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LOOTERS OF THE PUBLIC DOMAIN REVISITED:

THE 1903-1910 LAND FRAUD TRIALS

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Todd Peterson is a third-year law student at Northwestern School of Law, Lewis and Clark College, and is employed with the U. S. Attorney's office. He has prepared this article as part of a chapter in a history of the U. S. District Court for Oregon which our historical society is publishing. Mr. Peterson is collaborating with Jack G. Collins, a member of our board, in writing on the period from 1893 to 1927.

Between 1903 and 1910 the U. S. District Court for Oregon presided over the most far reaching and sensational series of trials in its history—the Oregon “land fraud” trials. Before they ended, an incumbent U.S. senator, a defrocked U.S. attorney, and a cast of other colorful characters had been convicted of bribery and conspiracy to defraud the government of its public lands.

Spurred by a tenacious special prosecutor and a special federal grand jury, which it was said would “crucify Christ,” the Oregon land fraud trials became the impetus to reform twentieth-century public land policy.

Setting the Stage

In 1891 Congress passed legislation authorizing the president to set apart and reserve public lands as public reservations. Carrying out the congressional mandate, the Harrison administration set aside 13,053,440 acres nationwide, and in September 1893 President Cleveland established the Cascade Range Forest Reserve—virtually cutting a continuous swath across Oregon.

In 1897, with conservation sentiment garnering more acceptance, Congress passed further legislation, the Forest Reserve Act, establishing additional timber

reservations on the national domain. This act further allowed bonafide settlers within the reserves to deed their land to the federal government. Landowners who pursued a “land swap” submitted affidavits to their local land offices, proving that they had settled the land, had lived on their claims prior to passage of the act, and had built dwellings and made improvements.

In 1900 a three-man Portland syndicate began undercutting this enlightened piece of legislation by preparing a series of fraudulent homestead claims in collusion with officials in several land offices in Oregon—principally in Roseburg, Eugene, and Oregon City. Heading the ring was Steven A. D. (S. A. D.) Puter, a lumber assessor; Franklin P. Mays, a former U.S. attorney in Portland and a state senator; and Horace G. McKinley, a minor timber speculator.

The “24-1” Deal

In October 1903 U.S. Attorney John H. Hall secured a string of indictments from a Portland federal grand jury, based on information from a federal investigation into practices of the U. S. Land Office in Oregon. This investigation was carried out by two Secret Service agents under the command of William J. Burns. Those charged were Puter, McKinley, Dan “Lookout” Tarpley (a local attorney practising in the reserves), and several others accused of colluding with Eugene land commissioner Marie Ware to prepare fraudulent homestead claims.

By bribing both settlers and land officials, the ring had obtained affidavits

and deeds for nonexistent settlers throughout Lane County in the newly created Cascade Forest Reserve (Township 24 south range 1 east of the Willamette Meridian). These fictitious entrymen or “strawmen” would hold the lands and—under the terms of the Act—exchange them later for more valuable lands, subsequently transferring them to the “syndicate.”

Prior to convening the grand jury, U. S. District Court Judge Charles B. Bellinger examined the fraudulent affidavits and summoned Ware to Portland. After the meeting, it was “mutually decided” she remove herself from office. Bellinger also removed three clerks from the Eugene office after it was disclosed that the syndicate had paid \$100 for each bogus claim filed in that office.

The court set the trial for December 14, and in the interim, following the recommendation of Attorney General Knox and Interior Secretary Ethan Allen Hitchcock (both of



A characteristic pose of Francis J. Heney

whom supervised the prosecution from Washington), Bellinger appointed a special assistant U.S. attorney to "assist" Hall in the "24-1".

The man appointed was Francis J. Heney of San Francisco, a shrewd, colorful, and tenacious lawyer who was considered one of the best in the nation and certainly the most formidable on public land law. Heney became, in the words of "S. A. D." Puter, a "veritable cyclone." He took charge of the prosecution and, suspecting Hall of selecting a weak case in hopes of an acquittal, executed a startling coup by substituting the "24-1" for another case—the famous "11-7," a much rawer deal. Before it was over, the "11-7" became the conduit that would expose the full extent of the fraud.

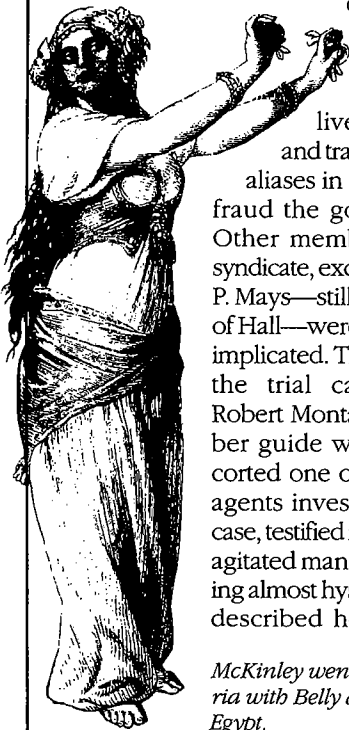
The "11-7" Trial

Involving essentially the same three-man syndicate as in the "24-1," the November 1904 "11-7" trial concerned homestead lands adjacent to the Marion Fork of the Santiam River. However, at Heney's request, Bellinger dropped Marie Ware from this indictment since she was not involved directly in the "11-7" transaction.

With a resonant voice and magnificent vocabulary, as reported daily in *The Oregonian*, Heney set to work. For several days he laid the groundwork for the conspiracy charge by establishing that Puter and Emma Watson, also charged as

one of the group's bogus entrymen, had lived together and traveled under aliases in order to defraud the government. Other members of the syndicate, except Franklin P. Mays—still a confidant of Hall—were then easily implicated. The climax of the trial came when Robert Montague, a timber guide who had escorted one of the Burns agents investigating the case, testified in a nervous, agitated manner, becoming almost hysterical as he described how he had

McKinley went to Manchuria with Belly dancer, Little Egypt.



become involved, tried to quit, and eventually been exposed.

Heney also attempted to subpoena Oregon's four-term popular senator, John H. Mitchell, to testify concerning his relation-



United States Senator John H. Mitchell

ship with the Washington land office, but Mitchell refused, implicitly asserting senatorial privilege.

The defendants presented no witnesses but were advised by celebrated handwriting expert Prof. F.J. Toland who, it was said, never failed to secure a verdict in favor of his clients.

In December 1904 the jury found the group guilty of conspiracy to defraud the government, but the court delayed sentencing in order to permit the defendants to testify in the trials expected to follow. In the interim, however, several members of the ring absconded. Puter went to Boston, where he escaped at gunpoint from the agent named Burns, only later to be recaptured in California attempting to meet with Heney. McKinley fled to Chicago, married Marie Ware of the "24-1" case, and went to Manchuria accompanied, according to reports of the day, by the notorious belly dancer "Little Egypt."

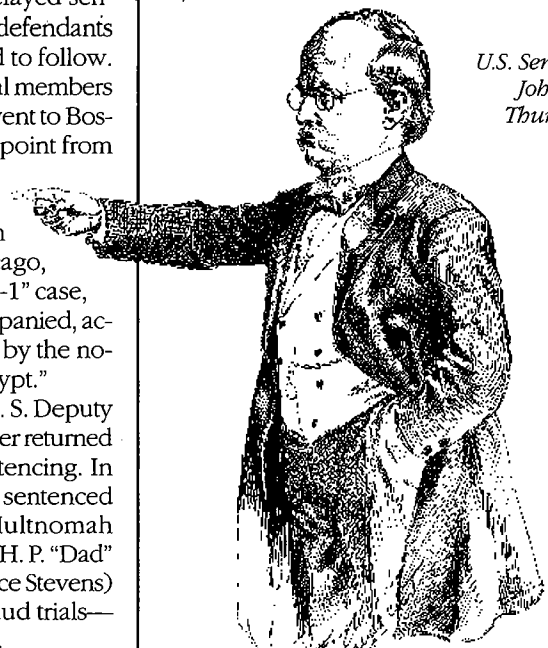
After a 30,000-mile chase, U. S. Deputy Marshall J. F. "Jack" Kerrigan later returned McKinley to Portland for sentencing. In July 1906, the court fined and sentenced Puter to two years in the Multnomah County jail where, guarded by H. P. "Dad" Hunter, he worked (with Horace Stevens) on his account of the land fraud trials—*Looters of the Public Domain.*

United States v. Mitchell

The "11-7" trial did not mark the end of the land fraud trials. In reality, it was a harbinger of greater trials to come. Styling himself the "land fraud king," Puter testified before an awe-struck grand jury in October 1904 on the full extent of the fraud. He described how Oregon Senator John H. Mitchell had accepted two \$1,000 bills to "influence" Congressman Binger Herman, then Commissioner of the General Land Office in Washington, to process the fraudulent claims in the "11-7" deal. This time Mitchell wasted no time and returned to Portland to testify before the grand jury.

A storm of sympathy swept Oregon supporting Oregon's senior senator after he was indicted along with Herman. Mitchell—certainly the most colorful and controversial figure in Oregon politics—denounced the prosecution, asserting it was based on revenge and politics. Senator Fulton called the indictment "a foul charge—and as false as foul." The Oregon Legislature also acted. In February 1905 it gave Mitchell a vote of confidence.

In April 1905 Mitchell tried to set the indictment aside, alleging that Heney had vindictively charged him and had improperly swayed the grand jury. Bellinger dismissed these claims, stating that it was natural for a defendant's feelings and interest to create an opinion that the prosecution had acted unfavorably. Bellinger reasoned, in this his final opinion, that Heney may have "greatly influenced" the grand



U.S. Senator John M. Thurston



U.S. District Judge Charles E. Wolverton, who sentenced Puter and McKinley

jury, but something tangible beyond conclusions and opinions would be required before the court would interfere with the indictment.

The grand jury and Heney did not stop after snaring Mitchell and Herman. Between December 1904 and April 1905 the grand jury poured out indictments. Oregon was in a near state of siege as indictments, accusations, and countercharges were played out. Franklin P. Mays, an early participant in the original syndicate, was charged along with dismissed U.S. Attorney Hall.

The Mitchell trial was nothing short of spectacular. In a hot and cramped courtroom, Judge John J. DeHaven of San Francisco realized the case was unprecedented. Portland's major political and social movers were daily spectators. Bellinger died a month earlier, and DeHaven from the district court in San Francisco came to preside.

With the assistance of a brilliant young future U. S. attorney, William C. Bristol, Heney quickly discredited a 1901 letter from Mitchell to the General Land Office, a letter that at first appeared to exculpate the senator. By showing that the watermark on the letter was different from that used by the senator's law office in 1901, Heney and Bristol proved that the letter was actually drawn and signed in 1904. Mitchell's attorney, ex-United States Senator John M. Thurston of Nebraska, then switched tactics, stating that Mitchell did receive money but was unaware of its source—like "manna in the wilderness". Finally in July 1905 after deliberating nearly eight hours, the jury found the senator guilty as charged.

Mitchell, shocked at the verdict, broke down in court and became, according to reports, ". . . old, broken in body and mind." The court sentenced him to six months in jail and imposed a \$1,000 fine. Mitchell became a pariah, barred from office on the order of the court, never seeming to accept the verdict and stating once to his secretary, "All I ever got was some little checks." Mitchell appealed to the Supreme Court with a legitimate argument that the sentence, a misdemeanor, was illegal because Article 1 section 6 of the Constitution permitted interfering with a senator's duties only when charged with a felony. Mitchell would never see the inside of a jail cell, and the Supreme Court denied review after he died, following a tooth extraction in December 1905.

The land fraud trials continued insatiably through 1910. Certainly the most bitter, the Blue Mountain Forest Reserve conspiracy, was a scheme to fraudulently obtain title to 150,000 acres of vacant "School Lands" in central and eastern Oregon through the state land office in Salem. In February 1905 Heney indicted several state senators—George Sorenson, Willard Jones, and former U.S. Attorney Franklin P. Mays—for influencing Mitchell and Herman to temporarily withdraw lands from the Reserve when the introduction of railroads into eastern Oregon caused land values to skyrocket. Mays was convicted in 1906 and sentenced to four months imprisonment and ordered to pay a fine of \$10,000.

John H. Hall, removed earlier from office by Attorney General Moody, was indicted in February 1904. Later, Heney charged Hall, Mays, and Binger Herman with conspiracy to defraud the government of its public lands by instituting a *civil*, as opposed to a criminal, prosecution against Butte Creek Land, Livestock, and Lumber Company of Fossil concerning fraudulent homestead claims and illegal fencing of reserve lands in Wheeler County. After his trial in 1909, the court sentenced Hall to 60 days in the Multnomah County Jail and imposed a fine of \$1,000.

President Taft would later pardon Mays and Hall after a federal investigation into the trials revealed that agent William J. Burns, who closely worked with Heney, received advance lists of the veniemen and improperly pressured and cajoled members selected for the jury.

Due to a holdout juror, Congressman Binger Herman, ex-land commissioner in



Binger Hermann, ex-commissioner of the General Land Office

Washington, was never convicted for his role in passing information between Senator Mitchell and the Puter ring. When Judge Charles E. Wolverton, Bellinger's successor on the bench, questioned the jurors on the possibility of reaching a verdict, juror Selkirk, as described in the reports of the day, passed a note stating that he had a "conscientious conviction" in the case. *United States v. Binger Herman* was dismissed and Oregonians later reelected Herman to Congress.

In retrospect, the Oregon land fraud trials exposed the ugliness of Oregon politics and the inherent weakness of nineteenth-century public land law. They also signaled change. Those convicted, Mitchell, Hall, and the others were victims of their times—unable to comprehend a basic notion of the public trust. The trials publicized this conflict between new and old attitudes on a national scale. The trials also gave rise to a new environmental ethic. President Theodore Roosevelt and Gifford Pinchot capitalized on this sentiment and moved conservation onto the American agenda.

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