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Article Summary: The test cases of Charles E Solis and John Gordon severely crippled the Black Hills exclusion policy. Judicial rulings that interlopers could be removed but not punished encouraged fortune seekers, making the task of keeping white men out of the Black Hills virtually impossible. The Army relaxed its vigilance during the summer of 1875 as miners by the hundreds entered the Black Hills gold fields, continuing to weaken the Fort Laramie Treaty of 1868 which held that the mineral rich region of western Dakota Territory belonged to the Sioux Indians.

Cataloging Information:

Names: George A Custer, Charles Collins, John Gordon, Eaf Witcher, James A Sawyers, Ed Henn, D T Gilman, Fred T Evans, Andrew W Hubbard, H D Booge, J L Follet, C E Hodges, George Weare, John H Charles, H L Warner, H A Hamilton, Silas Garber, L P Bradley, William T Sherman, Philip H Sheridan, Edward O C Ord, O D Greene, Ben Andrews, Peter Shannon, Fergus Walker, Anson Mills, William A Tisdale, William N Tisdale, C N Rockefeller, J W Brockett, Pinckney Lugenbeel, Charles E Solis, Lee Goddhard, R G Armstrong, William Pound, Lewis Congleton, Bartlett Tripp, Solomon L Spink, Oliver Shannon, Granville G Bennett, L J Garland, William Belknap, A Collins, Ulysses S Grant, Alfred Terry, Silas Garber, T O Dore, R E Johnson, George S Gallup, Frank H Edmunds, W H Cox, John Miller, E E Lewis, Ed Henn, J W Brockett, Ben Sanborn, W W King, W S Bowen, George Crook, A W Hubbard, Judge Lake, George D Ruggles, H I Chapman, A F Frey, Anson Mills, George H Roberts, C A Baldwin, Elmer S Dundy, William Daily, James Neville.

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Photographs / Images: General George Crook; General William T Sherman, author of General Order Number 2; Fort Randall, Nebraska Territory sketch 1858; Camp Sheridan, Spotted Tail Agency (1877-1878); Deadwood, South Dakota, 1876.



General George Crook

THE BLACK HILLS EXCLUSION POLICY: JUDICIAL CHALLENGES

By Grant K. Anderson

The news electrified the nation. General George A. Custer on a reconnaissance of the Black Hills had discovered gold. For more than a decade rumors abounded that there was gold in the region. In August, 1874, a financially depressed nation welcomed information that the rumors were substantiated. It would be two years, however, before the nation's economy benefited from Black Hills gold.

That mineral rich region of western Dakota Territory belonged to the Sioux Indians according to the Fort Laramie Treaty of 1868. On the heels of Custer's glowing reports came news the military intended to honor the agreement. Prospectors were forbidden to probe the Black Hills until a new treaty was concluded. Nonetheless, anxious miners were quick to challenge the right of the military to exclude them from this newest El Dorado.

In Sioux City, Iowa, a hotbed of Black Hills fever, Charles Collins, editor of the *Weekly Times*, had for several years been promoting schemes to develop the Black Hills. Custer's confirmation of gold produced a new flurry of activity. Collins began organizing a large expedition to the gold fields. These plans were dashed, however, on September 3, 1874, when a military edict forbade such endeavors.¹ Undaunted, Collins organized and dispatched a smaller party to the Black Hills in October. Led by John Gordon, the party managed to slip past the military, achieve its goal, and spent the winter of 1874-1875 prospecting along French Creek.

In spite of adverse weather the party gathered about \$40 in gold dust during January. Encouraged by their findings, John Gordon and Eaf Witcher decided to return to Sioux City for supplies and additional manpower. They left the Black Hills on February 9, 1875, taking the gold with them. Gordon and Witcher managed to again evade detection and arrived at Yankton three weeks later. The adventurers were greeted by their sponsor, Charles Collins, who escorted them the rest of the way to Sioux City via the Dakota Southern Railroad.²

Gordon and Witcher were hailed as conquering heroes. They confirmed gold did exist in paying quantities. Letters the two delivered from those who remained in the Hills estimated that a properly equipped miner could gather \$100 worth of gold dust per day. The party was secure, Gordon reported, and eager for spring so they could continue their search for wealth. He announced his intention to return to the Hills in about a month. The adventurer was confident he could make the trip by mule train in twenty days.³

News of the startling announcement spread like wildfire. Telegraphic dispatches to such metropolitan dailies as the *New York Times* announced the wealth of the Black Hills.⁴ Mass meetings were held throughout the country, expeditions were planned and organized, and a new wave of Black Hills fever gripped the nation following John Gordon's triumphant return. Residents of Sioux City hoped to capitalize on this epidemic. Businessmen were quick to perceive the profits to be made outfitting prospectors and transporting supplies and equipment. The northwest Iowa community thought of itself as the only logical point of departure for the Black Hills. A vigorous propaganda campaign was launched lauding the city's strategic advantages.⁵

A March 5 meeting of businessmen and financiers created the Sioux City and Black Hills Transportation Company. James A. Sawyers was elected president; Ed Henn, secretary; D. T. Gilman, treasurer; and Fred T. Evans, superintendent. A board of directors, Andrew W. Hubbard, H. D. Booge, J. L. Follet, C. E. Hodges, George Weare, John H. Charles, H. L. Warner and H. A. Hamilton, was also selected. Ten thousand dollars was pledged to secure necessary supplies. The transportation company offered to underwrite John Gordon's return trip to the Black Hills in return for his services as a guide. Gordon, who had

had a falling out with his former supporter, Charles Collins, willingly accepted the offer.⁶

Plans called for trains to be dispatched beginning April 5, 1875, and at regular intervals thereafter. Fares of \$25 to \$75 would be charged immigrants.⁷ Since the route to be used lay entirely within Nebraska, no military interference was anticipated. Trains would move straight west from Sioux City until they reached the Niobrara River about 75 miles from its mouth, thence along the valley into northwestern Nebraska. The western terminal was to be platted at Gordon City in what is now Sheridan County, some 50 miles southeast of the Black Hills. (Promoters had at first planned to name the county Garber—after Nebraska Governor Silas Garber.) Gordon City would become the county seat as well as a stopping-off point for Black Hills-bound travelers.⁸

The idea of such expeditions was viewed with disdain by the United States government. In early March Colonel L. P. Bradley, commandant of Fort Laramie, was instructed to remove the remaining Gordon party members from the Black Hills.⁹ General William T. Sherman, commander of the Army, explained the government's position in an interview with the *St. Louis Democrat*. He pointed to the provisions of the Laramie Treaty of 1868 and explained the Black Hills belonged "to the Sioux . . . and these men have no more right to invade this territory than they have to make a descent upon the property of you or me, and carry off what they find of value." In regards to the Sioux City and Black Hills Transportation Company expedition, the general said the Army would "Shut them out. Drive them off," and warned that prospectors "will forfeit such equipment as they may have, and will receive little sympathy from the troops when compelled to find their way back to the starting points."¹⁰

Sherman incorporated these ideas into General Order No. 2 issued March 17, 1875. He informed General Philip H. Sheridan, commander of the Division of the Missouri, that no expedition would be allowed into the Black Hills until a new treaty was negotiated. Sheridan passed this directive on to General Alfred Terry, Department of Dakota, and Edward O. C. Ord, Department of the Platte:

Should the companies now organizing at Sioux City and Yankton trespass on the Sioux Indian Reservation, you are hereby ordered to use the force at your command to burn the

wagon trains, destroy the outfits, and arrest the leaders, confining them at the nearest military post to the Indian country.¹¹

It was apparent the military meant to prevent development of the Black Hills. Ratification of a new agreement might produce changes, but for the time being western Dakota Territory belonged to the Sioux. To inform would-be violators of the regulations, General O. D. Greene, acting adjutant of the Department of Dakota, ordered it published in area newspapers.¹²

The military edict went almost unheeded in northwestern Iowa. John Gordon, hailed as the "Grant of the Black Hills party" by the *Sheldon Republic*, drew up plans for his return trip. The adventurer was quick to point out that his route lay wholly outside the great Sioux Reservation. The Sioux City and Black Hills Transportation Company caravan would travel west through Nebraska until reaching Gordon City. From here prospectors would be free to enter the Black Hills or continue on to the Big Horn Mountains in Wyoming.¹³

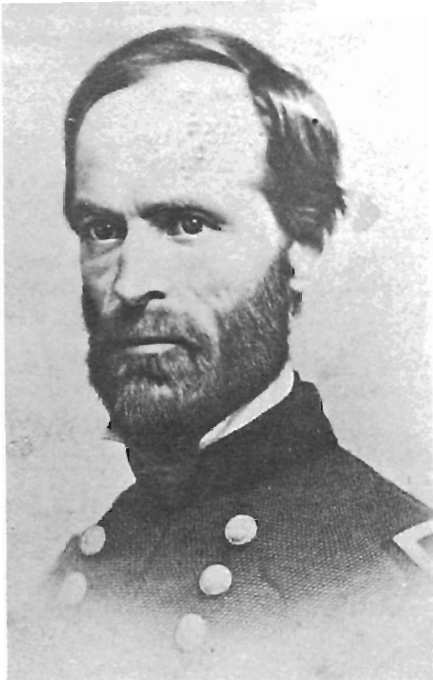
In a letter to George Marshall, editor of the *Council Bluffs Globe*, John Gordon expressed surprise and regret at General Order No. 2:

It is the first time in the history of Nations that a government did not encourage the development of its mineral resources. . . . But I am satisfied that people will go, and when they once start, it will be like an avalanche, sweeping all before it. They will start from all directions at once, and will simply take possession of that country, and hold it too.

The chance of sudden riches made them willing to risk arrest and destruction of their property by the Army.¹⁴

It was weather rather than fear of reprisal that hampered Gordon's progress. An unusually wet spring forced postponement of the April 5 departure date. However, the rival Sioux City and Black Hills Mining Company did dispatch its train under Ben Andrews. Anxious to be among the first in the gold fields, Gordon finally moved his 30 wagons westward on April 13, 1875.¹⁵

Little was heard from either of the Sioux City-based parties as they struggled westward. However, area journals indicated a confrontation lay ahead: Chief Justice Peter Shannon of the U.S. District Court in Yankton, mentioned the filibustering expeditions as he charged a grand jury in early April. He reminded jurors that the Black Hills were within court



*General William T. Sherman,
author of General Order No. 2.*

jurisdiction and argued that treaty stipulations must be enforced. The treaty, Shannon observed "must be observed with the same solemnity and should be as strictly carried out as if made with a strong and powerful nation."¹⁶ A column in the *Springfield (Dakota) Times* reported five companies of infantry and 25 mounted men departed Fort Randall intent on enforcing Sheridan's orders by turning parties back.¹⁷

The Randall column, commanded by Captain Fergus Walker, captured its first filibustering expedition on May 6. Ben Andrews and his Mining Company train were intercepted near the second crossing of the White River between Gordon and the Hills. General Order No. 2 was invoked but not fully carried out. Instead of burning the wagons and destroying the train, Captain Walker placed the entire outfit under military arrest. Although protesting vigorously, the Andrews party reversed its steps and under a strong guard moved toward Fort Randall, Dakota, on the Missouri River west of Yankton.¹⁸

Walker and the remainder of his force stayed in the field seeking interlopers. Scouts informed him the transportation company train was farther south along Sawyer's Road. Now in command of fewer than 30 men, Walker pushed ahead to pursue a force at least five times larger than his own.

The Gordon-Evans party was overtaken May 12 on the south bank of the Niobrara River near Reunion Creek. The miners were partially disarmed and persuaded to give up the idea of going to the Black Hills. The point of interception was about 80

miles east of Wounded Knee Creek and about 300 miles west of Sioux City. On May 15 Captain Walker sent this report to his commanding officer at Camp Sheridan:

My scouts informed me that the other party [Gordon's], numbered 150 persons, well armed, with a train of 28 wagons, was south of me on the Sawyer trail, proceeding in the direction of the Black Hills, with the intention of entering them. Immediately pursued and overtook them at Re-Union Creek, Neb. and succeeded in bringing them to this point.¹⁹

Satisfied he had captured all expeditions now in the field, Captain Walker accompanied this party on its way back to Fort Randall.

On the morning of May 14, Walker was informed the gold seekers would go no further. If they could not continue to the Hills, the Transportation Company decided their current location would be a good site for Gordon City. They argued that their rolling stock was worn out and unable to continue. To demonstrate their opposition, Gordon's party "removed the bars from the quarter parts of their wagons" and refused to budge. In addition, they reasoned that the military had no legal right to detain them. Out numbered, Captain Walker agreed they could remain where they were—16 miles below the mouth of Antelope Creek. All he requested was their written promise not to go to the Black Hills until permitted to do so by the government. Transportation Company officials readily agreed. Captain Walker went into camp nearby to keep the fortune seekers under observation. He was now in the Department of the Platte, far from Fort Randall, and unsure of what to do. Should the miners decide to move on toward the Hills, his small force would be unable to stop them. On May 15 Walker dispatched a courier to nearby Camp Sheridan, Nebraska, requesting reinforcements and additional orders.²⁰

On the evening of May 20, Walker's command was augmented by 60 cavalrymen under Captain Anson Mills, 3rd Cavalry, and a gatling gun detachment. In counsel Walker argued "that the men by their unhandsome conduct toward his command had elected themselves as subjects for the most rigid execution of General Order No. 2." Mills concurred in this decision to "handle the party without gloves," to make the transportation company train an example for other filibustering expeditions.²¹ On assuming command, Mills proposed to surround the miners, train the gatling gun on them, and surprise them at dawn. The

fortune seekers would then be enrolled and their leaders arrested. Both Mills and Walker were certain John Gordon was in the party, but this fact had not been substantiated. Once the miners were enrolled, all property would be collected and set to the torch. "In absence of any Judicial Judgement in the matter," Mills determined to convene a board of three officers to oversee the destruction—Captain William A. Tisdale, 1st Infantry Regiment, Lt. C. N. Rockefeller, 9th Infantry Regiment, and Captain Walker.²²

The strategy worked smoothly the morning of May 21, 1875. Major J. W. Brockett, who had represented himself as the miners' leader, brought John Gordon forward. Gordon agreed to parade his party—76 men, one boy, and one woman, Major Brockett's wife. As soon as all were enrolled the military proceeded against the miners' property. Six wagons and enough rations for 12 days were set apart and turned over to Major Walker. These were to sustain the party on its march to Fort Randall. All mining equipment, unnecessary clothing, and six wagons were heaped together and burned. In addition 28 rifles and shotguns and a small quantity of whiskey were set ablaze. Ammunition and blasting powder were thrown into the Niobrara River. In his official report Mills commended "the perfect discipline displayed" and remarked that "in the hurried destruction of so much valuable and desirable property, nothing was appropriated." He estimated that, all told, property valued at between \$2,000 and \$3,000 was destroyed.²³

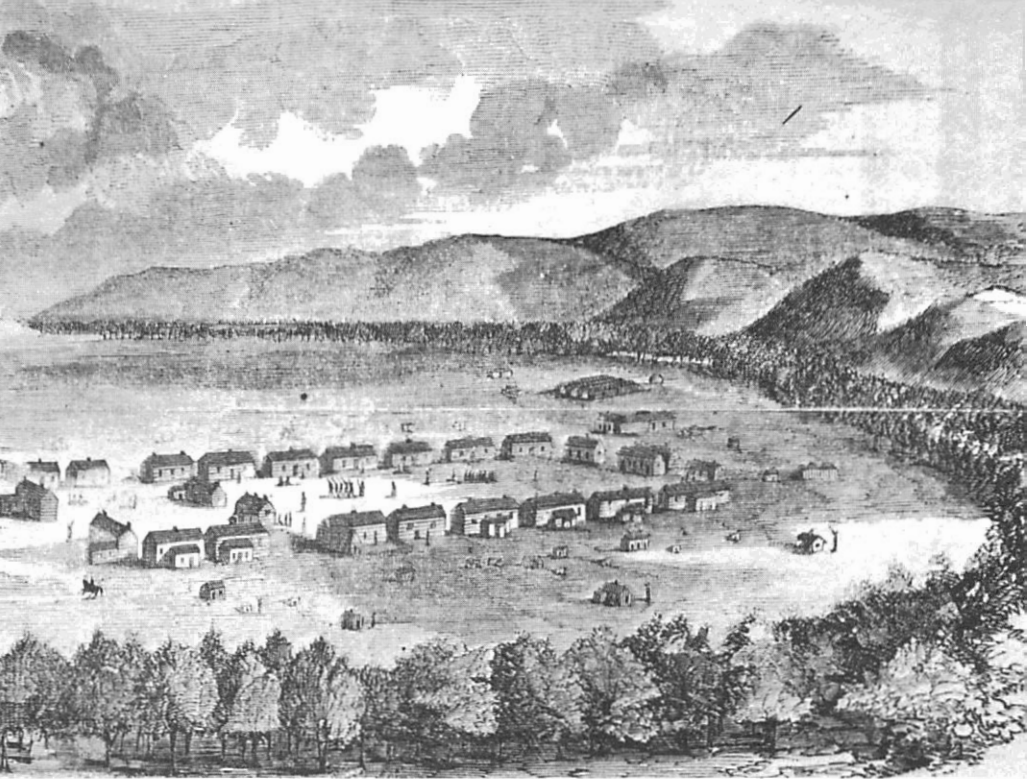
Their objective "to so cripple the party as to render it impossible for them to further trifle with the orders of Captain Walker or commit further trespass" was accomplished by mid-morning. Captain Walker departed for Fort Randall with the Sioux City and Black Hills Transportation Company's remaining six wagons. Captain Mills, in accordance with General Order No. 2, placed John Gordon under arrest and transferred him to Camp Sheridan to await orders from General Sheridan.²⁴

On May 18 Sheridan telegraphed the commandant at Fort Randall regarding members of the first party captured. Colonel Pinckney Lugenbeel was directed to release all of the Andrews party upon receipt of their written pledge not to reenter the reservation until permitted to do so. All property was to be returned to those who signed the parole. Several members

hesitated, but eventually all but two, Charles E. Solis and Lee Goddhard, consented. The two dissidents were confined to the Fort Randall guardhouse.²⁵ Solis, from St. Clair, Michigan, refused parole on the grounds the military had no right to require such a document. He demanded due process in the matter and threatened to sue the government for damages and illegal confinement. Colonel Lugenbeel consented and transported Solis in the custody of Lieutenant R. G. Armstrong to Yankton, the territorial capital. There the prisoner was turned over to the U.S. marshal until the case could be heard.²⁶

An arraignment was held before U.S. Commissioner Lewis Congleton May 24. U.S. Attorney William Pound charged the defendant with violating Sections 2134 and 5440 of the Revised Statutes. The prosecutor pointed out Section 2134 required every "foreigner" who entered Indian territory to have a passport from a governmental official—failure to comply should result in a \$1,000 fine. In Pound's interpretation the term "foreigner" applied to all white men caught upon Indian land without the required passport. The prosecutor also held Solis had violated Section 5440, which stated—"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner . . . all parties to such conspiracy shall be liable to a penalty of not less than \$1,000 and not more than \$10,000 and to imprisonment not more than two years." The section applied, he argued, as Solis had conspired to violate General Order No. 2. Lieutenant Armstrong was the only prosecution witness called. Under oath he simply related the date and location of Solis' arrest.²⁷

The defendant retained Bartlett Tripp, Solomon L. Spink, and Oliver Shannon as counsel. Solis reiterated his claim the military had no right to require a parole. Defense attorneys took exception to Pound's interpretation of the term "foreigner," arguing it was much too technical.²⁸ Commissioner Congleton realized the significance of the case before him. This was the first time anyone had legally challenged the Black Hills exclusion policy. Thus, an important precedent would be set. Due to the ramifications that could arise, Congleton ordered Charles E. Solis bound over to U.S. District Court, which also met at Yankton. Bail was set at \$200. The defendant, unable to meet this, was returned to jail to await trial.²⁹



Above, Fort Randall, Nebraska Territory. Sketch from Frank Leslie's Illustrated Newspaper, July 3, 1858. Below, an 1877 or 1878 view of Camp Sheridan, Spotted Tail Agency.



As it unfolded, the case was closely watched by area journalists. Readers of Yankton's *Press and Dakotian* were informed "the offense of Mr. Solis is not that he was on the reservation, because that is no punishable offense under the common acceptance of the statute, but that he refused to promise not to go again upon the reservation."³⁰ The *Sioux City Daily Journal* commented, "If the final decision should be that the intercourse laws have not been violated, people will be asking parolled captives why they turned back." These journals and the *Dakota Republican* of Vermillion ran articles examining the exclusion policy.³¹

Defense Counsel Spink secured a writ of habeas corpus to determine the legality of holding Charles E. Solis. Arguments were heard in District Court before Judge Peter Shannon on May 26, 1875. Due to the significance of the case, Shannon agreed to share the bench with Judge Granville G. Bennett of Vermillion. Prosecutor William Pound, in the words of an observer, "delivered an excellent argument on his side of the question. It was his desire to make this a test case for his guidance in future sections, and he spared no labor to attain that end."³² The proceedings consumed an entire day and were witnessed by a gallery of officers from Fort Randall. Judge Shannon then took the case under advisement. In the meantime Pound wired U.S. Attorney General Edwards Pierrepont regarding the case and asked for his opinion.³³

Judge Shannon based his findings on the attorney general's reply. Pierrepont informed Pound, "Section 2134 does not apply to citizens of the United States. Section 5440 does not apply, as no statute makes a breach of the provisions of the Sioux treaty an offense against the United States." Judge Shannon therefore ordered that all charges be dropped and that Solis be released from custody on May 29.³⁴ The verdict was regarded as a major victory in efforts to open the Black Hills. Adventurers in Sioux City and Yankton were certain the case would end, or at least weaken, the government's exclusion policy. Solis contemplated bringing charges against the military for false arrest and ill treatment but did not pursue such a course. The Solis case, once a major news item, was quickly abandoned in favor of fresh developments regarding the execution of General Order No. 2.

Sioux City first learned of the arrest of the Gordon party on Reunion Creek about a week before the conclusion of the Solis

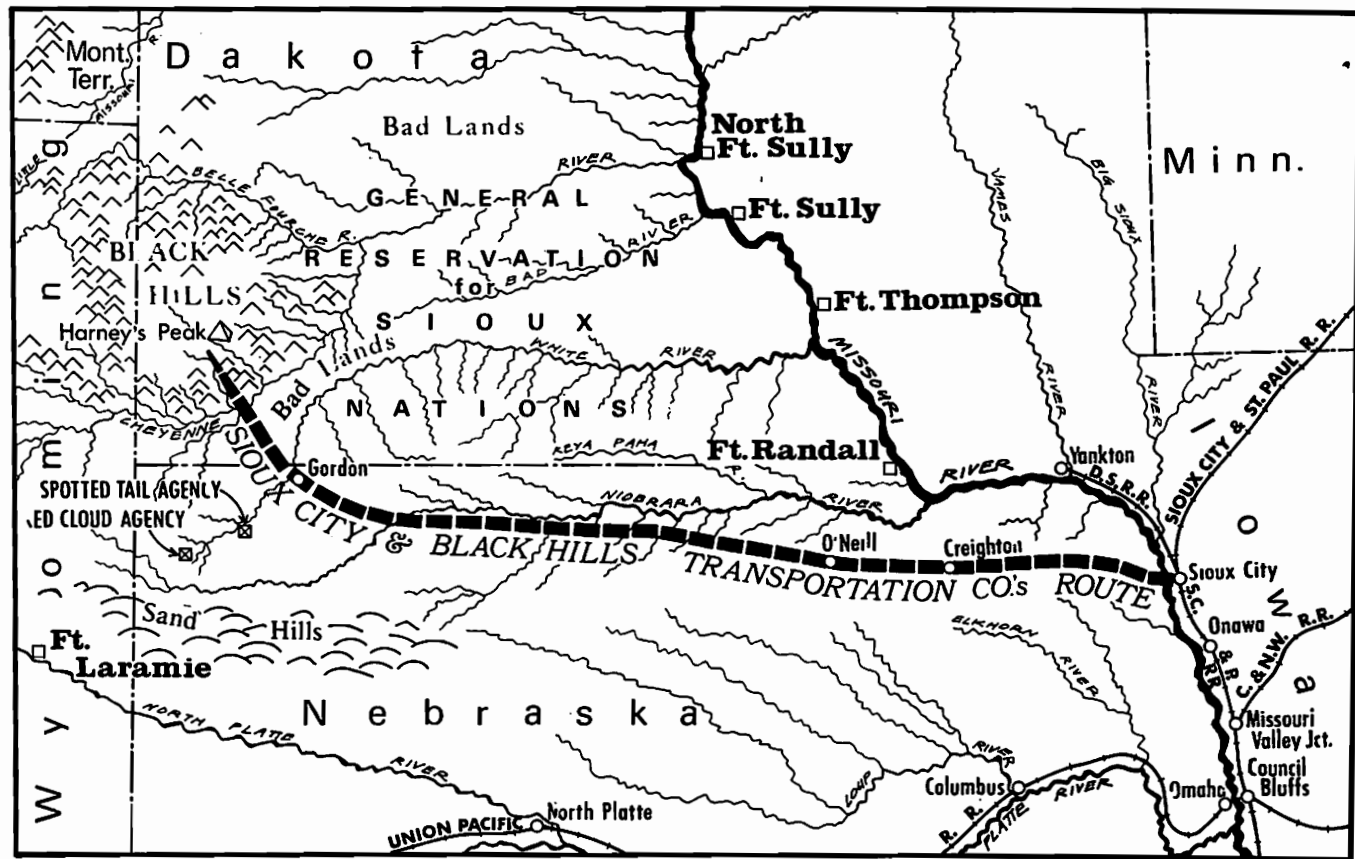
case. On May 22 L. J. Garland, a member of the train who managed to escape, informed Transportation Company officials of developments.³⁵ They immediately dispatched an attorney to Fort Randall to determine "whether or not the troops went outside of their instructions in arresting a peaceful and law abiding party on the public domain of the State of Nebraska." A telegram was sent to Secretary of War William Belknap asking if the arrest was legal and at the same time demanding unconditional release of the party.³⁶

About a week later another Gordon party member, A. Collins, reached Sioux City. The DeSoto, Iowa, native brought even more disturbing news. A hurried meeting of transportation company officers was called in Judge Hubbard's office. Collins, according to the *Daily Journal*, graphically related what happened on Antelope Creek on May 21:

O, it was a glorious sight, and one rarely witnessed in this free land of ours. The morning sun flashed brilliant from the gay trappings of the troopers; the gatling stood stern and threatening; the soldiers ran hither and thither thrusting their hands into coats and valises, hunting for infernal machines or something else; the subordinate officers picked their teeth after a repast which didn't cost them a cent; the noble son of Mars, the gallant Walker, who had planned and carried out the brilliant campaign, stalked up the crimson glare of a fire fed to ferocity by the flour and bacon of pioneers, his soul soaring as high as his waistband in this hour of renown for the army of the United States, of which he shines, in the opinion of Major Walker, the brightest and most conspicuous ornament, and if Sheridan is not removed and he placed in his stead it will be because the Republic is ungrateful.³⁷

The story Collins told shocked the gathering. To intercept and turn back the Gordon party was one thing; looting and destruction of private property quite another. The Sioux City businessmen filed another protest with the secretary of war, this time also contacting President Ulysses S. Grant. A letter condemning the military conduct was sent to General Alfred Terry, commander of the Department of Dakota. Transportation Company Superintendent Evans left for Omaha to confer with Governor Silas Garber, Senator Hitchcock, and other state officials. Because the Gordon party was destroyed in Nebraska, Evans reasoned state officials had a vested interest in the matter.³⁸

Meanwhile, the remnant of the Gordon party staggered into Fort Randall. They had marched the 250 miles from Antelope Creek to the post in nine days. The fortune seekers told a story of hardship and suffering on the trail. T. O. Dore, Fort Randall correspondent for the *Yankton Daily Press and Dakotian*,



Sioux City and Black Hills Transportation Company route. The map, redrawn from an indistinct reverse-plate illustration (white lettering on a black background), appeared in the Sioux City Daily Journal, May 19, 1875, 4.

noted the party's outward appearance bore out such statements. He informed his editor, "the feelings against Captain Walker seem to be very bitter, as all unite in saying that he used his authority with an unnecessary severity." These accusations were similar to those made when A. Collins returned to Sioux City.³⁹

General Terry, departmental commander, ordered the charges investigated, and Colonel Lugenbeel, commander of Fort Randall, established a military tribunal for that purpose. Captains R. E. Johnson and George S. Gallup and Second Lieutenant Frank H. Edmunds formed the board of inquiry. The three spent June 1 gathering testimony from some 25 captured miners. In response to questions about looting, the miners gave confusing and often conflicting testimony. Several stated they had not lost any property nor had they seen the soldiers steal anything. A handful answered they had articles stolen but were not sure who the culprits were. Others, such as W. H. Cox, Ed Henn, and John Miller, accused the soldiers of confiscating tobacco, revolvers, and boots for their own use. One captive, John Miller, testified he could identify the soldier who had taken his boots and pants. At the end of the proceedings, when Miller was allowed to examine Captain Walker's men, he was unable to identify the thief. Perhaps he had not lost any property to the soldiers, Miller sheepishly informed the board.⁴⁰

The board reconvened the next morning to take testimony from the soldiers. Two sergeants of the 1st Infantry Regiment testified they heard miners accusing one another of stealing from the party. Captain William N. Tisdale, 1st Infantry, informed the board he oversaw the burning. On the march to Fort Randall, several miners complained to him of soldiers looting. Tisdale personally investigated the charges while still in the field and was unable to substantiate them. Captain Fergus Walker told much the same story. He was also of the opinion if any stealing did occur along Antelope Creek, miners were the guilty parties. Walker told the investigators that private courts had been convened by the miners to try other party members for theft.⁴¹

A lack of evidence led the board of inquiry to rule the charges were unfounded. No testimony supported the contention that soldiers had looted private property. Any stealing which might have taken place was the work of the miners themselves, the board informed General Terry.⁴² The verdict was not warmly received in Sioux City. Transportation company officers

considered it merely a whitewash. Gordon party members continued to accuse Walker's men of looting. They contended General Terry knew of it but refused to act. To present their side of the case, angry miners gave sworn statements before E. E. Lewis, U.S. commissioner for the District of Iowa. Ed Henn, transportation company secretary, and 32 others signed a document charging the Army with thievery, harsh treatment, and drunkenness. To substantiate the last charge, the document charged Captain Tisdale with being so drunk that he could not sit upon his horse, and on one occasion, being unable to get down from his horse without falling, he attempted to get down upon a wagon wheel and fell, skinning his nose on the wheel. Similar testimony was given in individual documents prepared by J. W. Brockett, Ben Sanborn, and W. W. King. The latter was reported to have told the board of inquiry he had not lost any property. The opposite was true, King stated, and Captain Mills' troops were the villains.⁴³

Issues surrounding destruction of the Gordon party inflamed the regional press. Articles, bearing such headlines as "The Military Outrage," "Walker's Work," and "Military Arrest in Nebraska" appeared almost daily.⁴⁴ Editors were appalled at the lengths to which Major Walker went in carrying out General Order No. 2. Typical of such feelings was an article appearing in the *Council Bluffs Nonpareil*, stating, "This is supposed to be a country of law and not of military despotism, and all those who are opposed to a rule of arbitrary force will denounce Walker's action as some foreboding event."⁴⁵ George Perkins, editor of the *Sioux City Daily Journal* cynically inserted this note: "Information for Major Walker: The grasshoppers are reported to have invaded the Black Hills. Will he see to it that they are expelled and their outfits burned?" In a follow-up article the outspoken Perkins announced the arrival of several wagons from the Gordon party. One wagon cover bore the inscription "Saved From Walker's Fire." The editor was sure "that wagon will hereafter be to Sioux City what the liberty bell is to Philadelphia."⁴⁶

It was also pointed out the Gordon party had been captured and their belongings destroyed in Nebraska. The gold seekers had never entered the Sioux Reservation, thus their arrest was illegal, reasoned Sioux Citizens. "If the arrest can be supported," exclaimed the *Daily Journal*, "then parties in New York, Boston,

on railroads and thoroughfares all over the country can be arrested and taken to Fort Randall." The exclusion policy meant just that—whites were to be kept off the Indian reservation. But where was the legal basis to prevent fortune seekers from crossing Nebraska?⁴⁷

After the initial emotional outcry, there began a rational examination of the issues involved. Most of the debate centered around the area north of the North Platte River in Nebraska. The *Omaha Herald*, *Dakota Republican*, *Yankton Press and Daily Dakotian*, and *Omaha Republican* regarded the area where Gordon was arrested as unceded Indian country. They based this position on Article 16 of the Laramie Treaty of 1868, which prohibited whites from settling or passing through the region without the Indians' permission. In the words of the *Republican*, Gordon's men "were in Indian territory just as much as if they were in the heart of the Black Hills." Although they deplored Walker's tactics, these journalists conceded the military had the right to arrest the Gordon party.⁴⁸

The *Sioux City Daily Journal* did not agree. Editor Perkins pointed out that Article 2 of the treaty placed the boundary of the Sioux Reservation as the northern line of Nebraska. In addition, the Supreme Court had ruled in *United States vs. Baily* that "The State of Nebraska has jurisdiction over her territory and neither Congress nor the military, under the power to regulate commerce with the Indians, can exercise general jurisdiction over territory situated within the State." Readers were informed "the statute gives no power to arrest outside the Indian country, and consequently, the arrest of men in Nebraska, upon whatever pretext as to their intention to invade the Sioux Reservation, is illegal, and the officers making the same can only be regarded as trespassers."⁴⁹

In a journalistic exchange with the *Omaha Herald*, the Iowa editor argued those who made the treaty had no intention of including any part of Nebraska within Indian territory. Nor did residents in the northern part of the state consider the area as unceded domain. Had not Nebraska Senator Hitchcock introduced a bill in February, 1874, to have Article 16 declared null and void? Nebraska was a sovereign state, and as such, outside the jurisdiction of General Order No. 2.⁵⁰

The destruction of the transportation company's train and arrest of John Gordon was illegal, exclaimed Perkins. He based

his claim on the Supreme Court case of the *American Fur Company vs. United States*. The Court had ruled "that goods which had not been in the Indian country could not be seized." Since the Gordon party had never entered the Sioux Reservation, the military had no right to burn their train, reasoned the *Journal*. In regards to Gordon the newspaper contended "the person of the individual is much more sacred than his goods, and if his goods cannot be taken off the Indian soil his person cannot be."⁵¹ Perkins pointed out the verdict in the Solis case, demanded Gordon be freed at once, and called for retribution. Editorial support for this position was supplied by the *Yankton Press and Dakotian*. Editor W. S. Bowen was certain legal action would ensue resulting in action against "the highest officers of our Army."⁵²

In the meantime Gordon remained in the Camp Sheridan guardhouse. General Crook had offered to release the prisoner on May 29 if he would give a written pledge not to enter the Indian country. Gordon refused, explaining "I was arrested in the State of Nebraska, and not upon the reservation. I claim that my arrest was illegal—also that the destruction of my property was illegal."⁵³ In view of the Solis ruling it would appear his reasoning was sound. However, military authorities paid no heed to Gordon's charges, planning to hold him until he signed the required pledge.

Back in Sioux City efforts were underway to secure Gordon's release. Judge A. W. Hubbard, a member of the transportation company since its inception, wired Omaha to retain counsel for the gold seeker. The firm of Baldwin and Smith, retained on behalf of Gordon, sought a writ of habeas corpus for their client. It was their contention Gordon was illegally detained just as Charles E. Solis had been a couple of months before at Fort Randall.⁵⁴

The necessary legal document was secured from a Judge Lake early in July, 1875. Adjutant General George D. Ruggles, of Crook's staff, refused to honor the warrant. He pointed out it had been issued by a state court and thus was not binding upon the military. To back his case Ruggles cited a Supreme Court ruling handed down during the Civil War requiring that such writs come from a federal magistrate. The Army would not release Gordon, lawyers were informed, unless the order came from the U.S. District Court.⁵⁵

The situation was the same where Gordon was confined. H. I. Chapman, of Sioux City, had traveled to Spotted Tail Agency to work for Gordon's release. He found the prisoner "under a heavy guard and very poor accommodations." On July 7 Chapman applied for a writ of habeas corpus before U.S. Circuit Court Commissioner A. F. Frey, who complied with the request, but once again the military balked. Colonel Anson Mills, commander of Fort Sheridan, stated he would "pay no attention to a writ for Gordon's release." Frey, uncertain of his authority, referred Chapman to George H. Roberts, attorney general of Nebraska.⁵⁶

In Omaha, Chapman learned steps were being taken to secure a writ from the U.S. District Court there. C. A. Baldwin, one of Gordon's attorneys, had petitioned Judge Elmer S. Dundy on July 23, 1875, contending his client was "unlawfully and without any legal authority incarcerated." Furthermore, his confinement was "in violation of the Constitution of the United States and without the color and authority of law."⁵⁷ Baldwin also held that Sheridan's General Order No. 2 clearly stated military prisoners were not to be confined more than five days. Charges, if they were to be brought at all, must come in a civilian court, the defense reasoned.⁵⁸

On the same day Judge Dundy ordered General Crook to bring Gordon to Omaha within twenty days for a hearing. U.S. Marshal William Daily served the papers on General Crook, who agreed to cooperate. After a month of legal haggling, John Gordon was to have his day in court.⁵⁹

The accused, escorted by three guards, arrived in Omaha on August 4. Adjutant General Ruggles placed Gordon under house arrest. He could move freely through the city but was required to report to military headquarters once every 24 hours. The adventurer met with his attorneys Baldwin and Smith and transportation company superintendent Fred T. Evans to plan his defense.⁶⁰

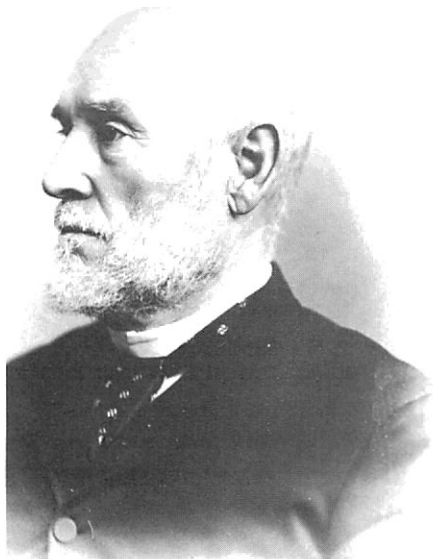
While awaiting the hearing, the *Sioux City Daily Journal* restated the case: Editor Perkins emphatically asserted John Gordon was the victim of discrimination. Gordon was charged with attempting to penetrate the Black Hills. Yet, by General Crook's own admission 1,000 to 1,500 miners were presently in western Dakota and the military had neither burned their property nor arrested their leader. "Why," Perkins asked,

"should the severity of all this business fall upon John Gordon and his little party who were overhauled upon Nebraska soil?" As if to answer his own question, the *Journal* asserted, "The military, as represented in the arrest of Gordon, made a mistake. . . . From Colonel Mills and Major Walker up to General Sheridan and Secretary of War [William W.] Belknap, there has been a desire to shift the responsibility and Gordon has been the victim of their efforts." Such blundering, Perkins concluded, would surely result in acquittal.⁶¹

The case took a dramatic twist on August 21. Accompanied by his attorney Gordon appeared at military headquarters, withdrew his parole, and attempted to leave. When General Ruggles objected and ordered him arrested, a scuffle followed. Gordon was wrestled to the floor, placed under arrest, and confined to Omaha Barracks. The district attorney later had him transferred to a civilian jail in Omaha to await trial.⁶² As prearranged, Gordon's attorneys obtained a magistrate's warrant charging General Ruggles with false arrest, contending that the military had no jurisdiction in the matter. Similiar warrants were secured for the four men who bodily dragged Gordon out of military headquarters. The general was released upon his own recognizance, the others on bail until the case could be heard.⁶³

John Gordon's first court appearance took place August 25, 1875, when Judge Dundy denied the application for a writ of habeas corpus. Gordon was officially charged with violation of the government's Black Hills exclusion policy. Adjutant General N. J. Buchanan, representing General Crook, based his case on Sheridan's General Order No. 2. Official telegrams regarding the case were presented by the prosecution, as was a map of Indian country.⁶⁴

Attorney Baldwin delivered a 12-page reply to these charges. He contended the Gordon party traveled west along Sawyer's Road—a trail the military regarded as in the state of Nebraska. The party's objective was not to enter the Black Hills, as the prosecution held, but rather to establish a townsite in northwestern Nebraska. The proposed Gordon City would serve as a rest station for settlers when the Black Hills were opened for settlement. Baldwin produced an agreement, signed by Major Walker, transportation company officials and government agents on May 15, 1875, which granted permission to settle in



*U.S. District Judge
Elmer S. Dundy*

Nebraska and establish a townsite. In return the Gordon party had agreed not to trespass on Indian country. His client was guilty of no crime, Baldwin announced, and should be released immediately.⁶⁵

A writ of habeas corpus was granted the defendant three days later. Judge Dundy ordered the accused turned over to civilian authorities for possible legal action. U.S. Attorney James Neville examined the matter and reported that no criminal laws had been violated. Judge Dundy then dismissed all charges and John Gordon was released from custody.⁶⁶

The judge reached his decision after considering these points: (1) the country where Gordon was arrested; (2) liability to be incurred by a person who illegally enters Indian country; (3) the limits to which the military could go when arresting a person in Indian country; (4) the responsibility of the military after an arrest has been made. In his written opinion Dundy ruled John Gordon was in Nebraska when arrested. It was his opinion there was no unceded Indian territory in the state of Nebraska. Although vaguely worded, the judge rationalized treaty makers had intended all Indian territory to be north of the state. The court also held the Treaty of 1868 to be non-binding on the government. Judge Dundy held the entire Congress must approve the location of a reservation, whereas only the Senate had ratified the treaty in question.⁶⁷

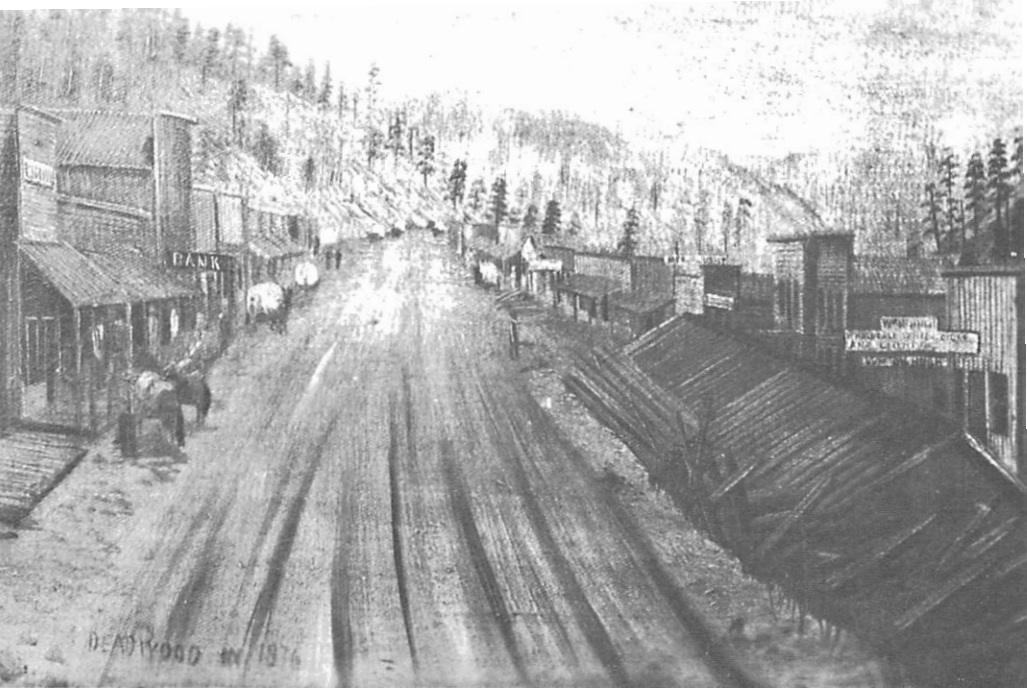
The military's right to repel miners attempting to enter Indian country was upheld. Nonetheless, Sheridan's exclusion policy was "wholly unauthorized by law." John Gordon had been

unlawfully detained by the military for nearly three months. Dundy cited Section 2151, Revised Statutes, the third subsection of which stated: "No person apprehended by military force . . . shall be detained longer than five days after arrest and before removal." The statute also provided that "such persons and property shall be proceeded against according to law." The judge held that John Gordon should have been turned over to a civilian court for immediate trial just as Solis had been. In addition, the decision in the Solis case made it illegal to require a parole as a condition for release.⁶⁸

The destruction of the Gordon party's train was also contrary to law in Dundy's opinion. Section 2125, Revised Statutes, required confiscated property to be treated as "merchandise brought into the United States in violation of revenue laws." Sheridan's directive to burn all trains headed for the Black Hills violated this statute. The proper action, according to Judge Dundy, should have been to auction off the goods and turn the money over to the United States Treasury.⁶⁹

Now free of all charges, John Gordon turned from defendant to plaintiff. His suit against General Ruggles for false imprisonment was heard the first week of September. The proceedings, heralded as a conflict between civil or personal rights and military authority,⁷⁰ turned into "one of the most stubbornly contested cases that has ever been tried in [Omaha] police court."⁷¹ The trial, which consumed three days and drew a large audience, resulted in a dismissal of all charges against General Ruggles. It was the court's opinion that the general was merely obeying the orders of a superior officer when he detained Gordon. Since Gordon was still in military custody at the time, the charges of false arrest were unfounded.⁷²

Why did the military detain John Gordon? The records show he was held for refusing to promise not to enter the Black Hills until permitted to do so by the government. However, the verdict in the Solis case which had been reached after Gordon was arrested, declared such a requirement illegal. In spite of this, Gordon spent the summer of 1875 confined in the Camp Sheridan guardhouse as the leader of the Sioux City-based Black Hills movement. Gordon had defied a military edict, evaded detection, and entered the Black Hills in 1874. Less than a year later he was once again seeking to violate the government's exclusion policy. The Army hoped his imprisonment would



Deadwood, South Dakota, 1876.

dampen the Black Hills excitement in northwestern Iowa and other areas.

It would appear the military's reasoning was sound. The destruction of the Gordon train successfully closed Sioux City as an outfitting point. No further attempts were made to send a large expedition to the Black Hills via Sioux City in 1875. Area residents were shocked that the military would destroy a civilian's private property and demanded compensation for the property Captain Walker burned along Antelope Creek. Legal advice was sought but no claim was filed against the government on behalf of Gordon's men, nor did Gordon seek redress for his three-month incarceration, though he quite possibly could have won such a suit. John Gordon did return to the Black Hills in 1876 but failed to realize his dream of wealth.

The test cases of Charles E. Solis and John Gordon severely crippled the Black Hills exclusion policy. Judicial rulings that interlopers could be removed but not punished encouraged fortune seekers. The task of keeping white men out of the Black Hills, difficult from the beginning, was now virtually impossible. The Army relaxed its vigilance during the summer of 1875 as miners by the hundreds entered the region. The government feverishly sought a solution to the dilemma. It would be an Indian war rather than a courtroom battle that would finally legally open the Black Hills gold fields.

NOTES

1. Jane Conard, "Charles Collins: The Sioux City Promotion of the Black Hills," *South Dakota History*, 1 (Spring, 1972), 136-148.
2. *Ibid.*, 148-149; Watson Parker, *Gold in the Black Hills* (Norman: University of Oklahoma Press, 1966), 30-37.
3. Parker, *Gold in the Black Hills*, 36.
4. *New York Times*, March 3, 1875, 10.
5. Erik M. Eriksson, "Sioux City and the Black Hills Gold Rush, 1874-1877," *The Iowa Journal of History and Politics* (July, 1922), 321-331.
6. *Ibid.*, 331-332; *Sioux City Journal*, March 12, 1875, 4; *New York Times*, March 7, 1875, 1. The *Times* was quite generous with its figures as the article states \$100,000 had been pledged for the enterprise.
7. *Sioux City Daily Journal*, March 12, 1875, 4.
8. Conard, "Charles Collins," *South Dakota History*, 152; *Sioux City Daily Journal*, March 30, 1875, 2.
9. Parker, *Gold in the Black Hills*, 34-36; Annie D. Tallent, *The Black Hills or Last Hunting Grounds of the Dakotahs*. (Sioux Falls, South Dakota: Brevet Press, 1974); *Cheyenne Daily Leader*, March 9, 1875, 4.
10. *St. Louis Democrat*, March 12, 1875, reprinted in *Sioux City Daily Journal*, March 16, 1875, 1.
11. *Sioux City Daily Journal*, March 18, 1875, 1.
12. *Sioux City Daily Journal*, March 14, 1875, 5; March 27, 1875, 1; April 11, 1875, 1.
13. *Sheldon Republic*, no date, reprinted in *Sioux City Daily Journal*, March 30, 1875, 2; March 26, 1875, 2.
14. *Sioux City Daily Journal*, March 14, 1875, 1.
15. *Des Moines Register*, March 30, 1875, reprinted in *Sioux City Daily Journal*, April 1, 1875, 2; *Sioux City Daily Journal*, April 6, 1875, 4; *Sioux City Weekly Times*, April 17, 1875, 4.
16. *Sioux City Daily Journal*, April 14, 1875, 1; *Omaha Bee*, no date, reprinted in *Sioux City Daily Journal*, April 16, 1875, 2.
17. *Springfield Times*, April 5, 1875, reprinted in *Sioux City Daily Journal*, April 20, 1875, 2; *Sioux City Weekly Times*, April 24, 1875, 1.
18. *National Archives*, Record Group 94, Letters Received, Captain Fergus Walker to Commander, Camp Sheridan, Nebraska, May 15, 1875; *Sioux City Daily Journal*, May 14, 1875, 2; *Sioux Falls Independent*, May 27, 1875, 4; George W. Kingsbury, *History of Dakota Territory* (Chicago: The S. J. Clarke Publishing Company, 1915), 1, 917.
19. *Ibid.*
20. Conard, "Charles Collins," *South Dakota History*, 156-157; *National Archives*, Record Group 94, Walker to Commander, Camp Sheridan, Nebraska, May 15, 1875; *Sioux Falls Independent*, June 10, 1875, 2; *Sioux City Daily Journal*, May 22, 1875, 4; *National Archives*, Record Group 94, Letters Received, Fergus Walker to Anson Mills, May 20, 1875.
21. *National Archives*, Record Group 94 (hereafter NARG 94), Letters Received, Captain Anson Mills to General George D. Ruggles, May 23, 1875. This is Captain Mills' official report as to the arrest and destruction of property belonging to the Gordon party.
22. *Ibid.*, As part of his report Mills included the orders establishing a board of officers as well as their report of the destruction.
23. Parker, *Gold in the Black Hills*, 36. Parker incorrectly identifies the commanding officer as Captain Mark Walker. He also lists Anson Mills as Captain Evan Miles.
24. Mills to Ruggles, NARG 94; Tallent, *The Black Hills*, 88-89; John S. McClintock, *Pioneer Days in the Black Hills. Accurate History and Facts, Related by one of the Early Day Pioneers*, ed. by Edward L. Senn (New York: Privately printed by J. J. Little and Ives Company, 1939), 29-30.

25. Kingsbury, *History of Dakota Territory*, 917-919. Kingsbury incorrectly states that Charles E. Solis was a member of the Gordon-Evans party. *Sioux City Daily Journal*, May 18, 1875, 1; May 20, 1875, 4; *Yankton Daily Press and Dakotian*, May 18, 1875, 1.
26. Kingsbury, *History of Dakota Territory*, 918; *Yankton Daily Press and Dakotian*, May 23, 1875, 6; Conard, "Charles Collins," *South Dakota History*, 159.
27. *Records of the Second Judicial District*, Yankton (1875), Kansas City Record Group No. 21, "Charles E. Solis, Information Filed" May 24, 1875; *Yankton Daily Press and Dakotian*, May 25, 1875, 4; Kingsbury, *History of Dakota Territory*, 918; Parker, *Gold in the Black Hills*, 65-66; *Sioux City Daily Journal*, May 24, 1875, 2.
28. *Yankton Daily Press and Dakotian*, May 25, 1875, 4.
29. *Yankton Daily Press and Dakotian*, May 26, 1875, 4; May 27, 1875, 4.
30. *Yankton Daily Press and Dakotian*, May 25, 1875, 4.
31. *Sioux City Daily Journal*, May 24, 1875, 2; *Vermillion Dakota Republican*, June 3, 1875, 3.
32. *Sioux City Daily Journal*, May 27, 1875, 4; Kingsbury, *History of Dakota Territory*, 1, 918; *Records of the Second Judicial District*, "Agreement as to Facts," "In the Matter of the Informant of Charles E. Solis."
33. Kingsbury, *History of Dakota Territory*, 1, 918-19; *Yankton Daily Press and Dakotian*, May 29, 1875, 4; *Sioux City Daily Journal*, May 30, 1875, 4.
34. *Yankton Daily Press and Dakotian*, May 30, 1875, 4; June 2, 1875, 4; *Sioux City Daily Journal*, May 30, 1875, 4; June 1, 1875, 4; June 3, 1875, 4; Kingsbury, *History of Dakota Territory*, 919.
35. *Sioux City Weekly Times*, May 22, 1875, 1; *Yankton Daily Press and Dakotian*, May 22, 1875, 2; May 23, 1875, 1.
36. *Sioux City Daily Journal*, May 22, 1875, 4; May 29, 1875, 4; *Yankton Daily Press and Dakotian*, May 22, 1875, 6.
37. *Sioux City Daily Journal*, May 29, 1875, 3.
38. *Ibid.*; *Vermillion Dakota Republican*, June 3, 1875, 3; *Omaha Daily Herald*, May 30, 1875, 4; *Sioux City Daily Journal*, May 30, 1875, 4; May 29, 1875, 4.
39. *Yankton Daily Press and Dakotian*, June 5, 1875, 4.
40. *Sioux City Daily Journal*, June 12, 1875, 4.
41. *Ibid.*
42. *Yankton Daily Press and Dakotian*, June 14, 1875, 2.
43. *Yankton Daily Press and Dakotian*, June 15, 1875, 2.
44. *Yankton Daily Press and Dakotian*, June 1, 1875, 4; *Sioux City Daily Journal*, May 30, 1875, 4; May 23, 1875, 4; *Minneapolis Daily Tribune*, May 22, 1875, 1.
45. *Sioux City Daily Journal*, June 1, 1875, 2.
46. *Sioux City Daily Journal*, June 8, 1875, 2; June 10, 1875, 4.
47. Editorial, *Sioux City Daily Journal*, May 23, 1875, 2; *Minneapolis Daily Tribune*, May 29, 1875, 1.
48. *Omaha Republican*, no date, reprinted in *Sioux City Daily Journal*, June 2, 1875, 2; *Yankton Daily Press and Dakotian*, June 1, 1875, 4; June 3, 1875, 2; *Vermillion Dakota Republican*, June 3, 1875, 2; *Omaha Daily Herald*, June 1, 1875, 2.
49. Editorial, "Military Arrests in Nebraska," *Sioux City Daily Journal*, June 23, 1875, 2.
50. *Sioux City Daily Journal*, June 3, 1875, 2.
51. Editorial, "Military Arrests in Nebraska," *Sioux City Daily Journal*, May 23, 1875, 2.
52. Editorial, "The Gordon Party's Arrest," *Yankton Daily Press and Dakotian*, June 7, 1875, 2.
53. *Sioux City Daily Journal*, June 15, 1875, 2; *Yankton Daily Press and Dakotian*, June 11, 1875, 4; June 29, 1875, 4.
54. *Sioux City Daily Journal*, July 15, 1875, 4; July 17, 1875, 4.
55. *Ibid.*

56. *Yankton Daily Press and Dakotian*, July 26, 1875, 3; *Sioux City Daily Journal*, July 24, 1875, 1.

57. *U.S. District Court of the U.S. District of Nebraska*. "In the Matter of the Application of John Gordon for Habeas Corpus," July 22, 1875, Nebraska Historical Society, microfilm 13810 (hereafter cited as Gordon case file).

58. *Ibid.*

59. *Gordon case file*. "Writ of Habeas Corpus," dated July 23, 1875; *Yankton Daily Press and Dakotian*, August 3, 1875, 4.

60. *New York Times*, July 25, 1875, 1; *Omaha Daily Herald*, August 5, 1875, 4; *Yankton Daily Press and Dakotian*, August 5, 1875, 1; August 7, 1875, 4; *Sioux City Daily Journal*, August 6, 1875, 4; August 7, 1875, 6.

61. Editorial, "Gordon's Case," *Sioux City Daily Journal*, August 18, 1875, 4.

62. *Yankton Daily Press and Dakotian*, August 24, 1875, 1 and 2; *New York Times*, August 22, 1875, 1; *St. Paul Pioneer Press*, August 22, 1875, 1.

63. *Ibid.*

64. *Gordon case file*. "Return of the Respondent," filed August 24, 1875.

65. *Gordon case file*. "Reply," filed August 24, 1875; "Agreed Statement of Facts by John Gordon." "Exhibit." The last item was a copy of the agreement signed by Walker and Transportation Company officers after their first arrest.

66. *Omaha Daily Herald*, August 28, 1875, 4; *Gordon case file*. "Order of Habeas Corpus"; *Yankton Daily Press and Dakotian*, August 30, 1875, 1.

67. *Yankton Daily Press and Dakotian*, August 31, 1875, 2; *Omaha Herald*, September 7, reprinted in *Sioux City Daily Journal*, September 8, 1875, 1. The lengthy account contains Judge Dundy's entire written opinion of the case.

68. *Ibid.*

69. *Ibid.*; *Iowa Journal of History and Politics*, 334.

70. *Yankton Daily Press and Dakotian*, September 3, 1875, 2.

71. *Omaha Republican*, September 2, reprinted in *Sioux City Daily Journal*, September 3, 1875, 4.

72. *Yankton Daily Press and Dakotian*, September 3, 1875, 2; *Omaha Republican*, September 2, reprinted in *Sioux City Daily Journal*, September 3, 1875, 4.