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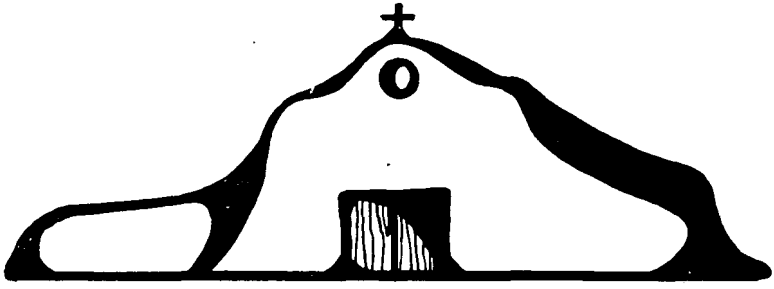


NEW MEXICO HISTORICAL REVIEW

REPRINT

JANUARY 1947

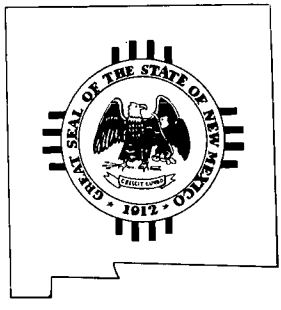
IN APPRECIATION

One of New Mexico's prime attractions, both to its own residents as well as to outsiders, is its rich and deep history. Nowhere did Indian society have greater historical impact, nor was there any area of the United States to which imperial Spain bequeathed such an indelible legacy. The pioneer period completes the trilogy and vies for historical attention.

With this historical background, today's society in the Land of Enchantment has need for substantial information concerning New Mexico. Chief vehicle for periodical publication concerning the state is the *New Mexico Historical Review,* which was born in 1926. In it, articles of maximum value have appeared quarterly for over a half century, representing a great treasury of authoritative information. However, with the passage of time some of the most important issues of the *Review* have become unavailable, with these out-of-print issues accessible at high prices at rare book shops, or sometimes unobtainable at any price. With a growing population desirous of becoming better informed concerning New Mexico, the need to provide availability to such important material became apparent.

The present reprint program was only a scholar's dream until farsighted citizens became likewise convinced of the utility of making available a storehouse of knowledge, particularly focusing their concern on educational need for republication. Max Roybal, Bennie Aragon, Robert Aragon, Mike Alarid and Adele Cinelli-Hunley provided effective leadership. Legislators Don L. King and Alex Martinez presented Senate Bill #8 to the 1980 session of the New Mexico State Legislature and used their influence and that of Governor and Mrs. Bruce King to insure favorable consideration. The Board of the NMHR, speaking for followers of New Mexico's important history, warmly thanks these friends for such support.

Donald C. Cutter
Chairman, Editorial Board, NMHR



Cover design by Jan Carley, graphic artist, College of Education, University of New Mexico, Albuquerque.

The Historical Society of New Mexico

THE ARCHAEOLOGICAL SOCIETY OF NEW MEXICO

Stephen Watts Kearny Centenary Program

The Hon. Pearce Rodey, Chairman
Vice-President of the New Mexico Historical Society

Presentation of the Battle Flag of the U.S.S. New Mexico
Rear Admiral George Lester Weyler

Acceptance of the Battle Flag on Behalf of the State of New Mexico.....Brigadier General Charles G. Sage

Acceptance of the Battle Flag on Behalf of the Historical Society of New Mexico.....Mr. Paul A. F. Walter
President of N. M. Historical Society

"The Star Spangled Banner"

"The Year of Decision".....The Hon. William A. Keleher

St. Francis Auditorium 8:00 p. m. October 16, 1946

SANTA FE PRESS

NEW MEXICO HISTORICAL REVIEW

VOL. XXII JANUARY, 1947 NO. 1

THE BATTLE FLAG OF THE U.S.S. NEW MEXICO

By REAR ADMIRAL GEORGE LESTER WEYLER

Mr. Chairman, The Honorable Governor of New Mexico, Honorable Postmaster General of the United States, distinguished guests, Ladies and Gentlemen:

I find it a great honor and a pleasure to represent the Navy at this celebration of the 100th anniversary of the establishment of a new province, by that great pioneer and soldier, General Stephen Watts Kearny. With their unyielding spirit, and unmatched courage, this man and his followers conquered the wilds of our western territory. On half rations, insufficient shelter, inferior equipment and poor horses, many of which were abandoned and others used for food, these men inched along, establishing bases, taming the inhabitants, and fighting the elements until their goal was reached.

Comment on these exploits will be left to others—as my mission is one relating to recent achievements in which the very flag that Kearny carried across this continent in the name of freedom was, a century later, carried on across the vast reaches of the great Pacific, to crush an enemy seeking to destroy the peace of the world.

There is, however, great similarity in General Kearny's accomplishments and those who fought our ships in the recent war, capturing from a determined and strongly entrenched enemy every island essential to further operations, and planting thereon this symbol of freedom. As with Kearny, our movement was slow at the beginning as

little was known of practical amphibious warfare. However, lessons were learned *well*, and no obstruction of nature, or counteraction of man, could deter either from their missions.

It is deemed appropriate to relate in some detail the war service of the United States Battleship New Mexico, named after your great state, whose *battle* flag is to be presented here tonight. May I also say that Vice Admiral J. B. Oldendorf, Commandant of the Eleventh Naval District, of which New Mexico is a part, regrets that he was unable to make this presentation personally, and that it is his wish to visit your city in the near future.

The battleship New Mexico well earned her part in the triumphant final operation of World War II, when, with other powerful units of the Third Fleet, she steamed past Fujiyama, to drop anchor in Tokyo's outer harbor at 3 p. m. on August 27, 1945.

Active in the Pacific since January, 1942, she steamed 183,000 nautical miles in war operations, in the course of which she participated in nearly every *major* campaign from Guadalcanal to Okinawa. Of the 1,365 days between the Japanese attack on Pearl Harbor and the enemy's surrender, the New Mexico spent 544 in combat areas. She was three times damaged in battle, suffering a total of 307 casualties including 86 dead and five missing. Her batteries fired more than 69,000 rounds of ammunition on enemy held bases and in enemy actions. The weight of the ammunition expended was approximately 13 million pounds—a weight greater than was fired by any ship in any previous war in history.

Though the New Mexico is no youngster, with her 27 years of service, she packs a punch that belies her age. These old battleships, some of which saw action in two world wars, were rarely in the headlines. Many times they moved in ahead of invasion armadas to soften enemy strongholds for landings. They stayed on to cover the assault forces until beachheads were secure, sticking by the troops ashore despite bombs, torpedoes, short battery fire, suicide planes and suicide boat attacks.

Twice in the closing months of the war the New Mexico suffered serious battle damage. First, during pre-invasion bombardment off Luzon. On January 6, 1945, she was fiercely attacked by Japanese suicide planes. One of the planes carrying a 500 pound bomb crashed on her navigation bridge, killing her commanding officer, 29 others, and wounding 87. At the time, the New Mexico served as my flagship, and we were honored with the presence of Admiral Sir Bruce Fraser, Royal Navy, Commander British Eastern Fleet, and Lieut. General Herbert Lumsden, Royal Marines. The latter lost his life in the attack. Numerous Army officers and observers were also aboard, including William Chickering of *Time Magazine,* who gave his life in the performance of *his* duties.

Again on 12 May while supporting landings on Okinawa, a bomb ladened plane crashed on the gundeck. Fifty-eight men lost their lives and 121 others were wounded.

The New Mexico, attached to Battleship Squadron One, under the command of Vice Admiral J. B. Oldendorf, also operated with the First, Third, Fifth, Seventh and Ninth Fleets, serving under Fleet Admiral Chester W. Nimitz, Admiral William F. Halsey, Admiral Raymond A. Spruance and Admiral Thomas C. Kinkaid.

The New Mexico was operating with the North Atlantic neutrality Patrol when the enemy struck at Pearl Harbor, and was immediately transferred to the Pacific Fleet transiting the Panama Canal on January 11, 1942.

Her early war service in the Pacific found her operating from bases in the Fiji and New Hebrides Islands, harassing the Japanese withdrawal from the Solomons, and covering the final consolidation of Guadalcanal. She then aided in the *re*conquest of Attu in the Aleutians, and covered the landing of assault forces on the island of Kiska. Next she appeared astride the equator, pounding the shores of Butaritari Island and supporting the landings on Makin Island. Then came Kwajalein in the Marshalls where the New Mexico again supported landings, after which she turned her guns on Taroa and Wotje in the same island group. It was in this campaign that she suffered her first personnel

casualty of the war when her target spotting plane was shot down in Kwajalein Lagoon.

After a brief rest for her crew in Sydney and change of commands, the New Mexico was again ready for action and with others steamed toward the Marianas Islands, taking Tinian under fire and covering landings on Saipan. After these islands were secured, she conducted 19 consecutive days of firing against Guam and nearby Rota Island. After the initial landing on Guam, she provided illuminating fire to prevent Japanese surprise counterattacks against our forces under cover of darkness. So efficiently was this service performed that at dawn the Marine Commanding General radioed his personal congratulations to the ship. The Marianas campaign completed a year of heavy bombardment for the New Mexico, and she was returned to Puget Sound Navy Yard for new guns and overhaul.

Her next mission was in the securing of Leyte and Samar, and later covering landings on Mindoro, all in the Philippines. Early in January, 1945, this proud battleship named after your great state was the flagship of the bombardment group in Lingayan Gulf, in strategic Luzon Island, and commenced her systematic bombardment on San Fernando, and the northern landing beaches in that gulf. The Japanese retaliated with fierce and repeated air attacks on the formation, and it was here that the ship received her first serious battle damage. Although badly injured, and her captain, Robert W. Fleming lost, the good ship stayed in action and continued her bombardment schedule. During this operation, strategically located enemy shore batteries were destroyed, and two railway bridges were rendered useless, thus preventing reinforcements of enemy troops from the North.

After battle repairs were completed, the New Mexico was again at sea, this time to play a major role in the greatest amphibious operations yet undertaken in the Pacific, the assault on the Japanese Island of Okinawa.

For six days the New Mexico supported underwater demolition teams and mine sweeping operations, blasted away at pill boxes, airplane revetments. She cleared her

assigned sector of coastal guns and camouflaged positions. After the assault waves landed on the beaches, the New Mexico with other units gave gunfire support to our troops ashore. Narrowly did she escape being struck by torpedoes fired from an enemy submarine, but prompt maneuvering avoided them.

For 64 days the New Mexico remained at Okinawa and was subjected to repeated suicide air attacks. The ship was credited with 21 enemy planes shot down. At Okinawa 8 planes were accounted for, and four within 16 minutes during a heavy air attack on April 12. She also *assisted* in the destruction of seven planes during this operation.

Etched deep in the memory of the crew is an air attack which occurred at dusk on May 12. A group of enemy planes approached from astern and closed to dive. The first kamikaze was destroyed by a 5″ shell passing under it, flaming it, and lifting it clear of the mastheads. Meanwhile, another plane had begun its final dive, and though hit several times, could not be stopped. It crashed on the gun deck and tore into the stack leaving a jagged 30 foot hole. Flames from the exploding bomb and the plane's ruptured gasoline tanks shot 200 feet skyward, like a gigantic blow torch.

While doctors, hospital corpsmen, and stretcher bearers went to the aid of the wounded, damage control parties fought the fires, and in the amazingly brief period of 15 minutes reported all fires under control, and in 21 minutes all were extinguished. The ship had taken a *hard* blow. Casualties totalled 177 men, 55 dead and 3 missing. Weary, grimy men worked throughout the night appraising damage, clearing debris and readying the ship's guns for new attacks. During the next few days miracles of gunnery and hull repairs were accomplished, permitting her to remain on station. Later after permanent repairs were affected, she accompanied the Third Fleet to Tokyo, and took part in the initial occupation of the enemy's home island.

The New Mexico has one of the longest histories of any ship in our Navy. Authorized by Congress in 1914 and commissioned in 1918, her history bridges two world wars. Like most things war built she incorporated many advances

in naval construction, being 16 feet longer than previous ships of her class with a main battery larger than any ship before her. After World War I she became the flag ship of the newly created Pacific Fleet.

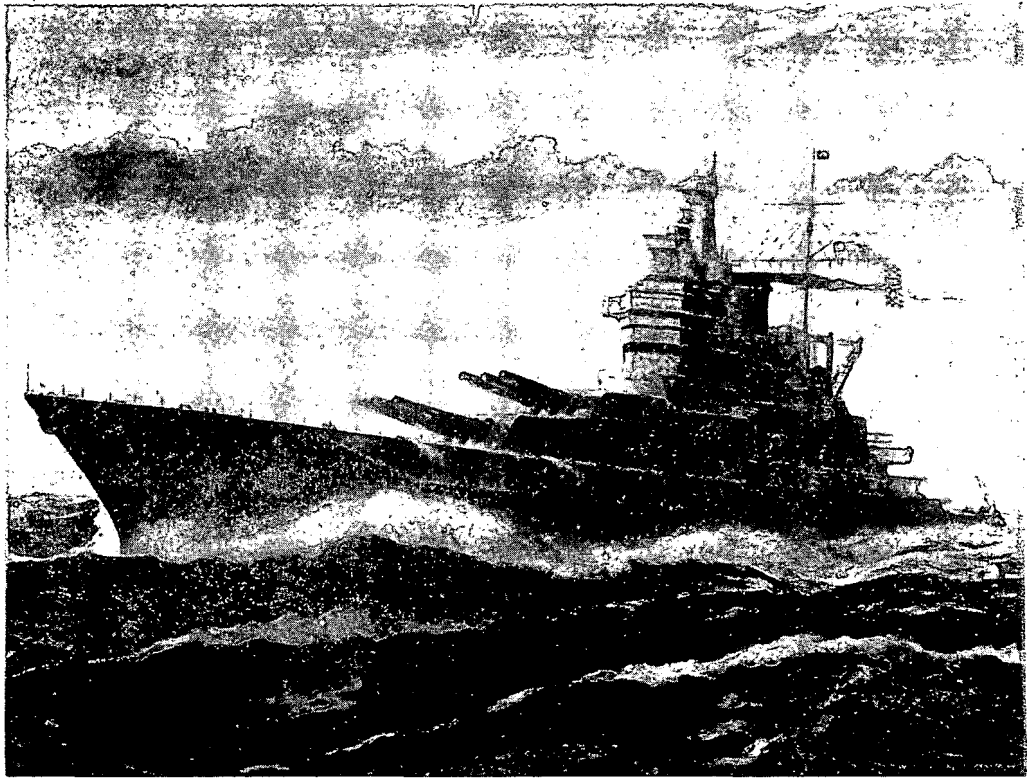
Long before World War II men of the fleet nicknamed the New Mexico "The Queen of the Fleet" in tribute to honors she won in Fleet competitions, in gunnery, engineering, and battle efficiency.

You can well be proud of this gallant ship which, with other old battleships, helped to deliver the hard punches that knocked out the enemy from island to island. These ships have forged a magnificent fighting record, firing a greater weight of shells effectively against the enemy than any squadron of ships in naval history. Although now "in commission in reserve" the New Mexico is still "The Queen."

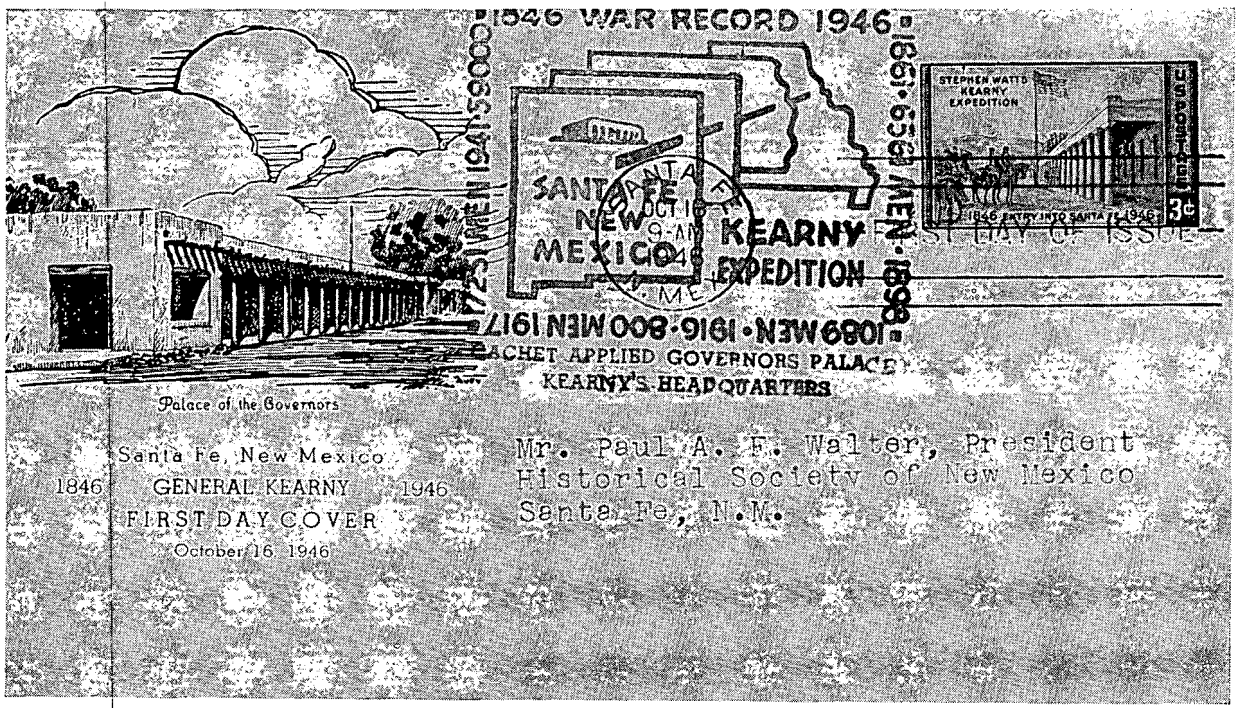
During these operations the New Mexico flew this flag which is to repose tranquilly in the museum here in your capital city. Be it known that no other flag ever flies above the Stars and Stripes, except the church pennant when religious services are in progress on our ships and stations. This custom is in accord with our belief that the church is above the state, but both marching forward together seeking world peace.

When thus displayed we see the church flag flying majestically above the Stars and Stripes, yet so close together they seem to merge into one banner dedicated to the brotherhood of man, and freedom for all mankind. That freedom seems obscured today, necessitating full faith in our statesmen to bring about unity among nations, otherwise our civilization cannot survive.

While we call this a battle flag in war, in peace it represents the symbol of individual liberty, under which your state and cities grew and prospered, as did the nation to which it belongs. A young nation founded on principles of equality and freedom was to become the greatest of all lands, towards which the world looks for aid in peace and in war. America has never failed to render such aid, nor has it ever offered or accepted war, except in the defense of the precepts of freedom of democracy.



U. S. S. New Mexico



Kearny Centennial Stamp 1946

Governor, in the name of the Navy Department, I present the Battle Flag of the Battleship New Mexico to your state, with the knowledge that we will all *ever stand close* to it, and *defend* it whenever or wherever needed.

THE YEAR OF DECISION

By WILLIAM A. KELEHER

For a full hundred years now New Mexico has been a part of the United States of America, not an important part perhaps, but it can be said with sincerity that New Mexico has contributed in its own small way since 1846 to help build a great and cohesive nation. The New Mexico of a century ago was indeed a part of the genuine western frontier. Under Spanish and Mexican rule, the province of New Mexico was governed by laws that were enacted in Durango, in Mexico City, and in Spain. Geographically New Mexico was isolated, hemmed in by towering mountains. Transportation was extremely difficult. There was only occasional communication with either Mexico or the American States. Tribes of wild Indians, notably the Navahos, Apaches, Comanches, Kiowas and Utes, roamed over New Mexico pretty much at will. The inhabitants suffered greatly in loss of life and property from depredations by Indian tribes. New Mexico was and is a long distance from navigable streams and salt water.

Even today New Mexico has many things in common with the Mother Country of Mexico, not shared by any other state of the Union. Geographically we are Mexico's next-door neighbor. Our soil was once Mexican soil. Our cultural background is fundamentally based on Spanish and Mexican life developed over hundreds of years. The language spoken by many of our people is the national language of Mexico.

This occasion is a memorable one in the history of the State of New Mexico, and of the American nation. The people of our country are thinking today as never before in terms of internationalism, as opposed to nationalism. They have an interest and a sense of personal concern never before manifested. Because the people of America are now directing their thoughts toward international horizons, this

occasion and the program prepared for its celebration are timely and justified. We would, however, be doing a disservice to the nation and to ourselves if we seized upon this occasion as one for a review of the glories of American achievement of a century ago. We would exhibit bad taste and poor manners if we attempted today to praise unduly the military successes of a hundred years ago. Certainly it would not be appropriate to say a single disparaging word about the efforts of the Mexican Republic to prevent seizure of its territory, nor to criticize the attempts of its leadership of that day to maintain the honor and dignity of their nation.

Fortunately an excellent relationship exists today between the government of the United States of America and the Republic of Mexico, a relationship perhaps never before in the history of the two nations so cordial and sincere. Our good neighbor policy, so long planned and nurtured by men of good will of both nations, has accomplished much in the field of foreign affairs in Mexico and the United States. That policy holds great promise for present and future harmony and understanding. We hear frequent mention of a subject called intellectual coöperation between our country and Mexico. The words, "intellectual coöperation," introduced of recent years into the vocabulary and terminology of both the English and Spanish languages, are today used to describe and define the honest and able efforts made by and between the diplomatic representatives of the two countries to achieve mutual trust and helpful understanding, certainly worthy and desirable objectives. A most recent practical demonstration of this spirit of intellectual coöperation has been exhibited in the harmony and mutual help apparent in the two countries during World War II.

Viewing the relationship between the two countries in retrospect, it may be said that no fair-minded student of history can sincerely argue that we of the United States of America have been free from blame in times past in attempting, because of superior strength, to impose our will on that of our neighbor to the south. We must plead guilty

of having meddled in her affairs, when it seemed to serve our purpose, from either a political or a diplomatic standpoint, and in attempting, perhaps in entire good faith, to interfere with her way of life in the conduct of administrative affairs, on the theory that we knew better than Mexico the things that were for her own best interest. As early as 1825, Joel R. Poinsett, acting under instructions from Henry Clay, went to Mexico as the representative of the United States, and began negotiations looking toward the purchase of a great slice of northern Mexico, certainly conduct which was an affront to that nation. Poinsett's name is kept alive and remembered today by the red flower that appears each year about Christmas time, while his work as a diplomat is recalled only by those interested in history.

During the presidency of Benito Juarez, that great Mexican leader, our government, on March 6, 1860, authorized the appearance off Vera Cruz of the battleship Saratoga. Our naval forces there participated in Mexican affairs to an extent which certainly would not be tolerated under the good neighbor policy of our day. American Marines were landed in Vera Cruz in 1914 by order of President Woodrow Wilson, and permitted to intervene in an incident which grew out of the ousting of General Victoriano Huerta, believed to have been responsible for the assassination of President Madero. As a result of that intervention a number of Americans and Mexicans lost their lives. All of these incidents, and others which might be mentioned, are now fortunately a thing of the past, forgotten and forgiven. Because of the eventual satisfactory solution of difficulties which in former times produced strained relations, and because of present cordial relations, it is believed that even the most zealous Mexican citizen would not object to the celebration in Santa Fe today of the centennial of the American Occupation, even if that celebration may perhaps recall for Mexico unpleasant and unhappy memories.

Thinking in terms of the building of a great free country, with no potential foe on land that spanned the continent from ocean to ocean, the leaders of our nation of a century and more ago, projected their thoughts many years into the

future. With their eyes focused on the international stage, they interpreted the things of their day in the light of things to come. They considered how the happenings of their times would affect future generations in their relationship to national solidarity.

Forty-five years after the American colonies had declared their independence of England, the people of Mexico, in 1821, declared their independence of Spain. In that year of 1821, the war of 1812, between England and the United States, had been over a scant six years. There was every indication in 1821 that England might and perhaps would attempt to acquire from Mexico, by purchase or conquest, the important California ports of San Francisco, Monterey and San Diego. We can adequately realize today the value of the decisions made by American leadership a hundred years and more ago to checkmate the designs of England. We can appreciate the value of their determination upon a policy which provided that no foreign power should be permitted to gain a foothold on this continent.

It would be interesting to explore the incidents which foreshadowed war with Mexico in 1846, to perhaps attempt to justify that war in the light of history. However, this is neither the time nor the occasion for such a discussion. We might say in passing, as a matter of interest because Texas is our neighbor to the south and to the east, that the course of events in Texas in 1835, and annexation of the Texas Republic by the United States ten years later, had a great deal to do with the actual beginning of the war of 1846, which ultimately meant invasion and conquest of New Mexico and California. During that critical period in our history the destiny of this nation was in the hands of men like Daniel Webster, Henry Clay, Andrew Jackson, Martin Van Buren, and other great statesmen and military leaders. It will help to orient ourselves historically if we recall that Abraham Lincoln was only thirty-seven years old in 1846, and that the Civil War of 1861 to 1865 was a decade and a half in the future.

As interesting as these sidelights of history might be, we have no time to pursue them. Our purpose on this

occasion is to recall some of the stirring events of the time when New Mexico became a part of the United States of America. We recall tonight that the American flag was first raised in this City of Santa Fe on August 18, 1846. We would like to recapture if possible some of the atmosphere of a romantic and most exciting period of the history of New Mexico.

We are happy to salute and to pay tribute today to the name and memory of Stephen Watts Kearny. He was the man who led the Army of Occupation into New Mexico. Fate and his superior officers assigned to him the part of playing the lead in the great, adventuresome drama of conquest of our own New Mexico. This distinguished leader of men was born in Newark, New Jersey, in 1794, and died—perhaps an unhappy death—as the result of his clash with Fremont in California over rank and authority—in St. Louis, Missouri, on October 31, 1848. Kearny abandoned his studies at Columbia College in New York when eighteen years of age, to enlist in the American Army. He fought bravely against the British in the War of 1812. He soon demonstrated a great talent for leadership and outstanding ability in military affairs. Throughout his adult life, he manifested the greatest patriotism and love for his country. Chosen to lead the expedition to conquer New Mexico and California, he demonstrated ability in that perilous undertaking that won him acclaim that has not been dimmed in a full century of time.

Kentucky born Alexander W. Doniphan, a Missourian by adoption, enlisted hundreds of men in Missouri for service in Kearny's army. The advance outfit under the command of Colonel Kearny consisted of 1,658 men, sixteen pieces of ordnance, 12 six pounders, and 4 twelve-pound howitzers. Kearny and his soldiers left Fort Leavenworth on June 29, 1846. By July 2 his army of the west was on the trail headed for Santa Fe. Traveling through Council Grove, Bent's Fort, Cimarron Peak, down Raton Pass into New Mexico, the army, enduring much in a strange, uninhabited country infested with Indians, reached the Mora River on August 14, and Las Vegas on August 15.

Carrying out instructions given to him by the War Department, General Kearny mounted the roof top of an adobe house in Las Vegas to proclaim that he had taken the country on behalf of the United States of America. He gave assurance of protection of life and property, and promised religious freedom. By August 16 the American troops were at San Miguel, on the Pecos River. On the 17th they had reached the ruins of the Pecos Indian village.

On August 18, 1846, after a spectacular march of almost nine hundred miles in less than fifty days, General Stephen Watts Kearny, who had been promoted from Colonel to General in the field, with his entire command, entered Santa Fe, the capital of the province of New Mexico. On that day, August 18, 1846, General Kearny took peaceable and undisputed possession of New Mexico in the name of the government of the United States. The conquest was accomplished without the loss of a single man, or the shedding of one drop of blood. John Taylor Hughes, a young schoolteacher-soldier with Doniphan, told the story of the conquest and his version of events has been accepted as historically accurate. Those of us who have been privileged to live in Santa Fe, or to visit this most gracious city on occasion, can close our eyes and almost visualize the happenings of a most exciting time in the history of this ancient capital one hundred years ago. The geography of the country today is identical with that of the days of the conquest. The place names of long ago, Mora, Las Vegas, San Miguel, San Jose, are familiar to all of us. The waters of the Pecos ran then pretty much in the banks they now occupy. We may even speculate that August 18, 1846, was a delightful August day, one of those long summer days for which Santa Fe is noted the world over. Thanks to the foresight of historic minded citizens, the Palace of the Governors has not been materially changed in the hundred years that have come and gone since General Kearny came on a very serious mission. The historic plaza has been preserved for posterity in its original place and setting. With Kearny's mounted soldiers advancing hourly closer and closer to Santa Fe on that historic day, things must have been tense indeed as the drama of invasion

unfolded. The Mexican troops had prepared for days to resist the invaders. Santa Fe was filled with rumors of impending events. The women and children had fled to places of safety in the mountains. For reasons much too involved to recall here, General Manuel Armijo, the Governor of New Mexico, failed to engage in the battle that was expected to be the high point of the resistance movement. In his diary of Tuesday, August 18, 1846, John Taylor Hughes jotted down many things of present historic interest:

> General Armijo fled for fear of assassination by his own people. Country remarkably dry & sterile 5 or 6 miles before you get into the town, & covered by dwarf cedar—The day was cloudy until evening, when the sun broke out just as we entered Santa Fé. Gen. K. came in advance & entered the town with ten companies, in fine array & banners streaming in the breeze, behind them the Artillery, which halted on the hill, and the Volunteers under Col. Doniphan marched next in order through the various crooked streets of the town; their banners gaily flown to the breeze, while the batteries fired a salute of near 20 guns. The American flag was erected in the public square so as to wave over the Palace Royal or Gov. Armijo's Residence. We encamped on a perfectly bare spot of sand, after a travel of 29 miles, not having halted to eat a bite—the men were very hungry and much fatigued—the horses are almost perished to death—neither man nor horse had anything to eat; nor did they get anything until the next morning—some few got a piece of bread or cheese from the Spaniards.

In his diary for Wednesday, August 19, 1846, John Taylor Hughes reported:

> Gen. K. took up his headquarters in the Palace . . . on the night of the 18th—the flag waved about the public square—at 9 a. m. I was invited to go down in town to hear Gen. K.'s speech to the Spaniards & to see them take the oath of allegiance to the Gov. of the U. S.

We all recall General Kearny's speech in Santa Fe, addressed to the people of New Mexico by authority of the government of the United States, of his declaration that he and his soldiers had come as friends to make New Mexico a part of the Republic of the United States; of his assurance of freedom of religion, of respect for property rights, of protection against the Indians. With pardonable pride, we may say here today that the promises General Kearny made a hundred years ago have been faithfully performed

by the government he represented. There were times in the Territory of New Mexico after 1846 when it seemed as if the United States considered New Mexico as a national stepchild, but subsequent to statehood we may speak of those times in the past tense.

The people of Santa Fe have always been an accomplished and resourceful people, noted for their hospitality. They were as accomplished and resourceful a century ago as they are today. Their ability to handle a most difficult situation was never better demonstrated than by the diplomatic manner in which the leaders in the political world at Santa Fe bowed to the inevitable on August 18, 1846. They graciously accepted and made the best of a serious military and political crisis. Ralph Emerson Twitchell and L. Bradford Prince, eminent New Mexico historians, joined their knowledge of events to tell many years ago that story in the following words:

> The advance of the American column arrived in sight of the city of Santa Fé at three o'clock in the afternoon of the 18th of August, 1846; by six o'clock the entire army was in the capital. The general and his staff, and other officers of the army, were received at the old Palace by Lieutenant Governor Vigil, assisted by about thirty representative citizens of the city. Refreshments were ordered served by Governor Vigil. . . .
>
> There, in the Old Palace, sat the American general and his principal officers, the guests, enforced it is true, but still welcome, of all that was left of the men who had derived authority from the Mexican Republic; seated in a building, which, in historic interest, surpasses any other within the confines of the United States; built in the first years of the 17th century, and, down through all the succeeding years, until 1886, whether the country was under Spanish, Pueblo, Mexican or American control, it remained the seat of authority; whether the ruler was called viceroy, captain-general, political chief, department commander or governor and whether he presided over a kingdom, a province or a territory, the Old Palace has been his official residence.

Acting Governor Juan Bautista Vigil y Alarid, who had been left in charge of the provincial government by Governor Manuel Armijo, in responding to the speech of General Kearny, reflected the true sentiments of the people of Santa Fe at the time of the conquest:

> Do not find it strange if there has been no manifestation of joy and enthusiasm in seeing this city occupied by your military forces.

To us the power of the Mexican Republic is dead. No matter what her condition, she was our mother. What child will not shed abundant tears at the tomb of his parents? I might indicate some of the causes for her misfortunes, but domestic troubles should not be made public. It is sufficient to say that civil war is the cursed source of that deadly poison which has spread over one of the greatest and grandest countries that has ever been created.

General Stephen Watts Kearny, in command of affairs in Santa Fe, acted with military speed and precision. He undertook the organization of a government for New Mexico, and had it completed by September 22, 1846. The Kearny code, written by Willard P. Hall, of Doniphan's troops, was adopted as the basic law of the new territory of New Mexico and remains so to this day. Within four months after Kearny had arrived in Santa Fe, New Mexico had become an important point of departure for new and far more extended expeditions, to the interior of Mexico, to the great ports of the Pacific Ocean in California.

Viewed in the light of the last hundred years, the conquest of New Mexico by the United States was an inevitable part of a policy known as "manifest destiny." The year of 1846 was indeed a year of decision for the United States of America. Our government was involved in difficulties with England over the Oregon question. Speed was of the utmost necessity if France and England were to be outwitted. Fortunately for the America of today, we had statesmen of vision and military men of courage and foresight in the America of one hundred and more years ago. Prompted by patriotic motives, they did not hesitate to act at a time when action meant the fulfillment of their dreams of empire. These men left a glorious inheritance for posterity, because of the skill with which they handled the conquest of New Mexico. It is only necessary to contrast the conquest of New Mexico in 1846 and the conquests by European powers of small nations in World War II, to demonstrate the greatness with which America handled a most difficult problem.

New Mexico is proud today of the magnificent progress that has been made by the descendants of those residents who were citizens of Mexico at the time of the conquest.

In dealing with its new citizens, the government of the United States undoubtedly adopted a short sighted policy. The newly created American citizens were permitted to shift for themselves, to learn the language, customs, laws, and habits of the American people without any assistance whatever from the conquering nation, a policy that was ruinous to many individuals, and to the inhabitants as a whole. Today's citizens of New Mexico, of Spanish and Mexican ancestry, having survived the ordeal thrust upon them, are thoroughly amalgamated as Americans, with no regrets because their ancestors a century ago accepted citizenship in a country offering great hope and promise for the future.

The name of Stephen Watts Kearny is recalled with sentiment and gratitude by the people of New Mexico today. General Kearny was a brave and honorable leader in New Mexico's first test under the Stars and Stripes. We can say today, as one of his close friends said when he died in St. Louis ninety-eight years ago, at the age of fifty-four years: "If ever there was a man whom I considered really chivalrous, in fact a *man* in all that noble term conveys, that national soldier and gentleman was Stephen Watts Kearny."

BLACK-ROBED JUSTICE IN NEW MEXICO, 1846-1912

By ARIE POLDERVAART

CHAPTER I

INTRODUCTION

From 1846 until 1887 New Mexico was divided into three judicial districts. The chief justice during this period maintained his headquarters and residence in Santa Fe. That the presiding judge should be located at the seat of government for the Territory of New Mexico was basically sound. It was accompanied, however, by one distinct disadvantage in that the first judicial district over which he presided was also by far the busiest district in the Territory. It comprised the counties of Santa Fe, San Miguel and Santa Ana from 1846 to 1860. In the latter year the counties of Mora, Colfax, Taos and Rio Arriba were added.

The second judicial district during this early period included the counties of Bernalillo and Valencia, and also, after their organization, the counties of Socorro, Doña Ana and Arizona. Terms were regularly held at Albuquerque and sometimes, by special order of the court, at Socorro. The third district, until 1860, consisted of the counties of Taos and Rio Arriba, with headquarters at Fernandez de Taos.

Under the sixteenth section of the organic act, actual designation of the judges to districts was left to the discretion of the territorial officials through a provision that,

> Temporarily and until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding court in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign judges, and alter the times and places of holding the courts as to them shall seem proper and convenient.[1]

1. 9 U. S. Stats. at Large 446, Ch. 49, Sec. 16 (Sept. 9, 1850)

In accordance with a law passed July 10, 1851, the chief justice of the Territory was to reside in the district in which the seat of government for the Territory was located. An elaborate schedule for conducting terms of the various district courts was prescribed by the act. However, for various reasons a number of the court sessions were not held by the judges during the late summer, fall and winter of 1851-52 as required by law. In an effort to correct this situation, the first legislative assembly at its second session on January 3, 1852, passed a supplementary measure which contained the following express directive:

> The judges of the supreme court of the Territory of N. Mexico are hereby required to hold the district courts in the respective districts to which they have been assigned, and in each county of said district for the disposal of all civil and criminal business within said counties, in exact conformity with the act passed at the last session of the legislative assembly, approved July 10, 1851. . . . [2]

To help prevent passing of court terms in case of unavoidable absence and illness, the act further provided in its second section "that the judges of the Supreme Court holding district courts may alter and change their districts temporarily, and if any judge should be absent or sick, either one of the other judges may hold the courts in the districts of those who are thus prevented from holding their courts."

Provision for a term of the Supreme Court was made by an act of the legislative assembly on December 18, 1851, which provided that the court should meet at Santa Fe, the seat of government of the Territory, annually, commencing on the first Monday in January, 1852, and each year thereafter until changed by law.[3]

By re-arrangement of districts in 1860, the third judicial district was shifted to the southern part of the Territory where it remains to this day. Included in the new third district were the counties of Doña Ana, Grant and Lincoln.

Dissension flared up from time to time concerning the

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2. Laws of New Mexico, 1851-52 (Santa Fe, 1852), p. 259.
3. Laws of the Second Session, 1851-52, page 227.

apportionment of the justices, and efforts were made on several occasions to have them shifted from one district to another because of local prejudices.

In the latter part of 1847 it became apparent to influential people of the Territory that jurisdiction of the courts established by General Kearny, and reorganized by General A. W. Doniphan, was very limited, especially when there was any conflict between the civil and the military authorities. The *Santa Fe Republican,* in an editorial upon the existing state of affairs, said:

> Recently the American citizens here have seen the powers properly falling under the jurisdiction of the civil tribunals arrogated by the military, bringing the former into contempt and disrepute, and that there is in effect only the form of a civil government in the Territory, and that for all practical purposes it is paralyzed and ineffectual. This being the state of things, the will of the commanding officer is the law. The citizens here are not aware that the laws framed and established by General Kearny and confirmed by the President have been revoked. They wish to know whether the organic laws of General Kearny are still in full force, or whether they have been revoked by order of the President in whole or in part. Why call together a legislative body if its acts may be annulled and made void if the will of a commanding officer is paramount. Why have judges and courts if they can only act at the pleasure of the military authorities.[4]

The historian Ralph Emerson Twitchell observes that though Judge Joab Houghton, presiding officer of General Kearny's court, was not a lawyer, "it does not require a lawyer to ascertain that Judge Houghton's stock of good common sense was great enough to cause a denial of a writ of habeas corpus rather than have a clash with the commanding officer, who, at that time, happened to be General Sterling Price." The Judge, said Twitchell, "evidently desired to continue dealing out justice, even though his jurisdiction was somewhat warped and hazy."[5]

Soon after the regular Territorial government in New Mexico was organized in 1851, Chief Justice Grafton Baker's court was purged from the military chapel by the ecclesiastics, and the Supreme Court held annual sessions in a building situated on the corner directly east of the

4. *Santa Fe Republican,* Oct. 20, 1847.
5. R. E. Twitchell, *Old Santa Fe* (Santa Fe, c1925), p. 311.

Palace of the Governors. This structure was nearly a hundred feet in length, about twenty-five feet wide, and one story high. During the military occupation it had been used as a quartermaster's storehouse. It was refitted as a courthouse soon after establishment of the Territorial government. Large double doors opened into the street from the courtroom, which was about sixty feet long, easily the most commodious and best courtroom in the Territory. The Supreme Court began its session in this courtroom at Santa Fe on the first Monday in January and continued to sit for the argument of causes for about three weeks. Except for a short period when Territorial legislation provided for a mid-year term of the Supreme Court in July, this was the only session of the Supreme Court held each year.

After the Supreme Court session each justice would return to his own district where he was by law required to reside. Two terms were held in each district annually, one in the spring and the other in the autumn. The time for holding these terms of court was staggered, so as not to interfere with one another, beginning in the north and running through the different counties to the south in rotation. This was done to enable the attorneys to argue cases in the courts of the different districts and, when necessary, for the judge of one district to sit for a judge of another district. The early lawyers and judges were indeed adept at riding the circuit.

From a practical standpoint the Territorial arrangement whereby the Supreme Court members exercised original jurisdiction in the district courts, as well as being members of the appellate tribunal, was wrought with serious difficulties. The review in the Supreme Court of cases appealed, in a certain sense was scarcely a review at all, as the trial judge, particularly in the earlier days, was personally present to convince his colleagues of the correctness of his holdings—it was not an independent review, regarded as a primary prerequisite in the impartial administration of justice. The district judges in many cases wrote opinions contrasting in this respect with the present policy of stating merely their findings of fact and conclusions of law. Some-

times the Supreme Court would be so impressed with the legal reasoning of the member who wrote the trial court opinion that it would adopt his opinion as its own. For example, in the case of *Armijo v. County Commissioners.*[6] the Supreme Court merely said that, "This case is affirmed for the reasons given in the opinion of the learned judge before whom the case was tried in the court below." This statement was followed by the opinion of the trial judge.

Chief Justice James Davenport almost at the very beginning of Territorial days called attention to this unsatisfactory arrangement when he observed in the case of *Bustamento v. Analla:*

> As this case was tried by me in the court below, I have felt a deep anxiety and much interest in arriving at just legal conclusions in the investigation of the principles which should conduct the mind to a correct opinion.[7]

Today a Supreme Court justice who has tried a case in the district court promptly disqualifies himself from sitting in the case on appeal. In Territorial times, at least during the earlier years, the trial judge might not only find himself called upon to sit in the case because the two remaining judges might be deadlocked one to one on the merits of the appeal, but he might be called upon, as in the above instance, to write the decision!

Keenly aware of the undesirability of the three-judge Supreme Court sitting in review of the decisions of its own membership who preside individually upon the district bench, the Constitutional Convention of 1849, chiefly through the influence of Judge Houghton, sought to overcome this unsatisfactory feature and yet retain an economical organization for the proper administration of justice. The results of its labors are reflected by the following provision in its proposed state constitution:

> Art. III, Sec. 2. The supreme court shall consist of four judges, one to be supreme or appellate judge, and the other three to be district judges, for the hearing and adjudication of law cases, and associates of the supreme judge in all cases of appeal; and the judge who tried the case shall not be allowed to sit in this appellate court.[8]

6. 3 N. M. (EWS., Gild.) 477, 7 Pac. 19.
7. 1 N. M. 255, p. 256.
8. 31st Cong. 1st Sess., Hse. Ex. Doc. 17, pp. 99-100.

The unsatisfactory condition was called to the attention of Washington authorities from time to time, but the problem was never completely solved until statehood, although with the increase in the number of justices during later Territorial days, the judge who tried the case below withdrew from participation on appeal. In 1895, Governor W. T. Thornton called attention to the unhappy arrangement when he wrote:

> I desire to call your attention to the formation of our present Supreme Court, which is composed entirely of district judges. In my opinion it is bad policy for the court of last resort to be composed of trial judges, for while it is true no judge sits in the Supreme Court upon a case which he has tried below, it is certainly a fact, well established from experience in the past, that they too often exert an influence upon their associates on questions arising before them, and upon cases appealed from the various districts, each judge feels an interest in having his own decision affirmed, which is an inducement for each to sustain the other. This system has been in existence for many years in the different Territories and has in the past proven, in many cases, very vicious; and in view of the further fact that the trial judges of the Territory have more work than it is possible for them to perform, and are now in some districts several years behind with their trial docket, I would respectfully recommend the creation of a court of last resort, to be composed of three or five judges, to act for the three remaining Territories of Oklahoma, New Mexico and Arizona, with the right of appeal thereto from the district courts of the several Territories.[9]

An embarrassing situation arising from the dual responsibility of the Supreme Court judges was illustrated by *Lincoln-Lucky and Lee Mining Co. v. District Court*,[9a] a case wherein it was decided that an associate justice of the Supreme Court could issue a writ of prohibition against another member of the court in a case which might be at issue before him on the district bench. This action by one member of the Supreme Court against one of his colleagues was resisted in the Supreme Court on the ground that it would result in an unwarranted interference, would be subject to abuse, and might readily be carried to the extent, if two or more members of the court were hostile to one

9. Report of the Governor of New Mexico, 1895 (Washington, Gov't Printing Office, 1895), p. 75.

9a. 7 N. M. 486, 38 Pac. 580.

another, of paralyzing the business of the courts. The majority, however, sustained the power of one judge to prohibit another on the ground that, whatever the relationship of the justices might be, the writ issued out of the Supreme Court to a statutory inferior court, and that the effect of the writ was merely to preserve the *status quo* until the question was finally disposed of on appeal. Judge A. A. Freeman dissented, revolting at the thought that failure of the trial judge to follow the mandate of his brother judge would subject him to the pains and penalties of fine and imprisonment for contempt.

Another difficulty with the Supreme Court membership was that the judges were political appointees. This tended to militate against an impartial judiciary. Some judges were accused of being too easy upon lawless characters, others were said to favor members of the political party which had brought about their appointment. Nevertheless, there were many whose devotion to duty and justice was unquestioned, though in some instances their personal conduct was the subject of attack both in the press and through iniquitous whispering campaigns.

Still another political difficulty was the fact that the membership was dependent upon the party in control of the administration in Washington. A change there meant that a new personnel of the Court could ordinarily be expected. Thus, in 1885 there was a complete turnover and cases which were pending had to be reargued and started anew because none of the old judges remained to carry on. The result was a serious and unfortunate delay for the litigants in the settlement of the disputes.

The number of cases determined by the Supreme Court in the earlier days of the Territory were few. Distances to the capital were so great and the attendant cost of appeal was so excessive that each district was very much the law unto itself. Furthermore, the thought that the trial judge needed to win but one of the other judges over to his view to affirm, furnished little incentive for an appeal. From the date of organization of the Kearny court down to the advent of the railroads in 1879, a period of about thirty-three years,

only eighty-two opinions were reported.[10] A few cases appear not to have been printed, and a number of the early appeals were dismissed without benefit of written opinions.

An interesting but unfortunate policy pursued by the Territorial Court (still practiced by the Federal courts to some extent) was to announce orally the decision or holding of the Court immediately following the oral arguments. The written opinion would then be prepared and handed down at a later date. Though this had the advantage of promptly advising litigants of their fate, it had the restrictive effect of binding the court to an orally announced conclusion, which might later upon more careful study of the case prove to be unwarranted or untenable.

Attorneys in the early days were not only handicapped by a scarcity of decisions by the New Mexico Supreme Court, but they were further hindered by the fact that printed copies of the opinions of the Court did not become available to the bar, except for a few important cases which were reported *verbatim* in the newspapers, until they were compiled by Charles H. Gildersleeve during the incumbency of Chief Justice L. Bradford Prince. Then the first bound volume of the New Mexico Supreme Court reports appeared, covering the decisions of the court from its first session in January, 1852, to the January term, 1879, inclusive.

Collection of the early opinions proved to be an arduous task, according to Mr. Gildersleeve, because some of the clerks had neglected to record the opinions deposited with them. Although the practice has long since been abandoned, Mr. Gildersleeve sought wherever possible to include with the opinions of the court the briefs and arguments of counsel. He was considerably disconcerted, however, because "the clerks have taken no pains to preserve the briefs of counsel."[11]

The files in the office of the clerk of the Supreme Court, furthermore, were not always in the best of order. This was largely due, no doubt, to inadequate filing facilities and

10. Of this total 81 cases appear in Volume 1, New Mexico Reports, and one case was belatedly printed in Volume 9.

11. Charles H. Gildersleeve, "Explanatory Note," N. M. Supreme Court Reports (Chicago, Callaghan, 1897), vol. 1., p. ix.

because of several removals of the court to new locations. Clerk Jose D. Sena, in reporting to the governor on the situation in 1898, stated:

> At the time that I took charge of the affairs of this office, nearly one year ago, the files in this office were in a very disorderly and lamentable condition, but after two months and a half of constant and hard work I have succeeded in arranging the files in a proper and accessible manner. . . . In a good many instances, owing to the careless manner in which the files had been kept, papers of great importance are missing, in several cases no papers at all having been found by me.[12]

The Territory had sixty Supreme Court judges from 1846 until statehood sixty-six years later. The largest number of decisions were put in writing by the Hon. John R. McFie who prepared a total of eighty-one majority opinions, concurred specially twice and dissented from the majority once. Judge McFie held the distinction of being the only justice to receive an oppointment for a fifth term and of having remained upon the Supreme Court bench longer than any other judge in New Mexico Territorial history.

From 1879 the business of the Supreme Court began to show a great increase, as did the number of cases docketed in the three district courts. This over-burdened the judges, and the district court dockets fell far behind. The difficulties confronting the court became so pressing by 1885 that Governor Edmund G. Ross reported to the secretary of the interior and to Congress in his annual report for that year, as follows:

> There are now but three judicial districts in this Territory, and the labor of these courts has become exceedingly onerous. A large part of the year is now occupied by each of the three judges actually in court, leaving them but little time for recuperation or for the preparation of opinions upon the many very important cases that come before them for adjudication. The result is that they are greatly embarrassed in the discharge of their duties, and are often unable to clear the docket in one county before court begins in another; important cases, civil and criminal, are obliged to be held over to a later term, to the great detriment of litigants, and with great wrong and the denial of justice to alleged criminals, who are not infrequently compelled to be in jail for another six months, under accusations of which they claim to be, and sometimes are finally on trial found, to be innocent. Another serious phase of this matter is in the fact that, with but three judges

12. Report of the governor of New Mexico, 1899 (Washington, 1899), p. 248.

to constitute the Supreme Court of the territory, each of the three is required, in order that there may always be a majority for the promulgation of an opinion and the decision of a case, to sit in judgment and reviewal of his own decisions in the court below. This is unfair and embarrassing to the judges themselves, as it is not unnatural that it should in the minds of interested parties create suspicion of collusion, and thus cause scandals in connection with a tribunal that above all others should be the furthest possible removed from all appearance of illegitimate motive as well as action. I therefore recommend the creation of a fourth judicial district for this Territory.[13]

The governor's plea did not go unheeded and pursuant to act of Congress, approved February 28, 1887, a fourth district came into being. The first judicial district was reorganized to include the counties of Santa Fe, San Juan, Rio Arriba and Taos. The second district remained unchanged, comprising the counties of Bernalillo, Valencia and Socorro. The third district was rearranged with headquarters at Las Cruces and comprising the counties of Doña Ana and Grant. The new fourth district headquarters were at Las Vegas and included the counties of San Miguel, Colfax and Lincoln.

The business of the courts, however, now increased so rapidly that less than three years later the situation was almost as serious as before and on January 27, 1890, the New Mexico Bar Association started a move to have the number of districts increased from four to six. Not only was the increase by two districts in line with the needs of the expanded business in the district courts, but it would also prevent reversion to the unsatisfactory situation created by an odd-numbered court when the trial judge might be called upon to break a tie, in event his colleagues were equally divided on his case before them on appeal. In seeking the increase in the number of judges and judicial districts, the Bar Association pointed out that the wealth and population of the Territory had rapidly increased, that five new counties had been created in the last three years, that there was a great accumulation of chancery business, and that mining litigation had jumped upward. "In some of the Districts," concluded the Association's Memorial to the

13. Report of the governor of New Mexico, 1885 (Washington, 1885), p. 7.

Congress, "the Courts are as much as two years behind with the business."[14]

Congress lent half an ear to the proposal and a bill was introduced to increase the number of districts to five instead of six. Judge McFie, who during his first term on the bench presided over the third judicial district, was particularly to be benefitted by the increase in the number of districts. He had to travel nearly 300 miles by stage coach twice a year in order to meet his judicial engagements in the district. Appointment of a fifth judge would divide up his immense territory which extended from the east side of the state to the Arizona boundary.

The bill passed Congress[15] and the court met on November 3, 1890, at the Chief Justice's chambers in Las Vegas, to redistrict the Territory. The first district, which had been the primary beneficiary of the re-shuffling three years earlier was left unchanged. Huge Socorro county was transferred from the second to the new fifth district which included also the counties of Lincoln, Chaves and Eddy; the town of Socorro was made the headquarters. Sierra county was made a part of the third district along with Doña Ana and Grant counties. The fourth district was relieved through transfer of Lincoln county to the new district. This district organization became effective on November 10, 1890.

The dockets continued crowded and the increased number of districts only partly compensated for the constantly increasing amount of litigation. New counties, too, were being created, necessitating additional sessions of the district courts at the new county seats.[16]

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14. N. M. Bar Association, *Minutes*, fifth annual session, 1890 (Santa Fe, 1890), p. 60.

15. 26 U. S. Stats. at Large 226, Ch. 665 (July 10, 1890).

16. In 1891 Guadalupe county was created and added to the fourth judicial district. In 1893 Union county was created and likewise included in the fourth district. In 1899 Otero county was created and included in the third district. McKinley county was established by the Laws of 1899 and joined to the second district. In 1903 Torrance county was created and made a part of the first district. In 1903 also, Roosevelt county was created and added to the fifth district, and Quay county for the fourth district.

As a result a sixth district was authorized and created in 1904 with headquarters at Alamogordo and taking in the counties of Otero, Lincoln, Guadalupe and Quay. Finally, in 1909 the fifth district headquarters was shifted to Roswell with jurisdiction over the counties of Chaves, Curry, Eddy and Roosevelt. A new seventh district, organized the same year, was given headquarters at Socorro and made to include Sierra, Socorro and Valencia counties. Merritt C. Mechem, later governor of the State of New Mexico, was appointed judge of the new district and retained the office until statehood.

The business that accumulated before the Supreme Court during the last few years was still great, but through the efforts of Chief Justice Pope and his able court to clear the docket, a clean slate was left for the State Supreme Court.

Sworn in on January 10, 1912, the new three-judge State Supreme Court started upon its role as the highest tribunal of the nation's forty-seventh state on the morning of January 15, 1912.

CHAPTER II

UNDER THE DREADED STICK
1824-1846

When General Stephen Watts Kearny and his army of occupation set in motion the American wheels of justice throughout New Mexico, their Yankee ways of administering the law were both novel and considerably more efficient than the system to which the native population had been accustomed.

During the Mexican regime the only constitutional tribunal or justice actively functioning in New Mexico was the alcalde's court. The historian Hubert H. Bancroft notes that attempts were apparently made at various times by the Mexican authorities to improve the administration of justice in New Mexico, but with insignificant results. He observes that about 1826 it was practically impossible to obtain justice and that theft and petty offenses were preva-

lent. He quotes one authority in which it is said that there was no *juez de letras* or lawyer in New Mexico and that litigation had to be carried on at enormous cost in Durango, Zacatecas, etc.[1] He adds that two years later there was said to be a *juzgado de distrito* at Santa Fe and that the circuit court of Parral was given jurisdiction in New Mexico. In 1831 the sum of $3,000 appears to have been assigned for a lawyer to serve as *juez de letras* in New Mexico, but a year later, in 1832, Barreiro, who had served in the area two years as *asesor,* complained that he despaired of being able to introduce order into the administration of justice in the northern possession and that few were able to take their cases to Mexico proper. Bancroft concludes that, "All is very confusing, and it is hard to determine whether the territory ever had any courts except those of the ordinary alcaldes."[2]

Under the Mexican law a provision from the old Spanish constitution had been carried forward which was basically sound. This was what is sometimes referred to as the judgment of conciliation, by which parties litigant were prohibited from originating an action until they had procured from the alcalde, who was not a lawyer and not supposed to know anything about law, a statement that a judgment by arbitration or conciliation had been attempted but failed before him on trial.[3] In some of the central departments of old Mexico this device worked quite well and resulted in prompt termination of some law suits. In the outlying territories, however, it was seldom followed and in New Mexico, apparently, was quite unheard of.

One writer has reported that the whole province comprising New Mexico was divided into but seven alcaldeships, the alcaldes serving without salary and subject to the political and military governor. Lansing Bloom mentions eight, including El Paso.[4] Bancroft indicates that there were

1. *Mex., Mem. Justicia,* 1926, p. 6, cited in H. H. Bancroft, *Arizona and New Mexico,* (1889) note p. 312.
2. Bancroft, *Arizona and New Mexico,* note p. 313.
3. Brantz Mayer, *Mexico: Aztec, Spanish and Republican* (1851), vol. 2, p. 147.
4. Lansing Bloom, "New Mexico under Mexican Administration, 1821-1846," *Old Santa Fe,* vol. 1, p. 45.

from 27 to 42 alcaldes in the region between 1827 and 1832.[5]

Practice before the New Mexico alcaldes was exceedingly primitive. A man with a cause of complaint would go in person to the alcalde and state his grievance in plain and simple form. The alcalde would then direct the complainant to go out and bring the defendant before him. The plaintiff would seek out the defendant and say, "*Le llama el alcalde,*" the alcalde calls you into his presence. This summons was always verbal and spoke for the immediate present, rarely for a future time. Instant attendance was expected.

When both litigants appeared, the alcalde would ask each party to state his own version of the controversy. Occasionally he would call for witnesses and swear them in by having them cross their fingers. Sometimes the matter in dispute was decided by calling in two third parties, one of whom was selected by each of the litigants. Trial by jury was unknown. The decision of the alcalde generally lacked that complete fairness which is normally associated with a decision based upon the merits of the case. As one commentator put it, "There is cause to believe that the path of justice was sometimes impeded by the barrier of a bribe."

Gregg described the situation as follows:

> Justice, or rather judgments, are a common article of traffic; and the hapless litigant who has not the means to soften the claws of the alcalde with a 'silver unction,' is almost sure to get severely scratched in the contest, no matter what may be the justice of his cause, or the uprightness of his character. It is easy to perceive, then, that the poor and the humble stand no chance in a judicial contest with the wealthy and consequential, whose influence, even apart from their facilities for corrupting the court and suborning witnesses, is sufficient to neutralize any amount of plebeian testimony that might be brought against them.[6]

When a defendant failed to come along forthwith to appear before the court upon the verbal summons of his adversary, the alcalde dispatched after him the regular process of his court. This was done by sending the alcalde's

5. Bancroft, *Arizona and New Mexico*, p. 311, note 4.
6. Josiah Gregg, *Commerce of the Prairies* (1849), vol. 1, p. 226.

messenger with a large walking cane, known as the *baston de justicia,* or the dreaded stick of justice. This cane, decorated with a peculiar black tassel, was beheld with more apprehension than a modern warrant. If the defendant did not appear in response to summons with the stick, he was considered in contempt of court and was certain to be disciplined accordingly.[7]

Punishment in the alcalde's court was by fine and imprisonment, but it was not always meted out in proportion to the offense. Little thought was given to avenging the outraged law or to reforming the wrongdoer. In case of debt, the defendant could be imprisoned, but this was not done if the creditor was willing to accept his services to work out the amount of the judgment. By this scheme the debtor was plunged into a state of servitude. He worked for a fixed sum, the equivalent of perhaps five or six dollars a month, and was furnished the necessary food and clothing. His wages were seldom sufficient to support himself and his family and at the same time discharge the indebtedness. The unfortunate debtor was therefore soon reduced to a state of peonage, and found himself virtually a slave for life.

The alcalde's powers extended primarily to the settlement of civil and mercantile transactions, and as representative of the governor to granting possession of lands in his name. In some instances, in absence of a military commander, the alcaldes were known to organize their fellow citizens in campaigns against the Indians.[8] The political chief *(jefe politica)* or governor was the judge of the alcaldes and served in a measure as an appellate tribunal for the losing party. Appeals were permissible to the Supreme Court in Chihuahua and further to Mexico City, but this procedure was seldom if ever followed. The distance was prohibitive and the expense was so great as to be beyond the reach of all but a few of the very rich. The cumbrous formalities, too, of Spanish law in the higher courts "formed a prolific hot-bed of special pleading, chicanery and delay." In 1850 there were cases in the Mexican courts, according

7. *Ibid.,* vol. 1, p. 233.

8. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe,* vol. 1, p. 45.

to one authority, in which the papers had been filed a hundred years before and which still remained unsettled.[9] In proportion as the litigants were wealthy, so were the greedy officials slow in preparing their cases for final hearing and decree.

Reducing the effectiveness of the alcalde's court, also, was the fact that his dreaded *baston* wielded no magic over the military, the clergy, and at one time the mining and certain other special classes.[10] These had their own systems of courts known as *fueros,* wherein they were tried by those of their own class or profession.[11]

According to the Spanish ecclesiastical law, members of the priesthood of the rank of curate and upward could not be made to appear before a civil tribunal. They could only be judged by their peers, the clergy. The ecclesiastical *fuero* gave an appeal to the bishop and from the bishop to the metropolitan, or from the archbishop to the nearest prelate. If the metropolitan commenced the cause, an appeal would lie to the bishop who was nearest; and, on a third trial, to another neighboring episcopate.[12]

The military were similarly exempt from trial before the constitutional civil tribunals, and the immunity extended to both officers and enlisted men. Those within the military *fuero* had their causes tried before the commanding officers, and on appeal before the supreme tribunal of war and marine. There also was a right of trial or jurisdiction for military misdemeanors before the council of war of general officers. Besides the general military *fuero* there were special *fueros* of war—one for the artillery, another for the engineers, and a third for the active militia of the country.[13]

These exemptions, which were not without abuse by unauthorized persons seeking to evade the law, maintained huge blocks of privileged persons in the community, which

9. Mayer, *Mexico: Aztec, Spanish and Republican,* vol 2, p. 146.
10. *Ibid.,* vol. 2, pp. 146-147.
11. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe,* vol. 1, p. 43.
12. Mayer, *Mexico: Aztec, Spanish and Republican,* vol. 2, p. 146.
13. *Ibid.,* vol. 2, p. 146.

proved a dead weight against any satisfactory effort to administer justice. The laws of Mexico, thus founded upon the old Hispanic colonial legislation and modified in some measure by state and national legislation under the republic, created a vast and complicated mass of legal principles which required a lifetime of studious toil to master and expound. The misuse of constitutional tribunals and specially privileged jurisdictions under the *fueros* created a complication of judicial functions which greatly narrowed the chance of a pure administration of the law.

While the Mexican constitution of 1836 contemplated organization of a *tribunal departmental* with a judge at its head in each Department, with subaltern judges at the seats of the different districts, of which there were two in New Mexico, very little was actually accomplished along this line of organization in this northern Department. So far as known, Lic. Antonio Barreiro appears to have been the only trained lawyer in New Mexico during the entire Mexican period![14]

The occasional sittings of the newly created district court in New Mexico did little to impress the law abiding citizens with the purity of its decisions, as was illustrated by its trial of the postmaster at Santa Fe who had been suspected of dishonesty in office. In December, 1833, Don Francisco Sarracino, political governor of the Department, had become suspicious of the activities of the postmaster, Juan Bautista Vigil, and he sent out his deputies to remove the mail and Vigil's records to his own house for the purpose of investigation. This caused a good deal of unpleasantness at the time, but Vigil was retained as postmaster, evidently as a result of insufficient political influence to convict. However, on October 23, 1835, Governor Albino Perez had occasion to advise Sarracino, who was then serving as *subcomisario,* or deputy justice of the peace, about a complaint filed against Vigil as postmaster by Miguel Sena. Sarracino promptly investigated and reported back to the governor that Vigil had disregarded the law

14. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe,* vol. 2, p. 12.

completely and that he had accordingly removed the postmaster from office and put Mateo Sandoval temporarily in his place.

Vigil and his co-workers were placed on trial before the district court, but the regular judge, Santiago Abreu, was not allowed to sit, nor his associate, Nafero, on alleged grounds of prejudice, and the case was tried before Juan Estevan Pino, who was no friend of Sarracino's. As a result of this "trial" Vigil was cleared and Sarracino was instead adjudged guilty of misconduct. Vigil was thereupon restored as postmaster. Governor Perez, however, was not pleased with the outcome, so he had Sarracino's case brought before the *departmental junta,* or legislative assembly. Pino vigorously fought this move, but the governor won out; Sarracino was cleared and immediately reinstated.[15]

When the rebel governor Jose Gonzales of Taos, who had been chosen governor of New Mexico by the insurgents following the Insurrection of 1837, was caught in Santa Fe after the skirmish had ended, he was instantly shot without the least form of trial.[16]

As a result of this general confusion, courts of justice were indeed almost unknown in the New Mexico Department. Except for the sporadic attempts of the alcaldes to exert their authority in settling disputes, the governor or *jefe politico* for the time being had taken over responsibility for redressing all wrongs, civil and criminal. From the decisions of the governor there was no appeal in either civil or criminal cases, except to the *audiencia* of Guadalajara, some 500 leagues (around 1,500 miles) distant.

Under circumstances such as these little faith could be placed in the integrity of the government and its administration of justice. Few indeed cared to invest their goods or wealth in business, mining or other ventures in the Department. Josiah Gregg, describing this situation said:

> Could any dependence be placed in the integrity of the government, I have no doubt that, with sufficient capital and the aid of machinery (such as is used in the mines of Georgia and Carolina),

15. Bloom, "New Mexico under Mexican Administration," *Old Santa Fe,* vol. 1, p. 364; vol. 2, pp. 15-16, 38.

16. Gregg, *Commerce of the Prairies,* vol. 1, p. 136.

the old mines of this province might be re-opened, and a great number of the *placeres* very extensively and profitably worked. But as New Mexico is governed at present, there is no security in an enterprise of the kind. The progress of a foreign adventurer is always liable to be arrested by the jealousy of the government, upon the first flattering bonanza. . . . Americans in particular would have little to hope for in the way of redress; for our government has shown itself so tardy in redressing or revenging injuries done its citizens by foreign states, that they would be oppressed, as they have been, with less scruple because with more impunity than the subjects of any other nation.[17]

When the American authorities took over, it required some time before the people could come to understand the new methods employed in the administration of justice. Many years later native New Mexicans occasionally would still present themselves before the chief executive with their grievances, asking that justice be done. Such applicants were generally turned over to the courts. As the people gradually became familiar with the American process they began to appreciate this manner of doing things, and learned to recognize in it a greater security to person and property than they had enjoyed under the old order wherein the same person both made and executed the laws. They began, too, to value their privilege of trial by jury.

CHAPTER III

EMBRYOS OF YANKEE JUSTICE

Brigadier General Kearny appointed a three-man Superior Court as the highest tribunal of newly occupied New Mexico in 1846. For its chief justice he selected a jack-of-all-trades by the name of Joab Houghton who had come to New Mexico from New York state in 1843 as a practical civil engineer. As one of the two men to serve with him Kearny named Antonio Jose Otero, the only person of Spanish descent ever to serve on the Supreme Court before statehood. For the third member Kearny designated Charles Beaubien, who was of French extraction. These three judges served faithfully, though at times a bit erratically, throughout the period of the military provisional government, until March 1, 1851.

17. *Ibid.*, vol. 1, pp. 172-173.

Houghton was only thirty-five years old at the time of his appointment. He was serving at the time of the occupation as the United States consul in Santa Fe. Though not a lawyer, Houghton had read some law as a hobby and did a little legal practice whenever the occasion permitted. About 1845 he also entered a merchandising partnership with Eugene Leiteñsdorfer. During 1846 and 1847 their place of business, located at the corner of San Francisco and Galisteo streets, was considered by many as the leading mercantile house west of the Missouri River. In November, 1847, Judge Houghton purchased the entire stock of goods of St. Vrain and Bent, another merchandising firm, and prepared to continue their business. The novel combination of a civil engineer who, while practicing law, served as chief justice and engaged in commercial pursuits on the side, appears to have drawn no adverse comment from either the politicians or the newspapers of his day. The *Santa Fe Republican* simply commented: "No man deserves more the consideration and respect of the public, and we hope to see him liberally patronized in his commercial pursuits."[1]

As Houghton was one of the prominent individuals in the Territory, it is but natural that Kearny upon his arrival selected him as the chief or presiding judge of his provisional civil court. Persons schooled in the law even to a limited degree were scarce in the Territory. After his appointment, Houghton continued residence in Santa Fe. Here on December 1, 1846, he opened the first term of court held by an American judge, J. M. Giddings serving as his clerk.

Soon after Judge Houghton had opened his first court at the capital an insurgent old native by the name of Antonio Maria Trujillo, living near La Cañada, now Santa Cruz, on or about January 20, 1847, became involved in a movement, said to have been part of a carefully devised plot, to upset the American controlled regime and to turn the Territory back to Mexican jurisdiction. The uprising led to assassination of the governor of the Territory, Charles Bent, of

1. Nov. 27, 1847.

Narcisco Beaubien, son of Judge Beaubien, and of others. Judge Houghton went to Taos to assist and sit for Judge Beaubien, who presided over the northern district of the Territory, when the latter was disqualified because of personal interest from conducting the case, perhaps the most famous court trial ever held there under American jurisdiction.

Present at the trial in the primitive court room, and guarded by members of the military detachment under command of a Lieutenant Colonel Willock, were two daughters of the murdered governor; William and George Bent, brothers of the governor; Lucien B. Maxwell of Maxwell Land Grant fame; Richard (Uncle Dick) Wootton, operator of the toll road across Raton pass; Judge Beaubien, and a large number of other prominent citizens. Trujillo was given a trial by jury in the new American way, and convicted. If not the trial, certainly the sentence imposed upon Trujillo will live as one of the most interesting in New Mexico history, serving it is believed, as a model for a famous and much quoted sentence pronounced by Chief Justice Kirby Benedict over a decade later.

The Court spoke as follows:

Antonia Maria Trujillo.—

A jury of twelve citizens, after a patient and careful investigation, pending which all the safeguards of the law, managed by able and indefatigable counsel, have been afforded you, have found you guilty of the high crime of treason. What have you to say why the sentence of death should not be pronounced against you?

Your age and gray hairs have excited the sympathy of both the court and the jury. Yet, while each and all were not only willing and anxious that you should have every advantage placed at your disposal that their highly responsible duty under the law to their country would permit, yet have you been found guilty of the crime alleged in your charge. It would appear that old age has not brought you wisdom nor purity nor honesty of heart. While holding out the hand of friendship to those whom circumstances have brought to rule over you, you have nourished bitterness and hatred in your heart. You have been found seconding the acts of a band of the most traitorous murderers that ever blackened with the recital of their deeds the annals of history.

Not content with the peace and security in which you have lived under the present government, secure in all your personal rights as a citizen, in property, in person, and in your religion, you gave your

name and influence to measures intended to effect universal murder and pillage, the overthrow of the government and one wide-spread scene of bloodshed in the land. For such foul crimes an enlightened and liberal jury have been compelled, from the evidence brought before them and by a sense of their stern but unmistakable duty, to find you guilty of treason against the government under which you are a citizen. And there only now remains to the court the painful duty of passing upon you the sentence of the law, which is that you be taken from hence to prison, there to remain until Friday, the 16th of April next, and that at 2 o'clock in the afternoon of that day you be taken thence to the place of execution, and there to be hanged by the neck till you are dead! dead! dead! and may the Almighty God have mercy on your soul.

JOAB HOUGHTON, Judge.

Filed March 16, 1847.
James M. Giddings, clerk.[2]

It is to be noted, however, that after the conviction of Trujillo, Judge Houghton signed a petition, along with the United States attorney, the counsel for the defense, most of the members of the jury before whom Trujillo was tried, and a number of other respectable citizens, suggesting that execution of the sentence be suspended until a petition could be laid before the president of the United States seeking pardon for the old man by reason of his age and infirmity. This was sent by Governor Donaciano Vigil to President James K. Polk with a recommendation from him personally for executive clemency. The president, apparently on grounds that the insurgents in New Mexico were not yet citizens of the United States, courteously declined, but suggested that the governor might properly grant the pardon in his stead. No further coaxing was necessary and the old man was spared from the gallows.

An early session of the court held at Taos was described by W. W. H. Davis, United States district attorney in New Mexico during the early 1850's:

At the hour of eleven I wended my way to the court-house, which I found to be a low, rude mud building, and less comfortable than the cow-stables in some of the states. I entered the sanctuary of justice, and took my seat upon one of the three chairs that had been provided for the officers of the court. . . . The room was about forty feet long, fifteen wide, and eight high. There were neither boards nor carpet to hide the earthen floor, which was damp and cold. On the south side were two windows, about two feet square each, and instead of glass,

2. Santa Fe District Court, *Records*, March 16, 1847.

they were supplied with cotton cloth nailed across frames, which answered the double purpose of shutting out both light and dust. In addition to the three chairs there were as many old benches for the accommodation of the bar, officers, parties, witnesses, jurors, and the lookers-on, and those who were not fortunate in the scramble for seats had the felicity of leaning against the walls—none of the best for Sunday coats—or sitting upon the floor. The roof was none of the tightest, and through the openings which were neither 'few nor far between,' could be seen the 'stars in the quiet sky' smiling down upon our deliberations. This was dealing out justice under a heavenly influence. At the west end of the room was the crowning glory of the house, decidedly the most ornamental feature in the establishment, for there the altar of justice was seated. A small nook, some eight feet by four, was partitioned off for the judge; the front was trimmed with a few yards of flashy Marrimac, and, as a matter of comfort, a couple of boards were laid down for a floor. The little place that held all that was mortal and immortal of his honor, much resembled a sentry box, but was inferior in point of equipments. A small pine table in front was used by the clerk, marshal and lawyers. When I first entered the room, and saw on one side a number of persons squatting upon the ground, and upon the other a man to whom all eyes were turned, fastened up in a cage, I was not certain that I had not made a mistake and intruded into the sanctuary of the Grand Llama of Thibet, who was now seated in his box, and about to receive the adoration of his subjects, instead of entering a court of justice.[3]

Judge Houghton's dockets and other records of his court from 1846 to 1851 give ample evidence of his meager education in the law. The entries were crudely made; orders, judgments and decrees are entered in strange form; and in many instances his methods of dispensing justice were unsatisfactory both to himself and to the litigants. His court promulgated no rules of practice for the guidance of the lawyers, and the bar itself with two or three exceptions knew even less than the judge of the principles and theory of the law. Judge Houghton, too, did not have a free hand in administering or interpreting the laws in view of the constant presence of the military authorities who wielded a powerful check-rein over the civil administrators. In various instances orders and decrees of the courts were not executed due to interference from the military in one form or another. When the Santa Fe County grand jury met in October, 1847, its report contained the following pertinent and fearless observation:

3. W. W. H. Davis, *El Gringo or New Mexico and Her People* (Santa Fe, The Rydal Press, reprint 1938), pp. 159-160.

> They [the grand jury] have found the Honorable Court which they now address has virtually acknowledged the existence of a superior authority by refusing to issue a writ of habeas corpus in behalf of a citizen. They do not wish to be understood as casting a reflection on the course the Honorable Court has thought proper to pursue; on the contrary, they recommend that all collision between the Civil and Military authorities be particularly avoided.[4]

This limitation of the judicial authority, together with the general uncertainty then existing as to what eventually would be the status of New Mexico with reference to the United States, made Judge Houghton's experience and that of his colleagues on the bench a not altogether pleasant one.

During Houghton's incumbency as Chief Justice, Congress was debating the question of Texan claims to Territory extending to the Rio Grande now included in New Mexico, and the ever increasing issue of slavery extension to the newly acquired areas. He had always been a bitter foe of slavery, and openly stated that any owner of slaves who should bring negroes into New Mexico would be ruined, that no means existed of making them earn their subsistence in competition with the cheap native labor, and that their introduction would produce a most deleterious effect upon the morals and the industrial interests of the region. By these outspoken views the judge made himself thoroughly unpopular with the southern members of Congress.

A statehood party, seeking annexation of New Mexico to the United States as a state rather than as a territory, was organized in opposition to the movement headed by Houghton, James Quinn, W. Z. Angney and others. Each faction sought support among the prominent native citizens and made extravagant promises of political reward. In the spring of 1850 tension grew so serious that President Zachery Taylor dispatched Lt. Col. George A. McCall to New Mexico to promote the statehood movement. However, after sizing up the situation, McCall came to the conclusion that his only hope of succeeding in his mission lay in winning over the stronger territorial faction. Consulting with Judge Houghton, McCall cagily observed that President Taylor wanted New Mexico to become a state to settle the slavery

4. *Santa Fe Republican*, Oct. 20, 1847.

question in the Territory and further to compose the New Mexico-Texas boundary dispute. After some three weeks of negotiation with the judge, McCall reported to Washington that the territorial party had expressed a willingness to compromise with the statehood party. However, it does not appear on what basis Houghton was willing to go along with the statehood group.

The Texas authorities became alarmed at the political agitation in New Mexico, for it was clear enough that neither faction was holding out the olive branch to their demands. One Robert Neighbors was accordingly sent to New Mexico with a scheme of promoting county elections to place Texas sympathizers into key positions throughout the area. Neighbors protested vigorously to the military commander, Colonel John Monroe,[5] for calling an election for delegates to a constitutional convention. While Neighbors was thus engaged, Judge Houghton advised the people to disregard Neighbor's trumpeting and recommended instead that they hold mass meetings to protest any and all Texas claims. Neighbors soon realized that his presence only tended to increase the solidarity of the two factions by welding a common field of resistence to the Texas scheme. Actual fusion of the two factions never completely materialized, however, on account of opposition from Richard Hanson Weightman, leader of the original statehood party

The constitutional convention for New Mexico, against which Neighbors had protested, was approved by Colonel Monroe, after a petition had been submitted to him by Judge Houghton requesting the governor of the Territory to call a convention to form a state constitution. Colonel Monroe issued his proclamation calling for an election of delegates on May 6, 1850. Twenty-one delegates assembled at Santa Fe on May 15, 1850; a few of these were from Weightman's faction, but Judge Houghton controlled a majority. The convention was in session for ten days, during which time the constitution was framed, written for the most part by Judge Houghton himself, as the "legal talent" of the convention. After formulation of the constitution, which con-

5. Name is sometimes written thus and sometimes Munroe.

tained a declaration against slavery, Houghton secured the adoption of a separate resolution declaring that slavery would be impracticable in New Mexico, that it would prove a curse and a blight upon the new state just as it was on every other state upon which it had been afflicted.

As to the claims of the Texans, the convention went on record as denying any title of that state to any part of New Mexico whatsoever. A native of New York, Judge Houghton clearly reflected that state's opposition to the claims. This conviction he retained and at the beginning of the Civil War he promptly took a leading role in rallying support for the Union in New Mexico against the Texans.

During the period when strenuous efforts were being made to gain admission for New Mexico as a state, Weightman's fiery disposition caused him to become a rather severe critic of Judge Houghton as leader of the opposition party. Weightman not only attacked the judge in speeches and conversations throughout the Territory but also filed charges against him with Colonel Monroe, as military governor, asking for his removal from office. Houghton soon learned of this onslaught and immediately sent a subtly worded challenge to Weightman for a duel. The challenge in its wording fails to mention the charges filed with Colonel Monroe, but accuses Weightman of having slandered Houghton. The judge's idea for thus squaring matters with Weightman may have come from his acquaintance through the law of the old English "wager of battle," a method employed to settle disputes in medieval times. Houghton's challenge read:

Santa Fe, September 9, 1849

Sir:

In consequence of slanderous words used by you in conversation with Lieutenant Taylor, at the Sutler's store, in Albuquerque, with J. L. Hubbell, Esq., at Socorro, at Santa Fé, and generally throughout the territory, within the last few ———, I demand of you an unequivocal retraction of such slander, or the satisfaction due from one gentleman to another.

J. HOUGHTON.

R. H. Weightman, Esq.[6]

6. R. E. Twitchell, *Military Occupation of the Territory of New Mexico* (Denver, Smith-Brooks company, 1909), p. 172.

The letter came as a surprise to Weightman, who promptly responded to the "learned fountain of justice," as he derisively nicknamed the judge. Weightman sent his reply through James H. Quinn, whom Houghton had designated as his second for the duel.

The letter from Weightman in its nature added fuel to the fire by accusing Judge Houghton of receiving a large sum of money, in the neighborhood of $3,400, for a client in his private practice, and of not paying the same over to his principal. The letter ends with this paragraph accepting the challenge:

> In conclusion I have to say that in consideration of the fact that Mr. Houghton occupies at this time the important position of chief judge of this Territory, and is recognized as a gentleman by persons of high standing, yourself [Quinn] among the number, I feel myself at liberty to accept the latter of the alternatives he has been pleased to offer me. I accept his challenge, and will meet him this day at as early an hour as can conveniently be agreed upon between yourself and the gentleman who will hand you this.[7]

In the duel that followed in an arroyo near where the Santa Fe stadium now stands north of the city, Weightman alone fired at the word of command. The judge, who was a bit deaf, ducked his head after the bullet zoomed past, and shouted, "I didn't hear the command to fire."

"All right," responded Weightman, holding up his hands, "you have the right to shoot. Fire now." The seconds rushed in to stop the deadly yet foolish proceedings and to induce Weightman to apologize. "I'll apologize as far as being sorry is concerned," said Weightman, "but I can't take back what I said, judge, for it was so." The judge was willing to accept this as an apology, but declared that if Weightman ever again insulted him on the bench he would shoot next time to kill.[8]

There was perhaps an overzealous and probably unfortunate tendency among the judges of the pre-territorial court to impress their judicial authority upon the church officials. The latter, accustomed for the most part to an extensive degree of freedom in handling their own disputes through the ecclesiastical *fueros*, considered such attempts

7. *Ibid.*, p. 174. 8. *Ibid.*, p. 392.

as an invasion of their rights and unwarranted civil interference with their authority. Mr. Weightman lost no time in bringing the complaints of the church officials, particularly those of the Vicar Don Juan-Felipe Ortiz, who at the time was the leading ecclesiastical power in the Territory, to the attention of Washington chieftains.

One particular complaint leveled against Judge Otero was to the effect that he took it upon himself as judge to restore and distribute curates to certain priests who were under suspension by the church. Two of these priests, Fathers Benigno Cárdenas and Nicolas Valencia, who had been stationed at Belen and Tomé respectively, and had been dropped from the fold, appealed to Judge Otero's court. The judge heard their cases and reinstated them, thereby expelling the two priests, named Baca and Otero, who had already replaced them pursuant to directions from the church authorities.

There is no official record of any session of the Superior Court, although there were at least four such terms, but a printed opinion by Judge Otero appears in the *Santa Fe Republican,*[9] a case in which Judge Houghton, interestingly enough, serving as the administrator of Juan Andres Archuleta, was the appellant. The action was founded in the common law action of debt, but the most significant legal propositions decided were procedural and dilatory. The appellant had filed a motion to remove the appeal from the docket at Santa Fe and to continue it until a later time during the term so it might be heard by the Supreme or Superior Court sitting in the southern district of the Territory, as it could do at that time. The appellant contended he had a right to have his appeal heard in the southern district because the case had been appealed from there. Judge Otero overruled this argument since under the construction which he placed upon Kearny's statutes on the subject, there was "but one Supreme Court in the Territory" and that its jurisdiction extended to all three districts composing the circuits.

9. Juan Andres Archuleta v. Manuel Armijo, *Santa Fe Republican*, Sept. 12, 1848.

> The places at which the courts were held [he declared] were evidently established for the convenience of the members of the court, and can in no wise impair powers, or create any distinction such as the motion would imply. Were the grounds taken by counsel in his motion correct, there would be three separate and distinct superior courts which is clearly not the case.

Judge Houghton and his two colleagues continued to serve until after New Mexico had been elevated to the dignity of a Territory by Congress in 1851. Governor James H. Calhoun, upon taking office, declined to allow them to function further, maintaining that the "Superior Court" had been abolished by the provisions of the Organic act creating the Territory of New Mexico. Whether this removal from office subsequently influenced Judge Houghton in seeking removal of Governor Calhoun, or whether his opposition to the governor grew solely out of Judge Houghton's opposition to slavery and the fact that the governor was from the south, is not known. He advanced serious accusations, one of which was to the effect that the governor had aligned himself and his friends with the Catholic Hierarchy and with wealthy natives against the Anglo-American residents of New Mexico. He also made the charge that the governor intermeddled in territorial politics.

After his removal from office, Judge Houghton continued for some time in the practice of law at Santa Fe, having formed a partnership with Hugh N. Smith. During this time he took a hand in the organization of the Historical Society of New Mexico. He was named register of the United States land office at Santa Fe in 1861. Soon after September 19, 1861, he was named the wartime district attorney for New Mexico, and as a militant northerner, he drew indictments for treason against several prominent citizens who had shown signs of southern sympathies. None of these, however, was ever convicted of the charges.

In 1865 Judge Houghton was again appointed to the Territorial Supreme Court as an associate justice to preside over the southern or Third Judicial district. He continued his residence in Santa Fe during most of the time he held office, contrary to the provisions of Section 10 of the

Organic Act. This brought him under attack from various quarters. While thus officiating as judge he had brought before him some suits under an act of Congress approved March 3, 1863, which authorized confiscation of property from Confederate sympathizers. By his rulings in these cases Judge Houghton laid himself open to some of the severest criticism that has been directed against a New Mexico Territorial judge. Rulings which received severest criticism held:

(1) that the third judicial district of New Mexico had jurisdiction over the citizens of El Paso County, Texas, for purpose of confiscation of their estates under Federal statutes directed against Confederate sympathizers

(2) that the proceedings in confiscation were similar to and were governed by the law of libel as in admiralty and that such causes could be heard *ex parte* and tried by the court without the benefit of jury.

These rulings arrived at by the judge undoubtedly were a reflection of his incomplete understanding of the law. Said the *Santa Fe New Mexican* for December 15, 1865:

> It is now clear that Judge Houghton is wanting in all the essentials necessary to a speedy and satisfactory administration of justice, and his appointment to the bench is but another evidence that those not bred in the law should not be intrusted with its administration.

By the decisions, the *Weekly New Mexican* deplored, "the sacred provisions of the Constitution are set at naught, and that glorious instrument, the safeguard of our liberties, received a fatal stab." A correspondent of one of the Santa Fe papers, reporting upon one of these trials from Mesilla where they took place, wrote:

> His acts are without a parallel in our judiciary and have but one in the world, that of Lord Jeffrey during the Bloody Assizes. The authority for such an unwarranted usurpation of power can only exist in the mind of the learned judge, for it cannot be found in the books.[10]

As a result of these proceedings Judge Houghton's district court soon acquired the nickname of a "prize court,"

10. N. M. Bar Association, *Minutes*, session of 1891. Report of Committee on history of bench and bar (Santa Fe, 1891), p. 89.

and so great became the indignation in certain quarters that the judge, the U. S. district attorney, Theodore D. Wheaton, and the U. S. marshal, Abraham Cutler, who participated in these trials, were denounced to their faces as unmitigated scoundrels and as corrupt officials.

No matter what may have been the persuasive factors resulting in Judge Houghton's rulings, examination of a cost bill which has been preserved in one of these confiscation cases, reflects the exorbitant nature of the charges:

Marshal's fees in the case of the United States vs. the property of Jesse Slade Franklin:

For the hire of herders, houst rent, etc.	$325.00
For charges and responsibility of property, 40 days at $10 per day	400.00
For serving monition on same	10.00
For mileage, for going and returning from the Cottonwoods, 40 miles at 50 cents per mile	20.00
For publication in *Santa Fe Gazette*	30.00
Total	$785.00 [11]

The records show that the property which was "herded" etc., consisted of eight yoke of oxen and five mules.

By January, 1869, feeling towards Judge Houghton had become so bitter that a memorial was introduced and passed by the legislative assembly addressed to the President of the United States seeking Judge Houghton's removal from the bench and at the same time asking for the appointment of John D. Bail of Grant County in his place.[12] As the alleged grounds justifying his removal, the memorial set out that the judge did not reside within his judicial district, had neglected his duty by not holding court in some of the counties within his district, had shown excessive partisanship for Andrew Johnson, engaged in private practice of law while upon the bench, and had proved himself incompetent through illegal and erroneous judgments in many of his decisions.

He was removed that same year, being superseded by Abraham Bergen under appointment from President Grant. During his entire two terms upon the bench Judge Hough-

11. *Ibid.*, p. 40.
12. Leyes de Nuevo Mejico, Apendice, 1868-69, p. 21.

ton appears to have filed but one written opinion. That was in the case of *Archibeque v. Miera,* 1 N.M. 160, which was decided shortly before he was succeeded by Judge Bergen.

Judge Houghton was an outstanding critic of Congress and the national administration in their treatment of the Spanish and Mexican land grants in the Territory. He felt rather strongly that the Federal government was violating its international and constitutional obligations under the Treaty of Guadalupe Hidalgo by cutting down the size, and in some instances completely rejecting, land grants claimed by citizens of the Territory which had been made to them during the Mexican regime. Writing for Elias Brevoort's propaganda pamphlet on New Mexico, Judge Houghton observed in 1874:

> The people of New Mexico have just ground for complaint, not only on account of the course of procedure adopted by the administrative officers of the Land Department of the government respecting their grants of land derived from their former government, the Republic of Mexico, but also the evidently erroneous, if not unconstitutional legislation of Congress in assuming to cut down and curtail the area and extent of these grants in several instances to less amount and extent than that ceded by the government of Mexico, and in which they have been placed in judicial possession by the legal officers of that government years before the acquisition of the Territory by the United States, under the treaty of 1848, between the two governments. Such legislation has not only operated oppressively and injuriously on the interests of the numerous holders and occupants of these grants, but upon the prosperity of the whole people of New Mexico, by creating doubt and confusion as to all titles to lands in the acquired Territory of New Mexico, granted to them or their predecessors as citizens of the Republic of Mexico; and by them held and possessed as *bona fide* grants, and as such considered and respected by the Government of Mexico up to the date of the transfer of her sovereignty over the Territory, to the United States.[13]

Reviewing the provisions of the Treaty, Judge Houghton pointed out that these meant that "property of every kind *now* (i.e., at the date of the Treaty) belonging to the Mexicans" was required to be inviolably respected, with equal guarantees, as if the property belonged to citizens, whether they retained their character as Mexicans or became nationals of the United States. It was Judge Houghton's

13. Brevoort, *New Mexico . . . ,* p. 176.

feeling that Congress through its legislation sought to alter the meaning, intent or obligation of the treaty.

"Would it not," Judge Houghton deplored, "be a stain upon the nation's faith, and an outrageous invasion of the private vested rights of these acquired Mexican citizens and their heirs and assigns, to legislate a proviso into the treaty of Guadalupe Hidalgo?" Judge Houghton took particular exception to legislation which had in effect interpreted the Mexican colonization law of 1824 as restricting grants to individual colonists to eleven square leagues of land or less. He pointed out that the colonization law had been passed to encourage foreigners to settle in the Mexican territories, and concluded that a restriction contained in Section 12 of the law was intended to restrict foreigners only, and that it in no way restricted citizens of Mexico to eleven square leagues. Judge Houghton substantiated his views with observations that the grants made in New Mexico not only failed to make reference to the decree of 1824, but seldom even mentioned the size or extent of the grant sought in terms of leagues or other measured distances, but were described instead by means of land marks or artificial monuments erected for the purpose by the officers placing the grantees in possession.

After his retirement from the bench the second time Judge Houghton continued the practice of law in Santa Fe. He moved to Las Vegas in 1874. On May 18 of that same year, however, he appears to have been back in Santa Fe, and, at least temporarily, opened and maintained a law office in a building next door east of the *Santa Fe New Mexican* office. He died in 1877, at Las Vegas.

Summing up Judge Houghton's career, the historian Ralph Emerson Twitchell, says:

> All in all, he was a fairly good man. He had his faults, but they were not glaring. He tried to do his duty as a judge and if he failed it was purely through his lack of legal knowledge and not with an intention to wilfully wrong any man.[14]

(to be continued)

14. N. M. Bar Association, *Minutes*, sixth annual meeting, 1891 (Santa Fe, 1891), p. 44.

JAMES A. BENNETT: A DRAGOON IN NEW MEXICO, 1850-1856

Edited by CLINTON E. BROOKS and FRANK D. REEVE

INTRODUCTION

The original manuscript of this publication is in the possession of Clinton E. Brooks who obtained it from Elizabeth Warfield Bennett, daughter of the author, James A. Bennett. The document was transcribed for publication by Mr. Brooks. Elizabeth Bennett contributed most of the biographical data about her father. Explanatory footnotes have been added, but no attempt has been made to make them exhaustive in the bibliographical sense. Those contributed by Mr. Brooks are marked by his initials, in parentheses, the others belong to the co-editor. All explanations of the army rank of individuals mentioned in the text, unless otherwise indicated, are taken from Francis B. Heitman, *Historical Register and Dictionary of the United States Army,* (Washington, Government Printing Office, 1903), vol. I. The first citation to a source is made in full bibliographical form; subsequent citations to the same work are shortened to the last name of the author and an abbreviated title.

Mr. Brooks states, "Dr. James A. Bennett apparently copied his notes, after some years had elapsed, and destroyed the originals." The dates in the manuscript are often incorrect, and where possible will be so indicated in the footnotes, but the manuscript as a whole has the flavor of the Southwest in the mid-nineteenth century, and affords an interesting historical account for that time and place.

In the words of Elizabeth Warfield Bennett, her father

> was born at East Avon, New York, January 8, 1831. At the time he was eight years old his father, Augustus A. Bennett, was robbed and murdered. This left my grandmother with three girls and three boys to support. Maria Pierson Bennett moved to a home on Prince Street in Rochester, New York, where she made a living by taking boarders. James supported himself by going from one relative to another to work a little and have his board. When he was eighteen he was visiting his

mother in Rochester and so became aware of her financial need. Gold had just been discovered in California and that fact, together with his mother's hardship, was too strong a lure for him. He enlisted under the name of James S. Bronson because he was afraid his mother would not let him join the army in order to get to California.

Bennett enlisted in November, 1849. The following summer he was assigned to the 1st Dragoons and sent to New Mexico where he served for eight years. The memoirs end in 1856, after he had spent time in a hospital. Elizabeth Warfield Bennett writes:

He told me that he was sick again in the hospital at Albuquerque. Although he was on duty for two more years, his ill-health continued and rendered him unfit for his arduous army duty. Following the termination of his army service, he journeyed south into old Mexico in a desire to gain strength and wealth before returning to the States. While there he made good as a practical doctor and Trader. On his homeward way, all his possessions were seized or destroyed by Comanche Indians who demolished the Mexican wagon train with which he was traveling. His companions were killed but father escaped with his life but without arms, money, or means of transportation. He walked to Texas, borrowed money and finally reached Lima, New York, where he took up the study of medicine under his brother, Dr. George Bennett. He graduated from the University of the City of New York where he finished his medicinal studies just before the Civil War. He served as a doctor (Assistant Surgeon) in the New York Heavy Artillery Regiments during the war. He then took up the practice of medicine at Prattsburgh, New York. . . .

Dr. Bennett married Rowena E. Warfield on September 19, 1860. She died on December 19, 1889. In partnership with her brother, Myron Frank Warfield, he operated a drugstore, and was also active in fraternal order and civic affairs.

A nephew, Brigadier General Augustus Bennett Warfield, writes of his uncle:

He was a member of the Masonic lodges at Lima and Prattsburgh, at which latter place he was Master for four years. He was the first Commander of the Macabees at Prattsburgh, and also was Commander of the G. A. R. Gregory Post there. He received the first telephone message that came to Prattsburgh.

He was a country doctor of the old type, practicing in the small country village of Prattsburgh . . . where he and his wife, Aunt Rowena, took me into their home when I was five years of age.

Ofttimes I sat in wonderment listening to tales of his soldier and Indian adventures, in the far away southwestern territory where he was twice wounded . . . both times while he was on scouting duty with that famous Indian Scout, Kit Carson.

Despite the hardships of army life in the Southwest in his time, Dr. Bennett lived a long life. He died on January 14, 1909.

Nov. 22, 1849.—Wandering through the streets of Rochester, New York, I met a soldier. After making some inquiries of him in relation to the service, I concluded to go to the rendezvous where I was informed that soldiers received good board, clothing, medical attention; had nothing to do but play the gentleman; and that those then enlisting were destined for California. I was elated with the idea of going to the "land of gold." I was sworn in to serve my country for five years and in one half hour had on my military garb.[1]

Nov. 23.—Today come my sober thoughts. I must leave home, friends, and companions, perhaps forever. Regret the step taken yesterday but 'tis too late, go I will. Disposed of everything I had pertaining to civilian life. Intend to live up to my profession but time goes heavily. Anxious to leave.

Nov. 26.—Today joined a recruit who looks as though he were on the verge of "Delirium Tremens." He was ordered to wash and put on clean clothes. A number of us examined his old clothes in the yard and found them literally alive. *The man must have been fond of company.* In the eve he indulged in a little too much of the "O be joyful" and

1. "James A. Bronson, Private, age 21, eyes, blue, hair, brown, complexion, fair, height 5 feet 8¾ inches; was born in Avon, New York. His trade or occupation was farmer. He was enlisted by Capt. Hamilton for a period of five years on Nov. 22, 1849." Head Quarters Instruction, July 2, 1850, *Muster Roll Records*, War Department Files, National Archive, (C. E. B.) All muster roll references in footnotes are to records in the War Department Files, National Archive.

probably from sheer regret wanted to cut his own throat with a razor but was prevented.

Nov. 27.—For the first time since my enlistment, I ventured on the street. Accidentally I met my mother[2] and a niece of mine but fortunately was not observed by them although I passed within a few feet of them. For worlds I would not have had them see me. I concluded to go out no more.

Dec. 12.—Today preparing my travelling paraphernalia which consists of Wardrobe: 1 flannel shirt, 1 pair of socks; Bedding: 1 blanket; Toilet: 1 old comb. Expensive as well as extensive! Took cars for Albany enroute for New York. For the first time strapped on a knapsack, making myself resemble a beast of burden. But fortune favored me. 'Twas dark when marching through the streets. I saw no one that I knew.

Dec. 14.—Arrived yesterday at Albany and there took boat down Hudson River for New York. Arrived at Governor's Island,[3] New York. Was shown a room in which I was to live. A long, narrow, desolate appearing place. The only furniture was composed of "two-storied bunks" of bedsteads without such a thing as a tick, nothing but the bare boards on which to rest one's weary bones. The room contained from 60 to 70 persons from all quarters of the globe, Ethiopia excepted. Night came. I sat me down to observe. First was heard a Dutch song by a group of German representatives. In another place is heard the "Sacre, Mon Dieu!" which eminates from a dark, curly headed Frenchman. We next hear a witty story, from a son of Erin's Isle, interrupted of course by long whiffs of smoke from his stump of a pipe. In another portion of the room is seen in earnest converse a party of Poles and Hungarians, perhaps sympathizing with each other upon their countries' recent annexation by Austria.[4] We also see an Englishman com-

2. His mother was Maria Pierson Bennett (C. E. B.)

3. Governor's Island, a "small fortified island in New York Bay, south of the Battery, and at the entrance to East River." It was used as a residence by colonial governors, hence its name. *The Encyclopedia Americana,* 1945 edition.

4. Austria participated with Prussia and Russia in the first partition of Poland in 1772 and the third partition in 1795. Hungary lost her independence to Austria in 1849.

plaining of the bill of fare while at one corner of the fireplace sitting "solitary and alone" whittling and whistling is a Yankee right out of Vermont.

Dec. 15.—Awakened this morning by a great noise and found that I actually had to get up and answer my name to let them know I was still at home. The noise was occasioned by 12 or 15 drums and fifes. Went immediately to breakfast and found a bowl of fluid resembling coffee, a small piece of fat pork and a piece of bread that would scarcely satisfy a hungry mouse. At 8 o'clock the cry was heard: "Turn out the recruits for drill." I among the rest. We were divided in parties of 10 and each party had its instructor. Mine happened to be a Dutch "Lance-Corporal" having the least command of any non-commissioned officer in the army but he exhibited all the pomposity of a Negro Preacher.

Dec. 25.—Christmas. In the morning we were informed that we would not drill and that we would have an extra dinner. Our hopes and expectations were raised high. Dinner came! Of what did it consist? *Boiled beef, cabbage, and potatoes* but what we had not had before, plenty of it.

Dec. 30.—Sunday. Rest from drill but march to church with two brass bands of music. I find 4 hours drill rather severe exercise daily.

Jan. 10, 1850.—Getting reduced in spirit and flesh. We actually in this land of plenty suffer for something to eat. I saw 8 or 10 men find upon the beach the carcass of a sheep, a portion of which was in a state of decomposition. They took it to their room, cooked it, and ate it. Horrid! But they were driven to it from constant hunger and want.

Jan. 27.—Last week Saturday night the small boats of the Island were taken. 8 men deserted. 3 of them were brought back. These deserters were tried by a Court Martial, sentenced to "Forfeit all pay allowances that are or may become due, to have their heads shaved, to be branded on the left hip with the letter 'D,' to receive fifty lashes with a rawhide upon the bare back, and to be drummed out of the service."

Jan. 28.—The above sentence carried into effect. Whipped in presence of us all and followed by 3 men at a charge bayonet. Music for the occasion was played. Only think! Men to be treated this way because they would not submit to being almost starved to death.

Feb. 6.—A military funeral! A soldier dead! 'Tis a solemn spectacle. No friend mourned at his bedside; no mother wept over him; no brother clasped that hand to bid a last adieu but he died. His heart beats no more; his eye is dimmed, and those lips are sealed forever. His spirit has flown and no friend near to witness it. We, his fellow soldiers, followed him to his last resting place. To the "Dead March" we slowly tread. Three rounds are fired over his grave. We turn and march to "quick time" from his grave, resume our duties, and by one half hour's time all is forgotten.

Feb. 22.—A number of the youngest recruits were chosen to learn the fife and drum. I was one of them. I was sent to new "quarters" among a company of 60 or 70 boys. They asked me the instrument I would learn. Not intending to learn either, I told them the drum. I was pleased at the change. The fare was better and I had a straw bed. I had no more drill but practice of the drum 2 hours per day.

March 15.—Last night there was a dance in one portion of our quarters. There was a grand supper in our kitchen and mess room. It has been some time since my eyes have feasted upon such viands. A comrade and myself watched the cook and the moment that opportunity presented we were determined to make use of our time, we not having been allowed to partake. To shorten the story, we each by light-fingering got a roasted duck and a smoked tongue. We to avoid suspicion went and hid our spoil, but alas, someone had watched us, for in a half hour when we went to regale ourselves upon the ducks they were gone. My heart was broken for in these days *meat is gold.* On account of our freaks we were sent away once more to join the recruits and sleep upon hard boards.

March 23.—Got leave of absence for 24 hours to visit New York City. Went over this morning in a small boat. Spent the day seeing the sights of the city.

March 25.—9 o'clock yesterday morning I should have been back on the Island but I was not half through sightseeing although I was ashamed of my clothing. No one here knows me, however. Went back to Island 24 hours behind the time. A bottle of brandy made it all right with the Orderly Sergeant. Went down to the wharf, found a man in search of a painter. I recommended myself, got a job of $7 to supply me with means to buy something to eat.

April 15.—Today fired a national salute from the castle.[5] Had a visit from a Commander and his crew of a Swedish Man of War vessel.

April 20.—Today paid off. The Island swarmed by drunken men. 170 men tied up by the thumbs. One man through mistake took a large drink of corrosive sublimate, supposing it to be whiskey but did not die, however.

April 23.—A rather comical person, named Theodore, came on the Island. He appeared to be deranged. This morning Theodore was ordered out to drill. He would not go. He said he had only come to look on. The Corporal tried to force him, he resisted and struck the Corporal. A Court Martial was in session. He was tried and sentenced to walk a ring with 40 lbs. weight on his back for 30 days. When he entered the court he appeared to be searching under the table and other places. The President asked him his object. He said he was looking for justice. Did he find it!

June 1.—Last night for the first time I was put on guard as a sentinel. My post terminated at one end at "Castle William," an old desolate building of which stories are told that "strange noises are heard," "it is haunted," and so forth. At the other end was the graveyard. At one side of my post the surging billows washed the dull unchanging shore while on the other side was an open space used sometimes as a parade ground. I took my post at 10 o'clock. The heavens grew black. The Storm King reigned supreme.

5. Castle William is a fort on Governor's Island; its construction was completed in 1811. (See footnote 3).

To shelter myself from the storm I took refuge in one of the post holes of the old castle. But a few moments had elapsed when the reported sounds commenced. Perhaps 'twas imagination. Cold drops stood upon my brow. I could not endure it long. I left the shelter preferring the storm to unnatural sounds, ghosts, and hob-goblins. I pursued my course toward the graveyard. My nervous system had been affected. When vivid flashes of lightning brought to my view the tall monuments, fear again seized possession of me and I concluded to leave the extremities of my post alone. So I seated myself about the center, pondering in my mind the chances of escape. While sitting there an unusually bright flash came on. I saw something on the beach which attracted my attention. I approached it. As I stood quite near, straining my eyes to see it, came another flash and to my horror it was the corpse of some person who had floated ashore. What a dilemma! I trembled violently but just then to my satisfaction came the "relief." Another soldier had the pleasure of remaining two hours where money could not have hired me to stay!

June 2.—The inmates of the Castle William complain of those noises during the night, like unto a great quantity of cannon balls rolling promisciously about. When they enter the room, the balls are there but silent and unmoving. The superstitious, especially the ignorant, tell strange stories such as "Last night a woman clothed in white made her appearance in the castle." Humbug!!! Although I was frightened out of my wits.

July 2.—Today we were all formed in ranks and 74 of our number were chosen for Dragoon service. I was one of the fortunates who must now learn to fight either on foot or on horseback. No more Foot Drill for me. Was informed that the Dragoons were to leave the Island the 12th of this month. Wrote to my friends to be on the look-out as I was to pass through the state of New York by railroad en route to Santa Fe, New Mexico. Great preparation for the journey in prospect.

July 12.—The long looked-for day at last arrived. Without one regret I left what had been my home for some time.

We proceeded to Fort Wood and from there to New York.[6] Our detachment numbered 274. Took boat up Hudson River for Albany.

July 13.—Arrived at Albany. During the night the soldiers had found a demijohn or two of liquor and appropriated it to their own use. A number of them were drunk and they were not allowed in town but they forced the sentinels and such scrambling and tumbling into the river, I never saw before. When we were called upon to march to the railroad, some were not to be found and others insensible to the troubles of this world. We formed our ranks, commenced marching through Main Street. Some were scarcely able to walk with their knapsacks strapped upon their backs, and to cap the climax we were followed by three drays loaded with drunken soldiers. We reached the depot and all were confined within the gates. Here were 2 barrels of whiskey and 4 of ale. Before the officers were aware of it, the barrels were nearly empty. Soon the cars started. The drunken men were all placed in one car. I was to take charge of one door of said car. I looked in for my own satisfaction. I saw one man trying to jump out of the window but he was so intoxicated he fell back into the car. Some five or six others were fighting and such a scene I never witnessed before.

July 15.—Passed Batavia yesterday. Met my sister, Mary. She burst into tears, presented me with her portrait and I left, perhaps never to see her more. I must confess a tear trickled down my cheek and my heart swelled for a moment with emotion. The farewell was spoken. Once more, I was alone. Arrived at Buffalo. Took boat for Detroit. Had a chill of ague. On the lake was awful sick, fever and ague, with the motion of the boat making it worse.

July 17.—Arrived at Detroit yesterday. Took cars for New Buffalo. At the stopping places the soldiers ran into the saloons, called for what they wanted and told the pro-

6. "This detachment of recruits left the depot at Fort Wood, Bedlows Island, under 2d Lieut. Samuel D. Sturges, 1st Dragoons, accompanied by Lieut. George H. Paige, 2d Infantry, on the 15th of July, 1850. There were 107 recruits in the above detachment including the name of James A. Bronson." Muster and Descriptive Roll, Headquarters Reg. Service, New York, 9th August, 1850, in *Muster Roll Records*, (C. E. B.).

prietors to charge it to "Uncle Sam." At New Buffalo, took boat for Chicago where we arrived during the night.

July 21.—Thursday morning changed from steam boat to canal boat. Slow dull travelling. In fact travel is so slow that men have the best kind of opportunity to jump off the boat, fight, and again overtake the boat. Yesterday arrived at Lasalle where we took steam boat for St. Louis, Mo. During this time the soldiers had a fight with the steam boat men. One or two were pretty badly hurt. Arrived this evening at St. Louis.

July 22.—In the night we arrived at Jefferson Barracks.[7] We were put into some stables to sleep on straw or on the barn floor. 8 or 10 men taken with the Cholera. One man got drunk and was found dead in a little stream of water. In the evening put on board another boat for Fort Leavenworth up the Missouri River. Had the roll called and found we had lost by desertion and death 104 men since leaving New York.

July 25.—Since leaving Jefferson Barracks had many new cases and 9 deaths from Cholera. The men were nearly all panic stricken. Got ashore at Fort Leavenworth, a military fort on the bank of the Missouri River. Garrisoned by 2 companies of Dragoons, 2 companies of Artillery, and 1 company of Infantry. The Fort swarmed with Indians. Our sick were placed in Hospital there while we moved 3 miles from Fort to Salt Creek and formed an encampment. Were joined by 200 recruits from Newport, Kentucky. Fort Leavenworth is the military depot for the Plains, New Mexico, and the West.

August 3.—Shortly after arrival we received each one a horse, saddle, bridle, rifle, pistol, and sabre. Now fully armed and equipped as the law directs. Cholera raging to an awful extent among us. Men at active pursuits one day are our active companions and friends; the next day they are a loathsome mass, thrown coffinless into the yawning pit. We wrap 4 to 5 daily in their blankets, and throw their

7. Jefferson Barracks was established at St. Louis, Mo., in 1826, and was named in honor of Thomas Jefferson. For a detailed story see Henry W. Webb, "The Story of Jefferson Barracks," NEW MEXICO HISTORICAL REVIEW, XXI, 185-208 (July, 1946). The title of the REVIEW will hereafter be abbreviated to *N. M. H. R.*

remains in the ground with a blessing or a prayer. No stone marks their last resting place. Consternation seized the camp and desertions continued in gangs from 3 to 8.

August 7.—Sent into Missouri in search of deserters. Travelled until night. Came to a grove, dismounted, tied my horse, went into a corn field, helped myself, came back, built a fire, roasted some corn, and ate my fill. Laid down and slept beneath the trees as pleasantly as if I were at home on my feather bed. Morning came. I went to water my horse and found a spring house well supplied with milk and butter. My two companions and I helped ourselves to a small pail of butter. Took pail and all and left in a hurry. After travelling 8 or 10 miles, came to another corn field, helped ourselves to corn, bought a loaf of rye bread from a traveller, built a fire, and made quite a meal. At night we returned to camp.

August 12.—Mounted our horses fully equipped today. It was laughable to see the horses running in all directions, riderless. Some men flying in the air; others came back holding their heads, etc. Recruits destined for the Infantry left us today. Decreased our encampment to 140 privates, 4 officers. Appointed Lance Corporal. Felt my importance.

August 25.—Tuesday arrived 40 wagons, each one drawn by 8 mules, and 30 wagons, each one drawn by 5 yoke of cattle. They were to accompany us across the plains. Today our long cavalcade was put in motion. 250 men, over 1000 animals, and 70 wagons makes quite a show. Theodore, mentioned before at Governor's Island, was leading 3 horses. He went flying past us all and bid us adieu. It was night before he could be overtaken. He was sent back, not being considered fit for a soldier.

Sept. 5.—Cholera has all disappeared from us. Arrived at Council Grove and Indian Mission. The last settlement this side of the plains. 6 houses only. The Mission was established for the Caw or Kansas Indians of whom a number came into our camp today. They are a half-civilized tribe of strong, athletic men but their heads are all shaven close with the exception of a ridge or tuft two inches in breadth, extending from forehead to neck and sticking up

like the comb of a cock. They were painted red but seemed friendly to us, begging us for whatever we could spare. When they had gone our laughter turned to rage for it was found they had stolen anything they could take.

Sept. 6.—Now we come upon the unbounded prairie. Before us no sign of timber or vegetation with the exception of a short dry grass from an inch to an inch and a half in length. Quite different from the past few days travelling the fertile well-watered section where the prairie grass sometimes, reaching above our heads as we rode through it, covered us from view.

Sept. 24.—For the past 14 days have been travelling up the river Arkansas. The scenery is dull and monotonous . . . a wide barren plain with not a sign of a tree or shrub or even a green spear of grass to be seen for mile after mile except near the river. Our horses' hoofs sink deeply into the dry mealy sand at every step. The prowling wolf drags himself quite near, looking distainfully at the column as it marches steadily on. It seems to say, "Yet a little longer and I'll have bones to pick. It matters not whether it be horse or rider." Today three soldiers were punished for some slight offense. A rope was placed around their ankles. The men were stripped first, however, then thrown headlong into the water. This is the prevailing punishment with this command.

Sept. 25.—Arrived Fort Atkinson, garrisoned by 1 company for the protection of travellers from the Indians. The company is in constant fear of an attack from a nearby camp of 1500 hostile Indians. This company has to send 35 miles for firewood and are obliged to send 12 to 15 men in company to get it. Passed in sight of the Indians and crossed the Arkansas River 1½ miles in width, without bridge.

Sept. 27.—Last night after encamping, the soldiers were lying lazily upon their saddles, when a sound as of distant thunder was heard. Louder, more distinct it sounded. Every one sprang to their feet. An immense volume of dust was seen in the distance. A dark form emerged, retreated again. On they came. "To arms! The foe! Comanche Indians!" burst from every lip. Horses were saddled in

haste. All eyes anxiously watched the oncoming dust clouds. One who had never practiced prayer since he left his mother's side dropped upon his knees. Suddenly the dust lifted and revealed an immense herd of buffalo which came madly rushing through our camp upsetting 2 wagons and filling the air with the best government flour. Today had a grand buffalo hunt. Killed 4. It was the most exciting amusement I ever had. When one was wounded, he turned upon his pursuer with unbounded rage.

Sept. 28.—This day some Indians came into camp. One of them had some difficulty with an officer and left camp highly incensed, swearing vengeance upon us. We lay in camp, expecting trouble from the Indians but none came.

Oct. 1.—Last night they tried to stampede our horses but did not succeed. This morning not an Indian to be seen. I suppose they thought we would be after them. Moved on our road, travelled all day and night. No water on the road.

Oct. 4.—Laid over to rest and sleep yesterday. Today moved on. Met Col. May and several other officers returning from Mexico. Stopped one hour. The Colonel got pretty drunk; our officers also felt their brandy. They refused to obey the Commanding Officer, were put under arrest, threatened to shoot him but when the effects of the liquor were gone, their "bravado" went with it. Colonel Charles A. May won his rank for gallantry during the late Mexican War.

Oct. 6.—Buffalo growing more scarce. Came in sight of some spurs of the Rocky Mountains. Passed the spot where a few months since a mail party of 11 men were killed by Indians.[8] Not one left to tell the tale. Their grave had been dug up by the wolves. Their bones were lying upon the surface.

Oct. 9.—Came to the first trees that we had seen for 10 days, diminutive but pleasant to behold. Later camped at some very deep clear springs, fine water. Quite a treat.

8. Ten men were killed in this unfortunate affair which occurred in the vicinity of Wagon Mound, a familiar landmark on the Santa Fe trail in northeastern New Mexico. See Lieut. A. E. Burnside's reports in James S. Calhoun, *Official Correspondence*, ed., Annie Heloise Abel (Washington, 1915), pp. 198f. This publication will hereafter be referred to as Calhoun, *Official Correspondence*. W. W. H. Davis, *El Gringo* (Santa Fe, The Rydal Press, 1938), p. 32, mentions the story.

Some more small trees. A small mountain is not so far away. Covered with timber. The mountains appear much nearer than any previous day.[9] Met a mail party. Hear that the Indians are very hostile in New Mexico. Plenty of work for us. Today for the first time in my life, had to journey afoot. My horse was sick. Decidedly hard work.

Oct. 12.—Came to the first house we had seen since Fort Atkinson on the Arkansas River. A pile of mud brick built for protection against the Indians by a few settlers here. It is called "Barclay's Fort," the proprietor bearing that name.[10]

Oct. 13.—After nearly three months of weary travelling, there appeared in view a great pile of unbaked brick which was the village of Las Vegas,[11] a town with a central plaza or square. The houses were one story high, all built of adobe or mud brick which is dried in the sun after moulded in size about 12x24x4 inches thick. People, hogs, dogs, donkeys, goats and sheep, mingled together in one common mass, turned out to give us a reception. And right glad were we after our long journey to once more have the pleasure of listening to at least the grunt, bark, bay, and bleat if we could not understand the Mexican gibberish.

Upon closer inspection everything about the town was dirty and filthy. The roofs of the houses were flat and very often green with verdure. Dirty too were the men, women, children of all ages, sizes, and color; all ragged, squalid, poverty-stricken, undressed or half-dressed, bare-footed, and bare-headed. Some wore wooden shoes, buckskin breeches with bell buttons jingling, faded cloaks and capes,

9. The party apparently followed the Cimarron cutoff on the Santa Fe trail and were now in sight of the Sangre de Cristo mountains which lie north to south in north-central New Mexico.

10. Barclay's Fort was at the junction of the Cebollo and Sapello which unite to form the Moro river near the town of Watrous. Davis locates it sixteen miles from Las Vegas, *El Gringo*, p. 33. Joab Houghton testified in a land claims case April 3, 1857: "In 1849, Alexander Barclay acquired certain rights by deed from the original grantees, . . . one from Robert T. Brent, who held under William T. Smith, and one from James M. Giddings, one of the original grantees. Barclay proceeded to erect a fort on the Moro river and to cultivate ground. The fort is still standing, and occupied and known as Barclay's Fort." 36 cong., 1 sess., hse. rept. 321, p. 157 (1068).

11. Las Vegas was a comparatively new town in New Mexico; the first settlers located there in 1835 on Gallinas Creek, a branch of the Pecos river.

and broad brimmed hats with conical shaped crowns. Some were mounted upon ponies or mules and wore spurs heavy enough to act as anchors; others were on donkeys which they guided by the ears; still others were in carts with great wooden wheels covered with rawhide and drawn by oxen.

We are to remain encamped here until such time as we hear from Head Quarters at Santa Fe to know what is to be done with us.

Oct. 15.—Cleaned up after a long and arduous journey. Went into town to amuse myself. Found no one to talk with who understood English. The miserable dirty streets all look alike since only the church is higher than one story.

In the evening heard music going through the streets; looked and saw a man playing a violin, another a guitar, another the triangle, and all singing in Spanish. I tried to inquire the meaning of it and learned 'twas the notice of a "fandango" or dance. My curiosity led me to the "fandango." I found arrayed ladies of all shades from a snowy white to a jet black; all dressed in guady attire and decorated with jewelry, principally brass. The most of them having no waists to their dresses but a long shawl, termed "reboso,"[12] which was thrown over the head and shoulders. Some of them wearing very short skirts, exhibiting the smallest and best formed feet and ankles I had ever seen but they appeared pleased in showing them.

The music struck up; the floor filled; a quick lively air was played and "all went as merry as a marriage bell." This dance was a species of waltz. 'Twas finished; they sat down; those ladies who had waists to their dresses commenced taking them off. 'Twas too warm. They were not used to such binding measures. The women ranged in age from 10 to 80 years and their clothing varied from rich dresses, plain calico and long cotton shawls to even rags

12. "If a headdress was used, the *reboso* was worn around the shoulders . . . . it was sometimes seven or eight feet long and nearly a yard wide, made of silk, linen, or cotton, and usually variegated and figured in the warp by symmetrically disposed threads waved in the dying. The finest rebosos were valued at fifty to two hundred dollars, but those of poorer quality seldom sold for more than five." Carl Coke Rister, *Southern Plainsmen* (Norman, University of Oklahoma Press, 1938), p. 208, (C. E. B.)

but all moved with grace and ease and kept perfect time with the music. The four musicians were seated at one end of the long room which had its benches on either side for the women. Two men played violins, another strummed the guitar, while the fourth made merry with metals or pieces of wood. The floor was the hard trampled earth as a board floor is unknown. The dance continued until after midnight when all appeared satisfied, dispersed, and went to their houses while I returned to camp to ponder.

Oct. 16.—Today busied myself in looking at Mexicans who came into camp to vend various articles which they supposed we needed. They entered camp riding upon jackasses which also were loaded with fruit or melons. No bridle or saddle was used. A short club guided the beast.

Oct. 22.—Express came today from Santa Fe. We are to be assigned to our respective companies at this place. 4 organized Companies of Dragoons arrived en route for their respective posts. Several officers arrived to receive recruits and horses for their posts. Drawn up in line. Told off to our Companies. I was to be sent to Company I, 1st Regimental Dragoons. Busied myself in making preparations for another move.

Oct. 25.—This morning started for Rayado[13] to join Company I. Bid farewell to several acquaintances of ten month's standing and left with 31 others. Travelled 20 miles and encamped. No wood to be had. It rained and grew cold. Night came on. Nothing to eat, no way to cook if we had had food. Rest assured I went to bed hungry.

Oct. 27.—Arrived at Rayado. Felt as though I had got home. Got a good dinner for the first time in two months. I met today the celebrated Indian hunter and guide, Kit Carson,[14] who resides at Rayado. This place derives its name from an Indian Chief who had isolated himself from his

13. Rayado creek flows eastward from the Sangre de Cristo mountains into the Cimarron. Carson located there in April, 1849, with Lucien B. Maxwell. See *Kit Carson's Own Story of His Life*, ed., Blanche E. Grant (Taos, New Mexico, 1926), p. 98.

14. The reader interested in Kit Carson and other individuals mentioned in these memoirs can find brief accounts in the *Dictionary of American Biography* (Charles Scribner's Sons, New York, 1930); *Appleton's Cyclopaedia of American Biography* (D. Appleton and Company, New York, 1888) (C. E. B.)

tribe and lived alone in a hut here until he died. There are but few people here and only about 10 houses besides the soldier's quarters. The place is situated on the edge of the great plains at the foot of the "eternal snow clad hills," a spur of the Rocky Mountains. A beautiful stream arises a few miles above the town in the mountains and winds its serpentine course downward until it is lost in the great, dry, wide plain below the village.

Oct. 31.—Since arrival there has been a great cleaning of arms, brushing of clothes, grooming of horses, burnishing of leather, etc. in preparation for being mustered into our Company. At 8 o'clock this morning appeared in full uniform to answer our names. Had an hour's drill. Received a long lecture from our Captain, William N. Grier,[15] a fatherly old man who was designed for a Methodist minister but whose patriotic spirit exceeded his religious zeal. He took a gallant part in the Battle of Santa Cruz de Rosales during the Mexican War two years ago.

Nov. 1.—Now commences duty. Orders issued for drill and instructions for 2 hours daily. Mounted our horses. Went on to a circle or ring, riding at all gaits, without stirrups. Rather sore work but occasionally one is interrupted by the attraction of gravity.

Nov. 10.—Snow commenced falling. Order of exercises ceased on account of the weather. During this bad weather, I am studying Spanish.

Nov. 21.—Detailed to go in company with 20 men to meet the mail on the road from the United States, and to protect the mail party from Indians. Rather uncomfortable travelling as the snow is two feet deep on the plain.[16] Met the mail. Their mules were dying from starvation and the men almost frozen to death. We took the mail along with

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15. William Nicholson Grier was commissioned Bvt. 2nd Lieut., 1st Dragoons, July 1, 1835; Captain on August 23, 1846; and Bvt. Major, March 16, 1848. Mention of Major Grier's command at Rayado is found in Calhoun, *Official Correspondence*, p. 107, under date of June 6, 1850.

16. "Bronson, James A. Private . . . Remarks: Due U. S. for 1 Fur Cap 81c; 1 stock, 10½c; 1 Great Coat $7.46½." Grier's Company I, *Muster Roll Records*, October 31 to December 31, 1850, (C. E. B.)

us. Came to Barclay's Fort where they went on and we returned home.

Nov. 24.—Today is as usual, there being no church or religious service. We saddle our horses and chase wolves which abound here to a great extent. Sometimes see as many as 200 in a pack.

Nov. 29.—Yesterday a Mexican herder who had about 400 head of cattle near here came in and reported that the Indians had driven off all his cattle. We started in pursuit, post-haste. Kit Carson, our guide, says we will find them tomorrow morning. Travelled 70 miles.

Nov. 30.—9½ o'clock came on to the Indians. They were encamped. Among the cattle were a number of cows. The Indians had made baskets which had been made water-tight with pitch. We found a great many hung up in the trees and full of milk, too. They were going into the dairy business pretty largely. We drove them from their camp. Recovered the cattle. Killed 7 Indians, took one child prisoner. Returned home.

Dec. 25.—A dull Christmas. Nothing was different from any other day.

Jan. 1, 1851.—Started for Santa Fe for mail in company with one other man. Used much care on the road. Saw nothing of Indians. Passed Las Vegas, a little town called Tecolota[17] or Owl, and San Miquel[18] which is noted for being the place where about 350 Texans were taken prisoner by the Mexicans in 1827. They were forced to march on foot to Mexico City and were treated most inhumanly. An account of this affair was published by William Kendall[19] of New Orleans.

Jan. 3.—Arrived at Santa Fe. The great depot or emporium of New Mexico contains from 8,000 to 10,000 inhabitants. The houses are all built of mud brick, called

17. The correct spelling is Tecolote, a small village about ten miles southwest of Las Vegas on present day Highway 85.

18. San Miguel: another small village on the road to Santa Fe before present day Highway 85 was rerouted farther north.

19. The Texan invasion of New Mexico occurred in 1841, ostensibly for commercial purposes but with a political motive. The contemporary account can be found in George William Kendall, *Narrative of the Texan Santa Fe Expedition* (New York, 1844).

adobe, and only the churches, the Governor's Palace, and one hotel styled the "Exchange" are higher than one story.[20] The main plaza is the center of the city and is the great market place. Here are to be seen vendors of all kinds of marketable stuff. The sunny side of the streets is crowded with ragged men, women, and children, all asking in the most pitiful tones for alms. I was surprised to see so many objects of distress of both sexes with scarcely their nakedness covered. They are too lazy to work, and can not steal for people guard their property in this country and no temptations are presented no matter how much they may be inclined toward thievery.

I was also surprised to learn that the Pi Utah Indians, also known as Ant Eaters or Root Diggers, are brought here every spring and sold as slaves. The prices range from 100 to 400 dollars apiece. These Indians are found in the neighborhood of the Gila River. Their diet consists of roots, ants, lizards, snails, and snakes. They are very disgusting. They wear no clothing, build no shelter, and provide for no future wants. Their heads are white with the germs of crawling filth. The bodies of the dead are left unburied. They have no weapons of defense but a club and their fingernails. They are hunted in the spring when they are poor and weak and brought to Santa Fe for sale as slaves. Strangely enough the Gila River near which they live is supposed to have much gold in its bed.[21]

Jan. 4.—Visited the church.[22] Did not find it as rich as I expected. From there went to the Governor's Palace, a long adobe[23] house. It was built by the Mexican Government[24] for the uses of state. It is now occupied by the

20. The Palace of the Governors may have looked higher than one story, but it was not so in its construction.

21. The Piute Indians are not known to have had their abode so far south as the Gila river, and it is doubtful that they were brought to Santa Fe in great numbers, although the capture and sale of Indians was practiced in New Mexico. This slave trade is discussed briefly in Andrew Love Neff, *History of Utah, 1847 to 1869*, ed., by L. H. Creer (The Deseret News Press, Salt Lake City, Utah, 1840), p. 370 f.

22. Probably the church of San Miguel, supposedly built about 1636.

23. See footnote 20.

24. The Palace of the Governors may have been built as early as 1610. An analysis of the floor plan can be found in Clinton P. Anderson, "The Adobe Palace," *N. M. H. R.*, XIX, 97-122 (April, 1944). For a description of its history and contents

Governor. Santa Fe was settled by the Spaniards about 1537,[25] a little less than 300 years ago.

In the evening attended a fandango. Never had seen the ladies of this place before but in 15 minutes I was acquainted with at least two-thirds of them and on as free and easy terms as if we were old school mates. A number of them talked good English. I noticed as a universal thing their neat and symmetrical form, far exceeding the generality of our women. This night's proceedings led me to form anything but a favorable opinion of the morals of this race of people. Treachery also seems to be the chief characteristics of this race of people. Stilettos are quickly drawn from their hiding places in moments of rage, and bathed in human gore.

Jan. 5.—A procession passed through the street this morning, carrying an image of the Virgin Mary. It was led by two violinists and one guitar player who played the same music as that at the fandango last night. As the procession neared the church there was an occasional firing of guns.

At night, attended another dance. Now I was an old acquaintance. I must dance. I did make an attempt but I must have made a ludicrous appearance as I never had danced before. This night the ladies indulged freely in wine, smoked a great many cigarritos, danced incessantly, and finally as midnight approached quarrels commenced. Half a dozen women became excited, had their passions aroused, fought, pulled each other's hair, scratched each other's faces, tore each other's dresses, and were borne off by their friends in a flood of tears because their wrongs were unavenged. They consoled themselves with thoughts of another fandango where they again might become gloriously drunk. Oh what a scene! Horrid to relate and sad to remember!

Jan. 8.—Returned home. Nothing on the road. Arrived

today see Works Projects Administration, *New Mexico*, (University of New Mexico Press, Albuquerque, 1945), 2nd edition, pp. 193-198 (American Guide Series). This is a useful reference book on New Mexico in general.

25. The more authentic date is 1610. For authoritative discussion see Lansing B. Bloom, "When was Santa Fe Founded," *N. M. H. R.*, IV, 188-194 (April, 1929).

in safety. Satisfied that I had got into a hard country. What a difference from my home life!

Jan. 16.—Started to escort the Paymaster, U. S. Army, across the Raton Mountains. Commenced snowing when we left home. Came to the foot of the mountains last night at dark and encamped. Woke this morning with the snow two feet deep over me. An ascent of 15 miles lay before us. The snow clad hills had a dismal aspect but on we trudged. The sun came out and we have been in water and snow knee deep. Half way up the mountain at dark.

Jan. 17.—Last night it froze. We started this morning but found that the mules couldn't pull one pound. We had to put ropes on and pull our heavy wagons up by hand. Delightful: Work hard all day in the snow; at night make your bed on a bank that would bury a man. It is too late to complain now.

Jan. 19.—Commenced the descent. Snow from 4 to 30 feet deep. Some places we are obliged to dig a road. At night killed some wild turkeys which appeared to hover about our fire. Reached the summit of the mountains after which the Paymaster left us on his way to the United States.

Jan. 21.—Yesterday proposed to take a new route home. Struck on to the plain. Snow falling in awful quantities. Nothing for our poor horses to eat. Started in the morning as usual. At 10 o'clock we knew not where we were. No sign of trees or timber. We were lost in a storm. Snow filled the air. The wind was cutting and very cold. Great complaints of cold came from all sides but on we went with death from cold an anticipation. Night approached. As yet no woods appeared. Extremities were benumbed. Hope was almost gone. The welcome voice of our guide was heard to exclaim, "Timber ahead. Come on!" New life, new action seized hold on us as we advanced to find it was but a phantom. Disappointment awaited us. Onward for two hours more and all hopes were dead. Another shout rang out, "We're saved!" In half an hour's time huge fires were blazing. At least 20 men were unable to dismount from their horses and had to be taken down by others. Most of

us felt rather the worse for wear but willing to stay in camp until the storm was over.

Jan. 23.—Arrived at home. Found it pleasant when night came to sit down to a good fire and sleep in dry blankets, even if it was on hard beds.

Feb. 3.—Went as escort with Dr. Magruder[26] to Taos, a town built as all Mexican towns are that I have seen. About 8,000 inhabitants live there while in the valley below also live nearly 1000 Pueblo Indians who all live under one roof in a house built in a circular form and being five stories high. Visited the burial ground. Found the grave of about 20 Americans who were killed at the time of the Mexican War.[27] Took a ride to the Rio Grande which is 12 miles from here and was about one mile in width and a muddy, turbulant stream where I saw it. In the evening attended another fandango. The prettiest women I have ever seen were present but the moral state was the same as elsewhere.

Feb. 8.—Heard music in the street. Looked out and beheld two fiddlers and one banjoist at a quick pace, playing a Spanish waltz. They were followed by 4 women who bore upon their shoulders the remains of a young girl which they were bearing to her last earthly resting place. What a solemn thing to behold! Returned home. 45 miles over the mountains.

March 10.—Paymaster arrived yesterday. Paid off the troops. Night came. The long rows of beds in our quarters were occupied. Benches were all full. All were interested in playing cards. Money exchanged hands as fast as possible. Up jumped one cursing himself, his parents, his God, for his evil fortune. Another that fiendish smile exhibited because he had won his fellows' money. All much engaged. Morning found many still gambling. Lost their sleep and

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26. Dr. David L. Magruder, born in Maryland, was appointed Assistant Surgeon February 1, 1850, from Virginia. He was wounded in the Cieneguilla fight; see footnotes 100, 101.

27. In the fight at Taos on February 4, 1847, five dragoons were reported killed and nineteen wounded, one of whom later died; The Adjutant General, *Report*, December 3, 1849, 31 cong., 1 sess., hse. ex. doc. 24, p. 18 (576). Years later the results were tabulated at seven killed and forty-five wounded; Secretary of War, *Report* . . . , May 31, 1900, 56 cong., 1 sess., sen. doc. 442, pp. 3, 12 (3878).

their money. This is a practice followed very much by soldiers.

March 11.—Started with Paymaster for Fort Massachusetts.[28] Camped at Rio Colorado[29] (Red River) 40 miles from Taos. 3000 inhabitants live here and are the same as all others I have seen, indolent, dirty, and immoral. Passed a restful night.

March 13.—Arrived at Fort Massachusetts, 100 miles from home. Stationed here are 2 companies of Infantry and one company of Artillery. The fort is situated in a niche of the mountains. Snow is seen within a mile of them the whole year. They are constantly surrounded by wolves, bears, and Indians.

March 20.—Arrived home yesterday from Fort Massachusetts. Today an express came in for troops to go immediately on to the plains. Indians had committed murders of some kind. Left home in company with 80 men. Kit Carson is our guide.

March 21.—Came to Wagon Mound[30] 56 miles from home. A spring is here. The Indians had lain in ambush waiting opportunity. Mr. White,[31] a Santa Fe trader, and his family came to this place in his carriage. The Indians pounced upon him. Killed him and five other men. Their bodies we found lying on the ground. We buried them and started in pursuit of the Indians. They, having taken Mrs. White, child, and female Negro servant with them, had left in haste. We are travelling hard, following Indian trail.

28. Fort Massachusetts was located in a sheltered valley on Utah Creek, about eighty-five miles north of Taos. A. B. Bender, "Frontier Defense in the Territory of New Mexico 1846-1853," *N. M. H. R.*, IX, 267 (July, 1934). Secretary of War, *Report*, December 4, 1852. 32 cong., 2 sess., hse. ex. doc. 1, pt. 2, p. 60 (674)

29. Rio Colorado (Red River) is a short stream flowing westward from the Sangre de Cristo mountains into the Rio Grande, north of Taos.

30. Wagon Mound is a geographical formation on the Santa Fe trail that gives rise to the name. There is a present day town of Wagon Mound, New Mexico.

31. Bennett is badly in error in his recollection of the date of this affair. Perhaps he confused the time and place with the mail party episode (see footnote 8). His story of the pursuit agrees reasonably well with the official report, but his description of Mrs. White's death is a new bit of information. Captain (and Brevet Major) William N. Grier led the pursuit party. See Grier to Acting Adjutant (1st Dragoons), Taos New Mexico, November 30, 1849, in War Department Files, National Archive, Adjutant Generals Office, 1850, No. M98, (C. E. B.). For other sources of information see Calhoun, *Official Correspondence*, pp. 63-88. Davis, *El Gringo*, p. 29ff.

March 30.—Hard travelling but we are gaining on the foe. Trail is growing more fresh. Should judge that there were 200 Indians ahead of us. Nearly every day we find some piece of Mrs. White's dress or some thing of her child's clothing on the road. I suppose left to encourage us to hurry on.

April 5.—Today passed two of the Indians' encampments. They go more slowly, perhaps they think we are not following them. We are not allowed to build fires at night for fear we might be noticed.

April 8.—May find our enemies tomorrow. Trail very fresh. We now are in the State of Texas, travelling down the Red River[32] towards the mouth of the Mississippi River. Still on we go, expecting momentarily to see our game. Now we are in a fine country. It is a beautiful valley, very productive, that has a fine, deep, wide stream running through it.

April 10.—This morning as we came upon the brow of a little hill, Kit Carson darted back and informed us that the Indians were on the other side of the hill. As was usual upon such occasions, all were engaged for a moment in making preparations. Arms were examined; saddles made tight; and one sober thought, perhaps a short but silent prayer was given; then came the command, "Charge!"

On we went at a furious rate. As we came in view of the Indians, they were so taken by surprise that they fled in dismay. Their shrill shrieks were echoed by the exultant yells of the soldiers who fired a volley after the fleeing foe. Indian horses were stampeded, dogs barked, and mothers left their children regardless of danger or destruction to jump into the river in efforts to gain safety.

As we neared their camp, I saw Mrs. White trying to disengage herself from an old squaw who was trying to put her on an old mule to take her away. Mrs. White, knowing we were troops, tried to reach us. She succeeded in getting away from the squaw but the Indian woman very deliber-

32. The party was still within the present day boundary of New Mexico. They struck the Indians on a southern branch of the Canadian (Red River) south of the present town of Tucumcari, New Mexico.

ately drew her bow and arrow, aimed, and Mrs. White with a shriek fell, pierced to the heart when we were within 15 paces of her. For which act the squaw paid dearly with her own life. Of the Negro girl or the child we found no trace. The Indians were all gone. We searched the scene of action, found 8 bodies lying dead on the ground and at least 3 more were shot in the water after they had sought refuge in the river.

We encamped and buried the remains of Mrs. White. She was a fraile, delicate, and very beautiful woman but having undergone such usage and treatment as she had suffered, nothing but a wreck remained. Her body bore evident signs of brutal treatment. It was literally covered with marks of blows and scratches. Her feet were all torn and cut from travelling. Her countenance even after death indicated a sorrow-stricken, heart-broken, and hopeless creature. Over her corpse we swore vengeance upon her persecutors.

After dark a noise was heard near our camp. At first we supposed it to be an animal of some kind. 3 or 4 of us made an examination through the willow bushes and found an Indian child which I suppose was about 8 months old. It was strapped to a board as all Indian babies are. I found it. An old gruff soldier stepped up and said, "Let me see that brat." I handed it to him. He picked up a heavy stone, tied it to the board, dashed baby and all into the water, and in a moment no trace of it was left. The soldier's only comment was, "You're a little fellar now but will make a big Injun bye and bye. I only wish I had more to treat the same way."

April 11.—Turned for home. Took with us 150 horses and mules taken from the Indians. Burned all their camp equipage before leaving.

May 9.—Returned home again yesterday, tired and wornout. Today orders came to move as soon as practicable.

May 11.—Spent the past two days in preparations to move bag and baggage. Today marched away from our winter quarters. Camped on the Ocate.[33] Found an old

33. Ocate creek rises in the eastern foothills of the Sangre de Cristo range and flows into the Canadian river.

Indian woman secreted in the rocks. She informed us that she was an "Appacha;" [Apache?] that it was her tribe that had held Mrs. White captive; that the Negro girl was killed because she could not keep up; that the "Uths" [Ute or Utah Indian?] had the child. We took her prisoner.

May 15.—Came to Las Pozos or Holes in the Ground. These are holes filled with water. No bottom can be found. Here are encamped 3 companies of soldiers. Quite a display of canvas in the shape of tents. A severe thunder storm arose. Lightning struck one tent, killing one man and shocking two others. Visibly felt by all in camp. Commenced building a fort.[34] I was appointed Corporal and of course was exempted from manual labor by my promotion.

May 29.—Sent in charge of 15 men on detached service to protect the "Villa" of Rayado from a band of Indians staying near there. Kit Carson's place is nearby. We left yesterday and arrived this morning at Rayado where we found 60 or 70 Indians quite saucy. They were helping themselves to whatever they chose. I told their Chief that I had come to stop them. He rather scoffed at me, and spit at me as much as to say, "I think as much of a dog." I ordered my men to have ready their arms. I then ordered the Indians to leave town. They refused. In the meantime I had our horses all saddled. We stepped out to the stable, mounted our horses with the intention to shoot down all before us or be shot ourselves. The Indians saw our movement and left without delay. I, being in command of the party, did not consider it politic to follow them.

June 2.—Indians have all left this vicinity. Started for the new fort, now called Fort Union, and again joined my company. Received approval from the officers for the course I took with the Indians.

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34. This was Fort Union, erected in the summer of 1851 by Colonel Edwin V. Sumner. It was located about ten miles northwest of the point where Cebolla creek and Sapello creek united to form the Mora river. For an early description see Assistant Surgeon J. Letterman, *Sanitary Report*, October, 1856, 36 cong. 1 sess., sen. ex. doc. 52, pp. 221f (1035). Davis, *El Gringo*, p. 33. Miscellaneous information on forts in New Mexico can be found in A. B. Bender, "Government Explorations in the Territory of New Mexico, 1846-1859," *N. M. H. R.*, IX, 1-32 (January, 1934); and Bender, "Frontier Defense . . . " pp. 345-373.

June 14.—Tuesday started with 18 wagons, 31 men for Fort Defiance[35] with supplies for the troops there. Arrived at Santa Fe today. Visited the Exchange, a hotel. In the evening several persons were seated in the hotel. A person came in, took a glass of brandy, turned from the bar and commenced firing his pistol at random, and could not be stopped until he had fired four shots which wounded one lawyer in the abdomen and another man in the arm. He was asked the reason for so doing and replied, "A friend of his from Texas was killed at Santa Fe and that all the inhabitants of the place were cut-throats, robbers, and murderers." He was a Texan. He was placed in jail. Later in the night, the Texan was taken from the jail and hung by the neck in the back yard of the Exchange. I suppose it was done by friends of the lawyer.

June 18.—Left Santa Fe. In sight of Delgrado Rancho is quite a rich gold mine which I may visit at some future time but can not today. Passed Las Algodones and Bernalillo,[36] the latter the prettiest place I have seen yet. The door yards are all hedged and a good store of shrubbery around their houses. Arrived at Albuquerque. This place is nearly as large as Santa Fe and is a very lively place. At night four fandangos, furnished the same easy kind of acquaintance as elsewhere.

June 19.—Crossed the Rio Grande which is 1 mile in width and has deep quicksand here. I once or twice imagined that a portion of our wagon train was lost as we do not have the advantages of bridges here.

June 23.—Laguna,[37] an old Indian town built upon a hill over a lake. It is very much dilapidated. Occupied by

35. Bennett is again wrong on chronology. The site for Fort Defiance was selected by Col. Sumner, September 18, 1851. Frank D. Reeve, "The Government and the Navaho," *N. M. H. R.*, IV, 96 (January, 1939). It was located at the mouth of Canyon Bonito on the west side of Fort Defiance Arroyo, or present day Black Creek, near the northwestern Arizona-New Mexico boundary line. Davis, *El Gringo*, p. 231, describes the fort.

36. Bernalillo is seventeen miles north of Albuquerque on present day Highway 85 and the village of Algodones is six miles farther.

37. Laguna lies about fifty miles west of Albuquerque on Highway 66. The Pueblo was established in 1699. Davis, *El Gringo*, p. 223f. Useful references books on pueblos are A. F. Bandelier and E. L. Hewett, *Indians of the Rio Grande Valley* (University of New Mexico Press, 1937); Charles F. Lummis, *Mesa, Canon and Pueblo* (New York, The Century Company, 1925).

some 850 Pueblo Indians of the old Aztec race. Every morning that they rise, they look to the east expecting Montezuma, the Aztec Emperor of ancient Mexico, to appear with the rising sun. They are good, peaceable citizens. They cultivate their ground and are more friendly and decidedly more honest than the Mexicans.

June 27.—We have had a very hot and dry route over sand hills. We have lost 34 head of cattle which died from this cause. Arrived last night at Zuni,[38] another Indian town. This morning the Indians gathered around us. I was surprised to see some 8 or 10 that appeared to belong to one family. These seemed to be Albinos with white hair and pink eyes. Learned on inquiring there were several such families here. I thought it a very strange thing among Indians.

June 29.—Reached Fort Defiance to find the troops out of provisions. They had been subsisting for two weeks on one pint of corn per diem together with what berries or fruit they could gather. They were glad enough to see us. This is a beautiful country but like other places it is infested with savage Indians.

July 15.—After 14 days travel, once more reached Fort Union, New Mexico. Glad to rejoin my company[39] which is now my home.

August 5.—Last Sunday started for Albuquerque to join Col. Edwin V. Sumner[40] on an expedition against the Navajo Indians, numbering about 8000 warriors who also practice agriculture and the raising of flocks and herds. The Colonel won his rank for his conduct at Molino del Rey during the Mexican War.

Camped at Rio Pecos, an old abandoned Indian town.[41]

38. The Pueblo of Zuñi lies west of Albuquerque close to the Arizona-New Mexico Boundary.

39. Company I, 1st Regiment Dragoons, (C. E. B.)

40. Col. Edwin V. Sumner was promoted to Brvt. Lieut. Col., April 18, 1847, for gallantry and meritorious conduct at the battle of Cerro Gordo, and Colonel on September 8, 1847, for similar conduct at Molino del Rey.

He assumed command of the department of New Mexico, July 19, 1851, and campaigned against the Navaho in August. Reeve, "The Government and the Navaho . . . , p. 96.

41. The Pecos Pueblo was abandoned in 1838 when the seventeen surviving inhabitants migrated to Jemez Pueblo northwest of Bernalillo in Jemez Canyon.

Here are the ruins of quite a large town. Still there are subterraneous rooms and cells. Two old churches with singular carving upon their woodwork show the marks of fire. Old graves and an old altar under the church may be seen. I asked some Mexicans that I met here if they knew anything about the history of the town. They informed me that the old Indians have a legend that "A long time ago, it was a prosperous place but that a serpent with seven heads came among them. To appease the serpent they were obliged to give it a maiden from their tribe every few days. After a time their number grew so small, they left town for fear of total degeneration, and took with them the eternal fire of Montezuma which they ever watch with care that it be not extinguished." It is true that they have this fire burning and that it has been for ages. They suppose when this fire is suffered to go out, their race will become extinct. Some calamity will befall them at once.

August 10.—Our long line moved from Albuquerque. It consists of 200 mounted men, 150 footmen, besides 60 teamsters, packers, etc. It makes a grand total of over 400 men, 40 wagons, a large number of loose horses, mules, and cattle. Travelled 60 miles without water. At night, about 9 or 10 o'clock, came to a little water hole which was green and muddy. I jumped from my horse and succeeded in getting a cupful but when I went to drink it, came near swallowing a tadpole and was forced to close my teeth in order to strain the water. When I had finished, I emptied out mud and polywogs. I was surprised myself that I could drink it but you that don't know what thirst is, try it!

August 19.—Passed Cubero[42] which is a miserable little town of some 500 people who look like Indians. Their little huts are built on a pile of rocks. Offered them gold in exchange payment for corn but they didn't know its value.

A. F. Bandelier, "Report on the Ruins of the Pueblo of Pecos," *Papers of the Archaeological Institute of America* (Boston, A. Williams and Co., 1881), part II, pp. 124ff, (C. E. B.). For a list of studies on Pecos Pueblo see Lyle Saunders, *A Guide to Materials Bearing on Cultural Relations in New Mexico* (University of New Mexico Press, 1944).

42. Cubero lies about fifty miles west of Albuquerque on Highway 66. (See footnote 137).

Also passed "Hay Camp"[43] which is so called from a circumstance which happened two months ago . . . 16 men, Americans, were at work here cutting hay for the government. The Navajo Indians came upon them, killing 7 of them and throwing their bodies in the crevices of the rocks. I found the bones of four of them. We could see them but could not reach them. Reached Moquis,[44] another Indian town. It is somewhat like Zuni, isolated from all the rest of the world.

August 23.—The day before yesterday we left our wagons, packed mules, and took to the mountains. Saw Indians, 12 or 15, riding within a mile of us as unconcerned as you please. If we tried to approach them, they would flee to the mountains. When we turned back, they would follow us.

Aug. 27.—The Indians still keep with us by day. At night we can occasionally see their fires. A little after dark last night, the enemy fired several shots into our camp. Wounded one man in the leg. Wounded man is carried on a litter. One officer we have, a Major George Blake, every night has a grave dug in his tent to protect him from night attacks by the Indians. Now at the mouth of the Cañon de Shea [Canyon de Chelly].[45]

Aug. 29.—Entered Canon for 15 miles yesterday. Both sides of the ravine are perpendicular and increasing in height as we go farther in. At this point, the walls are from 200 to 300 feet in height. The Indians are on top and we are on the bottom and we can not get at them.

This morning, we got a salute from the red skins but the only injury was to wound a horse so badly that we had

43. The Hay Camp was about thirty miles west of Laguna Pueblo on the banks of Gallo creek. Davis, *El Gringo*, p. 226. The killings mentioned having occurred there are recorded in Calhoun, *Official Correspondence*, p. 451.

44. Sumner does not mention visiting the Moqui, or Hopi Pueblo, which lies far west of Zuñi. Bennett may have had Acoma Pueblo in mind when he wrote Moqui. *Ibid.*, 416-429. Reeve, *op. cit.*

45. For a description of Sumner's penetration of Canyon de Chelly see Calhoun, *Official Correspondence*, pp. 416-419. A description of this Canyon and the later complete penetration of it by Kit Carson's forces and the Navaho war of 1863-1864 is told in Edwin L. Sabin, *Kit Carson Days 1809-1868* (New York, 1935) vol. II, revised edition.

George Alexander Hamilton Blake was promoted to Major, 1st Dragoons, July 25, 1850, and served as such to May 13, 1861.

to kill him. After travelling about two miles we came to a fine corn field and a nice watermelon patch where we feasted sumptuously, with only an occasional ball passing by. We destroyed the corn field and the melon patch. A little farther forward we found a large and flourishing peach orchard. Here we regaled ourselves and filled our pockets and sacks but the lead balls began to fall thickly and we had no way to retaliate. Prospects look bad ahead with no visible outlet. We concluded as we found a shelter of rocks to remain there for the day.

Night came. Over our heads and around us were to be seen at least 1000 little fires. The dark forms of the savages were seen moving about them. A council of our officers was called. All concluded 'twas best for us to retrace our steps as no one knew the country and the Indians by far outnumbered us. Saddled our horses about 10 o'clock and started back through the darkness.

August 31.—Yesterday morning encamped at the mouth of the Cañon, Indians here as usual all about it. One Indian came into camp just at dusk, tried to steal a horse. He was killed and very much mutilated by the soldiers. Animals all starved out, dying by the dozens daily. Turned for home.

Sept. 20.—Arrived at Fort Defiance, Monday. We were minus over 200 animals which died from hardships and starvation. The past few days have been spent in recruiting (resting) our animals. Started on foot, leading our horses toward home. Met our wagons which we had left. Some hope now if we get sick, we can ride in a wagon.

Oct. 8.—At Laguna found the Navajos had been there ahead of us and had stolen quite a large herd of cattle. At Albuquerque, attended a fandango. That night we forgot all the troubles we had passed through and so we danced until morning. Once more at Fort Union which we found nearly built. It presents quite a town-like appearance.

Nov. 4.—Company picked up their property once more and left for Galisteo[46] in company with Company F, 1st Dragoons, Major Blake commanding. Arrived at Galisteo

46. Galisteo lies south of Santa Fe. It was a good forage country for stock.

(600 inhabitants) which has very comfortable quarters. It is 25 miles from Santa Fe and 10 miles east of the *Placer* gold mines.[47]

Nov. 12.—Left for Navajo country to make treaty with them. Went to Pena Blanca,[48] a small but pretty town where we spent last night. Crossed the Rio Grande and took wrong road. Got lost in the mountains. Returned 11 o'clock at night where we started in the morning. 16 hours in the saddle.

Nov. 14.—Yesterday took a new start. Got right road. This is very mountainous country, abounding with deer and bear. At night, arrived at Jemez,[49] an Indian town on the Jemez River.

Nov. 15.—This morning the old chief harangued his people from a sort of rostrum but it was all Greek to me. At 2 o'clock the Navajos came in about 2500 strong. A treaty[50] was formed and signed by the chiefs of the various tribes and our part by Col. Sumner. We then set out for our quarters at Galisteo again.

Dec. 28.—Left with Company for Pena Blanca yesterday on account of there being no forage for our horses at Galisteo. This is a poor place. 70 men are all huddled up in two small rooms. We can scarce turn around without bumping someone.

Jan. 1, 1852.—The neighbor's chickens and pigs have to suffer. I went into the kitchen and found four nice pigs and 32 fat chickens ready for the pot and oven for a New Year's dinner. It is easy to judge how they came there when none have been bought. "The partaker is as bad as the thief" but they smelt too good not to eat. Rest assured, I didn't leave the table hungry.

Jan. 20.—Time has gone on finely. Nothing to do.

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47. The Old Placers were opened in 1828 and the New Placers in 1839; considerable quantities of gold were found over a period of years. See Bancroft, *Arizona and New Mexico* (San Francisco, 1889), p. 340; and Josiah Gregg, *Commerce of the Prairies* (The Southwest Press, Dallas, Texas, 1933) reprint, p. 107f.

48. Peña Blanca is a village on the east bank of the Rio Grande southeast of Santa Fe.

49. Jemez Pueblo in Jemez Canyon dates from the late seventeenth century.

50. Calhoun met the Navaho at Jemez on December 25, 1851. Reeve, "The Government and the Navaho . . . ," p. 99.

Rather cold though and wood has to be brought 25 miles. Went to Santo Domingo,[51] 5 miles from here to a feast of the Pueblo Indians. They dressed in the most fantastical style and such dancing is indescribable. I was highly "eddified."

Feb. 6.—Started in company with 60 men on an expedition against Apaches of Mangus Colorado's[52] band. (Red Sleeve's band). Stayed at Las Algodones last night. At Albuquerque, in an affray, one soldier was shot dead. Both soldiers belonged to another company.

Feb. 10.—Socorro[53] yesterday. Saw here the former Mexican Governor of New Mexico, named General Armijo.[54] Arrived at Valverde (Green Vale), a very pretty valley from 2 to 3 miles in width and covered with cotton wood trees. Fort Conrad[55] is located here. Here are concentrated 250 men to accompany us.

Feb. 12.—Marched. All on foot leading our horses. Our cavalcade consists of 300 men, about 350 horses and mules. Travelling down the Rio Grande. Camped on its bank.

Feb. 16.—Sandy roads, no grass, and warm weather cause great complaints over marching. This morning left the Rio Grande. Course due west. Now we have no roads. Camped on a small stream in a deep ravine. The water was very warm. It issues from a hot spring 1½ miles above us.

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51. Santo Domingo Pueblo lies southwest of Santa Fe at the confluence of Galisteo creek and the Rio Grande.

52. Mangas Coloradas was chief of the Mimbreño Apache in southwestern New Mexico. Those Indians were a source of trouble for many years and much has been written about them. The orders for this command are in Calhoun, *Official Correspondence*, p. 478f. See R. H. Ogle, "Federal Control of the Western Apache 1848-1886," *N. M. H. R.*, XIV, 309-365 (October, 1939): also published in Historical Society of New Mexico, *Publications in History*, vol. IX. Bartlett, *Personal Narrative of Explorations and Incidents* (D. Appleton and Company, New York, 1856), vol. I, chps. XIII, XIV.

53. Socorro is an early Spanish-American settlement about seventy-five miles by highway south of Albuquerque.

54. Manuel Armijo was the last governor of New Mexico under the rule of Mexico and fled southward on the arrival of the Army of the West under General Kearny. For a characterization see Davis, *El Gringo*, p. 202.

55. Fort Conrad was established at the north end of the famous *Jornada del Muerto* by Sumner in 1851. It was moved in 1853 a few miles to the south and named Fort Craig. Bender, "Frontier Defense . . . ," 249-272. Calhoun, *Official Correspondence*, p. 433.

We have 1 Indian, and 1 Mexican as guides with Major Marshall S. Howe[56] in command.

Feb. 18.—Came to the head of a deep ravine and commenced the descent about 11 o'clock in the morning. We were in a very narrow passage surrounded by high, abrupt mountains. The Indian guide was in advance. Shots were heard. We immediately hurried forward and found our guide shot through the left hip. The ball had lodged in his saddle. At the same instant we heard shouts of Indians. On getting into a clear spot, 15 Indians were visible but in such a position that we could not get at them. It was the wish of the soldiers to get around them and if possible kill them but the Officer in Command, Major Howe, *having the bump of caution* well developed, objected on the ground that the large body of Indians were on the other side of the hill. We moved on, came to a fine valley and stream called Rio Mimbres. This is a deep but clear stream. The stones on the bottom are visible. These stones have a dark blue color from the appearance of so much copper. The valley was filled with fine black walnut trees which only grow in very rich, fertile soil. We camped. The officers placed their tents in the center. We were all placed at short intervals around the camp to watch. We were all, every man, to be on post during the night. Only think of it! 300 men to watch and guard 5 officers! Oh, that our government only knew the courage of some of her officers! Nothing happened during the night.

Feb. 20.—Arrived at the Copper Mines[57] where Fort Webster[58] is located. Not long since the Indians came in sight of this fort and killed one Sergeant and 4 privates, and wounded 3 others. There are 50 men here, all frightened out of their wits. They have old wagons, logs, barrels, rocks, and other articles too numerous to mention, piled around

56. Marshall Saxe Howe entered the army as 1st Lieut., 2nd Dragoons, June 11, 1836. He attained the rank of Major, July 13, 1848.

57. The Santa Rita copper mine was probably worked as early as 1804. Bartlett, *Personal Narrative . . .*, I, 227. Stuart A. Northrop, *Minerals of New Mexico* (University of New Mexico Press, 1942), p. 19. Bancroft, *Arizona and New Mexico*, p. 303.

58. Fort Webster was established in 1851 about eight miles east-northeast of the Santa Rita copper mine to check the Apache. Bender, "Frontier Defense . . . ," 267. Calhoun, *Official Correspondence*, p. 433.

their fort, making it almost impossible to get to it. Their cannon is placed on top of the roof which is flat like all the roofs in this country. They expect momentarily to be attacked by the Indians. When they first saw us coming over the mountain, the mouth of their cannon was turned upon us but their fear was turned to joy when they recognized us as soldiers. During the night it turned cold and snowed 3 or 4 inches. Pleasant to be in camp.

Feb. 22.—Yesterday the snow melted. We moved on. Passed an old excavation where gold was formerly mined. It is now deserted on account of the Indians. Animals are dying fast. Thousands of Maguey or century plants are to be seen here. It grows luxuriantly in the richest soils and also shows itself in desert places where nothing else except a few stinted spears of grass can exist. Its uses are many. The fiber of the leaf makes a thread and is woven into sacking or made into ropes. Liquor is made from it. The rooty part of the stem is used by the Mexicans in washing. The plants grow about 18 feet high and have flowers on the top. Here grow also all species of Cactus.

Feb. 23.—Today found fresh signs of Indians. Our officer *concluded to go the other way!* [The word "officer" was *not* underlined in the text. C.E.B.]

Feb. 16.—Came to Rio Gila.[59] The vicinity along this beautiful river is said to be rich with gold. 'Tis a large river which empties into the Colorado, the latter running into the Gulf of California. We rested and fished. Caught a peculiar fish said to exist in no other river. Good eating, too. Today we moved down the river. Found an impediment in the shape of a mountain. Encamped to make a reconnoiter.

Feb. 27.—Advanced. The front of the column reached the summit of the mountain. Our officer took out his glass and took observations of the extensive valley. Below us was to be seen cattle grazing, and smoke curling up in one or two places. 'Twas evident Indians were there. After a moment's consideration he turned and gave the command, "Count-

59. The Gila river rises in the Black Range in southwestern New Mexico and flows southwest and west into the Colorado river. For early difficulty in traveling along the Gila see William Elsey Connelley, *Doniphan's Expedition*, (Topeka, Kansas, 1907), ch. XII.

ermarch!" Oh! What feelings arose within the breast of each soldier that had a spark of courage in him! To endure a long journey, get in sight of the Indians, have a spirited action in anticipation, and then our cowardly old Major from mere personal fear orders a "Countermarch!" The shouts of the men should have caused his cheek to have flushed with shame. We turned about, disgusted and disappointed. Shame on him who boasts of being an American and an officer in the army and is guilty of such cowardice. *March 3.*—Southerly course. No trail. Shoes worn out. An ox was killed. Made shoes of rawhide which were rather uncomfortable when the sun dried the leather. At Las Casas Grandes[60] are old ruins of some large buildings which I am inclined to think were built by the Jesuits. One building covered an area of 4 acres. Walls upon one side still standing 80 feet in height. An old altar with exquisite carving interested me. Pieces of pottery I found marked "1734." Buildings were all of small stones put together with a kind of cement. I could not examine as much as I would have liked.

March 18.—Easterly course. Left the Rio Gila some days ago. Passed Copper mines. No shoes or boots to be had. Again on the Rio Grande and glad to see it. Today the grass was as high as our heads and accidently it got on fire.

60. Colonel E. V. Sumner ordered Major M. S. Howe, about February 3, 1852, to move against the Apache and to remain in the field for a month, but there is no further information in the National Archive about the expedition. E. G. Campbell (National Archive) to Reeve, October 30, 1946. The expedition could have reached Casa Grande, Arizona, or Casas Grandes south of Janos in Chihuahua, Mexico, which is described as built of adobe (caliche) with coarse gravel. Bartlett, *Personal Narrative . . .*, II, 352. Casa Grande, Arizona, is located about midway between Tucson and Phoenix and is now a National Monument. The walls were constructed of puddled clay (caliche) and stones were only incidental. For history and description see Frank Pinkley, *The Casa Grande National Monument in Arizona*, (1931). J. Walter Fewkes, *Excavations at Casa Grande, Arizona in 1906-07*, (Smithsonian Miscellaneous Collections, Quarterly Issue, 1907), vol. 50.

Bennett's statement that they followed a southerly course, his use of the name Casas Grandes, and the statement about coarse gravel in the adobe, lead to the conclusion that the expedition crossed the border into Mexico. This was a logical move in pursuit of Apaches who were unusually troublesome in those years, but rather surprising without permission from the government of Mexico. When Major Howe turned away from the Apache, much to Bennett's disgust, the Indians may have been on the Mexican side of the Gila boundary line; if so, venturing as far south as Casas Grandes may have been done in ignorance of the boundary line in that direction.

Came rushing on at a tremendous rate. We had merely time to save ourselves by running to the sandy beach of the river. All our provisions, saddles, arms, ammunition, and camp equipage were destroyed. It was an exciting time. 300 guns and several pistols, lying promiscously on the ground, discharged their deadly contents in all directions. No accidents, however, happened. Bad as an Indian fight. The Major didn't seem to enjoy it.

March 25.—Arrived on the 19th once more at Valverde. We were without arms, clothes, ammunition, or provisions when we entered Fort Conrad. Drew a new supply from the Quarter Master. Now staying in camp, getting rested from our tiresome expedition. Nothing to do.

April 6.—Up Rio Grande to La Joya[61] where we went into quarters. This is a small town with only 500 inhabitants. Now is Lent Time. Some Mexicans are doing penance[62] for past offenses (Lord knows the need so to do). 13 persons went through the street whipping themselves with a kind of sharp pointed plant called Spanish Bayonet, (similar to that or a sickle), until the blood was trickling down their backs. Others were dragging a heavy cross of wood through the streets with their feet loaded down with chains. One other I noticed buried, standing upright, in the ground with nothing above the surface but his head. He remained in that position two days and nights, This is punishment put upon them by the priests for past offenses which have been confessed by them.

April 20.—Appointed Commissary Sergeant.

May 1.—Left La Joya with No Regrets! It is a poor lonesome place. Encamped at Peralta[63] where a Dr. Con-

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61. La Joya is on the east bank of the Rio Grande about twenty miles north of Socorro.

62. Bennett is describing the Easter rites of Los Hermanos de Penitentes, a religious order still active in New Mexico. For description see Earle R. Forrest, *Missions and Pueblos of the Old Southwest,* (Cleveland, Arthur H. Clark Co., 1929), pp. 196-200, (C. E. B.). The most thorough study of this society is Dorothy Woodward, *The Penitentes of New Mexico* (Yale University thesis in history, 1935), ms.

63. Peralta is on the east side of the Rio Grande about twenty miles south of Albuquerque.

nelly[64] lives. He is an Irishman who came to this country a few years ago without a cent. He married a rich widow and is now worth at least $300,000.

May 3.—At Albuquerque found encamped 6 companies of soldiers which number about 400 men concentrated for the purpose of receiving military instructions. Arranged our camp ½ mile out of town and all in a body. Orders are very strict: not allowed to leave camp, night or day, without permission; drill 3 hours every day; dress parade every morning in full uniform; inspection every Sunday morning; and must give a grand display to the best of our abilities.

May 18.—The soldiers will be out of camps nights in spite of orders or officers. Four fandangos every night in town and the camp is full of women! Last night two soldiers deserted. They took their horses and left. News came that the Indian woman we took prisoner on the Ocate River on May 11, last year, had killed the sentinel with a butcher knife and escaped.

May 26.—One of the men who deserted was brought back, placed in the guard house as a prisoner. Man was tried, pleaded guilty. He was sentenced to be drummed out of the service; forfeit all pay and allowances that are or may become due; have head shaved; and be branded on the left hip with the letter D, 1½ inches in length. Above sentence carried into effect. What a sorry looking object a man is with his head shaven. Hard punishment also to receive 50 lashes on the bare back. These were well laid on with a rawhide whip.

June 8.—Almost eaten up by mosquitoes. The sun pours down and the thin tents are no protection against it.

June 18.—Started for the purpose of making a treaty with the Gila Apaches. Travelled 45 miles yesterday. Hot summer day and no water. Today passed Laguna. Camped at a spring beneath a ledge of rocks in a small cave. Better water I never drank. The sun never shone upon it.

June 20.—Reached Achama[65] where the treaty is to be

64. Dr. Henry Connelly was a long-time resident and merchant of Chihuahua, Mexico, and Santa Fe, New Mexico. He also had a house at Peralta. Twitchell, *Leading Facts . . .*, II, 391 note 316. Davis, *El Gringo*, p. 197.

65. Acoma (not Achama) is about fifty miles airline southwest of Albuquerque.

made. An Indian town upon a high table land is accessible only upon one side and only for one horseman at a time. About 450 civilized Indians live here. Mangus Colorado (Red Sleeve) came in. Walked into Col. Sumner's tent, made himself very much at home. He said to the Colonel, "You are chief of the white men. I am chief of the red men. Now let us have a talk and treat." The treaty[66] was concluded satisfactorily. Returned home.

July 4.—No sign of Independence here at our Albuquerque camp. Arrived 250 recruits from the United States. Little do they know what this life is here.

July 13.—Arrived at Santa Fe where we were paid off. Numerous dances in town. Soldiers all attended. 11 o'clock at night firing of fire arms was heard. Went to where they were, found the soldiers fighting with the Mexicans who at last gave way after a severe scuffle. The soldiers were still in a body talking when an officer approached and inquired the cause. Being informed he marched on, met a large party of Mexicans, hailed them, ordered them to stand. They refused and fired one shot without effect. The officer immediately ordered his guard, 12 men, to fire. The party of Mexicans scattered. No more trouble followed.

July 14.—7 Mexicans are reported dead. One of our men missing last night, was found nearly dead in a back street. Taken to hospital, the sick ward in the camp. We marched on. Arrived at Canada[67] which is pronounced in Spanish as "Can y a tha." Went on to an Island in the Rio Grande. Fixed camp. Remain and await orders from Santa Fe. Good shade here and nothing to do suits us fine.

August 4.—Orders came to move to Taos. Started. Camped at San Juan[68] on the Rio Grande. The town is very well scattered, covering 5 or 6 miles of the valley which is a fine agricultural section.

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66. Bennett is wrong on the date. Col. Sumner and Indian Agent John Greiner planned to meet the Indians at Acoma on July 11, 1852. Calhoun, *Official Correspondence*, pp. 541ff. Ogle states they met on July 21, *Federal Control of the Western Apaches*, p. 343. (See footnote 52).

67. He probably means Santa Cruz de la Cañada, an early Spanish settlement about twenty-five miles north of Santa Fe.

68. San Juan Pueblo, a short distance north of La Cañada.

August 7.—Passed Las Rincones (The Corners), where a number of mountains appear to come to a point or corner. Scenery very picturesque. Arrived Taos and established our camp 8 miles south of town in a cañon or gorge of the mountain. This is to be the future site of a fort[69] which we have come to build. Surrounded by mountains, it looks as though we were shut out from the world. While we are waiting for tools to go to work, I am to keep busy buying winter supplies of forage.

Sept. 1.—Tools came yesterday and were put in working order. Men are now at work in good earnest.

Oct. 1.—Houses are progressing well. Begins to grow cold nights. Men are in a hurry to sleep under cover. Lost several men by desertion. They have gone with trains[70] to California

Nov. 1.—Moved into quarters just two months in building. Called Cantonment Burgwin from an officer who was killed here in 1847.

Nov. 10.—Continue to fit up the Fort. Some, I suppose, have a very vague idea of what a fort is like in this country. The buildings are built of mud brick in a hollow square, leaving in the center what is called a "parade ground" where the military parades are held every morning. One side of the square is used as officer's quarters; the opposite side as a guard house, commissary department, offices, etc. The other two sides are soldiers' barracks. There is a flag staff in the center from which the stars and stripes flash and wave in the breeze. Out of this square are to be found a hospital, dragoon stables, yard, etc. Buildings are all of one story with flat roofs, having a parapet on the top of the outer walls. There are no windows on the outside of the square and only port holes in the parapet through which one may look or shoot.

Dec. 25.—A Christmas dinner that would do honor to the Astor House.[71] Many got jolly. A few good toasts were

69. Named Cantonment Burgwin in memory of Captain John Henry K. Burgwin, who died February 7, 1847, from wounds received in the battle of Taos three days earlier. Bender, "Frontier Defense . . . ," 266. He was commissioned 2nd Lieut., July 1, 1830, and Captain, July 31, 1837. (See footnote 27).

70. These are wagon or pack "trains," of course, (C. E. B.)

71. Astor House was a famous New York City hotel.

given. I had to give a short address. Ended by a dance at night in our quarters. The dance broke up at the sound of the drum, announcing the morning of the 26th.

Jan. 1, 1853.—Cold and dreary day. The winds whistle loudly by us. Snow beats against the windows. As I gaze upon the scene without, the mountain which over-hangs us and towers almost to the skies, is clothed in its garb of white snow and dark evergreen foliage. The drooping branches of these trees cast a sombre hue upon the rocky clefts upon which these trees are rooted. The long dismal howl of wolves is heard. In fact, viewing winter in its stern reality, brings thoughts of home, friends, and youthful associations to mind. Now commences another year. It may be my last, surrounded as I am by danger. One only knows. His Will, not mine, be done.

Jan. 7.—Started with 4 men for Fort Union to get commissary stores. We took 15 pack mules. Snow is from 3 to 20 feet deep. Dug a portion of our road. Advanced 20 miles through deep ravines where in places only the tops of the pine trees are to be seen. Camped at night. Built a large fire and got close to it and then tried to sleep but I thought I would freeze. Would lie 15 or 20 minutes, get trembling from cold, get up closer to fire, and be literally burning on one side and freezing on the other side of the body. Got through the night, burnt my clothes and blankets trying to keep warm. Two mules died from cold during the night.

Jan. 9.—Spent last night at Mora.[72] A large flouring mill is here. It is built the same as those in the United States. Arrived Fort Union after crossing a plain 18 miles wide and having the cold north wind almost cutting through a person. It was bad travelling.

Jan. 12.—Monday loaded our mules. Camped in the mountains yesterday. It was not quite so cold as the past few days and nights. Glad to sit down this evening at a good fire at home in Cantonment Burgwin.

Feb. 17.—Company F, 1st Dragoons, passed here. At the store one of their men and one of our company had a

72. Village about thirty miles north of Las Vegas.

quarrel and it was carried to such an extent that both went to their quarters, got their arms. Both fired and our man fell wounded through the shoulder. Both were in fault. One was placed in hospital, the other was put in chains as a prisoner in the guard house. The wounded man died, forgiving his murderer.

March 1.—Prisoner is dejected but still exhibits no sign of penitence. He says he is "glad he did it, and would do the same again." The prisoner was delivered over to the Civil Authorities. A Bill of Wilful Murder was found by the Grand Jury.

April 1.—Sent over 20 men to the Commanding Officer for various pretexts where they were informed that they were "April Fools."

May 2.—Left home on a scouting trip to the Navajo Country. Crossed the Rio Grande at a point called Cienequilla,[73] a Rancho of 4 houses. Swam our horses. We were obliged to slip off our horses and cling to their tails in order to get across the river.

May 3.—Passed Ojo Caliente,[74] a large hot spring emitting quite a large stream which flows through a very productive and extensive valley. Probably 1000 inhabitants dwell here. Arrived at Abiquiu[75] which is a town built upon a hill beside the river, Rio Chama, where it leaves the mountains. Inhabitants number about 1500 souls. Procured quarters here to await orders.

May 21.—Proceeded to Jemez of which I have spoken on Nov. 14, 1851. Travelled through the finest mountain country I have seen. Wild game is here in abundance. Camped in the mountains. Navajo Indians had been here but had left. We returned to Abiquiu.

73. Cienequilla, or cieneguilla, meaning "little marsh," was on the Rio Grande about eighteen miles southwest from Taos. F. T. Cheetham, "El Camino Militar," *N. M. H. R.*, XV, 8. See also War Department maps for the years 1851 and 1864. It is not to be confused with Cienequilla southwest of Santa Fe, settled about 1698. Juan Candelaria, "Noticias," *N. M. H. R.*, IV, 274-297. Bancroft *Arizona and New Mexico*, p. 213.

74. Ojo Caliente lies to the west of Cieneguilla and was the scene of a fight with the Jicarilla Apache after the defeat of Davidson (see note 100). Sabin, *Kit Carson . . .*, II, 661ff.

75. Abiquiú lies in the Chama valley northwest of Santa Fe and was settled as a frontier outpost sometime before 1747.

June 7.—Reports came to Abiquiu quarters that the Navajos had killed 1 white man and 6 Mexicans who were trapping on the San Juan River[76] about 150 miles from this place in a northwest direction. Orders came to make inquiries of the above matter and report to Santa Fe.

June 17.—Found the rumor to be true. Reported accordingly. We were ordered to move as soon as practical in that direction. 3000 sheep were taken by the same Indians from near here on the 11th of June. Started yesterday with 60 men. Camped on Turkey Creek.[77] Went 60 miles without water over deep sand. Camped at a small spring where we found two skeletons of some persons who probably had been killed by Indians.

June 19.—Went 60 more miles without water. Camped at a mud hole last night. I reported to my officer that I was "quite unwell." He looked at me and said, "Why, you have got the jaundice." I did find a piece of looking glass and discovered my color would allow me to pass for a mulatto. But there was no help now, I must travel on the trail. Came to Rio San Juan where we found the bodies of the murdered men. Buried them. Went down the river which is large and deep and runs through a wide but rather barren valley. No marks of cultivation are to be seen.

June 22.—This morning came to a cornfield. Thousands of cattle were here not three days ago. About 1 o'clock this afternoon Indians were seen in every direction. At 4 o'clock we encamped. Indians about us in groups in council. A few Indians came into camp. Our interpreter informed them that we had come to talk with them and that we wanted their chiefs to come to our council meeting.

June 24.—About 400 Indians came into camp today. Their chiefs were seated in a semicircle with our officers, guide, interpreter, and me completing the circle. The interpreter was a Mexican and I was called upon to translate from Spanish to English. We demanded the murderers and the stock which had been stolen. In the course of the talk

76. The San Juan river rises in Colorado; it flows through the northwest corner of New Mexico and the southeast corner of Utah into the Colorado river.

77. Turkey or Gallinas creek flows northward and eastward into the Chama river.

a chief came from quite a distance. Our officer presented him with some flour which was in a sack. It was lying on the ground in the center of the circle. Another chief became offended because the same favor was not shone him. He sprang upon his feet, seized the flour sack by the bottom corners, and giving it a swing, scattered the flour to the four winds. Those seated in the circle were given the appearance of an assemblage of millers. Our officer sprang up, drawing his pistol from his belt. We all seized our arms. The Indians sprang upon their horses with bows in hand. Immediate difficulty was expected.

We took this chief prisoner and directed our guide to say to them that the first move that they made, their chief would be a dead man. They cooled down. We held their chief in custody about two hours. He begged for liberation. We had lost all our fresh meat. Before this happened they had refused to sell any sheep to us. Our officer consented to liberate him on these terms: that he should furnish us with 5 or 6 fat sheep. In 15 minutes time a round dozen of the largest and fatest sheep I have ever seen in any country were brought to us. They refused to take any pay. They left with the chief but promised to come into camp tomorrow.

June 26.—No Indians made their appearance yesterday. Met 150 soldiers who had come out to meet us. Remained encamped together this night.

June 29.—We parted Monday. The other party went down the Rio San Juan while we went up the river. We have seen nothing of the Indians. 'Tis evident that they are offended. The Platte[78] Mountains are in sight. Last night the Indians fired a great many arrows into our camp, probably intending to stampede our animals or perhaps kill someone if they could. They wounded 2 mules so badly that we had to put them out of their misery by shooting them.

Still we go up the river. There came into our camp this afternoon about 60 "Green River Utahs."[79] They

78. The name La Plata (or Platte) mountains is attributed to a Spanish exploration party in the 1760's. Bancroft, *Arizona and New Mexico*, p. 258, citing the Dominguez-Escalante *Diary*.

79. The Utah (or Ute) Indians roamed over a wide area in Colorado, eastern Utah, and northern New Mexico. The Green river is a branch of the Colorado flowing through western Colorado into Utah.

entered singing and discharging firearms into the air which is a demonstration of friendship with them. They were fine, noble-looking Indians and were mounted on splendid horses. They left before dark.

North and also east of here are located the Snake, Crow, Sioux, and Blackfeet Indians. The Snakes, like the Utahs, are rather friendly and manly with the Whites. They are exceedingly fond of dancing to which gather the young, the fairest, the best, and the most loved of the tribe. Cupid goes there too for after the dance often it happens that some of the sterner sex apply to some "beardless one" for the balm of sweet smiles for his relief. He does not wait for Sunday night. He chooses one of his most valuable horses, goes to the lodge of the girl's father, ties the animal and goes away. The inmates examine the horse and if it is found to be worth as much as the girl, the horse is taken by the parents and the girl becomes a bride. The lodges of the Snake Indians are ever open to the Whites. A guest among them is sacred.

June 30.—Quite different are the Crows who are the most arrant rascals of the mountains. The traders say they were never known to do an honorable act or to keep a promise. The Sioux are no improvement as they ever and anon commit most infamous acts.

The Blackfeet Indians in 1828 stole a number of blankets infected with small pox which caused dreadful havoc among them and struck terror to every heart. The Great Spirit was offended. Their hunts were ended. Their bows were broken. The fire in the pipe was extinguished forever. Their graves called for them, and the call was answered by a thousand groans. Brother forsook sister; father left the son; mother deserted the child. All separated and fled to the mountains. To this very day the unburied bones of 7000 or 8000 Blackfeet lie upon the rocks and in the valleys. Those who remain are still bloodthirsty and wage wars against other tribes and the Whites.

July 2.—Came to the foot of the Platte Mountains which are high, abrupt, snow-capped peaks. A hot burning July sun beat upon us while far above our heads was to be seen pile upon pile of snow and ice. Ascended the mountain.

The very rough trail at times was almost impassable. Camped at night where we could view the past four days' travel.

July 4.—Still ascending. I think no white man ever was here before us. Even the bears seem to stare at us. This is a day long to be remembered. We are on the summit of the Platte Mountains and thousands of feet above the level of the sea. Here one could behold the wonders of the Almighty and feel one's own insignificance. Admiration and astonishment fill the soul. One here feels and acknowledges the power and grandeur of nature. Crags and peaks project themselves outward and seem to frown upon the broken fragments below, which from time to time have fallen. Others point to heaven as if to indicate their Great Architect. 'Tis extremely cold while two days ago we were suffering from the heat.

July 5.—Commenced the descent on the north side where it is almost impossible to find a path down for our animals. It is growing warmer.

July 8.—We have been in a valley again since yesterday. We are once more warm and comfortable. Now going down the south fork of the Platte River.[80]

July 10.—Buffalo are numerous. The north fork of the Platte River goes through a fine valley. Reached Fort Lauramie[81] which is a military post in the mountains. One company, United States Infantry, is the garrison. 25 of their men were killed a few days ago by the Sioux Indians. Soldiers are afraid to go outside the fort.

July 15.—A Company of Mounted Rifles, U. S. Army, came in here yesterday. We left for home, today, on a due southwest course. We feel much better after our needed rest. We saw thousands of buffalo and plenty of good water and grass.

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80. The south fork of the Platte river rises in central Colorado and flows in a general northeastern direction and joins with the north Platte river.

81. Fort Laramie was in southeastern Wyoming. Bennett's party certainly took a long, rugged trip. See, LeRoy R. Hafen and Francis Marion Young, *Fort Laramie and the Pageant of the West, 1834-1890.* The Arthur H. Clark Co., Glendale, California, 1938).

July 20.—After four days travel struck the mountains near the head of the Arkansas River.[82] Camped on the mountain last night. We are now on the summit and can see the Arkansas River on one side of us and the Rio Grande River on the other side of the mountains.

July 21.—Descended toward the headwaters of the Rio Grande, passing in sight of where J. C. Fremont[83] and his party were frozen up in 1847-48.

July 27.—Passed through the valley of Sangre de Christo and arrived at Fort Massachusetts. Encamped and drew fresh supplies which we needed badly. Feasted on eggs and melons.

August 1.—Moved on slowly toward home. Both man and beast are tired. Camped at Rio Colorado[84] and Arroyo Hondo which is a small Mexican town situated in a very deep ravine. It is the usual dirty and filthy place. Arrived at Cantonment Burgwin today, needing rest after 3 months almost constant travel in all kinds of country and all kinds of climate.

August 10.—Went to Rayado. Met Kit Carson who went with me to a small Rancho, the Cimarron. A large herd of government cattle were grazing along the stream. Took 50 head and drove them home. Then returned to Taos village. Attended a dance. An American was insulted by a Mexican. Word followed word. The Mexican drew his knife. The American drew his pistol and shot among the crowd, killing one and wounding another Mexican. The American left and has not been heard from since then.

(to be continued)

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82. The party is again in central Colorado where the Arkansas rises and flows eastward-southeastward into the Mississippi river.

83. Fremont failed to cross the mountains in December, 1848, losing ten or eleven men in the attempt. For a short account see Sabin, *Kit Carson . . . .*, II, 614.

84. See footnote 29.

Notes and Documents

The Utah Humanities Research Foundation, University of Utah, announces the beginning of the *Utah Humanities*, the first number to be published in January, 1947. "This journal of regional humanities" will furnish an outlet for articles in "history, the arts, folklore, anthropology, social studies, science, recreation, and industry." Inquiries and manuscripts should be sent to the Editors, *Utah Humanities*, 309 Library Building, University of Utah, Salt Lake City.

Frances Shiras, "Some Experiences in Writing the History of Baxter County," *The Arkansas Historical Quarterly*, Volume V, Autumn, 1946, might be of interest to students undertaking research in local history.

The Journal of Mississippi History for April, 1946, carries a long poem by Roscoe R. Hill entitled, "The Archivist." When historian turns poet, the results are not too happy; but in this instance the theme is the important part, not the quality of the poetry. Dr. Hill reiterates his long contention that the word *archive* (in the singular form, not plural) should be used to designate the building wherein are housed historical records. The REVIEW hereafter will follow that usage, unless the Editor nods at his task and fails to change the plural to the singular when the word appears in some ms.

Professor Raymond E. Lindgren, Department of History, Vanderbilt University, is working on a study of immigration in the Southwest. He has received a grant-in-aid from Vanderbilt and the Huntington Library.

The following documents are transcribed from microfilm copies in the University of New Mexico library. The originals are in the National Archive, Records of the Office of Indian Affairs, Washington, D. C. Other documents from the same source have been printed in the REVIEW beginning with the April, 1946, number. F.D.R.

Superintendency of Indian Affairs
Santa Fe, New Mex., Novr. 24, 1855

Hon. Geo. W. Manypenny,
Commr. of Indian Affairs,
Washington
D. C.
Sir;

I had the honor to write you, on the sixteenth instant, in reference to a depredation committed near Las Cruces, supposed to have been done by a party of Mescalero Apaches. Since that time I have heard from Agent Steck on the subject, and am now happy to inform you that all but two of the animals have been caught and brought back by the Indians themselves. As soon as the depredation was known, Agent Steck saw the chiefs, and told them the tribe would be held responsible, unless the animals should be returned. They (the chiefs) started a party upon the trail, which, succeeding in coming up with the thieves, retook all the stock, except two mules, or horses, which were restored to the owner. The Indians who went in pursuit, report that they did not get near enough to the thieves to determine whether they belonged to their tribe. It is now supposed, however, that the depredation was committed by some of the Mexican thieves who congregate near a place called Manzana, and were, probably, assisted by one or two Indians. Col. Miles, third United States infantry, commanding Fort Fillmore took a judicious course in the premises, and aided to bring about the happy result.

In this affair the Mescaleros have behaved quite as well as could be expected, and we may view it as an evidence that they desire to remain at peace with us.

I remain,
Very Respectfully,
Your Obdt. Servant,
W. W. H. Davis Acting Governor,
& Supdt. of Indian Affairs.

Superintendency of Indian Affairs
Santa Fe, New Mex., Novr. 24, 1855

Hon. Geo. W. Manypenny,
Commr. of Indian Affairs,
Washington
D. C.
Sir;

On the night of the twenty eighth of October, four Indians stole from Mr. José Chavez, in Bernalillo County about one hundred and fifty head of mules. The next day Lieut. Moore, first U. S. dragoons, with some twenty soldiers, went in pursuit, and succeeded in recovering all the stolen animals except about thirty with which the

Indians made their escape. This depredation is supposed to have been committed by the Mogoyon Indians, as the trail led directly towards the country they are known to inhabit. This band, and the Gilanians, have been in the habit of making annual robbing excursions into the same section of the country in the fall of the year, to procure food to last them through the winter. I wrote to Agent Steck upon the subject and instructed him to use every possible exertion to discover whether the Mescalero or Mimbres Apaches, with whom we have treaties, had anything to do with the depredation.

About the same time, and in the same section of the country, a small party of Indians stole eight mules, and four horses from a Mr. Rafael Luna, which were not recovered; and two thousand sheep from the same gentleman, and three thousand from Anastasio Garcia, which were retaken by a party of citizens who went in pursuit. The trail of the Indians, who committeed these latter depredations, led in the same direction as the former, and they are also supposed to have been the Mogoyons or Gila Apaches.

Up to this time, the Indians, with whom treaties were made during the past summer and fall, are in a state of profound peace, and there is every appearance that they will remain so.

I remain,
Very Respectfully,
Your Obdt. Servant,
W. W. H. Davis Acting Governor,
& Supdt. of Indian Affairs.

Superintendency of Indian Affairs
Santa Fe, New Mex., Novr. 24, 1855

Hon. Geo. W. Manypenny,
Commr. of Indian Affairs,
Washington
D. C.
Sir;

Since I wrote you yesterday I have received a communication from Agent Steck, informing me of depredations committed by the Mescalero Apaches, in the southern part of the Territory, one of which was within a mile of his agency. On the night of the twenty fifth ultimo, four Mescaleros crossed from the east side of the Del Norte to a ranch near the agency, and attempted to steal corn. A man who was on watch killed one of them, when the others dropped the corn they had in their blankets, and made their escape. They also left their blankets and the dead body behind, but neither have been reclaimed. The dead Indian was recognized as a Mescalero. The other depredation, reported, was committed near Las Cruces on the twenty ninth ultimo, when they stole sixteen head of horses and mules from a

Mr. Fletcher; and Agent Steck feels confident, from the circumstances attending it, that the depredators were Mescaleros. I will cause the necessary means to be resorted to, in order to fix the offence upon the proper band.

I remain,
Very Respectfully,
Your Obdt. Servant,
W. W. H. Davis Acting Governor,
& Supdt. of Indian Affairs.

Washington City
January 18th 1856

Sir

I have the honor to acknowledge the receipt of your communication of the 16th inst, enclosing a letter from the Acting Governor of New Mexico relative to granting licenses to trade with the Pueblo Indians of that Territory, and requesting my views upon the subject before you make up an opinion.

The 2d section of the Intercourse Act of 1834 prohibits trade with the Indians "*within the Indian country*," but I am not aware of any statute that prohibits such trade unless it be carried on in the Indian country, then this question arrises, are the Pueblos within the Indian country or not? The District court of the United States for the Terriory of New Mexico has decided that there is no Indian country within this Territory, and although the correctness of this decision is, and may well be doubted, is it not better to acquies in this decision, unless there is a necessity for granting licenses to those who desire to trade with these Indians.

Within the Territory of New Mexico, there are some twenty vilages of partially civilised Indians, called Pueblo Indians, these vilages, or Pueblos, are situated in various parts of the Territory, and in many instances in immediate contact with and surrounded by the white settlements; these Indians hold their lands by grants from the governments of Spain and Mexico, as stated by the Acting Governor, they have long since abandoned the chase, and cultivate the soil for a subsistance, having nothing to trade except the produce of the soil. Several of these Pueblos are situated within a few miles of Santa Fe the Capitol of the Territory, the Indians bring their corn, wheat, fruits and vegitables to that market, and I can see no necessity or propriety in requiring them to sell exclusively to those having licenses to trade with them, and after having sold I cannot see the propriety of requiring them to purchase alone of merchants having licenses. Is there then any necessity or propriety in prohibiting persons desirous of purchasing the surplus produce of these Indians, going to the Pueblos and doing so without a license.

But if any white person or persons shall locate themselves either as traders or otherwise, upon the lands granted to any Pueblo, I think that the 11th section of the Intercourse Act before refered to, will prove more effectual in procuring their removal, if desirable, than to proceed against them for trading without license. The letter of the Acting Govr. is herewith returned as requested.

I have the honor to be
very respectfully
Your obt. Srvt.
D. Meriwether Govr.
and Supt. of I A in N. M.

Hon. G. W. Manypenny
Com of Indian Affairs
Washington City

Head Quarters 3d Inf.
Fort Fillmore, N. M.
12th October 1855-

Dear Governor.

Enclosed you will receive an extract of a communication I have deemed it my duty to make to Genl. Garland the commander of the Department, in reference to the Mezcalarie Apaches-

The constant intercourse I have had with them for the last three months, has made me better acquainted with their wants and wishes than any white man & I state to you earnestly if their welfare is to be considered and the object of the Government that their Treaty should be observed inviolate, they must have an agent of their own.

Although speaking nearly the same language of the Gila Apaches, they have but little intercourse with them—in fact they are exceedingly jealous of them—You know, that war does not unite them, nor have they any close affinities by intermarriage—On the contrary, they separate in war and the peaceable tribe will give information of the whereabouts and acts of the belligerent one, besides are frequently at war with each other, and each nation the place of refuge of all the bad, flying from justice of their tribe.

Should you be influenced by these views to recommend to the Honbl. Secty. of the Interior an agent for the Mezcalarie Apaches, I most respectfully commend to your especial notice as a very suitable person for the Office, Col. Augustus B. O'Bannon, originally from South Carolina but for the last two years a resident of Donña Aña County of this Territory—Col. O'Bannon's antecedents entitles him to the gift of an office from the Government; he served with distinction in the gallant Palmetto Regiment throughout the Mexican War, as an Officer, he is a faithful, true Democratic that loves his country.

There is no one of my acquaintance so peculiarly adapted to perform the duty of agent, for these Mezcalaries, more patiently, ener-

getically, justly and honestly than Col. O'Bannon, thereby if you recommend him for the station, confering an obligation on me, yours and his many friends in this section of country and securing to the Government an intelligent and faithful Officer.

I am Governor,
Most Respectfully
Your Obt. Servt. & Friend
L. J. Miles
Lt. Col. 3d Inf.
Comdr. Regt.

To his
Excellency
Gov. D. Merriwether
Gov. of New Mexico
Washington City, D. C.

Extract

Head Quart, Fort Fillmore
N. M. 11th October 55

Major.

The Mezcalero Apaches are quiet and seem disposed to be peaceable, they are very destitute and greatly in want of food. They frequently visit me in small parties and to induce them to continue to do so, I have liberally issued to them flour and fresh beef. They are very anxious for the return of their Treaty, that the agent may give them something to eat.

I feel confident without the issue of rations to these people they must starve or steal. They should have an agent of their own. Dr. Steck one of the best I ever knew, being identified by them, with the Gila Apaches, can never acquire their entire confidence or control them; and if he succeds, would lose his influence over the Gillanians; for there is considerable jealousy between these Tribes..

I am Major
Respectfully,
Your obt. Servt.
L. J. Miles
Lt. Col. 3d Inf.
Comdr.

To
Maj: W. A. Nicholls
Asst. Adjt. Genl.,
Dept. of New Mexico
Santa Fe,
N. M.

The Westward Crossings. Jeannette Mirsky. (New York, Alfred Knopf, 1946). $4.00.

The three crossings of the North American continent by Balboa, Mackenzie and Lewis and Clark were intended to seek definite objectives for their respective countries: gold for Spain, furs for the Hudson's Bay Company, and a highway of commerce for the United States. Miss Mirsky has given in brief compass the three most engrossing stories of North American exploration with the chief criterion of having reached the Pacific satisfied.

Vasco Núñez de Balboa's contribution to exploration was meager, but he did climb the mountain range separating the Caribbean from the Pacific and did point the way to maritime penetration of the middle Pacific. From Panama ships were to go southward to Peru, north to Acapulco and California and across the Pacific to the Philippines. Balboa, according to Miss Mirsky, was a kindly, noble, courageous, and fearless individual; her portrait is highly prejudiced and colored. As to his contributions, she stresses the brief climb over the mountains to the Pacific and then speculates on what he might have done had he not been the victim of Pedrarias Dávila's venomous hatred. No one can doubt the importance of the discovery of the Isthmus passage, but to discuss Balboa's future had he lived is idle and useless verbosity.

The second of the westward crossings is that of Sir Alexander Mackenzie through British Columbia. Mackenzie plunged into unexplored country up the Peace River, south down the Parsnip to the divide, portaged across to the Bad River, up the Blackwater and across to the Bellacoola and to Dean's Channel where his party saw the Pacific. The return to Fort Chipewyan was comparatively safe. The journal of the trip which eventually won Mackenzie fame and recognition has neatly been condensed by Miss Mirsky leaving the reader with a grasp of the whole in illuminating speech.

The third of the crossings is that of Meriwether Lewis and William Clark by the route of the Missouri, across the divide to the Salmon and finally the Columbia to the Pacific; on the return the party divided and followed separate routes to the junction of the Yellowstone and Missouri Rivers. It would be hard to give briefly the background of the expedition, the details of the trip and the results, but Miss Mirsky has conveniently bridged the gap between sensible condensation and retention of the full flavor of the seven volumes of the original narrative.

The value of synthesis is undoubted if the work has a purpose. Miss Mirsky has tied together the three crossings with only a tenuous bond of slim history, and few can perceive the reason for including three such momentous expeditions in a single volume. Peter Martyr forms the introduction to Balboa; Peter Pond performs the same function for Mackenzie; and John Ledyard stimulated Jefferson to arrange the Lewis and Clark expedition. Through this device Miss Mirsky broadens the scope of her work and gives the more general reasons for these explorations and their results. Her summaries of the journals of Mackenzie and of the Lewis and Clark expedition are skillfully done and should be commended. The Balboa episode is more than skill in the freedom with which Miss Mirsky creates the stage upon which Balboa operated.

Miss Mirsky's mistakes are those of lack of breadth in historical knowledge. Four examples will suffice to show that her historical "plaster" covering the gaps is sometimes erroneous or misleading. The Russian Great Northern Expeditions of 1741 were primarily to explore Siberia and not to ascertain the outline of the seacoast; the Hudson's Bay centennial was more likely celebrated in 1770 and not 1763 as the company was founded in 1670; the official rank of Clark was that of second lieutenant and not captain, the latter a courtesy title given by Meriwether Lewis to give Clark the same status as himself; Mackenzie believed the Fraser to be the Columbia, and Miss Mirsky makes the mistake of not correcting this error. But the carping historian

should be satisfied that literary style and historical fact are combined to an abundant degree, and the public, for which Miss Mirsky writes, will be completely satisfied with the book.

A short bibliography, useless for the professional historian, is satisfactory for the lay reader. The index is limited, but surprisingly effective. The utmost care has been taken in the selection of the book's twenty-four maps and illustrations; the three maps are particularly indispensable because of the difficulty of following exploration routes without the aid of geographical devices. Miss Mirsky should be commended for her excellent performance of a difficult task.

RAYMOND E. LINDGREN

Vanderbilt University

Necrology

ERNEST THOMPSON SETON, 86, world-famed author and authority on Indian lore and wildlife, died this morning at his home in Seton Village, 10 miles south of Santa Fe. Still active despite his years, Seton only a short time ago com-
33—Hist Rev — 3534 S L H
pleted his 42nd book and had made plans for a 10,000-mile lecture tour. He also helped place a new roof on his 50,000-volume library not long ago.

His best known book probably was "Wild Animals I have Known," published in 1898. It contained 200 of his drawings. This book attracted the attention of Theodore Roosevelt and the two became great personal friends. Rudyard Kipling also said the volume led him to write his "Jungle Tales." *The Daily Current-Argus* (Carlsbad, New Mexico), October 23, 1946.

RICHARD P. BARNES.—Judge Richard P. Barnes, pioneer New Mexico attorney, died at 10:30 a. m. today at the family home, 925 N. Eleventh. He would have been 88 on January 29, next year.

Judge Barnes had been in failing health for the past few years. He had continued to practice, however, and up until Oct. 7 had been in his office daily in the Cromwell Building. On Oct. 18, he insisted on leaving his bed to complete what was his last legal errand at the office.

About three years ago, Judge Barnes planned to retire and was given a dinner by the local bar. His feeling for the law, however, was so pronounced that he stayed away only a few days at a time and always returned to his practice.

Judge Barnes was born in Carthage, New York in 1859. His early education was in Virginia schools. In 1885, when Silver City was a wild, unruly mining town he came there and settled. He studied law in the office of Conway and Posey and was admitted to the New Mexico bar.

In 1915, he moved to Albuquerque and established a law practice. He served in several public positions, the first of which was a member of the 33rd Territorial Legislature

in 1897 from Grant county. He was district attorney of the Third Judicial District in 1899-1900 and a member of the state legislature in 1917 and 1919 for Bernalillo. In 1928 he was appointed to the State Supreme Court.

Mrs. Barnes died here in June, 1933. Besides Mrs. Coon, he is survived by two other daughters, Mrs. W. F. Ritter, El Paso, and Mrs. M. P. Walker, Tucson, and a son, C. B. Barnes, New York City.

In the early days he joined the Elks at Silver City and at one time was exalted ruler of that lodge. He had been a member of the State Bar Association since its formative days.

On his 85th birthday he stated that he was looking forward to many more birthdays. "I want to vote again, read the papers and see the end of the war, the usual activity of a good citizen," he observed then. *The Albuquerque Tribune,* November 11, 1946.