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THE COMING OF LAW AND ORDER TO THE BIG HORN BASIN

*John W. Davis**

I am here to talk about law and order in the Big Horn Basin during the frontier period. When I refer to the frontier period in the Basin, I am talking about the first years of settlement, when what we know as the forces of law and order were not in control, and the ultimate power in the society was the mob.

We are so used to living in a place and time in which, unquestionably, ultimate physical power is held by those whom we have selected to maintain control. When we drive through Cody, we see highway patrolman, sheriff's deputies, and policemen and expect that if anything gets sticky, they are going to take over. Just across Sheridan Avenue is the Park County Courthouse, filled with lawyers and judges and, again, we expect that these are the people who will have the final say on questions of law and order. That wasn't so in the Big Horn Basin during the frontier period. The people who had the final say were the cowboys with the guns, the men in the lynch mob, and the men on the sheep raid—in other words, the forces of vigilantism.

The frontier period had a very distinct beginning and ending in the Big Horn Basin. It lasted thirty years, beginning in 1879 and ending November 11, 1909. It took a wrenching, bloody event, one that resulted in the deaths of four men and produced a kind of civil war, but frontier justice was finally vanquished in the Basin.

Let me tell you more about the Big Horn Basin. Cody sits in the northwest corner of the Basin, which is a huge valley, cut approximately down the center by the Big Horn River. It is defined by two large mountain ranges—the Absarokas next to Cody form the west wall and the Big Horns the east. Both ranges reach points above 13,000 feet. The Big Horn Basin covers about 12,000 square miles, around three times the

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size of the state of Connecticut. The Basin is not as green as Connecticut, but is much more varied, ranging from the starkest, hottest desert, to lush, well-watered mountain sides, to tundra, which is what those snow-covered peaks are. It is first-rate livestock country.

But no livestock were brought to the Basin, at least on a permanent basis, until very late. Of course, Wyoming was not settled until very late; it was not until the Union Pacific came through in 1867-68 that there was any kind of white population, and until the late 1870s that population was confined almost entirely to the southern half of the territory. The Big Horn Basin was girdled by the Crow Reservation, running all the way across the north, by the Shoshone Reservation across the south, and by Sioux hunting grounds to the east. To the west there are very formidable mountains. Whites just could not get in without violating Indian ground. This changed after 1876 and the Custer battle.

In 1879, cattle started pouring into the Basin. The first herd was probably that of Judge William Alexander Carter, brought in by his foreman, Pete McCulloch.¹ Incidentally, one of those 13,000-foot peaks is Carter Mountain, just south of Cody, named after Judge Carter who was the sutler at Fort Bridger. Thirty or so miles further south of Cody is Franc's Peak, named after Otto Franc who also brought a large herd into the Basin in 1879.² By the early 1880s, there were fifteen or twenty huge ranch operations in the Basin, running as many as 10,000 to 15,000 head of cattle. These were what I refer to as Charlie Russell times, when cattle was king. These ranches brought in a lot of cowboys, rough, tough young men. I recall a recent statement that crime could be pretty much contained if we could just figure out something to do with young men between sixteen and twenty-eight because they commit almost all of the crime. Even within this rowdy sub-group cowboys stood out because the lifestyle attracted the roughest and toughest of them all.

Of course, we have all seen cowboy violence exaggerated on television and in movies, but in truth, there was a great deal of violence in the old west. In 1881, Jim White, a buffalo hunter, was murdered on the western slope of the Big Horn Mountains.³ In 1884, in the town of Meeteetse, in front of a saloon, a man named McWallace shot Jim Smith. Smith's friends then followed McWallace down to Green River, Wyoming and killed him.⁴

1. LAWRENCE M. WOODS, WYOMING'S BIG HORN BASIN 1901, A LATE FRONTIER 73 (1997).

2. *Id.* at 86.

3. BOB EDGAR & JACK TURNELL, BRAND OF A LEGEND 37 (1978).

4. *Id.* at 50.

In 1884 a very small town was founded, just north of Meeteetse, which is thirty-five miles south of Cody. It was named Arland, after Victor Arland, a Frenchman, and the town was essentially his business. This enterprise met all the needs of the local cowboys, food, gambling, drink, and prostitution. Mr. Arland wrote a series of fascinating letters to a friend, including one dated March 12, 1888. This letter speaks volumes about the climate of violence in the Big Horn Basin at that time. Victor casually tells his friend that, "I was obliged to kill a man in order to avoid being killed myself. Immediately I sent for the Justice of the Peace, who came to the scene, investigated the whole affair, and convoked a jury which rendered a verdict of justifiable homicide."⁵

Arland went on to explain to his friend that, "I must tell you that twice I've been attacked by these 'bad men' and that it is only through my agility and cool-headedness that I escaped being assassinated."⁶ Arland told his friend of a second murderous event when a man named Thomas Brady, "a rascal of the worst sort, fired a revolver shot at me point blank because I hadn't wanted to lend him some money to gamble. Fortunately, I was quick enough to thrust his gun aside with my hand."⁷ Arland reported that the sleeve of his shirt was burned, his wrist singed, and that he had Mr. Brady arrested, although Brady then escaped from jail and was never tried.⁸

About eighteen months after writing this hair-raising letter, Mr. Arland's letter writing ceased forever. He was shot and killed while playing poker in a saloon in Red Lodge, Montana. No arrests were made, but it was suspected that a friend of the man Arland had killed earlier had done the deed.⁹

In 1887, two men were murdered while sleeping at a temporary camp where Gooseberry Creek flows into the Big Horn River. A year later, one of the rare women living in the Big Horn Basin, Edith Wilson, was apparently robbed and murdered.¹⁰ All of this mayhem occurred in an area that probably had less than 1500 people by 1890.¹¹

5. Letter from Victor Arland (Mar. 12, 1888) (original included in unpublished manuscript, on file with the Buffalo Bill Historical Center, Manuscript Collection No. 2, Victor Arland Collection, in the McCracken Research Library). See also DAVID JOHN WARDEN, *FROM BEAVER TO OIL* 210-23 (1973) (including the quoted text and citation to Arland's letters in general), and EDGAR & TURNELL, *supra* note 3.

6. *Id.*

7. *Id.*

8. *Id.*

9. EDGAR & TURNELL, *supra* note 3, at 67.

10. *Id.* at 63.

11. This is an estimate by the author based upon the number of people voting in Big

The Big Horn Basin east of the Big Horn River was part of Johnson County, and there was big trouble around Buffalo, the county seat located on the east side of the Big Horn Mountains. In 1891, two small ranchers were assassinated, a prelude to the 1892 Johnson County Invasion. The Invasion resulted in the deaths of two more small ranchers, as twenty-five large ranchers, accompanied by twenty-five Texas gunmen, made an imperious drive north from Casper. Their purpose was to seize the county and assassinate county officials and others they identified as rustlers. Although stopped by small ranchmen who rallied like militiamen to save their homes, the willful men leading the invasion proved impossible to convict, even though evidence of their guilt was overwhelming. Witnesses were intimidated and even kidnapped, and Johnson County went broke trying to prosecute the invaders.¹²

The invasion came about because of angry conflicts between big cattlemen and small cattlemen in Johnson County, and those conflicts did not just exist east of the Big Horn Mountains. West of the Big Horn Mountains, in the Big Horn Basin, the same fear and anger polluted relations between neighbors.

In September 1892, two men suspected of rustling, "Dab" Burch and Jack Bedford, were shot and killed near Bonanza by stock detectives, men hired by big cattlemen. All of the circumstances pointed to the killings being cold-blooded retribution. The law was a long way away, however. The county seat of the Big Horn Basin west of the Big Horn River was Lander (Fremont County). This was hardly closer to the Basin than the west side's county seat, Buffalo; and by the time a posse was formed to make some arrests, Otto Franc had plenty of time to spirit the men away to Montana.¹³

In the 1890s though, the Big Horn Basin began to change. Farmers began to come in. The bottomland in the Basin is far too dry to support farming from rainfall alone, but those high mountains around the Basin supply water in the form of streams rushing down from snow-capped peaks. Those streams carry large volumes of water that can be

Horn Basin precincts in the 1890 elections. Since the Basin was part of Johnson and Fremont Counties, there are no census numbers showing its population in 1890.

12. For a comprehensive treatment of the Johnson County War, consult HELEN HUNTINGTON SMITH, *THE WAR ON POWDER RIVER, THE HISTORY OF AN INSURRECTION* 246, 263-64, 281-82 (McGraw-Hill 1966).

13. Otto Franc, *Diary of Otto Franc* (Dec. 16, 1892 & Mar. 19-20 & 30, 1893) (unpublished diary) (on file with the Buffalo Bill Historical Center, Count Otto Franc von Liechtenstein Collection, MS 10 (1890-1894) in the McCracken Research Library). For more general treatment, see CHARLES LINDSAY, *THE BIG HORN BASIN* 131, 155, 156 (University of Nebraska Press 1932).

diverted and spread upon the land. Land seemingly unable to grow anything but a sparse crop of sagebrush becomes remarkably fertile with the simple addition of water.

New settlers came in along the larger streams of the Basin, dug irrigation ditches, and started growing alfalfa and grain. These new settlers may have run some livestock, but most were traditional farmers and did not perceive themselves as cowboys.

Still, even at the end of the 1890s, the great majority of the people in the Big Horn Basin would be considered what we now refer to as "ranchers," and "ranch hands." The principal occupation was still that of cowboy, and it was still a rough and tumble society.¹⁴

The law enforcement situation improved when, on January 1, 1897, a new county was put into operation, and a county seat was located in the Basin, a place with a courthouse and a sheriff. Big Horn County consisted of the entire Big Horn Basin, being those parts of Fremont and Johnson County that covered the Basin. The new county seat was in Basin City, about the center of the Big Horn Basin. This new county may have made law enforcement more efficient, but it did not seem to curtail the violence. For example, in 1897, a drunken cowboy, working for the Pitchfork Ranch, shot and killed the camp cook. He then shot at, and missed, another cowboy; the other cowboy then shot and killed him.¹⁵

In 1902, an event occurred that tested the mettle of the new county. In the spring of 1902, a man named Tom Gorman lived at a place a few miles north of Ten Sleep, on the dry fork of Brokenback Creek. He was a freighter and was gone from home a lot. He was married to a woman named Maggie, ten years his junior and, by all accounts, a very attractive woman. That was very much a complicating factor in what was to come. Tom's much younger brother, Jim, was living with

14. In the 1900 census of Big Horn County, showing a population of 4328 people, 72% of the people over the age of eighteen were men and 28% were women. The men were mostly unmarried (almost all of the women were married, except, primarily, for older women who were widows), and they were remarkably young. The average age of the whole population was 24.6 years, and this was a society with a low percentage of young children. Primarily, the citizens listed themselves as "farmers" and "farm laborers," never as "ranchers," and rarely as "cowboys." In today's parlance, though, the great majority of the young men of the Big Horn Basin would be referred to as cowboys. See, UNITED STATES CENSUS BUREAU, POPULATION SCHEDULES: 1900 CENSUS OF WYOMING, *microformed on* Microfilm HA, 721.5, 1900, Reel 1 (on file with the University of Wyoming Coe Library, Government Documents).

15. LINDSAY, *supra* note 13, at 130.

them then—he was about Maggie’s age. He had lived with them a couple of years earlier but was forced away by his brother, evidently because the older brother was bothered by the relationship between his wife and his brother.

The exact reasons are obscure and the subject of conflicting evidence, but Jim killed Tom, burying a hatchet in his head. For the next three weeks or so, neighbors and associates were told that Tom was away, freighting. Then, the authorities closed in, and Tom and Maggie fled toward Montana. They were captured before they got there, though, and both charged with first degree murder. Maggie then told the county attorney, however, that she had been forced to go along with Jim, and they allowed her to turn state’s evidence, by testifying against her husband.¹⁶

There was a trial in the fall of 1902, and the jury found Jim guilty of manslaughter. This meant that, by the nature of the jury verdict form, they had first found him not guilty of first and second degree murder. But then, Mr. Gorman’s attorneys made a motion for a new trial, and the prosecution did not contest it. A new trial was convened in the spring of 1903, and the defense insisted that their client could only be tried for manslaughter since he had been acquitted of first and second degree murder. They further argued that under the double jeopardy provision of the Fifth Amendment to the Constitution, Mr. Gorman could not be retried. The judge disagreed, saying that the motion for new trial represented a waiver of a double jeopardy claim, and he let the trial go forward on the charge of first degree murder. This time, Jim Gorman was convicted of first degree murder. Under Wyoming law in 1903, this meant an automatic death sentence.¹⁷

There was an appeal on double jeopardy grounds. I do not know whether the appeal would have been successful, and we will never know, because it was abruptly canceled; but in my opinion Jim Gorman had a legitimate question for the Supreme Court. The reason the appeal was negated was that a lynch mob made the whole question moot.

On July 19, 1903, a mob attacked the Big Horn County jail. They stormed it, killing a deputy sheriff, Jim Gorman, and another man also convicted of murder. The mob consisted of men from the Shell and Hyattville areas and was led by a Shell livestock man named George

16. *Guilty of Manslaughter*, WYOMING DERRICK, Nov. 6, 1902, at 1; *Big Horn County's Terrible Tragedy*, CHEYENNE DAILY LEADER, Nov. 10, 1902, at 3.

17. *Guilty of Foul Murder*, CHEYENNE DAILY LEADER, May 4, 1903, at 4; WYOMING REVISED STAT. § 4950 (1899).

Saban.¹⁸ After the attack, Maggie Gorman received a note telling her that if she did not leave the country what happened to Jim Gorman would happen to her. The general feeling was that Maggie was as guilty as Jim. Of course, she left. She was then working in a stage stop known as the Hole in the Wall, located at the junction of Fifteen Mile Creek and the Big Horn River. Her employer was a kind, older gentleman known as "Dad" Worland. Dad drove Maggie by buggy to Garland, then the nearest railhead, and she got on that train and disappeared into the mists of history.¹⁹

The authorities, in the meantime, wanted to do something about the lynching. (The consensus among newspapers in Wyoming was that while two murderers may have gotten what they deserved, the mob had gone too far when it shot down the deputy, a well-liked young man.) The Governor of Wyoming wrote a strong letter to the Sheriff of Big Horn County, saying he wanted the law enforced, but offering very little other assistance.

A grand jury was convened and indictments were handed down. The meetings of the grand jury were held in an atmosphere of intimidation (the local Basin paper reported the fears that the witnesses against the lynch mob would be lynched themselves), but the witnesses held for a while and indictments were returned. But, by the time of the trials (about three months later), their testimony had become so timid that by the end of presenting its evidence in the first trial, the prosecution had to dismiss not only this case, but also all of the pending cases against members of the lynch mob.²⁰ It was a complete triumph for hooliganism.

Even at the time of the Gorman case, there was another area of "extra-legal" activity that had become a big problem in the Big Horn Basin. At the time of the Johnson County Invasion, armed conflict over use of the range arose between big cattle ranchers and small cattle ranchers; but, by the beginning of the twentieth century, this conflict had evolved into one between cattlemen and sheepmen. It was a very big problem. Cowboys raided sheep camps all over the state of Wyoming,

18. *Eight More Indictments Against Big Horn Lynchers*, CHEYENNE DAILY LEADER, Oct. 29, 1903, at 1.

19. For an excellent presentation of the Gorman case, see LYLAS SKOVGAARD & CONNIE SKOVGAARD SKOETSCH, BASIN CITY 51-61 (TimberTrails 1996).

20. See Big Horn County District Court Case Files, 130-52 (Big Horn County District Court Case Files were sent to the Wyoming State Archives, Department of Commerce, Division of Parks and Cultural Resources, State Archives Record Management and Micrographic Services); 1 *The Journal of the Big Horn County District Court*, 627-29 (available at the Big Horn County Courthouse in Basin, Wyoming); and M. B. Rhodes, *All the World's a Stage*, BASIN REPUBLICAN RUSTLER, Apr. 4, 1940, at 1.

killing thousands and thousands of sheep, destroying property,²¹ and killing sheepherders. Six men had been killed in Wyoming in such raids by 1909, including the murder of Ben Minnick near Thermopolis in 1903. I mention this in particular because the Sheriff of Big Horn County was not present in the Basin on the night of the Gorman lynching. He had gone to Thermopolis to make an arrest relating to the Minnick murder and was held up in Thermopolis by a mob of cowboys resisting the arrest he did make. They need not have worried, however, there was never enough evidence developed to bring the arrested man to trial.²²

All of this came to a head in the early part of 1909. Two Ten Sleep men, one a former cattleman named Joe Emge and the other a long-time sheepman named Joe Allemand, went into partnership and bought a herd of 5000 sheep. Their intent was to drive the herd from Worland east to Ten Sleep, knowing, as they did, that they would thereby be crossing the deadline, a line established in 1897 by cattleman with the declaration that the land within the line was exclusively cattle country, and anyone who crossed the line with sheep would be killed.²³

They traveled across the barren country between Worland and Ten Sleep without incident, and they actually thought they would make it to safety when they camped on Spring Creek seven miles south of Ten Sleep the night of April 2, 1909. That night, though, seven cowboys and cattlemen attacked the camp. There were two camps on Spring Creek, one south and one north of the stream, and after this night they became known as the south wagon and the north wagon. At the south wagon two men were kidnapped and led away from the wagons, which were fired. At the north wagon, containing Joe Emge, Joe Allemand, and Joe Allemand's French nephew, Jules Lazier, something different was done. Two men, Herb Brink and George Saban (one of the leaders), just fired into the sheep wagon. Then Brink set fire to the wagon, and one of the three men, Joe Allemand, came out. Brink gunned him down, declaring that, "it's a hell of a time of night to come out with your hands up." For the next hour or so, sheep were killed and property burned, and then the cowboys rode off into the night. The wagons continued to burn through

21. This included, for instance, tying crucially valuable sheep dogs to wagons and burning the wagons and the dogs, throwing dynamite into sheep herds, and driving whole herds off of canyon rims.

22. *Gorman and Walters Shot*, LARAMIE BOOMERANG, July 21, 1903 at 1; *Shot to Death*, THERMOPOLIS RECORD, July 25, 1903, at 1; JOHN W. DAVIS, A VAST AMOUNT OF TROUBLE 14 (1993).

23. DAVIS, *supra* note 22, at 12 & 39.

the rest of the night, and the bodies of the two men in the north wagon were hideously burned.²⁴

When all of this was discovered, the authorities were summoned, of course, but the chances of solving the crime looked very bleak. In the history of the state of Wyoming there had never been a conviction of a cowboy for a sheep raid, and at first it seemed that the clues were very slim. But the pace of change was accelerating in Wyoming and in the Big Horn Basin more than the people knew at the time. A newly formed organization, the Wyoming Woolgrowers, was determined to stop sheep raids and contributed thousands of dollars to the Big Horn County prosecutor and to the county's chief range detective, a man named Joe LeFors. The Governor of Wyoming, one B. B. Brooks, who happened to be one of the leading sheepmen in the state, called for a grand jury and supported it.

The investigation went well, as the sheriff and Mr. LeFors established a solid body of evidence. First, one of the kidnapped sheepman, a young man named Bounce Helmer, admitted that he had identified one of the raiders. Then, before the grand jury, the employer of a couple of the raiders was forced to acknowledge conversations he had had with them. A lot of physical evidence was developed that corroborated these statements. After the grand jury returned seven indictments for murder, two of the raiders turned state's evidence.

But through it all, the raiders were not worried. George Saban, no doubt remembering what happened in 1903, thought the whole thing was a farce and was supremely confident he would never be convicted of anything. Cattle interests hired every lawyer in the Big Horn Basin to represent the men charged (except for the county attorney, Percy Metz, and Senator Simpson's grandfather, Will Simpson). One of the Basin City newspapers took up the cause of the cowboys and harshly and bitterly criticized every action of the prosecution. For that matter, the whole county was deeply divided, and the prosecution caused terrible conflicts; one witness committed suicide after testifying before the grand jury. At one point, apparently at the instance of the cattlemen, the Wyoming State Examiner called the county commissioners on the carpet for spending too much for the prosecution, but B. B. Brooks headed that off too. Shortly before the trial began, the county ran out of money. One of the Basin banks refused to provide credit to the county, and the *Big Horn*

24. Trial Testimony of Felix Alston, 4-5 in *State v. Brink*, Big Horn County District Court Case File 442 (a copy of this transcript can be found at the Wyoming Department of Commerce, Parks and Cultural Resources, Archives and Records, Management Section).

County Republican (the cattlemen's newspaper) again sharply criticized the prosecution for spending too much money. The Woolgrowers stepped in with more money, however. But then, also shortly before the trial, another threat arose in the form of armed cowboys descending on Basin City, intent on intimidation. Here again, B. B. Brooks helped—militiamen were called in and camped on the courthouse grounds.²⁵

When the trial date finally arrived the feeling was widespread that the prosecution would never be able to find a jury and, if they did, cattlemen on it would make sure no conviction would be had. But, when the trial started, a jury was quickly seated (it took less than a day), and it was a group of neutrals, with no cattlemen or sheepmen on the jury. The county had grown a great deal since 1900. Because of large irrigation projects, the largest segment of the population was now farmers, and it was primarily farmers who comprised the jury.²⁶

To make a long story short, the prosecution presented its first case against Herb Brink; it took only three days and, at the end of that time, the jury handed down a conviction of first degree murder against Brink. Of course, the defendants were stunned, especially George Saban. But the evidence was so compelling and the prosecution's position was so strong that all of the remaining defendants had to make plea bargains. Five of them were sent to the penitentiary.²⁷

The cattle interests were shocked, dismayed, and crushed. But the message of *State v. Brink* was clear. The forces of law and order were in control. Acts of vigilantism would result in severe consequences.

It stopped the killing. After this case, I know of only two small sheep raids in the State of Wyoming, and no people were hurt. There were no other lynchings in the Big Horn Basin. The date the jury came in with the conviction against Herb Brink was November 11, 1909, and so I assign this date as the last day of the frontier in the Basin. It was a very important day, the day the forces of law and order finally vanquished frontier justice in the Big Horn Basin.

25. DAVIS, *supra* note 22, at 164.

26. *Keyes Makes a Confession*, THERMOPOLIS RECORD, Nov. 6, 1909, at 1.

27. DAVIS, *supra* note 22, at 226-34.