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# THE TABLE ROCK SENTINEL

NEWSLETTER OF THE SOUTHERN OREGON HISTORICAL SOCIETY



Bertha and Maud Prim, page 12

# Director's Corner

Get out your straw hats and jump into those bib overalls, folks, and join us on our excursion back to the farm. The Southern Oregon Historical Society is preparing to try its wings in a new venture--agriculture. On September 21, the members of the Board of Trustees unanimously agreed to accept the gift of the Hanley farm from Miss Mary Hanley. The magnitude of this donation is too vast for most of us to comprehend fully. Miss Hanley will retain occupancy of the property while the



Photograph by Doug Smith

Society will own the land and the buildings and their contents.

An enormous amount of planning will have to be done before a program for public use of the farm can be developed. At the moment it is our thinking that we may establish a living historical farm where farming skills and agricultural artifacts of the 1800s can be demonstrated. Some of the land might be set aside for an exhibition of horse and steam traction farming. Most of the land, of course, will be leased out on a share-crop basis.

It is our hope that we may show many farming activities, including those performed in earlier times by women. Attention will be given to such diverse industries as blacksmithing, plowing, seeding, harvesting, preserving food, making soap, quilting and rug making. In the near future we will feature the Hanley farm in an issue of the newsletter. The story of the farm established in the 1850s and the people who lived there should make a fascinating feature story.

Although we are overwhelmed by the gift, we are excited at the vast potential of the farm. We will be seeking assistance from many sources in the Rogue Valley. The future of the Hanley farm will be a major project.

Bill Burk



## THE SOUTHERN OREGON HISTORICAL SOCIETY

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*Paine Page Prim, pictured above with his wife, Theresa Stearns Prim  
....Here is a gentleman who has been prominently connected with the history of our state for many years and is held in high esteem by relatives and friends..He is a Democrat of the old school....*

## The Honorable Paine Page Prim

. . . A NOT-SO-LIBERAL LIBERAL

**I**n his youth The Honorable Paine Page Prim, one of the first chief justices of Oregon, "followed the plow on his father's farm until well along in years," wrote A.G. Walling in his *History of Southern Oregon*. But even as a boy, Paine was eager to escape from the limitations of a Tennessee farm and ambitious to make a significant place for himself. Romances of instant riches and do-it-yourself successes are always stimulating to the young, and at that time, as never before or since, such rumors were in sweeping circulation. Surely there were many

opportunities awaiting him in this newly fledged and rapidly expanding nation. But the dream and the actuality certainly appeared far apart.

Kinzie, Paine's father, was born in Tennessee, and after his marriage in 1819 brought a hundred acres near Lebanon, not far from the Hermitage, Andrew Jackson's splendid plantation. Paine was born in 1822. Eventually Kinzie acquired an additional hundred acres.

In 1836, when Paine was fourteen

years old, his father died. Kinzie had drawn up his will, leaving his property to his wife, Polly, who was to give the children--two sons and two daughters--a good education and have the use of the farm as long as she remained a widow. If she should remarry, all the property, with the exception of the slaves, was to be sold at auction. The money and the slaves would then be divided among the children and their mother.

Polly abided by the terms of Kinzie's last will and testament. When school was in session, she saw to it that her children attended. In his final term Paine was given such high marks that he was considered thoroughly capable of being a teacher, and he found a job in a one room school house. His salary was a mere pittance and his board and room, and saving any considerable sum to further his education was hopeless. He had exchanged one rut for another. He taught for several years, taking classes at the Lebanon Academy when he could.

After nine years as a widow, Polly remarried. The provisions of Kinzie's will were carried out, and, in 1846, Paine found himself with a substantial sum of money and a slave woman, Cley, who was evaluated at one hundred dollars. Nothing more is recorded about Cley. A young man with limited means would surely find that keeping a slave was less an advantage than it was an extra expense. In the settlement of the estate, poor Cley probably went to the highest bidder to add a little to Paine's newly acquired bank account.

His inheritance enabled him to take his first step away from the little rural schoolhouse towards a more promising career. He enrolled at the new law school at Cumberland University and in 1848 was graduated with a Bachelor of Arts degree. After he was admitted to the Bar in 1849, he opened an office in Lebanon and began his legal practice. He was twenty-seven.

Although at the onset he was kindled with enthusiasm, by the end of his first six months he had to face the fact that he wasn't exactly making a vivid record of achievement; he was

barely paying his rent. When a group of established lawyers in Sparta offered him a position as an associate, he gratefully accepted. His new partners were distinguished members of the bar and all of them ultimately made notable records: a circuit judge, a chief justice and a governor. From them Paine learned a great deal which he applied to his professional activities in later years in southern Oregon.

His alliance with these men was immeasurably profitable to him, but he was not content to coast along indefinitely on their glory. Perhaps he had been too dedicated to his career, for he gradually became fascinated with the tales of the western frontier. A wagon train of acquaintances from his hometown had earlier crossed the plains and founded a settlement in the Oregon Territory. They called their new home Lebanon after the town they had left in Tennessee. High flown reports with embroidered details were sent back to family and friends whom they had left behind. In 1851 Paine tendered his resignation, gave up his profitable position and took the pioneer trail west.

Arriving in the Oregon Territory in the fall of 1851, he settled in Lebanon. There was little need for law courts and lawyers and, at the age of twenty nine, after his constant concentration on legal affairs, he welcomed a complete change of activity.

Shortly after his arrival in the Willamette Valley, he took up a Donations Land Claim a few miles from Albany, but he soon realized that following the plow on his own land at the frontier was not a whit more gratifying than following the plow on his father's farm. The discovery of gold at Rich Gulch in southern Oregon was far more enticing than the anticipation of a profitable farm crop. After a winter of almost incessant rain and perpetually muddy fields, Paine abandoned his land claim and went to Jackson County.

In a spirit of adventure he bought mining equipment and a mule and set forth to the creeks. At once he became





aware of the great extent of petty quarreling and resentment among the miners. Every day there were angry flare-ups and accusations about claim jumping and dirty work. Few miners could cheerfully accept the success of a fellow prospector. It was not uncommon for a sourdough who had fortunately struck it rich to receive begrudging congratulations and then have to fight his way out of the saloon. Unwilling to become part of these annoying squabbles, Paine did not divulge his legal training. Not surprisingly, however, before six months had passed, the secret had leaked out. A case concerning a disputed claim brought him back to his profession.

A miner, Springer, who had been wounded by an accidental shot, was unable to work for several months. He was a jolly, amicable fellow, and a special friend of the miners around Jacksonville. None of them would jump his claim; in fact, they were supporting him during his recovery. Sims, a prospector from the Willamette Valley, had no such feeling of sympathy or loyalty, and discovering Springer's claim was a rich one, did not hesitate to take it. Springer objected

vehemently. When the case was brought before a Justice of the Peace--an appointed *alcalde*--he decided in favor of Sims, who had--off the cuff--given him a little encouragement by way of a poke of gold dust from Springer's claim.

Paine was troubled by the unjust decision and began making arrangements to bring about fair play. Acting as an adviser in the case, he called for the miners to elect U.S. Hayden as a supreme judge in a newly established court of appeal. The miners acted unanimously, Hayden was elected, the case retried and the new supreme judge made his decision in favor of Springer who was given back his diggings.

Paine's handling of the case revealed that he was an honest, well-trained, ingenious lawyer who had also displayed a good deal of common sense. Certain at last that law was his thing and that his sallies in other directions had been only a temporary respite from the steady routine demanded by the profession, he opened up a law office in Jacksonville. The town was growing rapidly, businesses were prospering and law was no longer an extraneous profession. Paine's thorough knowledge of law and keen perception of technicalities attracted considerable attention and he soon found himself with an extremely successful practice.

**I**n September of 1853 Judge Matthew P. Deady convened the first United States District Court for the Territory of Oregon, County of Jackson, at Jacksonville. The following year Paine Page Prim was elected District Attorney of the First Judicial District which was comprised, at that time, of Jackson and Douglas counties. Paine thus became a "circuit rider" who traveled by buckboard or stagecoach, attending court sessions from one county seat to the other. In 1856 Josephine County was added to the District Court and the town of Waldo was included in his itinerary.

Southern Oregon's unpredictable weather, primitive roads and colorful but uncomfortable stagecoaches were not

the only irksome disadvantages which he had to face. These were the years that the Indians were being forced into their final rebellion. Attacks on travelers were not uncommon and those who left the protection of the town often faced retaliatory action from the Rogues. In his constant travels, Paine fortunately met with no such incidents, but in a letter to Judge Deady he wrote:

Times look rather desperate for the whites; and the prospects look fair for the Indians to take the country...They are becoming bolder every day and it seems they can kill a man as far as they can see him.

This threat, which Paine had somewhat exaggerated, ceased at the end of the Rogue River Indian War in 1856.

**H**is briskly busy life left him little time for paying court to the ladies, but in April 1857 he married Theresa M. Stearns. She had immigrated across the plains in 1853 from Vermont. Her father was a Baptist minister who taught school and farmed in addition to preaching. The Stearns family lived a little south of Ashland.

Theresa was described as a most attractive young lady who "combined the masculine qualities of force and ambition with all the feminine traits of pure womanhood."<sup>\*</sup> That description rather hints that Theresa wasn't the typical demure lady of the period; she had apparently already revealed a pesky little spirit of independence. The newlyweds were happy, for a while anyway. They were a good looking couple, and Paine's profession gave them an elevated position in Jacksonville's social scale. In February of 1858 their daughter, Ella, was born and in the following year they had a son, Charles. In 1860 David Linn, who built many of Jacksonville's historic homes, constructed an attractive house for them on Blackstone Alley. Their complete happiness seemed to be disturbed only by Paine's recurrent absences from home.

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<sup>\*</sup>Records of the Southern Oregon Pioneer Association.

**S**ince 1849 there had been constant agitation throughout the territory for statehood for Oregon.

Finally in June 1857 the vote was favorable, and delegates were elected to a constitutional convention. Paine was one of four from Jackson County, and he served on both the judiciary and the schedule committees. What an honor that was. It made him instrumental in the formation of a state constitution that coming generations of Oregonians would have to live with, possibly forever. Delegates were charged with producing a document for Oregon as worthy and progressive as those of the other states.

At the time Paine was known as a conservative Democrat, but he was in actuality an old line Whig and an advocate of slavery. He had had no unpleasantness in his dealings with his one slave, Cley. He had even realized a profit so what was wrong with slavery, anyway? He approved the "black laws" to the Bill of Rights of the Oregon Constitution (Section I, Article 35), forbidding blacks "to come to Oregon, hold real estate, make contracts or maintain a suit." That took care of the slavery problem. To be charitable one might conclude that he was reluctant to defend black people because he was looking forward to an official position in the new state government.<sup>±</sup> Incidentally this exclusion clause remained in the Oregon Constitution until 1926. It appears that many of Oregon's citizens were no less bigoted than Paine Page Prim. Unfortunately this is not the only evidence of his prejudice. He supported an unsuccessful motion to exclude the Chinese as

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<sup>±</sup> Jesse Applegate, the delegate from Umpqua County, stalked out of the convention over this issue and did not sign the constitution. He wrote:

It is hard to realize that men having hearts and consciences, some of them today in the front ranks of the defenders of human rights, could be led so far by party prejudice as to put such an article in the frame of government intended to be free and just.



*Children of Theresa and Paine Page Prim: Ella, Charles and Ida*

well. He declared that he had found them "an evil in the mines," and suggested that Chinese who came to Oregon in the future should be forbidden to own real estate or a mining claim, and, in fact, should not be permitted to work in the mines. As if this weren't enough, he spoke strongly against Article XV, Section 5, giving a married woman the property rights she had at the time of marriage or had acquired by gift or inheritance thereafter. These opinions don't exactly add up to an accurate description of a bleeding heart liberal. There was one thing in his favor: for some reason or other he failed to vote on the article which denied the vote to blacks and Chinese. But he steadfastly maintained his stand, and later, during the Civil War, he refused to support Abraham Lincoln; he was consistent at least.

On February 14, 1859, by a very narrow margin, Congress approved the submitted constitution and Oregon became the thirty-third state.

Article VII provided for a judicial department with a supreme court of four justices. Judge Matthew P. Deady had been elected judge for the first Judicial District which included Jackson, Josephine and Douglas counties. (Jackson County included what later

became Lake and Klamath counties. When Deady accepted the appointment as United States District Judge for Oregon, Paine was appointed in his place by John D. Whiteacre, Oregon's first governor. The appointment was due to Paine's great popularity in his home district as well as to the fact that Whiteacre shared many of Paine's biased opinions.

**B**ut while Paine's fellow citizens were rallying 'round his cause, Theresa Prim was becoming more and more disenchanted with him. She had previously been vexed by his frequent absences from home; now his duties required him to spend far more time at court sessions in what today is five counties. In addition Theresa must have resented being left behind in Jacksonville while he lived it up socially in Salem and Portland with political big-wigs and prominent, influential people. Of course she had a house and two small children to see to, but he surely could have afforded a domestic staff to take charge--for short intervals, at least.

When he was home there was constant bickering and she began to treat him with contempt and indifference. Not one to keep her family problems hidden from the public, she didn't hesitate to

reveal her point of view to her friends. The lordly and distinguished Chief Justice Prim quite naturally resented this. When he sought a show down, she informed him emphatically that she had ceased to love him, and in fact experienced sentiments of dislike--even hatred--toward him. She felt that his company was not only disagreeable to her, it was actually offensive. As he realized she had given the same oration to the neighbors, he had to make some sort of face-saving move. He initiated divorce proceedings.

James D. Fay was engaged as his attorney and a divorce complaint was filed in U.S. Hayden's Justice of the Peace Court on August 26, 1865. It contained such sad facts as:

Deft exhibited her dislike and contempt for Plff, in private from day to day since 1862 and that frequently in public, she had manifested her contempt and indifference to him, thus subjecting both Plff and Deft to public ridicule...

Plff further alleges that for a long time Deft has absolutely refused to recognize or cohabit with him as her husband...The treatment by Deft...has been so harsh cruel and inhuman and so many personal indignities heaped upon him that his life has been rendered burdensome.

Paine requested his freedom and the care and custody of the children.

While the divorce was pending, he turned Theresa out of the house. No doubt she moved back with her parents. Several years after this, Abigail Scott Duniway, Oregon's pioneer suffragette, who was one of Paine's most vehement enemies, wrote that Prim gullibly believed some slander about Theresa that was being passed around Jacksonville at the time, but the source of her statement wasn't given. Aside from Theresa's unhappiness because Paine was absent from the home and fireside, other reasons for her cold indifference to him were not recorded. It is ironic that the complaints of the Plff who was, for the most part, the silent one in the

squabble, are on record for all to read, while the sorrows of the Deft who bent her neighbors' ears out of shape, were never written down for posterity.

Paine did not pursue the divorce with any particular vigor. When court opened on February 14, 1866, the proceedings were postponed to the summer term. In the summer, consideration was delayed until fall, and in November, Paine had the divorce stricken from the docket. No reason was given.

His refusal to complete the divorce action reveals that he actually had an abiding love for Theresa. She, in turn, probably cared greatly for him, but she was deeply hurt by his willingness to be absent from her side, and this turned to keen resentment. Poor Theresa must have realized the cards were stacked against her. In 1860 divorce cast a terrible stigma, and legally she was certain to be the loser. Eventually common sense would dictate to her that she was far better off living with her children and her husband, even if he was absent a great deal of the time, than maintaining her independence and pride in less happy circumstances. Paine did relent sufficiently to allow the children to be with their mother during the separation.

After Paine had completed his first full six year term as Circuit Judge, he found his work load lightened considerably. His court docket was not so crowded as it had been, and Roseburg was eliminated from his circuit. In the election he had handily defeated Benjamin F. Dowell, the Union Party candidate, and he had received gratifying kudos for his past performance. He well deserved his feeling of satisfaction, and with this complacency came a change in his feelings towards Theresa. He sensibly decided to make an effort to regain her love, and, feeling again like a young swain, he began wooing her for a second time.

One must hope that she didn't eagerly fall in with his overtures, but that she pouted a little, deliberated his offer for a tantalizing



*Taken Fall 1887 at Spring 1888  
P. P. Prim Res.  
Later: Elmer House*



*The Prim house. It is easy to recognize the first gentleman on the left as the Hon. Paine Page Prim. The grandchildren will have to remain unidentified. The second man, in the new derby, is Charlie Prim. The first lady (Theresa ?) is also unidentified but she appears to be smartly dressed for the sack race. The next three ladies are (probably) Ida, Ella and a visiting cousin. The last lady, with the baby is Effie Bybee Prim. She's the regal one.*

period while she dangled her final answer like a carrot on a string in front of his nose, and made a few demands of her own. In any case they were reconciled. He gallantly took her on a camping trip into the mountains for a second honeymoon and as they made up for their one and a half year rift, they romantically gathered wild strawberries and roughed it in the isolated wilderness.

Anna Dowell wrote to her husband,

Paine's recently defeated opponent in the race for Circuit Judge, "Mrs. Prim and the children have returned to Prim and they were all out to Church. They looked as happy as a newly married Couple...I hope they may be happy from this on.\*

In May 1868 Paine and Theresa's third

\*Letter cited by Peggy Haines in her MA Thesis: "Women in Jackson County, Oregon, 1875-1885: a group portrait".

child, Ida, was born. There are no reports of any further disagreement. No doubt, like Cinderella and her prince, they lived out their lives together in bliss.

**E**leven years earlier, when Paine became a delegate to the Oregon Constitutional Convention, he made a declaration of his political principles. Dean E. Snyder, who wrote a scholarly thesis entitled, "The Early Life and Judicial Career of Paine Page Prim 1822-1880) from which much of the material in this story is derived) wrote that Paine established "a reputation for independence which stayed with him, even surviving the Civil War years when others bowed to expedience and changed their party affiliations. [He] aligned himself solidly with the proslavery delegates and established himself as a Democrat. This is the political stand he held throughout his career."

In addition to being a successful attorney, he served as an Associate Justice in the Supreme Court and an *ex officio* Circuit Judge of the First Judicial District. He held the latter position from 1859 to 1880--twenty-one years--through successive elections.

There is no doubt that he was extremely capable as a lawyer, justice and judge. He established decisions of national significance that became precedents for the nation's highest courts. In his judgments he emphasized that justice and right should triumph over technicality and that common sense should rule. Dean Snyder wrote:

When his record on the supreme court is compared statistically with the records of his colleagues on the high bench, [his record] stands very high in the number of opinions that went on to be cited by the United States Supreme Court and by the Oregon Law Review...At the end of his long career on the bench, even his political enemies found him incorruptible. He did not allow his own preconceived

bigotry to influence his decisions. The murderer of a Chinese miner was given no less severe treatment than the murderer of a white settler. In only one instance did he hand down an exceptionally harsh judgment. In 1868 he sentenced Lee Lee Ong, a miner, to six years for stealing two dozen pairs of pants. A few days later when Lee Lee Ong attacked a fellow prisoner with a heavy oak club, Paine sentenced him to an additional five years for assault with intent to kill. Perhaps Paine considered Lee Lee Ong incorrigible and a danger to society, but perhaps, also, his prejudice was showing. In every other case he made fair and equitable decisions.

Paine's twenty-one year stay on the Oregon Supreme Court ended in 1880 and he returned to private law practice in Jacksonville. In 1882 he was elected to a four year term in the State Senate. At the conclusion of this duty, he again took up private practice, this time in partnership with his son Charles.

Theresa, who had last accepted her husband's extended absences as something she could do little about, opened a millinery shop in 1879 with her daughter



Ella. She should have undertaken the venture years before. Had she been more involved in getting those big stylish hats on the heads of the Jacksonville ladies, she would have been less eager to enumerate the Judge's marital failings for the enlightenment of the neighborhood. The new enterprise helped allay Theresa's loneliness and gave Ella an opportunity to save a little money towards her hope chest and trousseau.

**I**n August 1888 Charles married Effie Bybee. It was a brilliant marriage and a high spot of Jacksonville society--she the daughter of a wealthy land baron, and he, a popular young attorney. The Charlie Prims had four daughters: Maud, Mabel, Leila, and Bertha, and one son, Charles, Jr.



*Effie Bybee Prim*

Two months after Charles' wedding Ella married Charles Nickell, the ambitious young editor of the *Democratic Times*, Jacksonville's largest and most popular newspaper. Sadly, just when things looked bright for the young Nickells,

Ella died from complications of childbirth. Her son, Charles, Jr., lived for only a few months. She and Charles had been married for a little over a year. Charles Nickell continued to publish the *Times* until Jacksonville's ultimate decline and fall.

Ida, Paine's youngest daughter, married Montgomery J. Canning of San Francisco in 1889. Little information is recorded about her.

Paine continued in active practice until failing health forced his retirement. At their daughter Ida's insistence he and Theresa moved to Oakland, California, to be with her during his last few years. In 1899, at the age of 77, he died.

Theresa and Ida brought him back to Jacksonville and saw him put in the family plot. His inscription is a simple P.P.P. carved on his footstone. His survivors must have thought that his initials were sufficient identification--even for visitors who tramped by his lot a century later. Certainly no one could forget P.P.P.'s role in the making of Oregon's history.

Jacksonville was no longer home to the bereft Theresa. She returned to California with Ida, and when Ida, who was then also a widow, married Dr. J. P. Heinz and moved to Chicago, Theresa went with them. She lived for fourteen years after Paine's death. She was buried in a Chicago cemetery. For what it's worth, Paine and Theresa are farther apart in death than they ever were in life. In a tribute to her, the members of the Southern Oregon Pioneer Association concluded that "Mrs. Theresa Prim, a faithful friend, a devoted mother, and an unselfish wife, was a blessing both to her home and the community in which she lived." The statement may not be completely accurate but there was certainly a time when her activities gave the sewing circles and the quilting bees a fascinating topic for discussion.

The name of Paine Page Prim, P.P.P., is permanently identified with the legislative and judicial history of



Oregon. He served the people with judgment and wisdom for over forty-five years and won the respect and admiration of his fellow professional men and his constituents. The Pioneer Association wrote:

Starting as a poor boy at the lowest rung of the ladder [he had only one slave to his name]...he reached through his own unaided efforts, and held for a number of terms, the highest and most important position in the gift of an elective people, namely that of their chief magistrate.

Even with his provincial prejudices, he left an exemplary record that today's legislators might well emulate.



*The daughters of Charles and Effie Prim:*

### The Cover Photograph

Bertha Prim is the Goddess of Liberty and Maud Prim is the Angel of Peace. These symbolic figures were traditional in early Jacksonville, and girls representing them appeared on a float which was part of the Fourth of July parade. It was apparently a great honor to be chosen to wear the costumes and stand on the float. The Glorious Fourth was the big celebration day, far surpassing the Christmas and New Year's activities. The day began with a parade which wended through the streets and then made its way out to Bybee Park where the celebrants had a big noonday picnic. The afternoon program usually included a band concert, some eloquent readings and a special speaker, such as Paine Page Prim. Later in the afternoon games were held and there were races at the Bybee track. Fireworks at night concluded the festivities.

### Two New Books of Fred Lockley Material Offered

Mike Helm, who has previously compiled and edited two volumes of selections from the Lockley Files, announces the publication of two more Lockley books, *Visionaries*, *Mountain Men and Empire Builders* and *A Bit of Verse*.

The Lockley Files are composed of historical articles, essays and other literature which appeared in early newspapers in Oregon. Mike Helm found original volumes in storage at the University of Oregon Library, and became enthusiastic about making them available to historians and lovers of history. The first books, *Conversations with Pioneer Women* and *Conversations with Bullwhackers*, have been extremely well received.

The books were printed by the Rainy Day Press, and Mr. Helm offers a pre-publication price of \$9.95 for Volume 3 and \$6.95 for Volume 4.

If you are interested in further information about these indispensable books, write THE RAINY DAY PRESS, P.O. Box 3035, Eugene, Oregon 97403,