

to appear and testify and be cross-examined in an admiralty proceeding in the Supreme Court before the 1875 statute barring questions of fact to be presented to the Court, there seems to be no record that this was ever done. Nor does there seem to be a record of an admiralty appeal to the circuit court of appeals or to any of the U.S. courts of appeal, including the Ninth Circuit, in which a witness was allowed to testify in open court on any factual matter.

Once the door is opened for any vive-voce testimony in any appellate tribunal, the situation becomes rife with imponderables. What if some objection is made to the proffered testimony? And if so, which tribunal will rule on the admissibility of the evidence? Will there be an appeal from the ruling? No doubt these pitfalls were envisioned by the appellate judges and justices, which explains their chariness with regard to the admission of new or different allegations of fact.

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THE FRONTIER SHERIFF'S ROLE IN LAW AND ORDER

BY LARRY D. BALL

As pioneer Americans established communities on the frontier, instability and turbulence were often a part of their daily life. The need for a law-enforcement system thus became a matter of immediate concern. Within this system, the county sheriff soon occupied a prominent place.

Although the shrievalty was an English creation, settlers transplanted it to North America in the late 1600s. In the following century the Americans adopted the office with little change, and subsequently introduced it into the new territories west of the Appalachian Mountains. Even in the land seized from Mexico, whose inhabitants had different laws, the Americans imposed their own sheriffs, although the Hispanics continued to use the title of *alguacil* for the position.

The experiences of the county lawmen in the vast territories of New Mexico and Arizona illustrate the duties that sheriffs undertook elsewhere on the frontier, as well as the obstacles they encountered. Whatever the difficulties besetting the sheriffs—whether geography, limitations within the law-enforcement system, or the size and scope of those outside the law—they severely tested the office itself in the prolonged tenure of the two territories, from 1846 to 1912.¹

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¹ William Alfred Morris, *The Medieval English Sheriff to 1300* (1927; reprint, New York, 1968) [hereafter cited as Morris, *Medieval Sheriff*]; *Encyclopedia of the Social Sciences*, s.v. "sheriff"; Cyrus Harrelld Karraker, *The Seventeenth-Century Sheriff: A Comparative Study of the Sheriff in England and the Chesapeake Colonies, 1607-1689* (Chapel Hill, 1930); Julius Goebel, Jr., and T. Raymond Naughton, *Law Enforcement in Colonial New York: A Study in Criminal Procedure, 1664-1776* (Montclair, 1970); Robert M. Ireland, *The County Courts in Antebellum Kentucky* (Lexington, 1972); Marc Simmons, *Spanish Government in New Mexico* (Albuquerque, 1968) 160-99 [hereafter cited as Simmons, *Spanish Government*]; *The Kearny Code [Laws of the Territory of New Mexico]*, ed. Nolie Mumeey (1846; reprint, Denver, 1970) 74-75, 80-81 [hereafter cited as *Kearny Code*].

Most units of government in the territories included a law enforcer—a constable in the precinct, a town marshal in the municipality, a sheriff in the county, and a U.S. marshal in the federal sphere. Other officials, both public and private, were present—Indian police, various federal agents, and private detectives—but were not a part of the central network of lawmen. The sheriff's role as an officer of the county was influential, even critical, at a time when the county represented "the most significant government for the largest number of people," as one historian put it. The inhabitants of a county looked to it for many essential services and, in turn, tended to demonstrate fervent loyalty.²

As chief executive officer of his county in the New Mexico and Arizona territories, the sheriff served the process of the county-probate and justice-of-the-peace courts. He kept the jail and preserved order. When his superiors, the county supervisors, wanted help, they turned first to the sheriff. George Curry, a veteran sheriff in New Mexico in the 1890s, recalled the passion with which men sought the post—which they considered "the most important county office"—and the extensive electioneering in which they engaged to win it.³

The sheriffs of New Mexico and Arizona answered to another master, the territorial district courts. The territories were divided into three districts, each of which held spring and fall sessions in the counties within its jurisdiction. The presiding judge, a presidential appointee and an outsider, rode long, dangerous circuits to each county seat. These tribunals were arranged to hear both territorial and U.S. cases, whereas two separate systems were maintained in the states. (Congress assumed that the territories had no need of such an elaborate judiciary.) Sheriffs served the territorial processes, while U.S. marshals served the federal ones. However, since sheriffs and their deputies frequently held commissions as deputy U.S. marshals, they often also served the federal documents. The *Revised Statutes of Arizona* defined "process" as "all writs, warrants, summons, and orders of courts of justice or judicial officers." These fell into two broad categories of offenses, criminal (against humans) and civil (often against property). Sheriffs initiated the preparations for each session of court by serving jury venires (both grand and petit) issued by the

² Frank Richard Prassel, *The Western Peace Officer: A Legacy of Law and Order* (Norman, 1972); Larry D. Ball, *The United States Marshals of New Mexico and Arizona Territories, 1846-1912* (Albuquerque, 1978) [hereafter cited as Ball, *United States Marshals*]; Philip D. Jordan, *Frontier Law and Order: Ten Essays* (Lincoln, 1970); Malcolm J. Rohrbough, *The Trans-Appalachian Frontier: People, Societies, and Institutions, 1775-1850* (New York, 1978) 47-49.

³ George Curry, *George Curry, 1861-1947: An Autobiography*, ed. H.B. Hening (Albuquerque, 1958) 69.



George C. Ruffner, sheriff of Yavapai County, Arizona, 1897. Ruffner was the first Arizona elected to the Cowboy Hall of Fame. (Arizona Historical Society)

court clerk. Since the supreme court sat in the territorial capital, the sheriff of the host county served its needs.⁴

The sheriff and his deputies served most documents by horse-back and buggy, a time-consuming and perilous task in the great, sprawling counties of New Mexico and Arizona. In December 1883, a Tucson journalist encountered a weary deputy sheriff who had just returned from a five-hundred-mile journey in Pima County. The exhausted process server was so saddle sore that

⁴ Earl S. Pomeroy, *The Territories and the United States, 1861-1890: Studies in Colonial Administration* (Philadelphia, 1947) 51-61 [hereafter cited as Pomeroy, *Territories and the United States*]; Aurora Hunt, *Kirby Benedict: Frontier Federal Judge* (Glendale, Calif., 1961) esp. 49-68 [hereafter cited as Hunt, *Kirby Benedict*]; *The General Laws of New Mexico; Including all the Unrepealed Laws from the Promulgation of the 'Kearny Code' in 1846, to the End of the Legislative Session of 1880. With Supplement, Including the Session of 1882*, comp. L. Bradford Prince (Albany, 1882); *Revised Statutes of Arizona* (Prescott, 1887) 142.

"he now takes his meals standing," said the newspaperman. The sheriff was permitted to mail process to recipients outside his county, either directly or through other lawmen. The telegraph might also be used in emergencies. Private citizens could sometimes serve a civil process, thereby avoiding payment of the sheriff's fee. Occasionally the sheriff employed the mails within his bailiwick. Nabor Pacheco, the sheriff of Pima County in Arizona, used this method in 1907 to arrest a murder suspect in a far-western precinct. Rather than make the long journey, he mailed a warrant and special deputy's commission to an acquaintance in the area. Failure to make timely delivery of court papers was a punishable offense, as the chief law officer of Cochise County, Arizona, learned in November 1882. When he neglected to serve a subpoena for a witness who lived only two and one-half miles from Tombstone, the district judge scolded him publicly and fined him \$5 for neglect of duty.⁵

The sheriff and his staff supported the court in other ways, including maintaining the building and grounds and providing supplies for the courtroom. The sheriff also proclaimed the session open and patrolled each sitting. Frontier trials could be hazardous. During one especially tense session in Las Vegas, New Mexico, in the 1880s, the sheriff reportedly collected forty-two revolvers from spectators and members of the bar. On another occasion, at a murder trial in Phoenix, Arizona, the widow of the murdered man suddenly sprang from the audience and thrust a cocked revolver against the defendant's chest. Fortunately the hammer of the weapon became entangled in her scarf, giving the sheriff and his deputies time to disarm her. These police duties extended to the protection of the jury from outside influences—an almost impossible task, given the incommensurable nature of early courthouses. One longtime deputy sheriff in New Mexico declared that the public did not see all that transpired during sessions. Many trials in frontier times, he asserted, "involved more law enforcement than that on the court's books."⁶

The sheriff's management of the county jail was equally necessary to the justice system in New Mexico and Arizona. The jail held not only local short-term prisoners, but others en route to longer sentences. It also housed prisoners sentenced to death, and sheriffs were the hangmen in both territories. (The profession-

⁵ *Arizona Weekly Star*, December 27, 1883; *Arizona Citizen*, [September ?] 1907, reprinted in Joseph Miller, ed., *The Arizona Rangers* (New York, 1972) 163; *Tombstone Epitaph*, November 25, 1882.

⁶ Arie W. Poldervaart, *Black-Robed Justice: A History of Justice in New Mexico from the American Occupation in 1846 until Statehood in 1912* (Santa Fe, 1948) 126; *Arizona Daily Gazette*, August 10, 1892; John Britt Montgomery, Biographical Files, Arizona Historical Society, Tucson; Dee R. Harkey, *Mean As Hell* (Albuquerque, 1948) 125 [hereafter cited as Harkey, *Mean As Hell*].

al executioner, dressed in black and traveling from gallows to gallows, is apparently a fabrication.)⁷

Since the preceding Mexican regime had maintained few prisons, it was up to the newly formed American county governments to build new ones. Many of them were poorly constructed, unsanitary, and primitive. Jailers' wages were paltry, and of all the law officials on the frontier jailers were perhaps the least reliable. County funding was seldom adequate. When Santa Fe County failed to provide the sheriff with resources to support prisoners in 1852, the governor authorized him to free all the prisoners on the condition that they leave the territory. While this bizarre case was exceptional, there were other embarrassments. Jail breaks plagued the New Mexico and Arizona sheriffs throughout the territorial era. Some were especially disturbing, as when Billy the Kid escaped from the Lincoln County Jail in 1881, murdering two deputy sheriffs in the process.⁸

Political opponents used problems at the local lockup to discredit the incumbent sheriff, and shrieval elections sometimes turned upon such scandals. Formal investigations of jailbreaks were not uncommon. When four prisoners overpowered the nightwatchman of the Pima County Jail in Tucson on New Year's night in 1875, the supervisors found that the guard had routinely disobeyed security rules and that the day guard was often absent from duty and gambling in the local saloon. (Sheriff William S. Oury was cavalier about the incident. Informed of the breakout, he reportedly replied, "Well, damn it, let them go. It will save the county a lot of trouble.") In two instances (in Las Vegas, New Mexico, and Solomonville, Arizona), investigators found that the guards had neglected to make their scheduled rounds and were asleep when the prisoners escaped. All the escapees were either accused murderers or convicted men awaiting hanging.⁹

Besides permitting breakouts, the insecure jails undermined the justice system by encouraging mobs to remove inmates and administer extralegal rites. Gov. Lionel Sheldon addressed this problem in his annual message to the New Mexico Legislature in 1884. He lamented that many of the sheriffs' lockups remained "small, filthy and insecure" and that "escapes are almost as easily

⁷ *Kearny Code*, supra note 1 at 80-81; *Acts of the Legislative Assembly of the Territory of New Mexico*, 1866, 129-33; Hunt, Kirby Benedict, supra note 4 at 58.

⁸ The primary jail under the Spanish regime, the *carcel real*, was in Santa Fe (Simmons, *Spanish Government*, supra note 1 at 164); Ball, *United States Marshals*, supra note 2 at 26; Robert M. Utley, *Billy the Kid: A Short and Violent Life* (Lincoln, 1969) 176-85; Donna Rees, *The History, Development and Present Administration of the Mohave County Jail* (n.p., 1974).

⁹ Pima County Board of Supervisors, January 11, 1875, vol. 36, Pima County Original Documents, Special Collections Department, University of Arizona, Tucson; *Daily New Mexican*, November 13, 1880.

made as from a paper bandbox." Referring to a recent lynching in Socorro, he deplored the refusal of the county supervisors to provide Sheriff Pedro Simpson with extra guards. "There can be no certainty that criminals will be tried and punished," he concluded, "when there is so much insecurity."¹⁰

THE HAZARDS OF PEACE

Of the county sheriff's many responsibilities, peacekeeping presented the most difficulties and dangers, and these increased dramatically in the post-Civil War era. With the settlement of Native Americans on reservations and the appearance of the railroads, the huge grazing and mining lands of Arizona and New Mexico were open to exploitation. Although most of the new arrivals were law abiding, many of those who followed in the wake of the railroads and the cattle and land companies harbored animosities inspired by the recent Texan revolution and the Civil War.¹¹

This new wave of outsiders descended on the local inhabitants—Hispanos, Anglos, and Native Americans—so quickly that ethnic, racial, and religious tensions often provoked serious incidents. In his study of frontier violence, Robert V. Hine found that the "competitive" and "dynamic" society "placed a premium on physical toughness," but at the same time was "permeated with fear and doubt." In this highly charged atmosphere, the sheriffs were required to respond to a variety of disturbances: individual and family disputes, saloon brawls, cowboys "treeing the town," blood feuds, roving bands of desperadoes, and many confrontations over land-grant titles and other property disputes.¹²

As the larger economic institutions grew in power, public opposition began to coalesce in the Populist movement. Various violent corollaries to Populism arose in the form of labor agitation, White Capping, and other semisecret societies, as well as in individual acts of defiance, such as train and express robberies.¹³

¹⁰ *Message of Lionel A. Sheldon, Governor of New Mexico, Delivered to the Twenty-sixth Legislative Assembly, February 19, 1884* (Santa Fe, 1884) 3-4.

¹¹ See Calvin Horn, *New Mexico's Troubled Years: The Story of the Early Territorial Governors* (Albuquerque, 1963); Jay J. Wagoner, *Arizona Territory, 1863-1912: A Political History* (Tucson, 1970) 117.

¹² Robert V. Hine, *The American West: An Interpretive History*, 2d ed. (Boston, 1984) 333-34. Many works treat specific episodes of violence in the New Mexico and Arizona territories, but a survey is lacking. For a broader discussion, see Ball, *United States Marshals*, supra note 2.

¹³ Robert W. Larson, *New Mexico Populism: A Study of Radical Protest in a Western Territory* (Boulder, 1974); Richard Patterson, *Train Robbery: The Birth, Flowering, and Decline of a Notorious Western Enterprise* (Boulder, 1981) 133-45.

A New Mexico law characterized the sheriff as "conservator of the peace" and declared that he "shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors." The inherent dangers of such duties were enormously increased on the frontier. The practice of carrying deadly weapons and commonly held notions of the right of self-defense were dear to westerners, many of whom would certainly have agreed with William Blackstone's assertion that "self-defense . . . is justly called the primary law of nature." New Mexico's governor, Edmund Ross, was moved to lament this "loose interpretation of the law" but could do nothing about it.¹⁴

Sheriffs were often forced to kill or wound desperate men, and in turn experienced casualties themselves. Although few were killed in the line of duty, their deputies suffered heavily, since they performed much of the field work. Yet a handful of sheriffs, not their subordinates, are best remembered for their exploits against the lawless. Pat Garrett, Perry Owens, and John Slaughter became legends in popular Wild West literature, although they constituted only a fraction of the more than five hundred men in the Arizona and New Mexico shrievalties. This largely anonymous majority performed thousands of dangerous deeds that ensured the frontier public a measure of repose.¹⁵

When the scale of public disturbances overcame the resources of the sheriffs and their deputies, the chief lawmen were empowered to call upon the posse comitatus, which consisted of all able-bodied males in the county. Service in the posse was an obligation of citizenship, and the law prescribed a fine for refusal. However, county lawmen were reluctant to use this threat, since they might alienate potential supporters at the next election. To assess the effectiveness of these frontier posses is difficult. However, the death toll among posse men in Arizona and New Mexico reveals a widespread reliance on their services. In one five-year period,

¹⁴ *Kearny Code*, supra note 1 at 106; William Blackstone, *Commentaries on the Laws of England*, ed. and abr. J.W. Ehrlich (San Carlos, Calif., 1959) 450; Ross to Augustus Garland, June 3, 1887, Governors' Papers, New Mexico State Records Center and Archives, Santa Fe.

¹⁵ See William A. Keleher, *Violence in Lincoln County, 1869-1881: A New Mexico Item* (Albuquerque, 1957) [hereafter cited as Keleher, *Violence in Lincoln County*]; John P. Wilson, *Merchants, Guns and Money: The Story of Lincoln County and Its Wars* (Santa Fe, 1987) [hereafter cited as Wilson, *Merchants, Guns and Money*]; Philip J. Rasch, *New Mexico Historical Review* 39:257-73; Paula Mitchell Marks, *And Die in the West: The Story of the O.K. Corral Gunfight* (New York, 1989) [hereafter cited as Marks, *And Die in the West*]; Jim Berry Pearson, *The Maxwell Land Grant* (Norman, 1961); Donald R. Lavash, *Sheriff William Brady: Tragic Hero of the Lincoln County War* (Santa Fe, 1986); Leon C. Metz, *Pat Garrett: The Story of a Western Lawman* (Norman, 1974); Don Dederer, *A Little War of Our Own: The Pleasant Valley Feud Revisited* (Flagstaff, 1988) 139-54; Allen A. Erwin, *The Southwest of John H. Slaughter, 1841-1922* (Glendale, Calif., 1965) 213-54.

1896-1901, at least twelve citizens were killed in this line of duty. Most citizens were simply not equipped to deal with hardened criminals. Sometimes posse men were politically disloyal or even outlaws themselves. In February 1878, known outlaws joined a Lincoln County sheriff's posse and murdered a rancher, in an incident that helped set off the feud known as the Lincoln County War. Within weeks partisans of both sides had obtained the support of equally partisan lawmen and fought out the vendetta under color of the law.¹⁶

When people prevented sheriffs from serving process, the latter were constrained to ask for military assistance. This could come from the U.S. Army or the territorial militia. When feudists murdered Sheriff William Brady in Lincoln County in 1878 and began to vie for control of his office, Gov. Lew Wallace made federal troops available. (The bluecoats were necessary since the new sheriff could not rely upon the civilian population.) In the early years of the two territories, the federal government had recognized the army as a part of (and not separate from) the civilian posse comitatus, thereby permitting sheriffs and other law officers to requisition troops directly from the nearest post. However, Congress withdrew this privilege in 1878.¹⁷

Sheriffs could also turn to territorial militiamen, although neither Arizona nor New Mexico could afford to maintain such costly forces fully. Gov. Sheldon was most successful in this endeavor in the 1880s. In the face of public accusations that he was imposing a form of martial law and intruding on the civilian posse comitatus, he persisted with militia aid to the sheriffs. In a general order in September 1881, he instructed militia commanders to "furnish such posse comitatti . . . , as such sheriffs may require in their respective counties, to preserve the peace, guard jails and prisoners and make arrests."¹⁸

¹⁶For some discussion of the posse comitatus in England, see Morris, *Medieval Sheriff*, supra note 1 at 222, 226-27, 273, n.271; William Blackstone, *Commentaries on the Laws of England*, ed. William Hardcastle Brown, 4 vols. (1769; reprint, St. Paul, 1897) 109, 556, 623, 632, became a standard reference work; *General Laws of New Mexico*, art. 1005, ch. 85; *The Compiled Laws of the Territory of Arizona, Including the Howell Code and the Session Laws from 1864 to 1871, Inclusive*, comp. Coles Bashford (Albany, 1871) ch. 3, sec. 13, ch. 11, secs. 36, 38; Larry D. Ball, *Quarterly of the National Outlaw Lawman Association*, 6:2-10, 22; Wilson, *Merchants, Guns and Money*, supra note 15 at 79-82.

¹⁷Robert M. Utley, *High Noon in Lincoln: Violence on the Western Frontier* (Albuquerque, 1987) 118-36; General Orders No. 1, September 1, 1881, quoted in Larry D. Ball, "Militia Posses: The Territorial Militia in Civil Law Enforcement in New Mexico Territory, 1877-1883," *New Mexico Historical Review* 55:47-69 [hereafter cited as Ball, "Militia Posses"]; Pomeroy, *Territories and the United States*, supra note 4 at 13.

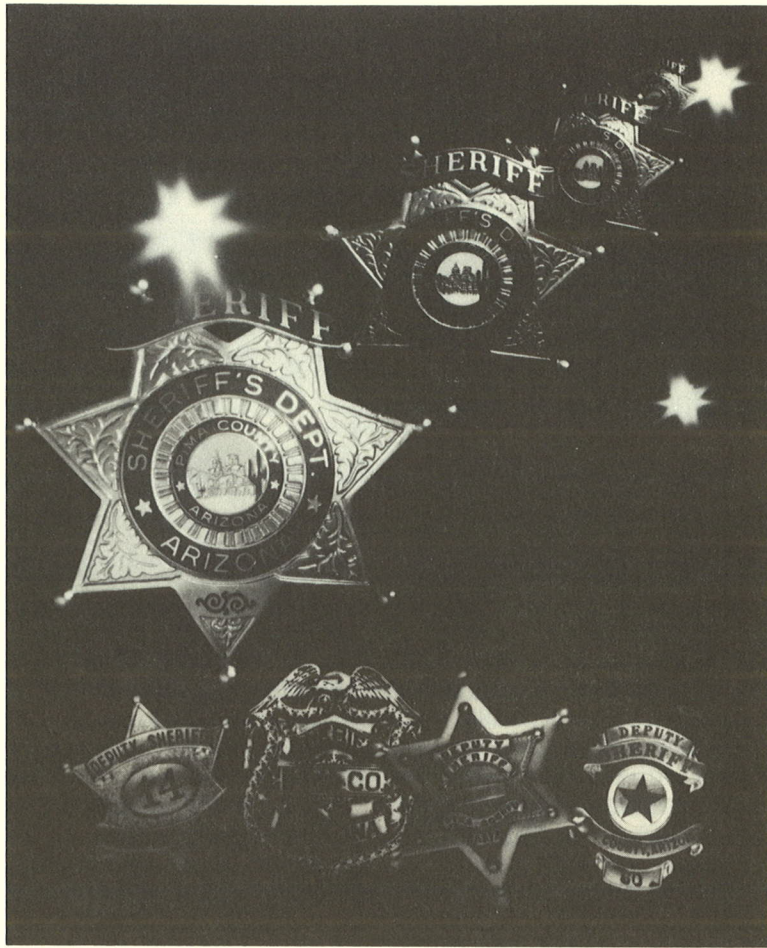
¹⁸Ball, "Militia Posses," supra note 17 at 47-69.



Pima County Sheriff Lyman Wakfield in his office, Pima County Courthouse, Arizona, ca. 1897 (Arizona Historical Society)

A QUESTION OF MONEY

Other problems hindered sheriffs in performing their duties. The fee system, which reimbursed the sheriff and his deputies for services rendered only, restricted many to part-time service. These fees were woefully insufficient for expenses incurred in the long-distance pursuit of outlaws or in the suppression of large-scale disruptions. The standard payment for serving an arrest warrant was \$1 (later \$2) plus mileage, whether the wanted man surrendered peacefully or put up violent resistance and fled hundreds of miles. As one knowing observer remarked during the New Mexico governor's campaign against stock thieves in 1883, "Neither county nor territory allows mileage [fees], or pay[s] enough [to encourage a sheriff] to go over a few miles from his residence to serve a writ of any kind." Nor did the sheriff's superiors, the county supervisors, readily provide him with emergency funds. He had to obtain approval before incurring any extraordinary expense, or spend his own funds and run the risk of disavowal by the supervisors. In the meantime, the delay permitted the fugitive time to flee, perhaps to Mexico, where formal



Pima County sheriffs' badges (Arizona Historical Society)

requisitions were costly and often failed. Governors also lacked the necessary funds with which to assist their sheriffs. When Frederick Tritle assumed the governorship of Arizona during disorders in Tombstone in 1882, he received the niggardly emergency fund of \$500. He had requested \$150,000.¹⁹

The sheriffs of the territories had to divide their time (and that of their staffs) between law enforcement and many other duties.

¹⁹ *Kearny Code*, supra note 1 at 74-76; *Revised Statutes of Arizona* (Prescott, 1887) [hereafter cited as *Revised Statutes of Arizona*] Title 28, ch. 1, 347-48, provided \$2 for service of a writ in criminal cases, \$1.50 in civil cases; *Silver City Enterprise*, May 4, 1883; *Weekly Epitaph*, June 17, 1882. The issue of April 24, 1882, reported that Tritle had asked Congress for \$150,000, but received nothing.

By far the most demanding was assessing and collecting taxes, ex-officio tasks that sheriffs had carried out for centuries. The frontier reinforced the practice of combining several offices in one person, so as to ensure the officer a living wage; unfortunately, the sheriffs enjoyed the more lucrative income from tax collecting and often neglected peace keeping. In addition, they were distracted by many odd jobs, including census taking, supervising roads and public health, and conducting public auctions. They were the handymen of their counties.²⁰

As the post of sheriff was an elective one, any citizen with the minimal property qualification could serve. This opened the door to amateurism. Moreover, the geographic isolation of many counties, and domination of some by one ethnic or religious group, could promote extreme parochialism, tending to discourage sheriffs from cooperating with their counterparts and with other territorial officials elsewhere. Such localism came through clearly when New Mexico's governor, Lew Wallace, asked the sheriffs—since he could not command them—to gather in Santa Fe in summer 1879. The purpose was to study ways of concerting action against the widespread lawlessness. However, not a single officer—not even the sheriff in Santa Fe, the governor's place of residence—put in an appearance. As a local journalist remarked, "Not a mother's son came near. . . . Like foolish virgins," he continued, the county lawmen "sent in their excuses" and ignored the governor's call. Such a gathering would have constituted the first county law-enforcement conference in the territory. A similar lack of cooperative spirit prevailed among sheriffs in Arizona.²¹

The system of territorial government itself was not designed to help the sheriffs, being a mixture that embodied the contrary elements of republicanism and arbitrary authority. Republicanism called for the division of power among many elected, rotating positions, each of which was largely autonomous. While the more mature eastern states could support such an approach, the younger and often volatile territories were less able to do so. At the same time, the governor, the district judges, and other officers were appointed by the president. In turn, the governors (who were

²⁰ *Revised Statutes of Arizona*, supra note 19 at Title 13, ch. 3, 138; Harkey, *Mean As Hell*, supra note 6 at 72-73; J. George Hilzinger, *Treasure Land: A Story* (Tucson, 1897).

²¹ Wallace to Sheriff Juan M. Garcia, Socorro County, June 5, 1879, Box 8, Lew Wallace Papers, Indiana State Historical Society, Indianapolis (copies were sent to the sheriffs of the counties of Dona Ana, Colfax, Grant, San Miguel, and Valencia). Unidentified newspaper clipping, [August?] 1879, Wallace Scrapbook No. 6, Box 32, idem.

usually politicians from the East) filled lesser positions, including that of the first sheriff of each new county. These territorial executives also had the power to remove sheriffs with cause and to make temporary replacements. During the emergencies of the late 1870s and early 1880s, governors Samuel Axtell of New Mexico and John C. Fremont of Arizona aroused much public anger and contributed to an increase of violence with their arbitrary shrieval appointments and removals.²²

A GROWING PROFESSIONALISM

By the time of statehood in 1912, a measure of law and order nevertheless prevailed in the New Mexico and Arizona territories. For several reasons the sheriffs had contributed significantly to this achievement. However thinly spread and clumsy in response they were, they functioned continuously and maintained some pressure on the criminal element. One asset was the increase in the number of counties, and hence in the number of sheriffs. In 1870 Arizona and New Mexico had contained, between them, only eighteen counties, making each sheriff, on average, responsible for one hundred and thirty-one thousand square miles of terrain. By 1912 the number of counties in the two territories combined had reached forty-two, with each sheriff's task reduced to fifty-six thousand square miles.²³

The job was still daunting. However, sheriffs were beginning to demonstrate some professionalism. In 1884 some of them formed the New Mexico Sheriffs' Association, and in the next decade their Arizona counterparts followed suit. While these movements were partly inspired by a desire to influence or restrain regulatory-minded legislators, they also fostered communication and an exchange of new law-enforcement techniques among them. Sheriffs in the more heavily populated counties in both territories were divested of their tax-collecting duties, and could thus devote more time to law enforcement. New territory-wide police forces—the Arizona Rangers and the New Mexico Mounted Police—were introduced just after the turn of the century. Besides helping the sheriffs, they enabled the governors to monitor the performance of county lawmen. The ensuing rivalry may have spurred

²² See Pomeroy, *Territories and the United States*, supra note 4 at 16-17; Norman Cleaveland, comp., *An Introduction to the Colfax County War, 1875-78* (n.p., ca. 1975); and Keleher, *Violence in Lincoln County*, supra note 15 at 124-27; Marks, *And Die in the West*, supra note 15 at 118-20.

²³ Henry P. Walker and Don Bufkin, comps., *Historical Atlas of Arizona* (Norman, 1979) maps 29-33; Warren A. Beck and Ynez D. Haase, comps., *Historical Atlas of New Mexico* (Norman, 1969) maps 41-50.

the sheriffs to greater efforts and made them more cognizant of modern techniques.²⁴

The growth of sophisticated means of communication, especially the telegraph and railroads, brought about prompter responses to violations of the law. In 1883, Gov. Sheldon successfully mustered the sheriffs of counties along the Santa Fe Railroad to prevent the escape of James Whitney, a wealthy easterner who had killed Manuel Otero, an influential Hispano, in a land-grant dispute. San Miguel County Sheriff Santiago Baca made the arrest by rail.²⁵

While New Mexicans and Arizonans could by no means claim that their lands were free from lawlessness, by 1912 both new states were far more law abiding than when the settlers had arrived more than six decades earlier. The sheriffs could claim some of the credit for this achievement.

²⁴ *Albuquerque Daily Democrat*, February 16, 1884; *Weekly New Mexican*, July 30, August 5, 12, 1885; *Arizona Republican*, February 22, 1899, October 2, 1902, March 9, 1905; Bill O'Neal, *The Arizona Rangers* (Austin, 1987); Chuck Hornung, *The Thin Gray Line—The New Mexico Mounted Police* (Fort Worth, 1971). See 35-36 for the mounted police's charges against an errant sheriff of Torrance County.

²⁵ Erna Fergusson, *Murder and Mystery in New Mexico* (Albuquerque, 1948) 33-48; the *Weekly New Mexican*, August 23, September 27, 1883, reports the cooperation of sheriffs with Sheldon.