

DIPS, ANGLES & SPURS

The Newsletter of the
Society of Mining Law Antiquarians

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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:

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ANNOUNCEMENTS

SMLA Website

Just a reminder that the Society has a website at www.mininglawhistory.org.

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### Society of Mining Law Antiquarians Breakfast Santa Fe, New Mexico July 23, 2011

In conjunction with the 57<sup>th</sup> Annual RMMLF in Santa Fe, New Mexico, the Antiquarians will be hosting a breakfast meeting on Saturday, July 23, 2011 at 7:15 a.m.:

Hilton Hotel - Pinon Grill  
308 W. San Francisco St.

RSVPs should be made to Bambi Booker at [bbooker@royalgold.com](mailto:bbooker@royalgold.com) or by calling (303) 575-6515 no later than July 20.

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Mining History Association's 2011 Annual Meeting Dillon, Montana June 2-5, 2011

The Mining History Association annual meeting, held in Dillon, Montana, was well attended. A pre-conference field trip visited the Barretts Minerals talc plant in Dillon, and a visit to the ghost town of Bannock, Montana was a part of the program.



One session was devoted to "Mining Lawyers and Corporate Mining." Brian Leech, a Ph.D. Candidate in American history at the University of Wisconsin-Madison, presented a paper titled "Copper and Coal: Eminent Domain Law and Surface Mining in Montana." His presentation examined why eminent domain law worked for the Anaconda Company in western Montana, but failed for coal companies in eastern Montana.

Rudy Davison gave a paper on apex litigation at Telluride at the end of the nineteenth century, focusing on the case of Liberty Bell mine vs. Smuggler-Union. The case resulted in an award of damages in the amount of \$403,853.08, a remarkable sum at the time.

Antiquarians would have also found interesting a number of papers describing various sources of information on Montana mining. A huge number of mining district and company files are being digitized and made available over the internet.

It is encouraging to see MHA continue to provide a venue for the presentation of mining law-related papers.

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### **University of Nevada, Reno Special Collections to Remain Open**

Good news from the University of Nevada, Reno Libraries... Donnie Curtis, Head of Special Services, has announced that Special Collections will not be closing, as recommended in the university's proposed budget cuts announced earlier this year.

Kathlin Ray, Interim Dean of Libraries, said in a statement to the Friends of the Library: "On March 7 the university announced proposed budget cuts of \$26 million... While initial recommendations included Special Collections, the library provided an alternative plan to meet the budget reductions. Therefore, Special Collections has been removed from the list of closures, and we are hard at work on a long-term plan to ensure its continuing health and

vitality. As we move forward, we welcome your continuing contributions of historically significant Nevada materials and support for fundraising initiatives."

April 29, 2011 article By Erica Olsen; article located at [www.finebooksmagazine.com](http://www.finebooksmagazine.com),

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## **MEETING MINUTES**

### **Second Meeting of the Mining Law Collection Working Group at the Lyn and Russ Wood Mining History Archive April 12, 2011**

On June 13, 2008, the Society of Mining Law Antiquarians, in partnership with the Rocky Mountain Mineral Law Foundation, established an endowment fund to enable the Arthur Lakes Library at the Colorado School of Mines to build a mining law history collection to be housed in its Russell L. and Lyn Wood Mining History Archive. The endowment included an agreement of the three organizations involved to organize meetings of representatives, from time to time, to discuss plans for collecting and preserving mining law books and materials.

The second meeting of representatives of the three organizations was held at the Arthur Lakes Library on the Colorado School of Mines campus on Tuesday, April 12, 2011. Hosting the meeting were Joni Lerud-Heck, Director of the Library; Lisa Dunn, Head of Reference; and Heather Whitehead, Collection Development Librarian. David Phillips attended on behalf of the RMMLF Foundation, Kathi Conner attended on behalf of the Colorado School of Mines Foundation, and John Lacy and Stan Dempsey were there for the Antiquarians. Also present were Anya Mallet, Ken Hubbard, John Stewart, David Delcour, Steve Alfors, Chris Thiry, George Reeves, Dale Trower and Warren Andrews.

The meeting reported on the efforts made by the library staff to develop the collection, and was expanded in scope to include a number of presentations on mining law history subjects.

The group engaged in a thorough discussion of John Lacy's proposal to have the Antiquarians help with disposal of books that are offered for the collection but which are not suitable because they are duplicates or are not in good condition. George Reeves helped sharpen the group's focus by reminding everyone that the original purpose of the Antiquarians was to make sure that old mining law materials were preserved and gotten into the hands of people who will enjoy them.

The roundtable discussion also dealt with issues such as full text availability of out of copyright books on the internet, and whether to collect physical copies of such books. There was general agreement that the collection should include physical copies of the titles deemed important to the collection. There was also discussion of the importance of journal articles for research in mining law history. Heather Whitehead described the impracticality of binding and cataloging individual journal articles, and it was agreed that references to such articles in a collection bibliography would be a good way to deal with this issue.

There was considerable discussion of practical issues of administering various programs. John Lacy pointed to recent requests from the widows of mining lawyers for help with disposal of their husbands' mining law books. Heather Whitehead provided information about the Library's current book sale practices and the amount of work it takes to accomplish. There was no final agreement on how to proceed, but there did seem to be considerable support for using the Library's current sale procedure (with proceeds going to the Library's general fund) with Antiquarians helping publicize the availability of mining law books, and some sort of ad hoc Antiquarian mechanism for helping with disposal of unwanted materials by members of the mining law community. The Antiquarians

were complimentary of the efforts of the Library's staff and their purchase of important books for the collection and for the work they are doing to understand the needs of this special collection.

Responding to a request from Stan Dempsey, Kathi Connor, Heather Whitehead and Lisa Dunn described some of the issues involved in maintaining special collections and the fundraising implications involved. There is a clear need for an endowed archivist who would look after the several special collections of the Arthur Lakes Library.

## POEM

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### *Lawyers and Experts*

<sup>1</sup> There was a man who had grown old  
In digging prospect holes for gold.  
Right often in his pilgrimage  
He dreamed he had the long-sought ledge;  
Yet every time, with spirit saddened,  
He was obliged to own he "haddened",  
And every time he cried, "You bet  
I'll hustle on and find her yet!"

At last he struck it; staked a claim;  
Laid out a townsite round the same;  
Sunk, drifted, stoped and crushed away,  
And showed the thing would surely pay.  
Fondly he thought that nevermore  
He would be luckless as before.  
Alas, his troubles were not ore!

One dismal day his happy labor  
Was interrupted by a neighbor,  
Who coolly told him doubts had risen  
Whether the ledge was "his" or "his'n",  
And challenged him, without excuse,  
His legal "apex" to produce.  
"Apex! What's that?" he cried in woe.  
"I cannot tell you", said his foe,  
"But I presume the lawyers know.  
And this much I can say is true:  
Without it, all is up with you;  
Nor is the apex all. You see,

You must have 'continuity',  
And side and end lines, suited quite  
To fit your 'extralateral right';  
And it is further understood  
a tunnel in the neighborhood  
Will make your title far from good.  
Then, other lodes may make connection,  
Taking the space of intersection,  
Or even unite with yours, and so  
Gobble whatever is below.  
Sure, many such things may combine  
To make your mine not yours, but mine.  
If you don't buy me, fear the worst!"

That miner eloquently cursed,  
And said, "I'll see you -- elsewhere first."

Thus was begun the famous case  
That filled the journals of the place,  
And thither called a mighty host  
From all the wide Pacific coast—  
A dozen lawyers on a side,  
And eminent experts multiplied;  
Maps of the biggest and the best,  
And models till you couldn't rest;  
Samples of rock and vein formation,  
And assays showing "mineralization",  
And theories of that or this,  
And revelations of "genesis",  
And summing-up of sound and fury  
Poured out upon the judge and jury.  
No matter now which party lost—  
It took the mine to pay the cost;  
And all the famous flight who saw  
Beheld, with mingled price and awe,  
What science breeds when crossed  
with law.

<sup>1</sup> Lines read in response to the toast, "Lawyers and Experts," at the banquet given to the American Institute of Mining Engineers, in San Francisco, on September 27, 1899.

Originally published in *Rossiter Worthington Raymond; A Memorial*. Published by The American Institute of Mining and Metallurgical Engineers and edited by T.A. Rickard.

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## BOOK NOTE

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*All Veins, Lodes, and Ledges  
throughout Their Entire Depth, Geology  
and the Apex Law in Utah Mines*  
The University of Utah Press  
Salt Lake City, 2004, 138 pp.

Author: William T. Parry

(Review submitted by John Lacy): In this quick read, William Parry has summarized the geology and legal arguments in the interpretation of the law of extralateral rights in the cases heard by the Utah courts during the "glory" days of apex litigation. The cases reviewed include *Flagstaff v. Tarbett*, 98 U.S. 463 (1878); *McCormick v. Varnes*, 2 Utah 355 (1877); and *Eilers v. Boatman*, 3 Utah 159 (1881) from the Little Cottonwood Mining District; *Silver King Coalition Mines Company v. Conkling Mining Company*, 256 U.S. 635 (1921) from the Park City Mining District; *Keely v. Ophir Hill Consolidated Mining Company*, 169 F. 601 (1909) from the Ophir Mining District; *Lawson v. United States Mining Co.*, 134 Fed. 769 (1904); *Wall v. United States Mining Company* (unreported) and *Utah Consolidated v. Utah-Apex*, 277 U.S. 41 (1921) from the Bingham Mining District; *Bullion Beck v. Eureka-Hill*, 5 Utah 3 (1886) and *Grand Central v. Mammoth*, 29 Utah (1905) from the Tintic Mining District.

Mr. Parry does a good job in making the cases understandable and any effort to read the cases in their reported form would be greatly assisted by reading the book's treatment. In short, the book is a good instructional manual for lawyers and engineers in understanding the application of apex law to geology. The average reader seeking a deeper insight into the lawyers and expert witnesses will be a bit disappointed.

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