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TERRITORIAL TIMES

Prescott Arizona Corral
of Westerners International



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Cover Photo: The Yavapai County Courthouse in Prescott, Arizona, circa 1880s. This brick Courthouse was constructed on the plaza as a replacement for the 1867 Courthouse located on Cortez Street (shown on page 10). As was the case of its predecessor, it housed courtrooms, the Sheriff's office and the County jail. It, in turn, was replaced in 1918 by the granite structure which stands on the Courthouse Plaza and to this day serves as the Courthouse for Yavapai County.

The Battle of Bloody Tanks Revisited

By Al Bates

One of the most controversial episodes in the long and bloody conflict between the settlers of Arizona and the various Apache tribes was the Battle at Bloody Tanks, sometimes referred to as the "Pinole Treaty" incident.

The battle occurred on January 27, 1864, after a small band of settlers led by King S. Woolsey, and aided by a group of Maricopa Indian warriors, trailed stolen stock deep into Tonto Apache territory near present-day Miami, Arizona, where they found themselves surrounded by a much larger force and in imminent danger of extermination. How they escaped from this predicament has long since entered Arizona lore and legend.

Much has been written about the episode, almost all of it taken from second- or third-hand accounts, or worse, but Woolsey's own account of the action has never before been published. Since he has been cast as a villain accused of treachery during a peace conference, and has been accused of feeding the Apaches poisoned pinole, it seems important that his version of the event be heard.

Woolsey did not make a written report for some time, but sent the following letter to General James H. Carleton, only after submitting an official report to Governor Goodwin about his third and final expedition against the Apaches later that year.¹

His full letter follows:

Prescott, Sept. 14th, 1864

*General James H. Carleton
Commander of Department
New Mexico & Arizona*



King S. Woolsey

Sir: I have the honor to report to you that on Jan. 5th the Apaches broke into the corral at the Ranch of A. H. Peeples near Weaverville and took 32 horses & mules & started with them in the direction of the Salt River country. A party was immediately raised to follow them. I was chosen as the leader of the party.

I started on the 7th with 28 men & ten days rations. We traveled in an easterly direction following the trail of the stolen stock across the Rio Agua Frio, Lost Creek & New River to the San Francisco [Verde River]. There the trail lead across the San Francisco still continuing in an easterly direction towards the Mouth of the Big Cannon on Salt River. My provisions being nearly exhausted, I decided to camp here & send to the Pimos Villages for supplies.

January 21st the party having returned with Flour & Pinola and some 45 Maricopas and Pimos warriors² I started on the 22nd for the junction of Salt River & the San Francisco. We followed up Salt River some 15 miles & struck the trail of the stock again at the Mouth of the Big Canyon. There all the Pimos backed out declaring that they would not enter the Canyon as they never had been up there before. But Captain [Juan] Chivari³ the head Chief of the Maricopas (being made of different material) called out his Braves and said that he would follow where I would lead.

So with my original 28 men & Cyrus Lennan & G. G. Fisher of the Pimos Village & 16 Maricopa Braves we started up this unknown canyon. We had but 19 rounds of ammunition for the White men and 7 for the Indians. We traveled all day the 23rd in the canyon and at dark found the trail leading over a high mountain on the south side of the river. We traveled all night without finding any fresh sign of the thieves until near sunrise when we discovered Squaw and children tracks. Some of my men being worn out I took all that were able to double quick it & dashed forward as rapidly as possible until 8 o'clock A.M. when we reached the ranchiere. The Apaches having discovered us & fled.

My men being all worn out I selected an open spot for a camp near some small Tanks of excellent water. The remainder of my party soon arrived. We commenced to prepare for breakfast & obtain a little sleep. We had however scarcely unpacked our animals before the Red Devils took possession of the Bluffs in our rear & in a short time they had entirely surrounded us. None of them coming closer than 600 yards. They kept up a most infernal yelling & built tremendous sig-

nal smokes as if in honor of our arrival. We paid no attention to them until we had satisfied ourselves with bread & Pinola & most of the boys had snatched a few hours sleep.

So at about twelve 12 o'clock I started out towards the nearest cliff with my interpreters a Maricopa & Yavapai Boy leaving my men in camp laying around carelessly on their blankets. As soon as we came in speaking distance the Chief of the Apaches came out on a point of rocks & told us that we had followed them in from Weaverville to kill them. That they had taken our horses & mules and would

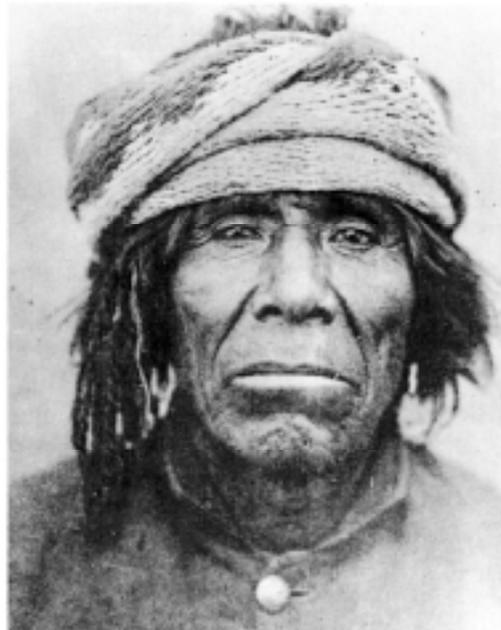
continue to do so & kill us whenever they could & wound up by saying that they had us this time. That we could not get out of the Canyon below as they had four hundred warriors as well armed as we were. They would then break out into loud laughing & yells.

After quiet was restored I replied to this great Chieftain that he was greatly mistaken in the character of his visitors. That we were great men in our own

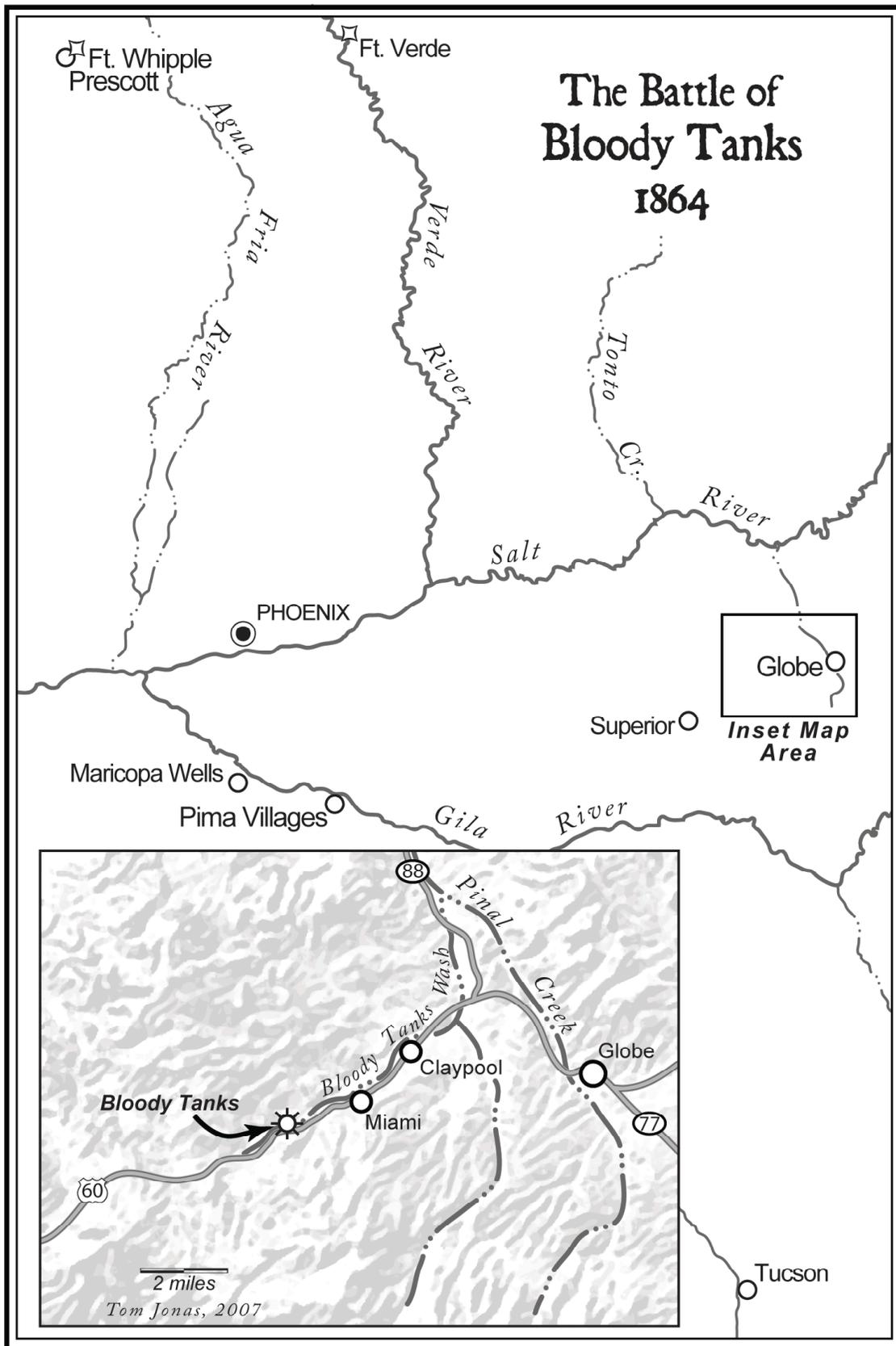
country & had come out here with the Chiefs of the Pimos & Maricopas & Yumas for the purpose of making a treaty with them & had followed the track of the stolen stock because we knew no other road into this country.

After some other talk, the chief came down to the foot of the cliff within 80 yards of where I was standing. He thinking that I was unarmed raised his gun to shoot saying that was all he was playing for. But the sight of my Sharpes carbine from under my blouse brought him to his senses. I then told him that if he attempted to ascend the cliff I would certainly shoot him & that he and his men must come in & have a talk with us.

After some hesitation he concluded to make the best of a bad bargain; so he called to



Maricopa Chief Juan Chivirea



his men to follow him into camp where the Maricopas had a feast prepared for them consisting Flour Pinola & Tobacco. They however only partook of the latter dish. They came into the camp to the number 30.

By this time the mountains as far as the eye could reach was covered with Signal Smokes & Indian runners came & departed in quick succession. I detained them some two hours waiting for the arrival of Big Rump from the north side of Salt River with 40 men as the runners had reported. (Big Rump is the chief of the Tontos.) About 4 o'clock P.M. a runner came into camp & reported that Big Rump would not come in until next morning.

About this time one of the Apaches struck Mr. Cyrus Lennan with a lance in the left breast killing him instantly. Of course a fight ensued in which 24 of the Apaches were killed dead on the ground besides several wounded. Our loss was one man (Mr. Lennan) killed & one Maricopa wounded also one horse killed in action.

We immediately packed up and traveled 12 miles that evening. Jan. 29th when near the Rio Agua Frio we met 2 Indians (Pinals) with 2 mules and 1 horse that they had stolen from the Hassayampa mine. We succeeded in killing one and badly wounding the other & retaking the animals.

We arrived safe at home Feb. 3rd having been absent 27 days. The Indians killed in this scout [were] Pinals & Tontos including one Yavepie or Apache-Moharve who arrived in camp before the disturbance broke out.

Those Yavepies or Apache Moharves profess friendship to the Whites But my opinion is they are as bad as any Indians in the Territory. They live on the western edge of the Walker & Weaver mines & number near one hundred Warriors. All of which is respectfully submitted.

Very Respectfully Your Obt Servt
King. S. Woolsey

There are some interesting differences between Woolsey's account and the memories of three others who were there.

The first published account of the battle was in a letter dated February 10, 1864, that appeared in the March 9, 1864, edition of the Sacramento Union.⁴ It was signed by a participant identified only by the initials J.K.S. His take on the battle's start was, "About this time a difficulty took place in which we lost one man, killed by a cut from a lance in the hands of an Apache, and the interpreter of the Maricopas was wounded, though not dangerously . . . we made good Indians out of 24 of their number--or killed them which is the same thing--besides what got away packing lead."

Several of the participants visited the Pima Villages within days of the battle where they were interviewed by J. Ross Browne, a popular writer and artist of the time, and by Charles Poston, the Territorial Superintendent of Indian Affairs.⁵ Browne later quoted from his shorthand notes: "Suddenly Woolsey drew his pistol, leveled it and shot Par-a-muck-a dead on the spot. This was the signal for the signing of the treaty. Simultaneously the whole party commenced firing upon the Indians, slaughtering them right and left."⁶

Poston, 30 years later, had this interpretation of the interview: "Woolsey was not only a brave but a very intelligent man, and he saw at once that either the Americans or the Indians were to be slaughtered, so he said: 'Boys, we have got to die or get out of this. Each of you pick out your Indian, and I will shoot the chief for a signal.'"⁷

Undated notes taken by historian Sharlot Hall from an interview with A. H. Peeples, who also participated in the battle, say: "Indian

boy warned Mr. P. that the Indians were only waiting chance to kill all party. A moment of treachery was soon seen and fight begun in earnest. Whites & Maricopas were far outnumbered but had advantages of owning guns--only a few Apaches had guns--rest had bows and arrows and spears."⁸

Woolsey's widow, Mary H. Taylor Woolsey Baxter, at the 1927 reunion of Arizona pioneers in Phoenix related the story as she said was told to her by Woolsey. The following is a reporter's paraphrase of her statement carried in a local newspaper:⁹

"Captain Woolsey had arranged with members of his little band to open fire on a given signal. He was to lift his right hand to his hat as the signal for opening hostilities whenever he felt the situation warranted it.

"The parley was progressing satisfactorily, when of a sudden an Apache runner came from out of the brush with a message that the Indians were to withdraw immediately from the conference; that another chief was approaching with several hundred braves with the avowed intention of exterminating the little band of white men. The message was interpreted into Spanish by a Yuma Indian and Captain Woolsey immediately gave the signal for the opening of the battle."

If Woolsey's actions precipitated the battle, why did he not say so? His position regarding the Apaches and Yavapais was clear and consistent. He stated it very flatly in his response to complaints that he later had killed Apache women and children as well as warriors.

In a letter to General Carleton dated September 15, 1864, Woolsey wrote, "It sir is next thing to impossible to prevent killing Squaws in jumping a ranchiere [sic] even were we disposed to save them. For my part I am frank to say that I fight on the broad platform of extermination."¹⁰

Woolsey and his band were treated as heroes on their return, and Governor Goodwin honored Woolsey by naming him as military aide with the rank of Lieutenant Colonel of Militia.

Despite Woolsey's raids and later efforts by the U. S. Army, Arizona's Apache uprisings continued for another 22 years, ending only with surrender of Geronimo's renegade band in 1886. Even then, there were occasional reports of small groups of Apache raiders active below the Mexican border in the early 20th century.

A Final Thought

Why was it that Woolsey did not make a point of denying the rumor about poisoned pinole? The reason is obvious; the rumor did not exist until at least a decade later. The poisoning rumor, probably started by political enemies, surfaced about the time of his campaign for Territorial Representative to the U. S. Congress in 1878, and became a part of Arizona folklore after Woolsey's death in 1879.



¹ National Archives, filed under "Salt River Scout, January 7, 1864." Photocopy in author's possession.

² The Maricopa and Pima warriors were armed with muzzle loading caplock rifles provided by the U. S. Army expressly for use against the Apaches.

³ Spellings of Chief Juan Chivirea's last name vary greatly from source to source.

⁴ Clara T. Woody, "The Woolsey Expeditions of 1864," *Arizona and the West*, Vol. 4 No. 2, 1962, page 163

⁵ Charles D. Poston, *Building a State in Apache Land*, ed. John Myers Myers, 1963, page 118.

⁶ J. Ross Browne, *Adventures in the Apache Country*, facsimile of 1871 edition, page 122.

⁷ Poston, *Building a State*, page 117.

⁸ Sharlot Hall Museum Archives

⁹ Newspaper clipping in Sharlot Hall Museum archives, dated April 13, 1927. Newspaper not identified.

¹⁰ National Archives, filed under "San Francisco River Scout, April 1st, 1864. Photocopy in author's possession.



LAW AND JUSTICE IN 19TH CENTURY ARIZONA TERRITORY

By Fred Veil

The common perception that the Arizona Territory of the 19th Century existed largely in a state of lawlessness is a myth. While the Territory certainly had its share of criminal activity and civil disputes common to the Western frontier, it also had a functioning legal system that, in general, appears to have dealt quite adequately with the legal and law enforcement issues of the day.

Motion pictures, television and dime novels notwithstanding, law and justice in the Arizona Territory was not very different from that which existed in the more developed and arguably more civilized parts of the country.

The Law

Prior to 1848, as a possession of Spain and then Mexico, the area that came to be known as the Arizona Territory was governed by Spanish and then Mexican law. The laws of these countries and therefore of Arizona were comprised of a system of rigid codes unlike that which existed anywhere in the English-speaking countries, including the United States. The latter, with its English heritage, operated under a system of “common law,” known essentially for its adaptability to changing circumstances based on legal principles founded on concepts of reason, natural justice and enlightened public policy.¹

When the United States assumed sovereignty over Arizona in 1848 and thereafter created the Territory of New Mexico, which then included Arizona, that Territory, as a matter of both United States and international law, remained covered by the laws that had governed it when it was part of Mexico, subject to such changes as the new governing authorities may enact. Significantly, the Organic Act that created the Territory of New Mexico did not

specifically adopt the English common law; therefore, the legislative enactments and judicial decrees which followed were heavily influenced by Spanish and Mexican law.

The Organic Act establishing Arizona as a separate territory on February 24, 1863 provided that “...the legislative enactments of the Territory of New Mexico not inconsistent with the provisions of this act, are, hereby extended to and continued in force in the said Territory of Arizona, until repealed or amended by future legislation...” Thus, the law that first applied to Arizona as a separate territory was, with a single exception, the same as that by which it was covered when it was part of the New Mexico Territory.²

One of the initial acts of the First Territorial Legislature when it met in Prescott in the fall of 1864 was to adopt a code of laws drafted principally by Territorial Supreme Court Associate Justice William T. Howell with the assistance of Tucson attorney Coles Bashford. The “Howell Code,” as it came to be known, was comprised of 61 chapters based generally upon the laws of Nevada, New York and California and is the origin of statutory law in the Arizona Territory. Importantly, the Code repealed the laws and customs of Spain, Mexico and New Mexico and specifically adopted the common law of the United States. Notwith-

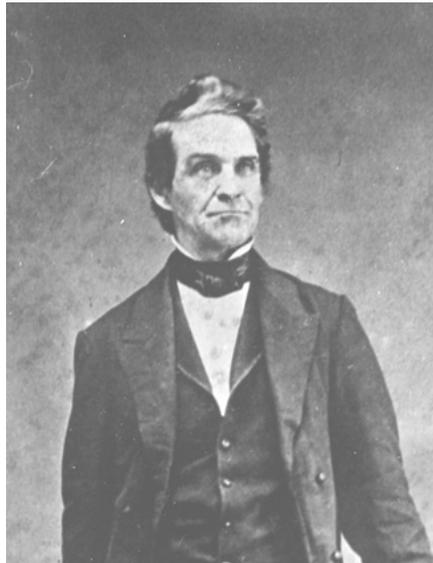
standing, the Code adopted by the legislature was in many respects strongly influenced by the Territory's strong Spanish heritage. For example, the Legislative Assembly's regulatory scheme of water and marital rights is foreign to any notion of English common law. The concepts of "prior appropriation" and "community property," both of which have applied to the Arizona Territory since its earliest days, are derived from Spanish law and have no parallel in the English system of common law.

Drafters of the Code

The influence of Justice Howell on Arizona law far surpassed his tenure in the Territory. A Michigan lawyer, judge and politician, he was appointed Associate Justice of the United States Court for the Territory of Arizona by President Abraham Lincoln in March, 1863. He arrived in the Territory along with Governor John N. Goodwin and other Territorial officials in December, 1863 and in March, 1864 was assigned to the First Judicial District which sat in Tucson. It was from this seat in Tucson that Howell presided over the first court proceedings ever to be held in the Territory and, with the assistance of Bashford, drafted the Territorial Code. Howell submitted the proposed Code to the Territorial Legislative Assembly on June 10, 1864 and shortly thereafter departed for Michigan to tend to his ailing wife. There is no record that he ever

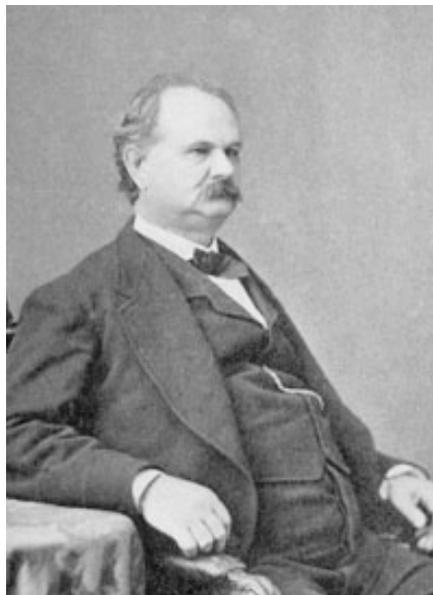
returned to Arizona. He resigned from the federal bench on March 8, 1865.

Bashford, on the other hand, had a long and distinguished career as a lawyer and politician in the Arizona Territory. A former governor of Wisconsin, Bashford came to Arizona with Governor Goodwin's party in 1863 and settled in Tucson where he was engaged in the practice of law when he was tapped by Howell to assist him in the preparation of the Howell Code. In July, 1864 he was elected to the Council of the First Legislative Assembly of the Territory³ and, when the Council convened in September of that



William T. Howell

year, was chosen as its first President. Bashford was appointed by Goodwin to serve as the Territorial Attorney General in 1866.



Coles W. Bashford

Thereafter, he was elected and served a two-year term as Territorial Delegate to the United States Congress. In 1868, he was appointed by President Ulysses S. Grant to be Secretary of the Territory, a position he held until 1876. Bashford also partnered with his brother Levi to operate the Bashford Mercantile Store in Prescott. He died in Prescott in 1878.

The Legal System

The law and justice system in the Arizona Territory was not unlike that of other

territories and states within the United States, which essentially paralleled the coordinate forms of government – federal and state or territorial - authorized by the U. S. Constitution. Thus, separate federal and territorial le-

gal systems were established within the Arizona Territory and co-existed for a time with the adjudicatory customs of the Indian tribes that resided within the Territory.

The Organic Act that formed the Arizona Territory provided for the establishment of three judicial districts, each of which was to be presided over by a Territorial Supreme Court Justice appointed by the President. The Organic Act also gave each of the Territorial District Courts "...the same jurisdiction, in all cases arising under the Constitution and the laws of the United States, as is vested in the circuit and district courts of the United States."⁴ Thus, three federal judicial districts were established with boundary lines identical to those of the Territorial judiciary. The Justices appointed by the President served as both federal and Territorial judges within their respective districts, hearing both civil and criminal cases in each jurisdiction. Federal cases were heard once a year; Territorial cases were heard twice a year in each county within the judicial district. The three justices also functioned as a Supreme Court to hear appeals from both the federal and territorial courts, which meant that at least in the early years of the Territory's existence a justice often heard an appeal of a case he had presided over as a trial judge.⁵

As was the case with other states and territories within the United States, the jurisdiction of the federal courts in the Arizona Territory was limited to matters arising out of the U. S. Constitution and the enforcement and prosecution of federal laws. Since under the Constitution, the states (and territories) retained the vast majority of policing power, as a practical matter the Arizona Territorial Courts had jurisdiction over substantially all of the crimes and civil disputes that occurred within the Territory.

In April 1864 Governor Goodwin established the three judicial districts authorized by the Organic Act. Shortly thereafter, the First

Legislative Assembly created four counties within the Territory – Yavapai, Pima, Yuma and Mohave – the boundaries of which were generally coincident with the judicial districts. Of course, as the Territory developed and its population increased, new counties were created and the number of judicial districts was increased by Congress from three to five.

While the counties did not have a separate judicial system as they do today, "precincts" were established within each county and the residents within each such precinct elected minor judicial officials called Justices of the Peace. The Precinct Justice of the Peace was the ground-level of the Anglo-American justice system. He had original jurisdiction over minor cases and, importantly, was responsible for examining persons accused of more serious crimes to determine whether they should be held over for possible grand jury indictment. By 1866, there were 13 Precincts within Yavapai County alone.

During the 1860's there were 15 recognized Indian Tribes in the Arizona Territory and each of them had some form of tribal justice system. Among the more developed systems were those of the Papago and the Yavapai. The latter, while lacking a formal enforcement mechanism, nevertheless adopted methods for punishing Indian transgressors. For example, in the case of murder, the victim's relatives had not only the right but the obligation to seek vengeance, either in the form of reparations such as a horse or some other article of value, or by seeking permission from the murderer's family to kill him. Other serious offenses, such as rape and theft, generally required compensation in order to avoid physical attacks or destruction of property by the victim's family.

During most of the Territorial Period, Arizona's Territorial Courts had no jurisdiction over Indians, as the United States specifically reserved authority over these Indian nations as a province of the federal government.

Notwithstanding, the Arizona authorities ignored the law with respect to crimes committed by Indians while outside the boundaries of their reservations. Thus, between 1864 and 1886, the *de facto* jurisdiction of the authorities with respect to Indians was as follows: (1) the federal government prosecuted crimes committed on a reservation by non-Indians; (2) the Territory prosecuted crimes committed off a reservation by both Indians and non-Indians; and (3) tribal authorities adjudicated crimes committed on a reservation involving Indians only. This informal and extra-legal jurisdictional arrangement changed in 1886, when Congress, in response to a U.S. Supreme Court decision in “Crow Dog’s Case,”⁶ enacted the Major Crimes Act, which gave territorial courts jurisdiction over murder and six other major crimes⁷ committed by Indians whether on or off the reservation. The Major Crimes Act foreshadowed the assimilation of Indians into the criminal justice system in the Arizona Territory.

The First Jurists

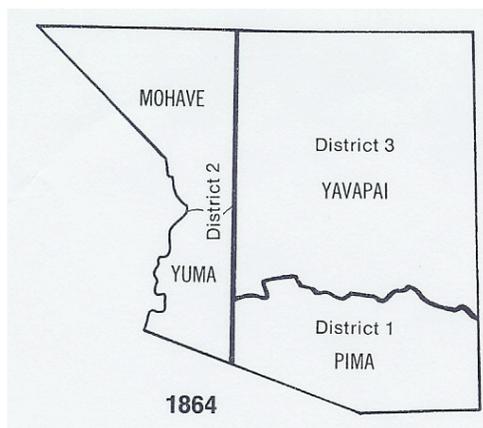
In March, 1863 President Lincoln appointed John N. Goodwin as Chief Justice of the Supreme Court of the Arizona Territory and William T. Howell and Joseph P. Allyn as Associate Justices. Goodwin never served in this capacity, as he was shortly thereafter appointed by Lincoln to be Governor of the Territory when the President’s initial appointee, John A. Gurley of Ohio, died before assuming office. Thereafter, Lincoln appointed William F. Turner as Chief Justice. Thus, the first Territorial Supreme Court was comprised of Turner, Howell and Allyn.

As previously noted Howell was assigned to the First District (Tucson). Chief Justice

Turner occupied the bench at Prescott (Third District) and Allyn held court at La Paz (Second District). Turner served the Territory as Chief Justice for nearly four years. The tenures of Howell and Allyn were short lived⁸ and neither of the latter named justices served long enough to sit as a member of the Territorial Supreme Court.⁹

Short tenures as Territorial Supreme Court Justices were not uncommon, as the Justices were presidential appointees and thus generally came from parts of the country that were invariably more civilized and genteel than the rugged Arizona frontier. Simply moving about the Territory during the 1800’s was very difficult and often dangerous. Moreover, these appointees were generally unfamiliar with the customs and people of the West. Finally, as political appointees they were subject to the political fortunes of the appointing authorities in Washington. By and large, however, they served the Territory competently.

The Prescott courtroom of Associate Justice Charles C. W. French on December 3, 1883 may have been cause for at least one Territorial judge to question his dedication to the bench. On that date French was trying a case involving a dispute over water rights between two Kirkland Valley ranchers, Mrs. Kelsey and Patrick McAteer. In the course of the cross-examination of a witness, the lawyers representing the opposing parties got into a heated argument which escalated into a general melee with ink stands, chairs and other articles being tossed about at will. Not to be outdone, McAteer pulled a large knife and sought out Kelsey’s son-in-law, Beach, as his victim. Beach drew his pistol and shot



Original Judicial Districts

McAteer. A second shot by Beach knocked out a large kerosene lamp suspended over the judge's bench and put the courtroom in complete darkness. The gunshots apparently were the catalyst for reasoned judgment to set in, and the carnage was ended. When all was said and done, McAteer was dead but not before he had seriously wounded a witness with his knife and caused minor injuries to others, including the Court Clerk, William O. "Buckey" O'Neill. Judge French, who after the melee was ended was observed well-enconced under some protective chairs, was later to remark that "Had it not been for my coolness and presence of mind on that occasion, more people would have been killed or injured on that tragic night."¹⁰

The Enforcers

As previously noted, our constitutional form of government reserved the primary policing power within the country to the states, and by extension, the territories. It follows, therefore, that the most important law enforcement officials in the Arizona Territory during the 19th Century were the County Sheriff and the District Attorney, both of whom were elected by the voters. This, of course runs counter to

the common perception that the United States Marshal was the primary lawman of the "Old West." In actuality, because of their limited jurisdiction, the U.S. Marshal and the U.S. Attorney played rather insignificant law-enforcement roles in the Arizona Territory during the 19th Century.¹¹

The County Sheriff and his appointed deputies and other staff were responsible for maintaining the peace, investigating crimes, apprehending and arresting lawbreakers, performing executions, serving summons and warrants, summoning jurors for both petit and grand juries and serving as the County Jailer. The Sheriff also served as the Tax Collector for the County. The District Attorney presented cases to grand juries, drew up indictments as required by grand jury action, prosecuted all criminal cases within his assigned judicial district and represented the county or counties within his district in civil actions brought by or against it or them.¹²

The Sheriff and District Attorney were poorly paid throughout the 19th Century and relied primarily on fees paid for specified services for their income. Often, they had additional



Yavapai County's Original Courthouse, built in 1867

sources of income from other employment in both the private and public sector. For example, District Attorneys generally had a concurrent private legal practice and the County Sheriff may have owned a ranch or a retail establishment. Often, they had positions of federal employment as well. It was not uncommon for the District Attorney to serve concurrently as an Assistant United States Attorney or the County Sheriff to be cross-deputized as an Assistant United States Marshal, each within their respective judicial districts. This arrangement not only provided additional income to these public servants, but also enabled them to enforce federal laws as well.

The Sheriff's responsibilities as the county jailer presented special problems, particularly during the early Territorial years. The early jails were either non-existent or very primitive, often being nothing more than a frame shack with or without bars. Thus, breakouts of incarcerated persons serving sentences or awaiting trial or the gallows, were common. Protecting prisoners against vigilantes bound and determined to serve the sentence of "Judge Lynch" also presented special problems for County Sheriffs, as many of the persons who participated in these extra-legal activities were respected members of the community and voters as well.¹³ Over time, the construction of more secure facilities eased some of these conditions. Yavapai County, for instance, was in the forefront in this respect, having constructed a two-story building on Cortez Street in 1867 to accommodate the sheriff's office, the jail and the county courtroom, which also doubled as a community meeting hall.

The least desirable task that frontier sheriffs of the Arizona Territory had to perform was to carry out the execution of persons sentenced to death by hanging. Even the most hardened lawmen often sought to delegate that unpleasant duty to others. For example, in 1898 Yavapai County Sheriff George

Ruffner, who was reputed to be a tough and effective lawman, sought out a surrogate executor to preside over the hanging of Fleming Parker, a convicted murderer. Parker, however, would have none of it as he wanted a "real man" to hang him. Ultimately, Ruffner complied with Parker's request and officiated at his execution.¹⁴

The popular characterization of the frontier lawman as the steely-eyed gunslinger that faced down the bad guys on a dusty street at high noon is largely a fiction created by the 20th Century media. For the most part, the sheriffs who served the Arizona Territory were ordinary folks who did their best to keep the peace and carry out the other duties of their office without resort to the gun. They did it by the force of the inherent authority of their office,¹⁵ the judicious utilization of citizen posses¹⁶ and the support of the people who voted them into (or out of) office. That is not to say that Arizona did not have some lawmen who were noted gunmen and man-hunters. Commodore Perry Owens (Apache County, 1887-1888) and John Slaughter (Cochise County, (1887-1890) were known for their dexterity with weapons but, more importantly, their willingness to use them.¹⁷ But, for every Owens and Slaughter, there many others sheriffs during the Territorial years that quietly went about the business of enforcing the law without resort to the "law of the gun."

In the early Territorial years any white male who was at least 21 years of age and of "good moral character" could be admitted to the practice of law in the Supreme and District Courts of the Arizona Territory. These requirements or, more accurately, the lack thereof, led to the admission of many men who were unqualified or ill-suited for the practice of law. It was not until 1901 that the Code required applicants for admission to the practice of law to have "a good knowledge of legal principles, rules of pleading and prac-

tice, rules of evidence and the ethics of the profession of the law.”

When the Territorial Supreme Court met for the very first time in Prescott on December 26, 1864 it admitted seven men to practice before it and the District Court, including Bashford, the co-drafter of the Howell Code, and John Howard, who was to practice law in Prescott for many years and serve as that town’s mayor for six terms. Soon thereafter, these initial admittees were joined by seven others, including E. W. Wells, a prominent lawyer and jurist who served as an Associate Justice of the Supreme Court in the early 1890’s. By 1895, there were 195 practicing lawyers in the Arizona Territory.¹⁸

It was not until 1892, five years after the male-only limitation was lifted by the 14th Legislative Assembly that an Arizona court first admitted a female lawyer to practice. Sarah Herring, the schoolteacher daughter of Tombstone lawyer Colonel William Herring, was admitted to practice in the First Judicial District in November, 1892 and shortly thereafter (January 12, 1893) to the Territorial Supreme Court. Herring, who adopted her husband’s surname following her marriage to Thomas Sorin in 1898, primarily practiced mining law, and she is credited with being the first female lawyer to argue a case unassisted and unaccompanied by a male counsel before the United States Supreme Court.¹⁹

While much has been said about the enforcement role of the lawyers and lawmen, the

practice of law in the Arizona Territory was not, of course, confined to the prosecution of crimes against the public. Even at a time when a mere handshake was often enough to cement a deal between two contracting parties, lawyers performed many of the functions then as they do today, including the representation of clients at trial in civil matters. As the Territory developed, lawyers developed practices around major economic events, e.g., mining, farming and ranching, transportation and, of course, water rights.



Sarah Herring Sorin, Arizona Territory’s
First Female Lawyer

Lawyers also practiced criminal defense law, representing persons accused of committing acts proscribed by the criminal codes of the Territory and the United States. For example, Tucson attorney James E. McCaffry was appointed to represent Delores Moore, who was accused of murdering her husband in December, 1868. Moore was convicted and sentenced to be hanged. Her sentence was

later commuted to life by Acting Governor Carter.

Bias and prejudice were no strangers to the application of the law during the Territorial period. The commutation of Delores Moore’s sentence was not an aberration. While women could not vote, serve on juries or practice law in Arizona during all or most of the 19th Century, there was a definite bias against executing those of the fairer sex. Despite numerous convictions of females for murder, not a single woman was legally executed during the Territorial period.

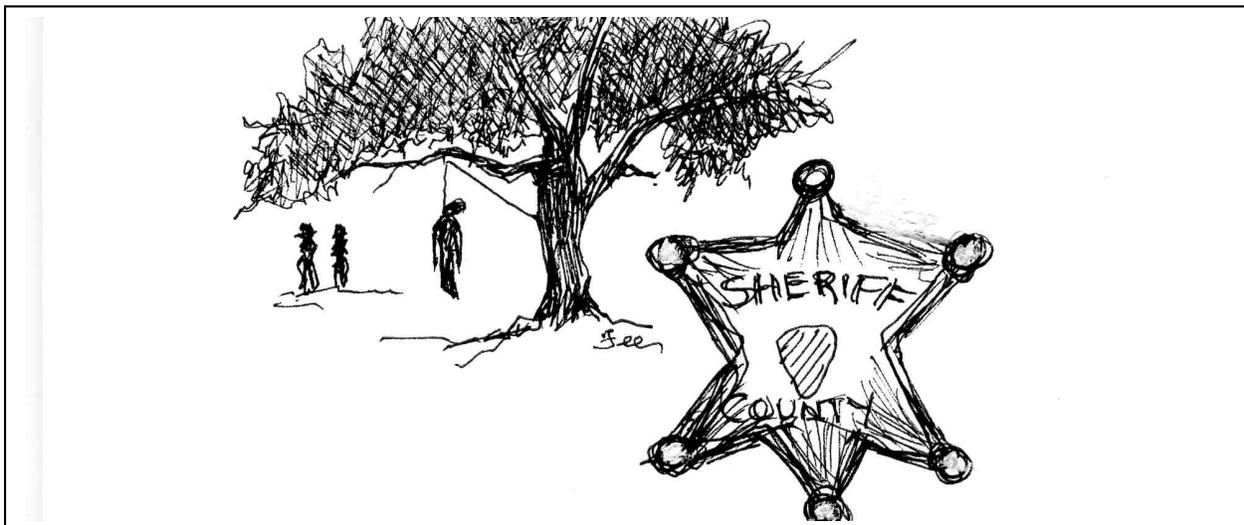
Camp Grant Massacre

The tension that existed between the Anglos and the Apaches in the latter part of the 19th Century also resulted in an uneven application of the law. On April 30, 1871, Sidney R. DeLong and William S. Oury, both of Tucson, led a vigilante force of Anglos, Mexicans and Papago Indians²⁰ in a raid on a band of Aravaipa Apaches who, with explicit permission of the Camp Grant commanding officer, were peacefully residing nearby, killing well over 100 defenseless Apaches, all but a few of which were women and children. While the vigilante action was supported by many in Arizona, Easterners were outraged and President Grant demanded that Governor Safford bring the perpetrators to trial. DeLong, Oury and most of their vigilantes were indicted,²¹ charged with murder under federal law and tried before a jury in federal district court in December, 1871. The defense, represented by James E. McCaffry, the lawyer who had represented Delores Moore in her murder trial (see above), and Granville Oury, the younger brother of the defendant, did not deny that the defendants had killed the Apaches; rather, they defended on the basis that the defendants' actions were defensive as they and others had been subject to persistent depredations by the Apaches. The judge who presided over the trial, Associate Justice John Titus, instructed the jury to consider the attack "justifiable and defensible" if the evidence showed that Anglo, Mexican and Papago residents

had been persistently subject to depredations by the Apaches and further that persons who had not been adequately protected from Apache spoliation and assaults by the U.S. Government had "a right to protect themselves and employ a force large enough for that purpose." Predictably, DeLong, Oury²² and the others were acquitted, a devastating loss for federal law enforcement in the Arizona Territory. It took the jury all of 19 minutes to reach its verdict.²³

Conclusion

Notwithstanding the inevitable existence of bias and prejudice in the administration of justice in 19th Century Arizona Territory, by and large the legal system was reasonably efficient. Territorial and federal law enforcement officials – lawmen and lawyers – did their jobs, keeping the peace, apprehending criminals and bringing them to justice in accordance with a legal code specifically adapted to the unique requirements of a new territory. Lawyers in civil practice represented clients in matters of probate, real estate, mining, ranching, transportation, water irrigation and the like, and by their efforts influenced the establishment of rules of law that helped to civilize and stabilize an evolving and developing territory and prepare it for statehood. The jurists of the time, while federal appointees who generally did not serve long tenures, served competently and dispensed justice in both criminal and civil mat-



ters effectively in accordance with the laws of the Territory. Certainly, there were law-breakers who went unpunished and persons who were not brought to task for violating the personal and property rights of others, but such was the case elsewhere in the county then as it is today. Arizona was far from the lawless image of Western lore.



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LAW AND JUSTICE ENDNOTES

¹ Of course, the common law – whether English or U.S. – was subject to modification by legislative enactment.

² The exception dealt with slavery. The Organic Act for the Arizona Territory provided that neither slavery nor involuntary servitude shall be lawful in the Territory.

³ The First Legislative Assembly was comprised of two bodies, a nine member Council and an eighteen member House of Representatives. *The Organic Act of the Territory of Arizona, 1863*.

⁴ The Organic Act of New Mexico (1850) which was incorporated by reference into the Organic Act of Arizona. See *Compiled Laws of the Territory of Arizona, 1871*. The Act also provided for justice of the peace and probate courts within each judicial district, the former to handle minor criminal and civil matters and the latter to handles estates of deceased persons and maintain records of titles to real estate.

⁵ In 1895, Congress added a fourth justice to the Territorial Court and provided that any three jus-

zona Territorial Officials, Black Mountain Press, Cave Creek, Arizona, 1975; and a dissertation written by Paul Thomas Hietter in connection with his pursuit of a degree of Doctor of Philosophy at Arizona State University in 1999, entitled *Lawyers, Guns and Money: The Evolution of Crime and Criminal Justice in Arizona Territory*. The principal resource materials for the lawmen of the Territory and their roles with respect to the enforcement of territorial and federal law were two books written by Larry D. Ball: *Desert Lawmen, The High Sheriffs of New Mexico and Arizona, 1846-1912* (Albuquerque, University of New Mexico Press, 1992) and *The United States Marshals of New Mexico & Arizona Territories 1846-1912* (Albuquerque, University of New Mexico Press, 1978). The principal resource for biographic materials was the Archives of the Sharlot Hall Museum at Prescott. Other sources and suggested readings are referenced in the endnotes that follow.

tices would constitute a quorum of the Supreme Court. Thereafter, a justice who presided over a case at the trial court level was precluded from participating as a member of the Court on an appeal therefrom unless one of the other justices was disqualified for other reasons.

⁶ Crow Dog murdered Spotted Tail, a Sioux chief. Crow Dog was arrested by the tribal police. The matter was settled by the families of Crow Dog and Spotted Tail in accordance with tribal custom for \$600, eight horses and a blanket. Bowing to public outrage, Crow Dog was arrested and tried in a federal court in the Dakota Territory, convicted and sentenced to be hanged. The conviction was reversed by the U.S. Supreme Court in 1883 on the basis that federal courts had no jurisdiction over crimes committed on reservations where both parties were Indians. *Ex Parte Crow Dog*, 109 U.S. 556 (1883).

⁷ The other major crimes were: manslaughter, rape, assault with intent to kill, arson, burglary and larceny.

⁸ Howell's brief period in AT is discussed above. He was replaced by Harry T. Backus. Allyn ran unsuccessfully for Congress in 1865 and was also unsuccessful in his efforts to be appointed to the governorship shortly thereafter. He was replaced

as Associate Justice by Harley H. Cartter in late 1865. Allyn is best known for his writings of his travels in the Arizona Territory in the 1860's. (See *The Arizona of Joseph Pratt Allyn, Letters From a Pioneer Judge, Observations and Travels, 1863-1865*, edited by John Nicholson. Tucson, University of Arizona Press, 1974.)

⁹ The Territorial Supreme Court convened for the first time on December 26, 1865 at Prescott in the Council's chambers. Chief Justice Turner and Associate Justices Cartter and Backus were the members of the Court.

¹⁰ The quote attributed to Justice French was reported in James Murphy's book entitled *Laws, Courts and Lawyers, Through the Years in Arizona*, Tucson, University of Arizona Press, 1970 at page 64. For other accounts of this event, see Walker, Dale L. *Roughrider, Buckey O'Neill of Arizona*, Lincoln, University of Nebraska Press, 1975 and Lauer, Charles D. *Arrows, Bullets and Saddlesores*, Golden West publishers, 2003.

¹¹ As towns developed in the Territory, many employed local lawmen, known as town marshals, constables or policemen, each of whom performed important law enforcement roles within their respective jurisdictions..

¹² The office of the District Attorney was created by the Third Legislative Assembly in 1866; prior thereto the Territorial Attorney General performed these functions.

¹³ Statistics of lynchings in the Arizona Territory are imperfect; however, one source identified 70 persons who were lynched between 1864 and 1912. Ball, *Desert Lawmen*, Appendix C, pages 381-82.

¹⁴ Ball, *Desert Lawmen* at 153.

¹⁵ As an interesting side note, while many lawmen purchased badges or shields of their office from drummers or salesmen who traveled about the West, others fashioned their badges from tin cans; thus, the term "tin star". Ball, *Desert Lawmen* at 22.

¹⁶ The 1789 federal Judiciary Act adopted the English common law concept of the "*posse comitatus*" (power of the county) and authorized law enforcement officials to require citizens to serve on posses. Territorial sheriffs had similar rights.

¹⁷ Both Owens and Slaughter entered office on law and order campaigns, promising to clean up their respective counties of the rampart lawlessness that existed in Apache and Cochise counties at the time. Both men were known as "quick guns" (as contrasted with "quick draw"), meaning they were willing to shoot sooner than those who stood in opposition to them. Slaughter, for example, was

said to have cautioned his deputies that in making an arrest of a "bad sort" his advice was to shoot first and then yell "throw up your hands." Ball, *Desert Lawmen* at 193.

¹⁸ The territorial authorities apparently paid little heed to their Spanish heritage. In 1520, Hernan Cortez issued a decree prohibiting "attorneys and men learned in the law from setting foot in the country [New Spain] on the ground that experience had shown they would be sure by their evil practices to disturb the peace of the community." W. H. Prescott, *History of the Conquest of Mexico* (London: George Allen & Unwin Ltd., 1949), page 583.

¹⁹ *Work v. United Globe Mines*, 231 US 595 (1914). See, "Sarah Herring Sorin: Arizona's First Woman Attorney", Danielle Janitch, Stanford Law School (2001).

²⁰ There were only 6 Anglos in the Oury/DeLong force, which included 48 Mexicans and 92 Papagos.

²¹ C.W.C. Rowell, the district attorney, encountered considerable difficulty obtaining indictments and had to resort to making a deal with his friend Andrew Cargill who was a member of the federal Grand Jury. Rowell told Cargill that if indictments did not issue, President Grant would declare martial law and try the perpetrators by a military trial. Neither Roswell nor Cargill believed that the Oury/DeLong group would be convicted by a jury comprised of Tucsonians; therefore, the deal was struck to indict and submit to a trial before a jury of their peers rather than one comprised of military officers. Ultimately, the grand jury which, incidentally, included pioneer Charles Trumbell Hayden, issued 103 indictment; however, since many of the participants were respected Tucsonans, most of the indictments were issued under "*aliases*". Scheille at 174-176.

²² Oury was elected Sheriff of Pima County and served that office from 1872 to 1877; he also served concurrently as Deputy United States Marshal. (Ball, *United States Marshals* at 68; Ball, *Desert Lawmen* at 351)

²³ The quotes attributed to Justice Titus were reported in Wagoner's *Arizona Territory, 1863-1912* at 131. For a more complete description of the Camp Grant Massacre and the subsequent trial, see *Vast Domain of Blood* by Don Scheillie, Tower Publications, 1971.



C. E. Cooley: A Virginian Among Apaches¹

By Eldon Bowman

Ever so gently, dawn came to Turret Mountain. The springtime air high up in the mountains of central Arizona was cool, dry and seemingly weightless. The sky was pearl gray except for the silver light that spread slowly from behind the far-eastern edge of the dark, broken silhouette of the Mogollon Rim. The first chirps of the birds gently eased aside the silence of the fading pre-dawn darkness. Then a pause, an almost unnatural silence, as the dawn expanded. Shortly, there was enough light to see the wickiups and the sights on a rifle barrel.²

Then, between darkness and dawn of March 23, 1873, this last quiet moment was violently shattered by the thunder of heavy-caliber military rifles sounding in unison, a volley of whining lead bullets sharply striking through brush huts. Suddenly, the morning was ghostly white and acrid from the smoke and stink of exploding black powder.³ Cries and shouts of surprise, a tattoo of shots, crouched movements in the half-light and the scratching of heavy boots across rocky ground all mixed together.

Those in the wickiups, Apache men, women and children scattered quickly into the bushes like quail to be flushed out by whizzing lead from one spot to another. Stunned by surprise and wild with despair, some of them were seen leaping from the steep precipice to sure death in the rocks below.⁴ No man surrendered; none expected to live if he did. As the thundering of the rifles stopped and the dense, white smoke drifted away, the toll was found to be fifty Apaches killed and fifteen taken prisoner. The women and babies were stunned and easily captured and the fight was over as suddenly as it had begun. For C. E. Cooley and his Apache scouts it was a good day's work, an *unusually* good day's work.

What troubled peace there was on the turbulent Arizona frontier in those days had vanished two years earlier in 1871, in the smoke

of burning freight wagons along dusty, lonesome roads and in blazing cabins at remote ranches. Several small groups of renegades had gone off reservation and were cutting a wild and bloody swath of pillage, destruction and killing throughout central and eastern Arizona.⁵ Travel had all but stopped and the Territory was in the grip of terrible rumors. Infantry and cavalry patrols, each with Apache scouts, were everywhere, crisscrossing the mountains and basins of Apacheria, often it seemed, like slow-moving horned toads chasing wasps.

The Army's best Indian Fighter, Colonel George Crook—"Gray Wolf" as the Apaches soon named him—was responsible for these tactics of relentless pursuit, sending out greenhorn soldiers attempting to deny the renegades any rest and wear them down. After arriving in Tucson in 1871, he quickly appraised the situation and the forces available to him, then organized the Apache scouts and armed them with the best rifles available. Tucson citizens were appalled; there were no "friendly" Apaches they said, and Crook was risking a blood bath by arming them. Having recently met C. E. Cooley and learning of his earlier scouting experiences and his close relations with the White Mountain Apache bands, Crook made him the linchpin of the operation, immediately attaching scouts to each patrol sent out, counting on Cooley's in-

fluence and active participation to effectively restrain and guide the scouts' behavior.⁶

To soldier and scout alike the Colonel made his orders simple and direct: The clothes on your back, one blanket under the saddle, a few fast-walking mules carrying ammunition and food and that's all. Wherever they are, find the renegades and stay on their tail until, fearing their own destruction, they return to the safety of the reservation.

Cooley (he never seemed to have used his given names, Corydon Eliphalet) was in his element. His Apache friends were the eyes and ears of these patrols, spreading out before them like a fan to pick up the faintest of signs and guiding troopers along recent tracks to secluded camps in the brush along the creeks. Rarely, at least at first, were the hunted surprised; the troops were still too slow and too noisy to catch them unawares.

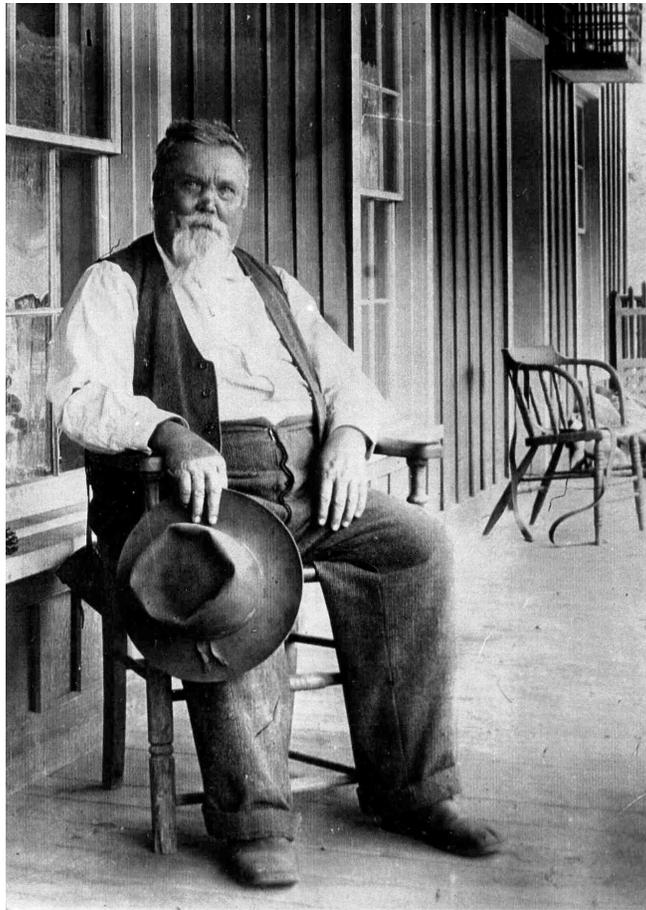
More often than not the tired soldiers had to be content with finding an abandoned campfire, some stray pieces of venison, or a few fresh squash to destroy. Rarely were they lucky enough to get off a quick shot or two at figures melting into the shadows or disappearing among the rocks.

But, with months of practice and adopting Apache ways of moving and fighting, these mixed units of scouts and soldiers began to be

effective. The battle of Turret Mountain culminated almost two years of scouting for Cooley. It was a major victory for the Army in this hide-and-see war. His Apache scouts had captured a woman from the renegade band they had been hunting, forced her to disclose their hideout on the top of the mountain and then led the entire patrol on a silent, night-long climb up the heights and into position for the surprise attack at dawn. It was this

kind of ceaseless and exhausting patrolling by small units that finally forced the rebellious Apaches back to their reservation. As one renegade told Colonel Crook, it was the copper cartridge (which allowed the troops to rapidly re-load their single-shot rifles) and the constant patrolling that had done them in.

By the winter of 1873, the worst of the fighting was over. Civilians were relieved but wary. The Army controlled the reservations, at least for the present and Crook was promoted to Brigadier General in recognition of both his success and the fact that his position, as Commander of the Military District of Arizona, called for that rank. Cooley remained around Camp Apache to give advice to Crook and encourage the acceptance of the Army's efforts to teach farming and other peaceful activities. Years later, in reviewing this Apache campaign, Crook angered professional officers in the East by saying that the



C. E. Cooley

promoted to Brigadier General in recognition of both his success and the fact that his position, as Commander of the Military District of Arizona, called for that rank. Cooley remained around Camp Apache to give advice to Crook and encourage the acceptance of the Army's efforts to teach farming and other peaceful activities. Years later, in reviewing this Apache campaign, Crook angered professional officers in the East by saying that the

Apache scouts, not regular troops, had won the skirmishes and that C. E. Cooley, a civilian, was the key man in recruiting and leading them.

Some isolated killing and cattle stealing continued with the Apaches now using their reservation as a refuge from civil authority. The Army became their policeman. For example, in August of 1874, Cooley, with a number of scouts accompanied by but one sergeant and four troopers, surprised renegades off reservation and fought them in a sharp skirmish. One of the scouts cut off the head of the leader, Chappo by name, and took it back to Camp Apache as proof of their success and a warning to others dissatisfied with reservation life to bring their complaints to their leaders and the Army or the civilian Indian Agent at that location.

It was a hard lesson for the Apaches to learn. With dissatisfaction widespread and civilian control hated and mistrusted, Crook was in a dilemma. As small groups began marauding off the reservation, Crook identified their leaders and put a price on their lives; a few heads were brought in for rewards. But, when two heads of Deltsay, a much wanted outlaw, were brought in to two different military posts at about the same time, the General considered the matter and “. . . being satisfied that both parties were in earnest in their belief, and the bringing in of a extra head was not amiss, I paid both parties.”⁷

Much of Cooley's work as a scout and later as a deputy U. S. marshal on the reservation was of this violent kind. He was probably the only white man who could go deep into the reservation after outlaws and come back alive. For instance, in March of 1871, an Apache, named Handsome Charlie, walked into the sutler's store at Camp Apache and lanced to death the owner as he stood behind the counter. Charlie disappeared but came back two years later and was rumored hiding among his relatives. The post commander asked Cooley and two

Apache headmen, One-Eyed Miguel and Petone, to find and capture him. The three rode to the village where Charlie was hiding, approached his wickiup and called him out. He appeared with a gun in his hand. At close range he pointed his revolver at Cooley and pulled the trigger. Cooley saw the fatal movement but heard only the hollow snap of the hammer failing on a dead chamber. As if in slow motion, he raised his own firearm as he saw Charlie's thumb curl over the hammer of his revolver and draw it back for a second shot. But this time he heard the crack of a pistol at his side. Petone had fired a lead ball that spun the outlaw to the ground, dead instantly.

How many times he was brushed by death, Cooley never would say. For years he was "on call" to both military and civilian authorities and would leave his ranch, a day's ride north of Camp Apache, to hunt down a particular renegade or murderer. On one such occasion he had been out a week when he unexpectedly rode in to the ranch alone, dusty, tired and hungry. Before going on down the post to turn in some evidence, he told his wife, Molly, he wanted to eat and rest a while. Thinking it would help to unpack his bedroll and air it out while he rested, she discovered two human ears in the folds of his blankets! She replaced the ears, re-tied the roll and later, without a word, watched him ride off with the "evidence" secured behind his saddle. Years later she said her discovery of those ears was reason enough she never again helped him unpack his camping things, nor asked him where he had been or what he had done.

Strange as it might seem, Cooley was neither cold-blooded nor egotistical as were other men attracted to the violent life in Arizona Territory. He was aware that no one else could deal with the Apaches as he could for he held their trust and they looked to him for advice in getting on in a white man's world. To the contrary, he was known far and wide across Arizona as a strong-willed Irishman

with an irrepressible sense of humor, an inexhaustible bag of stories, and the best table in all of the eastern part of the Territory. Everyone, soldier or civilian, would count on a stop at Cooley's Ranch situated beside the military road going down to Camp Apache.

Corydon Eliphalet Cooley was born in Loudon County, Virginia. As a young man he attended college but quit to come west in 1856 to "see the Elephant"⁸ and seek his fortune. In the Old Spanish capital of Santa Fe he saw the last of the fur trappers. Going farther west to Pike's Peak in early 1860, he prospected for gold but also clerked in the trading post (store) of the famous trader to the mountain men, Ceran St. Vrain. On August 9, 1861, he joined the Union Army becoming an officer and his regiment's quartermaster and an eyewitness and participant in all the major battles in New Mexico against Confederate troops. After the war, he was managing a hotel at the hot sulfur springs near Fort Union, New Mexico, when he heard of Doc Thorne's gold.

Doc's story was simple. While a captive of Apaches, he'd seen gold in unbelievable amounts lying loose in streambeds in dark canyons where no white men had ever gone. His story was also simplistic, "sheer hokum," Cooley said, after he saw it all for himself. But, at the time, Doc's story sounded like "gospel truth" to him. He and his partner, Henry Dodd, decided to go prospecting. By dumb luck, or uncommon sense, they struck upon the only sure way to enter the forbidden territory and come out alive. They simply asked some Coyotero Apaches who were visiting at Fort Wingate, New Mexico, in the summer of 1869. Under Indian protection, the two white adventurers prospected throughout Apacheria for almost two years. What they found in gold wasn't even worth going back to pick up!

During this wilderness sojourn Cooley learned their language and became friends with some of the White Mountain bands, Chief Pedro's

band in particular. Then, when troubled relations with the whites became violent in 1871, his example and advice kept these bands friendly and helped enlist them as scouts for the Army.

Three years later, in 1874, when his scouting work began to slack off, he moved north from Camp Apache and began ranching with a partner, Marion Clark. Cooley built a log cabin for his family. It is here that he began a life-long commitment to hosting all who came his way on the remote wagon road to Camp Apache. Things were crude at first, but Cooley made them hospitable. One young, eastern-bred Lieutenant's wife, Martha Summerhayes, many years later recalled her great relief and feeling of safety when her party reached Cooley's (1875). She wrote that it mattered little to her that the windows of the cabin were covered with cloth; that there were no rooms with doors, just partitions allowing scant privacy; that she had to sleep on robes on a dirt floor. "There seemed to be two Indian girls at his ranch," she remembered discretely, "and they prepared us a most appetizing supper."⁹

There were indeed two girls at the ranch, Molly and Cora (Anglo names given them by Cooley). Both were daughters of Chief Pedro. Cooley had married Molly in 1871. Soon after that Cora moved in with them, at her sister's request, as the girls decided he should marry her as well. Cooley accepted and never regretted this arrangement for he knew it was a customary practice among Apache women.

One story of their domestic relationship may be found in Farish's, *History of Arizona*. Here, at the ranch on Silver Creek, one startled traveler witnessed a lively domestic scene. Approaching the cabin, he saw Cooley crouched on the roof, laughing and dodging rocks vigorously thrown at him by one of the girls, who punctuated her throws with indignant yells and dire threats. When the storm had blown itself out and the girls had gone

inside, Cooley jumped to the ground near his wide-eyed visitor and explained he had played one of his many jokes on the girls by putting a lizard down one of their backs and they both had taken after him with Apache vengeance in their eyes. With hardly time to finish his laughter, he then launched into a lively soliloquy on the advantages and pitfalls of polygamy.¹⁰

Both girls impressed those who met them as bright, energetic and enthusiastic about Anglo cooking, homemaking and manners. Cora's Irish stew soon became famous; the "genuine thing" as one Irishman exclaimed. Cooley's ranch became known as an oasis of hospitality on the lonely roads in the region and indeed all over the Territory, especially among Army personnel. But, things suddenly changed, as they often did in life on the frontier; to Cooley's life-long sorrow Cora died in childbirth in 1876, leaving Molly alone to care for the babies and Cooley and to continue their commitment to hosting travelers on the road.

The ranch prospered from the beginning because Cooley saw to it that produce was sold to the Army at Camp Apache. In those early days the Army was the only buyer and paid in cash. Cooley was not a farmer at heart; he hired out to others the work of growing grains, vegetables and cattle. After several seasons working together, Cooley and his partner, Marion Clark, decided to split the partnership but not the ranch. So, one cold, snowy De-

cember day, shortly before Christmas, 1876, the two men sat down in Cooley's cabin to play a game of Seven-Up. In the last hand, when the top card was turned face up to determine the trump, Clark glanced up at Cooley and said: "Show low and take the ranch." Cooley looked over his hand and then slowly drew out a card and laid it face up on the table. The card was the duce of clubs, the low card; the ranch was his! News of the card game spread quickly south to Camp Apache, north to the Mormon Settlements along the

Little Colorado River and west to scattered ranches and the Territorial Capital at Prescott. In fact, the story of the card game brought laughter all over the Territory where ever it was told. Everyone began calling it the "Show Low" ranch and the name stuck, not only for the ranch, but also for the town of Showlow that eventually replaced it.



Cooley's daughters Bell, Cora and Lilly, Cora's daughter

In 1881, Cooley took a new partner, Henry Huning, a bachelor from New Mexico, who didn't like to go it alone in such a venture. They extended their range and continued to raise grains and vegetables for the Army. Huning brought in the first purebred Hereford (white-faced) cattle to the area and managed the cattle while Cooley continued to hire out the other operations and spend much of his time in Army and reservation activities.

When Mormon colonists (Cooley was not a convert) moved into an area west of the ranch, Cooley heard Chief Pedro's complaint that the whites were settling on his band's favorite

summer campgrounds. He passed the complaint to the authorities at Camp Apache, with the comment that it appeared the settlers were inside the generally accepted (but not surveyed) reservation boundary. The settlers persisted, but when they began selling their produce to Camp Apache, Cooley rode over and confronted them with charges of unfair competition and trespass on tribal land. So forceful was his warning, the settlers became anxious and wrote to church authorities in Salt Lake City. Back came the thunder of the Prophet himself, Brigham Young. He wrote Cooley: "If you treat them [the settlers] right you will be blessed, but if you do not you will go down, become a pauper in the land and your family will disown you and you will die a miserable death."¹¹ Young's prophecy got Cooley's dander up and he rode off to Camp Apache and complained to the Indian Agent, who needed little convincing that he had an explosive situation on his hands. He soon served notice of trespass and the colonists left the area. Cooley heard no more from the Mormons.

Cooley was often asked to umpire disputes and solve misunderstandings especially between whites and Apaches. Many of the incidents turned up in his bag of stories, invariably with a humorous twist. In one of his tales an Army officer killed an Apache warrior while leading a patrol near Cooley's ranch. Cooley heard about it, went to see the family and found them thinking about blood revenge. He knew that would mean the aggrieved family could take revenge on any white man they chose. Cooley told them that the fight had been fair and in self-defense. The family was not entirely convinced, so Cooley hurried to the post to tell the worried officer and suggested a solution that would surely convince the family to let the matter rest. The way out of his trouble was for the officer to give the dead man's brother a fine horse as compensation for the family's loss. The officer readily agreed, bought a good horse and asked Cooley to deliver the animal

with his condolences. Cooley made the presentation and returned to the post with the news that the aggrieved brother was much pleased and suggested if this kind of thing should happen again, the officer was not to worry. The family would be content to receive one good horse for every brave done in—which Cooley told his listeners around the dining table would surely bankrupt the officer in no time!

Incidents like this one continued to take Cooley's time and attention. But for the most part, he and his family settled down to develop the ranch and host travelers passing his gate. He had a sawmill built and then constructed a large, handsome, pillared house made of sawed boards. It had a touch of tidewater architecture in it, revealing Cooley's origins. It sat upon a green, grass-covered hill and was painted white; everyone called it the "White House." Molly was impressed and deeply pleased; here she presided over a growing family, a big kitchen and a table loaded daily with all the good food field, forest and garden could provide. Sitting down with his guests, Cooley was a contented and a happy man.

Captain John G. Bourke, General Crook's long-time aide gave this enthusiastic recounting of Cooley's hospitality based on a number of visits: "Four decidedly pretty gypsy-like little girls assisted their mother in gracefully doing the honors ... and conducted us to a table upon which smoked a perfectly cooked meal of Irish stew of mutton, home-made bread, boiled and stewed mushrooms plucked since our arrival--fresh home-made butter, buttermilk, peas and beans from the garden and aromatic coffee. The table itself was spread and everything well served."¹²

Another visitor, General Thomas Cruse, spoke for many of his fellow officers over the years who had stopped at Cooley's, when he recalled an 1882 visit. "Within twenty minutes [of arriving]," he remembered, "we sat down to a meal of steaks, venison, wild turkey, all

well cooked." When Molly came in to join them, Cruse noted that, "she was quiet, well mannered and the children were most attractive."¹³

Molly understood English well enough but seldom spoke it in front of guests. It was said that her English had been made fun of in the early days by some officer's thoughtless remarks. Cooley accommodated her in her reluctance and out of a need for privacy in conversation; they developed their own dialect, one which even the children, could not understand.

In September 1882, General Crook returned to Arizona for a second campaign against renegade Apaches and called for Cooley to join him at Fort Apache. The situation was ominous and growing worse. After years of government double-talk, crooked agents and short supplies, the Apaches were desperate, mad and threatening to leave their reservations. Crook called the bands in to the Camp to hear their grievances, but some refused to come in and talk with him. Pedro's band did come in and the old chief admonished Crook. "When you were here," he said, "we were content. Why did you leave us?"¹⁴

A second time, the General asked the bands to come to the post and present their complaints. Again they refused but countered with an of-

fer to talk if the General would come to them without a guard of soldiers. Among the officers at the post, feelings ran high against the General's going without an escort of troops. It was a trap and force was the only sure thing to use against them. Crook tried to assess the situation. After all, they had been his friends, the ones who first answered his call for scouts in 1871. He asked a few questions 'round about but otherwise kept still and took counsel with himself.¹⁵

Cooley also was worried. He thought it very serious that the bands would not come in to talk. Corporal Will C. Barnes, the post telegrapher, remembered his talking about it and saying that he was "scared stiff" and didn't expect to come back alive. But, he had made his will and was ready to go wherever the general went.¹⁶ Crook decided to go; taking with him a small party that included his two most experienced scouts, Al Sieber from Fort Whipple and Cooley, who would act as interpreter. As the group rode out of the post, the odds were decidedly negative; most likely the small party would be killed.

Three days later, with tension at the post strung as tight as a bowstring, the party quietly rode in, with the General in the lead on his favorite mule, "Apache." By noon the next day over a hundred belligerent Apaches came in and set up their camps nearby. Crook



and Cooley were much relieved for they did not want to fight old friends, nor did they want to have to fight elements of both the northern and the southern bands at the same time. Without this Apache support, now camped all around them, Crook had known he could not win.

At this tense time, Cooley had brought his wife, Molly, and family with him to Fort Apache, for he had no idea what he would be doing or where he might go; they were safer at the post. But, this put them in daily contact with the women of the post. These women were not the same ones who had gone through the earlier hard times of the first Apache campaign in 1871-74. Then, no one had raised a question as to the legality or the propriety of Cooley's relationship with Molly. Now, all the women were talking about it. Crook, not ordinarily sensitive to post gossip, acted quickly to write a letter, actually an official recognition wrapped around an order, confirming Cooley's marriage to Molly in an 1871 Apache ceremony that had been recognized at the time as a legal proceeding in accordance with the laws of the Territory and the Federal Government. It was a thoughtful gesture that did much to raise Molly in the eyes of her Victorian sisters at the post.¹⁷

Cooley worked a few weeks for the General in preparing an expedition to take to the field. But in November 1882, as Crook started into Old Mexico after the famous renegade, Geronimo, Cooley went home; at age forty-seven his scouting days were over.

As always, Cooley had more than ranching on his mind. He took on several obligations, postmaster, tax collector and county supervisor and of course continued to be the host of the road. In 1886, he sold his interest in the Show Low Ranch and moved south (near present-day McNary) just inside the Apache Reservation boundary, on the road to Fort Apache. (Camp Apache was designated a "Fort" in 1879.) Here Molly exercised her

right to some tribal land and they lay claim to 160 acres, sufficient to raise what they needed. Cooley built another large house, a two-story ranch house with a full-length porch, where travelers could continue to enjoy their hospitality, his stories and Molly's good food. With linen napkins and real china gracing the dining table, guests could momentarily escape the roughness of travel and the starkness of the wilderness still around them.

Sitting by the fire after supper, Cooley would tell stories sheathed in laughter of earlier, frightening times. Some of his recollections had no laughter in them; these came on, if at all, later in the evening when the children were asleep. He recalled the time he used Molly's kitchen table to lay out a man and remove a lead ball flattened against his skull. Another time, he cut off a prospector's smashed leg with his hunting knife, then cauterized the wound, carefully searing closed an artery with a red-hot poker. Both men lived and recovered. In the guest book the Cooleys kept, there is an interesting entry written by an army surgeon: "A pleasant recollection of the day [years ago] you gave chloroform for me."¹⁸ There seems to be no recall or record of the incident, and it is probable that Cooley helped out in several such emergencies he excluded from his stories. It was all a part of scouting and a soldier's dangerous life on the Arizona frontier.

Cooley's guest book, between 1891 and 1913, tells a tale of the taming of that frontier. Army fighting and the long patrols settled down to routine management and boredom. Civilians on business and politicians now traveled the old roads and even tourists passed by. Here is a sampling of comments (after 1900) that confirm this change:

July 24, 1900--"Last meeting was at Fort Apache, July 4, 1886" N. O. Kay, Captain, 9th Cavalry

August 15, 1901--"There is no more splendid and generous host than Cooley..." N. O. Mur-

phy, Governor, Arizona Territory

December 10, 1901--"Returned to Fort Apache after a month's campaign in the Hopi Indian country, dragging Hopi children to school. Cooley's ranch certainly looks good to me." Frank B. Edwards, 1st Lieutenant, 12th Cavalry

October 25, 1913--[The last entry in the guest book.] "Touring in an auto is pleasant . . . [We are] on our way to Phoenix in a Lambert, from Mariston Colorado." Robert Tate and wife ¹⁹

Cooley lived in Arizona nearly fifty years and, indeed, saw the times change. He knew the northern Apache bands, as did no other white man. He helped them sustain the peace during the violent and blundering years when whites and Apaches often fought each other. For nearly twenty of those years he was a scout for the Army among the Apache Scouts or a Deputy U.S. Marshal ready to put his life on the line. But, through all the turbulence of the times in which he took a substantial, often crucial, part, he and his wife, Molly, raised a large family and for forty-three of those years they sheltered and revived tired travelers on the road to Fort Apache.

As if announcing the end of an era, in April 1916, Captain Oliver Hazzard, USA, and twenty Apache scouts rode by to pay their respects to Cooley. They were on their way to join General John "Black Jack" Pershing's Punitive Expedition into Mexico against the bandit, Pancho Villa. It was the last time the scouts would be called into action. They rode into Cooley's yard and dismounted. Cooley sat in a rocker on the porch of his house, his legs wrapped in a robe, stroke-stricken and forgetful. But, as they filed past him, the old scout's eyes brightened and he called each Apache by name, shook his hand and wished him well. This simple ceremony over, the scouts remounted their horses and the command, "Move Out," was given. In a cloud of rising dust, the scouts disappeared down the road.

Within a year--March 18, 1917--Cooley, at 81, also disappeared down the dusty road and the last, lingering twilight of frontier Arizona went with him.



COOLEY ENDNOTES

¹ The material in this article is based predominantly on H. B. Wharfield's book *Cooley: Army scout, Arizona pioneer, Wayside host, Apache friend*. (El Cajon, Cal.: by the author, 1966), based in large part on interviews with Apaches. He was fortunate to be at the right place at the right time. Assigned as a young First Lieutenant to Fort Apache, Arizona, on January 8, 1918, he arrived within ten months of Cooley's death on March 18, 1917. He witnessed and assessed the high regard for Cooley expressed by Apaches and Anglos alike, especially by the military, people who knew him either first or second hand. His later efforts to interview knowledgeable Apaches, in the late 1950s and early 60s, was in the nick of time, so to speak, before memories of Cooley slipped away enough to harden into legend. Finally, and perhaps most important, Apaches talked to Wharfield as a friend, one who "understood" what they were saying and what they meant by it. Wharfield's qualifications and timing on his research gave his little book uncommon veracity and insight, which is nearly impossible to gage by other contemporary sources still available. Little wonder that researchers and western historians have stayed away from Cooley even though he is a major figure in the highly colorful and popular period of Territorial times when "Indian was painted and white man was pale." The principle source for Cooley is Wharfield, almost exclusively so. His little book (101 pages) is quite scarce. I have found no new or contradictory material but rely on Wharfield. I have evaluated Wharfield as extensively as I can on the basis of my own experiences and studies in Arizona and western history and judge him to be accurate, reliable, and balanced, with no axe to grind and insightful. I do footnote quotes and cite other books as does Wharfield to confirm his information. Lastly, I make several short summery evaluations of Cooley and his activities, which the discerning reader will recognize as mine.

² Turret Mountain is still an obscure and unchanged place in the rugged country of central Arizona. See USGS Topographical (1:24,000) Bloody Basin and Tule Mesa, Arizona, Quadrangles. Also, see Tonto National Forest Map (USFS, 1975) at T. 10 N. R. 4E. Sec. 18. See also Will C. Barnes' *ARIZONA PLACE NAMES, 1988 Edition*, p. 460. Barnes may be in error

on his location of T. 11 N. He cites a forest map of 1926 vintage, while the more accessible 1976 map indicates T. 10 N. At dawn the entire Table mountain area was most likely as described; the most peaceful and quiet atmosphere imaginable with swiftly changing light and shadows rivaled only by Grand Canyon's similar display each morning. These conditions of silence and light are familiar to me through many years of riding the Canyon at all times of the day and night and several extended pack-trips along the Verde River and environs in the 1990s. The Apache renegades were certainly as accustomed to these conditions as modern urbanites are not. To them they gave assurance of safety and confirmation that they were all alone. The instantaneous shattering of the silence must have profoundly disoriented the sleepers causing terror among them. See footnotes 3 and 4. The soldiers and scouts had no choice but to await enough of dawn's light to clearly see their rifle's sights or most of their fire would go astray and the attack probably fail. Today's rifle sights are highlighted easily, if not automatically, adjusted or even function on their own beams of light so rifle fire will be accurate even in the dark. Not so in 1873. Then, sights were simple, inert attachments at either end of the long barrel. The rear sight was a shallow vee or a small, thin metal circle (called a peep sight) into which the image of a thin, short post front sight had to be centered and held steady until after the trigger was pulled and the gun finally went off. On the military rifle of that day, the front and rear sights were 30 inches apart and impossible to align quickly in dim light.

³ Black powder is the oldest propellant, the one that made firearms possible. It was, and remains, a dirty, somewhat unstable, fast-burning combination of carbon and saltpeter that produces a thick, white smoke that often hides the shooter from the target at the same instant that it identifies his precise location. If there is no breeze to blow it away, the smoke may cover and obscure the whole battlefield hiding all targets and prevented both sides from using aimed fire. The second marked characteristic of black powder is its strong smell of sulfur. Both the smoke and the odor worked to the decided advantage of the attackers, evidently disorienting the renegades almost completely.

⁴ Wharfield, p. 42; The contrast between the pre-dawn quietness at the top of Turret Mountain and the swift, certain firing from the attackers was an absolute surprise that so terrorized the renegades that it may be that some of the men (warriors) were seen by the soldiers deliberately jumping to their death. Wharfield does not exclude men and it could have happened, but not likely. See endnotes 2 and 3. Apache warriors committing suicide in battle? Unheard of!

⁵ Worcester, Donald E., *THE APACHES: EAGLES OF THE SOUTHWEST*, (Norman: University of Oklahoma Press, 1979), Chapt. VII. See also Chapt. VI.

⁶ Cooley quickly earned Crook's high regard and friendship. Shortly after they met, Crook put Cooley to recruiting scouts from the northern bands. Known as a taciturn and demanding General, Crook had few friends or advisors (Worcester, p. 123). It appears Cooley was both for many years and through two Apache Campaigns. Other signs: Cooley's first-born (April 5, 1872) was named Bell Crook Cooley. There exists several cordial letters from Crook, one actually a memorandum that asserts with finality the Cooleys Apache wedding in 1871 and put to rest the gossip of the post women about the matter during the second campaign in 1882. Wharfield, pp. 30, 45, 76, 67.

⁷ Wharfield, p. 49; Crook, George, Gen. *GENERAL GEORGE CROOK: HIS BIOGRAPHY*, Martin F. Schmitt, ed. (Norman: University of Oklahoma Press, 1946, 1960), pp. 181-82.

⁸ To "see the elephant," is a western term for a western adventure, such as being in the California gold rush in 1849, where the expression became popular. To go west was to witness the great events, the stirring episodes, the huge land with its limitless freedom and wild opportunity; as strange and exciting as seeing the wonder of an elephant for the first time.

⁹ Wharfield, p. 31. Summerhayes, Martha, *VANISHED ARIZONA*, (Philadelphia: J. B. Lippencott Co., 1908), p. 112. Or p. 118 in the Rio Grande Press reprint, 1970.

¹⁰ Wharfield, p. 51. The author doesn't indicate which volume of Farrish contains the reference. I didn't find it in the first two volumes which are the only ones generally available. Farrish, Thomas E., *HISTORY OF ARIZONA* (San Francisco: Filmer Bros. Co., 1915).

¹¹ Wharfield, p. 59

¹² Wharfield, p. 31; Bourke, John G., *ON THE BORDER WITH CROOK*, (New York: Charles Scribner's Sons, 1891). Reprinted by TIME-LIFE BOOKS, 1980, p. 179-80.

¹³ Wharfield, p. 31-32

¹⁴ Wharfield, p. 71.

¹⁵ Worcester, p. 123. See endnote 6.

¹⁶ Wharfield, pp. 71-72; Barnes Will C., *APACHES & LONGHORNS*, (Tucson: University of Arizona Press, 192), pp. 92-93.

¹⁷ Wharfield, p. 67

¹⁸ Wharfield, p. 79.

¹⁹ Wharfield, p. 93.





This Arizona Territorial seal featuring a stalwart pick-and-shovel miner is said to have been devised by the first territorial secretary, Richard C. McCormick. It may not have been official but was used by the government, nevertheless, from 1864 until at least 1879. It reflects the primary basis of Arizona's economy at that time.

ABOUT US

The Prescott Corral was founded in 1962 as an affiliate of Westerners International, an organization dedicated to the preservation of the real history of the American West. Its original membership list, which included such well-known residents as Budge Ruffner, Gail Gardner, Danny Freeman, Bruce Fee and George Phippen, comprised a virtual “Who’s Who” of local historians, a tradition that is continued today by the 125 members of the 2007 Prescott Corral.

The Prescott Corral has a well-earned reputation for excellence with respect to the Western history programs it presents to its members and guests during its monthly meetings at the historic St. Michael’s Hotel and for the annual Western History Symposium it co-sponsors in the fall of each year with the Sharlot Hall Museum.

This premier and limited edition of ***TERRITORIAL TIMES*** is a work that has been in progress for more than a year and required many difficult decisions, including those relating to the historic and geographic scope of this and future editions of the publication. Ultimately, we decided that our main historical focus would be on the Territorial period, with perhaps some overlap into the early twentieth century. Further, from a geographical perspective, we elected to concentrate primarily on the area that comprised the original Yavapai County and, secondarily, that of the Arizona Territory. That is not to say that we will not accept interesting and well-written articles respecting other parts of the American West but rather that old Yavapai and Arizona Territory will be our principle areas of interest.

The articles that are presented here were researched and written by members of the Prescott Corral. We are confident you will find them interesting and informative.

ABOUT THE AUTHORS

Al Bates, the author of *Bloody Tanks*, served as the Sheriff of the Prescott Corral in 1998. He is a frequent speaker on a variety of subjects on Arizona history and is an expert on pioneer Jack Swilling. Al’s book on Swilling will be published early next year.

Eldon Bowman, the author of the *Cooley* article, is a retired college professor and a long-time resident of Arizona. He served as the Corral’s Sheriff during 2007 and has been very active in locating and marking historic Arizona trails, including the wagon road between Fort Whipple and Camp Apache.

Fred Veil, the author of *Law and Justice*, is a semi-retired lawyer who has lived in Prescott since 2000. Active in the Corral, he served as Sheriff in 2004. Fred initiated the Corral’s annual Western History Symposium and has spoken on a variety of subjects at that event.

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