

DIPS, ANGLES & SPURS

The Newsletter of the
Society of Mining Law Antiquarians
www.mininglawhistory.org

Volume: 2017 Number 1

June 2017

Inside This Issue...

Editor's Notes	Page 1
Announcements	Page 1
2016 Mother Lode/Gold Rush Tour	Page 2
University of Arizona – Global Mining Law Center	Page 2
Interview with Stanley Dempsey, Sr.	Page 3
The International Mining Law History Conference	Page 13
West Australian	Page 28
Curtis Holbrook Lindley	Page 29

EDITOR'S NOTES

Dips, Angles & Spurs is an occasional publication of the Society of Mining Law Antiquarians. Please send submissions for the newsletter, including book reviews, meeting notices, articles on mining law matters, as well as address corrections to:

Anna Mallett, Editor
433 S Reed Ct
Lakewood, CO 80226
Telephone: (303) 895-6158
E-mail: anymallett@yahoo.com

ANNOUNCEMENTS

No meeting will be held at the 2017 RMMLF
Annual Institute in Santa Fe, NM



CONGRATULATIONS
to John Lacy for receiving the University of
Arizona Alumni Association Professional
Achievement Award



Mike King presenting the award to John Lacy at the 2017
Law College Association awards ceremony.

2016 Annual Institute Mother Lode/Gold Rush Tour

Reported by John Lacy

Twelve of the registrants of the RMMLF 2016 Annual Institute met at the Holiday Inn Express in Grass Valley, CA on July 20, 2016 to hear a local historian describe the historic mining in the area and provide directions. The next day, most of us visited the Empire Mine State Park and the North Star Mining Museum. The North Star Mining Museum is particularly impressive, in that all of the equipment actually works. The building is the old electric generation station for the mine - see the picture of Terry below. Afterwards, Terry and I drove to Sacramento and toured the Sacramento Historical Society's Museum.



Terry Lacy next to the Pelton Wheel.
Photo by John Lacy.

John Lacy becomes the Director of the James E. Rogers College of Law at the University of Arizona – Global Mining Law Center

The James E. Rogers College of Law at the University of Arizona, Global Mining Law Center, announced John Lacy as its first director.

The Global Mining Law Center is the first ever interdisciplinary unit that will educate lawyers on mining issues and miners on legal issues.

In addition to education, the new center will assemble leaders from across the mining spectrum to foster productive dialogue, create solutions that address pressing law and policy issues, and support cutting-edge research about the industry.

The center will roll out degree and non-degree training opportunities online and in-residence, including:

- Master's degrees with a mining law and policy focus for both lawyers (an LLM) and non-lawyers (an MLS);

- JD degree with a concentration and certificate in mining law and policy; and

- Certificate courses for executives, lawyers, managers, engineers, civic and community leaders, and government officials in the mining industry

The center is led by John Lacy, an Arizona Law alumnus and professor of practice who has devoted his career to international mining transactions. Lacy is the 2015 winner of the prestigious Clyde O. Martz Teaching Award, given by the Rocky Mountain Mineral Law Foundation in honor of excellence in teaching natural resources law.

Interview with Stanley Dempsey, Sr.



Stan Dempsey's career was succinctly summarized in the National Mining Hall of Fame press release: an attorney, geologist, historian, author, investment banker, corporate executive and a pioneering leader for proactive environmental protectionism.

Q: You started your small mine career when you were still in school. Did that bring you into contact with mining law and related matters?

A: My first exposure to the 1872 Mining Law was in the late 1950s when I was in school. I was a geology major at the University of Colorado, and became interested in the small gold and tungsten mines in Boulder and Left Hand Canyons. There were still a few small mines operating and I became acquainted with some of the people doing the mining. I attended the meetings of the Boulder County Mining Association, and met miners like Harrison Cobb, Al More and Al McGowan.

Tom Brightwell and I were classmates and fraternity brothers at CU, and we decided to become partners in mining. Our first activity was an investment in Boulder County tax sale certificates on mining properties in places like Caribou and Ward, mountain districts west of Boulder. We soon learned how to search the county records to find mining claims and their status.

We also learned how the 1872 Mining Law worked. We examined a number of mines,

and I eventually leased a gold property in Four Mile Canyon, installed a pump and dewatered a shaft on a patented claim that I leased from Al More. It was a great way to get acquainted with mining and mining law.

Q: You did some uranium mining too, if I recall correctly?

A: Yes, that was in Montana. Harrison Cobb invited me to join him in a venture in the Pryor Mountains in Montana, west of Bighorn Canyon and northeast of Yellowstone Park. The deposit was in the Madison Limestone, a great mass of limestone that outcrops in much of northeastern Wyoming and southern Montana. The ore mineral was tyuyamunite, a cousin of carnotite, which was the mineral usually mined on the Colorado Plateau. It occurred along with nice crystals of calcite in collapsed caves in the limestone.

Harrison and I lived in Lovell, Wyoming, south of the mine. Our daily commute took us through a big sedimentary basin that was the home of a wild horse herd. We sometimes stopped on our way to the mine to prospect the Morrison formation, a Jurassic age formation composed of mudstone, sandstone, siltstone and limestone. It was prospective for uranium, but was also full of dinosaur bones and gizzard stones. It was all a great adventure.

At the mine, I usually did the blast-hole drilling with a compressor and jackhammer drill. Harrison did the mucking with an Allis Chalmers front end loader and we both did maintenance work on the equipment as needed. I did the books in the evening and Harrison did the purchasing of parts. We took several trips to Riverton to negotiate with the Atomic Energy Commission uranium ore buying station at the mill.

Q: Were these small mine activities helpful to you in your later practice as a mining lawyer?

A: They certainly were. The commercial aspects of these small operations are demanding and you pay attention pretty

carefully when your own money is at risk. I worked on mining law issues and of course, other things, like raising money, leasing properties, securing licenses from the state, dealing with mine inspectors, purchasing equipment, and so on.

Q: Tell us about your time with Climax Molybdenum and AMAX.

A: I started working at Climax when I got out of the University of Colorado at Boulder with my geology degree. I worked in the engineering department, doing time and motion studies of underground operations, and equipment justifications. I went back to school to get my law degree and went right back to Climax when I graduated in 1964. I was hired back to be in the legal department, working for Jack Laing.

I came back to Climax just at the right time career-wise. Climax was getting ready to expand its tailing facilities in the valley of Ten Mile Creek and was acquiring land, moving towns and all kinds of infrastructure like highways, power lines, and even cemeteries. One of my first assignments was to terminate the existence of two incorporated towns, Kokomo and Recen. I ended up securing disincorporation of Recen and a federal judicial determination of abandonment of Kokomo. I had avoided taking municipal law in law school, figuring that a mining lawyer would never encounter such a prosaic matter. So much for that faulty assumption!

My practice at Climax was very busy with title work and some really novel problems arising when we had to move infrastructure. But that was just the start. When I arrived in 1964, Climax was building a new mine called Urad, near Berthoud Pass. I was quickly thrown into construction contract preparation and administration for a major project. As I was getting the hang of that, the Climax geologists discovered the Henderson molybdenum deposit below Urad. Now I was given the assignment to secure land for Henderson, a program that involved private and public lands. The Henderson Mine took ten years to

build and by the end of that time, I had succeeded Jack Laing as the head of the legal department and had managed to patent thirteen lode mining claims and one mill site, buy all of the private land required and secure thousands of acres of public land by way of forest exchanges. And in the process, we managed to pass a special act of Congress to allow for a nine-mile, full size railroad tunnel under the Continental Divide. When I say "I" did this or that, I need to acknowledge that building the Henderson Mine was a team effort, and although I was generally responsible for items like obtaining land, there were a lot of other people involved as well.

Q: Developing Henderson Mine was a pretty big undertaking. What kind of resources did you have to work with?

A: I was able to hire additional help when it became clear we were into a very large program at Henderson. Bob Backus, Dan Hale, Dave Delcour, Art Biddle, Peter Keppler and Jim Engleking were with the legal department in the late 1960s and early 1970's. We were also able to use a number of excellent outside law firms and lawyers. Dawson, Nagel, Sherman and Howard provided much of the legal work on land and water acquisitions and labor matters. I recall fondly the wonderful working arrangement we had with lawyers like Don Sherwood, Gary Greer, Hugh Burns and Bill Schoberien. Holland & Hart handled a lot of the legislative matters. Steve Hart had a relationship with Climax that went back long before I entered the scene, and he was very much a mentor. Bob Davison, Frank Morison and Jack Kelly were part of the Holland & Hart team. Tony Zarlengo, a classmate and longtime colleague of Jack Laing was always available for the most delicate and complicated problems. Ray Moses gave us wise counsel on our effort to secure water rights. Bob Theobald in Breckenridge helped us a lot with title work for the new Ten Mile tailing pond at Climax. We had a lot of lawyers working on different matters but these were the lawyers most involved. We also had the pick of the best

water engineers and landmen. Pete Wheeler did most of the water work and Chuck Robinson did a superb job on our effort to secure a developed water decree for the Henderson Mine. I had the best of the best as mentors.

Henderson project was probably the biggest civil project built in Colorado until 1980s or 1990s. It took from 1966 to 1976 to build it. It involved a mine site with three shafts, the deepest was 3,000-foot-deep. The shafts were on the east side of the Continental Divide, connected to the western slope by a 9 mile long tunnel with a full size railroad. It also involved several miles of railroad tracks to get to the mill and tailing disposal area, and constructing a road over Ute pass. At that time, the total capital was about \$500 Million; today it would probably be close to \$5 Billion.

This was a really interesting project to be involved with. We wrote tunnel contracts. I believe I read every case of changed conditions decided in every English-speaking country in the world - to really understand contracts issues like changed conditions. I finally figured out this simple approach- the owner bears the objective risk of bad ground; the contractor bears the risk of his own management abilities. So, we came up with contracts that provided for cost plus payments when ground conditions were bad.

Isn't it about time for another anecdote?

I remember one situation when the accounting and the law departments were taking the position that the tunnel contractor, who had run into some tight and squeezing ground, and was invoking the cost-plus remedy, should keep going and be paid on the unit price basis. The engineers, of course, were sympathetic to the tunnel driver, and finally the chief engineer said - "look, if you two clowns think this is not bad ground and it should not go to cost plus - come see it yourself." The four of us - the chief engineer, chief accountant, chief lawyer and the contractor- went underground into the tunnel. When we got to the face a couple of miles in, we could hear the steel

rails being used to spile through the fault groaning as they bent as weight came on them. So, we all decided in favor of the cost-plus rate and got the heck out of there! Those are the kinds of things that are memorable on a big project like this.

That tunnel was so long that the engineers had to use cadastral surveying that takes into account the Earth's curvature. It was driven from two ends, and when it came together, they were less than two inches off.

The decision was made early on to patent every square foot of the Henderson Mine. That decision came largely because of fear of government interference, which at the time was over price controls and a battle between President Johnson and the President of US Steel. Patenting everything was quite an undertaking because of the amount of public land involved. We did forest exchanges, patented a mill site and 13 lode claims, and went to Congress to get a special act to deal with the tunnel. It was difficult to find a precedent in any of the public land laws allowing us to build that tunnel, so out of the abundance of caution we got a special act to deal with it. First question from a member of Congress was - has anyone done this before? Being a mining historian, I knew about the Sutro tunnel in Nevada that was constructed to drain the Comstock lode in the 1870s . So, we found that the law used for the Sutro tunnel was a special act of Congress and we wrote the law for the Henderson situation pretty much the same way.

Water was another major issue - getting 3,000 acre feet of water for industrial use was a challenge, to say the least. Pete Wheeler and Gary Greer did a marvelous job and we were actually able to make an exchange with the City of Englewood. We also had the support of the Denver Water Board. Of course, at that time, a mine was considered a good thing for Colorado.

People ask about permitting - how hard was it to permit? Permitting wasn't very hard. This was before the enactment of NEPA in 1970 and the Clean Water Act Amendments were

enacted in 1972. The public's interest in environmental matters was starting to build up in Colorado and the Parker case was decided in favor of the environmental community. We used this as an opportunity to establish a relationship with the leaders of the environmental community and asked them to help us plan and build the mine. It was a 10-year long collaboration between the former heads of the Sierra Club, the head of the Rocky Mountain Center of the Environment, the head of the Thorne Ecological Institute, and many other environmental leaders. We learned a lot from them and they learned a lot from us. That collaboration resulted in the mine being built on schedule, a mine that has run with a good environmental record ever since. It received kudos from the national and international press. We had wonderful stories from people like Robert Cahn and Stewart Udall.

That collaborative program, named the "Experiment in Ecology," was unique. The industry in general started calling my big boss in New York asking how in the world we did this. Pretty soon we were getting requests to come to New York, Philadelphia and Washington to give speeches on our experience. And then other mining companies started discussing our experience with us. One of the most interesting things that happened was - Ken Paulsen, one of the engineers who worked with me, and I were asked to visit with the iron and steel people in Europe at their major OECD Committee meeting in Brussels. After we gave our talk, we were invited to go to London, where we were asked by a major mining company to help them in Papua New Guinea, where the new Bougainville mine had been in production for about a year. That was the time when there were difficulties between the newly independent government of PNG, the people of Bougainville, and Rio Tinto's affiliate in Australia. AMAX and Rio Tinto were on good terms, and both companies were interested in finding solutions to the problems that were starting to interfere with the orderly development of large mines.

So, in 1972, we ended up traveling to PNG. They were struggling with - how do we deal with this business of the environment. People didn't know what that word "ecology" meant in the 1970s. Bob Kendrick, General Manager of Climax Mine and one of the finest people I know, and I spent 10 days at the Bougainville Mine, seeing on the ground the impacts of building a new mine at that time.

This all resulted in the top people in AMAX realizing that we'd better have AMAX ready for the environmental era that was upon us. Rachel Carson's "Silent Spring" had been published, Earth Day occurred, corporate mining was getting a message - we need to do things differently. I think AMAX did do a good job of getting in front of the issue. Because of my experience building a mine the size of Henderson, and the success of the Experiment in Ecology, I was asked to head up a special committee involving all parts of AMAX - coal, specialty metals, aluminum and copper divisions. At that time, AMAX was the largest mining company in the world, growing as fast as it could. So, we put together a committee to anticipate the standards that would be imposed on us very quickly in the 1970s and 1980s. In that committee, we formed a sophisticated approach to auditing the environmental performance and likely compliance challenges for each of AMAX's mines. I was able to go to all mines and plants of AMAX worldwide, and it changed the whole nature of my work - I became a VP of AMAX, reporting directly to the Chairman and to the President of the company. We hired lawyers, ecologists, geographers, economists, sociologists, anthropologists, and we were all trying to figure out where we were in time and space. It was a very interesting time.

I think you have an anecdote that goes about here. Right?

Right.

I was going to Australia, and I asked Senator Allott of Colorado to help me to get an appointment with the Minister of Environment

of Australia. The Senator's office called and said, "Stan, they don't have one." It was that early in the development of environmental law. I went to Geneva and from there to Australia, and by then a Minister of Environment was appointed. I met him in the hallway – he was moving the furniture in. He said, "I am sure glad you called." I don't tell this to denigrate Australia or anybody, but it's just the way it was, nobody knew what to do, but everybody responded very quickly.

Also, at that time, I was asked to take on the exploration legal work for AMAX worldwide. That brought me into contact with the corporate legal department in New York. Those lawyers were real gentlemen. They had worked on the Mount Newman joint venture in Australia, which was one of the first multinational joint ventures. I had the benefit of their support and willingness to help us as we developed the legal foundation for AMAX Exploration. At that time, we were mainly operating in Europe, Australia, Fiji, and Canada.

Another thing that happened during that period was the development of Powder River Basin coal. It was a major US issue because enormous deposits, a whole series of mines, were being developed on public land, mainly in Campbell County, Wyoming. That brought eastern coal operators, like AMAX Coal, in contact with the West. Our cultures in the East in coal mining were quite different from the cultures of people in North East Wyoming. Bringing that all that together was an interesting time. By then, there were plenty of environmental advocacy groups trying to stop development of Western coal. I came into the picture on the corporate side of our enterprise in the Powder River Basin. AMAX Coal had major holdings that they wished to develop immediately. We were faced with the issue of whether impact statements under NEPA were required. Candidly, I can't say that I enjoyed the corporate politics, sorting out how we made decisions in AMAX, and whether to do an environmental impact statement for NEPA, but it was fun to accomplish the development of Western coal. It was a blended result, and I

think a good result. Working together, our corporate team and AMAX Coal were successful in securing the development rights. We did the first impact statement in the Powder River Basin, and it was successful. The mine was built, AMAX Coal got the first contracts; it was done very thoughtfully, and again, with a lot of attention to the legitimate demands of the government, and we also listened to the environmental community. We were successful in getting the Belle Ayr and Eagle Butte mines into production.

Q: How did you become the head of operations of AMAX in Australia?

A: My career developed pretty much along the lines of staff work. I was worried about becoming a two-trick pony, a mining lawyer and an environmental director. My interest in the industry has always been on the operating side. In 1981, I was fortunate enough to be asked to go to Australia and try to integrate all of our different divisions. I think we were probably one of the largest exploration groups in the country. AMAX owned a big interest in Mount Newman, one of the largest iron ore mines in the world. We were also in coal and oil and gas. The various AMAX divisions were in one building overlooking Sydney harbor and just across the street from the Sydney Opera House. Each group had a floor and separate switchboard, and there was not much cooperation between them. I was sent out to Australia as Chairman of AMAX Australia Inc. I was also Chairman of AMAX Iron Ore, President of AMAX Iron Ore, President of all the other companies. My job was to integrate them and also look into taking all the Australian assets public. Judy and I moved to Sydney, and eventually Sir Charles Court, Premier of Western Australia, made it attractive for us to move AMAX headquarters from Sydney to Perth. AMAX's main source of income in Australia was the Mount Newman iron ore mine in Western Australia, and he thought that was an appropriate place for the national headquarters.

The Australian years were among the most interesting in my whole career. Being on the

board of the Mount Newman Joint Venture and being involved with the finest exploration people in the world, was a great way to get experience as an operator. Also, my job in Australia was probably the foundation of my interest in merchant banking and investment banking. While I was there, the gold boom started, and AMAX was involved in gold exploration, both directly and through a company called Australian Consolidated Minerals, which I was on the board of. I was constantly being courted by the banks to do gold loans. As a lawyer and a geologist, I was sometimes overwhelmed by the sophisticated financial discussions that went on and the discussions I would have about gold financing and hedging being good for the industry. I was always a tiny bit skeptical but I would grab my yellow legal pad and say, "Explain that one more time." Pretty soon I started to understand it a little bit. At that time, AMAX was also disposing of assets, as were many companies all over the world during the downturn. That was the time when Sandra Atchison wrote the cover story in Business Week called "The Death of Mining." I spent a lot of time with AMAX groups meeting with investment banks all over the world - in London, Paris, Frankfurt.

Toward the end of 1983, AMAX was going through quite a change, and there was a big turnover of officers. It seemed like a good time to make a change. I was asked to serve on a board of an oil company in Denver, and I thought - if mining is going to die, I might as well learn the oil and gas business. In any event, I left AMAX in late 1983 and came back to Denver. I had lunch with my old AMAX colleague Ed Peiker, at the University Club, and we decided to put together a merchant bank called Denver Mining Finance. Frank Coolbaugh, the former chairman of AMAX, who had preceded Ian MacGregor, had established an office in Lakewood, so Ed and I subleased some office space from him. We were in a wonderful position because between us we knew just about everyone in the mining business, and a bunch of companies were trying to dispose of assets and other companies wanted to buy them. A good

example would be a European state owned nuclear company. They wanted to buy up all of the uranium mines in the US, and so we got the mandate to do that work. There is life after a big company, but I do have to say I enjoyed every day of my time at AMAX.

Q: Around that time, you also started Royal Gold - how did that happen?

A: That actually happened this way: the oil company I joined the board of was Royal Resources. That was the company that was set up by a federal judge after a big class action suit took Royal Resources down; it was sort of a pyramid scheme. The judge appointed three people to run Royal Resources to see what they could recover for their shareholders. Because this had been a pyramid scheme, and John King and his group had assembled some pretty good properties, these new fellas said to the judge, "We should drill some of those, financing it with money from a secondary public offering". They did. They got an exemption from registration, and a firm in Kentucky helped raise money. They were very successful, but like everyone else in the oil industry in 1983 and 1984, they were all wondering what they were going to do in their next career. So, I'm on that board and I am now operating the new merchant bank, Denver Mining Finance Company. One day the chairman of Royal Resources says to me, "Why don't you take a mandate to see what you can do with our entity." Ed and I came back and recommended they get in the gold business, acquiring mines. We knew lots of properties were for sale and lot of restructuring was going on. They decided to do that and we earned a very nice fee for putting that all together, they paid us in stock. The board said that they didn't know how to run a gold mining company, and asked Ed and me to join them. We did and went into the mining business.

Q: So, you were still involved in the mining law work after you left AMAX?

A: Very much so. Pretty much the whole time I was with AMAX, from 1966 on, I was involved in work with the American Mining Congress Public Lands Committee. Before leaving AMAX, I had been the chairman of the Committee. I continued to serve on that committee after I joined Royal Gold. I have been involved in the 1872 Mining Law policies all those years.

Q: Were you at some point at Arnold & Porter?

A: Yes, Arnold & Porter had set up a Denver branch in the early 1980s, joining the energy boom like everyone else. Harris Sherman, former Director of the Colorado Department of Natural Resources, was the lead person there. Harris and I had worked together successfully over the years, he with the government, and me with AMAX. After the successful Experiment in Ecology, AMAX became involved with a very controversial proposal to build a molybdenum mine near the town of Crested Butte, Colorado. Harris and I and Governor Dick Lamm worked out what became known as the "Colorado Joint Review Process". It provided support for local land use planning, streamlining decision-making by Gunnison County. The CJV received national attention. The federal and state governments were looking for ways to make permitting for things like oil shale faster. This was at the time of the Arab oil embargo. It received a national award for excellence from the President's Council on Environmental Quality. Harris and I always had a good relationship and I was very pleased when he asked me to join him at Arnold & Porter. I was a contract partner there doing mining and public land law work; in fact, I did a land exchange for one of Colorado's major ski resorts. I then created Denver Mining Finance and left. Arnold & Porter is a class act, I was lucky enough to work with large clients that had the money to spend on whatever it takes

to do the very best kind of work. Not every lawyer gets that opportunity.

Q: You have been pretty active with various mining organizations – could you describe your involvement?

A: I first learned about mining associations in my student days in Boulder. I loved working with those fellas at the Boulder County Mining Association. On one occasion, they asked me to testify in front of a US Senate Committee on lead zinc imports. I thought - here is a bunch of small miners working on international commodity pricing. It's like a bunch of farmers in Kansas that you wouldn't believe are interested in commodity prices in China, but they are - because that is where they sell their wheat. Boulder County occasionally sold lead and zinc concentrates in world markets so they had a reason to be interested. I ended up President of that association, and I did testify. Over the years, I became involved in many mining organizations, trade associations in particular, because I was always interested in the policy side of the business. I was fortunate to be elected to the board of the Colorado Mining Association when I was still in my 20s. I became President of CMA in 1980. When I went back to Climax, after I graduated from law school they kept me on the board of the company as a representative.

Because of AMAX's interest in the public lands, particularly because of the Henderson project, AMAX asked me to serve on the Public Lands Committee of the American Mining Congress, which was the national trade association for the mining industry. I joined the Committee in 1965, and served on it for most of my career, for a long time as Chairman. The compelling reason I was put on the Committee was that a Public Land Law Review Commission had been created, chaired by Wayne Aspinall, Congressman from Colorado, and the mining industry was afraid that it might recommend changes in the 1872 Mining Law. The industry was not inclined to see that done. I had the privilege of working

with the very best mining policy people and mining lawyers in putting together a comprehensive report on the 1872 Mining Law. It was adopted by the majority in the Commission. A minority spoke out against the 1872 Mining Law, but the majority voted in favor of our position. I had the benefit of working with Howard Gray, Chuck Barber, George Munroe and a number of other CEO's and fine lawyers like Howard Edwards, Howard Twitty, Dick Pendleton, Morey Hecox, Jerry Haggard, and Fred Ferguson.

Over the years, I was very interested in how to make environmental regulations, which were being demanded by a big part of the public, work with the self-initiating features of the 1872 Mining Law. I still believe very strongly that the 1872 Mining Law feature of self-initiation is sound national mineral policy. There is a body of new research coming out of the Silicon Valley and places like that, dealing with the issues of involving the public with finding minerals. The benefits of having everyone looking for the minerals are now being analogized to the kinds of open source activities that are now a feature of the internet.

The 1872 Mining Law is a tenure law, not an environmental law, and for over 30 years I have testified before Congress that, as a policy matter, we want to keep self-initiation because you never know who or where you might find a mineral deposit. On the other hand, we have to recognize that this self-initiation trumps other land uses, and can cause legitimate land use conflicts. Decision makers have to accommodate all sides, as the industry is learning. But to fossilize today's environmental regulations in tenure statute does not make sense. I think it was Dean Pound of the University of Chicago, who in 1920 made an observation, in connection with zoning laws, that you don't want to put a social based regulation in a tenure law because tenure needs stability, it shouldn't be changed every year. You don't want the deed to your home to be the issue of public hearings each year, you want certainty and capital can't be formed without that certainty in a tenure law.

Environmental regulations should be changed as we acquire more understanding of the environment, so they should not be put into tenure laws which are hard to change. The 1872 mining law makes the case well that people do not like to change tenure laws. I think the important thing I would like to say here is that lawyers in the mining field need to sort out in their mind what part of the legal framework are we working with. Those are the principles that help us work through the policy debates, ultimately creating a law that works.

Q: Please tell us about your involvement with the Rocky Mountain Mineral Law Foundation.

A: Very happy years. Judy and I both worked for the Foundation when we were in law school. In the summer time, Judy worked as a helper to one of the very early directors, and I worked for Clyde Martz indexing the first edition of the American Law of Mining. When I got out of school, I started attending the Annual and Special Institutes I, gave papers, and worked on committees. I was working with people like Don Sherwood, Gary Greer, John Lacy, Randy Parcel, Ken Hubbard, and Frank Erisman - all these folks were young members of the Foundation. In those years, it was pretty common to take our kids along to Annual Institutes so it was a big social event as well as a very thoughtful professional activity. I was President of the Foundation one year, just before I left for Australia. The Foundation was the key to the development of many good things in the mining law area. I served on the Form 5 Committee, I think it was good for the industry to develop the framework for negotiating joint ventures, and it brought together many mining lawyers that now know each other pretty well. I have to say, I settled lots of litigation and did several deals at the RMMLF meetings. We all ascribed to Randy Parcel's statement that "we all checked our guns at the door". We respected one another and we all practiced law in a way that we could all be proud of. We

could sort things out because we knew each other very well and respected each other.

Q: How did other trade organizations help your career?

A: First of all, it helped me meet the senior people the mining industry. I served on committees with vendors, operators, government people, such as the US Bureau of Mines staff. Tom Falkie has been a friend of mine for a lifetime. He and T. S. Ary headed up the U. S. Bureau of Mines at one point in time.

Q: How did the Society of Mining Law Antiquarians start?

A: The truth is that some of us that collected mining law books-George Reeves, Don Sherwood, John Lacy, RandVic Verity-would get together for a drink once in a while, mainly at the RMMLF annual institutes, and commiserate about widows throwing out rare mining law books because they didn't have pictures. We thought if we could find a way to somehow certify that these old books have value, then maybe they wouldn't be destroyed. We decided to get together more often and talk about these things. Eventually, Vic Verity, Wayne Aspinall, Don Sherwood, Jack Laing and John Lacy and I had a meeting in the old Tucson Club during a Special Institute in Tucson, and decided to put together the Society of Mining Law Antiquarians.

In those early years, John Lacy had us all over to his house one time, Vic did one time, and I had the group in Denver one time. We discussed mining law books and the history of mining law. Of course, the history of mining law, as we all discovered, is pretty rich, goes back an awful long way. Finally, we were so enthusiastic that we decided to put out a newsletter to share all of this. We wanted to be careful about the membership - we didn't invite everyone who just wanted to subscribe. We also didn't want to hire anyone, so we decided that a new member had to do something for the administration before he or she could join. I think it had the unfortunate

connotation that it was exclusive or something like that, but it was never really meant that way.

I asked one of Climax's public relations firms to help us with the logo. When they asked what it should say, I said "Dips, Angles and Spurs". That's how it got its name. Now, that I have studied the mining laws for another 30 or 40 years, I find that it should have been "Dips, Spurs and Angles," which is the classic formulation in the cases.

Q: Do you still collect books?

A: I do. Not nearly at the level of sophistication of John Lacy, but I've got a few books. One in particular that I am proud of, I think I beat George Reeves out of it one time. Of course, this is the part of the bargain too - to have fun with your fellow lawyers and historians and others who join. Howell's Book store was across from the hotel in San Francisco where the American Mining Congress met. All of us would go to the Public Land Committee meeting and then race over to Howell's. I got there about a half hour before George. The clerk hands me Yale, which is one of the harder books to get. And this copy of Yale book is inter-leaved/ and I wondered, is this the author's copy". I later found that it was, indeed, an author's copy, and that he was using it to update for a second edition. The extra pages included notes written in his hand! From a collector's point of view this is a very special book. I think I spent \$75 on it. I got there just in time, because if George would have seen it, he would have bought it. I am not sure he has ever forgiven me.

I am more interested in what books say, so I'm not a classic collector. Now that I can get them off the internet, I'm just as glad to have most books in electronic form. But I do treasure my Yale, and some early Morrisons.

Q: Tell us about some of your trips with the Society of Mining Law Antiquarians.

A: I travelled regularly to the UK as part of my work for AMAX. On each trip, I usually found some kind of opportunity to visit historic mining sites or climb mountains. On one occasion, I visited the Magpie Mine in the Peak District in Derbyshire, in the English Midlands. Fluorspar and lead had been mined in the area from time immemorial.

We ran into a bunch of mining history buffs who did everything from dousing to climbing around in old mines. They were interested in the cost books they kept. We communicated with those folks and they suggested having a first international mining law history conference in Bakewell, which is near Chatsworth. Several Antiquarians, including Jim Bird, Howard Edwards, Don Sherwood, John Lacy and Vic Verity, traveled to Bakewell and each of us gave a paper. The background was that in 1288 the miners in the Peak District became annoyed because after 1066, the Normans had come over and started building manor houses, enclosing the land. The miners, who had free rights to go out into those areas to dig for lead or whatever they found, were told by the Normans that they could no longer do that. The miners went to London and told the King that he was not going to have any lead for cannon balls for the navy. The King sent a royal inquiry out to Bakewell and the decision there was sort of a split decision - the miners were allowed free entry, but they had to pay a royalty to the land owner in the form of a dish of ore. This system was to be regulated and adjudicated by a special Miner's court. That Miner's court was having its 700th anniversary when we were there. We got to the building where the court was held, saw court being held, and looked at the dish, in physical form. It was a great time. There was a banquet at the end of the conference, and the lord of the manor who now owns Chatsworth came to the dinner. I reckon he was a pretty good sport, since the members of the inquiry in 1288 awarded miners the right to enter and mine on the

lord's land, except, in public ways, graveyards and the lady's rose garden.

Our papers were published and distributed in Britain and Europe. Don Sherwood got into a bit of a battle because he suggested that the origins of the apex law, or extra lateral rights, diffused from Germany through Derbyshire and through to California. There are some people in Britain that don't agree with that position, so Don has been branded a diffusionist, which I think was a term used as a pejorative.

Q: You have been active in the mining history field and at some point, you were the President of the Mining History Association.

A: A group of us put the Mining History Association together about 25 years ago. Duane Smith, a professor of history at Fort Lewis in Durango, was one of the founders. I did all the legal work for it. The idea was that we needed a place for academics in the mining history field to get together with people from the industry who had interest in it as well. It has turned into quite an organization that publishes a journal every year, with very high quality papers. I was privileged to deliver a paper there this year, in Telluride. They meet in old mining towns, all over the place.

The International Mining Law History Conference, 1988

An International Mining Law History Conference was held on May 29-30, 1988, at Matlock Bath, Derbyshire, England, and was attended by six members of the Society led by Vic Verity. Other members attending were Jim Bird, Stan Dempsey, Howard Edwards, John Lacy, and Don Sherwood. Connie Sherwood and Terry Lacy also went along to keep the fellows out of trouble.

More than 60 people attended the two-day session, which included speakers from several regions of England, the curator of the Bochum Deutsches Bergbau Museum in Germany, and three members of the Society of Mining Law Antiquarians.

Jim Rieuwerts chaired the morning session on May 29 and presented the first paper on Medieval Derbyshire Laws and Customs. Other papers during the morning were by Mike Gill on the Grassington Laws, Lynn Willies on the decline of the Derbyshire Laws and Customs, Robert Pennington on the Stannery Laws of Devon and Cornwall, and Ivor Brown on the modern mining laws in England.

The afternoon session was chaired by Trevor Ford and the papers included Gerd Weisgerber of the Deutsches Bergbau Museum discussing archaeology and mining documents, and David Elkington on Roman Mining Laws. The presentations from the U.S. delegation were introduced by Vic Verity who provided some background on the Society of Mining Law Antiquarians and introduced the speakers. John Lacy spoke on Spanish Colonial mining laws, Stan Dempsey on mining district regulations and Don Sherwood on the history of the development of extralateral rights in the United States.

All of these papers have been prepared for publication in the Peak Mines District Historical Society Bulletin and will be distributed to members of the Society.

That evening, a "Quo Warranto Celebration" Dinner was held at which the Duke of Devonshire, the Lord of the Field, was the guest of honor. The dinner included an exchange of toasts from Jim Rieuwerts to the visitors which was answered by John Lacy on behalf of the American delegation. As part of the evening's celebration, Vic Verity was presented a limited edition medal commemorating the Quo Warranto Celebration. Lynn Willies completed the evening by describing (at length) two local historical incidents where mining laws played an important role.

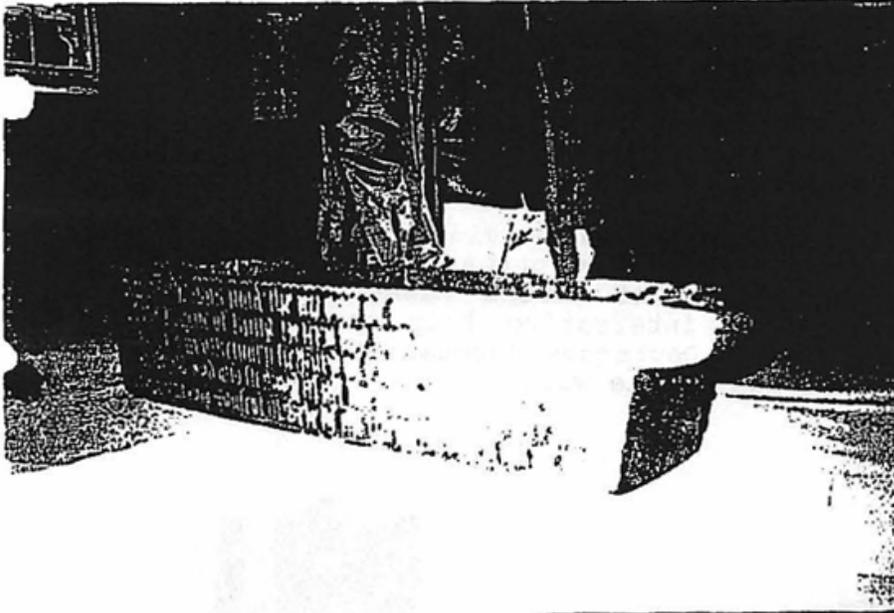
The next morning the group participated in a field trip that began with a trip to the building that houses the Barmote Court where members of the Society examined the famous Miner's Standard Dish and posed for photographs at the bench. The group then visited the Magpie Mine, a local lead mine of historical significance that has been restored and is maintained by the Peak

District Mines Historical Society; traveled over to the Derbyshire Dales for a hike along some of the old workings and drainage tunnels of the historic lead mining areas, and finished up the day with a visit to a lead reprocessing plant (the group cut a splendid figure with white coats, hard hats, shoe covers and umbrellas!). Finally, Don Sherwood, Jim Bird and John Lacy, who apparently hadn't had enough, traveled to the Ecton Mine for an underground tour of a mine that is maintained as a teaching vehicle of mining methods over the years. The first adit was driven by fire setting in the 1600s and thereafter has been mined by various methods up until the middle of the 20th Century. It was interesting to observe mining technology taught in an archaeological context!



Above: Don Sherwood and Stan Dempsey at the entrance to the Barmote Court Hall. The building was the first stop of the field trip part of the Mining Law History Conference. The building itself was built in 1814 but the stone carvings on the front of the building are of much older vintage

Left: Stan Dempsey, Vic Verity and John Lacy take their places as 'judges' behind the bench at the Barmote Court Hall. Behind our erstwhile judges are plaques containing the seal of the Duchy of Lancaster and the names of the Barmastors going back to 1793 (there have only been six!) Photos by Jim Bird



Top: The miner's "Standard Dish" is kept at the Wirksworth Barmote Court Hall. Photo by Jim Bird. Right: One of the two stone carvings that decorate the exterior to the Barmote Court Hall. Photo by Jim Bird. Left: Gerd Weisgerber begins a head-first examination of one of the shafts at the Magpie Mine. Photo by H.M. Parker.

The final day of the celebration included the "Groovers Festival" at the Magpie Mine with traditional technology on display combined with entertainment by the Bakewell Silver Band and the Flying Camel Folk Group. The entertainment also included a reenactment of the "Red Soil Murders" upon which Lynn Willies had expounded at the celebration dinner.

After the celebration there was considerable sentiment to repeating the convention in some form perhaps after five years. Several people suggested that the famous Rammelsburg Mine in Goslar, Germany might be an interesting trip that could also include a visit to the Bochum Deutsches Bergbau Museum, probably the most famous mining museum in the world.



Top: The stoneworks around the hoist at the Magpie Mine Photo by Jim Bird



Left: Society members pose in front of the Peak District Mines Historical Society's museum in Hatfield Bath, the site of the conference. Left to right, Stan Dampsey, Howard Edwards, John Lacy, Trevor Ford, Vic Verity, Don Sherwood and Lynn Willies Photo by Connie Sherwood

PEAK DISTRICT MINING MUSEUM



MATLOCK BATH, DERBYSHIRE DE4 3PS

Telephone: MATLOCK (0629) 3834

700th Barmoot Court Anniversary Celebrations

International Mining Law History Conference

28/30 May 1988

To commemorate the 1288 Inquisition of Ashbourne and the confirmation of the Derbyshire Lead Mining Customs

Saturday 28 May - Morning Chairman - J.H. Rieuwerts

0900	Museum Open	-	tea and coffee
0930	James H. Rieuwerts		Welcome
	Alan Mutter		Domestic details
	James H. Rieuwerts		Derbyshire Laws and Customs
1000	Mike Gill		Grassington and the Customs
1030	Lynn Willies		Decline of the Derbyshire Customs

Tea or coffee

1100	Robert R. Pennington		Stannary Law
1140	Ivor Brown		Modern Mining Law

1230 Lunch

Afternoon chairman - Trevor Ford

1400	Gerd Weisgerber		Archaeology and German Medieval Law
1440	L.V. Caplan		South African Mining Law
1520	David Elkington		Roman Mining Law

Tea or coffee

Speakers from the American Society of Mining Law Antiquarians

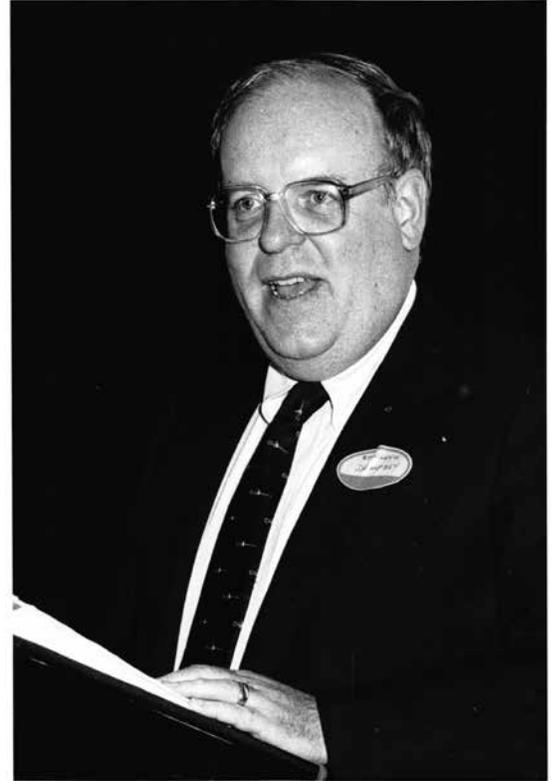
Introduction - Victor H. Verity.

1600	John C. Lacy		The Spanish Ordinances in Mexico
1630	Stanley H. Dempsey		California, and the forty-niners
1700	Don H. Sherwood		Extra-Lateral rights in the USA.

Concluding Remarks - Trevor Ford

Details of the Sunday visits will be issued during the day - but will include the Barmoot Court, Wirksworth, Mandale Mine, Lathkilldale, Magpie Mine, Sheldon, and Enthoven's Lead Works, Darley Dale. You will also be reminded of the festivities available at Magpie on the Monday.

Remember too that your conference fee entitles you to visit both the Museum and Temple Mine - keep your lapel badge for entry.



INTERNATIONAL MINING LAW HISTORY CONFERENCE

The Speakers

James H. Rieuwerts: in his professional life manages a laboratory for a major construction company. He has been involved in lead mining history for some three decades, specialising in mine drainage - soughing, for which he was awarded his doctorate from Leicester University in 1981. He has been a regular contributor to the PDMHS Bulletins, is co-editor of the famous "Red Book" (Lead Mining in the Peak District - now multi-coloured in its third edition), and is very active in site conservation. He has a particular interest in the development of the medieval mining law, and is author of the short book recently published to mark the 700th anniversary.

Mike Gill is a former mining surveyor who recently graduated from the University of Bradford with a degree in Archaeological Science. He is now an external M.Phil. student with Exeter University Department of Economic History, researching Lead Mining in the Pennines, with particular reference to Grassington Moor. Since 1984 he has been sponsored to help with the re-assessment of the Yorkshire Lead Industry, especially the Duchy of Devonshire's archives covering Wharfedale, Airedale and Nidderdale.

He has been a member of Northern Mines Research Society for 23 years, and has been on its committee, mainly as recorder, for 20 years. He has been Secretary to NAMHO, and is currently Vice Chairman.

Lynn Willies teaches at a further education college. His interest in mining began over thirty years ago and he has published a wide variety of articles on the Derbyshire lead mining and smelting industry, especially on its technological and business history, and was awarded a PhD. in 1980. He has also investigated lead ingots from wrecks, and in this decade has visited and researched mines in Spain, India, USA, Greece, and Cyprus, with an emphasis on the archaeological investigation of ancient mining. Within PDMHS he has been involved with conservation, and in the development of Peak District Mining Museum.

Robert Pennington is a solicitor, and since 1968 has been Professor of Commercial Law at Birmingham University. His well known book, Stannary Law was published in 1973. He is a member of the Cornish Mining Development Association, and of the Trevithick Society which is concerned with the industrial archaeology of Cornwall. His interest in mining law is a hobby - unfortunately it is not taught at Birmingham.

Ivor Brown is a mining engineer with a decade of experience in the mining industry, followed by eight years as a lecturer, and five more as a reclamation and geo-technical engineer. More recently he has been involved as a Mineral Planning Officer in West Yorkshire, and is now Minerals and Waste Disposal Officer in Leeds. His research for his Ph.D reflected these interests and also his strong historical

interest and involvement in mining history. He has acted as a consultant in the Middle East and India, and has travelled widely studying the problems of declining mining areas. He has been involved with the advising and setting up of several mining museums in the UK., including Ironbridge Gorge, and in investigating instability problems. He has been Treasurer of NAMHO since 1970.

Gerd Weisgerber is Vice Director of the Bochum Deusches Bergbau-Museum, and was formerly its Head of Mining Archaeology. He has been a school-teacher, but after studying Prehistory at Saarbrücken University, was awarded his doctorate in 1970. He has studied, excavated and published on mines in many countries, including flint mines in this country and Germany, copper at Timna, and others in Thasos, Siphnos, and the Oman, and has visited or made lesser studies on mines in Spain, Cyprus, Greece, Switzerland, Italy and Iran, and is the invited consultant for the Thailand Archaeo-metallurgical Project at Phu Lon.

David Elkington comes from the West Country where he has always lived except for a short spell in the Royal Navy, and three years at Durham University. He is Head of Classical Studies at Wellington College, and is also an extra-mural lecturer at Bristol University on Romano-British History and Archaeology. Despite this he has failed to share his plumbic enthusiasm with his wife and two fairly grown up children (and is obviously on more fertile ground up here). His MA degree at Durham on Roman Lead Mining in Spain and Britain, centred on the Roman mining in the Mendip. He is a contributor to two books on the Roman West Country.

Victor H. Verity, who will introduce his fellow members of the American Society of Mining Law Antiquarians, is a graduate of Toledo and Arizona Universities, and has both mining engineering and law degrees (JD - Juris Doctor, 1936). He is author of a much reprinted book on Laws and Regulations Governing Mineral Rights in Arizona, and another on New Mexico, and co-author of American Law of Mining. He has been President (1968-69) of the Rocky Mountain Mineral Law Foundation, and is still a trustee. Born in Seattle, he spent much of his professional career in the South West of the USA, but is now retired back to Oregon.

John C. Lacy was born in Cambridge, Massachusetts, and was admitted to the bar in 1967. He has a BA. in Journalism, and a JD from the University of Arizona, and has been Adjunct Professor of Mining and Geological Engineering and is now Adjunct Assistant Professor of Law, both in the University of Arizona. He has a wide range of professional publications - which includes the co-authorship of American Law of Mining, and has been on the committee and is Commentary Editor of the Rocky Mountain Mineral Law Foundation. He is a shareholder in, and employed by Verity, Smith, Lacy, Allen and Kearns of Tucson, and is a shareholder in Deconcini, McDonald, Brammer Yetwyn and Lacy, also Tucson, Arizona.

He is author of a number of articles and notes, which includes The Least Welcome Profession; Lawyers in the Mining Camps, and is editor

of Dips, Angles, and Spurs, the publication of the Antiquarians. He is also member of many organisations, including the American Bar Association, and the Mining Club of the Southwest.

Stanley H. Dempsey is a partner in the Denver and Washington firm of Arnold and Porter, and practices mainly in Denver, in the mining and natural resources field. He has been vice-president of Amax, and was resident attorney at their Climax Mine near Leadville, later held a world-wide brief on their behalf. He has also held the post of Senior Vice President of Climax Molybdenum, and was Chairman of Climax Australia until 1983.

He holds both a Bachelors degree in geology, and a JD, from the University of Colorado, and studied management at Harvard. He is a past president of the Colorado Mining Association, and the Rocky Mountain Mineral Law Foundation. He is co-author with James Fell of Mining the Summit; Colorado's Ten Mile District, 1860 -1960 published in 1986.

Don H. Sherwood has a BSc. and a JD from the University of Nebraska. He is a partner in Sherward and Howard of Denver, and is Executive Director of the Rocky Mountain Mineral Law Foundation. He is a Visiting Professor at the University of Colorado School of Law, Adjunct Professor at the Denver College of Law, Chairman of the Mineral Law Section of the Colorado Bar Association, and past-Chairman of the Mining Law Review Committee of the Colorado mining Association. He is a member of the Society of Mining Engineers (AIME), and a founding member and Vice President of the Society of Mining Law Antiquarians.

Trevor Ford, is now semi-retired from the Department of Geology at Leicester University, having received his degree and PhD in 1950 and 1953 at Sheffield University. His career has made him very well known both as a researcher and interpreter of the geology of the region, and he has published very many articles and books, including of course as co-editor, the "Red book". That three of the PhD's amongst the speakers were his students, they hope redounds to his credit. He has been Editor of the PDMHS Bulletin for nearly a quarter century, and Editor of BCRA Transactions since its inception. He is currently President of BCRA, and has always been a powerful force in PDMHS's development. He was made an Honorary Member last year. He is well-travelled in the United States, and is indeed an Honorary Member of the American Society of Mining Law Antiquarians.

THE ALJUSTREL TABLET

Of the One per Cent Sales Tax

The lessee of these sales by auction within the boundaries of the mining district of Vipasca shall receive one per cent from the seller, exception being made to those sales made by the procurator of mines at the command of the Emperor. The lessee shall receive from the purchaser one per cent of the price of the mines which the procurator of mines shall sell.

If, after the auction has begun, everything shall be purchased with one bid, the seller shall nevertheless pay one per cent to the lessee, his partner, or his agent. The seller shall announce beforehand to the lessee, his partner, or his agent, if he wishes any articles withheld from auction. The lessee, his partner, or agent shall exact also one per cent of the value of that which has been withdrawn during the auction.

With reference to him who shall have placed goods in the hands of a crier; If the crier shall not have sold them at auction, but if, within ten days during which they shall have been in the crier's hands, he shall have sold them at the price agreed upon, the owner shall nevertheless give one per cent to the lessee, his partner, or his agent.

Unless that which, in accordance with this section of the law, is due the lessee, his partner or agent is paid, settled or secured within three days after the debt shall have been contracted, the seller shall pay double.

Of the Auctioneer's Fee

He who has leased the auctioneering concession shall furnish an auctioneer within the boundaries of this district. From him for whom sale of one hundred denarii or less is completed, the lessee shall receive two per cent,; for a sale of over one hundred denarii, one per cent.

He who shall have given slaves to the auctioneer for sale shall give to the lessee, his partner, or his agent, if five or a smaller number be sold ... denarii for each slave; if a greater number be sold three denarii for each slave.

If the procurator of mines shall sell, or lease, any property in the name of the fiscus, for this property the lessee, his partner or his agent shall furnish an auctioneer.

He who shall have published a list with the name of each thing to be sold shall give to the lessee, his partner or his agent one denarius.

Of the mines which the procurator of mines shall have sold, the purchaser shall pay to the lessee one per cent of the price. If he shall not have paid this within three days, he shall pay double. The

lessee, his partner or his agent shall have the right to take security for this.

He who shall have sold through an auctioneer mules, asses or horses of either sex shall pay for each animal three denarii.

He who shall have offered for sale through an auctioneer slaves or any other property, and the latter shall have sold them at the price agreed upon within thirty days, the seller shall pay the regular fee to the lessee, his partner or his agent.

Of the Bath Management

The lessee of the baths, or his partner, shall entirely at his own expense warm and keep open the baths, which he shall thereby hold in lease until the following June 30th, from sunrise until noon for women and from one in the afternoon until eight in the evening for men, subject to the approval of the procurator who will be in charge of the mines. He shall properly furnish water running into the tank over the heating chambers, up to the highest mark, and in the plunge, for the women as well as for the men. The lessee shall charge each man half an as, and each woman an as. Freedmen and slaves of the Emperor who shall be in the service of the procurator, or receiving pay from him, shall be exempted; likewise minors and soldiers. The lessee, his partner or his agent, at the termination of the lease, shall hand over in good repair the equipment of the bath and everything which was assigned to him, except that which has been worn away with age. The bronze articles which he shall use he shall properly wash and dry and coat with fresh grease at least once every thirty days. If any necessary repairs should make impossible adequate use of the bath, the lessee shall deduct (from his contract price) an amount in proportion to the loss of time. Aside from this, if he does anything else in the course of administering the bath he shall deduct nothing. The lessee shall not be permitted to sell wood except the ends of branches which are not suitable for burning. If he violates this rule, he shall pay one hundred sesterces to the fiscus for each sale. If this bath shall not be properly open for service, the lessee shall pay to the procurator of the mines a fine of not more than two hundred sesterces for each time it shall not be open for service. The lessee shall have wood in reserve at all times to last...days.

Of the Shoemaker

He who shall have made any shoes, or thongs which shoemakers are wont to make, or who shall have nailed in shoemaker's nails, or who shall have sold them or who shall have been convicted of having sold within the boundaries anything else which shoemakers are wont to sell, shall pay to the lessee, his partner, or his agent double the amount of the sale. The lessee shall sell nails in accordance with the law of iron mines. The lessee, his partner, or his agent may take security (from other shoemakers). No one may repair shoes save when he mends or repairs his own or those of his master. The lessee shall offer for sale ALL varieties of shoes. If he shall not have done this, anyone may have the right to purchase where he wishes.

The coloni may sell among themselves, at as great a price as possible, those shares of mines which they have bought from the fiscus and for which they have paid the full price. He who wishes to sell his share, or who wishes to purchase, shall make a declaration before the procurator who is in charge of the mines. In no other way may purchase and sale be effected. It is not permitted him who is indebted to the fiscus to give away his share.

Those to whom the ore belongs shall convey to the smelter from sunrise to sunset that which lies extracted at the minehead. He who shall be convicted of having carried ore from the mines after sunset and before sunrise shall pay to the fiscus one thousand sesterces. If an ore thief be a slave, the procurator shall beat him and shall sell him with the condition that he be kept perpetually in chains and shall not reside in any mining camp or district. The price of the slave shall go to the owner. If the thief be a free man, the procurator shall confiscate his property and banish him for ever from the mining districts.

All mines shall be carefully propped and supported and in place of old material the colonus of each mine shall substitute a new structure.

No one shall touch or injure the pillars or props left for the purpose of strengthening (walls and ceilings), nor shall he wilfully do anything as a result of which these pillars or props shall be less firm and passable. He who shall be convicted of having injured, weakened... or having done anything wilfully which shall render the mine unsafe, if he be a slave, shall be beaten with rods at the discretion of the procurator and sold from his master under the condition that he shall not reside in any mining district. The procurator shall seize the property of a freeman for the fiscus and banish him forever from the mining district.

The person who works a copper mine shall avoid the ditch which carries water from the shaft and leave untouched a space not less than fifteen feet on either side. He shall not be allowed to harm the ditch in any way. The procurator shall permit, for the purpose of discovering new deposits, a drift from the ditch, provided that the drift be not greater in depth and in width than four feet. It is not permitted to prospect for or to extract ore within fifteen feet on either side of the ditch. He who shall be convicted of having violated the regulations concerning the drifts, if he be a slave, shall at the discretion of the procurator, be beaten with rods and sold from his master under the condition that he shall not reside in any mining district. If a freeman transgresses, his property shall be taken by the procurator for the fiscus, and he shall be banished forever from mining districts.

He who works silver mines shall avoid the tunnel which carries water from the mines and shall leave untouched not less than sixty feet on either side, and he shall exploit the mines which he has occupied or received in assignment in accordance with the regulations; nor shall he go beyond the boundaries, nor pile up crude ore, nor extend his drifts beyond the limits of the mines assigned...

LEX METALLIS DICTA

To Ulpianus Aelianus, greeting

' In accordance with the will of the liberal and most sacred Emperor Hadrian Augustus, he shall make immediate payment: He who shall not have done this and who shall be convicted of having smelted ore before the purchase price has been paid in the manner indicated above shall be deprived of the share due to him as occupier, and the entire mine shall be sold by the procurator of mines. He who shall prove that the colonus has smelted ore before he has paid the price for the half share belonging to the fiscus shall receive the fourth part.

Mines of silver shall be exploited in conformity with the regulation which is contained in this law. The price of these mines shall be maintained in accordance with the will of the liberal and most sacred Emperor Hadrian Augustus, namely that the usufruct of that portion which belongs to the fiscus shall belong to him who first shall put up the price for the mine and who shall present to the fiscus four thousand sesterces.

As has been stated above, he who shall have reached ore in only one of five shafts shall continue work in the others without intermission. If he shall not do this the right of occupancy shall go to another.

If anyone after the twenty-five days granted for the collection of working capital shall begin work at once, but shall afterwards cease working for ten consecutive days, the right of occupancy shall revert to another.

If a mine sold by the fiscus shall lie unworked for six consecutive months, the right of occupying it shall be open to anyone, provided that when the ore shall be extracted therefrom, one half shall be reserved to the fiscus, according to custom.

It is permitted that the occupier of mines shall have such partners as he wishes, provided that each one shall undertake expense in proportion to the amount of his share. If a partner shall not do this, then he who has undertaken the expense shall make out a statement of the expenses undertaken by himself, shall place this statement for three consecutive days in the most frequented spot of the forum, and shall announce through the public crier that each partner must bear his share. The partner who shall not contribute, or who shall wilfully do anything to avoid his share or who shall deceive one or more of his partners, that man shall not retain his share in the mine, and his share shall belong to the partner, or partners, in proportion to their payment of the expenses.

And to those coloni who have undertaken an expense in a mine in which many partners are interested there shall be the right in law of regaining from their partners that which shall appear to have been asked for in good faith.

Of the barber

The lessee shall have this privilege, that no one in the village of the mining district of Vipasca, or within the district, shall practise barbering for profit. He who shall have practised barbering in this manner shall pay to the lessee, his partner, or his agent, for each use of his razors, ...denarii, and his razors shall be forfeited to the lessee. Slaves who shall have served their masters, or their fellow-slaves, shall be exempted. Travelling barbers, whom the lessee shall not have sent, have not the right to practise barbering. The lessee, his partner, or his agent may take security from them. He who shall have refused the giving of security, for each refusal shall pay five denarii. The lessee shall furnish one or more workers in proportion to the demand.

Of the Fullers

No one shall have the right to clean and press, for pay, unworn or soiled garments save him to whom the lessee, his partner, or his agent shall have leased or granted this privilege. He who shall have been convicted of having acted contrary to this regulation shall pay to the lessee, his partner, or his agent three denarii for each garment. The lessee, his partner, or his agent may take security.

Of the tax on mining dumps and rock piles

He who within the boundaries of the mining district of Vipasca shall wish to clean, crush, smelt, prepare, break up, separate, or wash silver, or copper dumps, or dust from dumps, or rock fragments purchased by measure or by weight, or who shall undertake work of any nature in the quarries, shall declare within a period of three days the number of slaves and free labourers whom he is sending for this work, and shall pay to the lessee on or before the last day of each month If they shall not do this, they shall make double payment. He who shall bring within the boundaries of the mines copper- or silver- bearing rock from other mineral workings shall pay to the lessee, his partner, or his agent one denarius per one hundred pounds. For whatever amount, in accordance with this section of the law, he shall owe to the lessee, his partner, or his agent, and shall not have paid, or have given security for payment on the day on which payment shall have been due, he shall make double payment. The lessee, his partner, or his agent may take security, and whatever part of this dump (or dross) shall have been cleaned, crushed, smelted, prepared, broken up, separated, and washed, and whatever prepared stones and slabs shall have been worked up in the quarries may be confiscated unless he shall have paid what he shall owe to the lessee, his partner, or his agent. Slaves and freedmen of operators engaged in smelting silver or copper, who are working in the smelters of their masters or patrons. shall be exempted from this charge.

School Masters

Schoolmasters shall be untaxed by the procurator of mines.

Seizure of mines or of claims

He who within the boundaries of the mining district of Vipasca shall seize or hold a mine in order to establish legal possession under the terms of the law of mines, shall within two days of his seizure or occupancy report to the lessee of this tax, his partner or his agent.

-

The West Australian, 1898

A PREMIER MOBBED

During the last few years of the century, there were almost continuous disputes on the Western Australian goldfields over the respective rights of the alluvial (or surface) miners and the mining companies. The initial cause was the existence of the 'dual title'. Under the provisions of the Mining Act of 1895, no leases were granted to mining companies if they contained only 'poor man's gold', but prospectors were allowed to speck for alluvial gold to within 50 feet of the lode on land leased for reef mining. This enabled limited liability companies to work the deep deposits, while allowing the independent prospectors opportunities for surface dry-blowing. But surface gold became scarce after the mid-1890s, and prospectors wanted permission to dig shafts. In December 1897, the Ivanhoe Venture Gold Mining Company at Kalgoorlie claimed that all its lease was lode, and refused to

admit prospectors. Then in January 1898, in the absence of the premier, Sir John Forrest, alluvial miners were not allowed to sink shafts deeper than 10 feet. The miners were incensed at the new regulation, and after several had defied the government on the Ivanhoe lease, there were disorderly scenes and several were sent to jail in Fremantle. In March 1898, the premier visited the goldfields in order to begin the Menzies railway, but after meeting a deputation of miners at a hotel in Kalgoorlie, he was mobbed by a crowd of 5,000 men, and managed to reach his train only with great difficulty. Later, the 10-foot regulation was repealed, and in 1898 the dual title was abolished, leading to further, unsuccessful demonstrations. The following is an account of the occurrence at Kalgoorlie:

A few police who had been on the outskirts of the crowd reinforced the police body at the hotel door, and they and the members of Sir John Forrest's party and a few members of the delegation surrounded the Premier and endeavoured to get him over to the railway station. Then the tumult still further increased, and efforts were made in the dusty road to strike Sir John Forrest with sticks, etc., and several stones were thrown. Slowly and steadily this time the little body of protectors succeeded in making their way over the road, until within a few yards of the railway station entrance, and then another stubborn stand was made by the infuriated mob, and Sir John was again severely mauled, and the Warden and others assisting the Premier fared almost as badly. More than once the Premier was nearly carried off his feet. He was called "Cur," "Coward," and other similar names, and was jostled up against the coach which was standing in the roadway, but eventually the station was reached . . .

The excitement continued to increase, and there were cries of "Don't let him go." Some hundred persons had gathered about the railway entrance and the doorway became choked. The police stuck to their charge, and eventually managed to get the Premier halfway through the entrance when the doors were again blocked from inside and Sir John received a severe jamming. There was greater pressure outside than in, and the Premier was eventually forced through into the station. The excitement continued to increase, and the position became most grave.

Presently three mounted troopers were seen to detach themselves from the main body of the police and dash at breakneck speed along Forrest-street in the direction of the police station. They returned a few moments later armed with rifles. Their appearance seemed to disconcert the mob, and very soon the rioters in Forrest-street began to disperse. Those on the platform, however, showed no inclination to surrender their position . . .

After the deputation, prior to the troopers being despatched for firearms and as the crowd were surging round the railway station, the Warden felt compelled to resort to the extreme measure of reading the Riot Act, which, as is well known, absolves any officer of the law who might shoot down the rioters. This proceeding marked the climax of the riot . . .

On reaching the platform the force of the rush was so great that the Premier was forced off the platform on to the line, and had it not been for Mr. F. D. North, secretary to the Premier, and Mr. J. W. Kirwan, J.P., the Premier would assuredly have fallen heavily. These gentlemen just caught him as he was falling. The interdict against trespassing on the line was, in fact, wholly disregarded. Law and order were being ignored by the crowd.

Everyone followed the Premier, and soon the line was crowded. Just off the network of lines was a heap of sleepers, and Mr. North, the private secretary, said to him, "Had you not better say a few words, Sir John?" Promptly came the reply from the Premier, who was highly excited, "No I'm d—d if I do. I won't speak a word to them now." Just at this time a number of pressmen surrounded the Premier. On the left of Sir John there were the representatives of the WEST AUSTRALIAN and the *Kalgoorlie Standard*, and on his right were the reporters connected with the *Morning Herald* and *Coolgardie Miner*. These all linked their hands together, and followed by the police and the men, Mr. North accompanied Sir John to the train a few yards away. Mr. F. H. Piesse, Director of Public Works, joined the little band here, and asked the Premier whether he would go on to the Boulder. The Premier assented, and was helped into a seat in a state of semi-collapse. His face was flushed and dusty, his white straw hat crushed and broken, his collar undone and his suit dust brown and disarranged. His companions pressed round him, and anxiously asked if he had sustained any serious injury, and between gasps for breath Sir John said that he had come out of it comparatively lightly. "I was a fool to come here at all," he said, "but at any rate it has taught me a lesson. The cowards!" He was trembling violently, and as he himself stated subsequently, had he not a vigorous constitution he would have assuredly collapsed under the strain of the preceding half hour. It was suggested to Sir John that his presence at Boulder might possibly create a riot there among the men. Sir John's reply was "I don't mind them, the cowardly lot. I'll injure some of them if they interfere with me any more." . . .

During the crush to the railway station the Premier was struck in the face once, and got a severe blow from the butt-end of an umbrella inside the station. The Premier took the hustling well at first, but when he was crowded at the station he got very angry indeed.

— *West Australian*, Perth, 25 March 1898

Later, Sir John Forrest said that

he was amused at some of the statements which had secured circulation. His hands had not been cut, he said, nor, indeed, had he been injured at all. "I was certainly pushed off the platform," said the Premier, "but I was not injured. I was pushed from behind by someone who had pretended to be friendly. I was not assaulted, except once when I received a poke in the ribs from the handle of an umbrella. The crowd hustled me along, but I was never struck." Questioned as to whether he considered that if he had addressed the crowd it would have had a pacifying effect, Sir John replied, "No. I think it would have made them worse." He further stated that he had not used to the crowd the remarks ascribed to him, about "coming on one at a time." The Premier laughingly added, "I may have used a good many words to them. I probably called them cowards and scoundrels." In answer to a query as to the cause of the turbulence of the crowd, Sir John said that, in his opinion they might have been imbibing too much.

— *West Australian*, Perth, 26 March 1898

California Law Review

VOL. IX

JANUARY, 1921

Number 2

Curtis Holbrook Lindley

(1850-1920)

COMMANDING figures in history increase in stature and their remarkable qualities become emphasized as a result of traditions and glorification with which time surrounds them. And yet it does not seem that this reason alone accounts for the absence of great outstanding characters among the lawyers of today. Where are the Websters and the Choates and the Pinckneys of our contemporary bar? Without doubt their absence is due, not so much to the lack of innate genius and creative ability in those among us, as to the leveling effects of modern life and conditions. The stupendous number of decisions which the judicial mill is daily grinding out, the intense competition resulting from increasing density of population, the strife to accumulate material wealth, all have a tendency to stifle and restrict within narrow limits the full and free expression of genius. It is all the more remarkable, therefore, when a lawyer nowadays emerges head and shoulders above his fellows in the profession and becomes a source of inspiration not only to those who come after but also to those who live immediately about him. Such a man and lawyer was Curtis Holbrook Lindley.

Judge Lindley's ancestors came to this country from England about the year 1684, and settled in Connecticut, while his mother's family, which was of Scotch origin, chose Virginia as a place of residence. Representatives of both sides of the house fought in the war for American Independence. Charles Lindley, his father, a graduate of the Yale Law School, reached California in 1849, where he engaged in the practice of the law, subsequently becoming Judge of Yuba County.

Judge Lindley was born in Marysville, California, December 14, 1850. Marysville was at that time one of the most important mining centers in the state, for a large number of the "gold-seekers" who rushed into the Sierra passed through Marysville.

Judge Lindley was not only a pioneer by birth, but he grew up in the stimulating atmosphere immediately following the "days of '49." Because of the early loss of his mother a considerable portion of his boyhood was spent attending military academies. When only sixteen years of age he managed, because of his size, to enlist in the regular army, but his father secured his release before he had served the full term of his enlistment. He attended Santa Clara College 1863-5, the San Francisco High School 1865-6, and the University of California 1870-2. He was attending the University at the time of the organization of military instruction there, and because of his military experience became at once the ranking captain of the University cadets, and was the first commissioned officer under Professor Soule, who was in charge of this branch of University training.¹

His father, Charles Lindley,² practiced law in many of the pioneer mining camps, having spent considerable time in Virginia City in the 60's during the thrilling Comstock days. Here again his son became imbued with the spirit of adventure and was brought in close contact with the stirring scenes of the great mining excitement which underlies the development of the West. In Virginia City he lived next door to Mark Twain and for a time attended school with Bret Harte.

A few years later young Lindley, then only seventeen years of age, started out with companions on a prospecting expedition in Nevada. In the course of their wanderings they reached the Reville Mining District, and being attracted by conspicuous copper stains on the surface, located the "Bluejay" mining claim. While engaged in exploration work a rival locator, a much older man, appeared on the scene and challenged their right to the ground. They mutually agreed to submit the matter to a board of arbitrators, each side selecting two. Young Lindley was chosen by his companions to present and argue their side of the case. The introduction of evidence and the argument lasted far into the night. The arbitrators failed to agree, each two remaining loyal to their respective sides. Lindley and his associates later lost interest in the enterprise, but the incident was prophetic, for it was the first lawsuit in which he appeared as an advocate, and it

¹He received the degree LL.D. from the University of Santa Clara in 1912, and from the University of California in 1917.

²Judge Lindley's son, Curtis Lindley, Jr., informs me that Charles Lindley was largely instrumental in the passage of legislation providing for military training and co-education at the University of California.

CURTIS HOLBROOK LINDLEY

89

was at a time when he had neither studied law nor had the slightest intention of later specializing on mining law.

Another mining incident in his career is also noteworthy. While he was still under age, the state legislature of Nevada passed a special act making his conveyance of an interest in a mining claim legal.

He ran a stationary engine on the Comstock and just before commencing the practice of the law was stationary engineer at the Union Works. In later life he was firmly of the opinion that every lawyer should, as a part of his education, take some sort of engineering course. At the age of fifty, in order better to fit himself for the practice of mining law, he took a correspondence course in mining engineering.

He was admitted to practice in May, 1872, and the same year was appointed secretary of the California Code Commission, of which his father was a member. He was married to Elizabeth Mendenhall in June following his admission to practice. After practicing law for a short time in San José he entered the offices of E. B. Mastick and J. W. Mastick, who were prominent San Francisco attorneys. Frank Otis, U. C. '73, was also in the same office. They were allowed to attend to small matters that came into the office on their own account, and these perquisites were commonly referred to by Lindley as "cold turkey". His copper-plate handwriting resulted in a large share of the engrossing of legal documents falling to his lot, for those were pre-typewriter days. He later opened an office in Livermore and drafted a charter for the town. Like many a struggling attorney he had to economize, and he and his wife lived in the rear of his office, with only a curtain between office and living quarters. He moved to Stockton in 1882 and became city attorney. In 1884 he was appointed superior judge of Amador County by Governor Stone- man, and served an unexpired term (1884-1885). He failed to secure the nomination of his party to succeed himself, and for two years engaged in the practice of the law in Jackson, Amador County. Judge Lindley has often said that his failure to succeed himself as judge was one of the most fortunate happenings in his life. It marked the turning-point in his career. Instead of brooding over his defeat, it spurred him on to fame and fortune. If he had been re-elected he would probably have spent the better portion of his life on the county bench. He later removed to San Fran-

cisco and became a member of the firm of King, Rodgers & Lindley.³

In the fall of 1890 he formed a law partnership with Henry Eickhoff, and they were associated under the firm name of Lindley & Eickhoff until his death. At that time they had remained associated longer than any other firm then existing in San Francisco.

While on the bench in Amador County, Judge Lindley had occasion to decide several mining cases. With his customary thoroughness and methodical habit he made many notes on principles of mining law. After he left the bench he began to specialize on this branch of the law, and the material he had accumulated served him in good stead. He added to his annotations until he finally conceived the idea of publishing a treatise on the subject. "Lindley on Mines"⁴ was the result and is the enduring monument to his genius. It is almost inconceivable that a work of the high order of "Lindley on Mines", giving every evidence of countless hours of painstaking research and mechanical labor, combined with other countless hours of contemplation and deliberation essential to the presentation of the finished and weighty conclusions on the complex subjects there discussed, could be produced by a professional man in active practice. And yet this is the herculean feat that Judge Lindley accomplished. Those who were in his office during the period preceding the appearance of the first edition tell me that there was scarcely a night or a holiday which did not find the Judge in his law library industriously laboring with notes or text. When he had completed the discussion of some particular question he would read it aloud with evident satisfaction, and call on his assistants for comment and suggestion. He was quick to recognize valid criticism and modify his conclusions accordingly.

The title page of "Lindley on Mines" bears the following quotation:

"I hold every man a debtor to his profession; from the which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves, by way of amends, to be a help and ornament thereto."

This was typical of the author's idealism, and he faithfully lived up to this precept.

³ Arthur Rodgers was for many years a regent of the University of California.

⁴ The complete title of the work is "A Treatise on the American Law Relating to Mines and Mineral Lands within the Public Land States and Territories and governing the Acquisition and Enjoyment of Mining Rights in Lands of the Public Domain." The first edition appeared in 1897, a second edition in 1903, and the third and last edition in 1914.

At the time the first edition of the work appeared in 1897 there was no comprehensive treatise on the subject of mining law. Springing up "overnight" as it were, as a result of the immediate necessities of the hour, and founded on the rules and customs and regulations of the miners themselves, the law governing mining on the public domain was unique. Later codified by the Acts of Congress of 1866, 1870 and 1872, it presented many complex problems for determination by the courts. This judicial interpretation was a matter of gradual growth. No one in the early days of this period of development of mining law principles could possibly have anticipated these problems or their solution. The few works that had appeared were little more than digests of the statutes and the few cases the courts had then decided.⁵ They could hardly be dignified with the title of treatises.

Judge Lindley recognized that the time was ripe for a more systematic and philosophical treatment of the subject, and seizing the opportunity, he produced a work that stands out as a classic, not only in its special field, but also in the literature of American jurisprudence. Not content with presenting merely the legal mining problems in this country, he conducted an exhaustive research into the mining laws of other countries and other times. The introductory chapter of his treatise contains the finest presentation of "Comparative Mining Jurisprudence" in the English language.⁶

He, of course, covered the entire field of American mining law, presenting the main features of the mining jurisprudence prevailing in the original states and those of the Middle West. His treatment of the mining law of the public domain is most illuminating and thorough. Judge Lindley, as previously noted, practically grew up with this law, and his knowledge of its problems and his appreciation of its spirit and development was unusually sympathetic and complete.

As soon as the work appeared its extraordinary merit was recognized. It quickly took rank as the authoritative text on the

⁵ "Mining Claims and Water Rights", (1869) by Yale was the pioneer work. Copp's "U. S. Mineral Lands" appeared in various editions, as was also the case with Morrison's "Mining Rights", Weeks on Mineral Lands (1877 and 1880), Wade's "American Mining Laws" (1889) and Sickel's "Mining Laws and Decisions" (1881) had also appeared.

⁶ An interesting incident in this connection is worth noting. Some years ago, I had requested my sister-in-law, then in London, to secure all the English books on mining law that were available. Calling at one of the leading dealers she was shown "Lindley on Mines" and told that it was the best treatise on the subject in the English language. The dealer was quite impressed when she said that she need not purchase the work because her brother-in-law was an associate of Judge Lindley's.

subject. There are few mining decisions of importance that do not cite it. The justices of the Supreme Court of the United States have on many occasions shown their high approval by quoting extensively from it in their opinions.

Three editions have now appeared, and it was a source of great pride to Judge Lindley that in his later editions he was repeatedly able to note under section after section that either its language or its announcement of principle had been endorsed by various courts. This was particularly gratifying and indicative of the high character of the work, for when the first edition appeared, many of the problems there discussed were still moot and open to debate. Yet Judge Lindley had never hesitated to express freely and fairly his own individual views, which is not the case with many a more cautious author, and when an able writer has the courage to do so it adds immeasurably to the value of the work. In after years while engaged in the trial of mining cases, opposing counsel would often cite some passage from "Lindley on Mines". Judge Lindley would frequently remark in a humorous way that he had been guilty of a "literary indiscretion", and that his opponents always quoted everything they could find in his work in support of their contentions, but never made any reference to the many passages that were authority against them. He was such a stickler for the proprieties that he would never quote from or refer to his own book, and never allowed it to be brought into the court-room, even by his associates, when he was present.

Probably the ablest and most sympathetic review of "Lindley on Mines" was written by the late Rossiter W. Raymond, a life-long friend of Judge Lindley's, and who as a lawyer, an eminent mining engineer and a author on similar subjects, was perhaps best qualified to make an accurate appraisal of the real value of the work.⁷

Dr. Raymond said:

"It is seventeen years since the first edition of Mr. Lindley's work made its appearance, taking rank at once as the leading authority on the subject of which it treated. At that time, the U. S. mineral land law, substantially in its present form, had been in operation twenty-five years, yet only a few of the many difficult questions arising under it had been clearly and finally settled by the U. S. Supreme Court, and a large part of the book was devoted to the discussion of such questions, in the light of judicial opinions not complete or conclusive,

⁷ This review was of the third edition and appeared in the "Engineering and Mining Journal" of April 18, 1914.

CURTIS HOLBROOK LINDLEY

93

obiter dicta, and, above all, the author's own study of the text and principles of the statute, and his critical sense of fitness and justice in their application. It was the candor, lucidity and forceful suggestiveness of these passages which caused the work to be recognized immediately and on all sides as much more than a laborious compilation. It was a helpful summary and guide, alike intelligible to laymen and instructive to lawyers and judges. . . .

"He spent eight years in the preparation of a third edition—truly an imposing magnum opus—which will be, no doubt, the monument of his fame. He cannot perform the colossal task again; and he may well rest content with this achievement. . . . His most important service has been connected with the intricacies and difficulties of the 'apex-law', that is, the law regulating the possessory occupation and the sale of public mineral lands containing ore-deposits classed as lodes, and defining the nature of title to such lands and deposits conveyed by the deed of the United States."

Tribute to the excellence of the work was also paid by a noted mining engineer, Horace V. Winchell, who said:

"To the lawyer, the mining engineer or economic geologist, to the mine owner or superintendent who desires to have in his possession an authoritative book of reference to which he can go for up-to-date information as to any vexed point on the mining laws of our country 'Lindley on Mines' is indispensable. The thanks and appreciation of all these classes of men are due the author for the painstaking labor and intelligent interest with which the masterly work has been prepared."⁸

In this respect "Lindley on Mines" is unique. There is no other legal text to my knowledge which is so extensively consulted and owned by those outside of the legal profession.

Many remarkable legal treatises have been written, classic in elegance of diction as well as scholarly in exposition of principles. Few eminent authors, however, have shown conspicuous ability in the actual conduct of cases in court. The calm, impartial temperament and infinite patience essential to the writing of a truly great text book is seldom combined with striking forensic ability. In this respect Judge Lindley was a noteworthy exception. Not only was he recognized as an author of an exceptional work, but for many years prior to his death he was an acknowledged leader at the bar. In his own specialty, mining law, he was admittedly pre-eminent, but his remarkable versatility became manifest in the handling of other cases as well.

⁸ Economic Geology, vol. IX, No. 6, Sept., 1914.

His mining practice took him into practically all of the mining states of the West as well as Canada, Mexico and England. He became a familiar figure before the Supreme Court of the United States. He was at his best in the trial of mining cases involving complex and novel extralateral right problems. Having been closely associated with him in all of the litigation of this character in recent years, I can appreciate the reasons for his success. He was never content to rely upon his exceptional familiarity with general mining problems nor his native ability, but in each case he must needs go to the very bottom and know all there was to know about both law and facts. The briefs which he prepared in anticipation of a trial were exhaustive, and though not used in many cases, were always prepared to meet the possible emergency.

To attempt to enumerate the leading cases in which he was engaged would mean to include most of the important mining cases of recent years. The Providence⁹-Champion¹⁰-North Star¹¹-Pennsylvania¹² litigation of the Grass Valley and Nevada City mining districts, the Bunker Hill and Sullivan¹³ litigation of the Coeur d'Alenes, Idaho, covering many years and involving many cases in which numerous new principles of mining law were decided; the Argonaut-Kennedy¹⁴ and Central Eureka¹⁵ litigation of Amador County, the more recent Utah Apex-Utah Consolidated¹⁶ suits in Utah, were among the important cases of his career. In the earlier part of his professional career, Judge Lindley accomplished a splendid piece of work in the partitioning of the San Pablo

⁹ Walrath v. Champion Min. Co. (1894) 63 Fed. 552, (1896) 72 Fed. 978, 19 C. C. A. 323 (1898) 171 U. S. 293, 43 L. Ed. 170, 18 Sup. Ct. Rep. 909.

¹⁰ Cons. Wyoming Min. Co. v. Champion Min. Co. (1894) 63 Fed. 540.

¹¹ Carson City Min. Co. v. North Star Min. Co. (1896) 73 Fed. 597, (1897) 83 Fed. 658, 28 C. C. A. 333 (1898) 171 U. S. 687, 18 Sup. Ct. Rep. 940.

¹² Pennsylvania Consolidated Min. Co. v. Grass Valley Exp. Co. (1902) 117 Fed. 509.

¹³ Bunker Hill etc. Min. Co. v. Empire State etc. Co. (1901) 106 Fed. 471, (1900) 108 Fed. 189, (1901) 109 Fed. 538, 48 C. C. A. 665, (1903) 134 Fed. 268; Empire State etc. Co. v. Bunker Hill etc. Co. (1902) 114 Fed. 417, 420, 52 C. C. A. 219, 222, (1903) 121 Fed. 973, 58 C. C. A. 311, (1904) 131 Fed. 591, 66 C. C. A. 99, (1906) 200 U. S. 613, 50 L. Ed. 620, 26 Sup. Ct. Rep. 753; Last Chance Min. Co. v. Bunker Hill, etc. Co. (1904) 131 Fed. 579, 66 C. C. A. 299, (1906) 200 U. S. 617.

¹⁴ Argonaut Min. Co. v. Kennedy Min. Co. (1900) 131 Cal. 15, 63 Pac. 148; Kennedy Min. Co. v. Argonaut Min. Co. (1903) 189 U. S. 1, 47 L. Ed. 685, 23 Sup. Ct. Rep. 501.

¹⁵ Central Eureka Min. Co. v. East Central Min. Co. (1905) 146 Cal. 147, 79 Pac. 834, 9 L. R. A. (N. S.) 940 and before the Supreme Court, (1907) 204 U. S. 266, 51 L. Ed. 476, 27 Sup. Ct. Rep. 258.

¹⁶ Tried in the Federal court. Decisions not yet reported.

Grant, on which the City of Richmond is now situated. This partition involved most intricate problems, involving the law of Spanish Grants and the equitable division of property where the grantors had conveyed far more in acreage than they were entitled to convey.

One of the later cases, not involving his specialty, in which Judge Lindley was engaged, was the organization of the Marin Municipal Water District. The handling of this case again illustrates Judge Lindley's ability in dealing with novel problems. This district was organized under new and untried legislation, and many questions of constitutional law were raised, but the Judge met them all successfully.¹⁷

Prior to the San Francisco fire of 1906 Judge Lindley had been working on the stupendous task of preparing a work on the "Law of Waters" similar to his work on mines. He had spent eight years of laborious effort in gathering notes and accumulating material. All of this data was utterly destroyed and the Judge never had the heart to undertake the labor anew, though one of the government bureaus offered to furnish him with the necessary clerical assistance and publish it without charge.

If I were to sum up the elements which contributed to Judge Lindley's success as a lawyer, I would place them in the following order; exceptional native ability, then incredible industry, and finally undeviating integrity.

I have never known a lawyer who was more punctilious on questions of legal ethics. He would never take an unfair advantage of an opponent and never tolerate the slightest suggestion of questionable tactics on his own side of the case. In trying cases he ignored technicalities and directed his efforts to solving the fundamental issues.

Becoming interested in the work of the San Francisco Bar Association, he was elected president, which office he filled for four years (January 8, 1909, to January 10, 1913). Members of the association will recall the inspiration of these years, the series of lectures on live legal topics which he organized, and the encouragement and assistance which he gave to the junior members of the bar. A little later he assisted in the organization of the state

¹⁷ In re Application Marin Water Dist. (1915) 6 Cal. R. R. Com. Dec. 507, 12 id. 532, 692; Marin Water, etc. Co. v. Railroad Commission (1916) 171 Cal. 706, 154 Pac. 864, Ann. Cas. 1917C 114; Marin Municipal Water Dist. v. Dolge (1916) 172 Cal. 724, 158 Pac. 187; Marin Municipal Water Dist. v. Marin Water, etc. Co. (1918) 178 Cal. 308, 173 Pac. 469; Marin Municipal Water Dist. v. North Coast, etc. Co. (1918) 178 Cal. 324, 173 Pac. 473.

Bar Association and served as its first president, (1909-1910) lending his wonderful personality and ability to the establishment of that institution on a firm foundation.

As a result of his work in these bar associations he became intensely interested in the position which the lawyer occupies in the community. He acquired a rare library of books bearing on this subject, not hesitating to refresh his classical learning and to carry on his research by consulting Latin and Greek authors in the original. He had amassed a valuable collection of material relating to the emergence of the lawyer from ancient institutions, particularly the ecclesiastical. With the assistance of his daughter, he had been preparing a series of lectures on this fascinating subject "The Lawyer in Ancient Times," which he was intending to deliver at the Law School of the University of California and later perpetuate in a published volume, but ill health forbade. He also accumulated a remarkable secular library at his home, which reflects his great diversity of interests—sociological, governmental and scientific problems occupying his spare moments.

But Judge Lindley was not content merely to be an eminent text-writer and a conceded leader at the bar. We have noted that one of his cardinal principles was recognition of the duty each lawyer owes to his profession. He did not stop there. He also recognized a higher and more important civic duty and added to his manifold labors as an author and lawyer more than his share of service and devotion to the commonwealth. There are few men who have served their country as unselfishly and as well. Municipality, state and nation all owe him undying gratitude.

In politics Judge Lindley was a progressive. While his main allegiance was to the Democratic Party, there were many occasions when he supported Republican candidates. He placed the welfare and best interest of the community above any party.

At a dinner given in San Francisco, May 16, 1911, by the Princeton, Yale and Harvard clubs in honor of President Wilson, Judge Lindley concluded his remarks as follows:

"This message from the progressive men of California of all past political creeds to the progressive men of New Jersey, whatever may have been their past party affiliation. We are fighting under the same banner and for the same righteous cause—reform in our civic methods and the raising of the ethical standards of American citizenship"

Convinced that the municipal government of San Francisco needed betterment, he was one of the leaders in forming in 1911

CURTIS HOLBROOK LINDLEY

97

the "Municipal Conference", a non-partizan organization. Through the efforts of this Conference, a complete change in city administration took place. Judge Lindley also devoted himself without compensation to the securing of a municipal water supply for San Francisco, and it was in large part due to his guiding hand that the plans of the municipality were carried out.

He was a strong supporter of Hiram Johnson when the latter ran for Governor of California.

He was one of the directors of the Panama-Pacific International Exposition, and in the early conduct of its affairs before it had become an assured success, he proved to be the "wheel horse", in whom its financial backers had absolute confidence, and whose advice and guidance carried it through the critical period.

A few years ago he was appointed park commissioner of San Francisco. A short time after his appointment he was made president of the commission. This was practically the only public office which he held in his later life and he would not have accepted it were it not an honorary position, for like all his other public work, he could not bring himself to the idea of receiving compensation for public work which he felt it was his obligation to perform. On the Park Commission he has been referred to as a "tower of strength".

He was frequently called on to address various clubs and organizations, the subject of many of these addresses being important public policies. At a banquet given in 1911 in San Francisco by the Commonwealth Club in honor of former President Roosevelt, he delivered an address on "Conservation With Special Reference to the Doubtful Zone between National and State Authority". Roosevelt was so delighted with the address that on its conclusion he immediately left his seat, and coming over to the Judge congratulated him and demanded that the Judge then and there turn over to him the typewritten text of the address. This address concluded with the following paragraph:

"In other times and in other nations the national domain—the folk-land—the hinterland, has been the plaything of tyrants. In the American commonwealth it has fed the appetite of greed; has been preyed upon by the pillaging land-grabber and annexed by the fraudulent land pirate. That there still remains enough upon which to focalize a national sentiment, and around which to build a national hope is due solely to those men who had the great foresight to take the initiative, and the magnificent courage to deliver the message. Among these patriotic citizens the name of him, who like

Abou Ben Adhem's (may his tribe increase) leads all the rest, is that of the distinguished guest of the evening."

But the greatest opportunity for rendering public service came with the entry of the United States into the world war. Judge Lindley had many years before delivered lectures on mining law at Stanford and at the University of California, at which latter institution he had been made an honorary professor of the law of mines and water. Mining engineers attended these courses at both universities. Judge Lindley took a special interest in these younger men and made many lasting friendships. Among his Stanford listeners was Herbert C. Hoover. Shortly after Mr. Hoover's graduation from college, Judge Lindley aided in securing him a professional engagement which opened the way to fame and fortune. Before the United States had entered the war, Mr. Hoover, who had done such an incredible amount of good in Europe, felt that his work there was largely accomplished and intimated to Judge Lindley that he was ready and anxious to serve his own country. Judge Lindley encouraged him in this desire and aided in bringing Mr. Hoover in touch with the administration leaders at Washington. Immediately upon Mr. Hoover's appointment at the head of the Food Administration he called upon Judge Lindley to assist him in organizing the legal department, and Judge Lindley joined the ranks of the "dollar-a-year" workers. He left his practice at the climax of his professional career and at a time when his earning power was greatest. I shall always remember the boyish enthusiasm with which he put his professional house in order and left for Washington. Only those who were in close contact with the Judge can realize how hard he labored and what wonderful results he accomplished while there. He organized the legal department of the Food Administration, having Robert Taft, a son of ex-President Taft, as his principal assistant. Standing out from the infinite detail and perplexing problems of this organization which had sprung up on a moment's notice, was the creation of the United States Grain Corporation. Judge Lindley had aided in drafting the legislation which clothed the Food Administration with the necessary power, and among those powers was the right to form a corporation for the purpose of controlling the grain production of the United States. Judge Lindley carefully drafted a proposed charter for this corporation and submitted it to President Wilson as a "tentative draft", expecting it to be returned for revision. It was a matter of considerable pride to the Judge to have the President

CURTIS HOLBROOK LINDLEY

99

pen out the words "tentative draft" and without further delay sign the proclamation making the charter effective. It is enormously to Judge Lindley's credit that, leaving his special field of mining law, he was able to turn at once to the great problems of commercial law, constitutional questions and novel matters concerning which there was no precedent to guide the way, and that his judgment in such matters should have been so unerring, and eminently sound, as was amply demonstrated by the results.

The climate of Washington proved a severe drain on Judge Lindley's vitality, and at the end of the year he was forced to leave with his health badly impaired. With characteristic courage he gradually built up his health after his return to California and again engaged in practice.

He died "in the harness", as he had often expressed a desire to die. We had been engaged in the trial of a suit involving extralateral rights in Arizona. During the trial he had taken the leading part in the examination of witnesses and conduct of the case. The last day was a most trying one, because it involved cross-examination of the leading expert witnesses representing the opposing side. We had returned to the hotel about an hour after the conclusion of the trial, when he was stricken with the illness which resulted in his death five days later. His courage in facing death was characteristic. His desire to die "in the harness" had been granted, as was also his wish to return to his home and wife. Shortly before his death he remarked: "After an active life like mine what is there more to be desired than the peace that comes with eternal sleep". On November 20, 1920, there passed away not only a great lawyer and a great author, but also a great citizen. He will live hereafter as an inspiration to others and particularly to the young men of the University which he served so well.

Wm. E. Colby.

San Francisco, California.