheriff-slayer of Billy the Kid) incidentally, who was no friend of Gene, rode a long way to let Gene know he had better vamoose in a hurry. Old time Westerners were like that!

I have given you no picture of Gene's warm affection for his friends, for his West and the people in it. Nothing stirred his ire more than reflections cast on it. An editor wrote, "We have no heritages or traditions to which we cling."

In answering Gene told several stories. One was of the Harrington boys, riding for their lives from a posse, their horses worn out, the certainty of capture in their hearts. They were beyond Tularosa when they overtook two young girls riding home in the moonlight on good fresh horses. The outlaws said, "Good evening," and rode on not disturbing the girls. Rhodes wrote: "So they went their way. No poor way. Death found them an hour later, when the posse overtook them. It is more than forty years ago, and in all these years no man has remembered those two dead thieves except with pride. No traditions, no heritages? . . . There is no miles of all our miles but has its story, no farm but what was won by daring and toil, perseverance, hardship, and pain."

Gene needed little to set him off. When the San Francisco Chronicle commented editorially, "The cowboy was never, after all, anything but a hired man on horseback," Rhodes' indignation flamed in verse--"The Hired Man on Horseback."

Harp and flute and violin, throbbing through the night,  
Merry eyes and tender eyes, dark head and bright;  
Moon shadow on the sundial to mark the moments fleet,  
The magic and enchanted hours where moonlight lovers meet;  
And the harp notes come all brokenly by night winds stirred--  
But the hired man on horseback is singing to the herd!

(Whoopie-ti-yo-o-o! Hi yo-o, my little dogies!)

Doggerel upon his lips and valor in his heart,  
Not to flinch and not to fail, not to shirk his part;  
Wearily and wearily he sees the stars wheel by,  
And he knows his guard is nearly done by the great  
clock in the sky.  
He hears the Last Guard coming and he hears their song  
begun,  
A foolish song he will forget when he forgets the sun.

(Whoopie-ti-yo-o-o! Hi yo-o, my little dogies!)

'We got 'em now, you sleepy men, so pull your freight  
to bed  
And pound your ear an hour or two before the east is  
red.'  
If to his dreams a face may come? Ah, turn your eyes  
away,  
Nor guess what face may come by dream that never  
comes by day.  
Red dawn breaking through the desert murk;  
The hired man on horseback goes laughing to his work.

The broker's in his office before the stroke of ten,  
He buys and smiles and he sells and smiles at the word of  
other men:  
But he gets his little commission flat, whether they buy  
or sell,  
So be it drouth or storm or flood, the broker's crops do  
well.  
They are short of Katy Common, they are long on Zinc  
Preferred--  
But the hired man on horseback is swimming with the herd!

White horns gleaming where the flood rolls brown,  
Lefty fighting the lower point as the current sweeps  
them down.  
Lefty fighting the stubborn steers that will not turn  
or slow,  
They press beside him, they swim below him--'Come  
out, and let them go!'

But Lefty does not leave them and Lefty tries once more,  
He is swinging the wild leaders in toward the northern  
shore;  
'He'll do to ride the river with!' (Bridging the years  
between,  
Men shall use those words again--and wonder what they  
mean.)

He is back to turn the stragglers in to follow the leaders  
 through  
 When a cottonwood snag comes twisting down with long arms  
 lashing hate,  
 On wearied horse and wearied man—and they see it come,  
 too late!  
 —A brown hand lifted in the splashing spray;  
 Sun upon a golden head that never will be gray;  
 A low mound bare until new grass is grown—  
 But the Palo Pinto trail herd has crossed the Cimarron!

A little midnight supper when the play is done,  
 Glancing lights and sparkling eyes—the night is just  
 begun.

Beauteous night, O night of love! —Youth and joy are  
 met,

Shine on our enchantment still! 'Sweet, your eyes are wet.'  
 'Dear, they sing for us alone!' Such the lover's creed.  
 —But the hired man on horseback is off with the stampede!

There is no star in the pit-black night, there is none to  
 know or blame,  
 And a hundred yards to left or right, there is safety there  
 —and shame!

A stone throw out on either side, with none to guess  
 or tell—

But the hired man on horseback has raised the rebel  
 yell!

He has turned to loosen his saddle strings, he has fumbled  
 his slicker free,

He whirls it high and snaps it wide wherever the fore-  
 most be.

He slaps it into a longhorn's eyes till he falters in his  
 stride—

An oath and a shot, a laugh and a shot, and his wild  
 mates race beside;

A pony stumbles—no, he is up, unhurt and running  
 still;

'Turn 'em, turn 'em, turn 'em, Charlie! Good boy,  
Bill!'

They are crashing through the cedar mottes, they are  
skating the rim-rock slick,

They are thundering through the cactus flats where the  
badger holes are thick;

Day is breaking, clouds are lifting, leaders turn to  
mill—

'Hold 'em, cowboys! Turn 'em, Charlie!—God! Where's Bill!

The proud Young Intellectuals, a cultured folk are  
these,

They scorn the lowly Babbitts and their hearts are  
overseas;

They turn their backs upon us, and if we ask them why  
They smile like jesting Pilate, and they stay for no  
reply;

They smile at faith and honor, and they smile at  
shame and crime—

But the Palo Pinto man is calling for his time.

For he heard old voices and he heard hoofs beat,  
Songs that long ago were gay to time with drumming feet;  
Bent back straightens and dim eyes grow bright—  
The last man on horseback rides on into the night!

Cossack and Saracen

Shout their wild welcome then,

Ragged proud Conquistadores claim him kind and kin,  
And the wild Beggars of the Sea leap up to swell  
the din;

And Hector leans upon the wall, and David bends to  
scan

This new brown comrade from the old brown clan,  
The great-hearted gentlemen who guard the outer wall,  
Black with sin and stained with blood—and faithful  
through it all;

Still wearing for all ornament the scars they won  
below—

And the Lord God of Out-of-Doors, He cannot let them  
go!  
They have halted the hired horseman beyond the outer  
gate,  
But the gentlemen adventurers cry shame that he should  
wait;  
And the sour saints soften, with a puzzled grin,  
As Esau and Ishmael press to let their brother in.  
Hat tip-tilted and his head held high,  
Brave spurs jingling as he passes by--  
Gray hair tousled and his lips a-quirk--  
To the Master of Workmen, with the tally of his  
work!

Through all of Rhodes' writings there runs a vein of racy humor. To describe a character he once wrote: "fine face marred by an expression of unscrupulous integrity."

Once he wrote, "Money was so scarce in the country that the babies had to cut their teeth on certified checks."

Charles Lummis had helped him greatly in getting a start, and once he wrote in Lummis' guest book, with his host looking over his shoulder and getting ready to blush, "All I am and all I hope to be I owe--", here he stopped and grinned impishly at Lummis, "---to my creditors," he finished.

On another occasion when a man started to bully him, looking small and inoffensive, he said gently, "When you got any communications for me, brother, I want 'em sweet and low, like the wind of the Western sea."

After his return to New Mexico his health failed him. Against the orders of doctors he continued to ride, to overdo. When he saw the end was near he wrote an epitaph for himself. "For me, by me," he penciled on the manuscript.

Now hushed at last the murmur of his mirth,  
 Here he lies quiet in the quiet earth.  
 When the last trumpet sounds on land and sea  
 He will arise then, chatting cheerfully,  
 And, blandly interrupting Gabriel,  
 He will go sauntering down the road to hell.  
 He will pause loitering at the infernal gate,  
 Advising Satan on affairs of state,  
 Complaining loudly that the roads were bad  
 And braggin what a jolly grave he had,

In a letter I wrote to Rhodes I chanced to quote some lines of a poem I liked:

. . .wearing with every scar  
 Honor at eventide.

Gene wrote back that they warmed the cockles of his heart. I can say this for Gene: He may have flung out the old rebel yell too often; he fought for lost causes and sometimes for personal reasons; he simmered frequently with indignation; he cherished oldtime friends occasionally beyond their merits, especially when they happened to be scoundrels in whose heart still burned a spark of self-respect--but when at last he went into that jolly grave he was still

. . .wearing with every scar  
 Honor at eventide.

\* \* \* \* \*

### WILLIAM MACLEOD RAINÉ

Bill Raine, posseman and speaker at this month's meeting, has written more than seventy books (almost one for each year of his colorful life--he is 74!) which have numbered more than

four million copies. Many of his books have enjoyed a popular sale in Great Britain, and have been translated into Spanish, Czechoslovakian, Swedish, French, Hungarian, Portuguese, Dutch, Danish, German and Polish. Twenty-four of his novels have been produced as motion pictures.

Bill was born in 1871 in London--of Scottish ancestry--and spent his first summers in the cattle country of Ayeshire. At the age of ten he accompanied his parents to America--to a cattle ranch which his father had purchased in Texas. Young Raine attended Oberlin College, from which he graduated in 1894. He worked on ranches, taught school and became principal of a school in Seattle, wrote newspaper columns and studied law. When his health became precarious he migrated to Denver where he worked sporadically for The Rocky Mountain News and the Republican. While recovering his health he turned to the serious business of writing western novels--his first volume, A Daughter of Raasay (now a collector's prize) appeared in 1902.

Raine is an avid bridge player, is married and has a daughter. He has traveled widely in North and South America, Europe and Africa. For a time he lectured on Journalism at the University of Colorado. In World War I he was in Washington with the Committee on Public Information--the OWI of 1918! Bill is not resting on his laurels. As this month's BRAND BOOK goes to press our fellow posseman is in Wyoming gathering material for another opus. Good luck, Bill, long may you wave!

\* \* \* \* \*

**WANTED! COPIES OF THE WORKS  
OF EUGENE MANLOVE RHODES**

If any Westerners have extra copies--any editions--of any of Rhodes' books, please write the Registrar of Marks and Brands. For your information here are the works of Rhodes:



- (1) 1910 GOOD MEN AND TRUE. New York: Henry Holt and Co. Title taken over, in 1917, by the H. K. Fly Co., and a second novelette, not until then published between covers, was added to the reprint volume to give it bulk. Later, this edition was taken over by Grosset & Dunlap, Inc.
- (2) 1914 BRANSFORD IN ARCADIA. New York: Henry Holt and Co. Title taken over, in 1917, by the H. K. Fly Co., and reissued as Bransford of Rainbow Range. Later reprints, using this second title, carry imprint of Grosset & Dunlap, Inc.
- (3) 1916 THE DESIRE OF THE MOTHE. New York: Henry Holt and Co. Title taken over, in 1917, by the H. K. Fly Co., when a second novelette was added to the volume. This second story had not previously appeared in a book. Later reprints carry imprint of Grosset & Dunlap, Inc.
- (4) 1917 WEST IS WEST. New York: The H. K. Fly Co. Fly published only the one edition, and all reprints carry the Grosset & Dunlap imprint.
- (5) 1921 STEPSONS OF LIGHT. Boston & New York: Houghton Mifflin Co. Pub. in England by Hodder & Stoughton.
- (6) 1922 COPPER STREAK TRAIL. Boston & New York: Houghton Mifflin Co. Later reprint by Grosset & Dunlap. Pub. in England by Hodder & Stoughton after American edition issued.
- (7) 1927 ONCE IN THE SADDLE. Boston & New York: Houghton Mifflin Co. Apparently the only edition.
- (8) 1933 THE TRUSTY KNAVES. Boston & New York: Houghton Mifflin Co. Reissued by Grosset & Dunlap, Inc. British edition by Hodder & Stoughton.

- (9) 1934 BEYOND THE DESERT. Boston & New York: Houghton Mifflin Co. Reissued by Grosset & Dunlap.
- (10) 1935 THE PROUD SHERIFF. Boston & New York: Houghton Mifflin Co. Reissued by Grosset & Dunlap

BROCHURES

- (11) 1921 SAY NOW SHIBBOLETH. Chicago: The Bookfellows. Contains three short essays—Say Now Shibboleth, King Charles's Head, and the Gentle Plagiarist, of which only the second had previously appeared between covers. Edition, in boards and cloth, limited to 400 copies.
- (12) 1934 PENALOSA. Santa Fe, N. M.: Writers' Editions. A separate printing of the fourth chapter of West is West, with a foreword by Alice Corbin Henderson. Edition, in wrappers only, limited to 500 copies, of which each was signed by the author.

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MAY MEETING NOTES:

In addition to the interesting paper and discussion of the life and work of Eugene Manlove Rhodes the meeting was enlivened by the presence of three distinguished guests: The Honorable William S. Jackson, member of the Supreme Court of Colorado and of a pioneer Colorado family; John Charles Thompson, editor of the Cheyenne Tribune and author of the celebrated historical column "In Old Wyoming"; Russell Thorp, nationally-known Secretary-Chief Inspector of the Wyoming Stock Growers Association.

Newly elected posseman Henry Toll—attorney and member of another of Colorado's pioneer families—attended his first Westerner's session. W. W. Grant, elected to membership at the April meeting, was detained at the last moment and thereby missed his initial introduction to the posse.

Elected to membership at the May meeting were: Robert Eagleston, Assistant to the President of the Denver & Rio Grande Western Railroad Company; Henry Hough, one-time director of the Colorado Writer's Project, author, journalist; Robert J. Niedrach and Alfred M. Bailey of the Natural History Museum in Denver.

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CHICAGO WESTERNERS  
RECEIVE DENVER BRAND BOOK

Sheriff Elmo Scott Watson of Chicago has done a good job of advertising the Denver Brand Book among the members of his posse. The Registrar of Marks and Brands is in receipt of subscriptions from the following members of the Chicago group:

- Burleigh Withers, 2222 Lincoln, Evanston, Illinois
- Martin Johnson, 8 So. Michigan Ave., Chicago, Illinois
- John Jameson, 328 Lindy St., Winnetka, Illinois
- Manuel Hahn, 370 Walnut, Winnetka, Illinois
- Everett Graf, 20 Fox Dr., Winnetka, Illinois
- Leslie M. Parker, 1316 Maple St., Evanston, Illinois
- Clarence Paine, Librarian, Beloit College, Beloit, Wis.

POSSE NOTES: Beginning with the June issue of the Brand Book a section will be devoted to the activities of the Denver possemen --their writings, addresses, etc. In order that this section can be complete a special card will be furnished each member. Please fill it out regularly and return it to the Registrar of Marks and Brands.

JUNE MEETING TO FEATURE HISTORIC RAILROAD  
CONTROVERSY. JUSTICE WILLIAM S. JACKSON  
TO TELL STORY OF COLORADO MIDLAND FOUNDING.

"The battle of the Tycoons" will again rage on June 22 at the regular monthly session of the Westerners. Justice Jackson will present his answer to an address by Mr. Percy Hagerman of

Colorado Springs describing the founding of the Colorado Midland Railroad. Mr. Hagerman's paper--copy of which has been sent all possemen--was delivered before a Kiwanis luncheon in Colorado Springs and contained an account written by the speaker's father, Mr. J. J. Hagerman, one of the founders of the Midland. The reminiscence contained a number of allegations and inferences which are not supported by the record, according to Justice Jackson, who has entitled his address, "The Record vs. Reminiscence." Stalking through the story are the shadowy figures of Charles Francis Adams, William S. Jackson, Hagerman, General William J. Palmer, Jay Gould, and other tycoons who once molded the rail development of the West.

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**WANTED!** Information regarding sources of Cattle Industry History!

Do you know where any of the original documents, letters, ledgers, tally books, diaries, cash books, or other business papers of any of the cattle ranches of the last century now repose?

The WESTERN RANGE CATTLE INDUSTRY STUDY is endeavoring to locate all source material for the cattle industry for the period from 1850 to 1900 (in New Mexico, Colorado, Wyoming, and Montana). No attempt is being made to buy or acquire such materials from their owners, but field representatives are microfilming or photostating all such records for use by the study.

For information -- and a brochure describing the work of the Study--write to the Director, Western Range Cattle Industry Study, Room 306, State Museum, 14th & Sherman Sts., Denver 2, Colorado.

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ART O. BRAYER, REGISTRAR OF MARKS AND BRANDS

AUGUST 1, 1945

No. 7

## THE MEEKER MASSACRE AND THORNBURGH BATTLE--

### FACT AND FICTION

By Forbes Parkhill

The Meeker Massacre and the Thornburgh battle in north-western Colorado in September, 1879, have formed the subject matter of a vast amount of published fact and fiction and, unfortunately, of a great deal of fiction parading as fact. Fiction and history cannot be judged by the same set of standards. In seeking the causes of the Meeker massacre and the Thornburgh battle -- causes which have been the subject of endless controversy -- let's make certain we know what is historical fact and what is fiction. This talk is an attempt to sift fiction from fact, so far as that is possible.

The Utes were mountain Indians, occupying, at the time of the Civil war, most of the mountainous western half of Colorado and a part of eastern Utah. In 1863, Territorial Governor Evans, appointed by and representing the Federal government, made a treaty with the Tabeguache band of Utes providing that they leave the San Luis valley.

In 1868 Governor Hunt negotiated a treaty providing that the confederated Utes, embracing all bands under the leadership of Chief Ouray, were to occupy "forever" a reservation

including all of Colorado west of the 107th meridian and south of a line 15 miles north of the 40th parallel. Draw a line through Pagosa Springs, Gunnison and Yampa, and you have the eastern boundary. A line directly west of Yampa would approximate the northern boundary.

The so-called Southern Utes occupied the southern part of this huge reservation; the Uncompaghre Utes the central portion, and the White River Utes, with whom we are particularly concerned, the northern portion.

Immediately rich ore deposits were discovered in the San Juan country, and the white man began to covet that area. In 1872 a government commission tried, unsuccessfully, to induce the Utes to give up this rich region. Another commission under Felix Brunot was more successful the following year. In 1874 the Brunot treaty was ratified by the United States senate.\*

Under the Brunot treaty Chief Ouray was to receive \$1,000 a year for life. Article 3 of the treaty provided "\$25,000 annually for the benefit of the Ute Indians, annually forever, disbursed or invested as the president may direct." The payment was in consideration of the relinquishment by the Utes of the rich San Juan mining region.

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Footnote\* A treaty between nations is a solemn obligation which takes precedence over an act of Congress. Some years ago a Shoshone Indian friend of mine was arrested for a violation of the game laws. He had killed a Canadian goose. The law he was charged with violating was enacted in conformity with the migratory bird treaty with Canada. The Indian contended that under the treaty with the Shoshones, the members of that tribe were empowered to make their own game laws. The court held that no act of Congress, nor any subsequent treaty with another nation, could modify the terms of the original treaty with the Shoshones, and the charge against my friend was dismissed.

Up to the time of the Meeker massacre, five years after the ratification of this solemn national obligation by the United States senate, only a small portion of this payment had ever reached the Utes. Payment customarily was made to the Indians in the form of supplies and annuity goods, rather than in cash. By '79 a backlog of \$65,000, appropriated by Congress to meet this obligation to the Utes, had been withheld by the Indian Bureau.

At a Congressional investigation following the Meeker massacre, William M. Leeds, former chief clerk of the Indian Office, testified that the president had not directed that the payments be withheld or invested, but that the Bureau had nullified the solemn obligation of the nation under the treaty, merely because "The Bureau feared trouble -- the Indians might buy firearms." Such was the power of what today would be called Bureaucracy to substitute its opinion for a solemn national treaty obligation ratified by the U. S. Senate.

However, some supplies and annuity goods had been shipped to the White River Utes in '76. Owing to the failure of a freighter to meet his obligation to transport the supplies from Rawlins, Wyo., to the agency, the supplies remained in the Union Pacific railroad warehouse at Rawlins for two years, piling up storage charges.

The Utes, bewildered by Government red tape, found what they believed was a simple solution -- if the Great White Father couldn't get the supplies from the warehouse to the agency, what was simpler than for the Indians to go to the warehouse? A band went to Rawlins to get their supplies and annuity goods but, except for some temporary rations, red tape prohibited the release of the supplies. In '78 some annuity goods were sent to the agency, but the railroad kept a sufficient supply of flour and oats to protect its storage bill. Finally it was found that most of these supplies had spoiled, and their value was not worth the storage charges, so they were not redeemed by the government and the railroad was left holding the bag.



Meanwhile settlers were swarming to the West by the tens of thousands, many following Horace Greeley's advice to "Go West, young man." Among Greeley's proteges was Nathaniel C. Meeker, a poet and a special writer on agricultural subjects for the New York Tribune.

Meeker was a disciple of Fourier, the French Socialist, who advocated the organization of society into self-sufficient phalanxes. Meeker promoted such a phalanx, based upon communal principles, in an eastern state, but it ended in failure. In 1870, supported by Greeley, he organized the Union Colony at Greeley, which he described in the Greeley Tribune as "a system of cooperation within limited bounds."

Through the eighties, 35 colonization schemes based to some degree on a communal system had been established in Colorado.\*\*

Meeker was a deeply religious, obstinate, earnest reformer, so eager to develop the brotherhood of man that he was willing to use force, if necessary, to do good to his fellow man. His followers in the Union Colony called him "Father" Meeker, and worshiped him with what almost amounted to religious fervor. His enemies opposed him bitterly, and he continuously was complaining about "lack of cooperation" on the part of colonists and outsiders alike. His opponents charged that what Meeker meant by "cooperation" was unquestioning obedience to his orders. They said that when all did not go well with the Union Colony, and many colonists withdrew, Meeker saw "lack of cooperation" as the reason for his two failures; felt that "forcible cooperation" would bring success; and saw in the then vacant post of Indian agent at the White River Ute agency the opportunity to achieve the brotherhood of man through cooperation enforced by

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Footnote\*\* For a description of these projects, see the privately printed volume, "What Life Has Taught Me," by E. M. Gallatin, leader of several such projects. Gallatin died in Denver some ten years ago.

the might of the United States government. Whether this is fact or fiction remains undetermined.

Through the influence of Greeley, he was appointed Indian agent in the spring of '78, and took to the agency with him his wife, his daughter, Josephine, and a group of workers from the Union Colony. In an era when the Indian Bureau was notorious for corruption among its employees, no enemy ever charged Meeker with dishonesty. He was so scrupulously honest that he refused to accept gifts from his Indian wards for fear he might be accused of accepting bribes. Apparently he was not opposed to nepotism, for his son, Ralph, had been his secretary at the Union Colony, and his 20-year-old daughter, Josie, employed as a teacher drew a salary larger than any employee at the agency except Meeker himself, although at no time did she have more than three pupils in her school.

Governor Pitkin said, "A purer and better man than Meeker was never appointed to an Indian agency," but added that he did not understand Indians sufficiently.

Perhaps the best key to Meeker's character is found in his letter to Senator Teller, in which he wrote, "I shall propose to cut every Indian down to the bare starvation point if he will not work." He proposed to civilize the Utes overnight, if he had to starve them to do it. He once reported, "The most hopeful thing is that there are several families complaining bitterly of cold, and they want houses."

Meeker entered into his plan to create a Utopia overnight with all the fervor of a religious zealot. The agency at that time was located in a narrow canon of the White River, some ten miles upstream from the present town of Meeker. Snows were deep in the winter, and the canon was too narrow for the farms Meeker envisioned. He decided to move the agency to Powell's Bottom, a broad valley some four miles below the present town of Meeker. But the Utes had other ideas.

The proposed site was the most convenient expanse of grassland for the grazing of their ponies. If it were plowed up and converted into farming land, there would be little grass left. Meeker untactfully suggested that if there was not sufficient grass they kill part of their ponies. An Indian's wealth being measured by the number of his ponies, this suggestion was received with anything but enthusiasm. Yet, from Meeker's standpoint, it was quite logical. As long as the Indians possessed ponies and firearms, they would remain nomads, hunters of wild game. Deprive them of their ponies and their guns, and they would be forced to become farmers.

The government had recognized Douglas, a 60-year-old factional leader, as chief of the White River Utes. However, the leader who controlled by far the largest following was Jack, 38 years old, also known as Captain Jack, Ute Jack and Ute John. Jack had been reared by a Mormon family, had served as a scout under General Crook in the Sioux campaign, and consequently spoke reasonably good English. The third tribal leader of consequence was Johnson, who was a medicine man rather than a chief. Johnson owned an excellent Henry rifle, was a crack shot, an inveterate gambler and a racer of ponies.

Despite the objections of the Indians, Meeker moved the agency buildings to the new site. He laid out a model community townsite, and offered to give every Indian a home-site. Strangely enough, the Utes couldn't understand how he had the power to give them land that, under the Brunot treaty they considered already theirs. Meeker built a cabin for Johnson and his two wives, in the belief that others would be led by Johnson's example into the ways of civilization. One of Johnson's wives, Susan, was a sister of Chief Ouray.

By tribal custom, the male Indian provided game sufficient to feed his family, and his squaw performed all the work around the house. Except for squaws, manual labor was regarded as degrading. To demand that a male Indian labor in the fields

was as humiliating as if some dictator told the gentlemen in this group that hereafter, they and their male children would be required to cook the meals, dry the dishes, wash the diapers and to perform other household duties we regard as in woman's sphere. They met Meeker's suggestion just about as you would meet the suggestion that you abandon your businesses and professions and take up housework.

Meeker had one field plowed and planted, but the labor was performed by the white agency employees, with the help of a few squaws. Meanwhile Meeker was making every effort to cut red tape and get the annuity goods and supplies delivered, and succeeded so well that the government's failure to deliver these goods cannot be considered as one of the principal causes of the Meeker massacre.

There was no trading post at the agency, but there were four just outside the limits of the reservation. These stores sold arms, ammunition and whiskey to the Indians, and Meeker complained officially that one was operated as a house of prostitution staffed by Indian girls. Meeker made every effort to prevent the sale of arms and ammunition and whiskey to his wards at these stores, without success. At the Union Colony he had crusaded against the use of intoxicants, had prohibited in its charter the sale of liquor in Greeley, and had written in the Tribune, "Having known how to strangle the demon of rum for two years, we have learned how to strangle it for all time to come."

Most western Indian agents, recognizing the fact that the Indian was by nature a nomad and a huntsman, and that he could not be turned into a farmer overnight, permitted the sale of firearms and ammunition by the post trader, where it could be controlled.

The White River Utes, with little or no annuity goods for two years, would have starved if they had not killed wild game. And to get arms and ammunition for this purpose, they were forced to leave the reservation. However, they would

have left the reservation under any circumstances. They never regarded the reservation boundary as anything but a fence to keep the white man away. They ranged as far east as the plains north of Denver before the buffalo was exterminated, as far north as central Wyoming, and west as far as the Uintah reservation in Utah. Frequently Meeker would never see his wards except when they returned to the agency, usually in the Fall, for the distribution of annuity goods.

Sometimes they set fire to the range, "so the grass would grow better next year" -- a method of fertilizing still practiced by the white man. But now, as these ranges were filling with settlers, a grass fire frequently would wipe out a farmer's house and haystacks. To the Utes, this was the farmer's hard luck, and they did not see why it should be necessary to abandon a practice of generations' standing.

Likewise they sometimes set fire to the forests to drive game into the open where it could be killed more easily, and "because it provided dry firewood for the next season's hunting trip." Naturally this practice did not set well with the settlers. Feeling against the Utes became bitter among the Colorado whites. Congressman Belford -- father of Frances Wayne of The Denver Post -- introduced a bill providing for their removal to Indian Territory.

Discovery of the rich San Juan mining area led to the belief that more riches could be found on the vast reservation of the consolidated Utes. The movement to get rid of the Indians, to get this vast section of the state on the tax rolls, to exploit the resources of the immense reservation, gained momentum steadily. Most Colorado whites of the period were convinced that "the only good Indian was a dead Indian."

Meeker did his best to keep his charges on the reservation. But he had no police force, and he feared to follow the example of other Indian agents who had created a force of Indian police, because he feared and distrusted the brown brethren he was so

determined to civilize. Naturally he was without authority outside the reservation boundaries.

When numerous complaints were received from white settlers of the damage caused by the Utes, he wrote to Major T. T. Thornburgh, in command of the army post at Fort Steele, near Rawlins, Wyoming, asking for his assistance in keeping the Utes on the reservation. Thornburgh, as disclosed by subsequent investigations, reported that the ranchmen had no complaint to make, other than that the Indians killed too much game, and supported this statement by letters from a number of cattlemen and settlers.

How could it be possible that on the one hand the Utes were being charged with the wanton destruction of the lives and property of the whites, and Thornburgh reported there was no trouble with the Indians? Which was fact, which was fiction?

It should be understood that Fort Steele was in the army Department of the Platte, under General George Crook, and that the jurisdiction of this department extended only to the Colorado line. Colorado was in the Department of the Missouri under General John Pope. It is significant that the letters accompanying Thornburgh's report were from Wyoming ranchmen. Apparently he was reluctant to go beyond his own territorial jurisdiction in his investigation, for fear of casting a reflection upon the commanding general of the adjoining department.

Again, how was it possible that the white residents of Wyoming and Utah, where the Utes ranged widely, had no complaints to make against the Indians, while the residents of Colorado held them to be murderous, wantonly destructive savages?

Did an Indian who was peaceable and harmless in Utah and Wyoming become a murderer and a firebug when he crossed the state line into Colorado?

The answer is found in the fact that it was the Colorado whites who had everything to gain by ejecting the Indians from their state and exploiting the reservation resources. Residents of Utah and Wyoming had no interest in placing the reservation resources on the Colorado tax rolls. Keep this in mind in sifting fact from fiction concerning the reports of Ute outrages in Colorado. There are such instances -- Jack himself admitted one such charge against two of his men -- but it likewise is probable that every theft of horses, every forest fire caused by lightning, every unsolved killing was likely to be charged to the Indians.

The government owned a herd of cattle kept on the reservation for the use of the Utes. Under the conditions of the open range as they then existed, these cattle mingled with herds owned by neighboring cattlemen, and it is not strange that many calves of the Indian herd were picked up as mavericks by unscrupulous cattlemen. Uncle Sam was considered fair game. So were the Indians.

The agency herd bore the I. D. -- Indian Department -- brand. This brand is most easily blotched, and Meeker officially charged that a neighboring cattleman registered the "Double Box" brand because two strokes of a running iron changed the I. D. into the cattleman's brand.

As the tension between whites and Indians grew, General Pope dispatched a company of cavalry -- they were not called "troops" of cavalry until later -- into Middle Park. These were Negro soldiers, called "buffalo" soldiers by the Indians, who detested Negroes, and were commanded by Captain Dodge.

In the summer of '79 two Utes, Bennett and Chinaman, were charged with burning the home of a settler in Middle Park, and the sheriff of Grand County went to the agency with a warrant for their arrest. Meeker still further incurred the enmity of the Utes when he tried to give them up to the law, but the two fugitives refused to surrender and the

sheriff was without authority to make an arrest on the reservation.

Meeker decided to fence and plow another field alongside the agency buildings, but met bitter opposition because the field would have destroyed the Indian pony race track, and because plowed fields meant farming and farming meant work and they had no intention of working. When Meeker ordered a white farmhand to plow the field regardless of objections, a bullet fired by the son of the medicine man, Johnson, whistled past his head, and the project was abandoned. Johnson quarreled with Meeker, dragged him from the agency, pushed him backward over a hitching rail and injured his back.

Meeker immediately sent letters to Governor Pitkin and to the military authorities asking for help. Pitkin wired to Washington, and Major Thornburgh was ordered to the agency, in command of a company of cavalry and a company of infantry from Fort Steele, and two companies of cavalry from Fort D. A. Russell at Cheyenne. The company of infantry was left at Little Bear Creek to guard the expedition's supplies.

Meanwhile Jack had just returned from Denver, where he had asked Governor Pitkin's help in getting Meeker removed from the agency. Chief Ouray already had asked the removal of Meeker. Pitkin, who believed Meeker a "pure and noble soul" had given Jack an evasive answer. Jack and several other Utes met Thornburgh as the expedition neared the reservation, and warned him if the soldiers entered the reservation the Utes would regard it as an act of war and would fight.

Jack suggested that the expedition halt and that Thornburgh send five men, along with five Indians, to the agency to remove Meeker. Thornburgh agreed tentatively to the plan to send five men to the agency, and communicated the proposal to Meeker by courier. Had Jack's suggestion been followed, the investigating commission later reported, the massacre and battle would have been averted.



Meanwhile Thornburgh moved his troops to within a mile of the reservation boundary, on Milk Creek, some twenty-five miles from the agency. That night, according to testimony at subsequent hearings, he held a staff meeting and changed his mind, deciding to move on into the reservation and to establish a camp within some twelve miles of the agency before sending his five emissaries forward. This decision was based on the belief that the troops must be within easy striking distance if hostilities developed. It undoubtedly was one of the immediate causes of the subsequent Thornburgh battle, as when, on the morning of September 29, the troops began to move across the reservation boundary, the waiting Utes regarded it as a breach of faith.

Jack had deployed his warriors on both sides of the main road passing through Red Canyon. Thornburgh, however, recognizing the danger of an ambush in the canon, sent his men forward on a trail that cut across the adjoining ridge. He sent his adjutant, Lieutenant Cherry, ahead with an advance guard, and left one company at the Milk Creek bivouac to guard the supplies.

Lieutenant Cherry later testified that he saw from 300 to 400 Utes deployed along the ridge ahead. Jack insisted that no more than 50 or 60 Utes took part in the battle against Thornburgh's force of some 175 men. Josie later said the warriors in the tribe numbered from 150 to 175. Cherry ordered his men to deploy in skirmish line, and waved his hat in what he said was a signal of friendship to the Indians.

Cavalry commands often are given by means of arm signals. Jack later said the Utes took the waved hat to be a signal to charge. Captain Payne, deploying on Cherry's left, testified he took the signal to mean, "we have sighted the enemy." Thornburgh was under orders not to fire unless attacked.

Cherry said the Indians fired the first shot, wounding a soldier at his side. The Indians claimed the soldiers fired

first. Cherry then heard an outburst of shooting on his left, and the battle was on.

Because the troops had taken the trail instead of the road, a group of Utes on the far side of the road were enabled to swing in behind the advance guard, and almost cut them off. Thornburgh sent back word to the bivouac to arrange the wagons in a circle to withstand a siege. He was killed a few minutes later. Two soldiers were killed and several wounded before the advance guard succeeded in retreating to the hastily formed stockade.

Captain Payne, the ranking officer, ordered forty horses killed by the soldiers to form a temporary barricade. Thirty more horses were stampeded and captured by the Utes, who charged once, were repelled, and settled down to a siege. The Utes set fire to the grass and the besieged soldiers barely escaped being burned out by the fire, which spread in succeeding days some twenty miles back into the Danforth hills.

During the night the soldiers dug trenches. They were equipped with Springfield carbines, which recently had replaced the Civil War needle guns. These carbines were not very accurate, and their range was not great.

The Indians were equipped with a variety of weapons, including several excellent Spencer, Henry and Sharps hunting rifles, and a number of late model Winchesters that they had bought the preceding week at the off-reservation trading posts.

One Ute, later identified as the marksman, Johnson, established himself in the willows just beyond the range of the cavalry carbines, and began methodically picking off the horses and mules in the stockade, so that only four remained at the end of the siege.

That night three couriers were sent for help, including Scout John Rankin, a civilian and a soldier. Rankin's 150-mile ride to Rawlins has been the subject of considerable controversy. Some newspaper accounts had it that he ran the entire distance, afoot. Some reported that he had ridden the 150 miles in 24 hours. The army reported that he made the ride in 48 hours. But the most reliable accounts agree that, with two changes of horses at local ranches, he made the ride in 27 1/2 hours total time, or 24 hours net time in the saddle. Lieutenant Paddock's published account credits Private Murphy with making the ride.

The other two couriers felt their work accomplished when they warned ranchers in the Bear River valley, from which there immediately began an exodus of ranchmen and their families. A written message was left impaled on a sagebrush branch on the trail from Middle Park.

Meanwhile Captain Dodge with his Negro soldiers from Middle Park had received orders, issued before the battle, to join Thornburgh. Proceeding at a leisurely pace, he found the message on the sagebrush clump, and immediately headed for the scene of the battle. His pack train was left with Thornburgh's supply company which had camped on the Bear. He reached the besieged soldiers on the morning of the third day after the beginning of the battle, but instead of being of assistance to them, his presence proved merely an additional drain on the food supplies, as his horses were quickly picked off by the Ute marksman.

Immediately upon the outbreak of the battle at the edge of the reservation, an Indian courier was sent to the twenty remaining Utes, under Chief Douglas, at the agency. Shortly after lunch, while the womenfolk were washing the dishes, the Indians stole the firearms in the employees' sleeping quarters, and opened fire on Meeker and his men. Three of the employees were shot as they were spreading dirt on the roof of one of the new buildings.

No survivor witnessed the actual killing of Meeker. He was last seen passing the kitchen door on his way to lock the room from which the employees' guns had been stolen. Many accounts say Meeker was dragged from his room by a log chain around his neck, and that a barrel stave (some say an iron stake) was driven through his mouth into the ground. This is more probably fiction than fact, for Mrs. Meeker testified that when his body was last seen that evening, he was laid out on the ground as if for burial, stripped of all clothing except a shirt, and with a bullet wound through the forehead. Neither Mrs. Meeker nor daughter Josephine mentioned the log chain, nor the stake. Meeker probably was shot in his own room by the son of Johnson, who was killed a few minutes later by one of the agency employees. Every white man at the agency, except for one who had been sent out as a courier, was murdered.

The women — Mrs. Meeker, 68 years old and lame; Josie Meeker, 20, Mrs. Price, the housekeeper and wife of the agency blacksmith — with the two small Price children and an agency employe, Dresser, took refuge in the agency milk house, because it was built of green cottonwood logs and would be difficult to burn.

In the evening they made a break for liberty across the plowed field north of the agency, hoping to lose themselves in the tall sagebrush beyond. The Utes saw them and opened fire. Dresser gained the sagebrush, wounded, reached a coal mine twelve miles from the agency, lay down to rest and bled to death from his wounds. His body was found in the mine days later.

Mrs. Meeker was wounded in the thigh, and was captured along with the other two women and the two children, and the five were taken to different Indian camps.

Meanwhile Colonel Wesley Merritt had set out at the head of a rescue expedition, and reached the besieged soldiers on the morning of the fifth day. At the same time a white courier

from Chief Ouray brought orders to the Utes to cease fighting. The Indians immediately melted away, and fled south to various refuges in the Uncompaghre country. Merritt established camp on the present site of the town of Meeker.

He was intent upon pressing south to rescue the kidnapped women and children, but orders from Washington forbade this course, stating that it probably meant death for the captives, and that a civilian commission was meeting with Chief Ouray at the Los Pinos Ute agency, with the hope that Ouray would order his tribesmen to surrender the captives.

Merritt built permanent log buildings, which he occupied during the ensuing winter. The father of Mrs. Harry English, of Denver, was one of his officers, and made some excellent pencil sketches of the half-dugout officers' quarters, now in the possession of Mrs. English.

When the temporary military post was abandoned, the log buildings constituted a ready-made town for whoever might care to move in. The buildings were occupied gradually by white settlers. Thus the present town of Meeker originated. Some of the original log buildings still stand and the public library, I believe, is housed in one of them.

A joint delegation of whites and Ouray's Indians set out for the camp on Plateau Creek, northwest of Gunnison, where the captives were being held. The poem, "Chipeta's Ride," telling how Ouray's squaw sped on her trusty pony to rescue the white women single-handed, is 100% fiction, for Chipeta was not a member of the rescue party. The prisoners were surrendered, and upon their arrival at the Los Pinos agency, and during their return through Denver to their home in Greeley, they were interviewed repeatedly and their story became a nation-wide sensation. They had been held captive 23 days.

Meanwhile a joint civilian and military commission was appointed to investigate the massacre and battle and to bring

the guilty persons to justice. The women captives and many Indians were examined, and at the conclusion of its hearings the commission fastened the responsibility upon twelve ring-leaders, and demanded that Ouray produce them for trial. Ouray promised to do so, if given enough time to find them. He never produced them. One surrendered voluntarily. Jack was held at Fort Leavenworth for a time and then was released. No individual was ever punished for his part in the massacre or the battle. War Department records show the investigation of the commission caused much bitterness in military circles, because the commission apparently sought to fix responsibility only for the massacre, and made no effort to seek out and punish those responsible for the killing of soldiers in the Thornburgh battle.

Throughout the many newspaper interviews, all three women insisted that they had not been criminally attacked while being held captive. However, during the first investigation, upon receiving the pledge of the commission that their testimony would be kept secret, each testified that she had been outraged. The secrecy pledge of the commission was broken when the proceedings of the commission were published the following year.

There is considerable reason to believe that the testimony concerning the outraging of the women is more fiction than fact. When it is considered that many months had passed without the arrest of the killers of Meeker, Mrs. Price's husband and other agency employees, it is only natural that these women should feel most bitter, and should do everything in their power to spur the authorities into action. Nothing presumably could accomplish this end better than to change their original story and to insist that they had been outraged. Mrs. Meeker at the time was 68 years old, lame, and suffering from a bullet wound in her thigh. Chief Ouray scoffed at the stories of the outraging, insisting that it was impossible because the squaws of the Utes named by the white women "would never have permitted such a thing."

In the second investigation, conducted in Washington in 1880 under Congressional authority, no mention of the alleged outrages was made by Josie Meeker, the only one of the three women to testify. Josie later became secretary to Senator Teller, lectured on the subject of the massacre, and died a few years later of a pulmonary ailment. My wife's mother, who lived near Greeley and later in Denver, knew Josie Meeker, and describes her as a fairly attractive but rather frail person.

The upshot of the whole affair was that no person was punished for his part in the affair, but the Utes were moved from their reservation to the present Ute reservation, which is much smaller, in southwestern Colorado, and the huge reservation of the late seventies was opened to exploitation and occupancy by the white man.

The army reported 25 whites killed, including 11 civilians; 41 wounded, and 39 Indians killed. Jack testified that only 19 Indians were killed, and 7 were missing.

Clinton B. Fisk, a member of the Board of Indian Commissioners, testified "(Meeker) was as unfit as a man could possibly be; destitute of tact and knowledge of Indian character; too old; unhappily constituted in his mental organization; his whole agency and administration almost a failure. His management of the Utes and his threats to bring soldiers in, had very much to do with the massacre."

Most of the Indian witnesses said Meeker had told them that Thornburgh was bringing a wagonload of chains and manacles to shackle them. Their chief complaint was based on Meeker's efforts to make them into farmers. They also charged he spoke with a "forked tongue," telling them one thing one day, and another the next. Jack complained that he had promised him a new red wagon, but when the wagons arrived he kept them and gave Jack an old, used wagon, which he forced him to return after thirty days.

In Josie's school the Utes saw a design to enslave them. Their reasoning: if their children were educated, they would become carpenters; as carpenters, they would have to build houses; having built houses, they would have to live in them; living in houses, they could hunt no longer, but would have to become farmers; farmers must work, and to a buck Indian, work was degrading.

Josie testified about a mysterious letter from Thornburgh, which fails to appear in any record. She says her father read her this letter the night before the massacre, and that it probably was destroyed when the agency was burned. It stated, she said, that Thornburgh actually intended to march to the agency despite his assurance to the Utes, but that his plan must be kept secret from the Indians.

The site of the Thornburgh battle is now an alfalfa field. A monument marks the spot where the troops were besieged. Traces of the trench leading down from the stockade of wagons to a gooseneck bend of Milk Creek, used by the besieged soldiers to get drinking water without being exposed to enemy fire, are still visible.

Another monument marks the spot of the massacre at the agency, four miles down the White River from the town of Meeker. The land long since has been converted into farms -- but not farms operated by Indians, as envisioned in Nathaniel Meeker's Utopian dream. Of old Fort Steele, a single log barracks building and a brick powder magazine remain.

Causes of the massacre and battle are:

1 -- Broadly, the attitude of the white residents of Colorado, who wanted to get rid of the Utes and open the huge reservation to exploitation.

2 -- The incredible stupidity of a corrupt and inefficient Indian Bureau.



3 -- The unfortunate personality of the Indian agent, Meeker, who was temperamentally and emotionally unfit for such a post.

4 -- Errors in judgment on the part of leaders of the Thornburgh expedition.

5 -- Least of all, in the opinion of the speaker, the reactions of the Indians themselves, who were thoroughly bewildered by the white man's efforts to civilize them overnight, rightfully resentful over the white man's repeatedly broken promises, and who used the only means they knew to fight for what they considered their rights.

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#### AUGUST MEETING:

John Charles Thompson, a corresponding member of the Denver WESTERNERS and editor of the Cheyenne Tribune will be the featured speaker at the monthly meeting August 24th. Charley will give an intimate, first-hand account of the activities of Tom Horn, Wyoming gunman whose activities are still a matter of controversy among old timers. It is expected that former governor Chatterton, who refused to pardon Tom Horn after the latter had been convicted of murder, will also be present. Russell Thorp, noted secretary-chief inspector of the Wyoming Stock Growers Association is also to be present as guest of the posse.

POSSEMAN CURFMAN STEALS SHOW AND CONVINCES MAYO

Dr. George Curfman, in an extemporaneous and unscheduled demonstration at the July meeting of the WESTERNERS, finally convinced posseman Ralph Mayo of the medical properties of the leech as well as the centuries-old practice of trepanning. The whole thing started at the June meeting at which Ralph Mayo was inducted as a new member. Somehow Ralph was seated next to those two raconteurs par excellence, George Curfman and John T. Caine III. Aided and abetted by Roundup Foreman Virgil Peterson, the discussion turned to the use of leeches for medical purposes. Ralph's incredulity became outright suspicion when the discussion turned to the trepanning of skulls among the Incas and other native Americans. Ralph frankly charged that he was being initiated, which only led to the stories becoming larger and even more incredulous.

Our good doctor decided to prove his case and at the July meeting--held at the Chief Hosa Lodge in Genesee Mountain Park -- produced two leeches and demonstrated their use. Dr. Curfman also demonstrated (upon an end board from an apple box) the use of a trephine. The demonstration and discussion was the cause of a good deal of interest on the part of all present and it might be added that posseman Mayo was not the only one whose knowledge was increased.

Forbes Parkhill's excellent paper on the Meeker Massacre and the Thornburgh Battle proved once again the rich source of information to be found in the membership of Denver WESTERNERS. Present at the meeting were Edwin A. Bemis, H. O. Brayer, John Caine, III, Arthur Carhart, George H. Curfman, E. V. Dunklee, Thomas H. Ferril, Ralph B. Mayo, E. W. Milligan, Lawrence Mott, Forbes Parkhill, Virgil V. Peterson, Charles B. Roth, Arthur Zeuch, Henry W. Hough, and Robert Eagleston.

POSSE NEWS:

Dabney "Doc" Collins has earned national recognition for his series of Western advertisements for Davis & Shaw; Dr. George Curfman is working on his forthcoming WESTERNERS address featuring the "Red Ladies of the Rockies"; Ed Dunklee's daughter, Dorcas Mary, has completed a 16,000 word article for the New York Times describing her experiences as a Red Cross director in India. Roy Hafen has spent his two weeks vacation in Utah investigating the Mormon Trail from Salt Lake City to San Bernardino--the study is part of the Huntington Library Pacific-West Program; Larry Mott has changed positions--he is now engaged in the refrigeration business; Forbes Parkhill has completed an article on western brands in the Wyoming State Museum collection for Colliers; Roundup Foreman Virgil V. Peterson has gained national recognition for his series on the cattle industry--his recent Montana article will be reprinted in a Chicago periodical this fall while his latest article on Wyoming appeared in the American Cattle Producer for August; Bill Raine has returned from Wyoming where he collected material for his 73rd western novel; Fred Rosenstock is head-over-heels in work preparing for the fall book season; B. Z. Woods has been directing a boys' camp high in the Rockies during the summer months but is expected to return for this month's meeting; Herb Brayer has returned from New York and Boston and is editing his new book for publication this fall; Justice William S. Jackson of the Colorado Supreme Court has accepted membership in the WESTERNERS--his recent contribution to the Brand Book has received favorable comment everywhere.

We report with profound sorrow the death of Robert "Bob" Ellison, charter member of Denver WESTERNERS, corresponding member of Chicago WESTERNERS, member of the Board of Directors for the State Historical Society of Colorado, noted book collector, founder and leader of the movement for the erection of historical monuments in Wyoming. Mr. Ellison died of a heart attack at his home in Colorado Springs on August 16th.

DENVER POSSE

Alfred M. Bailey  
 Edwin A. Bemis  
 Herbert O. Brayer  
 John T. Caine, III  
 Arthur H. Carhart  
 Dabney O. Collins  
 George H. Curfman  
 Levette J. Davidson  
 Edward V. Dunklee  
 Robert Eagleston  
 Robert S. Ellison  
 Thomas H. Ferril  
 W. W. Grant  
 LeRoy R. Hafen  
 Paul D. Harrison

Henry W. Hough  
 William S. Jackson  
 Ralph B. Mayo  
 E. W. Milligan  
 Lawrence Mott  
 Robert J. Niedrach  
 Forbes Parkhill  
 Virgil V. Peterson  
 Wm. MacLoed Raine  
 Fred Rosenstock  
 Charles B. Roth  
 Henry Toll  
 B. Z. Woods  
 Arthur Zeuch

Corresponding Westerners

Frank A. Brookshier  
 L. G. (Pat) Flannery  
 C. H. Leckenby  
 John C. Thompson  
 Colin B. Goodykoontz

F. E. Voelker  
 Russell Thorp  
 Harry Stewart  
 Ralph Hubert

Exchange Westerners  
(Chicago Posse)

Farleigh Withers  
 Martin Johnson  
 John Jameson  
 Mamel Hahn

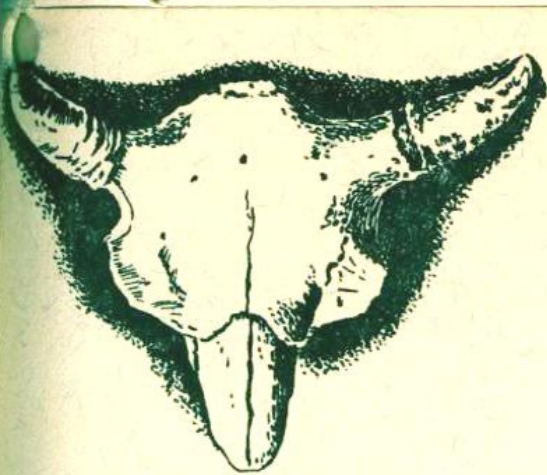
Everett Graf  
 Leslie M. Parker  
 Clarence Paine

Institutional Westerners

Library, University of Wyoming, Laramie, Wyoming

Contributing Members

Velma Linford



# The BRAND BOOK

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DENVER 2, COLO.

ROBERT O. BRAYER, REGISTRAR OF MARKS AND BRANDS

OCTOBER 1, 1945

No. 9

## EARLY COWBOY DAYS IN WYOMING

By Russell Thorp  
Secretary-Chief Inspector  
Wyoming Stock Growers Assn.

The story of the cattle business in Wyoming is one of glamour and romance, of tragedy and heartbreak, of hard work and splendid accomplishment. It is a story of years of affluence, prosperity, and boom days almost beyond the realm of imagination; a story of unbelievable blizzards, drought and erosion, business "panics" and depression, and great financial losses. It also is a story of cattle rustlers, sheep and cattle wars, and struggles against so-called bureaucratic encroachment. It is a story of a satisfactory way of living, gained through a continual struggle to preserve the right to enjoy the freedom so cherished by every rugged individualist.

We have it on authentic record that seven calves of Andalusian breed were shipped in 1521 from Santo Domingo to Mexico. That was the start of the vast cattle industry throughout North America. We find that in a few years the cattle spread northward through Old Mexico. Cortez himself, later a rancher, is said to be the first American to use the branding iron on his stock. His brand was three crosses, said to represent Christ between two thieves. The branding iron was used on both men and cattle. As time went on, we find that the cattle industry spread into what is now the State of Texas.

During the Civil War period cattle and ranches were neglected, and shortly after the close of the war there was an interesting individual by the name of Maverick who found many cattle in these great herds that were unbranded and proceeded to put his brand on them, and he did not stop at his own but included any unbranded cattle that he could find--hence the origin of the term "maverick."

The Texas Trail was for the greater part of its length made up of smaller trails originating in southern Texas, then contracting at certain favorable river crossings and avoiding less favorable grass areas. These trails gradually drew together, converging into one broad concourse which entered Wyoming through Pine Bluffs, crossing Horse Creek, swimming the Platte near the mouth of Raw Hide Creek, with occasional detours across the Platte River near the Platte River bridge at Fort Laramie, on up Raw Hide past Jay Em to the east of Raw Hide Buttes, the Running Water, past Hat Creek Station, down Old Woman and Lance to the Cheyenne River, and to the crossing of the Belle Fourche. There the trail spread fan like to the Dakotas, Indian agencies, northern Wyoming, eastern, central, and western Montana, and the Canadian border--1,700 miles from the Texas ranges.

By 1868 the great migration of men and cattle from the south was well under way. Three hundred thousand cattle each year left Texas for the northern ranges, aggregating more than eight hundred thousand at the peak in 1884. From that time on the numbers declined to the one last through herd in 1897, although about nine years prior to that time the rail connections had been completed to Orin Junction.

In reviewing the news items from the early files of the Lusk Herald, I find in 1887:

"A Hash Knife outfit from Texas driving a herd of 2,300 cattle through the country."

And, again, in later issues:

"Two herds of Matador cattle, numbering 4,500 head, V brand, passed through Lusk last Monday on the way to Montana."

"Two herds, numbering 4,300, passed through Lusk last week. They belonged to Lee and Scott and were being driven to Montana."

"A Hash Knife herd of 2,000 head passed through Lusk on the way to ranges near Stoneville, Montana."

On August 18, 1892, the Herald recorded:

"Probably the last trail herd of the season passed through here Sunday from the south, bound for the northern ranges. It was the O X outfit consisting of 2,000 head."

The last record we find is dated June 24, 1896:

"Another X I T trail herd struck this town the first of the week on its way to Montana ranges."

Author J. Evetts Haley, eminent historian, records:

"In 1897 the syndicate (XIT) only one herd, and its last, made the long trek. The coming of the nester, his control of the waterings, and his network of barbed wire fences brought to an end the greatest and most spectacular pastoral movement of all time."

I have in my records a log of the Texas Trail as kept by Ealy Moore, Trail Boss, in which he recorded his day-by-day movements, Texas to Montana. For example:

June 14th, 1892. Camped fifteen miles of Pine Bluffs, Wyoming.

- June 15th Passed by Pine Bluffs. Rained that evening.
- June 16th Camped twenty miles from Pine Bluffs.
- June 17th Got to Horse Creek.
- June 18th Got to Hawk Springs on Horse Creek.
- June 19th Camped three miles north of Horse Creek.

And here is the interesting part:

- June 20th Camped three miles of North Platte River. Helped a W-W herd and Chris across that day.
- June 21st Assisted Jim Vaughn to cross his herd in the forenoon, and tried to cross mine in the afternoon, but failed.
- June 22nd Assisted Jack Horn to cross.
- June 23rd Helped to cross Mil's, my own, and Dan's herds. Camped one mile from the river.
- June 24th Camped 8 miles up Raw Hide from the river.
- June 25th Made a cut-off of about four miles and camped just below Coffee's ranch.
- June 26th Camped ten miles of Lusk.
- June 27th Passed through Lusk, Wyoming, and camped six miles beyond.

Thus we find it required four days to swim seven herds of cattle, aggregating fifteen thousand head, across the Platte River at the mouth of Rawhide.



They say Trail Drivers were "tough"--they had to be as tough as hickory to endure such hardships and privations.

Visualize, if you will, these great drives confronted with innumerable dangers--encounters with marauding bands of hostile Indians demanding beef by day and running off the "remuda" at night; thunderstorms; cloud-bursts; stampedes; milling herds; buffalo herds scattering the cattle; meager rations; 16 to 18 hours a day in the saddle, including 2 to 4 hours night guard; traveling 10 to 18 miles a day, day in and day out, was the lot of these men. But the Trail Drivers' greatest boast was - "We Held the Herd."

The trail had its day of glamour and tragedies, but with it all was the fascination of seeing just what was over the next hill. I know of no better authority than the late Senator John B. Kendrick, who, in describing his first drive, in 1879, said:

Another interesting thing I might mention is that I do not remember coming in contact with or seeing a wire fence between Fort Worth, Texas, and the head of the Running Water in Wyoming. The most hardened and unobservant cowboy could not help but be impressed with the beautiful and ever varying scenery on the way. The element of danger that was a part of almost every day's experience did not detract from the fascination of the trip, you may be sure - the danger from Indians and the holding of a large herd of cattle in a night so dark that no ray or glimmer of light was to be seen, and when the most insignificant incident or the slightest accident - a stumbling horse, a flash of lightning, the smell of a wild animal, might cause a stampede that would last for hours. After such a night of hardship and terror the men would be exhausted and utterly discouraged with their lot, but a good night's rest would cause them to look upon life in the same cheerful way again.

What at one time was the great highway traversed by great herds of cattle in charge of capable men and accompanied by thousands of horses, has been abandoned and lives now, if at all, only as a part of the history and development of the Great West.

Great men - young men, who had the courage of their convictions, seeking profit and adventure, brought these great herds through to the northwest, replacing the buffalo.

In 1868, John Iliff turned loose in the vicinity of Cheyenne, the first Texas herd trailed into Wyoming, and from that developed one of the greatest adventures in the livestock business of our history.

During the decade from 1876 to 1886, large corporations were formed with American and foreign capital to carry on the cattle business. The publicity given to Wyoming and its possibilities was tremendous. It was called the "Great Grass Bonanza." News of easy profits spread far and wide. Herds began to crowd in from drought-stricken Colorado; some came back along the old Oregon Trail from the Northwest while others came up the Texas Trail or down the old Bozeman Trail from Montana.

Wealthy cattlemen built fine homes in Cheyenne, maintained stables of thoroughbred horses, supported Grand Opera and fine plays, and entertained with a lavish hand.

It was here in Cheyenne that the famous Cheyenne Club flourished. On its membership roll were the names of some of the most prominent families in the United States. I have it on reliable authority that there was a time when the Cheyenne Club bought more high-priced liquors than any other club in the United States.

John Clay, in his story "My Life on the Range," said, referring to the Cheyenne Club:

The hospitality of these people was unbounded. In fact it ran over. It seemed as if you could have champagne for breakfast, again to lunch and over again at dinner. There was a surfeit of good things such as this frontier town could supply. If they lacked facilities at home, they took you to the Cheyenne Club, that hostelry famous the world over. During this visit, I was introduced to this wondrous place, hallowed by many a tale of the Wild West, garlanded with memories of delightful personalities who made it their home.

While I had been a guest several times of the Cheyenne (Wyoming) Club, it was only in 1883 that I became a member of that famous place. Men will congregate, find some common meeting place. In the old days it was Babel; in modern London it is Trafalgar square, where any one except in war times can spout his ideas; in the sporting world it is Epsom Heath, and so on it goes until you reach Plymouth Rock and all that lies west of it. So in Cheyenne, a little town lying like a mirage in the desert, the cowmen of the west found a common meeting place, and all that was good, bad and indifferent, a congenial home in the club. It was a cosmopolitan place. Under its roof reticent Britisher, cautious Scot, exuberant Irishman, careful Yankee, confident Bostonian, worldly New Yorker, chivalrous Southerner, and delightful Canadian, all found a welcome home.

As the brave band dispersed, through death, hard times, extravagance, or other causes, the club of "de Prato" days has sunk, almost shriveled up. The rooms seem haunted. Even the copy of Paul Potter's bull, through which John Coble bored a hole with his six-shooter, has been spirited away to a back room. Photos of racing cups hang still on its walls, memories of old days when Brooks, Kuykendall, Irvine

and others were amateur jockeys. A picture of Rainsford's black cow pony, with all the trappings supplied by that eccentric, hospitable genius, is still hanging on its walls; and Albert Bierstadt's steel engraving of his famous picture, "In the Heart of the Big Horns," presented by him to the club, brings back the thought that a little over a half-century ago this wild land was still terra incognita except to the trapper, or men like Dunraven, who pierced its solitudes in search of sport, or a Mormon prophet seeking a sanctuary by the shores of the Great Salt Lake.

Now let us take a look at the other side of the picture.

I gleaned from the old time press and the records of the Wyoming Stock Growers Association, that the development of the cattle industry produced many humorous, serious, sympathetic, and bloody situations. They had lively times in those days, as you will note from the following:

A procession intensely interesting to the rough-and-ready masculinity who encountered it along the trail pulled out of Cheyenne for the Black Hills gold field. Members of the town's lower social strata--"madames," filles de joie, "pi's," tinhorns--turned out en masse to see it off, to bid its personnel a riotous if not a fond farewell. Moral pollution from the Wyoming capital was about to spill into the new camp of Custer City.

The procession was composed of three wagons, each drawn by four horses. The wagons were loaded with whisky, bar-fixtures, faro layouts, roulette wheels, tables and the other supplies and paraphernalia essential to the operation of a combined saloon and gambling place, in the parlance of the period called a "dance hall." Perched upon this cargo were

the other essentials--gamblers and "girls." There were eight of the former, 14 of the latter. Proprietor of the outfit was one Al Swarringer. Al was a shrewd character who cannily reckoned there would be a better chance to make a fortune in the hills with gals and games than thru sluicing for gold in the gulches.

Representatives of the "solid citizenry" of the community were not altogether absent from the sidelines when the expedition took the trail. Possibly those present of this category were impelled solely by curiosity; history has too much ground to cover to take cognizance of commonplace peccadillos, so if any there were among the male gentry who spoke out of turn by calling "Good-bye" to a "May," a "Mayme," a "Maud" or "Mert" (those of the most ancient of professions had in that time a propensity for assuming names beginning with "M") the slip long ago was swallowed by the mists of antiquity and no record remains to mortify posterity. That whatever, the "girls" waved gaily to all and sundry as they shook the dust of Cheyenne from their slippers as the prelude to shaking the "dust" from the miners in the hills.

As long as we are on the subject of gals here's one from the Rawlin's Journal of 1886:

Calamity Jane is in town. Her postoffice name is Mrs. Martha King. She left Meeker some time since, accompanied by her "best Man" who deserves a hangman's knot. Calamity is not half so bad as the human ghouls that abuse her. The victim of passion, with generous impulses, this poor pilgrim has been made the scape-goat of the outlaw, the assassin, the tinhorn, and at last the outcast of man. Kind Christians, what will you do with her?

From the Carbon County Journal on Dec. 2, 1882, we note:

The following item is at present enjoying the run of the eastern press:

"One of the Deadwood girls is having a dress made and embroidered with the cattle brands of the various cattle men whom she counts among her admirers. It is evident that she is in cahoots with the coroner and surgeons and is taking this way to promote domestic encounters. The Black Hills Pioneer says the above is correct, and adds: 'The dress referred to is not only receiving the brands of many of our thoughtless young stockmen but the initials of their names as well. An artistic seamstress in Fountain City is doing the embroidery, under a contract of \$200. Some of the investors in the dress will no doubt be heartily ashamed of their foolish investment before they die, if not sooner. The brands and initials of her particular favorites cover the side of her neck and bosom, and the brands, etc., of those occupying but an indifferent corner in her affections are attached to the bottom of the skirt, and some are located so as to be frequently sat down upon. After reading the explanation her admirers will be enabled to discover at a glance their standing in the girl's sinful love, whenever she appears in her novel frock.'"

I find the following terse report by Inspector Morrison of the Wyoming Stock Growers Association.

Ordered to go to Ft. Laramie and arrest \_\_\_\_\_.  
On returning with the prisoner to Cheyenne, at the crossing of Horse Creek, prisoner attempted to escape and thereby met his death.

I have purposely left out the name of the prisoner because his grandchildren have become useful and respected citizens of this state.

Tony Whitfield shot and killed "Big Smith" at Chadron, Tuesday. The trouble arose over a "soiled dove."

Wednesday night two pistol shots rang out in the still night air. Citizens investigated. They found it to be a family quarrel between Charley Boyse and his wife, Lou. She shot him through one finger and he beat her on the head with a six-shooter. No arrests were made.

J. S. Gustine of the firm of Harris & Gustine, got his family here just in time to get a bad scare by the reckless shooting the night of the 3rd. One bullet passed through their tent and only a few inches from a sleeping child. We hope this dangerous pastime is over in Lusk.

Harry C. King shot and killed J. H. Bowman at Douglas last Tuesday.

"Broncho Charley" Lacey was shot and instantly killed by Hugo S. Miller at Lander on October 27. Lacey was a bad man and for once tangled with a mere boy who was faster on the draw. Miller is a quiet, unassuming boy, and had been abused by Lacey, who got about what he deserved.

A pack of coyotes at the edge of town Sunday kept up such a howl that guests at the Elkhorn Hotel had a hard time sleeping. George Wiley ran them off with his Winchester.

There was considerable "corn-popping" going on last night, which disturbed our sleep. The cowpunchers appeared to be having a large time.

Doc Cornett, one of the squarest boys in the

territory, has purchased the dance hall in Lusk, and among other attractions has opened a monte bank with a \$500 bank roll.

It is reported here that Sweetwater County has had another fatal shooting affray, the principals of which are known in Lusk. The victim was a one-legged cowboy named Bill Gross, who created some excitement in Green River last summer by lassoing several Chinamen and dragging them about the streets. Gross was killed by another cowboy, named Barney Todd, who beat him on the draw.

There was a lot of promiscuous shooting on Main Street this week by irresponsible cowpunchers who came to town and got loaded up on a bad brand of bug juice. To hear the incessant crack of the six-shooter one would be led to believe that Lusk is still a frontier town. Why can't we have a little law and order here? Of course we know the shooting is done in sport, but we have gotten tired of putting new window lights in the Herald office just to have them shot out. What we need is a deputy sheriff located here permanently.

A drunken cowboy rode his horse down the sidewalk on main street yesterday. The marshal tried to stop him by grabbing a stirrup, but he fell down and sprained an ankle, while the cowboy continued his gallop down the sidewalk, fired a couple of shots and disappeared in a cloud of dust, while the marshal hobbled to the drugstore to get his ankle bathed in some horse linament.

"Clover" Bill, notorious horse thief, who was captured some time ago near Lusk by Sheriff Prost, and turned over to the sheriff of Fall River County, Dakota, escaped a few days ago and stole a horse from the S - E outfit. If captured again, he will probably be lynched.



In order that you may have some idea of the cattle shipments of those early days, we find the following interesting item:

Shipping Notes--The O W outfit shipped 600 cattle yesterday. On the 16th Chandler shipped 15 carloads of cattle to Chicago. 600 head of 5-year-old cattle were shipped out of Lusk on the 18th. J. W. Hammond of Indian Creek will ship 25 cars of cattle on the 25th. The Converse Cattle Company shipped 52 cars, or 1200 head, of cattle, to Chicago. Stevens & Mizener of Albany County shipped 15 cars of cattle to Chicago from Lusk on the 15th. Charley Wulfjen of Hat Creek will ship 22 cars of cattle from Lusk to Chicago on the 20th. Mr. Lawrence of the Bar T Cross outfit shipped 600 head of beef steers yesterday. Good judges estimate that from 40,000 to 50,000 head of cattle will be shipped from Lusk this season.

In passing, I wish to quote one of the thrillers that will clearly indicate to you some of the tragedies of the range:

Casper, Wyoming  
July 19, 1897

Editor Casper Tribune:

I have seen all sorts of reports bearing upon John R. Smith gang stopping the roundups from working in the Hole-in-the-Wall country. They will have a hard time of it. Neither the C Y boys, the Keystone nor the Pugsley outfits are hunting a fight. We are all working men and only want such cattle as belong to our employers, and it is an indisputable fact that the Hole-in-the-Wall is the hiding place for thieves, and has been for years. Thousands of dollars worth of cattle have been stolen by these outlaws, brands burned out and their own brands substituted. Their

friends then can help them to dispose of the burned cattle. Every year I have gotten back cattle from there that were taken from their mothers and lots of cattle on which the brands were changed. I am going to work that country and have asked the sheriffs of Natrona and Johnson Counties to work with us and see that everybody is treated right. The time has come for all honest working men to declare themselves in favor of law and justice. And, if these men want to fight us, when we know we are right, I say fight.

(Sgd.) R. M. Divine.

Brother Divine's letter apparently failed to impress the outlaws, for the following reply was received:

Bob Devine you think you have played hell, you have just begun you will get your dose there is men enuff up here to kill you. We are going to get you or lose twelve more men you must stay out of this country if you want to live. We are not going to take any chances any more but will get you any way we can we want one hair apiece out of that damed old chin of yours you have give us the worst of it all the way through and you must stay out or die. You had better keep your damed outfit out if you want to keep them. Don't stick that damed old head of yours in this country again if you do not want it shot off we are twelve men appointed a purpose to get you if you don't stay out of here.

Revenge Gange

Cheyenne became the capital of the cattle world, and it was here, in the fall of 1872, that five men met in a livery stable to organize a vigilante committee to punish cattle and horse thieves. As a result of this meeting there came into being, the following spring of 1873, the Laramie County Stock

Growers Association, later known as the Wyoming Stock Growers Association. This Association was the result of an effort for organization for mutual protection.

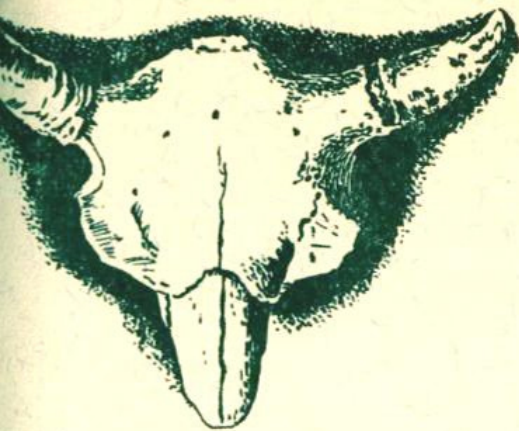
It is a fact that the cattleman, for protection, is wholly dependent on brands for identification of his livestock, wherever they may be found. The purpose of brand inspection is to determine the proper ownership of cattle, horses, and mules from the brand appearing on them, and to make certain that the proceeds of estrays, or any animals to which the possessor can not show title, reach the hands of the rightful owners. The inspector's first duty is to be on watch for stolen cattle, for worked-over brands, for fake bills of sale, or intentional or unintentional diversion of valuable livestock from its rightful owner. Such has been the history of the inspection and detection staff created and maintained for almost three-quarters of a century by the Wyoming Stock Growers Association.

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#### HAFEN TO DESCRIBE FOUNDING OF JEFFERSON TERRITORY

At the October 26th meeting of the WESTERNERS Dr. LeRoy R. Hafen, State Historian of Colorado and editor of the new five-volume history of the state now in preparation, will describe some of the details attendant upon the establishment of the Territory of Jefferson previous to the creation of the Territory of Colorado in 1861.

Sheriff Bemis will be visiting the Chicago WESTERNERS this month and Deputy Sheriff Dunklee will preside over the October Roundup.



# *The* BRAND BOOK

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DENVER 2, COLO.

T. O. BRAYER, REGISTRAR OF MARKS AND BRANDS

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## JEFFERSON TERRITORY AND ITS COMPETITORS

By Dr. LeRoy R. Hafen

One of the most interesting features of pioneer development in Colorado was the rise of civic and political organizations. Anglo-Saxons are noted for their inborn tendency toward self-government and political creation, and nowhere is the trait better exemplified than in the early history of the Colorado region. A. D. Richardson, noted journalist, wrote with both truth and humor on his visit to Denver in 1859: "Making governments and building towns are the natural employments of the migratory Yankee. He takes to them as instinctively as a young duck to water. Congregate a hundred Americans anywhere beyond the settlements, and they immediately lay out a city, frame a State constitution and apply for admission into the Union, while twenty-five of them become candidates for the United States Senate."

### Governmental Jurisdictions

From 1854 to 1858 the land of present Colorado lay within the boundaries of four Territories. All that portion west of the continental divide was a part of Utah; that south of the 38th parallel, east of the continental divide and west of the 103d degree of west longitude, belonged to New Mexico; and the remaining part was included in Kansas and Nebraska, with the dividing line on the 40th

parallel. Such the divisions remained until Colorado Territory was created in 1861. Thus, at the time of their founding, Breckenridge was in Utah, Conejos in New Mexico, Boulder in Nebraska, and Denver in Kansas.

All the region was Indian territory, for prior to 1861 the natives had made no treaties ceding their land to the whites in this region. The newcomers were intruders in the Indian country, but the pioneer Pike's Peakers showed little regard for Indian title, and were almost equally disinclined to acknowledge the jurisdiction of existing Territorial governments. From the beginning they envisioned the creation of a new mountain state; any other arrangement was merely a temporary expedient.

#### Earliest Governmental Activity

On November 6, 1858, the handful of pioneers at Auraria elected Hiram J. Graham as their delegate to Washington, and A. J. Smith to represent them in the Kansas Legislature. Mr. Graham carried with him across the plains and to the national capital a petition praying the organization of a new Territory in the Pike's Peak region. In Washington, he found others already planning a new Territory for the gold country. Schuyler Colfax, awake to the possibilities of the region, introduced in the House, on January 6, 1859, a bill for the creation of "Colona Territory." The bill appears to have died at birth.

Mr. Graham, although accorded no standing as a Territorial Delegate, had some influence among the national lawmakers. On January 27 the Chairman of the Senate Committee on Territories, Senator Green of Missouri, presented the "petition of Hiram J. Graham, praying the organization of a new Territory to be composed of (the western part of) Kansas, the southwestern part of Nebraska and the eastern part of Utah." The Committee's unfavorable report of February 8 was accepted by the Senate.

In the meantime Graham had been active in the House. Alexander H. Stephens, soon to become vice-president of the Confederacy, was Chairman of the House Committee on Territories. On January 28 he reported from his committee "a bill to provide a temporary government for the Territory of Jefferson," to be erected in the Pike's Peak country. Who first suggested this name for our territory is not definitely known, but it is altogether probable that Stephens did so, and planned thus to honor a former President and the founder of his own party. "Jefferson," however, did not appeal to the Republican Representative from Pennsylvania, Mr. Grow, who immediately proposed to substitute the name "Osage." Repeated efforts were made by Stephens to further his Territorial proposal, but the session ended without action being taken. Graham, who had personally borne the expense of his trip to Washington and his stay there, now retired without having achieved his purpose.

Meanwhile the government of Kansas was giving some attention to the Pike's Peak region. Before Governor Denver's appointees to office in Arapahoe County had entered upon their duties, the legislature, anticipating a great and rapid development in the western section of her territory, replaced Arapahoe County by creating on February 8, 1859, five new counties in the same region--Montana, Cro, El Paso, Fremont, and Broderick. For each county, boards of Commissioners were named who were to select the respective county seats and be paid for their services from the "proceeds of the sale of the first lots of each county seat." None of the counties appear to have been organized, nor did Governor Denver's appointees, previously named, assume office. Instead, there was held in Denver on March 28, 1859, an election for officers of Arapahoe County, Kansas. Whether the managers of this election were unaware of the abolition of Arapahoe County by the legislature more than a month previously, or were ignoring that action, is not clear. Officers of Arapahoe County were elected and at least some of these performed the duties of their offices during succeeding months.

A New State Proposed

With the arrival of immigrants in the spring of 1859 there arose a demand for the creation of a new state or territory in the Pike's Peak country. When it became clear that no action would be taken by Congress (session of 1858-59) toward political organization of the region, the movement for an independent government was given impetus. Perhaps the first definite proposal for a new state came from Fountain City (forerunner of present Pueblo). On April 7, 1859, the citizens "without distinction of party, unanimously declared in favor of a new state" to be formed from a "portion of Kansas, Nebraska, Utah, and New Mexico." A similar meeting was held in Auraria on April 11. It called upon the different communities to appoint delegates to meet in convention on April 14 "to take into consideration the propriety of organizing a new State or Territory." The meeting of the 14th selected delegates to the general convention appointed for the next day.

The convention of the 15th assembled in the upper story of "Uncle Dick" Wootton's store in Auraria, with thirty delegates present. They represented: Fountain City, Eldorado and El Paso, Arapahoe, Auraria, and Denver City. A preamble and resolutions were adopted:

...Whereas, Owing to the absolute and pressing necessity for an immediate and adequate government for the large population now here and soon to be among us, actively engaged in the various acts of life; and aware of the impossibility of an early formation into a territorial government, that duty having been neglected by the recent session of Congress; and also believing that a territorial government is not such as our large and peculiarly situated population demands: therefore,

Resolved, That the State contemplated shall embrace the following territory, viz; its northern

boundary commencing at 102d meridian of west longitude from Greenwich, Eng., with the 43d parallel of north latitude, and running west on the said parallel to its intersection with the 110th meridian of west longitude, thence south to the 37th parallel of north latitude, thence east on that parallel to the 102d meridian, and thence north to the beginning; and that the name thereof shall be the State of JEFFERSON.

Resolved, That the citizens of the proposed State be requested to elect delegates to attend a constitutional convention, to be held in Denver City on the 1st Monday in June, 1859, and said election of delegates shall be held on the 2nd Monday of May next, or between that time and the time specified for the meeting of the convention.

Resolved, That it shall be the duty of said convention, when convened, to prepare a constitution for the said state, ...

On motion, the following gentlemen were appointed a committee to prepare an address to the citizens of the intended State of Jefferson, viz: H. P. A. Smith, L. J. Russell, L. J. Winchester, H. McCoy and D. B. Castro.

On motion, the following gentlemen were appointed as a Central committee, viz: M. Clancy, C. Davidson, C. Gilmer, J. M. Shaeffer and W. M. Slaughter.

On motion, the proceedings were ordered to be published in the papers of the whole United States friendly to our objects. A vote of thanks was passed to the officers of the Convention and for the use of the Hall, and the Convention adjourned.

The Committee appointed by the Preliminary Convention prepared and published the following address to the "Electors of the Intended State of Jefferson":



It has been made our duty to address you at this time, to set briefly before you the reasons for requesting you to unite as one man in throwing off the feeble ties that bind us to the far off governments of our several territories, and forming what in our isolated position becomes a necessity, viz: a new and independent State. It has always been the policy of the United States to form and admit new States into the Union as fast as the necessities of the people have required it. So much has this been the case that it may almost be called an immutable rule, and how strongly does this rule apply to us. Severed by a distance of over seven hundred miles from the governments of Kansas and Nebraska, and four hundred from New Mexico or Utah, nature itself has rendered it impossible for us to depend upon either of them. The time necessary to send a petition or receive even a message of any kind is so great, that such a government becomes almost a farce, and we are forced to act as if we had nothing but ourselves to depend upon. The business of our intended State will be principally mining — of the others, entirely agriculture — two means so different as to be under the circumstances incompatible. The prices of labor are and will be so different that no laws that apply to one will apply to the other, while divided as we are between Kansas, Nebraska, New Mexico and Utah, our representation will be but nominal with each, and we at the mercy of men who know nothing of our wants, cannot realize our situation, and will use their position only to enrich themselves at our expense.

Again, if crime be committed, the U. S. courts of a Territory are the only ones competent for a trial, and what criminal will be deterred from the commission of crime when his judge is separated from him by seven hundred miles of arid waste. Government of some kind we must have, and the question

narrows itself down to this point: Shall it be the government of the knife and the revolver, or shall we unite in forming here in our golden country, among the ravines and gulches of the Rocky Mountains, and the fertile valleys of the Arkansas and Plattes, a new and independent State? Shall the real keystone of the Union be now set on the summit of the arch, and a republic inaugurated that can from her mountain aerie cast her eye to the Pacific on the one hand and the Atlantic on the other. Embracing the waters of the Arkansas and the Plattes flowing into the Atlantic, Grand River and Colorado flowing to the Pacific, she at once becomes the real centre of the Union.

We may soon expect the advent of the iron horse, and a national railroad is no longer a question. Northern and southern routes will no longer be a cause of delay, for nature has provided by her golden largess an argument for its location that will be irresistible, and both roads will become not a disputed issue but a remunerative speculation.

Let us then all unite as one in so great an object; forgotten be for the time all party creeds and political differences, and with an eye solely to so glorious a result, let us all push forward to the one point before us, the formation of the State of Jefferson. . . . It will thus be seen that we include within our limits all the material necessary to make not only a state but a nation. With our mountains teeming with minerals and metals of every kind; our valleys richer for agricultural purposes than any part of the Union, with a population hardy as the hills they traverse, and prairies to divide us from the rest of the world, we may indeed feel free as the mountain air which brings to us health and vigor. . . . It is a glorious cause, and a feeling of pride as well as of duty should lead us to act in it.

This move for self-government was but a natural result of conditions, and was neither new nor unique in the history of Anglo-Americans in the New World. It was but the re-expression of the principles embodied in the Mayflower Compact (1620), and in the organic acts of the "State of Franklin" (1784), "Oregon Territory" (1843), the "State of Deseret" (1850), and various other spontaneous governments that arose on the frontier.

As anticipated, the immigrant rush to the Colorado region in the spring of 1859 was very large. But unfortunately, gold discoveries during the early months were not up to expectations. Many of the goldseekers, lured to the gold fields by greatly exaggerated reports, were gravely disappointed with the new country. They turned their covered wagons about and trudged back over the plains with the embittered cry of a "Pike's Peak Humbug." Even the discovery on May 6, 1859, of the important Gregory Lode, the first important gold find in the region, failed to hold all the gold hunters or to induce the "go-backs" to turn again to the mountains. Naturally the disappointments in mining development were reflected in political events. When the time arrived for the constitutional convention to meet in Denver (June 6), the future of the prospective State was still rather doubtful.

Horace Greeley, famous editor of the New York Tribune, arrived in Denver by Concord stagecoach on the day the convention met. He addressed the citizens at a public meeting that first evening and advocated the formation of a State government. Two days later, at a mass meeting in the Gregory Diggings, he repeated the recommendation.

The constitutional convention that met in Denver on June 6 and 7, 1859, was composed of fifty delegates from the following districts: Auraria, Fountain City, Douglas City, Lupton's Fort, Denver City, Gregory Diggings, Huerfano, Sanders Ranch, Eldorado, Russellville, Baden, Highland, and

Colona. With the uncertain state of existing affairs, the convention decided to appoint committees to draft a constitution and then adjourn until the first of August to await developments.

With the return eastward of many emigrants and a prospect of but few new arrivals before another season, the feeling grew that the pioneers had politically over-stepped themselves. Would not a Territorial organization be adequate to the needs of the people, and at the same time dispense with the financial burden involved in statehood? This question became the major issue in the convention that assembled on August 1, 1859.

This convention accepted the credentials of 167 delegates, from districts throughout the region. The sessions lasted for six days, with spirited discussions throughout. The question as to the adoption of a State or a Territorial government ended in compromise. It was decided to draft both a State Constitution and a Memorial to Congress praying the establishment of a Territorial government. The people were to vote on the two propositions at an election on September 5th.

At this election the State Constitution was defeated. The Rocky Mountain News (September 17, 1859) reported 2,007 ballots cast for a Territory, 1649 for a State, and observed that not over one-fourth of the miners voted.

### Jefferson Territory

Steps were presently taken toward the organization of a "Provisional Territorial Government." A Territorial Convention met in Golden September 21 to nominate a candidate for Delegate to Congress, but adjourned without transacting any business. Pursuant to a call issued by a Denver mass meeting on September 24, an election was held on October 3 for selection of delegates to the proposed Territorial con-

vention. On this same day two other elections were held. One of these resulted in the election of B. D. Williams from a field of seven candidates, as Delegate of Jefferson Territory in the national Congress. The other was the election of a quota of officers for Arapahoe County, Kansas.

One fails to find much logic or consistency in these political maneuvers. Laws and principles that suited the purposes of certain individuals were complied with, while others which may have been more authentic or consistent were ignored. Said the News editorially on October 6:

Here we go, a regular tripple-headed government machine; south of 40 deg., we hang on the skirts of Kansas; north of 40 deg., to those of Nebraska; straddling the line, we have just elected a Delegate to the United States Congress, from the "Territory of Jefferson," and ere long we will have in full blast a provisional government of Rocky Mountain growth and manufacture.

The convention to form a Provisional Government met at Denver on October 10 and in a three-day session formed and adopted a constitution for Jefferson Territory and nominated officers for this political entity. This Territorial constitution has a Preamble almost identical with that of the State constitution adopted by the convention on August 6 preceding. Otherwise the State constitution is much longer than the Territorial document, the former running through more than seven columns in the pioneer newspaper, while the latter filled but two. The convention nominated candidates for the Territorial offices and these nominees, on the day following adjournment of the convention, issued a public address in which they justified the provisional government and asserted that "in the inherent right which every community of people have to govern themselves in the absence of regular Government, we find a good and sufficient reason for forming the Provisional Government."

On October 24 the Territorial government was adopted by a vote of 1852 to 280. At the same election the following Territorial officials were chosen: R. W. Steele, for Governor; L. W. Bliss, Secretary; R. L. Wootton, Treasurer; G. R. Bissell, Auditor; Samuel McLean, Attorney General; A. J. Allison, Chief Justice; L. W. Borton and C. J. Johnson, Associate Justices; O. B. Totten, Clerk of the Supreme Court; Hickory Rogers, Marshal; and H. A. McAfee, Superintendent of Public Instruction.

In size, Jefferson Territory (with the same boundaries as the proposed State of Jefferson) had assumed ample proportions. It included all of present Colorado and liberal slices of Utah and Wyoming of today. The boundaries were fixed at the 102d and 110th meridians of west longitude, and the 37th and 43d degrees of north latitude. Jefferson embraced sections of the existing Territories of Kansas, Nebraska, Wyoming, and Utah.

The General Assembly of Jefferson Territory convened at Denver on November 7, 1859. It was a bi-cameral body, composed of eight members in the Council and twenty-one in the House. At the opening session Governor Steele presented an able Message. He gave a summary of the history of the region, an exposition of the necessity for the provisional government, a description of the resources of the country, and made recommendations as to needed legislation.

In a thirty-one day session (November 7 to December 7, 1859) the General Assembly defined the duties and fixed the salaries of the Territorial officials; established a judicial system; divided the Territory into twelve counties and three judicial districts; authorized the issuance of warrants in payment of salaries and expenses of the government; consolidated Denver, Auraria, and Highland; incorporated a number of road, bridge, ditch, mining, lumbering, insurance, and town companies; and passed other general laws. It appointed a joint committee to draft civil and criminal codes for presen-

tation to an adjourned session. This extra session, held January 23, to 25, 1860, adopted extensive codes of civil and criminal law.

The enactment of laws was easily accomplished, but their execution was quite another matter. Every one was aware of the spontaneous nature of the government and of its lack of legal authority. The greater part of the better element of the population saw in it a good solution of their perplexing political problems, and for some months gave it their support. But even from the day of its inauguration there were many who refused to acknowledge its jurisdiction or to lend it support. On the day following the convening of the General Assembly some of those claiming to recognize Kansas authority held an election at which a representative was chosen to the Kansas legislature and a set of officers elected for Arapahoe County. (This was the third election of the year for officers of defunct Arapahoe County).

The most telling opposition to the Territory came when it attempted to raise revenue. When a poll tax of one dollar was levied to defray the expenses of government, the opposition crystalized. Six hundred miners from the mountain camps signed a pledge to resist the collection of any tax imposed by the Provisional Government. Wrote a correspondent from Mountain City on December 23: "The miners had no objections to ambitious men seeking and obtaining office, nor did they care how long the gentlemen in office gave forth laws to the world, but when they came to vote themselves ten dollars per day for their huge services, they aroused a spirit of indignation that is entirely irresistible.

"The laws cannot be enforced here; the man who tries it will find as many opponents as there are miners in the mountains, and the one who comes to collect taxes here will get a far greater display of bullets than dollars."

Financial rocks endangered the Jefferson ship of state,

but though the craft was unable to make a successful voyage, it did manage to remain afloat until Congress created a more seaworthy vessel.

### Mining Districts

In the meantime the really effective governments in the new country were the local ones of the Mining Districts and Claim Clubs. These were as extra-legal as Jefferson Territory and equally spontaneous, but operating in a smaller area, in a group with common interests, they were much more effective.

When prospectors revealed rich diggings or lodes and men flocked to the scene, it was imperative that some regulations be formed to safeguard rights and protect holdings. By a common impulse these miners assembled in the open air and in that great, democratic institution, the mass meeting, decided all questions that arose. They organized Mining Districts and provided for their government. The constitutions and laws adopted usually included the following provisions: gave the name and boundaries of the District; listed the officers, defined their duties, and provided for their election; fixed the size of mining claims and described the amount of work or other requirements necessary to hold them; outlined a method of settling disputes; and provided a simplified system and appropriate laws for handling ordinary civil and criminal cases that might arise.

The rules and regulations adopted were simple and clear, and therefore effective. A person accused of crime was given a hearing before a jury and straightway the verdict was executed, without the prolonged delays that so often defeat justice today. Crimes were usually punished by forfeiture of property, whipping, banishment from camp, or hanging, depending upon the seriousness of the offense. But an appeal could be made to a meeting of all the citizens of the District, which was the court of last resort.



There is some uncertainty as to which was the first Mining District organized in Colorado, as some of the early records have disappeared. It is probable that the first was "Mountain District No. 1, Nebraska Territory," formed in the Gold Hill area of Boulder County. It may have been formed as early as March 7, 1859. The first miners' meeting of which definite record is extant, was held in the vicinity of present Idaho Springs. The printed record (in the Rocky Mountain News of May 14, 1859) follows:

#### MINERS MEETING

Jackson Diggings, Cooks Creek  
May 9th, 1859

Meeting organized by calling Jas. S. Lowry to the chair and electing D. C. Collier Secy.

On Motion a committee of three were appointed by the meeting consisting of Messrs. Allen, Trascher and Wright, to draft By-laws and resolutions, who reported the following which were adopted:

Sec. 1. Each claim shall be fifty feet front by two hundred deep.

Sec. 2. Every claim shall be marked and staked with at least two stakes and shall be improved within ten days after taking.

Sec. 3. The discoverers of new diggings shall be entitled to one extra claim.

Resolved, that the Chicago company be entitled to two extra claims in these diggings.

A. J. Storm was chosen permanent Secretary, Wm. M. Slaughter, Vice President, and a committee appointed to draft permanent Constitution and By-laws to report at the next meeting.

The proceedings were ordered to be published in the Rocky Mountain News.

Meeting adjourned for one week.

D. C. Collier, Sec.

The next District organized, and the first to publish and post its laws, was formed at the Gregory Diggings, near present Central City, on June 8, 1859. The rare broadside carrying these laws reads as follows:

LAWS AND REGULATIONS  
OF THE MINERS  
OF THE GREGORY DIGGINGS DISTRICT

At a meeting of the miners of Gregory diggings, on the north Fork of Clear creek, K. T., on the evening of the eighth instant Wilk Defrees was elected president, and Joseph Casto secretary.

First--resolved that this mining district shall be bounded as follows: commencing at the mouth of the north fork of Clear creek, and following the divide between said stream and Rallston creek, running seven miles up the last named stream to a point known as Miners Camp. Thence South West to the divide between the North fork of Clear creek and the south branch of the same, to the place of beginning.

Second--resolved that no miner shall hold more than one claim except by purchase or discovery, and in case of purchase the same shall be attested by at least two disinterested witnesses, and shall be recorded by the Secretary, and the Secretary shall receive in compensation the fee of one dollar.

Third--resolved that no claim which has or may be made shall be good and valid, unless staked off with the owners' name, giving the direction, length, breadth, also the date when said claim was made; and when held by a company, the name of each member shall appear conspicuously.

Fourth--resolved that each miner shall be entitled to hold one mountain claim, one gulch claim and one creek claim, for the purpose of washing; the first to be 100 feet long and fifty feet wide, the

second 100 feet up and down the river or gulch, and extending fifty feet.

Fifth--resolved that mountain claims shall be worked within 10 days from the time they are staked off, otherwise forfeited.

Sixth--resolved that when members of a company constituted of two or more shall be at work on one claim of the company, the rest shall be considered as worked by putting a notice of the same on the claim.

Seventh--resolved that each discovery claim shall be marked as such, and shall be safely held whether worked or not.

Eighth--resolved that in all cases priority of claims, when honestly carried out, shall be respected.

Ninth--resolved that when two parties wishing to use water on the same stream or ravine, for quartz mining purposes, no person shall use more than one half of the water.

Passed at the Miners' Meeting, June eighth, one thousand eight hundred and fifty-nine.

JAS. CASTO, Secretary.                      WILK DEFREES,  
President.

As the miners gained experience in lawmaking they formulated extended constitutions and laws. Scores of these are preserved in manuscript form in the archives of the State Historical Society of Colorado and in the County Clerks' offices of Colorado's early mining counties. A number of Districts published their laws in pamphlet form. These are now rare items of Western Americana.

So important were these records and the property rights they safeguarded that the legislature of Jefferson Territory and the first General Assembly of Colorado Territory both enacted laws legalizing the records and laws of these early Mining Districts.

### Claim Clubs

Claim Clubs came into existence because settlers on the frontiers outdistanced the laws and especially the land surveyors of the federal government. These protective associations were designed to secure to the squatters the possession of a particular tract of agricultural land against latecomers and speculators. They made it possible and practicable for settlers to take and hold portions of the public domain prior to the government's offering of the land for sale.

Claim Club technique was well established in frontier areas of the United States before the migration to Colorado began. An association for claims to agricultural land was formed in Alabama in 1830. In Iowa and Wisconsin during the late 1830s and in the 40s, Claim Clubs were numerous and were especially effective in safeguarding the rights of squatters.

The Colorado Claim Clubs were organized before the land here was surveyed or the Indian title extinguished, and the federal government had made no provision for legal occupancy of this land by white men. Legally, Colorado's pioneer settlers were trespassers on unsurveyed Indian land, without benefit of preemption and without recourse to law if their claims were jumped. It was natural that they organize to protect their holdings and property rights. Writes Dr. George L. Anderson:

These informal, extra-legal, protective associations bridged the gap for the settlers between settlement and proving up under the preemption act, by assuring them possession against all comers until the day that the tract was formally opened to settlement. They represent an attempt at an orderly solution of disputes and disagreements in communities which were without the usual agencies of law and order. As such they

were in a real sense the forerunners of local governmental institutions in localities that were outside the limits of organized units of local government. They were the answer of the premature pioneer to a sluggish government. . . .

It was characteristic of these early associations to have a written constitution, a definite group of officers, a panel of arbitrators, and a body of by-laws and regulations which governed the taking up and validating of claims on the public domain, or potential public domain.

The agricultural Claim Clubs were not nearly so numerous as the Mining District governments in the Colorado region. And of the Claim Clubs known to have existed, only a few have records that are preserved. Other clubs are known only through notices and reports in the pioneer newspapers. The Arapahoe County Claim Club is mentioned in the Rocky Mountain News of August 13, 1859, and reference is therein made to a meeting of the club at Auraria on August 8, at which time the following resolution was adopted:

Resolved, That each and every claim holder, who holds a claim for farming purposes, shall make, or cause to be made, improvements on his or their claim, by breaking one acre of land: or building a house sufficiently good to live in. The same shall be made within sixty days from the date of this resolution.

Resolved, That all claims, with the above improvements, shall be considered valid for one year from the time the improvements are made.

This Club was especially active at the time of the attempted jumping of part of the Denver townsite in February, 1860. The following revised constitution for the club was adopted on February 11, 1860:

## CONSTITUTION OF ARAPAHOE COUNTY CLAIM CLUB

Whereas it sometimes becomes necessary for persons to associate themselves together for certain purposes, such as the protection of life and property; and as we have left the peaceful shade of civilization -- left friends and homes for the purpose of bettering our condition, we, therefore, associate ourselves together under the name of "The Arapahoe County Claim Club," and adopt the following Constitution:

Article I. There shall be elected on the second Saturday of February, and annually thereafter, one President, one Vice President, one Secretary, and six Directors, who shall constitute a Board of Managers.

Article II. It shall be the duty of the President to preside at all meetings . . .

Article III. Hereafter any person taking a claim for farming purposes shall be entitled to one hundred and sixty acres in one body, provided the same shall be in a square, and the lines shall conform to the cardinal points of the compass, with the course plainly marked by stakes, trees, or mounds, and have the claimant's name written plainly thereon, with the date of taking the same, and shall, within five days after making said claim, file with the Recorder the boundaries of the same, showing that he has at least made four corners to the claim

...

Other articles made the following provisions: that claimants must occupy their claims or make specified improvements; that claims be on one side only of the Platte River, Clear Creek, and Cherry Creek; that selling of claims was permissible; that sawmill owners be entitled to 160 acres as a mill site and to 640 acres of timber land; that town companies each be allowed an area not to exceed 1280 acres; that disputes be settled by the method provided; that members of the Club sign the consti-

tution; that amendments of the constitution be made by a two-thirds vote of members; and that monthly meetings be held.

A large portion of the extant records of Claim Clubs is devoted to notices filed by members in which they describe their respective tracts of land. The following is a typical one:

Colorado City, Dec. 15th, 1859

Wm. Henry Garvin claims within the jurisdiction of the El Paso Claim Club one hundred and sixty acres of land for farming purposes, described as follows: commencing at a stake on the northeast corner of said claim near the north end of the "Gypsum Quarry" so called, about two miles north from Colorado City, and running from said stake west 160 rods, and immediately across the upper or north end of the "Red Rocks" so called, from thence at right angles running south 160 rods along the west line of the place known & designated as the "Garden of the Gods" from thence at right angles 160 rods east to a point near the north west corner of the claim known as M. S. Beach's claim on "Camp Creek," from thence at right angles in a north line to stake at place of beginning.

The said claim taken Dec. 12th / 59 and the foundation laid immediately west of the large "Red Rock" & as near the centre of said claim as may be.

Witnessed by

M. S. Beach

James Garvin

Wm. H. Garvin.

Recorded Dec. 15, 1859

H. J. Brughardt, Recorder

There are about 320 of these recorded claims to 160-acre, farming tracts in the El Paso Claim Club records. Sales and transfers are duly filed also. There were some claims to other than agricultural lands, such as for coal lands, "pineries," lime kilns, quarries, dam and ditch sites, and town sites.

Congressional Action, Session of 1859-60

Jefferson Territory was intended as a provisional government only, and its agents and influence were employed at the national capital in attempts to secure recognition for the establishment of a Territorial government. Both B. D. Williams and George H. Willing claimed to be the duly elected Delegate of Jefferson Territory to the national Congress, and proceeded to Washington, where each urged government action in behalf of the Pike's Peak country. Joining them presently was S. W. Beall, who had been authorized by the Denver City Town Company to represent its interests in the national capital.

On February 15, 1860, Representative Adams presented to the House a communication from Delegate Williams which included a petition from the Governor and legislature of "Jefferson Territory," praying for the recognition of the provisional government already established and its Territorial Delegate. Five days later President Buchanan presented to Congress a memorial from residents of the "eastern slope of the Rocky Mountains" asking the creation of a Territorial government and the extinguishment of the Indian title to lands of the region.

On April 3, Senator Green of Missouri introduced a bill "to provide for a temporary government in the Territory of Colorado" (Senate Bill no. 366).

This was the first appearance of the name "Colorado" for the Territory. S. W. Beall wrote from Washington that the name "Jefferson" did not meet with favor in the capital. It was asserted that all the presidents could not have Territories named in their honor, and that Washington should be alone with this distinction. It is probable also that the young Republican party was not enamored with the name of Jefferson. Apparently, there was considerable discussion as to a name. The Rocky Mountain News of April 18, 1860, says:



The Senate Committee have before them the following names: "Yampa," interpreted Bear; "Idahoe," meaning Gem of the Mountains; "Memara"; "Colorado"; "San Juan"; "Lula," interpreted Mountain Fairy; "Weapollao"; "Arapahoe," the name of the Indian tribe inhabiting the Pike's Peak region. The House seems to have hit upon the very appropriate name of "Tahosa" which means Dwellers on the Mountain Tops. This, or "Idahoe," will probably be adopted. Among the anti-barbarian names suggested, excepting that of the author of the Declaration of Independence, I have heard those of Lafayette, Columbus and Franklin, each entitled to the highest considerations.

No further action appears to have been taken on this Territorial matter by the upper house during the remainder of the session.

On May 10th Chairman Grow, of the House Committee on Territories, reported a bill for the organization of the Pike's Peak region into the "Territory of Idaho." Slavery debate absorbed the attention of Congress and two days thereafter the bill was laid on the table. Thus ended for the session (1859-60) Congressional action in behalf of Territorial organization. Congress did, however, on June 19th, make an appropriation to cover the expense of a treaty with the Indians, in pursuance of which most of the territory of eastern Colorado was later ceded by the Indians to the United States Government.

### Competing Governments

Jefferson Territory maintained a nominal existence through the summer of 1860, but was almost wholly impotent. Most of the functions of actual government were discharged by the local, popular tribunals -- miners' courts, people's courts and claim clubs. These bodies dispensed rude and speedy jus-

tice as occasion required. The more serious criminal offenses were tried before improvised judges and juries and the sentences were straightway executed. Courts presumably organized under Kansas Territory handled most civil cases at Denver.

As Jefferson Territory, together with its county and city creations, declined in prestige, the lack of recognized authority became more apparent. In Denver the situation was especially distressing. The mining camps had their local courts which administered effective justice, but at the metropolis so many agencies claimed authority that none was accorded full allegiance. Experience in this region proved the superiority of local governments as against those claiming more general jurisdiction, and the people of Denver, heeding this lesson, decided to establish an independent city government. They drafted and adopted a constitution, which began as follows:

We, "The People of Denver," ever loyal to the Constitution of the United States and the Laws of the land, yet claiming that from our peculiar circumstances, we derive no immediate protection from either, and realizing in our extremity, that self-preservation is the first law of nature; therefore, in order to protect our lives and our property from the lawless, to establish and administer right and justice in our midst, and to ensure to ourselves and to those who peaceably come among us, the blessings of peace and protection, do ordain and establish the following constitution for our temporary government, until such time as the General Government may provide us with another and a better one.

Section 1. The name and style of the government shall be "The People's Government of Denver."  
. . . (It runs on for twenty sections.)

This government, established in the fall of 1860, re-

mained in effective operation until the Territory of Colorado was created the following year.

With the decline of Jefferson Territory there were other organizations of assumed territorial dimensions which sprang from the fertile soil. A meeting at Golden on August 7, 1860, passed a resolution for the formation of a State Government (News of August 15th). In September a "United Mining District" arose on the headwaters of the South Platte, Arkansas and Blue Rivers. This prodigy elected T. C. Wetmore to represent it in Congress and chose a Circuit Judge, a Marshal, a Recorder, and a Legislative Committee, and resolved that the code of laws should take effect as soon as prepared. The residents of Mount Vernon District met in their sovereign capacity, September 19, and declared that they owed allegiance to no political organization except the United States Government, and proceeded to form a constitution to secure life, property, and the general welfare.

A noisy convention composed of 96 delegates, representing 24 districts, met at Golden October 9, 1860, and in a four day session debated vigorously but finally adjourned without accomplishing anything.

Another convention, composed largely of the same delegates, convened at Central City on October 24 and adopted a very unusual government for "Idaho Territory." Its principal feature was a "Judicial System," under which "Idaho Territory" was to comprise three Judicial Districts each to have a Judge, a Clerk, and a Sheriff. These courts were to recognize the laws of the various Mining Districts and to service as a court of appeals in cases brought up from the local miners' courts.

The Central City Convention also elected a Delegate to Congress and "five commissioners to aid the Delegate to Congress in his duties." In addition it nominated a representative to the legislature of Kansas and one to the Neb-

raska legislature. This was all; there was no governor, legislature, or other officials.

The Convention committee which prepared an address to the people, concluded:

It was the sense of the convention as it certainly is of this committee, that with the Judicial code now submitted to the people, in full operation together with the local laws which the people already have, or may from time to time adopt, that nothing more is needed for this people to properly govern themselves, and secure all their rights and interests both personal and material, until such time as the Congress of the United States shall see fit to give us a Territorial Government.

The unsympathetic Rocky Mountain News said in an editorial under the heading, "Oh, Consistency":

"Idaho' Territory, as the new government is christened, by its score or two of so-called delegates, elects five commissioners to the United States Congress, and nominates representatives to the Kansas and Nebraska Legislatures. And pray, what is this new government, with its six ministers at the Court of Uncle Sam, and one each fawning at the feet of Nebraska and Kansas? What does it want or expect, and what object of good can be gained by this people?...

None of these governmental competitors did better than, if as well as, Jefferson Territory. Although admittedly weak, the Jefferson Territorial establishment had not been superseded by any general organization more effective. Therefore, Governor Steele issued the call for the general election in conformity with the provisions of its constitution. He gave due warning that no salaries would be forth-

coming to those elected to office, but this did not discourage sufficient candidates from coming forward. Executive officers and members to the General Assembly were elected on October 22, and the legislature began its deliberations on the 12th of the following month. Some days later the assembly adjourned to Golden and continued the session there. In order to prevent opposition it repealed the measure (of the first session) for raising revenue and for the payment of salaries. This government continued in nominal existence until Colorado Territory was established by Act of Congress, but in its last months attempted no action.

When the 36th Congress met in its short session in December, 1860, the pioneers of the Pike's Peak country asked a third time for a Territorial government. At last there was assurance of favorable action. Representative Grow presented a bill (H. R. No. 887) on December 15 to provide a government for the "Territory of Idaho," but action was postponed until the following February. In the meantime the Senate had been considering the matter. The bill for creation of "Colorado Territory," introduced in the previous session (April 3, 1860), was brought up in the Senate January 30, 1861, and the name changed to "Idaho Territory." The original bill had designated the Green and the Colorado rivers as the western boundary of the Territory, while the other boundaries were identical with those of the present state. This western boundary was first changed (in the bill) to the 33rd meridian and finally to the 32nd (from Washington). The bill was again considered February 4 and Senator Wilson "at the request of the delegate from that Territory" proposed to substitute the name "Colorado" for "Idaho." Senator Gwin of California objected: "It is the handsomest name that could be given to any Territory or State," he said, and he wanted it reserved for present Arizona Territory. But his objection was overruled.

The bill now went to the House and was considered on the 18th. The Delegate from New Mexico objected to having Colorado include that portion of New Mexico north of the 37th parallel,

but his objections were disregarded. The bill with minor changes was passed by the House and now returned to the Senate. The Senate concurred in the amendment on the 26th and the President approved the measure two days later. President Buchanan left the appointment of the Territorial officials to his successor.

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#### NOVEMBER-DECEMBER ROUNDUPS ANNOUNCED

With a full house expected it is anticipated that at the November meeting Denver WESTERNERS will be entertained and "edified" by Posseman Arthur Carhart whose subject will be "Raw Meat and Long Rifles." Art is expected to discuss the great change which has taken place in the habits of western wildlife since the coming of the white man to the Rockies. WESTERNERS will recall that Art is an authority in the field of big game and has wide experience in their history and development in America.

At the December meeting Registrar of Marks and Brands Herb Brayer will discuss a novel topic "Insurance Against the Hazards of Western Life" which will give a new and previously unrecorded history of the extension of insurance to the West following the California Gold Rush in 1849 and the Pikes Peak development in 1858-9. This study is part of a series on business history which Herb has been writing and publishing the past five years.



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SEPTEMBER 1, 1945

No. 8

## THE HANGING OF TOM HORN

By John Charles Thompson  
Editor, The Cheyenne Tribune

For more than 40 years there has endured in the minds of a numerous company a suspicion, which has acquired now the tenaciousness of tradition, that Tom Horn did not die at the end of a rope in the Laramie County jail at Cheyenne, November 20, 1903. This fantastic tradition is that the hanging of Horn was a mock execution; that he was cut down alive, revived, spirited away; that the cadaver carried from the jail was that of an unidentified tramp; that it was the body of this tramp which was taken to Boulder, Colorado, and there buried as that of Horn. I can testify otherwise—I saw Horn hanged and I saw his dead body on a mortuary slab. I knew him personally; there was no mistaking the identity of that body.

Horn was a professional murderer. He operated in Wyoming in the '90's and in Colorado in 1900, then again in Wyoming in 1901. He was employed by a group of cattle ranchers to liquidate rustlers and sheep-owners whose flocks intruded in "cattle country." His fees for murder ranged from \$500 to \$700. He "dry-gulched" his victims. His trade mark was a rock placed beneath the head of a victim for the purpose of proving to his employers that the "dirty work" had been his.

He was hanged for ambushing a 13-year-old boy whom he mistook for the lad's father. No other murder was proved against him but there was general belief that he committed at least four others. He was hanged not because the murder of the boy was fastened upon him "beyond peradventure of a reasonable doubt," but on "general principle" that he "had it coming."

This piece is not a biography of Horn or history in detail of his homicidal accomplishments. It is designed only to lay the myth that he did not pay the supreme penalty prescribed for murder. There is incidental sketching of dramatic events of which I have personal knowledge. I may err concerning some facets of these gems of criminality; if so, the error is not intentional; more than 40 years is a long period for recollection to bridge and I have not had time to document my tale.

Before he appeared on the Wyoming scene, Horn had a notable career as a scout in Indian warfare and as a stock detective in Arizona and New Mexico. There is not time to sketch this here. His Wyoming advent was during a troublous era there. The famous and infamous "Johnson county invasion" then was little more than three years in the past; the lynching of Jim Averell and Cattle Kate had been perpetrated only five or six years previously; there had been numerous other dark crimes to avenge alleged cattle stealing. There was "blood on the moon" and Horn was to add to it.

As the mid-nineties approached, the Wyoming Stock Growers Association, a powerful society of cattle-raisers of which my friend here present tonight, Russell Thorp, is executive secretary, appointed a secret committee to employ a stock detective to obtain evidence against rustlers. United States Senator Joseph M. Carey of the firm of J. M. Carey & Bro., the far-flung range of which in Laramie, Converse and Natrona counties was being raided by thieves, was chairman of this committee. The committee dug up Horn, whose real name was said to be Hörner, and brought him to Wyoming. Soon after his employment, John C.



Coble of the Iron Mountain Ranch company, which also was suffering heavy losses to rustlers, is said to have broached a proposition that Horn was ready to kill cattle thieves for a fee of \$500 a head. Carey was horrified by this proposal, demanded and obtained the discharge of Horn. Thereafter Horn was employed independently by a group of big cattlemen, reputed to have included Coble, Ora Haley and several others.

Forthwith things began to happen. A small-time rancher named Lewis was shot in the back while working in the corral of his ranch about 35 miles northwest of Cheyenne. This was in 1895. A brief period later, a neighbor of Lewis, Levi Powell, was murdered from ambush as he worked in his meadow, accompanied by his six-year-old son. Seeing Horn in the courthouse at Cheyenne, this boy identified him as the slayer of his father. There was no other evidence and Horn was not arrested. Interestingly, the Powell lad, grown to manhood, was shot to death by a step-son at the ranch on which his father had been killed.

Finger of public suspicion pointed so accusingly at Horn that there was a lull in assassination. In 1898 Horn enlisted for the war with Spain, went to Cuba as a packer, made a commendable record. He was back the following year, headquartered at the Coble ranch. In 1900 he went to Brown's Park, Colorado. Soon two ranchers under suspicion of rustling, Matt Rash and Isham Dart, the latter a negro, were assassinated there. Riding out of Colorado after the murder of Rash, Horn met a posse which was seeking the murderer at Dixon, a hamlet on the Colorado-Wyoming line. He and a posseman became embroiled, fought with knives. Horn severely slashed his antagonist; himself suffered a terrific wound in the neck. Only a man of his robust physique would have survived this injury.

July 18, 1901, Willie Nickell, 13-year-old son of Kels P. Nickell, a small rancher who had committed the error of introducing sheep in the Iron Mountain section over the protest of cattlemen, was shot to death by an ambushed assassin.

The killing occurred in the dimness of dawn. The boy was wearing his father's hat and coat, riding the elder Nickell's horse. A rock the size of a man's fist was placed under his head. Supposition was that he had been mistaken for his father; killed because of this error. Suspicion leveled on Horn but there was no evidence.

A week after Willie was slain, his father, while working in his garden, was twice shot by an ambushed marksman; suffered severe wounds in an arm and hip. A few days later some of his sheep were clubbed to death by a person or persons unknown.

The Nickells had been feuding with the family of a neighbor, James E. Miller. Suspicion pointed also to the Millers and he and his two sons, in their mid-'teens, were arrested. At their preliminary hearing, a diminutive school-teacher who boarded at the Miller home, Gwendoline Kimmell, provided them a convincing alibi and they were discharged from custody. Horn also testified in behalf of the Millers. He was reported to have been attentive to Miss Kimmell.

Months passed without further developments. During this period suspicion of Horn grew darker and darker in the public mind. He decided to move to Canada, got as far as Omaha, changed his mind and returned. But for this change of mind he might have lived to a ripe old age.

On January 10, 1902, Joe LeFors, a deputy United States marshal and former stock detective, and Horn engaged in a drinking bout in a Cheyenne saloon. Horn became very drunk. LeFors invited him to go to the marshal's office. There, while Horn continued drinking, LeFors led him into a discussion of the Nickell killing. Egged on by leading questions, Horn became maudlinly boastful. Shrewdly interrogated by LeFors, he said things about the killing which were to be construed as a confession. Listening in an adjoining room, at a partly open door, were Deputy Marshal Les E. Snow and Court Stenographer

Charles J. Ohnhaus. Ohnhaus made a stenographic record of the conversation.

Two days later Horn was arrested in the bar of the Inter Ocean Hotel. While Undersheriff Dick Proctor stood a few feet behind him, gun in hand, Sheriff Ed. J. Smalley tapped him on the shoulder, told him he was under arrest. Horn, who could see Proctor reflected in the bar mirror, submitted quietly. At a preliminary hearing a few days later, the so-called confession was introduced. Horn was astounded. He was bound over without bail for the murder of Willie Nickell.

He went on trial October 10, 1903. Before a shred of testimony was offered he was a doomed man; public opinion had convicted him and intended to have him hanged. The trial lasted two weeks. Horn didn't have a dollar to his name, but an imposing array of counsel presented his defense--counsel whose fees probably ran to \$5,000 or more. The State's case, presented by Prosecuting Attorney Walter R. Stoll, was circumstantial other than for the testimony of LeFors and Ohnhaus' notes of the alleged confession. October 24 the jury returned the verdict, "Guilty of murder in the first degree," despite testimony of a physician who performed an autopsy on the Nickell boy that the bullet which killed him was of much greater calibre than those of Horn's gun, .30-30.

Appeal was taken; the supreme court affirmed the verdict. One expedient after another delayed punishment more than a year. As the day set for hanging drew near, pressure on Governor Chatterton for a reprieve was intensified. New evidence laid before the governor by the defense was quickly rebutted by Stoll. Gwendolene Kimmell came to the fore again with a retraction of her alibi evidence for the Millers; asserted she had overheard Miller and one of his sons plotting to kill Nickell. Perjury had a large place in the new evidence, but Gwendolene was the only witness against whom a perjury charge was lodged. She was arrested but not brought to trial. Governor Chatterton was not convinced by the new evidence, refused to intervene to prevent the execution on November 20, 1903.

During his long imprisonment Horn became increasingly apprehensive that he would be unable to avoid the gallows. He constantly plotted to escape.

January 20, 1903, there came to the Tribune office a youth named Hubert Herr. He had been released from the Laramie county jail after serving a term for stealing a saddle. After some beating around the bush, he confessed he had been entrusted by Horn with a message to Coble at Bosler, outlining a scheme for delivery of Horn from jail. This message was written on the backs of letters which had been received by Horn and on sheets of toilet paper. He was to be rewarded by Coble for his service as messenger. In the clear light of the open air he had done some straight thinking and arrived at conclusion that if Horn's friends were sufficiently desperate to carry out the plan conceived by Horn, doubtless they would have no compunction against liquidating the murderer's messenger because he "knew too much." Suffering a severe attack of "cold feet," Herr proposed a deal with the newspaper.

If the Tribune would provide him transportation to Ogden, Utah, he offered, and would withhold publication of the story of the plot until he was beyond the confines of Wyoming, he would turn Horn's message over to the paper. William C. Deming, the publisher, agreed.

The Tribune office and plant had been destroyed by fire a few weeks earlier; we occupied the former quarters of a defunct bank. With numerous uncurtained windows looking upon the street, privacy in these quarters was about equal to that of a goldfish. Herr declined to be interviewed, and to deliver Horn's message, in a place so public. Therefore, I took him to a room in my father's house. He would not walk there with me, followed a few paces behind. I obtained his story and the written message to Coble; delivered a railroad ticket to Ogden. He departed. Later I discovered that a watch belonging to my sister had departed also.

We withheld publication of the story 24 hours, "splashed it all over the first page" the morning of the 21st. Hardly was the paper out before Smalley charged into the office, all but apoplectic from indignation.

"What the hell!" he blurted, "do you mean publishing a fake like this?"

Reply was to push the letters on the backs of which Horn had written, and the supplemental toilet paper, across a desk to him in silence.

These exhibits were conclusive. The letters were authentic, the message on their backs and on the toilet paper was in Horn's handwriting. Smalley's wrath subsided, was replaced by chagrin--then flared anew. We should have notified him at once of the plot, he declared; he should throw us in the clink for withholding criminal information from the authorities, or words to that effect. "Uhuh," was the substance of our reply.

Horn's plan, as outlined to Coble, was that a wall of the jail should be dynamited, blasting a hole into the corridor in which he would be exercising at the time he directed the blast should be set off. Waiting, should be a fast horse, with grub and a six-shooter appended to the saddle which it bore. Horn would escape through the hole in the wall, mount the horse and high-tail into wide open spaces where he might outdistance pursuers.

After this expose, Horn's liberty within the jail was curtailed, vigilance against escape redoubled.

These precautions notwithstanding, Horn did escape eight months later; enjoyed (perhaps it better would be said, survived) a few minutes of liberty. August 9, 1903, he and Jim McCloud, a common or garden variety of thief, attacked and overpowered Proctor in the cell block, took his keys, unlocked the door to the sheriff's office, dragged him, beaten almost

into unconsciousness, there. They were searching the office for arms when Snow, the selfsame deputy who had heard Horn's "confession," walked in. Instantly comprehending the situation, Snow bolted back through the door, ran along the court-house corridor to the open, firing his gun to give the alarm.

Horn and McCloud fled from the court-house in opposite directions. McCloud ran to the sheriff's barn, commandeered the only horse there. He was endeavoring to mount the skittish animal when Smalley, who had been at breakfast in the sheriff's quarters in the court-house building, and correctly had surmised the significance of Snow's shooting, appeared in the alley on which the barn fronted, revolver in hand. Smalley fired twice at the fugitive, "creasing" him with each bullet. McCloud abandoned the horse, threw up his hands, and submitted to seizure by citizens who had been summoned by Snow's shots. In due time he was sent to the penitentiary on a post-office robbery.

Horn ran out of the main door of the court-house. He had materialized an automatic pistol. He ran eastward along Nineteenth street a block, turned north on Capitol, then east of Twentieth. Across Nineteenth from the court-house was an itinerant merry-go-round outfit. The proprietor, middle-aged O. M. Eldrich, pursued the fugitive, armed with a cheap nickle-plated revolver. At Eldrich's heels went a growing pack of citizenry who just had emerged from Sunday morning devotions at a near-by church.

As Horn turned into Twentieth, Eldrich began firing at him. As two bullets smacked into a building he was passing, Horn stopped, threw down his pistol, threw up his hands. Eldrich confidently kept him covered, unaware that he had exhausted the cartridges in his nickle-plated gun. Horn had not fired a shot; the "safety" of his pistol had not been thrown. Citizens and a police patrolman, Lou Stone, seized Horn, began a march back toward the jail. As they approached the building, Snow appeared with a rifle. Seeing Horn he

quickly reversed the weapon and attempted to club the helpless prisoner. Stone threw up an arm to shield Horn, and thereupon suffered a fracture of the limb.

The popular and published explanation given at the time for Horn's failure to use his pistol was that he was unfamiliar with the weapon's "safety" and was unable to fire it. He had obtained the supposedly Belgian-made automatic while escaping from the sheriff's office. The truth doubtless is that Horn was unfamiliar with the operation of the "safety," but was too shrewd to fire at Eldrich and other pursuers, realizing that another killing surely would seal his fate, whereas he still had hope that legal action might enable him to avoid the noose.

Testimony by Dr. George P. Johnston, prominent physician, many, many years later is illuminating concerning this part of the story. Johnston was the first man to go to Eldrich's aid as the merry-go-round operator held Horn at bay with an empty gun. Horn's pistol lay at the fugitive's feet. Johnston stooped to pick it up, changed his mind, let it lie, went away from there as unobtrusively as was possible. His explanation, withheld for three decades or longer, was, in substance, as follows:

The automatic pistol, later known as a "Colt," had been but recently perfected in Horn's day. It then was known as a "Browning," the name of its inventor. Among the earliest of these weapons to arrive in Cheyenne was one owned by Johnston. He kept it in his desk in his office. Some months before Horn arrived at the end of his trail, Johnston related, Coble walked into the office, requested that he be permitted to examine the novel firearm. Having had its operation explained to him, said Johnston, Coble drew a six-shooter, laid it on the desk, announced that he would take the automatic with him, exchange it for the six-shooter later, and walked out without awaiting an "aye" or "nay" by the physician. The next time he saw the automatic, "Johnston continued, it lay at

Horn's feet in the street--that was why he did not pick it up, and later discreetly refrained from putting in a claim to it. The fact that Horn had obtained an automatic in the sheriff's office and Johnston's story are reconcilable--Horn may have been equipped with the Johnston pistol and have discarded the Belgian pistol because he was familiar with the operation of the Johnston weapon.

During the 106 days remaining to Horn after his return to jail extreme precautions against further escape or delivery were observed. Special deputies kept guard at the court-house. As the day of the condemned man's doom neared these precautions became almost fantastic. On November 18, three days before the execution, two companies of militia went on guard. There was apprehension bordering on hysteria that Horn's employers, fearing that at the eleventh hour he would break and reveal their identity, would attempt a rescue with armed force. During those last three days only persons of known unimpeachable integrity were permitted to go to the court-house unchallenged; all others attempting to approach were stopped by bayonets, allowed to proceed only if they could produce an official pass. Cheyenne was in the grip of an attack of "jitters" not equaled during the 30 years following 1873, when it suffered its last "Indian scare."

Throughout the night immediately preceding dawn of the day of execution a solid cordon of soldiers surrounded the court-house. Approaches to the building were declared "out of bounds" and roped off. Only the reckless among the population went near the "dead line;" others, heeding the counsel of common sense that a nervous militia-man might shoot first and inquire afterward, avoided the vicinity. Meanwhile, Horn slept placidly.

Before he slept, an eccentric preacher and several sisters of his congregation were permitted to enter the jail, sing hymns to the condemned. The preacher emerged to assert that Horn had "confessed" to him while under the influence of sweet song. Concerning that, more presently.



Word had gone out that the hanging would take place at 7 a. m. At crisp dawn of the 20th crowds began collecting outside the rope barriers. They soon numbered several thousand persons. There was naught to be seen other than the grim walls of the ugly court-house, but imagination morbidly pictured what was going on inside. Business virtually was suspended; the "Roman holiday" spirit was in the air.

Persons accorded the privilege of observing Horn's "last mile" were admitted to the court-house at 7 o'clock. Guards with rifles at ready herded them into the county clerk's offices, two rooms across a corridor from the sheriff's office and entrance to the jail. These included about eight newspaper reporters, and a dozen visiting sheriffs and other peace officers; also the Irwin brothers, Big Charlie and Little Frank, close friends of Horn who had disdained enmity aroused by their efforts in his behalf. Kels Nickell importunately had sought admittance, but had been denied. There might have been violence in the clerk's stuffy offices had he and the Irwins met there.

Time marched on at a pace considerably less than that of a victim of locomotor ataxia. Seven-thirty o'clock came without summons from the sheriff's office; 8 o'clock, 8:30. Sheriff Smalley came into the corridor, beckoned Charlie Irwin to a corner, spoke to him in tones inaudible to others, handed him an envelope. Big Charlie, his back in a corner, extracted a sheet of paper, scanned it, nonchalantly pocketed it. Reporters were fired with curiosity; besieged him with questions which elicited no information. A little later the county clerk, at Irwin's request, cleared the rear room of the suite Irwin invited me and George H. Evans, the only other local reporter present, to go there with him. To us he confided that the communication he had received was a letter from Horn reiterating innocence. We could copy this, he said, and "show up" the crack reporters covering for the "metropolitan press" (meaning 150,000-population Denver).

Jubilantly, we copied, while Irwin stood guard at the door to prevent intrusion. I took a new sheet of carbon paper, typed a double copy as Evans read the letter to me. I tossed the carbon paper into a wastepaper basket. Then, in turn, we telephoned the message to our respective papers, each of which was prepared to issue an extra immediately after the hanging. Smugly, we rejoined the other reporters, unaware that we were about to receive a shocking lesson in journalistic resourcefulness and enterprise.

Nine o'clock passed, 9:30, 10:00, and still we sweated in the county clerk's offices. Cause of the delay was the sheriff's unwillingness to kill Horn while a last-minute appeal for a reprieve was being made to Governor Chatterton.

At 10:30 o'clock I received a call from the office. A press bulletin just received from Denver related that the Post had issued an extra there which quoted Horn's letter to Irwin in full. Hot with indignation, Evans and I remonstrated with Irwin, accusing him of bad faith; he rejoined as hotly that he had not given us the "double-cross"--that no one other than we two had seen Horn's letter; not even his brother, Frank.

This colloquy amusedly was observed by a tall, saturnine scribe of the Post's staff named Hamilton. He beckoned me to the rear room. "Irwin's right," he said, "he didn't 'double-cross' you. Look here." He reached into the wastepaper basket beside the typewriter desk, drew out the carbon sheet I had used in double-copying the Horn letter, held it up against the light. There, stenciled as legibly as the copy on the sheets between which it had been imposed, was the letter. "The next time you wish to keep something secret," dryly advised the veteran reporter, "don't use new carbon paper."

This Hamilton, during our long wait, regaled us with stories of executions he had witnessed. They were passee for him, he said, no longer aroused more emotion than the killing

of a rat. He was directly behind me at the gallows, his body crowded against mine by pressure in the press section. His head drooped, his forehead rested against the back of my head. Later I found the back of my stiff collar sopping, wilted by tears he had shed.

My face doubtless still was red from mortification arising from Hamilton's expose of my dumbheadedness when we were admitted to the place of execution. We marched through the Sheriff's office into the jail along a gauntlet of nervous guards, each with a rifle presented in our direction. As a precaution against possible interference by Horn's friends with the execution, the gallows had been erected inside the jail. The cell block was in two tiers. Horn's cell was at an end of the upper tier. A narrow gangway surrounded this tier. The gallows platform had been put up on a level with this gangway. Its edge was not four feet from Horn's cell. With only a canvas curtain masking it from Horn's view, the gallows had been assembled two days previously; its mechanism had been tested repeatedly--the last time only 30 minutes before the hanging. Horn could hear every movement; a more barbaric ordeal for the condemned man hardly could have been arranged.

I, myself, had been accorded a demonstration of how the gallows worked. Morning before the day of execution, Proctor had slipped me through a side door into the jail; operated the mechanism with a 200-pound sack of sand as a "stand in" for Horn.

"Notice, Charley," said the undersheriff, "that when the sack stops it will make only a half-turn. I've arranged it that way so Horn's back will be to the spectators as he hangs."

Sure enough, the sandbag made only a half-turn, then hung motionless save for a slight swinging.

Calmly from behind the curtain came Horn's voice.

"Did she work all right this time, Dick?" he asked.

"Sure, slick as a whistle," replied Proctor.

"That's good," commented Horn; "I don't want any slips."

Now something concerning that gallows. It was designed and built by James P. Julian, a be-whiskered pioneer architect, for the execution, in 1892, of a murderous moron, Charlie Miller, who had not attained his majority and never would have attained intellectual maturity. Miller was hoboing it via the Union Pacific when he fell in with two other youthful tramps. Between them, his companions in a box-car possessed \$2.30. Miller murdered them for this sum.

A boy of 13, I was present at the hanging of Miller. The gallows was set up in the court-house yard. A select company of considerable proportions were guests at the vindication of the law's majesty by dropping Miller into the hereafter. I was not among the guests, but, from the vantage point of the roof of a nearby shed, I could see the gallows tree, which projected a couple of feet above the stockade with which the gallows was screened from public view, and a corresponding length of the rope the other end of which was attached to the condemned. With a savage thrill, I saw the rope tauten, the gallows tree sway at the moment Miller was gathered to the bosom of his fathers. The hanging of Miller was a neat job; his neck was broken and death was instantaneous. I did not wot that something more than a decade later I would be among the select permitted to observe the next, and less efficient, demonstration of that gallows operation.

The Julian gallows still is in existence 53 years after its inventor got the jump on Rube Goldberg by a score or more of years. It is stored at the state penitentiary at Rawlins. The Horn case's demonstration that there might be a slip between the law and the loop inspired enactment of a statute that thereafter all legal executions should take place in the

penitentiary, so the Julian contraption was bought by the State. It was used for several hangings at the state prison prior to adoption, a few years ago, of the gas chamber as Wyoming's instrumentality for the dispatch of criminals. "Criminals" not "murderers," was used advisedly in the foregoing sentence, for under Wyoming law we may hang also for train robbery. We never have done so, although it was only through determined resistance of the very great influence of the Union Pacific that Bill Carlisle was preserved from the Julian man-killer after he had made a mockery, in 1916, of the sanctity of property on Union Pacific trains. Bill now is a respected business man at Laramie. A subsidiary of the Union Pacific even gave him a job. I suggest a sketch of the brief career of banditry, which included emulation of Houdini, as an engaging subject for the information and entertainment of THE WESTERNERS. It will have to be done by someone other than myself, for I like Bill too well to present an unbiased narrative. I will undertake, however, to have him present in the flesh should this suggestion meet with favor.

The Julian gallows was designed to conform to the fiction that a man legally condemned to death may be compelled to execute himself. This accounts for the weird scheme of old man Julian's blueprints.

There are, of course, the platform and gallows tree. The former is about 10 feet square, affording considerably more foot room than is requisite. Connecting the platform with the ground level is the conventional flight of 13 steps. Conventuality ends with this. The trap consists of two leaves. These, when set for action, project, where their edges touch, slightly above the level of the platform. Each has attached to it a rope which runs over a pulley to a weight supported by what may be termed a hair-trigger. When the triggers are pulled, the weights drop and snap the leaves away from the opening in the platform. Supporting the trap are two pieces of 2x4 connected with a hinge. These, when in proper position, uphold the leaves of the trap. Connected

with one of the leaves is a rope which leads over a pulley to a wooden plug in a large can filled with water. This can is at one end of a stick, hinged in the middle, the other end of which supports a counterweight. From this counterweight a rope runs over a pulley to connection with the 2x4 at the hinge. The weight of the water when the can is full more than offsets that of the counterweight, but when the plug in the can is pulled and water escapes, the counterweight drops, pulls the triggers, jerks the 2x4 aside, and the trap is snapped open. The weight of the condemned, when it comes upon the leaves of the trap, causes them to settle enough to pull the plug.

Julian's theory was that, inasmuch as it was the weight of the condemned which caused the trap to become horizontal and pull the plug, he actually hanged himself. Flaw in his reasoning which made this a fiction was that two persons, one at each side, must lift a bound and helpless man onto the trap, and whoever does this as certainly causes the victim to be hanged as though they had pulled the plug by hand. The fiction merely makes complicated what could be a simple act. It has, however, comforted the consciences of the executioners on the several occasions when the gallows was used.

Now back to Horn's "last mile." We newspapermen were crammed into a little space at the edge of the platform adjoining Horn's cell; the visiting sheriffs were marshaled on the first-tier level below. The Irwin brothers, flanked by guards, stood beside them. The executioners and a venerable Episcopal clergyman, Dr. George C. Rafter, an acquaintance of Horn, were on the gangway at the opposite edge of the platform. Beside the Irwins stood two physicians, Dr. George P. Johnston and Dr. John H. Conway. They were gentlemen of the highest integrity whom nothing could have induced to contribute to a criminal conspiracy.

Horn, his back against the cell grill, was half-reclining on his narrow bed, puffing a cigar. He was perfectly com-

posed. His soft shirt was unbuttoned at the collar, this exposing the scar of the wound he had suffered in the fight at Dixon.

"Ready, Tom," said Proctor.

Horn arose, carefully placed his cigar on a cross-reinforcement of the grill, stored firmly the few steps required to take him to the side of the gallows platform.

He nodded to the Irwins; sardonically scanned the peace officers below.

"Ed," he commented to Smalley, "that's the sickest looking lot of damned sheriffs I ever seen."

"Would you like us to sing, Tom?" said Charlie Irwin.

"Yes, I'd like that," responded Horn.

So, while Proctor buckled straps that bound Horn's arms and legs, the Irwins, each in a rich tenor, sang a rather lugubrious song popular on the range, "Life Is Like A Mountain Railroad."

The clergyman read his church's prayer for the dying. Horn, standing relaxed, listened without a tremor.

"Would you like to say anything?" asked Smalley.

"No," replied Horn.

"Tom," spoke up Charlie Irwin, "did you confess to the preacher?"

"No," was the reply.

Proctor adjusted the noose, formed with the conventional

knot of 13 wraps, to Horn's neck; drew a black hood over his head. Smalley on one side, a friend of Horn, T. Joe Cahill, on the other, lifted the doomed man onto the trap.

Instantly the sibilant sound of running water permeated the breathless stillness; the instrument of death had begun to operate. To the straining ears of the listeners that little sound had the magnitude of that of a rushing torrent.

Smalley, his face buried in the crook of an arm resting against the gallows tree, was trembling.

"What's the matter," came in a calm tone through the black cap, "getting nervous I might tip over?"

Seemingly interminable, the sound of escaping water ran on.

"Joe," said Horn, addressing Cahill, "they tell me you're married now. I hope you're doing well. Treat her right."

Indubitably, he was the best composed man in that chamber of death.

Still the sinister sound of running water; then mercifully, the leaves of the trap parted with a crash and Horn's body dropped through the opening.

Thirty-one seconds had elapsed since he had been lifted onto the trap!

He fell only four and one-half feet; his head and shoulders projected above the gallows floor. This drop was not sufficient; his neck was not broken. Proctor had feared to arrange a longer drop, apprehensive that stoppage of the fall of a body so heavy as Horn's might tear the head off. The slam of the massive hangman's knot against the side of



Horn's skull shocked him into unconsciousness, however, and he did not suffer. For 17 minutes the physicians, with fingers on his pulse, felt impulses as a mighty heart labored on; then the pulse ceased.

Tom Horn was dead--unconfessed!

I did not see him die. Immediately upon his plunge through the trap the witnesses were required to leave. I hesitated sufficiently to watch the dangling body turn. It made precisely one-half turn--stopped. Proctor reckoning in this respect had been accurate.

I was the first man to get out of the court-house. I emerged at a high lope, was intercepted in the middle of the street by Kels Nickell, who had contrived to get through the police line.

"Is the son-of-a-bitch dead?" he demanded.

"Yes," I replied, and loped on--I had an extra to get out.

An hour later I saw the Horn cadaver on a slab at the Gleason mortuary. There was no mistaking the body--it was that of Horn.

Take it from me, gentlemen, Tom Horn is dead, the myth of a fake execution notwithstanding.

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True or False - Which?\*

by Ralph B. Mayo

"Who speaks the truth stabs falsehood" (James Russell Lowell)

There is strong evidence that there is need for a keener distinction between that which is true or false among men who are highly esteemed. Hence this essay devoted to easing the torment of those who may later embrace an invitation to join the Westerners.

One would reasonably expect the Westerners, especially the older members, men who have achieved some eminence and distinction, men interested in intellectual and cultural pursuits, to be searchers after facts and to rigidly adhere to the truth. In fact sheriffs and possemen are public defenders of veracity. As a new member, having been privileged to attend two meetings, the writer must confess that the slimy serpent of doubt is crawling around inside.

Truth is a statement which corresponds to reality. Observe that it is not enough that it appear to be reality, it must correspond thereto. Of course truth may be strange, stranger than fiction, but hardly as strange as some of the tales told to this new member. Surely a line must be drawn somewhere; there must be some limit to how strange truth can be and still be truth. Truth is powerful and according to the poets must eventually prevail, but it often hurts and can even lose one's friends. One of our national advertisers of

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\* The reader is referred to last month's Brand Book in which a description of Dr. George Curfman's illuminating demonstration, mentioned herein by Posseman Mayo, will be found.

counter-odorants reminds us that "even his best friends won't tell" the truth.

Turning now to falsehood, we find it means that which is not real, incorrect, untrue, or just plain hooey. In some states it may even be called a lie, but in others, notably Kentucky, no person now living has ever used that word. There are times when men are driven by desperation to turn to falsehood. A preacher friend has quoted the Bible as saying that a lie "is an abomination unto the Lord and an everpresent help in time of trouble."

Too often the line between true and false is difficult to discern. Consider for instance the information which appears on income tax returns, or perhaps we had better not. A safer illustration occurred at the June meeting, when an eminent doctor, an old member, discussed with a prominent stockshow manager, within this member's hearing (or intentionally so he would hear it) interesting historic occurrences. As the dinner progressed these experiences increased in hearer interest; at first almost imperceptibly but later in spectacular fashion. Finally the doctor without change of expression opened the subject of the practice of the healing arts among the Indians of early days and stated that clear evidence of trephining had been found. We can't all have so much education, so although to that point the silent reserve expected of a new member had been observed, he asked what was meant by trephining. With professional solemnity he was told that it was a surgical procedure of releasing cerebral pressure by removing a disk of bone from the skull. Oh yes! it is accepted practice today using a sort of compass-like reamer and made plainer by a demonstration on a slice of bread. By way of confirmation one of the members who in private life is accepted as reliable, volunteered that he had seen an old Indian skull with six or seven such discs removed, the last one being fatal. (What a headache that warrior must have had.)

The learned discussion turned (or twisted) then to unusual

treatment of bruises and inflammations by attaching leeches to the affected parts and letting this simple-minded animal do the work of drawing off the impurities while the doctor draws the pay. By this time it was observed that the new member's lower jaw was hanging limp (justifiably he thinks) so, as before, the questionable procedure was employed of confirmations by older members; one, an honored educator, volunteered that he could remember seeing a barber for a fee apply a leech to his customer's black eye. Another stated that leeches are used by physicians today. Why, said our doctor, they can be bought in drugstores right here in Denver.

There is no telling how far matters would have gone if the meeting had not been called to order to start the program. The new member found time to call attention to the obvious fact that his 21st birthday was behind him (in fact, way behind) thus implying the double meaning that either he possessed a maturity that could not be deceived by tall tales or, on the small chance that there might be some truth in what had been said, that of course he understood.

The learned doctor, apparently sensing, that things had gone so far, that further affirmative evidence was necessary, came to the July meeting with an old trephining instrument and a pair of leeches in a bottle. These he demonstrated to the new member in the presence and with the approval of all the older Westerners. The trephiner looked like a rusty wood-working tool and the whole display could have been made more convincing if evidence were produced showing in what drugstore or dirty water hole the leeches had been found.

To return to the essence of this essay, what are the reliable and infallible tests of that which is true or false? Is the reputation of the teller enough? To be true must it be reasonably plausible? Surely a new member cannot be expected to come equipped with a lie-detector. Usually the teller's face will give a clue, but when in recent years did our doctor's face change expression. There is no way to tell

whether his hole card is an ace or a deuce.

It is regretted that this discussion must be closed without reaching a clear conclusion. That is sad, but the happy thought has just occurred to the writer that soon he too will be a seasoned member, free to revel with the others in complete irresponsibility.

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At the August meeting, held at the Crow's Nest (Bradford-Robinson & Company), the following possemen were present: Alfred M. Bailey, Edwin A. Bemis, John T. Caine III, Dabney O. Collins, George H. Curfman, Levette J. Davidson, Edward V. Dunklee, LeRoy R. Hafen, Paul D. Harrison, Ralph B. Mayo, E. W. Milligan, Lawrence Mott, Forbes Parkhill, Virgil V. Peterson, Charles B. Roth, Arthur Zeuch, Henry Toll, Henry W. Hough, and William S. Jackson. Also present were corresponding members Russell Thorp and John Charles Thompson of Cheyenne, the latter the speaker of the evening.

For our September meeting we are fortunate again in having another of our Wyoming corresponding members as speaker of the evening. Russell Thorp for many years Secretary-Chief Inspector of the Wyoming Stock Growers Association will have as his subject, "Early Cowboy Life and Days of the Deadwood Stage."



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## LONG RIFLES AND RAW MEAT

By Arthur H. Carhart

" . . . the right of the people to keep and bear arms shall not be infringed."

--2nd Amendment to the Constitution.

Dr. Remington Kellogg, who sat across the desk from me, looked out of the window of the National Museum, toward the hazy sunlight of a May day in Washington, D. C. As though he were looking back over the yesteryears, he said, "If it hadn't been for the deer and the wild turkey supplying meat to our pioneers, the settlement of this country would have been delayed by decades." Kellogg and Major E. A. Goldman are the outstanding authorities on deer in North America, and a statement from either of them must be taken at full value.

But there was another element in the pioneer picture. That meat supply would have not served without the existence of the American rifle. As the west was settled, rifles and wild meat came into a combination that underwrote the subsistence of explorers, trappers, stampeders, railroad construction crews and settlers. It is the plan to here brief these two threads in the pattern of empire that were so vividly dominant in the early west, and then view some of the interesting facts concerning the legacy we have today in both rifle and wild game.

The history of the rifle actually begins before the time of available records, when the Chinese invented gunpowder, and used it in rockets to frighten and confuse enemies in battle. The use of powder in a tube to propel a missile had not appeared on the scene at the time the priest Robert Bacon began his studies in Paris in 1233, or when, in 1265, at the command of Pope Clement, he wrote an exhaustive report on this study of explosives (published in Latin in 1267). It seems certain that Bacon would have mentioned guns in his meticulous report had there been any such weapons.

The first European record of guns appears in the official proceedings of the Italian Republic of Florence in 1326, when several metal cannon and balls were purchased for state defense. Apparently by this time cannon had been in use long enough to be accepted as valuable in military operations. The earliest record of guns in England appears in 1327, and, in the following year Edward III took along a few cannon on his invasion of France. Ten years later at the Battle Cr cy (the beginning of the 100 Years War), the English used a number of cannons, and the French blamed their defeat on the new weapon. From that point on, missiles propelled out of a tube--guns--became important in the equipment of fighting men.

The first hand gun--a tube on the end of a stick, touched off by a hot wire inserted through a hole at the base--appears about the time of Joan of Arc and Charles VII at the battle of Orleans. Just before Columbus sailed to lose himself in discovery, curved stocks were invented and we had the "Arquebusses", fired by a "match"---a twisted string of tow soaked in saltpeter that smouldered.

The Spanish produced the musket in 1540. It was 6 to 7 feet long and named the "moschetto"--the name for a small hawk. It was so unwieldy that it had to be rested on a forked stick as it was aimed in order that the man behind the gun could touch the "match" to the powder pan. This was the basic form of the powder and ball gun that had little fundamental

change, although many improvements, over a period of 200 years.

The method of igniting the charge progressed from the hot wire, through the tow match, the matchlock, the flintlock, and the wheellock. It was not until 1830, that the percussion cap appeared. Black powder was the explosive until Bracconnet, a French chemist, in 1832, discovered "gun cotton" by combining cotton and nitric acid. "Smokeless powder" was not very successful until after our Civil War when Gen. T. J. Rodman, USA, was a leader in the development of this important innovation.

The old powder and ball smooth bore maintained its position for many centuries,—from the 14th century to Civil War times, a span of some 450 years. During that long period, however, experiments in Europe had found that riflings would give the bullet a spinning motion that was at right angles to the line of trajectory, and keep the bullet more accurately on its course. The old lead ball of the smooth bore had a spin in line with the trajectory as it tore through the air, thereby putting more resistance on one face of the ball than on the other. The result was that it curved away from the true line of sight just as a pitcher's curve will bend. But the fact that the lead bullet had to be rammed down hard to actually cut the riflings made this a slow operation and the smooth bore continued to dominate the field.

About 1700 the colonists in America devised the greased patch which they rammed in between the powder load and the lead ball. This stopped off gases from escaping around the ball, and imparted a spin that was sufficient to keep it on a truer course. This change came from necessity. The pioneers had to target their gun more truly to hit a turkey or an individual skulking Indian.

These rifles with greased patches were used by the first sharpshooters of the American army—men with Washington who



were detailed to pick off English officers at long distances. The rifled handgun gave a convincing demonstration of its superiority at the Battle of New Orleans, when the English general, Packenham, expected to charge to within 100 yards of the American defenders, fire a volley from his traditional smooth bores, and then charge. The American rifles, however, began to take a terrific toll of the invaders at 300 yards. The British volley was never fired by the smooth bores and the battle went decisively to the men equipped with rifles.

In this period each rifle was carefully hand made to individual specifications, either those of the artizan or the purchaser. It was at this juncture in our history that the "long rifle" developed--a smaller bore gun, with a proportionately heavier charge of powder to drive the bullet a longer distance. When the frontiersman had tried to put more powder back of the lead in a larger bore gun, to take advantage of greater accurate distance, the gun had kicked unmercifully. But by reducing the bore, maintaining the charge of powder, both accuracy and distance were obtained. The barrel was lengthened both for accuracy and to take full advantage of the explosion, thereby producing the "long rifle"--the "Squirrel Rifle", the old timers called it in derision, because they were accustomed to the larger bore, and the smaller caliber looked pee-wee to them.

Incidentally, the size of bore in a modern shotgun is based on the old smooth bore guns. A gun that would take a one-pound lead ball was called a "1 gauge." The 12 gauge gun will take a lead sphere of a size that runs twelve to a pound; 16 gauge balls were one ounce in weight. But when the bullet was elongated as the rifle was developed, this "gauge" no longer represented the size of the bore, and the present day method of designating by calibers was adopted. They are decimal fractions of the English inch: a .22 caliber is one in which the distance between the riflings is 22/100 of an inch. A .30-30 has riflings 30/100 of an inch apart and so on through the long gamut of calibers in use today.

Through the middle of the 19th century the modern rifle's forebearers fought it out for supremacy in the field. The Colt revolving magazine repeater came into the scene in 1836, first as a rifle. The Henry rifle preceded the Winchester. The old Sharp's rifle, invented in 1848 and using a paper cartridge, was remodeled to chamber the newly developed metal cartridge about 1870. The Sharps "Big Fifty" or "Buffalo gun" was a .52 caliber, weighing 16 pounds, and while it leaked gases around the breech until it looked like a fireworks display at each shot, it could be loaded and fired 10 times per minute—a marvel at that time.

This is the sketchy background of how the rifle, developing in starts and stops, began in Europe, languished, and then as necessity demanded, found its most fertile soil in America. These are brief highlights of history leading to the accurate, powerful rifle we carry today—the gun which contributes so materially to our big game hunting in America.

Tales of the abundance of game on the frontiers have built up a popular conception that before the coming of the white man, one could gaze in any direction and see the landscape crawling with game. True, there were times and places, and within limits of certain species, where this was possible. But that general vision of game everywhere in abundance does not jibe with the records. The man with the rifle couldn't just step outside his doorway, shoot east, west, north or south and, as Paul Bunyon is reported to have done, expect to get game. You'll remember that when Paul didn't bring down game by shooting in the cardinal directions, he merely pointed his gun straight up, fired, and then dodged inside his shack as a blizzard of ducks and geese fell. The facts are that many an early expedition nearly starved because their plans were to live on game. There are numerous incidents in old journals to verify this; let's just look at a few.

As Zebulon Pike's party traveled down the Arkansas above the Royal Gorge between January 1 and 5, 1807, they were unable

to get sufficient meat by hunting. One section of the party was actually preparing to cook a deer skin for food when a well placed shot brought down the only deer that had been within rifle range for days. As the same expedition traversed the Wet Mountain Valley of Colorado, from January 15th to the 19th, Pike's group was in serious condition from lack of food. Dr. Robinson and Pike on the night of the 18th sat up all night in the snow, for they had gone hunting, had secured no meat, and were too weary to go back to camp. Pike described in his Journal under the entry of January 19th **dr**awling a mile in the snow, trying vainly to stalk buffalos. "By this time I was becoming extremely weak and faint, being the fourth day since we had received sustenance--." Fortunately, that day buffalo were killed and the party received its strength. All this happened in an area now well stocked with deer, and where plenty of venison is available even in mid-winter.

As you read the journals of Lewis and Clark, you'll run across the entry under September 21, 1804, wherein is described how the famished trailblazers cooked up a dish of colt meat, prairie wolf and a few "pheasants." The following week game was again so scarce, that as they left their camp on a stream poignantly named "Hungry Creek," the whole party again turned to a diet of colt meat. And, following along with these hearty pioneers you'll encounter their accounts of how they dickered for dogs and ate them with relish.

We might go on through many another record, and find that there were days when the great trailblazers of the 19th century found no game in areas we consider good game territory today. There are two ready explanations of the absence of game in certain areas traversed by the early travelers. One would be the seasonal shift of game herds out of summer range to wintering grounds. That is a movement we see today; for example, the movement of some 30,000 deer in the "White River Herd" in Colorado, takes place down-country after the first heavy snow in the autumn, and up to the White River

Plateau in the spring when snow has melted enough to allow deer to travel and find good food supplies uncovered.

The second probability lies in the fact that there were areas through which these explorers traveled that were in a "low" period of cycles of abundance and scarcity. There is slight chance of any species attaining a certain level of population and, under natural conditions, maintaining it. Game populations are almost constantly subjected to two groups of forces, one aiding increases, the other reducing herds and flocks. The condition implied by the glib catch phrase "The Balance of Nature", as usually understood, probably never existed, and under the conditions resulting from man's invasion of wildlife habitats, certainly cannot exist today. Populations were continually rising and falling in chronological cycles; in the short view there never was a "balance." In the longer view, the unbalance evidenced in the cyclic rise and fall of numbers in a species resulting from the dominance of adverse or favorable forces, whichever may have been greater, could account for the disappearance of some species of the past. In other words, when the adverse factors built to a certain level, there would come a time when the "low" would be so far down the scale that there would remain insufficient breeding stock to produce enough new stock to meet the drains on that species plus a little margin to rehabilitate the wildlings. It was at this point that the species skidded into oblivion. The balance of nature is an interesting theory, a catchy picture, but the facts are that wild species are rising or falling in proportion to the pressures that are beneficial or adverse.

There are no adequate records or computations available by which we might judge just how much game we had as the man with a rifle came into the wilderness. By estimating there were 2,000,000 square miles of deer range in North America and then assuming that there was an average of 20 deer to the square mile, Seton arrives at a figure of 40,000,000 deer existing at the time the "rifle toting frontiersman" invaded

the original habitats of this species.

Over several seasons, starting in 1939, the staff that worked under my direction in Colorado, carried on a census of deer in that Great Salt Wash area. This was a winter count taken in an area and at a time when the deer were concentrated. By counting representative watersheds, sample plots within the known winter range, we found that the average population was 23 deer per square mile. This, you must remember, was definitely a concentration area. We knew the limits of the wintering grounds. By applying this ratio to the known wintering area, we estimated about 6000 deer were in that group of watersheds. Higher up, lower down, on the plateaus and hills, there were probably not 5 deer to the square mile; none in some areas. If we had applied the 23 per square mile ratio to all the area that at some time in the season was deer range, we would have had a fabulous figure instead of a reasonably accurate 6000. As another example, on some parts of the Sapinero wintering area there were 54 deer per square mile, while five miles away, in similar terrain and cover, there were practically no deer whatever!

We concluded from our studies that in reality America may have had in her early history more deer, less deer, or just about what we now have! Similarly, we have no basis for estimating the numbers of other game animals which once populated our nation. We know that there were areas where, in certain seasons, early day travelers found an abundance of certain species, and also considerable stretches of country wherein no game was located and which today are considered good game areas.

Perhaps what is of more interest to the hunter and game lover of today is where we presently stand in wildlife resources. As a first step we must consider that man's appropriation and conversion of historic game ranges has upset what might have been regarded as a balance between species and hereditary environments. Man's invasion upset practi-

cally every game and predator species, jolting them out of normal ranges and traditional routines. It is the sheerest fallacy to talk of retaining or regaining any so-called balance of nature in the game fields today.

The bison was condemned to near extinction when the trail herds began to come up from Texas. Here we have a plains animal, a grass eater, that would compete with cows. Cattle bred to produce more and better meat would have displaced the bison because of simple pressure for more and better meat from a given acreage if the wild slaughter of the hide and meat hunters had not cleared the way for the cows before the herds began streaming northward.

Looking quickly at three other game species we see the elk, or more properly the wapiti, wiped out throughout most of the great spread of country where they once were reasonably plentiful, and almost exterminated in other sections. The antelope, another plains animal, went skidding to a low in population verging on extinction until game management entered the picture. They now have staged a rather fabulous come-back in several states where trapping, transplanting and management plans have been in operation over a span of years. Finally the "bighorns," our picturesque mountain sheep, are an example of a game species so radically displaced, so thoroughly unable to adapt themselves to present conditions, that they will never return to the hunting harvest level; they always will be museum and trophy animals.

Let's look at the bighorns. To do so will illustrate several general points worth noting. In our own Tarryall Mountains, in areas from forty to a hundred miles from Denver, we have somewhere in the neighborhood of 600 to 700 of these bighorns—the largest group in existence on one range. A quick glance back over the history of this herd shows that they build up over some twenty to thirty years, and then "hit the toboggan." The last big die-off occurred in the

late 1920s. From 500 to 600 animals then estimated in that herd, the count dropped to only about 9 head known to remain on that range. There may have been more, but not many more. There may have been some additions to this herd from the Pikes Peak and Mount Evans herds to the south and to the north. But from such a small remaining seed stock, we now have this present population.

At the time of the 1927-28-29 die-off, all sorts of specific reasons for the catastrophe were advanced. But the studies which were made by my field men beginning in 1939 and extending over the seasons until I checked out of this work in 1943, combined with similar studies in Idaho, Wyoming and several national parks, add up to only one compound answer as the basic reason for the bighorn never returning to a high level of population. (These combined studies of the several states and federal agencies were to have been brought together, analyzed, digested and published. This never was done. But the data as it came along, indicated the scheme of things with regard to the Bighorns.) These fine game animals simply were rooted out of their normal range and probably never will be able to reinhabit some parts of it. In the first place, bighorns never were timberline dwellers the whole year around as they now are. They were foothill dwellers in mid-winter. There they had a more benign climate. The ewes that carried lambs got calcium from licks in the sedimentary rock types which do not exist in the rock masses of the high country that constitutes their present range. Lime, phosphorus and other minerals kept the ewes in good condition, built heavier frames and more resistance into the embryos. They dropped their lambs in the temperate yellow pine belt during spring months.

Today the lambs are dropped near timberline, above the "lime" belt, and common sense would point to the fact that they cannot have the chance of survival their forebears had when they wintered in low country, traveled to timberline for summer and then back down as winter closed in. That

displacement of range is basic. But there are other factors beyond this now affecting the bighorns.

Where they do have winter range at lower elevations, the area is closely circumscribed; the sheep cannot spread out. Some kindhearted, but misguided, winter feeding has tended to further concentrate them. When for example, the Tarryall flock was down to 10 or 12 animals, the essential browse and other forages of the sheep were abundant in relation to the number of mouths to feed. It was ideal, super quality range. The habitat condition was benign. The flocks built up. After any such body of game animals reaches a certain level in base breeding stock, a certain amount of velocity in reproduction occurs. It keeps on beyond a proper balance with the primary forage plants best suited to the species, and the animals begin to eat secondary and tertiary forages, not so good but still filling. But you begin to get a creeping malnutrition and a lowering of whole herd vitality.

In the case of the Tarryall Bighorns, this concentration plus a large population brings in another factor. That is the close association of animal units, and the creation of potential epidemic conditions. And there is again today an epidemic potential in the Tarryall herd.

Here is the picture. When we began our studies of this and other bighorn flocks, we collected feces of the animals to see if there were indications of parasitic or disease organisms present. We found a number. One of the most common, a disease which domestic sheep may have introduced, causes bloody diarrhea. This is a coccidia known as Eimeria arloingi. It is ingested with contaminated food stuffs, and the organism enters cells of the lining of the intestinal tract. There it grows, finally erupting, causing a pinpoint hemorrhage. The increased number of newly incubated organisms coming out of one of these pinpoint ruptures may either re-enter the intestine wall or be voided and further contaminate food or bedgrounds. An animal that has plenty of good food,



good range, good climate, and is good in other factors, can remain reasonably "healthy" and the disease will not get the upper hand. But if vitality is lowered, then virulence of the organism rises. The concentration of population on limited areas allows rapid transmission of the organisms. Trouble soon follows.

On our first examination of the feces from the Tarryall bighorns, there was this organism, plus some three others of the same coccidia group that are pathogenic in some degree, tapeworms, lung worms (that can be fatal), and round worms (that certainly are not beneficial). But there was not a very heavy infestation in any of these. Most samples showed what is called "one plus" by the Veterinary Department at the State College of Agriculture.

The last check made in this field, in January of 1942, showed that animal after animal was carrying a "three plus" load, which our veterinary cooperators described as lethal whenever stamina dropped below a certain point. The total parasite load on the herd was much heavier.

These studies also disclosed other pertinent facts. One of the most significant was that bighorn herds consistently were made up of older individuals and there was a small ratio of lambs. Bighorn ewes drop their first lambs in their third year and rarely have twins. The breeding potential is not high. Even if all other factors were favorable and all lambs survived, the replacement of older stock by young animals would not be as rapid as with deer or antelope where females breed as "long yearlings," have a single fawn the first time, and usually twins each season thereafter. But even taking this into consideration, the young stock in bighorn herds is in such a low ratio that it is apparent that no adequate increment is coming from the yearly lamb crop that will survive and build up the herds. Herds of a dozen or fifteen adults, with only one or two yearlings, one or lambs of the current season, lack the young blood to keep

that herd "healthy." So it was evident to our research staff that a basic condition of too few lambs in proportion to adults meant something wrong with the replacement machinery.

Field studies showed that as of June, lamb crops were satisfactory. Lambs were dropped in numbers that would be expected from the adult she-stock in each flock. By mid-August they had almost faded out of the picture! About eight weeks after some nine new-born lambs were recorded as present in a Gros Ventre, Wyoming, flock, the lambs seemed to disappear. Only two were left; then one. Thorough search revealed no evidence of coyote or eagle kills; no accidental deaths from falls. But the lambs were gone! Other herds showed the same general pattern.

Instead of guessing and speculating on what might be wiping out the lambs, we can consider the loss against several major factors we know are present as a bighorn lamb begins life. We have touched on the major factor of the radical displacement of historical seasonal ranges. There is the historical record of ewes wintering at the edge of the plains, with the probability of their getting food or water with high calcium content, thus being in good health themselves and building strong bone structure in the embryos. This potential relationship to lime carries on after the lamb is born, as the little one gets milk with a high mineral content. We also have the factor of the lambs formerly being born in warmer, sunnier lower elevations, not in mountain cold at timberline as now.

The point is today we have a lamb that probably has not too high a level of vitality to start with. He might make it, except that—.

The exception is this. The coccidia disease mentioned is particularly destructive to young animals that have low stamina and little natural immunity. There is some degree of immunity established in coccidial diseases, and that probably

is why the adult animals can carry the load they do and keep going. But the lamb doesn't have this immunity, because it can't be conferred by his dam.

The first day a lamb nurses, he probably gets his infection from teats contaminated as the ewe slept in dung-laden bedding grounds. If he got that one inoculation and no more, he might get by. But every time a ewe lies in a bedding ground that has feces carrying the disease organisms, the little lamb gets another loading. The history of the disease shows a usual "course" in lambs of about eight weeks; domestic lambs show this definitely. That period coincides almost exactly with the disappearance of young bighorns from ranges about eight weeks after birth!

Let's not say that this is a disease factor alone. The situation actually roots in the displacement from traditional ranges. Also consider a constriction of the new wintering ranges, constriction by snow in the high country, and by ranches in the low country. It is a combination of all such factors that sets up the potentials of a game species increasing, holding its own, or disappearing. In the case of the bighorns, we probably have a species that never can be increased to anything like a general hunting level because of its inherent unwillingness to live with man or near him. We may, by good management, by using stock from relatively abundant flocks plant the best suitable unstocked ranges and secure spread within the limiting conditions. "Trophy hunting" may develop but we probably never will achieve a general hunting season on Bighorns.

This discussion of the bighorns may have gone into unnecessary detail. But that was done designedly for two reasons.

The first is, to present by example the two major fundamental factors in what has happened and will happen to our game resources. The first factor is the breeding potential.

The second is the combination of favorable and unfavorable factors found in the environment. There is, of course, a close relationship between the two.

Another reason for this detail is to drive home the fact that too much game regulation and legislation--setting bag limits, closing seasons and the like--has been done "by guess and by gosh." One factor observed by one or a few men is given undue weight, a theory is developed, a decision is made, and no sound program results. A systematic compilation of facts in adequate volume will show in some reasonable degree the existence and relative force of both favorable and unfavorable factors affecting wildlife species. From there on, good game management is honest, fearless, non-political and common sense following of a course indicated by these facts. Game and fish do not just happen by the grace of God; like weather or seasons, they have to have the machinery to reproduce and mature. Two parts of the production are breeding potentials and environment. It is just as possible to make adequate and reasonable analysis of the game production line, **what** favors it, and what hinders it, as it is to survey and analyze any production line. That, essentially, is what we call game management--and we've had too little of it, with too much guessing, "politicking," emotionalism, fable and indifference.

Some of the findings in our sage grouse study in North Park, Colorado, show how the facts explode the guessing. You have heard the lack of increase in sage chickens was because domestic sheep trampled the nests, or that it was weather that killed chicks, or because of the illegal acts of poachers. Here are some of the highlights uncovered by four seasons of systematic, thorough study.

During the study, over 300 sage grouse nests were located, "flagged" by a lath a hundred paces north of each nest, and visited from one to three times each week of the season by a field man who did not approach the nest after

that first visit any closer than necessary. Only one nest, on a sheep driveway, was found that might have been sheep-trampled. But nests were destroyed; nearly two thirds of the nests were destroyed or "abandoned" before they hatched. You can't produce a crop of game birds with that sort of an obstruction to reproduction right in the nesting period.

By four different methods: setting up "dummy nests" with poisoned pullet eggs; an electric trip camera trained on a dummy nest throughout the season; traps on dummy nests; and by the collection of hair samples caught in sagebrush twigs around destroyed nests, we found what was causing the destruction. There was some crow and magpie destruction, some by skunks, but the overwhelming destruction was by badgers. The evidence was piled up, record upon record, until it was indisputable!

The fourth season this study was carried on, two important series of data were compiled. The "abandoned" nests generally were found to be cases where coyotes had killed the setting hen, but had not bothered the eggs. In contrast badgers generally do not catch the hen, but break, and suck the eggs, or bury them. On several poisoned dummy nests we found badgers that had eaten several eggs, started to bury others, and had died in the act.

The other part of ~~the~~ record is the affirmative side of this predator factor. A square mile of sage chicken territory was wiped clean of predators. It was the same square mile that had had a loss of about two-thirds of the nests in two preceding seasons. Besides the square mile test area, a surrounding "buffer" area about a mile wide was cleaned of predators. As a result, on that same square mile, the "nesting success" was raised to a ration of 63 nests hatching out of each hundred. But here is another interesting consideration; predators crossed the "buffer" area and wrecked nearly 25 per cent of the nests. If we had been able to eradicate and keep out all predators, there would have been something around 85 out of every hundred nests produce chicks!

That is not all the sage grouse story. But it is a rather forceful illustration of how far off management plans would be that accepted such popular and fallacious explanations, namely, that sage grouse were not producing more of an annual "crop" because domestic sheep or poachers were holding down the increases.

There is one other point that illustrates what we are considering and that should be told about this sage grouse situation. There had been an intensive campaign poisoning ground squirrels over large stretches of North Park. This destroyed a great volume of natural food of the badgers. How much this shifted the pressure onto the sage grouse nests can only be guessed. Maybe badgers like eggs regardless. But it is a part of the complete picture—and it certainly is a vivid illustration of how man, tampering with one of the factors in wildlife resources without considering all results, may affect other important wild species. We can't get game management that is worthy of the name by one-shot action; with consideration of only one problem related to only one species and aimed at one limited objective—in this case, eradication of the ground squirrels without regard to ecological inter-relationships.

Another illustration of what our systematic approach disclosed, was the study of deer food requirements. Over two hundred and fifty stomach samples were taken and analyzed by the Denver Food Habits Laboratory of the W. S. Fish and Wildlife Service. As these samples were secured, the field men, who were trained foresters and range men, recorded by percentages all types of forage available in the specific area under scrutiny. Then, as we got the reports from the laboratory showing the percentage of each type of forage present in the stomach, it was possible to see what food deer would select out of the various forms available. We now had the two sides of the picture; what was on the table, and what was eaten. And you can't argue with a deer's stomach. If a certain proportion of one plant was in his stomach, he ate it

in the relative ratio of preference shown when the total stomach contents were correlated to what he could have eaten.

Deer are highly selective in their choice of food. We found that with perhaps thirty or more potential forage plants on the ranges, as much as 75% to 90% or more of their diet was derived from four to six plant species. A range, therefore, may show a lot of forage plants, even a super abundance, but if preferred deer foods are not present--regardless of gross appearances--it just is not deer range. This is particularly true of a misconception that good grass range is good deer range. The analysis showed that in one year grass did constitute 12.22% of the spring diet of those deer inspected, but in summer grasses were only 0.38%, in fall 0.30%, and in winter 0.52%. Deer are browsing animals--they eat brush. While there have been complaints that deer compete with cows to the detriment of both, and we sometimes hear that deer are "wrecking the livestock industry," it is rather difficult to accept such statement in the light of what the deer's own stomach told us.

Another outstanding feature demonstrated by our study was the swift shift of deer from one forage to another. Previous studies we had been able to review were mostly done by some able biologist during summertime; vacation time when it was good going in deer country. Such limited studies did not reveal the high selectivity in feeding that we found in all-season studies. Our crew was in the field every week in the year--sub-zero winter and hot mid-summer. Only with such continuous piecing together of accurate evidence can one get the full, year-around answer to the game problem. We found that late in April, deer were eating a high proportion of grass. Early in May they stopped that almost over night, and began to eat heavily of snowberry. That went on for ten days or so, then the shift was to scrub oak, and in early June it was as swift a shift to service-berry.

Without trying to detail any more of this particular

study, we definitely determined what deer eat, what was deer range and what was not. The next step was to ascertain how much carrying capacity existed on these ranges and how much of each forage that deer really eat was present. By actually cutting the available browse growth that deer do eat, from a measured sample plot, and repeating this literally thousands of times on a range, weighing it, by species, and then air drying it, we could estimate the air-dry tonnage on a given range. Making use of several excellent studies carried on by Brody at Missouri, by Nichol at Arizona and Morrison at Cornell, we were able to set up a table showing that an average weight deer—about 150 pounds—would require approximately 4 pounds of air dry forage per day. We allowed 5 pounds per day (air dried weight), after charging off, as unusable or not to be used, forage covered by snow on critical winter ranges, or the percentage of new growth that must remain on a plant to allow it to continue in healthy condition. By these steps, we approached a pretty sound answer to whether the number of deer on a range, determined by systematic enumeration, were (1) under the carrying capacity of the deer range as it existed, (2) about in balance with food supply, or (3) over carrying capacity and in need of balancing.

These are glimpses of a few systematic studies and the facts they disclosed after sufficient data, fact piled on fact, was assembled to demonstrate the actualities. Game management—good game management—rests on this sort of a foundation. Continued health and populations rest on it. We have little of such a foundation; we need a lot.

In Colorado we have game species that are on the up-grade and those that are static or retrogressing. In 1914 our first systematic report on the state's deer population showed about 14,500 head. In 1920, there were about 22,000. In 1925, there were but 23,000. But at that point there was enough production volume to start rolling. There must be a certain minimum in each herd unit to reach this point. For example, New Mexico has found that their antelope herds must number 35 head in each



group before increases start showing. Colorado deer had increased to 36,000 by 1930. The build-up was under way. In 1940 there were about 150,000; and now there are somewhere near 200,000 head in the state, unevenly spread, understocked in some areas in relation to food supply, perhaps overstocked or approaching that condition in a few other areas.

Elk, almost extinct a quarter of a century ago, and restocked on many historic Colorado ranges, have increased to somewhere between 20,000 and 25,000. Our antelope have suffered an open season during the past year. There were about 5000 head in the entire state five years ago; maybe 7000 now. This is good base stock if management were applied—if transplanting such as has gone on in New Mexico, Wyoming and Texas were carried out. The picture is essentially the same in each of these states—good game management, including scientific transplanting, has built up the stock to where there is an annual harvestable crop. To New Mexico goes the credit for pioneering this management program with its spectacularly successful result.

In 1927 the best possible check showed that there were 2957 antelope in New Mexico. Trapping and transplanting was undertaken. Groups that numbered less than 35 were consolidated with others, or supplemented with animals trapped from larger herds that could be utilized as reservoirs of breeding stock production. Transplanting alone does not encompass all the factors that were involved or measures taken in developing food management of these herds. But it is a large factor; that is undeniable. Today New Mexico has more than 30,000 antelope. They didn't open the season until there was a volume production that allowed the taking of an annual harvest without cutting into the breeding herd—the production machinery. Colorado, with an estimated 7000 antelope, with many historic ranges still without any game, evidently had other considerations in mind than real game management when a season was opened in 1945, instead of building the resource up to where annual hunting would be taking only the year's crop.

There is one final point to make, We often have looked at our wildlife resources as something that "just happened." It has been and still is considered a field to be used politically by many officials. It's economic value has not been fully recognized by the general public. We hear of the annual cash value of this or that state-wide industry or product, and are amazed if it is five, or ten or fifteen million dollars a year. Let's look at what the wildlife business is in this one state of Colorado each season; each season because if properly managed wildlife is a renewable resource, and not like oil, coal, or gold which once removed cannot be regenerated.

Last year in a carefully prepared article which appeared in the April 1945 Nation's Business entitled "The Haul of the Wild" I estimated that the average sportsman spent at least \$100 per year directly chargeable to his hobbies of fishing and hunting. On that basis the annual national business based upon fish and game totaled two billion dollars and served approximately 20,000,000 sportsmen. After I had finished the article and before it was published, Ira Gabrielson, Director of the U. S. Fish and Wildlife Service, told me of a survey recently completed by his division which showed that even in the war year of 1944 the annual business resting on fish and game was \$1,875,000,000. And this survey further disclosed that a more exact figure on the annual average expenditure of each sportsman was \$125.

Because that was a rather thorough survey, we can accept this average annual expenditure of each sportsman, apply it to the number of sportsmen in this state as shown by licenses sold, and come out with a total that will be approximately correct. If that is done, on the basis of pre-war sportsman business in this state we get a figure that is truly striking. The annual expenditure for all purposes that rests on fish and game of Colorado, reaches the astounding total of at least \$25,000,000. Some argue it is at least \$33,000,000. Be as conservative as you wish, the fish and game business is one of the principal wealth producing industries of the state

economy. About twice the annual value of sugar beets, of gold, of corn, of wool---and if you don't believe that, just look it up!

If you want to sweep all other considerations aside, the business value of wildlife in this state is something that merits a lot more sound management, more consideration and less political maneuvering than it has had. It probably has the greatest property value of any one type of property other than real estate actually owned by the citizens of this state.

But starting from there, add all the other values inherent in game and fish. Add the recreational value, the rehabilitation that comes from hours in the field and along streams, the purely aesthetic values of wildlife in native habitat. And then, at the finish, just weigh out the heritage we have left, the over-all treasure, that has come down the two paths of history. One path the long rifle and the excellent weapon we carry today; and the other path, that rocky road, with ups and downs, with waste and ignorant destruction, and that our game species have followed and have survived so we may rehabilitate and protect them today.

The rifle is an American heritage. The right to hunt and fish is another heritage. Together they are something distinctly American.

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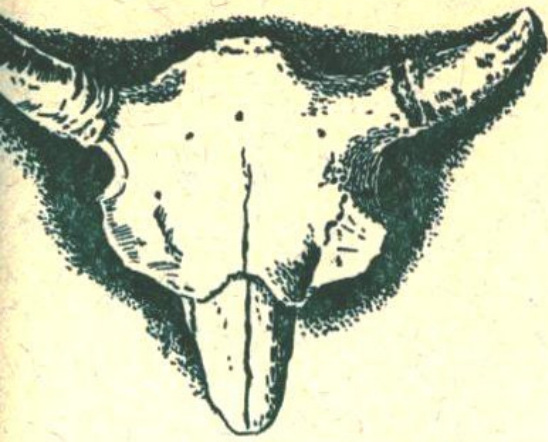
WESTERNERS TO PUBLISH ANNUAL VOLUME

By action of the Denver Posse the entire series of twelve papers delivered during 1945 at the regular monthly roundup is to be published in January in a memorial volume dedicated to the memory of charter posseman Robert S. Ellison.

It is intended to publish 350 numbered copies which will sell for \$3.50 a copy. Advance orders will insure the taking of the entire edition. Orders should be sent to the Recorder of Marks and Brands before January 15th.

ELECTION OF OFFICERS PLANNED FOR DECEMBER MEETING

Sheriff Edwin Bemis has announced the election of officers for the ensuing year will be held at the December meeting of the Denver Posse.



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DECEMBER 31, 1945

No. 12

## INSURANCE AGAINST THE HAZARDS OF WESTERN LIFE

By Herbert O. Brayer

Though the by-ways of history are numerous and often devious, each contributes just enough to the central pattern to pique the curiosity of the historian and to tempt him from the traditional "straight and narrow" path of research. To those who succumb to this Lorelei on the road of history the detour may prove of value and even contribute to a more thorough understanding of the broader highway, thereby leaving the transgressor with a rich reward for his daring. It is much like a cross-country trip by automobile. If you stick to the Lincoln Highway you can make the trip from coast to coast in about six days of steady driving. You will travel the same roads and see the same scenery as the thousands who passed before you and the thousands who will follow. But you won't see the Grand Canyon, Yellowstone National Park, old Fort Union, or the Garden of the Gods at the base of Pike's Peak! It will take you longer to arrive at your destination by indulging your curiosity, but think how delightfully satisfying the trip can be. It is along one such detour that our attention is directed tonight--an almost virgin sideroad on the carefully graded and surfaced highway of Western History.

As the familiar kaleidoscopic scenes of covered wagons, heavily laden ox-drawn freight trains, stage coaches and even

the heroic little diamond-stack "tea kettles" of the pioneer railroads pass in mental review, the very concept of life insurance would seem incongruous if not completely irrelevant. Yet, some form of this concept was an integral part of the westward trek from the beginning of that movement to the present day. The guns carried by the pioneers, the organization of integrated wagon trains from dozens of private parties about to undertake the dangerous trip along the California-Oregon trail, the "fabulous Santa Fe Trail," the pooling of supplies and equipment, the use of escorting dragoons--all of these are part of the basic concept of insurance--"insurance against the hazards of western life."

There is even a closer relationship between the westward movement and the growth of the American institution of life insurance--they were contemporary. Our modern concept of life insurance--as distinguished from its ancient antecedents in the burial societies and medieval guild relief funds--developed out of the expanding marine insurance business in Europe from the Sixteenth through the Eighteenth centuries.

During the American colonial period individual underwriters gathered in coffee houses and taverns to write marine insurance on cargoes of New England rum, whale oil and ship stores, or upon shiploads of tobacco, indigo or rice from Carolina and other southern colonies. Occasionally, following the example of their English colleagues, these conservative gentlemen would insure important or wealthy persons making sea voyages. Apparently, however, such life insurance was drawn in favor of companies or groups seeking to protect themselves from the loss of important officers. It was not until 1749 that a real life insurance program designed to assist the families of deceased individuals made its appearance in America. This was the much-heralded Presbyterian Ministers Fund established by the Presbyterian Synod of Philadelphia after some years of experimentation with their "fund for Pious Uses" (1717) and the "Widows Fund" (1754). This corporation, designed solely to provide annuities to widows

and orphans of Presbyterian Ministers, was the first corporation in America to furnish benefits payable on death, and has survived to the present time. The early years of the fund were fraught with difficulties, and payments to bereaved families were small indeed. The missionary zeal of some of the early Presbyterian divines led them westward to the sparsely settled frontier where the thud of a deftly wielded tomahawk or sudden twang of a tightly-drawn bow-string terminated the earthly sojourn of one of the insured and placed another burden upon the Fund. Apparently, the company experienced other "risks" from which it required protection. One clause in its contract read:

That every Contributor at his Marriage, and as often as that happens, shall pay one Year's Rate extraordinary, as he thereby makes the Chance worse, by bringing, in general, a younger widow upon the Fund.

In 1769 a similar life insurance program was organized for the Episcopal clergy in America. Twenty-five years later (1794) the first secular corporation to sell life insurance in the newly established United States of America was founded, the Insurance Company of North America. The corporation wrote a small amount of life insurance, but eventually withdrew from the field. It remains today one of the nation's outstanding fire, marine and casualty companies.

Other companies were incorporated in the early years of our national history but their success was only nominal. One authority estimates that around 1800 there were not more than one hundred policyholders in the whole United States. Circumstances combined to make the life insurance business a precarious one up to the Mexican war period. People felt no great need for its protection—conditions of life provided the security desired. In a self-sufficient agricultural economy the passing of the family head did not constitute an

irreparable economic blow. The farm or small hand business went on in much the same way as before. A strong religious prejudice further retarded the spread of insurance. Ministers--despite the Presbyterian and Episcopal life insurance systems--denounced the business not only as a sinful form of gambling,

...but positively impious as showing a distrust in God and a presumptuous attempt to interfere with the Supreme Arbiter of Life and Death.

One minister, viewing with alarm the spread of insurance, solemnly labeled the whole transaction the work of Satan and advised his parishioners to give up the sinful practice and raise sons instead! They, he triumphantly concluded, would provide for their parents' old age and take care of the mother if widowhood were to be her lot. Despite the steady progress made by the life insurance companies after 1845, this antipathy persisted up to the Civil War. As late as 1853 the New York Times editorialized, "He who insures his life or health must indeed be a victim of his own folly or of another's knavery."

Modern American life insurance had its real beginning in 1843 when the Mutual Life Insurance Company of New York issued its first policy. In rapid succession there appeared on the scene between Feb. 1, 1843, and June 1, 1845, the New England Mutual Life Insurance Company (Boston), Mutual Benefit Life Insurance Company (Newark, N. J.), New York Life Insurance Company, State Mutual Life Assurance Company, (Worcester, Mass.), and a number of others.

Thus, on that fateful January 24, 1848, when James Wilson Marshall accidentally discovered flecks of yellow gold along the tail race of a sawmill on the American River in California, life insurance was still in its infancy--actually only five years (less one week) had passed since the first of our modern insurance companies had opened for business.



Almost overnight California became the "mecca" of America. Around the Horn, across Panama, over the tortuous overland trails tens of thousands of gold-seeking Argonauts headed for the Pacific coast. They came from every section in the nation and represented all walks of life—"Rich man, poor man, beggarman, thief; doctor, lawyer, merchant, chief; tinker, tailor, cowboy, sailor"—all were part of this vast westward migration. Conservative New England and the Middle Atlantic States--home of the budding life insurance industry—sent thousands to the gold fields. The virus struck even the eminent president of Harvard, Dr. Edward Everett, who sonorously exhorted his listeners to go to California "with the Bible in one hand and your New England civilization in the other and make your mark on the people and country."

That the California hysteria would have its effect on the dozen or so major life insurance firms in the United States was almost inevitable. It brought about a revolution in insurance practices, and helped to build modern leviathans out of anaemic companies then struggling for recognition and success. From their inception less than a half dozen years before the Gold Rush of '49, most insurance companies had included in their contracts definite restrictions as to travel, residence, and occupation.

One almost universal prohibition was designed to protect the company from losses attendant upon the annual southern cholera epidemics; it specifically forbid the insured to travel or live south of the boundaries of Virginia and Kentucky (or south of 36° 30" as some variants read) between May 1 and October 31. Previous to 1850 most contracts were declared null and void if the insured, without written permission, ventured "West of the Mississippi River." Daniel Webster, sixty-two year old "favorite son and silver-tongued orator from Massachusetts," purchased in 1844 a \$5000 policy from the New England Mutual Life Insurance Company for an annual premium of \$263.70. By the terms of his contract he was not only prohibited from going west of the Mississippi,

but (and here I wonder if his presidential ambitions might not have come to mind when he purchased the policy) a second reservation permitted him to live in Washington, D. C., or any other city of over 50,000 persons, only upon payment of an extra premium. Of principal interest to this study, however, were the specific prohibitions preventing policyholders from traveling West of the Mississippi, taking sea voyages beyond the Atlantic ports, or engaging in mining, railroad-ing, steamboating or other "hazardous occupations." Such restrictions were definite handicaps to those insured individuals who might be tempted to "go West."

Even before the California Gold Rush, the companies were faced with the magnetic power of the West—that large part of the nation beyond the "Father of Waters." In May 1846 the New England Mutual Life Insurance Company granted Forrest Shepherd, a citizen of New Haven, Conn., the right to travel West of the Mississippi upon payment of one-half of one per cent extra premium. Prior to the discovery of gold in California, the New York Life Insurance Company accepted occasional risks at varying rates on the lives of traders and ship masters visiting the Pacific Coast. Undoubtedly, similar applications were granted by other companies upon payment of extra premiums to compensate for the additional risk assumed.

It was the gold fever of 1849, however, which forced the companies to alter their restrictions and to provide specific regulations by which a policyholder could go to California. At the outset the underwriters sought merely to grant individual permission to make the journey and to set a special premium to be paid by the insured. There were many variations in such permits. Some companies sought to regulate the type of ship the Argonauts could sail on, the route the ship could take, the time of the year the trip could be made, the period the insured could remain in California, what occupations he could not engage in while on the Pacific Coast, and when and how the policyholder was to return. In February 1849, the New

York Life Insurance Company adopted a uniform rate of three per cent extra on the amount of insurance purchased, the policies being written on the seven-year table to run three years only. This extra rate was reduced to two and one-half per cent in March 1852; to two per cent in February, 1853; to one per cent in 1858, and in 1859 it was taken off entirely for persons residing in San Francisco. In addition to the extra premium the company prescribed the routes which could be taken to California, designating at first only the Cape Horn and the Panama water routes. In March 1850 the overland route through Missouri was added. A few examples of such specific provisions taken from insurance company files might be of interest:

(1) Forrest Shepherd, who had received a permit to travel west of the Mississippi in 1846, was granted a permit on January 5, 1858, by the New England Mutual Life Insurance Company, which read:

On the previous payment of an additional premium of seven 50/100 dollars said Shepherd has liberty to reside and travel in California and on the payment of a further additional premium of seven 50/100 dollars he has liberty to make a voyage to California by any usual route and on the previous payment of a like additional premium he shall have liberty to return thence to the New England or Middle States.

(2) A Cincinnati agent of the Penn Mutual Life Insurance Company (Philadelphia) inquired of his home office early in 1849 as to what provisions could be made for persons going to California. President John W. Horner replied:

Yours of 2nd is recd. We are insuring persons going to California by any route except via Panama and Chagres at the following rates.

For all policies for one, two or seven years, we charge our table rates for seven years and four

per cent extra upon the sum insured, which I believe is as low as any office of good standing here.

We are very particular with these risks as to Habits, temperance &c and do not take more than \$1000 on any one life--\$10,000 on any one vessel if they go by sea or \$12,000 by any one land party. . . .

It will be noted that the Pennsylvania company, unlike most of its New England competitors, would accept risks on persons going to California by the overland route.

(3) Another New England Mutual customer, Cyrus Woodman of Mineral Point, Iowa County, Wisconsin, had purchased in 1844 one of the company's first policies in the amount of \$5000 for which he paid an annual premium of \$105.00. This contract, similar to that held by Daniel Webster, contained the provision that the premium could be increased up to fifty per cent if the insured moved to Washington, D. C., or any town or city containing fifty thousand inhabitants. On June 10, 1850, Woodman obtained,

...liberty to reside and travel in any part of California and go thither by way of the Isthmus...and return to the Eastern States by any usual route of travel excepting by way of the Rocky Mountains, on prior payment of an additional premium of one hundred and fifty dollars per annum provided that he shall not be employed in mining or digging for gold or other metal during said residence in California.

Note carefully that while the insured could go to California, he could not engage in gold mining! There is only one interpretation--mining was a hazardous occupation (claim jumping, miners' brawls, and the general hectic atmosphere of the mining region)--and the company would not accept the risk. It can be assumed that some of the insured readily accepted the travel restrictions in order to protect their heirs while en route to the gold fields, but took their chances after

arrival at the mines. The results were about what could have been expected. The first death loss book of the New York Life Insurance Company shows that in 1850 out of one hundred consecutive payments of death benefits fifty were on the lives of California policyholders.

(4) On August 7, 1857, Collton L. Pratt, member of the San Francisco shipping firm of Page and Webster, purchased a three-year five thousand dollar life insurance contract at an annual premium of \$272.00 from the same New England company. His policy was somewhat modified from the early contract cited. Although he, too, was prohibited from engaging in mining, he could remain up to one month west of the Mississippi without consent of the company. For any longer period he needed specific written consent. The policy contained the endorsed permit by which Pratt had

...liberty to navigate in any seas at any time all season, and to reside at any ports or places for the purpose of taking in and discharging cargo. Said Pratt also has liberty to return to the middle or eastern states of the United States from any part of the Pacific by any route except the one across the Rocky Mountains on the payment of an additional premium of twelve dollars, said premium to be returned if said liberty of returning is not availed of.

(5) The latter provision in Pratt's contract is reminiscent of the action taken by the Mutual Benefit Life Insurance Company. In December 1848 the Mutual's directors provided that policyholders (those who had already purchased insurance) might be given permission to go to California and to reside on the coast at an extra premium of one per cent or to go inland to the gold fields for an extra two per cent premium. In April 1849, it decided that risks to California for old policyholders would be allowed at ten per cent extra premium, but no new insurance would be risked on people wishing to go west. The ten per cent extra premium was divided

three and one-half per cent in cash and six and one-half per cent as a note, the latter to be canceled in case the policyholder returned from California in good health, as judged by a company medical examiner. The note would be payable on demand, with interest, if the policyholder was not in good health.

By 1860 the directors of the company determined that policyholders might be given permission to live in California at no extra premium but with five-tenths per cent extra premium for the travel either way from east of the Mississippi to California, and with a two per cent annual extra premium if the policyholder became engaged in mining.

Other insurance companies were quick to offer "favorable terms" for California-bound policyholders. The extra premiums charged for "Pacific Permits" were certainly not out of proportion to the risks assumed by the companies. Fifty per cent of the California risks taken by the Penn Mutual Life Insurance Company during the Gold Rush became losses! According to the records of the New York Life Insurance Company that organization appears to have suffered considerable losses from deaths to persons taking the overland trails to California. Henry H. Treat of Palmyra, New York, purchased in February 1849, five policies aggregating \$3000 and payable to five different beneficiaries. Treat gave his occupation as "Forwarder" and presumably the policies were to protect creditors in the event of his death. The record shows that he died on March 27, 1849, at the age 54, of cholera at "Rio Grande." John Booth Lambert, a thirty-year-old lawyer of New Canaan, Connecticut, also purchased a \$1,000 policy in February 1849, and soon set out for California. He, too, died of cholera at "Rio Grande" on March 15, 1849. The same record shows other such losses recorded simply as "on way to California," or "on the prairies," or "on the plains."

Causes for the high percentage of losses among the

insured who attempted to cross the plains and mountains to California can be well understood from the following synthesized description of the hazards of the trip:

...Its (cholera) ravages were frightful from the Missouri to the Rockies. Men were struck suddenly. Some died after two or three hours of violent chills and fever. Others lingered between life and death for days or weeks. Medical attention was seldom to be had; relatives were not always on hand to care for the afflicted. Occasionally utter strangers went out of their way to minister to those in distress, but in selfish panic supposed friends often abandoned their companions.

Fortunately, the cholera did not cross the continental divide; mountain fever took its place as the principal ailment, and then it likewise was left behind. But the road became worse. The Platte Crossing, the alkaline lakes, Sublette's Cut-Off with its thirty-five miles without water, the Green River Crossing--these earlier crises paled before the Humboldt. ...

From the Humboldt to the Pacific the travelers still had hundreds of miles of desert followed by the rugged ascent of the Sierra Nevadas before arriving at their goal. Little wonder that premiums amounting to one per cent, three per cent, and as high as ten per cent upon the face value of the insurance contract were demanded by the companies when in one year, 1849, over 1000 emigrants died of cholera alone while en route overland to California!

The water route offered plenty of hazards on its own account. Storms, badly loaded or overloaded ships, antiquated barks inefficiently operated, the land trip across the disease-ridden Isthmus, or the passage around the unpredictable Horn followed by the long and tiresome passage up the coast (frequently attended by heavy seas), gave the actuaries many an uneasy moment during the "Gold Rush" era. Sizeable losses

were recorded by almost every company granting permits over the water route. An outstanding, though not unusual loss, was recorded in 1850, by the National Life Insurance Company of Vermont.

The National was a new-comer in the life insurance business. It issued its first policy on January 17, 1850, and immediately made provision for insuring the many Vermonters, and other New Englanders, about to sail for California. For an extra premium of three and one-half per cent of the face value of the policy travel permits were granted by way of Cape Horn, Isthmus of Panama, and Nicaragua routes. Four hundred and sixty-seven policies with gold country permits, aggregating a total of \$302,800 worth of insurance, were written in 1850 and subsequent years. Two of these contracts, each for five hundred dollars, were purchased by Rowland Allen of Ferrisburg, Vermont; the first to protect his young wife, Sarah, the second as protection for a loan made him by Nathan Lewis--the presumption being that the loan was used to finance Allen's way to California. For the \$500 seven-year plan term life insurance policy in favor of his wife, Allen paid the annual premium of \$5.15. The one-year Pacific permit, however, cost an additional premium of \$17.50, thereby making the total \$22.65. The contract contained the usual prohibition against traveling in the cholera-ridden southern states or "west of the settlement on the Western bank of the Mississippi (except in the states of Missouri and Iowa)." On May 17, 1850, just four months after the company had begun business, Allen died of dysentery on the U. S. mail steamer, Oregon, off the port of San Diego, California. News of the death of the insured reached the Montpelier, Vermont, office of the insurance firm in July. The company promptly waived the ninety-day notification period and paid both Mrs. Allen and Mr. Lewis--"although it required the personal credit of some of the directors of the Company to raise the funds."

By 1855 the California rush had slowed materially.



# PIKE'S PEAK GOLD REGIONS!

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**Policies granted by  
THE NEW-YORK LIFE INSURANCE CO.  
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**ACCUMULATED CAPITAL  
ONE MILLION, SIX HUNDRED THOUSAND DOLLARS**

In view of the extensive emigration to the Gold Regions, the above well-known **Company of 14 years standing**, are now prepared to issue policies for that locality. Parties can thus secure to their families or friends some resource in case of accidents, and creditors protect themselves from loss for advances. For full particulars, as of Rates, &c., apply to

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Better accommodations were available for those going by the water route. The overland trail routes were more closely defined and the experience of more than a decade contributed materially to the security of the wagon trains crossing the plains and mountains. Insurance companies were quick to sense the difference. Extra premium rates to the Pacific were gradually reduced and a number of the companies now carried on newspaper advertising campaigns in Boston, New York, Cincinnati and other cities designed to interest California-bound immigrants in the purchase of life insurance.

Underwriters, actuaries, and local agents had just settled down to the routine of selling ordinary life insurance when the trouble started anew. In a clear little mountain creek bed at the foot of the Rockies some enterprising individual, in the fall of 1858, discovered the same telltale flecks of yellow gold which James Marshall had stumbled on at Sutter's Mill in California just ten years before. The Pike's Peak Gold Rush was on! Now the life insurance companies were faced directly with the problem of travel and settlement in the Rocky Mountains. Restrictions or no restrictions the westward movement was a reality, and, as one company executive succinctly commented, "life insurance companies were in the business of dealing in realities."

Late in 1858 or early in 1859 (the records leave the exact date in doubt), the fourteen-year-old New York Life Insurance Company scooped its competitors by advertising special rates for those going to the "Pike's Peak Gold Regions." The extra premium charged for emigration to the Rockies was one and one-half per cent. In general, however, the larger companies in 1858 still had very precise provisions in their contracts rendering them null and void if the insured undertook to cross the plains to the Rockies. To these was added the very definite prohibition against the policyholder engaging in any form of mining. The New England Mutual Life Insurance Company, while restraining its custom-

ers from engaging in mining, worded its travel restrictions so as to prevent the insured from remaining "over one month in any part of the year, West of the Rocky Mountains." Previous to the Pike's Peak Gold Rush the Massachusetts Mutual Life Insurance Company had no recorded objection to mining as an occupation, but did restrict its policyholder from passing "West of the Rocky Mountains." With the opening of the Kansas country this latter provision was modified to prohibit the insured from passing "West of the 100th meridian of West Longitude." This action kept all of the present State of Colorado "out of bounds." It was not until 1873 that the Massachusetts firm removed the travel and residence restriction so as to allow its policyholders to go to the Rockies and far West without special permits. It is interesting to note, however, that when this liberalization was finally made an occupational restriction against mining was added to the contract.

The New England Mutual also continued its restrictions against settlement in or west of the Rockies until the 'Seventies, but seems to have banned only coal mining, leaving the gold fields open to the insured if he obtained a special travel or residence permit. The energetic Equitable Life Assurance Society of the United States, while maintaining its conservative occupation restrictions well into the 'Eighties, modified its residence and travel requirement. In 1864 its regular contract prohibited the insured from working at mining or railroading, and from visiting, without written consent, "those parts of the United States which lie west of the 100th degree of west longitude." Three years later a policy contract labeled "Policy where beneficiary is other than a wife," contained the same restriction but added parenthetically, "excepting into Kansas, Nebraska, or Colorado, or by direct overland route into California." This type of business contract carried a higher premium than an ordinary life policy where a man's wife was his beneficiary. The latter type of policy declared the company to be without liability if the insured

went "west of the 100th degree of west longitude (excepting in California and Oregon, with right of passage thither and back by direct overland route)." By 1886 the Equitable society had modified these terms in its "Semi-Tontine Policy for a Wife" so as to permit settlement in the West if it were within "settled limits."

A provision in the first policy of the John Hancock Mutual Life Insurance Company of Boston, issued December 24, 1864, specifically restricted mining and railroading as occupations for policyholders, and declared its contract void if the purchaser "voluntarily (and without consent) be and remain over one month in any part of the year west of the Rocky Mountains. ..." This latter restriction was omitted from policies issued after March 1869. It was not until 1875, however, that the Provident Mutual Life Insurance Company of Philadelphia removed its provision voiding the contract if the insured "pass to or west of the Rocky Mountains." An identical provision was found in the policies of the Penn Mutual Life Insurance Company until the early 'Seventies. The Northwestern Mutual of Milwaukee retained until 1867 a provision against its policyholders passing "west of the 100th degree of west longitude." In that year the restriction was altered to read,

The person whose life is assured is permitted to travel by the usual routes to and from California or to and from any portion of the Western hemisphere north of the tropic of Cancer.

The force of this revision was still to prevent settlement in the Rocky Mountain West and was not removed until 1884. Between its founding in April 1858 and May 29, 1878, the policies of the St. Louis Mutual Life Insurance Company also restricted the insured to areas east of the 100th degree of west longitude. After October 1, 1878, the policyholder was permitted to travel and reside "anywhere within the settled portions of the United States north of the 33rd

parallel....," but were restrained from engaging in such occupations as blasting, mining, or railroading.

It would be possible to offer several dozen additional examples of the restrictions made by other companies against travel to and west of the Rockies in the decade immediately following the Pike's Peak excitement, but the examples cited are representative of such provisions. The general rule was to restrict the number of such risks by prohibiting immigration to the Rocky Mountain West except by written permission and with the payment of extra premiums. The companies granting such permits sought to further reduce the risk by prohibitions against mining--an occupation considered hazardous to this day. Such a volume of restrictive measures, however, does not seem to have prevented a goodly number of insured persons from making application for special permits. The records of the Mutual Benefit Life Insurance Company of Newark, New Jersey, provide an excellent example of this situation. In 1860 this company granted (in consideration of a one per cent extra premium) seven travel permits to "Pike's Peak" for policyholders from Chicago, Kalamazoo, St. Paul, St. Louis, Quincy, Mass., and Newark, New Jersey. One applicant was a 27-year-old druggist in Chicago, while the gentleman from Kalamazoo was a 49-year-old, 170-pound blacksmith. In 1861 Pike's Peak permits were approved for six applicants from Indianapolis, Muscatine (Iowa), Newark, Quincy (Illinois), and St. Louis. Three more were granted from Indianapolis and St. Louis in 1862; three in 1863--from Newark, Rockford, (Illinois) and St. Louis; eight in 1865--from Cedar Rapids (Iowa), Chicago, Jersey City, Milwaukee, Newark, New York City, and St. Louis; nine in 1865--from Boston, Chicago, Davenport (Iowa), Decatur (Illinois), Omaha, Philadelphia, Providence (Rhode Island), Quincy (Illincis), and--as usual--St. Louis.

Despite this liberality the Mutual Benefit Life Insurance Company retained its travel and occupational restrictions until the 'Eighties. Of particular interest in this regard

was a Colorado permit issued in 1871 to a New York minister, the Reverend Charles Morton. This choice tidbit of economic history read:

Permission is hereby given without extra charge to the insured...to visit over land any of the states or territories of the United States west or north of Kansas and reside in any part thereof for a period of one year from date.

It being understood and agreed that the party is not to be engaged personally as a miner, or in mining operations except as superintendent, and that the Company is not liable if death should occur from hostile Indians.

One year later the good pastor was given permission "to reside at Denver City, Colorado Territory, during the continuance of his policy." According to the record the Reverend Morton died of old age in Denver in 1874.

Not all early Colorado permits turned out as fortunate as that issued the Reverend Morton. One classic example of the reason for the extra premiums usually charged during the territorial period is found in the files of the Travelers Insurance Company of Hartford, Connecticut. On October 10, 1865, a young Brooklynite named Horace Frederick Merwin purchased a \$10,000 policy from the New York Office of the Travelers and named his mother as his beneficiary. The total cost of the policy for one year, including a special permit allowing him to cross the plains, amounted to seventy dollars. What happened next was graphically described in the January 1866 issue of The Travelers Record, official publication of the company under the title "Indian Treachery."

During the summer of 1865 a new route from Atchison, Kansas, to Denver, Colorado, was opened—a hundred miles shorter than the old route—and it has since been the main line of travel, Butterfield's stages con-

veying passengers and express packages. The stage that left Atchison, November 15, had halted at noon of Sunday, the 19th, at Downer Station, 310 miles west of Atchison, when a band of Cheyennes came whooping into the camp, causing a stampede of the mules. After the first alarm the Indians changed their manner, and one of their number came forward as spokesman, professing the warmest friendship, and inquiring if the new Indian treaty had been signed. The suspicions of the party were entirely lulled by the friendly behavior of the Cheyennes. They mingled freely together with the most cordial handshakings, and all sat down to smoke the pipe of peace—all except Mr. H. F. Merwin, express messenger, who was arranging some articles in the stage-coach—when the treacherous Indians sprang up suddenly, and fired a volley of arrows at the stage. One arrow struck Mr. Merwin, penetrating to his heart and killing him instantly; one of the station keepers was also killed, and a negro named Henderson wounded in the head. The rest of the party, it is believed, escaped, after fighting and hiding until dark, though two were missing three days afterward. In the subsequent pursuit of the Indians a soldier was killed but none of the Indians were caught.

Merwin's body was recovered and interred in Brooklyn. The company promptly paid the \$10,000 face value of the policy to the mother of the unfortunate youth.

Not all life insurance problems resulted from losses due to cholera, mining accidents, or Indian hostilities. A standard clause in a majority of contracts issued up to the late 'Eighties contained the warning that the policy was null and void if the insured died,

by his own hand, whether sane or insane, or in, or in consequence of a duel, or by the hands of justice,

of in violation of any law of these States, or of the ~~United States~~....

Carroll Frey, editor for the Penn Mutual Life Insurance Company and unwitting instigator of the idea which led to the research and preparation of this paper, after analyzing this policy restriction pointed out that this company dropped this section shortly after 1875. "In other words," he concluded, "I gather that after 1876 you could be hanged at your own pleasure (and not at the expense of your heirs)." The whole philosophy behind the restrictive clauses in regard to the West is well summed up by William Cunningham, in his excellent history of the State Mutual Life Insurance Company:

Unfortunately, all parts of our country did not have an environment equally conducive to good health and a normal length of life. The pioneer of the West enjoyed a full life while it lasted but it was considered likely to end suddenly and unexpectedly by a pot shot from an Indian or outlaw or from over-exertion or exposure.

The attitude of those who paid the extra premium and made the westward trek might well have been that of Charles E. Crane of the National Life Insurance Company who wrote,

You will see that we did charge an extra premium but let me ask you if it isn't worth the extra cost to have included in one's policy the permission to visit such grand states as Colorado or California.\*

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\*Citations and references used in this study will be included in the annual Brand Book now in publication. This is Part I of a three part study, the second of which will include the development of insurance within the Rocky Mountain region from 1861 to 1900. The author acknowledges with sincere appreciation the generous help of the general agents of the various life insurance companies having agencies in Denver.