

DIPS, ANGLES & SPURS

The Newsletter of the
Society of Mining Law Antiquarians

Volume: 2010 Number 1

June 2010

Inside This Issue...

Editor's Notes		Page 1
Announcements	Page 1	
Submission		Page 1
Meeting Minutes		Page 3
Book Note		Page 4

EDITOR'S NOTES

Dips, Angles & Spurs is an occasional publication of the Society of Mining Law Antiquarians.

The editor would be pleased to receive items for the newsletter including: book reviews, meeting notices, legislative articles on mining law matters, etc. Please send submissions for the newsletter and address corrections for the Membership Directory to:

Stanley Dempsey, Editor
1660 Wynkoop Street
Suite 1000
Denver, CO 80202-1132

Telephone: (303) 573-1660
Fax: (303) 595-9385
E-mail: sdempsey@royalgold.com

ANNOUNCEMENTS

SMLA Website

The Society now has a website at www.mininglawhistory.org.

Society of Mining Law Antiquarian Breakfast Banff, Alberta, Canada

The Society of Mining Law Antiquarians will host a breakfast meeting on Saturday, July 24, 2010, at the Bow Valley Grill, located in the Fairmont Banff Springs Hotel, from 7:15 a.m. to 8:15 a.m. The meeting will be held in conjunction with the 56th Annual Rocky Mountain Mineral Law Institute. RSVPs should be made to Bambi Booker at bbooker@royalgold.com or by calling (303) 575-6515 no later than July 16.

SUBMISSION

William E. Colby and Books

William E. Colby, a San Francisco lawyer in the early years of the twentieth century, is known because of his work with Judge Curtis Lindley, on many of the seminal litigations of extralateral rights under the General Mining Law, and his close association with John Muir and his leadership activity in the Sierra Club. Interestingly, he is also known for his book collecting prowess.

William E. Colby amassed a very large library of foreign and domestic books about mining law, ultimately giving them to the law school at the University of California at Berkeley. He was also involved in putting together a library for the Sierra Club, and that library is still maintained as the William E. Colby Memorial Library at the headquarters of the Sierra Club in San Francisco. Colby describes his mining law book collecting



activities in an oral history document prepared by the Regional Cultural History Project at the Bancroft Library at the U.C. Berkeley Library in California, ¹ as follows:

Colby: I was asked very early in my association with Judge Lindley, and I think through his reference, to prepare a history of mining law for the Carnegie Institution in Washington. And I agreed to do that because it was along the line of my studies and my law work. I found, however, when I tried to get the books I wanted on mining law that might give some idea of what was the form of mining law in Europe and other countries which might have preceded and had some effect on the mining laws that developed in the United States, that there were not many of these books available. I went to the University of California and also to the library in Sacramento, but found very few books that would give me an insight into what I wanted to know so I started collecting these books myself and carried this on all during the time that I was in Judge Lindley's office in the early days. I was very fortunate in the fact that I came in contact with Herbert Hoover, who afterwards became President of the United States.

Herbert Hoover was a great friend of Judge Lindley, because Judge Lindley gave a course of lectures on mining law at Stanford, which I did later on, long afterwards. I think I gave only one course of lectures.

Gilb: Lindley's was in 1909, wasn't it?

Colby: Yes. Judge Lindley's was rather early. And Hoover took this course with Judge Lindley, and later on, Judge Lindley I believe got him his first mining work, in Nevada County, Grass Valley, and put him in contact with some mining engineers that Judge Lindley knew very well. So that later on after Hoover had made his great fame as a mining engineer and came back to the United States from Australia, Africa, and China to California, he always looked up Judge Lindley, and finally Judge Lindley gave him an office while he was there visiting two or three months each year, as it was his custom...I should go back to my law book collection which was connected with Hoover. Hoover's main offices were in London at that time, and he spent most of the year there except when he was travelling around the world on his various mining trips. He came to San Francisco during the summer of almost every year, and Judge Lindley gave him one of his three private offices, which had geological books in it and books that of course

Hoover would naturally refer to while he was there in San Francisco. Earlier Hoover had been collecting books on Mining, in every language, from all over the world, from all times, and he finally amassed the greatest collection, without any doubt, of books on mining that there is in the world. And that is now down at Stanford University, and if he hasn't given it to Stanford University, no doubt he intends to. But because of his collecting, he had in London sent to him from all parts of Europe and the world various catalogues of books on mining. Those catalogues of books on mining, oftentimes contained books on mining law, so that very kindly he'd send those over to me. After he'd gone through them, his secretary had gone through them, he'd send them to me. And from those I selected books on mining law, mainly in connection with English works, and I had other friends from the University and elsewhere who put me in touch with the antiquarian book dealers in various parts of Europe, in London, of course, Paris, Berlin, Amsterdam, Rome and Madrid. So though I never have been in Europe, I was able to purchase some of the rarest books on mining law that have ever been published. I amassed this great collection in order to give me the necessary background for writing the history of American mining law. This I never was able to do because the Carnegie Institution gave up the idea of writing this great series of works on mining after they requested me to write the book on mining law. Various other books had been written and published, and it was just as well that they did give it up because it would have taken up so much of my time away from my law that I could have ill-afforded to give to produce a work which would have been adequate.

However, I did publish, as a result of my collection and my research, a series of articles in the California Law Review on the extralateral right, particularly, but also on various phases of mining law. I remember that at one time I had these books here in this house in which I am at present speaking, on the upper floor, which I made into a study specially for the purpose of carrying on my mining law work and for writing of these articles. I had Professor Gayley of the English Department of the University and Professor Richardson of the Latin Department and one or two other professors one evening at dinner and took them up afterwards to show them these books. And they were unanimous in saying to me, "Colby, you are committing a crime to keep these books in a wooden house where they might be destroyed by fire, because many of them are irreplaceable." So

that I did finally make an arrangement with the University and with the Law School to have them installed in the special room there in the Law Department, as part of the Law Library. But I still retained ownership and the right to take them out whenever I wanted to. Later on, I gave them outright to the University with the reservation that I could take them out any time I wished in connection with my mining law work. This library is outstanding. I've examined the libraries of New York City, of Congress, of various Universities, and there is no collection of books on mining law that can compare with it. So that I felt especially pleased that it should be deposited with the University of California in a state that was the outstanding mining state, that had more to do with the development of mining law than any other state in the union.

Gilb: Did you ever tabulate the cost of making this collection?

Colby: No, I didn't. I didn't want to surprise myself with the results. I remember that I paid fifty dollars, which in those days was an outstanding amount, for one book, which was a book, The Mining Laws of Joachimsthal in Germany, in the Hartz Mountains. This book was published in 1500 and something, as I remember it. Anyway, it was just about the time that Agricola was published that Hoover translated, he and his wife translated, and published in England. A most remarkable production. I gave the complimentary copy which Hoover gave me, I presented it recently to Boalt Hall Law Library.

Gilb: Did you ever come into conflict with Hoover because you both wanted the same book?

Colby: Yes. That was interesting because one summer when Hoover was out here, one of the book firms he had put me in touch with, Wesley & Co. of London, sent me a notation of a very rare book I'd been looking for for a long time. It was Mander's Mining Glossary published in Derbyshire, and Hoover had been very anxious to get it. He found from some other books it had been published, and he put in a standing order for it. Because he was away from London, they sent it on to me, and it arrived when Hoover was there. And I showed it to him and he became very indignant because this book firm had not kept it for him on his special order. I told him that he could have it photostated any time and that I'd loan it to him any time he wanted. That did not seem to satisfy him. So that is one book in my collection that I don't

think exists in his. Of course, he spread over into mining law because he wanted to get all the books on mining of every character that he could, and books on mining law of course were of that character.

¹ William E. Colby (1875-), *Reminiscences* (California Mining Lawyer). 1954, 145 p., the Bancroft Library, University of California, Berkeley.

MEETING MINUTES

July 25, 2009

A Meeting of the Society of Mining Law Antiquarians was held at Lori's Diner in San Francisco at 7:15 a.m. on Saturday, July 25, 2009. John Lacy, President, called the meeting to order. Stan Dempsey kept the minutes of the meeting.

Attendees were Frank Erisman, K.D. Feedback, David Phillips, Mark Nesbitt, Laura Skaer, Janet Thurman, Anya Mallett and Stanley Dempsey.

John Lacy suggested that we consider having the Antiquarian meeting in conjunction with the annual meeting of the Mining History Association each year. The next meeting of that organization will be held in Silver City, New Mexico in June, 2010. Dave Phillips suggested that we consider a dinner function during the RMMLF short course on mining law.

John Lacy gave a report on the meeting that was held at the Arthur Lakes Library to develop a collecting plan for the new SMLA/RMMLF Endowed Fund. Dave Phillips suggested we set up a form for donations of books to the archive. Frank Erisman volunteered to help put together such a form. Stan Dempsey suggested we try to identify 50 or 100 of the "must see" mining law books.

Stan Dempsey reported on the effort to establish a website for the organization.

Jim Butler (not present) advised that the Society has about \$400 in its treasury.

Several members volunteered “war stories,” focusing particularly on incidents of records tampering by federal agencies.

Stan Dempsey made a presentation to Janet Thurman to thank her for helping arrange the annual SMLA breakfast meetings over the years.

The meeting adjourned at 8:20 a.m.

Respectfully submitted,
Stanley Dempsey

BOOK NOTE

Bancroft’s California Lawyer and Book of Forms: Containing Instructions for Ordinary Transactions...with Numerous Precedents and Forms...and Adapted, Under the Revised Laws and the Latest Judicial Decisions, to California, Oregon and Washington Territory (1860)
D. P. (David Price) Belkamp

(Submitted by John Lacy): During our visit to Grass Valley on the way to this last summer’s RMMLF institute I found a book, *Bancroft’s California Lawyer* (San Francisco, 1860), that provided an interesting insight into the pre-mining law surface/mineral conflicts in California as well as a general description of the mining customs between individual miners. I have made copies of the materials related to mineral and water rights.

As I read it, the law looked like this:

The mineral estate for precious mineral was considered to be vested in the sovereign (i.e., the State of California) and both surface and mineral rights (together with water rights) were subject to a form of “prior appropriation.” As part of this process, since agricultural lands were considered as having been “reserved from sale,” mineral claimants going on lands occupied for grazing or

agricultural purposes were considered trespassers and responsible in damages. It appears, however, that once the damages were settled, the miners could continue. A different situation seems to apply to land occupied as town lots where the first occupant appears to have the right to preempt other uses. The enclosed materials include topics of “the Right of the State in the Mines” and further discussions entitled “the Right to Mine upon Lands occupied for Grazing or Agricultural Purposes” and “the right to Mine upon Lands already occupied for other than Grazing or Agricultural Purposes.” See pp. 558-566.

A separate explanation is provided for “the Rights of Miners with Respect to Each Other” (pp. 575-576). In this treatment the miners’ law is succinctly stated that “[a]ctual possession of a portion of a mining claim, according to the custom of miners in a given locality, extends by construction to the limits of the claim held in accordance with such customs.” Citing *Hicks v. Bell*, 3 Cal.R. 219 (1853).

Some of the other mining subjects treated include regulation of foreign miners (including a form of foreign miner’s license), transfers, forms, and the regulations for the Jacksonville, Tuttletown and Springfield Mining Districts. The book also contains a considerable amount of material on water rights, transfers, and a good form for a “Chattel Mortgage by a Water-right Company.

(Editor’s Note): *Bancroft’s California Lawyer and Book of Forms* is available in paperback on amazon.com for \$42.99.
