Cornelius Francis Kelley : the rise of an industrial statesman
by Thomas Charles Satterthwaite

A thesis submitted to the Graduate Faculty in partial fulfillment of the requirements for the degree of MASTER OF ARTS in History
Montana State University
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Abstract:
"Look out for the boy . . . who begins by sweeping out the office. He is the probable dark horse you had better watch." With these words Andrew Carnegie ended an address to the class of 1885 of the Curry Commercial College in Pittsburg. Two thousand miles away in Butte, Montana, a ten-year-old boy, Cornelius Francis Kelley, began in that summer by carrying water for thirsty construction crews. "Con" Kelley, as he was popularly known, would in the next half century become the living embodiment of Carnegie's prophecy and the American Gospel of Success.

Kelley's career took him from water-boy to Chairman of the Board of Directors of the Anaconda Copper Mining Company. The development of that career, the people, the events, and the ideas that shaped it, are the subjects of this work.

No two men exerted greater influence on Kelley than did Marcus Daly and John D. Ryan. Daly and Ryan occupy opposite ends of the business spectrum. In Daly one sees the embodiment of 19th century "rugged individualism." Characterized by a sense of "noblesse oblige," Daly endeared himself to his workers and commanded loyalty and devotion from them. Ryan was the typical standard bearer of 20th century corporate management, with its absentee ownership, interlocking directorates and financial manipulations.

Each of these men imparted the best qualities of his world to Kelley, until at the height of his career, he stood as a rare blend of both. Daly and Ryan contributed to Kelley's development, but in the final analysis the qualities of greatness were within the man himself. Others showed the way, but Kelley provided the impetus.

Kelley demonstrated his natural abilities in three major areas. First, as a lawyer in Anaconda's complex legal involvements. Second, as an astute and capable labor negotiator for the "Company." And third, as an executive on the board of directors.

Kelley's passing marked the end of an era. When he departed, so too did the last tenuous ties with the old "Daly regime." He symbolized continuity in Anaconda and transition from old to new in the copper industry.

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Date August 10, 1971



CORNELIUS F. KELLEY
(1875-1957)

CORNELIUS FRANCIS KELLEY: THE RISE OF AN INDUSTRIAL STATESMAN

by

THOMAS CHARLES SATTERTHWAITE

A thesis submitted to the Graduate Faculty in partial fulfillment of the requirements for the degree

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in

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ABSTRACT

"Look out for the boy . . . who begins by sweeping out the office. He is the probable dark horse you had better watch." With these words Andrew Carnegie ended an address to the class of 1885 of the Curry Commercial College in Pittsburg. Two thousand miles away in Butte, Montana, a ten-year-old boy, Cornelius Francis Kelley, began in that summer by carrying water for thirsty construction crews. "Con" Kelley, as he was popularly known, would in the next half century become the living embodiment of Carnegie's prophecy and the American Gospel of Success.

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CHAPTER I

THE FOUNDATIONS OF A CAREER

1883 marked the nineteenth year of production in the western Montana mining camp of Butte. The camp had undergone a successful transition from placer gold to quartz silver, and in doing so had avoided becoming a "ghost" town," at least for a few years. The discovery of silver in W. L. Farlin's Travonia claim in 1874 launched a new era of prosperity in Butte, and by 1880 the booming silver camp boasted 4,000 residents, a strongly organized working man's union, a millionaires' club (Silver Bow Club), and a daily newspaper (The Daily News).[1]

Butte's position among the leaders of the mining world was secured in 1883 with the occurance of two completely separate events. First, while engaged in development work on the 300 foot level of the Anaconda mine, workers encountered a five foot vein of extremely rich copper ore.[2] Copper had been encountered in numerous cases

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[1]Federal Writers Project of Works Project Administration in the State of Montana, Copper Camp (New York: Hastings House, 1943), pp. 285-287.

[2]Federal Writers Project, Copper Camp, p. 287.

previous to this; however, silver "was the major metal in the camp. Copper was still a sort of stepchild, tolerated, and generally regarded as having only nuisance value."[3] This "strike," however, proved to be of such magnitude that it prompted the manager of the Anaconda Mine, Marcus Daly, to begin work on his own smelter, located 26 miles to the west on the banks of Warm Springs Creek. The site was chosen because of the availability of water, which was lacking in the Butte area.[4]

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[3]Issac Marcosson, Anaconda (New York: Dodd, Mead and Company, 1957), p. 26. Marcosson's work, which is the official history of the Anaconda Company, must be used with caution. It is undocumented and in some cases extremely biased. Marcosson received much of his material concerning Kelley from a personal interview with Mr. Kelley. Thomas Wigal, Public Relations director, Anaconda Company, private interview held with author, Butte, Montana, April 30, 1971.

[4]Federal Writers Project, Copper Camp, p. 287. Marcosson, Anaconda, pp. 21-22. Up until this time, copper bearing ore had to be transported great distances. There was a small smelter located at Baltimore, Maryland, but the world's largest copper refining plants were in Swansea, Wales. To mine copper in Butte, then ship it to Wales to be refined was an expensive process and left precious little profit margin; K. Ross Toole, "A History of the Anaconda Copper Mining Company, 1880-1950" (Unpublished Ph.D. Dissertation, University of California at Los Angeles, 1954), pp. 24,25.

The second significant occurrence for the future of the mining camp occurred on the 16th day of April, 1883. It was on this day that, along with his mother, brother, and two sisters, Cornelius F. Kelley first set eyes on the city of Butte. The boy probably had little idea of the tremendous part the dingy camp would play in his life. Nor did the city take any special notice of the boy's arrival. People were coming and going with increasing frequency now that Butte had railroad links with both the east, by way of the Northern Pacific, and the south, by way of the Utah and Northern.[5]

The father, Jeremiah Kelley, had preceded his family to Butte two years previously and had worked as manager of the Lexington Silver Mine before launching into his own work developing the Bell Mine. Jerry Kelley had immigrated to this country at the age of four years with his parents. The first stop was in Fall River, Massachusetts, where his mother's grandfather had established a boarding school. Jeremiah then attended Georgetown High School in the Shenandoah Valley of Virginia. Excited by the news of gold in California, he signed as a cabin boy

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[5]Federal Writers Project, Copper Camp, p. 287.

on a vessel bound for San Francisco via Cape Horn. California launched Kelley on his career in mining. While working in the Grass Valley region of that state, Kelley met John W. Mackay and James G. Fair, both of whom were heavy investors in the Comstock Lode. Men such as these were no doubt influential in Kelley's decision to move into Nevada, site of the fabulous Comstock.[6]

While in San Francisco, Kelley met young Hannah Murphy who, after immigrating from Ireland herself, crossed the Isthmus of Panama by rail to visit her brother Dennis in San Francisco. Dennis Murphy and Jerry Kelley were close friends at the time, and it was through Dennis that Kelley met his future bride. After the wedding Kelley and his wife journeyed to Mineral Hill, Nevada, in 1873. Mineral Hill existed as a small mining community in Eureka county. Kelley soon received word from his old acquaintance, John MacKay, of the newly discovered wealth in and around Virginia City. He went to Virginia City and made a fortune in mining stocks, which he subsequently lost. The

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[6]Marcosson, Anaconda, p. 29; Montana Standard, May 12, 1957, p. 1.

significance of the trip to Virginia City lies in the fact that it was here that Kelley met and became fast friends with Marcus Daly, who was at that time employed in the Comstock Lode.[7] On February 10, 1875, while the Kelleys were still living at Mineral Hill, young Cornelius was born.[8] Shortly thereafter, Jeremiah moved with his family back to San Francisco, where they remained until their arrival in Butte.

Immediately after meeting the train bearing his family to Butte, Jeremiah took them to the Superintendent's home at the Bell Mine, where they remained for a number of years. "Kelley . . . had organized a company which did the first important development work at the Bell Mine and constructed the Bell Smelter, one of the earliest in the Butte camp." Two years after the family's arrival, in June of 1885, Jeremiah singlehandedly quelled a riot at the Bell. He faced down an angry mob at pistol point.[9]

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[7]Marcosson, Anaconda, p. 28; Montana Standard, May 12, 1957, p. 1.

[8]Montana Standard, May 12, 1957, p. 1.

[9]Marcosson, Anaconda, pp. 29, 67; Montana Standard, May 12, 1957, p. 1.

The next move took the Kelleys to a small house located about a mile east of Daly and Main streets in Corra Terrace, Walkerville.[10] This would be the home of Kelley's boyhood. He attended grade school there and developed many fond memories which in later years he recalled with obvious delight. The high point of Kelley's week occurred every Saturday, for on that day Mrs. Kelley went down into Walkerville to shop and visit her friends. "Con" always insisted upon being her chauffeur, whereupon he would hitch up the family horse "Centennial" and eagerly drive his mother to Dennis Driscoll's grocery store, where he enjoyed the aroma of the wares. However, as much as he enjoyed visiting Mr. Driscoll's store, it could not compare with a visit to his mother's friend, Mrs. Margaret Sullivan, who ran a boarding house in the hilltop community. Mrs. Sullivan happened to be the acknowledged "pastry queen" of the community, and she always seemed to have just baked

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[10]Walkerville is a small community located two miles north of Butte. It derived its name from the Walker brothers who in 1876 sent Marcus Daly to Butte to survey the Alice Mine situated in that area. Marcosson, Anaconda, p. 67; Toole, "History of Anaconda," p. 1-16.

something fresh when Mrs. Kelley and young "Con" stopped in to visit. It developed in the boy a sweet tooth that never left him.

The most exciting occurrances for young Cornelius were undoubtedly the frequent visits made by Marcus Daly to the Kelley home. Daly and the elder Kelley had known each other since their days in Virginia City, Nevada.[11] By this time the elder Kelley was a superintendent at Daly's Anaconda Mine, and the conversations revolved around its development, with numerous digressions back to the good old days on the Comstock, Ophir, and Ontario.[12] These discussions exposed the young boy to the intricacies of the mining world, and what started as childhood fascination developed into lifelong love.

Kelley's academic career, as stated previously, began in a small school in Walkerville. By 1888, "Con" was ready to go down the "hill" to Butte High School, from

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[11] Marcosson, Anaconda, pp. 28, 67; Montana Standard, June 5, 1936; May 12, 1957, p. 1.

[12] "Anaconda Copper," Fortune Magazine (December, 1936), p. 91; Marcosson, Anaconda, p. 68; Montana Standard, May 12, 1957, p. 1.

which he graduated in 1892.[13] The years spent at Butte High School loom large in the maturing of "Con" Kelley. Not only did he develop physically into a commanding figure of a man, six feet tall and over 200 pounds, but more importantly the young man's natural talents began to surface and take shape. One natural talent that became a characteristic of the man in later years found its genesis at the Butte High School; that was his eloquent speaking ability. The gift of fluent speech first became manifest during the High School debates in which Kelley participated avidly.[14] In adult life, Kelley used his eloquence as a tool to give expression to his forceful and dynamic personality, making him a capable, and popular social and business speaker.

Well before his high school years, Kelley had worked for wages. As he recalls, he was ten years old when he bagan to carry water for the men on the hill.[15] He earned $1.50 a day while carrying water to thirsty

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[13]Marcosson, Anaconda, p. 68; Montana Standard, May 12, 1957, p. 1.

[14]Marcosson, Anaconda, p. 69.

[15]Kelley in Montana Standard, June 5, 1936, p. 3.

construction crews engaged in laying track for the Butte, Anaconda, and Pacific Railroad.[16] For a ten-year-old boy, $1.50 per day represented an enormous sum. In 1936, while president of Anaconda, Kelley recounted:

> I carried water on this hill for a dollar and a half a day, and God knows I thought it was big pay, and I guess it was . . . I never apologized for the fact that Johnny O'Farrell gave me a dollar and a half a day and I never apologized for what anybody paid me, because I felt that I had and can earn it.[17]

Kelley began his first actual mining work while still in high school. During summer vacations he worked with the surface gangs at the Diamond Mine. Here he performed a multitude of odd jobs, such as carrying ore samples from the mine to the assayer's office, cleaning and

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[16]This railroad was then and is today owned by the Anaconda Company. Its primary task is to transport raw ore from the mines in Butte to the smelter in Anaconda, some twenty-six miles to the west. It also hauls lumber from the central lumber yards at Rocker. Originally steam powered, the line was electrified in 1913 with the acquisition of abundant electrical power in the state stemming from the incorporation of the Montana Power Company. Marcosson, Anaconda, p. 69.

[17]Kelley in Montana Standard, June 5, 1936, p. 3.

refitting the old carbide lamps used by the miners, and various other odd jobs connected with the work on the surface.[18]

By the spring of 1892, young Kelley faced a crucial decision. Born and raised in the atmosphere of mining, he naturally turned to it for a livelihood. His father, who had by this time become Marcus Daly's superintendent at the Anaconda Mine, protested his son's decision but eventually gave in to the strong willed young man. Kelley's first experience underground came as a "nipper" in the huge Anaconda Mine.[19] He soon approached Daly with a request for a job in the engineering department of Anaconda. In July of 1893, Kelley was accordingly placed on the payroll of the Engineering Department with the position of assistant

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[18] Montana Standard, May 12, 1957, p. 1; Marcosson, Anaconda, p. 69.

[19] "Anaconda Copper," Fortune, p. 91; Marcosson, Anaconda, p. 69. "Nipper" is a term used to designate someone whose job it is to see that the men underground are supplied with tools that are in good condition. The job necessitates extensive travel from one working level to another and accordingly exposes the nipper to all phases of the mining experience. For this reason the job of nipper is usually given to young or inexperienced personnel in order to familiarize them with the workings. No doubt Kelley developed the foundation of his tremendous knowledge of mining from this experience.

instrument man at a monthly salary of $60.00. Kelley continued in this capacity for several years, rising to the rank of instrument man at $100.00 per month. This was only summer employment. In September of 1894, Kelley enrolled at the University of Michigan.[20]

Marcus Daly's friendship with Jeremiah Kelley extended to his son "Con." Evidence indicates that Daly had taken the young boy under his wing early. Young "Con" worked as Daly's personal office boy and there is no reason to doubt that Daly was influential in urging the boy on to school, especially in view of the warm, personal and business relations between Daly and Cornelius' father. Marcus Daly helped finance Kelley's education, if not directly, at least by continuous summer employment.[21]

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[20]Letter, Edward S. McGlone to Mr. Kelley, February 23, 1952, Kelley File, Montana State Historical Library, Helena, Montana; Marcosson, Anaconda, p. 70; Official Records of Anaconda Engineering Department, "Letter Press Book," pp. 140, 184, Kelley File.

[21]Marcosson makes an unique distinction in this regard, emphasizing the fact that Daly was willing to finance an education in mining engineering for Kelley but not one in law. In light of other evidence, this appears inaccurate. Toole, "History of Anaconda," p. 238; "Anaconda Copper," Fortune, p. 91.

While at the University of Michigan, Kelley earned his first degree in mining engineering; later in 1898, he received a second degree in law.[22] He put many of the theories learned at Michigan into practical use during the summers of the years 1893 and 1895.[23]

During the summer of 1896, Kelley sustained severe injuries while working in the Diamond Mine. As the story is told, Kelley was employed as an assistant to Sam Barker, who on this particular day had charge of surveying a particular section of workings in the Diamond Mine. Kelley did not like the looks of the ground and instructed one of the miners in the vicinity to take a sounding of the rock with his hammer. The miner did and declared the ground safe, whereupon Kelley began to set up his surveying instruments. He never finished. The entire ceiling of the

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[22]Kelley's career at the University of Michigan remains clouded. University policy refuses information concerning its alumni. Hence the degree in mining engineering referred to by Toole and Fortune does not appear anywhere else and cannot be authenticated; however, there is little reason to doubt its existence when one views Kelley's aptitude in handling mining litigations in the courtroom. Toole, "History of Anaconda," p. 238; "Anaconda Copper," Fortune, p. 91.

[23]Official Records of Anaconda Engineering Department, "Letter Press Book"; Letter, Edward S. McGlone to Mr. Kelley, February 23, 1952, Kelley File.

tunnel caved in, burying Kelley under tons of debris. Instinctively, the young engineer threw himself forward into an opening and saved his life. His partner and two miners who were missed by the fall of ground began to dig him out immediately; they took him to the surface, and then to the hospital, where it was discovered he had a broken shoulder, a broken leg, and three cracked ribs. Upon release from the hospital, Kelley went to work at a desk job in the Anaconda drafting department because of his inability to return underground.[24]

His job in the drafting lab consisted mainly of drawing charts to determine the connections of Anaconda properties with those of other companies on the hill. The result of this work was severe eye strain resulting in retinitis, which constantly plagued Kelley in later life.[25]

All of Kelley's work experience during this period served him well in later years. Whether or not this followed some plan is impossible to determine. Several facts point in this direction, however, and suggest that Daly was more than casually interested in the boy's progress.

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[24]Marcosson, Anaconda, pp. 70-71.

[25]Ibid.

The most notable of these is the fierce loyalty Kelley demonstrated to the Anaconda throughout his life.[26]

One other bit of evidence indicates that Kelley's job, at least by 1897, encompassed more than surveying copper deposits. The chief of the Anaconda Engineering Department at the time was Mr. August Christian, who was a charter member of the Anaconda organization, a share holder, and a warm personal friend of Marcus Daly.[27] Christian became almost a second father to Kelley. As late as 1952, Kelley still remembered his first letter of recommendation written by Christian, a testament to the older man's strong influence on his life.[28]

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[26] The Reveille, September 23, 1902, p. 5; October 31, 1904, p. 1; November 4, 1904, p. 8.

[27] The relationship between Christian and Daly is demonstrated in a series of handwritten letters from Christian to Daly giving progress reports on development work in Butte. The letters are dated December 23, 30, 1898, and February 1, 1899, and can be found on pages 407, 415, 420, and 428 of Anaconda Engineering Department, "Letter Press Book," Kelley File; Marcosson, Anaconda, pp. 61 70, 90.

[28] McGlone's letter to Kelley dated February 23, 1952, was in reply to the latter's request for Christian's letter of recommendation; Letter, McGlone to Kelley, February 23, 1952, Kelley File; Letter, C. F. Kelley to August Christian, September 24, 1897, "Letter Press Book," pp. 178-183, Kelley File.

Even by 1897, therefore, Kelley's position in the Anaconda was special, and Daly and Christian exhibited more than casual interest in the young man's progress. In 1898, he graduated from the University of Michigan Law School. A promising future now lay before him.

CHAPTER II

KELLEY AS A CIVIL SERVANT

"Con" Kelley returned to Butte with his newly acquired law degree in June, 1898. The family had moved from the small frame house on Corra Terrace to a large brick home located at 800 North Main Street.[1] The young barrister was fortunate in obtaining a position with the firm of McHattan and Cotter, then one of the leading law firms in Butte, with offices in the Silver Bow Block in the heart of the city.[2]

Kelley realized the importance of receiving the position with the McHattan firm. Many years later he recalled: "When I was a kid out of law school and did not have enough money to rent an office, he [McHattan] gave me a chair in his library and started me in the practice of law."[3]

A position with the leading law firm in the city, however prestigious, was not the rainbow's end for "Con"

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[1]Issac Marcosson, Anaconda (New York: Dodd, Mead and Company, 1957), p. 74; Butte City Directory, 1898.

[2]Marcosson, Anaconda, p. 74.

[3]Kelley in Montana Standard, June 5, 1936, p. 3.

Kelley. The extreme depth being reached in the mines by that time caused many old timers to question the extent of the ore bodies in Butte and to express a genuine fear concerning the future of the city. To a bright young lawyer, it hardly seemed the place to set up a practice. This lack of confidence in Butte keenly affected Kelley and caused him to remark: "When I left law school, if I had the price to go to a first-class city instead of to a borrowed chair in Judge McHattan's library, my uncertainty of Butte was such that I think I would have gone."[4]

Despite the uncertainty of his situation, Kelley did remain in Butte and soon engaged in the practical aspects of law. As might be expected, his first case involved mining litigation. Kelley represented a local claim holder of French descent by the name of Poulon. It appears that certain individuals were encroaching upon Poulon's claim and illegally mining his ore. The crux of the case was the determination of the apex of the vein in

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[4]Kelley, Montana Standard, June 5, 1936, p. 3.

question.[5] Kelley's involvement here began his experiences in some of the most colorful and bitterly fought courtroom litigation in the history of mining. He worked for months on the case and finally in order to prove his client's point, he produced a boxlike device which he had built himself. In it, he had constructed his client's claim in miniature. Using blue and red paint, he described the course of the vein in question and did so with such skill that the Judge handed down a verdict favorable to the young attorney's client. Winning his first case, "Con's" confidence in his ability soared. However, the case left much to be desired financially. The court awarded Poulon exactly one dollar in damages. Poulon, in turn, failed to reimburse his counsel and handily left

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[5]The apex of an ore vein is that position where the vein breaks the surface of the ground. The "Apex Law" was based on the idea that the owner of the property upon which the vein apexed was sole owner of the vein and was allowed to follow the vein in any direction underground, even though the vein extended beyond the vertical end lines of the claim. Sara McNelis, Copper Kings at War (Missoula, Montana: University of Montana Press, 1968), Appendix III, pp. 214-215.

town. The case left Kelley broke financially but established his reputation as an expert on the intricacies of mining law.[6]

The building of model diagrams became extremely popular and effective in later litigation involving apex controversies. Kelley learned the procedure from a revolutionary method of determining the ownership of veins in the Butte area. A free lance geologist, Horace V. Winchel, first developed the procedure and subsequently shared his discovery with the Anaconda Geological Department.[7] Kelley continued his legal practice in the firm of John McHattan. His courtroom triumphs included such cases

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[6]"Anaconda Copper," Fortune Magazine, December, 1936, p. 91.

[7]Mr. F. A. Linforth, private interview held at his home with the author, 1140 West Platinum, Butte, Montana, June 14, 1971. Mr. Linforth's career as a geologist and mining engineer began with the Anaconda Company in 1907. He and "Con" Kelley were personal friends, and he knew many important persons in Butte at that time, including F. A. Heinze; Reno Sales, who was his immediate superior in the Anaconda Geological Department; and Judges Clancy and Harney, both of whom played large roles in the affairs of Butte.

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> When Kelley returned to Butte from law school his first impulse was to go in for a political career for which he had a natural aptitude. He was tall, handsome, endowed with Irish charm, quick-witted with a retentive memory for names and faces--always an invaluable asset in politics.[11]

Regardless of the ticket one campaigned on or the political philosophy one professed, in Silver Bow County in 1898 a candidate for office had to be either a Daly man or a Clark man. The antagonism between these two mining giants had been smouldering for years in such episodes as the capital fight of 1894. The Clark-Daly feud climaxed with W. A. Clark's bid for a U.S. Senate seat in 1898-1899.[12]

"Con" Kelley was hardly immune to the polarizing affects of this feud, nor did his experiences in Michigan dim his loyalty to his friend and benefactor Marcus Daly.

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[11] Marcosson, Anaconda, p. 72.

[12] The Clark-Daly feud has been the subject of numerous works. Foremost among them are C. B. Glasscock, War of the Copper Kings (New York: Bobbs-Merrill Company, 1935); C. P. Connally, The Devil Learns to Vote (New York: Covici Friede Publisher, 1938); Jerre C. Murphy, A Comical History of Montana (San Diego: Scofield Press, 1912); K. Ross Toole, "History of the Anaconda Copper Mining Company, 1880-1950" (Unpublished Ph.D. Dissertation, University of California at Los Angeles, 1954) is among the most objective studies available concerning the activities of the Anaconda. Caution must be used in dealing with most accounts of the Clark-Daly feud, since most have a tendency toward bias.

The twenty-three-year-old candidate openly proclaimed his loyalty to Daly. Although Kelley spoke continually about the silver issue and the pride he held in being a supporter of W. J. Bryan, he did not avoid the local issues, the mere mention of which would place a candidate in one camp or the other.[13]

Finally, after constantly alluding to his loyalty to Marcus Daly, Kelley declared himself. In a speech delivered at a South Butte Democratic Rally on the evening of November 1, 1898, Kelley scored his opponents and expressed his own sentiments and ideas:

> The other ticket [Clark's] has no excuse whatever for its existence. It has no platform and goes before the people on a lot of issues which have no place in politics, heaping abuse upon a corporation and indulging in personalities as reasons why they should receive support. I believe a campaign should be conducted by a discussion of issues and not personalities.
>
> It has been said that there is nothing involved in this campaign but local issues. This I deny, there is something more far reaching than the personal triumph of one man.[Clark] It has been asserted that the Democratic ticket is a corporation ticket

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[13] Anaconda Standard, October-November, 1898; For an indepth study of bimetalism and Montana politics see Thomas A. Clinch, Urban Populism and Free Silver in Montana (Missoula: University of Montana Press, 1970).

> the candidates on which all wear the collar of a corporation. You know that to be false . . . .
>
> From this county will go to the legislature the largest delegation sent by any other county [sic] in the election of a United States Senator . . . . The Senator to be elected will represent the greatest mining state in the union. There should be no question about his being a strong silver man.[14]

Continuing, Kelley defended his running mates and openly commended the Anaconda:

> In all the campaign I have yet to hear from any man or read in any opposition journal anything against the individual character of any man on the Democratic ticket . . . . The only argument used [against the Democratic candidates] is that they wear a corporation collar, and in this connection I want to stand aside from the position of a candidate long enough to express admiration for a candidate long enough to express admiration for a company that has done more to make Silver Bow County what it is than all other agencies combined, and when I say this I don't admit that I wear a collar, but I merely pay just tribute to the good this corporation, that is so abused, has done. . . . The fact that I earned my living working for the Anaconda Company four years and when I resigned my position carried away the good will of the company's officers, I do not regard

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[14]In the popular jargon of Butte, this is the so-called "Copper collar" allegation. It is interesting to note that Kelley does not use the term, which to the average miner had an extremely derogatory connotation. Anaconda Standard, November 2, 1898, p. 10.

> as anything against me. I have no mud to throw, nothing to say against any candidate on any other ticket or his principles, if he is sincere in advocating them.[15]

If Kelley was sincere in his statements about having no mud to throw and concentrating on issues rather than personalities in the campaign, he failed to prove it. For in closing, he delivered a vindictive attack on W. A. Clark.

> If the Democratic ticket represents a corporation, the citizens ticket represents the ambition of one man [Clark] who never did anything for this county he did not have to but who has devoted himself to money getting, and now that he has grown enormously rich wants a term in the United Sates Senate as a crowning glory to his life.[16]

This speech in Frost's Hall was significant for several reasons. Kelley left no doubt as to his loyalties. His scathing attack on W. A. Clark only confirmed the rumors hinted at in Clark's Butte Miner that Kelley was a Daly man.[17] Kelley was elected to the Montana legislature as a member of the solidly Democratic Silver Bow dele-

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[15] Anaconda Standard, November 2, 1898, p. 10.

[16] Ibid.

[17] Butte Miner, October-November, 1898.

gation.[18] His vote totaled 5,837 and roughly matched that of the other local delegates. At least at this time, other than loyalty there is little to indicate that Kelley possessed any exceptional attributes which would endear him to the Anaconda, rather, he appears to have been simply a solid organization man and part of a solid block of votes to be used against Clark.

Montana's Sixth Legislative Assembly convened on the second of January, 1899.[19] This particular session would go down in history as one of the state's most infamous. W. A. Clark, his mind fixed on a seat in the U.S. Senate, set out to capture his dream by fair means or foul. His temporary retirement from state politics in 1896 had allowed Marcus Daly to gain control of the Silver Bow County Democratic delegation, the largest in the state. Out of desperation, Clark aligned himself with the Repub-

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[18] Anaconda Standard, November 10, 1898, p. 7.

[19] Montana House Journal of the Sixth Legislative Assembly of the State of Montana, January 2, 1899-March 2, 1899 (Helena, 1899). Hereafter referred to as House Journal.

licans and set out to buy a Senate seat by massive bribery of the Montana legislature.[20]

Kelley's actions during the legislative assembly reveal his emerging political character. As was to be expected, he voted consistently against Clark and for the Daly backed candidate, W. G. Conrad, in the Senate race.[21] At 23 years one of the youngest members in the assembly, Kelley found new avenues of release for his dynamic energy and forceful personality. He immediately secured a seat on two prestigious committees, the Committee on Appointments of State Boards and Offices and the Committee on Affairs of Cities.[22]

Kelley's legislative efforts were diverse. As early as the 11th of January, he introduced a bill to amend

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[20]Until 1913, U.S. Senators were elected by state legislatures. For indepth studies of the bribery attempts, see Glasscock, War of the Copper Kings; Connally, The Devil Learns to Vote; Murphy, A Comical History of Montana; Toole, "History of Anaconda"; Merrill G. Burlingame and K. Ross Toole, A History of Montana (New York: Lewis Historical Publishing Company, Inc., 1957), 3 Vols.; K. Ross Toole, Montana: An Uncommon Land (Norman, Oklahoma: University of Oklahoma Press, 1959).

[21]House Journal, Sixth Assembly, pp. 42, 47, 52, 64, 70, 78, 83, 93, 101, 107, 114, 120, 127, 139, 146, 147.

[22]Ibid, pp. 12-13, 44, 92, 201, 273-316.

the Code of Civil procedures. On January 20, he directed his efforts toward amending the procedures used to appoint special constables in the State. On the 9th of February, he campaigned for the defeat of a bill he felt to be harmful to the Silver Bow Trades and Labor Council. He was appointed Chairman of Committee of the Whole on February 17 and in that capacity spoke eloquently on the inadequacy of the pay then given to Supreme Court Justices.[23]

As a whole, Kelley's tenure in Helena considerably advanced his career. He proved his loyalty to the Daly interests by his votes on Senate appointment and HB132.[24] House Bill 132, more commonly known as the Two-thirds Act, provided a corporation with the power to sell, lease, mortgage or exchange for the part, or whole, capital stock of any other corporation, its ground smelter, and all assets, if two-thirds of the stockholders favored the move. In short it permitted the transfer of stock without the consent of the minority stockholders. He provided his con-

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[23] House Journal, Sixth Assembly, pp. 273-316.

[24] House Journal, Sixth Assembly, pp. 380-384; Sarah McNelis, Copper King at War (Missoula, Montana: University of Montana Press, 1968), pp. 32-33, 63, 68, 204. Governor Robert B. Smith vetoed the Bill which was then passed over his veto.

stituents in Silver Bow County with effective representation. The bright young mining lawyer returned home more widely known than ever.[25] He did not, however, return to the borrowed chair in McHattan's office, but rather to the Silver Bow County Court House. On March 1, 1899, before the close of the legislature, Kelley was appointed assistant county attorney under C. P. Connally.[26] This constituted a step upward for "Con" Kelley. At age 24, he occupied an enviable position, and for a year and one-half he gained court room experience in criminal law. Kelley represented the County in such notable cases as the famous Daniel Lucy murder trial, in which Lucy was found guilty and sentenced

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[25] Anaconda Standard, March 4, 1899, p. 7; March 5, 1899, p. 7.

[26] Permanent File, Records of County Clerk, Silver Bow County, Volume I, Entry March 1, 1899. Connally deserves special mention. As a pro-Daly contemporary of Kelley, he served in various capacities in Butte. From his position as county attorney he went to a district judgeship, presumably upon the request of the Amalgamated management. His greatest claim to fame lies in a series of articles published in McClures Magazine in the summer (May-July) of 1907. These articles described in depth the controversies existing in Butte between Daly and Clark and the apex litigation over the "Minnie Healy Mine." Connally subsequently published the articles in book form under the title The Devil Learns to Vote. By virtue of these articles, Connally became a nationally recognized critic of the "copper wars."

to be hanged. Lucy appealed, and the case reached the State Supreme Court. Based on the evidence compiled by Kelley, the Supreme Court upheld the decision of the lower court, and Lucy was hanged.[27]

The time spent as assistant county attorney exposed Kelley to the intricacies of court room procedure. "He became a master of jury address, eloquently playing on the emotions of jurors in effective fashion. His demeanor, however, always comported with the dignity so essential in a court of law."[28] Many of Kelley's cases were argued before the chair of William Clancy, the Populist judge who later became notorious in his rulings involving F. A. Heinze and the Amalgamated.

However beneficial Kelley's career under Connally may have been, it was only a stop along the way to higher achievements. By mid-1900, the political urge again struck the young barrister, and at age 25 he tossed his hat in the political arena once again. This time, Kelley set his aim

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[27] State of Montana v Daniel Lucy, 24 Montana 295, June, 1899.

[28] Marcosson, Anaconda, p. 74. In dealing with this phase of Kelley's career, Marcosson becomes extremely distorted and unreliable and should be used with caution.

on the U.S. House of Representatives. 1900 saw the Montana political picture polarized as never before. His heart still burning for a seat in the U.S. Senate, W. C. Clark began to arrange his forces again. F. A. Heinze, the genial pirate of Amalgamated ore, had his own interests in the election. Realizing the courtroom battles his ore piracy would generate, the far-sighted Heinze set out to guarantee that the judicial powers in Silver Bow County would consistently favor his cause. "Each in the interest of his own objectives Heinze and Clark joined forces. Both agreed on their prime opponent: Marcus Daly and the Amalgamated Copper Mining Company."[29]

The Amalgamated Copper Company had been created in 1899 as a holding company through which the great Standard Oil Company sought to gain control of U.S. copper production. It purchased control of the Anaconda Copper Mining Company, which became its major holding; and thus control of the Butte hill now passed to Wall Street and the Rockefeller-Standard Oil interests.[30] Although Daly served as

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[29]McNelis, Copper King at War, p. 94.

[30]Marcosson, Anaconda, p. 95; Toole, "History of Anaconda," p. 116; Thomas W. Lawson, Frenzied Finance (New York: Ridgeway Thayer, 1905), pp. 237-252.

president of Amalgamated, the real power in the corporation rested with Henry Rogers and William G. Rockefeller, the directors of Standard Oil. The formation of the Amalgamated had a profound affect upon Montana politics.

Thus the political battle lines were drawn upon economic grounds. The Clark-Daly feud once again surfaced, and the personal hatred these men held for one another split the state Democratic party in half. Into the Clark-Heinze camp drifted all sorts of diverse elements: anti-trust Republicans, anti-Daly Democrats, and Populists made up the bulk of Clark's Fusionist ticket.[31] In this unstable political atmosphere, Kelley's political ambitions found fertile soil. Democrats loyal to Daly, like Kelley, organized the Independent Democratic Party. Loyal to the national Democratic Party, the Independent Democrats were determined to block Clark's Senate bid.

As Heinze's newspaper, The Reveille remarked:

> "Con" Kelley had personal reasons for his fierce hatred of Clark. Con was picked up and educated by Daly, to whom he [Kelley] swore eternal loyalty, and Daly hated Clark with an intensity that knew no bounds. . . . Daly resolved that Clark should never have a seat in the U.S. Senate. Con Kelley nursed

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[31] McNelis, Copper King at War, p. 94.

> and nourished a vicious hatred for Clark. He strove to out do his master [Daly] in hatred and vituperation of Clark. Standard Oil took over all of Daly's mining assets and among those assets were a board of political hacks and alleged attorneys.[32]

The Independent Democrats nominated T. S. Hogan for governor and C. F. Kelley for Congressman.[33] Kelley, still serving as assistant county attorney, lost little time in taking the stump. On October 11, he opened his campaign with a speech in Livingston.

Opening the campaign in Livingston provided two political advantages. First, that city's small size allowed the candidate to organize his efforts before he reached the larger population centers to the west; this prevented one from stumbling or getting off on the wrong foot in a critical county. Second, Livingston, being a division point on the Northern Pacific Railroad, was heavily pro-labor. This proved to be an astute move on Kelley's part, for the labor vote was the prize sought by everyone. As Vernon Jensen put it, "While the 'wars of the copper kings'

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[32]P. A. O'Farrell, "Con Kelley, Standard Oil Attorney Advises Voters What To Do," Reveille, October 3, 1904, p. 1.

[33]Anaconda Standard, October 2, 1900, p. 1.

were in progress, workers were courted and treated to the most distinguished consideration and regard. Workingmen had political power through their votes as well as their power of brawn and muscle."[34]

The bait used to snare the labor vote was the eight-hour day. Heinze and Clark had granted their employees a cut from ten to eight hours prior to the campaign and used it as a highly effective weapon. The New York offices of Amalgamated refused to cut hours without a corresponding cut in wages. This action put the Independent Democratic candidates at a tremendous disadvantage.[35] Kelley labored under extreme difficulty in this regard, offering his audience only the vague promise that in his opinion: " . . . miners would not accept eight hours as a bribe but they would elect the candidates of the Independent Democracy and get it as a right."[36]

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[34]Vernon H. Jensen, Heritage of Conflict (Ithica, New York: Cornell University Press, 1950), p. 291.

[35]Butte Miner, November 3, 1900, p. 8; for a general treatment of the "eight-hour day," see Jensen, Heritage, chapter IX.

[36]Anaconda Standard, November 6, 1900, p. 7.

Kelley's approach to international issues consisted of a curious blend of anti-imperialism and anti-militarism, based on the idea that such a policy would in the long run destroy American labor. Speaking in Belt, a small community outside of Great Falls, Kelley cited the Philippine war as an example of the dangers of imperialism. In response to the Republican President McKinley's idea that the Philippines would open new markets for American products, Kelley said:

> . . . it would also result in bringing about one of the greatest race problems with which the United States has ever been compelled to cope. Twenty thousand Japanese laborers have come to the Pacific coast in the past year. They are crowding out the American laborer who receives $2.50 per day on our railroads, by doing the work for $1.25 . . . .[37]

Continuing, Kelley exhibited some of the ideals he held in regard to the Democratic process:

> There is more authority in the executive of the United States than in any ruler in Europe. McKinley said himself that no government should exist except that which derived its power from the consent of the governed. If

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[37] Anaconda Standard, October 29, 1900, p. 1.

> McKinley was right two years ago what has justified him in this radical departure [the Spanish-American War].[38]

Several of Kelley's key traits emerged during this campaign. Throughout the campaign, his remarks indicated that his primary objective was the defeat of Clark and the vindication of Daly. He expressed this notion in chivalrous terms at the onset of the campaign:

> Like knights of old the [Independent] Democrats would hurl full and fair the gauntlet at the polluted host [Clark] which was opposed to honest government and dare it to accept the challenge.
>
> Let us go forth like a solid phalanx, knowing and respecting the honor of men and the virtues of women in Montana and respecting this honor and virtue let us say that Mammon [Clark] shall not control us and all Montana.[39]

According to Sarah McNelis; "Heinze and Clark won the November elections overwhelmingly. Many of Amalgamated's workers had obviously cast their votes for the Heinze-Clark Fusionist slate." Kelley finished a dismal third in the Congressional race, receiving only 9,443 votes, compared to the Fusionist candidate, Caldwell Edward's victorious 28,170 votes. Even the second place Republican, S. G.

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[38] Anaconda Standard, October 29, 1900, p. 1.

[39] Ibid., October 3, 1900, p. 10.

Murray, received over 23,000 votes.[40] The most obvious explanation for Kelley's poor performance lies in the fact that he was swept away by forces beyond his control. His crushing defeat in November, 1900, was not registered against him personally but against the Amalgamated. The failure of the Amalgamated to grant their workers an eight-hour day as Heinze and Clark had done had proven decisive in the latter's victory at the polls.

Once again, Kelley returned to his law practice in Butte. His defeat at the polls did not dim his popularity, and by this time his name could be found in the "Butte Blue Book," a register of local personalities who were considered among the social elite.[41] Prior to the race for Congress, Kelley's chief, C. P. Connally, left the county attorney's

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[40] McNelis, Copper King at War, p. 96; Thomas Stout (ed.), Montana: Its Story and Biography (New York and Chicago: American Historical Society, 1921), vol. I, 458-459; Ellis Waldron, An Atlas of Montana Politics Since 1864 (Missoula, Montana: University of Montana Press, 1958), p. 94.

[41] Butte Blue Book: A Social and Family Directory (Butte, Montana, 1901), p. 17. A copy is in the Montana State Historical Library, Helena, Montana.

office to accept a judgeship on the district court.[42] This opened the door for Kelley to enter the county attorney's office. He declined in order to run for the House of Representatives. Interestingly, the suggestion that he be a candidate for the county attorney's job came from William Scallon, then chief counsel for Amalgamated, one more indication that Kelley's ties to the Marcus Daly organization had not been severed. While he may not have been on the payroll, the charming young Irishman was not forgotten by Amalgamated, and by early 1901 Kelley accepted Scallon's new offer to join the Amalgamated Legal Department. His personal political ambitions ended as Kelley took up his duties as an Amalgamated attorney with zeal and ambition that would eventually propel him to the top of the "company" hierarchy.[43]

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[42] Butte Miner, October 2, 1900, p. 4.

[43] Marcosson, Anaconda, p. 73.

CHAPTER III

A CARNIVAL OF LITIGATION

When "Con" Kelley accepted William Scallon's offer of a position in the legal department of the Anaconda early in 1901, he found himself joining a much different organization than the one he had served as a surveyor during the 1890's. The Anaconda Copper Mining Company, founded in Butte and built by Marcus Daly, was now and had been since 1898 merely one element of the giant Amalgamated Copper Company. Marcus Daly had been retained as president of the giant combine, and the people of Butte expressed their assurance that all would be well, that the anticipated dangers of the Amalgamated would not materialize now that Daly occupied a position of authority.[1] Things became complicated when, on November 12, 1900, Marcus Daly died at

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[1]Robert G. Raymer, Montana: The Land and Its People (New York, Chicago: Lewis Publishing Company, 1930), vol. I, 477; K. Ross Toole, "A History of the Anaconda Copper Mining Company, 1880-1950" (Unpublished Ph.D. Dissertation, University of California at Los Angeles, 1954), p. 116; Butte Intermountain, April 28, 1899; Issac Marcosson, Anaconda (New York: Dodd, Mead and Company, 1957), chapter V; K. Ross Toole, Montana: An Uncommon Land (Norman, Oklahoma: University of Oklahoma Press, 1959).

the age of 58 years. The founder of the Anaconda had passed away, and with his passing the personal ties between Butte and the Amalgamated were severed.[2]

The turn of the Twentieth Century marked a shift in business methods throughout the country. The general trend toward centralization and consolidation signaled the twilight of rugged individualism in business.[3] There were still a few of the old breed left, such as the flamboyant F. A. Heinze, whom Kelley always referred to as "that smiling S.O.B."[4] But Heinze and those like him were fast becoming outdated. The new century ushered in a different breed of industrialist--the corporation man, who lived in a world of stocks, bonds, interlocking directorates, and absentee ownership. Each executive performed a specific function, and each represented but one component part in a well oiled machine. "Con" Kelley well exemplified this transition: Kelley was part old-fashioned entrepreneur, part modern, corporate executive.

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[2]Anaconda Standard, November 13, 1900, p. 1.

[3]Toole, "History of Anaconda," p. xi.

[4]Mr. F. A. Linforth, private interview held at his home with the author, 1140 West Platinum, Butte, Montana, June 14, 1971.

Kelley entered Amalgamated as a staff lawyer. His rapid rise from the lower echelons of the legal department to the Company's chief counsel in the span of seven years was a tribute to his personal ambition and tremendous drive. After the death of Daly, Kelley's inside track to the hierarchy of the Company apparently remained open. The families of D. J. "Dan" Hennessy, who owned the company store, and "Con" Kelley were neighbors and friends. The business bore Hennessy's name and occupied the same building as the Anaconda offices.[5] Marcosson suggests that it was upon Hennessy's urgings that William Scallon, Amalgamated's chief counsel, hired Kelley. This does indicate somewhat preferential treatment toward Kelley.[6] Scallon had been a close friend of Kelley's for years, and he shepherded the young man during his first years with Amalgamated. Scallon's fondness for the boy may have stemmed from Marcus Daly, with whom he was an intimate friend. Available evidence suggests that "Con" Kelley's rapid rise in the Amalgamated

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[5]The store still bears the Hennessy name and the Anaconda offices are still located on the upper three floors of the structure.

[6]Marcosson, Anaconda, p. 77.

came about, at least in part, as a result of his courtroom performance when representing the "Company." His direct and forceful personality enabled him to gain favorable verdicts in many important cases and served to augment his reputation both in and out of the "Company."[7]

A few of the men occupying the legal office of Amalgamated at the time of Kelley's joining were L. O. Evans, A. J. Shores, and D'Gay Stivers. All were capable lawyers, but with the exception of Evans, none seemed above intrigue. Shores and Stivers amply demonstrated their talents during the notorious Harney scandal.[8]

Lewis Orvis Evans, commonly called "Orve" by his friends, was born in Utica, New York. His parents moved to Helena in 1883. He graduated from high school in that city and took his law degree in New York. After a brief tenure in the office of Ward, Smith, and Ward in Helena Evans entered the Montana bar in 1894. In 1896 he joined the firm of John R. Forbis, in Butte, becoming a full

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[7]Burton K. Wheeler and Paul F. Healy, Yankee From the West (Garden City, New York: Doubleday and Company Inc., 1962), pp. 79,83, 100, 133, 160, 161, 190.

[8]Toole, "History of Anaconda," chapter XIII.

partner the following year. Forbis and Evans handled all of the legal business of the Butte and Boston Company and the Boston and Montana Company.[9] Evans became one of Kelley's closest legal associates and his most cherished friend. Kelley's magnificent retreat on the shore of Swan Lake was the product of a 137-acre investment made in 1915 with Evans.[10] A. J. Shores, another of Kelley's colleagues, joined the Anaconda in 1900. He first practiced law in Minneapolis and since 1891 had been counsel for James J. Hill's Great Northern Railroad.[11]

Captain D'Gay Stivers was probably the most colorful personality in the Anaconda legal department. Stivers grew up in the military. Educated in military schools, he graduated from high school in Chicago in 1885. After a varied career which including service in the Texas Rangers, being secretary to the manager of Yellowstone Park, and a term in medical school, he entered the law department of

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[9] Progressive Men of the State of Montana (Chicago: A. W. Bowen and Company, 1902), p. 152; Marcosson, Anaconda, pp. 102-103.

[10] Marcosson, Anaconda, p. 103.

[11] Progressive Men, p. 415.

Columbia University in 1891. He then served as private secretary to the Honorable W. W. Dixon, a Democratic Representative from Montana. Stivers came to Montana with Dixon and was admitted to the Montana bar in 1895. In 1897 he secured the position of deputy county attorney of Silver Bow County but resigned in order to enlist in the army at the outbreak of the Spanish-American War. Returning to Butte in 1899, he obtained a position as a junior counsel for Anaconda.[12] Stivers' career with Anaconda is fascinating. He handled many of the dubious dealings involving the Company, and his activities both in and out of court did much to tarnish his reputation.

Kelley's joining of the Amalgamated in 1901 coincided with the height of the second phase of the "War of the Copper Kings."[13] The battles fought during this phase shifted from the political arena to the courtroom. Most all of the litigation between Heinze and the Amalgamated revolved around the "apex law." Passed by the Federal government in the 1860's, as it will be recalled, this law

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[12] Progressive Men, p. 437-438.

[13] C. B. Glasscock, War of the Copper Kings (New York, Indianapolis: Bobbs-Merrill Company, 1935).

stated that the holder of a claim upon which a vein of ore apexed or broke the surface had sole right to follow that vein in any direction and to any length underground. This held true even when the vein in question ran beyond the end lines but not the side lines of the owner's claim.[14]

To say the least, this could and did result in endless legal controversy. The situation in the Butte area complicated the intricacies of the law beyond belief. Through the ages the volcanic nature of the area had caused numerous faults, sub-faults and fissures breaking and disrupting ore veins until it became virtually impossible to determine the course of a single vein.[15] The most important veins in the area run in an east-west or north-east--south-west direction, while the fissures consistently run in a north-west--south-east direction, crossing the ore bodies at 45 degree angles.[16] The complicated structure

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[14]Sarah McNelis, Copper King at War (Missoula, Montana: University of Montana Press, 1968), p. 29; See appendix III of McNelis for the legal wording of the law. Mining claims were 600' x 1500' in area. Miss McNelis is apparently mistaken in her assumption that a vein could be followed in any direction.

[15]Linforth, private interview, June 14, 1971.

[16]Ibid.

of the ore bodies in the Butte area allowed two or more individuals to extract ore from the same vein, each believing that the vein being worked was his alone. In the case of F. A. Heinze, this procedure became standard. As an expert mining engineer, Heinze effectively mined huge quantities of Amalgamated ore by locating his surface claims in such a position as to give him underground access to Amalgamated ores. Heinze's activities often resulted in legal suits. This did not deter him, however, for both district judges, the Populist William Clancy, and the Democrat Edward Harney, friendly to Heinze, never failed him in their rulings on apex litigation.[17]

To combat Heinze, Kelley and his fellow lawyers employed the talents of geologists and mining engineers. Using the theory developed years earlier by Horace V. Winchell, the Amalgamated lawyers constructed the so-called "sub-fault apex law," which held that, at the point of a underground fissure, a vein ceased to be one but in fact became two or three completely new veins whose apex was not

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[17]Perhaps the most comprehensive study of the litigation from Heinze's point of view is McNelis' Copper King at War.

at the surface but in fact at the fault.[18] The geological reasoning in this was sound, but it usually failed to impress Judges Clancy or Harney.

One of "Con" Kelley's first assignments in the Heinze litigation concerned Heinze's Nipper property and gave Kelley his first taste of the Heinze method. The "Nipper" claim was in such a position as to allow Heinze to mine ore from Amalgamated's rich Anaconda Mine. As Reno Sales, one of the three original geologists for the Amalgamated, recalls: "Exploration work in the Nipper had disclosed only one vein, the discovery vein of the Nipper named the Blue."[19] This Blue vein crossed the Nipper claim in such a manner as to deprive Heinze of any extralateral rights: the Blue vein, that is, crossed the Nipper from side line to side line.[20] The Blue vein was broken by one of the previously described fissures. Heinze geologists plotted the course of the Blue vein in such a way as to

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[18]Linforth, private interview, June 14, 1971.

[19]Reno H. Sales, Underground Warfare in Butte (Caldwell, Idaho: Caxton Printers, 1964), p. 19.

[20]McNelis, Copper King at War, p. 29.

permit them to claim discovery of a brand new vein called the "Nipper Discovery Vein." To the Amalgamated geologists' trained eyes, the age and condition of the rock formations in the area made this a geological impossibility; yet, Heinze persisted. The case came to Judge Clancy's court and according to Sales:

> As usual the litigants made use of elaborate maps and models to illustrate the days of testimony of the witnesses. One of Heinze's witnesses, W. S. Kelley [no relation to Con] . . . gave an unusually descriptive expression in answer to one of the questions asked by the Anaconda attorney, C. F. Kelley.[21]

The witness was trying to prove that both the Blue and the Nipper surfaced on the Heinze property, when in fact they lay deep in the earth, as determined by geological age. The following is an excerpt from Con Kelley's cross examination:

> Kelley: Under your contention that the Blue vein intersects and crosses your Nipper vein at the surface, is it not a physical and geometrical impossibility that the geologically older Nipper vein could unite with the disputed ore body?
>
> Witness: Well, I don't know about the geometry but its a mineralized fact.[22]

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[21] Sales, Underground Warfare, p. 20.

[22] Ibid., p. 21.

Judge Clancy apparently took the man at his word and ruled in favor of Heinze.[23]

Perhaps the most famous apex litigation was that concerning the Minnie Healy Mine. Much ink has been spilled about this action, and it is far beyond the scope of this work to deal with it in any way other than with Kelley's involvement in it.[24] The Minnie Healy litigation is less important in itself than because of its far reaching repercussions. It began in 1901 when the Healy's owner, Miles Finlen, agreed to sell the property to Heinze. The agreement of sale was oral; hence the legal complications. Heinze wanted the property, hitherto unproductive, in order to raid ore bodies located in the Picollo and Gambetta claims nearby, these claims being the property of the Boston and Montana Company. However, Heinze soon discovered that the Healy itself contained a fortune in unmined ore. The news leaked, and Finlen claimed that he had

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[23]Sales, Underground Warfare, p. 21.

[24]By far the most comprehensive study of the issue is Christopher P. Connolly, "The Fight for the Minnie Healy," McClure's Magazine XXIX (July, 1907), pp. 317-332; others dealing with it are McNelis, Copper King at War; Glasscock, War of the Copper Kings; Toole, "History of Anaconda"; Marcosson, Anaconda.

never struck a bargain with Heinze and therefore still owned the property. Finlen sued, but before the case reached court Amalgamated bought Finlen out and prepared to crush Heinze. The presiding judge, Edward W. Harney, ruled in favor of Heinze, and at this point Kelley entered the picture. Following Harney's Healy decision, Amalgamated lawyers A. J. Shores and D'Gay Stivers, in company with W. A. Clark's son, Charles, approached Judge Harney and offered him $250,000 to admit that Heinze had bribed him to render a favorable decision in the Minnie Healy case. Harney refused the bribe, whereupon the Amalgamated men produced a series of letters alledgedly written by Harney to his mistress, Mrs. Ada Brackett. In these so-called "Dearie letters," Harney discussed the Healy case and Heinze's bribery with Mrs. Brackett. Harney continued to refuse the Amalgamated bribe; hence the incident reached the courtroom and the public.

Kelley's name has never been directly connected with the Harney scandal.[25] Even the Reveille and its vitriolic editor, P. A. O'Farrell, spoke of Kelley as being

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[25]Toole, "History of Anaconda," chapter XIII.

above his associates in the Anaconda legal department.[26] Marcosson, the Anaconda historian, states that:

> When Harney following the dictates of his master, decided the case in favor of Heinze, Kelley motioned for a new trial. He also filed fifty-five affidavits containing concrete evidence of Harney's dissolute life and his unfitness to sit on the bench.[27]

The evidence in these affidavits undoubtedly came from Kelley's associate D'Gay Stivers, who had been an agent acting as a "clandestine correspondent" between Harney and Mrs. Brackett.[28]

After Harney denied Kelley's motion for a new trial, Kelley obtained a writ of mandamus from the Supreme Court ordering Harney to retry the case. According to Marcosson, Kelley presented the writ in a highly dramatic scene which he describes with obvious bias toward Kelley and against Harney. Marcosson alludes to a violent personal hatred existing between Kelley and Harney. The animosity had reached such levels that Harney had even made open threats

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[26] Reveille, September 23, 1902, p. 3; September 27, 1902, p. 8; October 11, 1902, p. 4; July 10, 1903, p. 4.

[27] Marcosson, Anaconda, p. 131.

[28] Toole, "History of Anaconda," p. 134.

on Kelley's life. In view of this animosity, Marcosson's description of the courtroom confrontation between Kelley and Harney seems plausible:

> As Kelley reached the courtroom he found it crowded. All Butte knew of the antagonisms that flamed in Harney for Kelley. Harney had made open threats to kill Kelley and on one occasion was only deterred from it by Kelley's coolness and contempt. . . .
>
> A Heinze gunman was planted in the court near the bench. Kelley took O'Neill [his own gunman] up to where he [Heinze's man] was sitting and said to him: "Sit here. Watch this fellow. If he makes a move at me kill him!"
>
> Harney was glaring manevolently at Kelley when he rose to present the motion for a new trial.
>
> Harney: "Upon what grounds?"
>
> Kelley: "The motion is based on the corrupt, dissolute and absolutely false conduct of the presiding judge in this case as disclosed by the affidavits on file."
>
> Harney: "I don't want to hear those affidavits on file."
>
> Kelley: "Thank you your honor."[29]

One can well appreciate Harney's hostile attitude in view of the fact that the courtroom was packed with spectators who were eager to share in Kelley's spicy story about the presiding judge. In July 1903, the State Supreme

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[29]Marcosson, Anaconda, p. 131.

Court returned the Minnie Healy case to the district court for retrial by Judge William Clancy.[30] Clancy's decision on October 22, 1903, upheld Harney's earlier ruling which favored Heinze. On the same day that he rendered the Minnie Healy decision, Clancy handed down his ruling in what became known as the Parrot suit.[31]

Early in 1903 two minority stockholders in the Parrot Mining Company instituted suit against the Amalgamated they declared that the trust, as majority stockholder, was using the Parrot Company to benefit its other companies by controlling the supply of copper in complete disregard for the interests of the other stockholders. Clancy ruled in favor of the plantiffs, declaring that Amalgamated, being a trust, had no legal status in the state of Montana. He also issued an injunction forcing all of its subsidiaries within the state to cease paying dividents.[32]

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[30] McNelis, Copper King at War, p. 60.

[31] Ibid.

[32] McNelis, Copper King at War, p. 72; Glasscock, War of Copper Kings, chapter XIX; Toole, "History of Anaconda," chapter XIV; Connolly, "Fight of the Copper Kings," McClure's Magazine, XXIX (May-June, 1907); C. P. Connally, Devil Learns to Vote (New York: Covici Friede Publisher, 1938), chapter XXIII.

Amalgamated reacted swiftly and without mercy by announcing a complete shutdown of its entire Montana operation. Ten thousand men were laid off the first day, and within a week's time probably four-fifths of the wage earners in the state were unemployed.[33] Heinze beseeched ten thousand unemployed miners to stand by him. Speaking from the courthouse steps in Butte he delivered one of the most eloquent speeches ever given in the city. But eloquent words would not feed hungry families nor clothe freezing chilren. His position was precarious, and Heinze knew it.[34]

On October 31, 1903, Amalgamted laid down its terms. It demanded an immediate session of the legislature in order to pass a "Fair Trials Bill" permitting a change of venue if either party to a civil suit considered the judge corrupt or predjudiced. Faced with an intolerable situation, Governor J. K. Toole had no recourse. The special session was called, and the bill passed in November, 1903.[35]

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[33]Toole, "History of Anaconda," p. 147; Anaconda Standard, October 23, 1904, p. 1.

[34]McNelis, Copper King at War, chapter VII-B; Marcosson, Anaconda, chapter VI; extensive quote from Heinze's speech can be found in John K. Hutchens, One Man's Montana: An Informal Portrait of a State (New York: J. D. Lippincott Company, 1964), pp. 118-120.

[35]Toole, "History of Anaconda," p. 151-152.

Kelley's name has not been associated with this Amalgamated venture. There can be little doubt, however, that he was deeply involved. It will be remembered that it was Kelley who first presented the writ of mandamus to Harney, and it was Kelley who argued--and lost--the Minnie Healy case in the state Supreme Court.[36]

Kelley played an important part in the efforts to impeach Harney and Clancy in early 1904; he had hired two agents to gather information against the judges, especially against Harney.[37] One of the so-called detectives, a woman, had been convicted of perjury earlier and was arrested in Helena. The court set bond at $50,000, and Kelley obtained the money from Butte by hiring a railroad locomotive to transport the cash to Helena during the night.[38] The Supreme Court dismissed the action against Harney and Clancy on April 4, 1904.[39]

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[36]Marcosson, Anaconda, p. 131. Marcosson's unreliability becomes graphic here and can only be used safely in conjunction with sources such as those cited in footnote 32.

[37]Ibid., p. 129-130.

[38]For contrasting accounts of the trial, see Anaconda Standard, February 28-April 4, 1904; Reveille, February 28-April 4, 1904.

[39]Montana Reports, 30 Montana 193, pp. 193-202.

In 1906 Heinze, his key judicial powers now lost, sold the bulk of his Butte holdings to the Amalgamated.[40] In February of 1906 the Butte Coalition Mining Company was incorporated under the laws of New Jersey. Its directors were John D. Ryan, C. F. Kelley, and Thomas F. Cole. This company's sole reason for being was the takeover of Heinze's property.[41]

In summarizing the events of 1903 Thomas Lawson said:

> We have demonstrated that the 70,000 voters in Montana who are dependent upon Amalgamated can be made to think through their stomachs better than through their brains. We have solved the Heinze problem by the only reasonable method.[42]

Thus ended the carnival of courtroom litigation that characterized the second phase of the "War of the Copper Kings."

Kelley's personal life changed during these years. The restlessness of youth, as Kelley reached age twenty-eight, gave way to domestic inclinations. His job with

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[40]McNelis, Copper King at War, chapter X.

[41]McNelis, Copper King at War, pp. 140, 143; Marcosson, Anaconda, p. 132.

[42]Glasscock, War of Copper Kings, pp. 296-299.

Amalgamated was now firmly established due to his actions against Heinze and his future seemed bright. With these ideas in mind, "Con" Kelley married Miss Mary Tremblay on June 2, 1903, in Missoula.[43] Long considered one of the most eligible young bachelors in Butte, Kelley had for sometime been courting the pretty young daughter of Dr. Joseph Tremblay, a prominent Missoula physician. Six years Kelley's junior, the bride had been born in Malboro, Massachusetts. She came west with her parents, who settled first in Butte. Miss Tremblay received her education in Butte schools before her father moved his practice to Missoula. She was teaching the violin at the time of her marriage, and for years after she entertained guests with her playing.[44] After experiencing the loneliness and frustration of being married to a rising young attorney whose love for her seemed to be equalled by his love of his job, she settled nicely into the role of hostess for her husband's increasingly important guest.[45] The Kelleys

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[43] Anaconda Standard, June 2, 1903, p. 1.

[44] Montana Standard, November 14, 1955, p. 1.

[45] Montana Standard, November 14, 1955, p. 1; Marcosson, Anaconda, pp. 103-104.

subsequently raised five daughters, and Mrs. Kelley's primary role was always that of housewife and mother.

Up until this time, "Con" Kelley had conducted numerous court cases aside from those of the Amalgamated. As a staff lawyer, he found time to conduct his own law practice; and the extra money helped, since he was living at home at the time. His father's death in 1901 left him as sole breadwinner in the family.[46]

The end of the Heinze litigation precipitated a change in the direction of Amalgamated interests and directly affected Kelley's career. Anxious to retain Kelley solely for the "Company," William Scallon hired him on a full time basis in 1904.[47] In that year, Scallon resigned as managing director of Amalgamated. The reasons for his resignation were varied. One, seems to have been his ineffectiveness in handling the miners, especially in the face of Heinze's popularity. However, according to Murphy, Scallon abhorred the tactics asked of him by the hierarchy of Standard Oil. The shutdown following the

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[46]Bureau of Vital Statistics, Butte City Hall, Butte, Montana, Standard Certificate of Death #269, Vol. 202-408; Anaconda Standard, September 30, 1901, p. 5.

[47]Marcosson, Anaconda, p. 108.

Parrot-Minnie Healy decision proved to be the final straw.[48] Scallon's replacement appeared in the person of John D. Ryan. Because of his unusual influence on and relationship with "Con" Kelley, Ryan deserves special attention.

Ryan represents the epitome of the new corporate personality. His mind reveled in high finance, and he appeared immune to any emotion in the world of business. He was as cold and calculating as the machinery in his mines, completely above any personal ties to the domain he commanded. His enemies in Butte feared and hated him with a vengeance, no doubt because he represented something foreign and was not one of their own, as was Kelley. His aloof mannerisms and polished appearance contributed to their feelings against him. In speaking of Ryan, Jerre C. Murphy commented:

> Organized greed could teach him nothing in selfishness and no awakening conscience disturbed the dreams of his avarice. He combined a pleasing personality with the arts of dignity. He reinforced plausible argument with flattering persuasion, and possessed, to the full extent of its power,

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[48]Quoted in Glasscock, War of Copper Kings, pp. 290-291.

> that peculiar combination of talents which enables the distinguished kings of finance to entice enemies and fleece friends with equal skill. . . .[49]

Ryan came to Butte as a salesman for the Continental Oil Company. He had been born and raised in Michigan, his father being the manager of the famous Hecla Mine. Ryan met Marcus Daly while selling oil. Daly took a liking to the young man and subsequently took him on as an officer of the Daly Bank in Butte. Upon Daly's death, Ryan became president of the bank. In 1904 he replaced William Scallon as president of the Amalgamated.[50]

It is with the ascendency of John D. Ryan that one can detect a shift in priorities in the career of "Con" Kelley. At this point in his career, Kelley ceased to be merely the local boy making good. From here on, he embarked upon a career that would take him to the heights of the financial world. There can be little doubt that Kelley was exposed to the world of high finance by John D. Ryan.

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[49]Jerre C. Murphy, A Comical History of Montana (San Diego: Scofield Press, 1912), p. 64.

[50]National Cyclopedia of American Biography (Ann Arbor, Michigan: Xerox Company, 1933), XXIII, 248-249.

In 1905 Kelley was appointed Secretary of the Anaconda Company. This appointment signaled the first of many advancements that would lead to the top. The two men met while Ryan was still with the Daly Bank and while Kelley occupied a position in the Anaconda legal department. Evidently they became friends quickly, and in temperament each had what the other lacked.[51] Ryan provided the leadership and the skill in the financial arena, while Kelley provided the stability in Butte. During the early years of their relationship, this became Kelley's greatest asset. He was "one of the boys," something Ryan could never hope to be. To the workers of Butte, Kelley represented the last tenuous ties with the old Daly regime. They trusted him and he never openly betrayed that trust, although at times it became strained. Kelley could hobnob with the miners anytime and was forever a favorite at social functions, when he would fill his listeners with Irish "blarney," kick into an Irish jig, and sing "Has Anybody Here Seen Kelley?"[52]

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[51] Marcosson, Anaconda, p. 136-137.

[52] Linforth, private interview, June 14, 1971.

While continuing to be a "favorite" of the miners in Butte, Kelley also increased his legal responsibilities with the Amalgamated. In the legal sphere perhaps no other single case did more to insure Kelley's position with the Amalgamated than did the famous "Smoke Cases," properly referred to as: Fred J. Bliss v. Anaconda Copper Mining Company and Washoe Copper Company. The litigation stemmed from complaints by farmers and ranchers in the Deer Lodge Valley that emissions from the Anaconda's Washoe Smelter were killing livestock and crops and generally blighting the land.[53]

Claims rising from the smelting of ore in the district had been filed against the Anaconda ever since refining began in the area. Especially during the tenure

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[53]For the most comprehensive and objective review of the case see, "Opinion by Judge William H. Hunt, In The Circuit Court of the United States, Ninth Circuit District of Montana," transcript in Kelley File, Montana State Historical Library, Helena, Montana; Jerre C. Murphy kept a running account of the "Smoke Cases" in his Montana Lookout, a newspaper published in Helena, Montana, from 1905-1909, and he later condensed these accounts into a single chapter of his Comical History, pp. 201-264; the Butte Inter-Mountain likewise gave a sporadic account of the proceedings. In many cases a word for word following was given. Issues of this newspaper can be found in the Manuscript Section of the Montana State University Library, Bozeman, Montana. A series of glass negatives showing the condition of the vegetation in the area are also here.

of William Scallon, these claims were usually settled out of court. Before July 1, 1903, over $300,000 had been paid out to the farmers and ranchers in the area. On that date a new fluming system and the largest smoke stack in the world were put into operation at the smelter.[54] Claims ceased for a time, but by 1905 the ranchers and farmers in the valley organized and filed suit.

By 1905, however, William Scallon no longer occupied the position of manager for the copper company. That position John Ryan now held, and the "trust" attitude toward the farmers changed with this change in leadership.[55] Company policy now centered around the process of tying the farmers and ranchers up in expensive court cases in a deliberate attempt to crush the farmers by exhausting their funds. The Amalgamated even went so far as to have Senator Thomas H. Carter push a bill through the United States Senate doubling the price of court transcript records. In the Bliss Case, this increased the cost to the farmers

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[54]Murphy, Comical History, p. 203.

[55]Ibid., p. 203-204.

from $15,000 to $30,000 dollars.[56] Evidence that the Anaconda's policy was directed toward the financial ruin of the farmers is seen in the fact that:

> The farmers filed their complaint on May 5, 1905, and presented their case in ninety days between January 15 and April 15, 1906. Not until April 26, 1909, was the final decision in the trial court received. The bulk of that intervening three years was given over to Anaconda testimony.[57]

"Con" Kelley and his friend and associate L. O. Evans handled most of the proceedings for the copper concerns. Kelley's callous tactics were to waste time, make fools of the plantiffs' witnesses and in general create a carnival atmosphere designed to frustrate and tire everyone involved. It must be remembered, however, that the stakes for which they were playing were extremely high. An adverse decision by the judge could and would seriously affect Anaconda's Montana operations. There is little reason to doubt that this fact ever strayed far from Kelley's reasoning.

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[56] Murphy, Comical History, p. 181.

[57] Ibid., p. 207.

A random excerpt from the testimony will suffice to illustrate Kelley's methods. On March 9, 1906, Kelley cross-examined a witness for the plantiff, one Dr. Harkins, a chemist from Montana State University at Missoula.

Kelley : How many instructors are there in your [chemistry] department?

Harkins: I am the whole works, but I have two student assistants.

Kelley : Its sort of a Miles Standish army affair is it?

Harkins: I don't care to go into the literature of that.

Kelley : Why not? Don't you care to qualify? I'll ask you to define a chemist. What is a general chemist?

Harkins: A chemist is a man familiar with the substances more intimately concerned with the changes in the properties in substances, or something very similar.

Kelley : Is that all?

Harkins: Yes.

Kelley : You think that's right?

Harkins: It is all I care to give.

Kelley : Then as a first proposition, you exclude women from being chemists.[58]

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[58] Butte Inter-Mountain, March 9, 1906, pp. 1-8.

This type of questioning went on and on, consuming days of courtroom procedures. On March 14, 1906, Kelley allowed the same Professor Harkins to consume two days setting up models and describing algebraic formula and geometric reasons showing why, due to the particular height of the stack, the smoke emitting from it would settle on the ranches in question. At the conclusion of Professor Harkins' reasoning, Kelley completely destroyed him in one stroke by pointing out that the interior of the stack contained baffles which altered the velocity of the smoke thereby making Harkins' calculation absurd. Kelley realized the presences of the baffles all along and simply allowed the witness to consume time.[59] This type of procedure characterized the entire trial and was in the main responsible for its extreme length.

Amalgamated pursued other means of gaining a favorable ruling. It sent the owner of the State Insane Asylum, Dr. Warren, to Idaho to buy out Mr. Fred Bliss. Bliss was the only plantiff mentioned in the case and if he would have accepted Warren's office the case would

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[59] Butte Inter-Mountain, March 14, 1906, pp. 1-6.

have ended.[60] The "Company" also went into the agricultural business by establishing the Deer Lodge Valley Farms, on which they grew crops and raised livestock which were shown every year at the Anaconda sponsored Deer Lodge County Fair.[61] In defense of the Anaconda, it must be realized that remodeling of the smelter in 1903 amounted to some $725,000 and that it did contain the latest in purifying equipment designed to counteract the damage caused earlier by the smoke.[62]

Judge William Hunt ruled in favor of the "companies" and the case was dismissed on April 26, 1909. The trial had lasted three years, eleven months, and comprised some 27,000 pages of testimony.[63] In 1908, during the height of the Smoke Cases, Kelley became chief counsel for Amalgamated.[64] His future was now tied directly to the

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[60]Murphy, Comical History, p. 210.

[61]Ibid., p. 214.

[62]Marcosson, Anaconda, pp. 140-146.

[63]"Hunt's Opinion," transcript in Kelley File; Murphy, Comical History, p. 207; Marcosson, Anaconda, p. 106.

[64]Thomas Stout (ed.), Montana: Its Story and Biography (New York and Chicago: American Historical Society, 1921), III, 987-988.

future of the Company, and he pursued it with characteristic energy.

The close of the Smoke Cases marked the closing of an era for Kelley and for Butte. The colorful courtroom contests between the copper giants all but ceased. Kelley's duties as an active courtroom attorney soon ceased also. In 1911 the directors of Amalgamated elected "Con" Kelley vice-president in charge of all western operations.[65]

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[65]Marcosson, Anaconda, p. 109.

CHAPTER IV

LABOR, TAXES AND KELLEY

The removal of F. A. Heinze allowed Amalgamated to direct its energy toward consolidation and expansion.[1] For the next twenty years, J. D. Ryan and "Con" Kelley pursued the goals of consolidating holdings and expanding interests. Kelley and Ryan realized well that the future of profitable mining in the Butte district depended upon the elimination of competition. Courtroom litigation such as that during the Heinze era was much too costly, both in time and money.[2] The outright purchasing of properties seemed the only viable solution.[3] Yet, the removal of

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[1]Issac Marcosson, Anaconda (New York: Dodd, Mead and Company, 1957), p. 136.

[2]"Anaconda Copper," Fortune Magazine (December, 1936), p. 93; (January, 1937), p. 52; Marcosson, Anaconda, chapter VII, pp. 136-166; K. Ross Toole, "A History of the Anaconda Copper Mining Company, 1880-1950" (Unpublished Ph.D. Dissertation, University of California at Los Angeles, 1954), chapter XX, pp. 235-251; for specific areas of Anaconda expansion, see "Meaning of the Copper Merger," Literary Digest, February 10, 1923, p. 17; "Copper Price Gives Way at Last," Business Week, April 23, 1930, p. 5; "Anaconda and Copper," Time, October 7, 1935, p. 55; Herbert Solow, "Anaconda: One Face to the Future," Fortune Magazine, January, 1955, p. 89.

[3]Mr. F. A. Linforth, private interview held at his home with the author, 1140 West Platinum, Butte, Montana, June 14, 1971; Robert G. Raymer, Montana: The Land and Its People (New York: Lewis Publishing Company, 1930), p. 513.

competition did not insure a peaceful future. Soon labor would make its presence felt, and then there would be the state government to deal with. These problems lay in the future, however, and were to a large degree products of Anaconda's next move, that of securing and enlarging her interests.

In this context, Kelley's first major exposure to the executive end of Anaconda's operations came as early as 1906, when he left Montana on a tour of the major mining areas of North and Central America.[4] Although the exact purpose of the trip is not clear, it is certain that Kelley was exposed to a variety of mining conditions and techniques that he had never seen before. The open-pit method of excavation predominated in the areas he visited.[5] To Kelley, the most striking difference between this open-pit technique of mining and that practiced in Butte was

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[4]Marcosson, Anaconda, p. 108.

[5]Open-pit mining utilizes heavy power shovels and huge trucks or trains. In this method, quite like strip coal mining, waste rock and soil is mined along with ore and separated later. Its major asset is its small cost of operation, especially when compared with deep-level mining. The open-pit procedure allows the recovery of vast quantities of low grade ore bypassed in the conventional vein mining procedure.

the cost factor. It convinced Kelley, and later Ryan, that if Anaconda wished to remain competitive it would have to substantially lower its overhead.

From 1906 to 1911, Kelley's activities are difficult to trace. He apparently played little if any major role in the actual expansion of the Company during this time. But his role as chief counsel no doubt put him in the forefront of the legal proceedings involved with the purchasing of the many small operations in and around Butte.[6] In 1910, Anaconda began the consolidation of workings on the Butte hill in earnest. During that year, Anaconda increased its capital stock from thirty-million to one hundred and fifty-million and, true to its name, swallowed the other companies.[7] However, expansion did not reach high gear until the 1920's when, under the combined guidance of Kelley and Ryan, the Company acquired world-wide holdings.[8] The intervening period, 1910-1920, was characterized

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[6] Raymer, Montana, p. 513.

[7] Ibid.

[8] "Anaconda Copper," Fortune, p. 93; p. 52.

by complicated labor difficulties. In the area of labor relations, Kelley made the transition from legal attorney to corporate businessman.

In 1911 "Con" Kelley entered the executive department of the Anaconda Company.[9] His position, vice-president in charge of western operations, put him at the helm of all Company affairs in Montana. From this time on, at least until his departure for New York, he personally directed Anaconda policy in Butte.

The earlier years in Butte had been characterized by local control and a sense of "noblesse oblige" on the part of the mine owners, especially Daly.[10] Anaconda's

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[9]Thomas Stout (ed.), Montana: Its Story and Biography (New York and Chicago: American Historical Society, 1921), III, 987-988.

[10]Rayer, Montana, pp. 407-408. Speaking of Daly Raymer recounts:

> "The miners of Butte mourned the passing of their friend. No wage disputes ever brought about a strike of his employees. Many young professional men of Butte owe their start to him. He provided generously for the families of miners injured or killed; and it is said it was his invariable custom to present the widows with beautiful homes and a sum sufficient to start them in some kind of business . . . what the law now requires Marcus Daly did with a sense of justice and sympathy."

consolidation of properties on the Butte hill and its increasing concentration of authority in New York thus fostered a sense of alienation among the mine workers of Montana. Partly as a result of this change in policy, the previously passive Butte Miners Union began to assume a new and more powerful role in the affairs of copper mining in the area.

The first rumblings of labor unrest began in 1906 and centered around a wage increase. "The daily wage of the miner was $3.50 the same as it had been since the beginning . . . in 1878."[11] On November 15, 1906, a union committee approached Ryan with a demand for a 50¢ per day increase in wages. Ryan offered the union 25¢ but balked at 50¢.[12] The majority conservative element in the union accepted the offer, but the growing radical element demanded a strike. Anaconda answered the demand with the cessation of operations in late November, claiming "full

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[11] Vernon H. Jensen, Heritage of Conflict (Ithica, New York: Cornell University Press, 1950), p. 302.

[12] Ibid.

ore bins." But the real purpose appears to have been avoiding a strike and bringing pressure to bear on union officials.[13]

Kelley participated in the resulting negotiations between the union and the company. From these negotiations came the first written work contract involving the miners in Butte. The contract was based on a sliding scale of wages, and wages were based on copper prices.[14] The signed contract ran for five years until 1912.

Kelley played a major role in negotiating the contract and the resulting wage scale.[15] Ryan predominated at the negotiations; and, as might be expected, the contract greatly favored company interests. In times of depression, Ryan explained, a sliding scale would greatly help to

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[13] Engineering and Mining Journal, 102 (New York: July-December, 1916), p. 1040.

[14] The original sliding scale called for a minimum wage of $3.50 per day. Wages would advance to $4.00 per day when the price of copper reached or exceeded 18¢ per pound.

[15] Marcosson, Anaconda, p. 109.

stabilize unemployment and maintain wages. Actually Ryan's statement proved to be false soon afterward.[16]

Kelley observed the proceedings of the 1907 wage negotiations with interest. At the expiration of the contract in 1912, Kelley found himself in the driver's seat and he then faced conditions extremely more volatile than those existing in 1906.

Between the years 1907 and 1912, events in Butte followed a course directly in opposition to that which Anaconda, or any operating company, would have desired. Socialism began to gain rapidly in both membership and influence. Its power appeared in three major areas; first, the massive influx of southern and eastern Europeans into Butte which caused the so-called "Bohunk scare." Second, socialist and I.W.W. (International Workers of the World) elements captured key union offices; and third, Butte elected a Socialist city administration.[17] The three events

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[16]Norma Smith, "The Rise and Fall of the Butte Miners Union, 1878-1914" (Unpublished Masters thesis, Montana State College, Bozeman, 1961), pp. 42-44.

[17]Federal Writers Project of Works Project Administration in the State of Montana, Copper Camp (New York: Hastings House, 1943), pp. 54, 133-137. Smith, "Butte Miners Union," chapter VIII.

crystallized in 1912 by which time socialist power had firmly entrenched itself in both the union and the city. In March, the city elected new aldermen. The 1907 labor contract expired in April, and the union chose new officials in June.[18]

It is virtually impossible to trace the genesis of the events of 1912. At the end of that year, one thing was certain: Kelley and the "Company" held the upper hand in Butte. In March, just before the city elections, several of the companies in Butte discharged a large number of men, apparently because of their socialist tendencies. Kelley emphatically and consistently denied the allegation that this was the case.[19] He strained credibility even further, claiming that to his knowledge the Anaconda Company had

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[18] Smith, "Butte Miners Union," p. 57-58.

[19] U.S. Commission on Industrial Relations, Final Report and Testimony on Industrial Relations 64th Congress, 1st Session, Senate Document No. 415 (Washington D.C., 1916), IV, 3716-3718. The Final Report on mining conditions and labor relations in Butte is by far the best source of information concerning the events leading up to the violence of 1914. Unfortunately witnesses were not under oath, and as a result testimony varies considerably in regard to vital questions concerning Anaconda motives and activities during the period described.

never attempted to coerce or exert influence over any individual merchant or organization in the city of Butte.[20]

Negotiations for a new labor contract began in April, while the socialist element remained in power. However, a new agreement was not signed until July. In the interim the conservatives regained control of the union, and the contract, like its predecessor, greatly favored the "Company."[21] In November of 1912, the "Company" introduced its infamous "rustling card." For whatever reasons, be they innocent as claimed by Kelley or sinister as claimed by the socialists, the card proved to be an extremely effective means of controlling and coercing workers.[22] The rustling system required a worker to obtain a card at a central office before he was allowed to seek work at Anaconda mines. The system lasted from 1912 until 1917; it ended with the collapse of unionism in Butte.[23]

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[20]U.S. Commission, Final Report, pp. 4064-4066.

[21]Ibid., pp. 3879-3889, Kelley exhibits 6, 7.

[22]U.S. Commission, Final Report, p. 4064; Paul F. Brissinden, "The Butte Miners and the Rustling Card," American Economic Review (December, 1920), pp. 755-775; Engineering and Mining Journal, 104 (July-December, 1917), 466-467. Both Brissinden and the Engineering and Mining Journal show examples of the "rustling card."

[23]Toole, "History of Anaconda," p. 164.

The key events now centered within the union itself. In the summer of 1914, the Butte Miners' Union fell victim to its own excesses. From its founding in 1878 until 1910, the Union had operated under comparatively conservative leadership. Competition among the various employers in Butte provided the union with an enviable position. Amalgamated's consolidation of the workings on the "hill," coupled with the socialist influence of the I.W.W., erroded the union's position by 1910. In 1914, the struggle for leadership between radical and conservative factions within the union caused the entire organization to collapse in violence. Into the vacuum created by the collapsing union stepped the "Company." Unionism in Butte did not reappear in force again until 1934.[24] "Company" activities are lost in clouds of secrecy: its records are stored in locked vaults. Kelley's own papers have been "destroyed."[25] But nonetheless, as one historian of the Anaconda puts it:

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[24]For an indepth study of the collapse of the Butte Miners Union, see Smith, "Butte Miners Union"; Jensen, Heritage, chapter XVIII.

[25]Julian Hayes, personal letter to author, May 5, 1971. Mr. Hayes is Public Relations director for the Anaconda Company, with his office in New York.

> The salient fact that emerges . . . is that the Company was actually at the core of the split within the Butte union. . . . . It was the existence of the Company and of what appears very much like a policy of divide and conquer on the Company's part that remained a constant in the picture.[26]

In retrospect, this seems the shrewdest policy Anaconda could have followed. It resulted in the complete collapse of effective unionism in Butte. As manager of Anaconda, Kelley was the man who implemented these policies, and he must be given credit or blame for their effectiveness. From a purely Company point of view, Kelley's policies of "divide and conquer" achieved the highest goal attainable, the elimination of chaos and strife and the implementation of an orderly, productive and profitable atmosphere in which the Anaconda could prosper.

Anaconda's growth stirred not only the labor unions but the state government as well. By the second decade of the Twentieth Century, Anaconda's position in the state's economy was such that an increasing number of people outside of its sphere began to question its influence and position in the state as a whole, especially its ownership of newspapers and favorable tax position.

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[26]Toole, "History of Anaconda," p. 175.

Anaconda's next controversy involved the state government and revolved around the issue of taxes. As he had done previously, Kelley assumed the position of defense for the corporation. The question of mining taxation had been a hot issue since territorial days.[27] As the power of the Anaconda increased, so too did the volume of criticism regarding the Company's tax payments. The overwhelming power of mining interests during the territorial period secured an almost tax free status for mining.[28] When the constitutional conventions met in 1884 and 1889, the miners submitted their own tax provision, thereby taking the initiative from their opposition.[29]

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[27]Lewis Levine, The Taxation of Mines in Montana (New York: B. W. Huebsch, 1919), p. 7. The publication of this work by Dr. Levine, then on the staff at Montana State University in Missoula, caused considerable unrest within the state and resulted in Dr. Levine's dismissal from the University and a reformation of Montana tax laws; see Aron Gutfeld, "The Levine Affair: A Case Study of Academic Freedom," Pacific Historical Review XXXIX, (February, 1970), 19-37.

[28]Toole, "History of Anaconda," p. 199; Joseph K. Howard, Montana: High, Wide and Handsome (New Haven: Yale University Press, 1943), p. 61.

[29]Toole, "History of Anaconda," p. 199-200.

> The proposition which the miners [led by W. A. Clark, who was chairman of the convention] hoped to insert in the constitution was that the mines should be taxed at the price paid the United States; that surface property should be taxed, that machinery should be taxed, but that only proceeds [not the ore bodies themselves] should be taxed.[30]

This "net proceeds clause" became part of the constitution and remained so until it was amended in 1924.[31]

Governor Robert B. Smith, a Populist, violently denounced the state tax structure before the Legislative Assembly in 1899. His successor, Joseph K. Toole was no less explicit in his condemnation of the tax structure of the state.[32] In 1904 the Democratic Party called for a constitutional amendment to equalize the tax burden. Interestingly, the Democratic attack was directed against the railroads of the state. "But," according to Levine,

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[30]The price was fixed regardless of the value of the property. The price amounted to five dollars per acre for quartz mines and two and one half dollars per acre for placer claims. Proceedings and Debates of the Constitutional Convention in Helena, July 4-August 17, 1889 (Helena, Montana: State Publishing Company, 1924), p. 472; quoted in Toole, "History of Anaconda," p. 200.

[31]Toole, "History of Anaconda," p. 201.

[32]Levine, Taxation in Montana, p. 7-8.

"in 1912 the Progressive Party of the state, under the leadership of Senator J. M. Dixon, changed the line of attack and fixed its guns on the Amalgamated Copper Company."[33]

The Republicans in 1916 pledged themselves to a tax reform, even threatening a constitutional amendment if legislation was not forthcoming.[34] By the time of the campaign of 1916, the issue of taxes had crystallized as one between the large mining companies and the small property owner, especially the farmer.[35] It was significant that Kelley should be the one to defend the Company's position publically. Kelley had been active on the tax question for some time. Evidence supports the view that Kelley remained extremely active in politics even after his defeat for Congress. According to Marcosson, " . . . despite his exacting labors for the Company he took a prominent part in politics figuring in State and County

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[33]Levine, Taxation in Montana, p. 8.

[34]Toole, "History of Anaconda," p. 203.

[35]Levine, Taxation in Montana, p. 11.

Democratic conventions."[36] His increasing stature in the Company, as well as in the community, brought about a corresponding increase in political power.[37] After a few preliminary replies to tax criticism appeared in Company owned newspapers, Kelley appeared before a joint legislative committee on January 18, 1917.[38]

Kelley's two hour speech in defense of the Company centered around two fundamental propositions. He stated:

> Now I submit to you as a fundamental proposition that when you have taxed the surface of a mining claim at its full value for the purpose for which it is being used, or is capable of being used, and when you have taxed the improvements that have been made upon that surface you have gone as far in the matter of taxation as the law reaches any other class of property in this state.[39]

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[36]Marcosson, Anaconda, p. 106.

[37]Burton K. Wheeler and Paul F. Healy, Yankee From the West (Garden City, New York: Doubleday and Company, Inc., 1962), pp. 79, 83, 100, 133, 160, 161, 190.

[38]Anaconda Standard, January 15, 1917, p. 1; Butte Miner, January 15, 1917, p. 1; Helena Independent, January 19, 1917, p. 1. Kelley's complete address is printed on p. 5 of this issue.

[39]Cornelius F. Kelley, "Speech to the Joint Legislative Committee of the State of Montana, January 18, 1917"; quoted in Helena Independent, January 19, 1917, p. 5. This speech was subsequently published in pamphlet form under the title "Mining Taxation in Montana."

Kelley continued, declaring that contrary to Anaconda being undertaxed, the corporation was in fact overtaxed:

> Upon the successful mining venture there was levied, in addition to the taxes all other property bears, a net proceeds tax . . . in other words a license tax . . . so that today, and every day since the formation of the constitution of this state, the mining industry is and has been, the only great industry of the state, which has been on a substantial license basis.[40]

Kelley based his major propositions on the premis that ore did not have value until it was processed; therefore, it was impossible to tax a mine on the amount of ore beneath it.

> Until each particular ton of ore is reached . . . it is not a thing of value. It has no more intrinsic value than has the rock that lies a hundred fathoms beneath any point in this state . . . . It is just as incapable of being reached . . . as any other particle of the earth's crust to which access cannot be obtained. The moment it is reached in the course of mine development and extracted from the earth, it becomes property--a thing of value--a thing of worth, possessing the elements of taxable wealth and at that very moment under our system of taxation it is so taxed.[41]

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[40]Kelley, Committee Speech, quoted in Helena Independent, January 19, 1917, p. 5.

[41]Levine, Taxation in Montana, p. 33.

Kelley supported his arguments with numerous facts and figures, all very impressive and all very confusing. His reasoning appeared extremely sound and when delivered in his own eloquent manner must have sounded convincing. When Levine published his book in 1919, he took Kelley to task. He also presented an array of facts, figures, and percentages to illustrate and confirm his arguments that Kelley's speech two years previously had been misleading. In one small section of his book, Levine cited six figues and asked one question which forever destroyed Kelley's and Anaconda's argument. Levine indicated that, for the year 1917, the assessments of Anaconda mining property in Silver Bow County amounted to slightly over $3.35 million. The net proceeds of the company for that year, amounted to some 44.25 million dollars, giving a total taxable assessment of 47.5 million dollars.

Levine contended that:

> According to Mr. Kelley's statement . . . when mines have been assessed for their surface at a fixed price and for their improvements, they have been fully assessed as compared with all other forms of property. In other words three million dollars in his [Kelley's] opinion was the real value of the great mining industry of the Butte district in 1917,

> and the taxes paid on every dollar over and above the three million was an extra burden placed on the mines in a spirit of discrimination.[42]

At this point, Levine asked the unanswerable question:

> Do Mr. Kelley and his associates mean to say that they would be willing to dispose of all of the mining property in Silver Bow for three million dollars?

Not until 1924 did any substantial revision of the tax structure take place. By then Kelley was firmly entrenched in New York with his eyes and mind on South America. Levine lost his position at the University as a result of his article.[43] K. Ross Toole observes: "On this occasion the Company was victorious . . . they apparently subscribed to the theory that the best defense was a strong offense.[44]

In his statements concerning the tax question Kelley is guilty of at least stretching the truth. His actions certainly demonstrate that Anaconda's interests were his number one priority and when the interests of the corporation and the community conflicted he would rally to the

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[42]Levine, Taxation in Montana, p. 33.

[43]Gutfeld, "Levine Affair," pp. 19-37.

[44]Toole, "History of Anaconda," p. 212.

Anaconda's defense. Kelley successfully represented, defended and prosecuted for the Anaconda Company for nearly thirty years by the time of the Levine affair. He played a key Montana role for the Anaconda Copper Mining Company. His reputation in the state commanded respect, and his abilities insured success for the corporation. His capabilities had been proven in at least three major confrontations faced by the Anaconda. Yet few really knew or understood him. What sort of man was he? Where did he acquire his skills? What were his beliefs and ideals? The answers to these and other questions will be the subject of the following chapter.

CHAPTER V

IDEAS AND IDEALS

"Kelley represents continuity. He is the Company's memory and perhaps, sometimes its conscience."[1] This comment on Cornelius F. Kelley appeared in 1954, toward the end of a career spanning over half a century and witnessing the rise of a part time surveyor's assistant to a position of eminence in the history of the American metals industry.[2] Kelley does represent continuity; and more, he represents transition from old to new, from the world of "rugged individualism" to the world of corporate management.

As a man it was nearly impossible not to like him. His physical size, forceful personality, and inexhaustible fund of Irish stories captivated people wherever he went.[3] One of the most articulate critics of the early years in Butte, Jerre C. Murphy, particularly delighted in leveling

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[1] K. Ross Toole, "A History of the Anaconda Copper Mining Company, 1880-1950" (Unpublished Ph.D. Dissertation, University of California at Los Angeles, 1954), p. ii.

[2] Montana Standard, May 12, 1957, p. 1.

[3] F. A. Linforth, private interview held at his home with the author, 1140 West Platinum, Butte, Montana, June 14, 1971.

the guns of his newspaper, the Montana Lookout, at the policies and personalities of the Anaconda Company. But even Murphy lamented the fact that a man of Kelley's calibre worked for the corporation. In 1909 Murphy editorialized:

> We confess a strong partiality for a lot of the traits of character possessed by Mr. "Con" F. Kelley . . . . For his richest endowments, including scholarly attainments and the personal qualities which invite respect and friendship, he is indebted to Mother Nature who gave to him generously both heart and brain in addition to a pleasing presence . . . . Mr. Kelley is obliged [to Anaconda] for some years of drudgery, many sleepless nights, premature baldness, and a hope to become possessed of great wealth in a brief time by the methods and powers of high finance.
>
> Thus it happens that Montana has in one of its most talented and lovable citizens a gentleman regularly employed by a great corporate power frequently in conflict with public interests, who spends his leisure hours oftimes in delighting his friends with patriotic and public spirited utterances.[4]

Murphy's comments came long after the bitter court-room battles had ended. By 1909 reputations had been created and destroyed in Butte, and at that late date there could be little doubt as to where a man stood with the Company. Much later, when Murpny published his book,

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[4]Jerre C. Murphy in Montana Lookout, March 20, 1909, p. 4.

The Comical History of Montana, he was even more generous in his description of Kelley. Murphy's comments on Kelley appear most flattering when contrasted to his description of Kelley's superior and mentor, John D. Ryan.[5]

In the beginning at least, P. A. O'Farrell, editor of the Heinze-owned Reveille, refrained from personally attacking Kelley.[6] O'Farrell commented in 1902 that:

> The Reveille wishes to state that it has never intended to place C. F. Kelley in the same class as Andy Campbell, D'Gay Stivers, and A. J. Shores.
>
> From what we've been able to learn of Con Kelley he is a young man of considerable promise, little experience and honest purpose.
>
> In fact we know nothing he has done which a young man of inexperience and lack of broad and extensive knowledge might not have been induced to do . . . .[7]

Between 1902 and 1906, as the Heinze/Amalgamated controversy became more heated, O'Farrell turned on Kelley with a

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[5]Jerre C. Murphy, A Comical History of Montana (San Diego, California: E. L. Scofield Press, 1912), pp. 64, 71, 72.

[6]Otto Heinze, F. A. Heinze's brother, blames most of the hatred directed toward his brother on the writings of O'Farrell. Sarah McNelis, Copper King at War (Missoula, Montana: University of Montana Press, 1968), p. 95.

[7]P. A. O'Farrell in the Reveille, October 11, 1902, p. 4.

vengeance.[8] Not until the appearance of the I.W.W. in Butte would the vituperation of O'Farrell's accusations be equalled.

Criticism of the early Kelley centered primarily around two areas. First, he continually came under attack as being a young man with an unquenchable thirst for power and money. Murphy alluded to this when speaking of Kelley: "He would like to be right but he would rather be managing director of the great combine, notwithstanding complete knowledge of its methods and purposes."[9] The Reveille, of course, was even more graphic and constantly spoke of "Kelley's paymasters and 'Rockefeller Gold'."[10] Most, if not all, of these indictments appeared in the Reveille during political campaigns and seemed largely to be political rhetoric. However, the pen of O'Farrell struck wherever and whenever the occasion demanded.

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[8] Reveille, November 3, 1902, p. 5; July 10, 1903, p. 4; October 31, 1904, p. 1; November 4, 1904, p. 8.

[9] Murphy, Comical History, p. 71.

[10] Reveille, November 3, 1902, p. 5; July 10, 1903, p. 4; October 31, 1904, p. 1; November 4, 1904, p. 8.

Kelley's questionable loyalty was another attribute constantly under attack by his opposition. Loyalty was a trait central to the character of "Con" Kelley and must be treated in greater depth than the previous accusations. Kelley held no man in higher esteem than he did Marcus Daly; his devotion to Daly must be considered basic to all of his actions. This attachment to Daly sprang from his youth.[11] Kelley's unshakable allegiance to Daly at once clouds and clarifies his motives. It largely explains his shift of allegiance from Daly to Amalgamated when the former sold his interests to the latter.

Less clearly understandable, however, was Kelley's shift from castigating W. A. Clark, Daly's old foe, in 1900 to aligning with him after 1903. What induced Kelley to have a change of heart toward Clark? The Reveille constantly attacked Kelley on this issue, always making clear that Kelley's alliance to Clark was only political and that he still held a burning hatred of Clark.[12] Marcosson disputes

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[11] Issac Marcosson, Anaconda, (New York: Dodd, Mead and Company, 1957), pp. 67-70; Murphy, Comical History, p. 71; Toole, "History of Anaconda," p. 238.

[12] Reveille, September 23, 1902, p. 3; October 11, 1902, p. 4; October 31, 1904, p. 1; November 4, 1904, p. 8.

this idea, contending that Kelley and Clark became good friends, with Clark often seeking "Con's" advice.[13] Despite O'Farrell's accusations that Kelley "bent his knee to Clark" after Daly's death, the fact remains that Clark made overtures to the Amalgamated rather than vice versa. Certainly Kelley would gain in no way by switching camps and siding with Heinze.[14]

It appears that the promise of a successful future with Amalgamated, combined with devotion to an old friend, directed "Con" Kelley's actions in that critical period of 1900-1905. Characteristically, once Kelley made the choice to go with Amalgamated, he served the Company with unswerving loyalty for over fifty years.

In an article about Kelley, Jerre C. Murphy asked if it was possible for a man such as Kelley to serve two masters.[15] Murphy's comment suggested that Kelly would

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[13]Marcosson, Anaconda, p. 141-143.

[14]Reveille, November 4, 1904, p. 5; also see K. Ross Toole, Montana: An Uncommon Land (Norman: University of Oklahoma Press, 1959), pp. 200-201. A huge cartoon appeared in the Reveille on November 4, 1904, showing Kelley on his hands and knees kissing W. A. Clark's toe. In the background stands Marcus Daly, and the caption reads "Shades of Marcus Daly: And Thats the Boy Who Owes Every-Thing to Me."

[15]Murphy in Montana Lookout, March 20, 1909, p. 4.

either serve the interests of Amalgamated or those of the people of Montana. To Murphy, the two were incompatible, and a man must choose one or the other. The enigma of "Con" Kelley lies in the fact that he did precisely what Murphy and others claimed impossible. Upon his retirement it could truthfully be said:

> He [Kelley] recognized that his first responsibility was to the Company's welfare, but he appreciated the lot of the men who worked in the mines . . . and never failed through the years to make every possible decision in their favor.[16]

There is little reason to question Kelley's sincerity in his devotion to Butte and to Montana. Quite aside from the issues concerning business, evidence suggests that Kelley held the same devotion toward the community as he had held earlier for Daly. Turning his attention and remarks toward the community of his childhood, Kelley stated with apparent sincerity in 1936:

> Butte! Ah, what a magic source of inspiration there is to me in that name. It bespeaks the earliest recollection of my boyhood, the struggles of young manhood. The source of whatever I have been, and in its future largely lies the

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[16] Montana Standard, May 19, 1955, p. 1.

> fate of whatever I hope to be . . . . So to me from the bottom of my heart I say, I love it. It is at once a shrine, a homeplace.[17]

This uncharacteristic sentimentality found support in fact on more than one occasion.

During the worst years of the Great Depression, Anaconda donated over $750,000 to relief in Butte, and Kelley himself constantly expressed his faith in the community's future.[18] Always interested in the individual miner and his welfare, Kelley almost singlehandedly implemented a comprehensive and wide ranging safety program in the Butte mines. Anaconda's Bureau of Safety was the first in the industry; and Kelley insisted that its courses be compulsory for everyone, superintendents included, who worked in or near the mines.[19]

His concern for the safety of those working in the mines stemmed from first hand knowledge. As has been noted

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[17] Montana Standard, June 5, 1936, p. 3.

[18] New York Times, August 5, 1934, section 4, p. 6; C. F. Kelley in Montana Standard, June 5, 1936, p. 1; May 13, 1949, p. 1; December 16, 1951, p. 1; December 17, 1951, p. 1. A copy of the speech to combined civic clubs of Butte, Montana, September 10, 1947 located in the Kelley File, Montana Historical Library, Helena, Montana.

[19] Montana Standard, May 19, 1955, p. 1.

he sustained severe injuries early in his underground career.[20] He showed insight and familiarity with the ways of the miner when he declared:

> If the grog shops upon this hill were shut up the accident record would be closed. The man who comes up to the collar of the shaft with half a dozen drinks under his belt and goes underground is the one who, many times, falls into the chute, loses his hold on a lever or misses a loose piece of ground over his head.[21]

Kelley's attitudes and ideas concerning working conditions, labor relations and the welfare of the common miner had wider implications than merely humanitarian and charitable concern. For Kelley was a corporate progressive. As head of a giant and expanding corporation, progress seemed to him the life blood of his industry. Kelley's notions of progress, which came to the fore after 1920, found their origins in the influence of J. D. Ryan. It is in this light that one sees the other side of Kelley. In

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[20]Marcosson, Anaconda, p. 71.

[21]Robert G. Raymer, Montana: The Land and Its People (New York: Lewis Publishing Company, 1930) I, 520; for complete text concerning safety, see U.S. Commission on Industrial Relations, Final Report and Testimony on Industrial Relations 64th Congress, 1st Session, Senate Document No. 415 (Washington, D. C., 1916), IV, 3816.

representing transition and continuity, Kelley bridged the gap between the business world of a Marcus Daly and that of a John D. Ryan.

To a large extent, Kelley's notions of progress centered around the expansion of American industry. In 1937, he reminded one interviewer:

> Anaconda poured its millions into South America. It transported shovels across the desert. It piped the water down from the Bolivian hills. Certainly all this was done for a profit. But how else could it have been done, I ask you? If the government paid out millions tomorrow, it could not duplicate what American ingenuity and pioneering have developed through private enterprise.[22]

A year earlier, while speaking to the Great Falls, Montana, Chamber of Commerce, he revealed--perhaps unknowingly--his fundamental religiosity, his optimism and his notion that the acquisition of wealth through business enterprise was fundamental to the American system.

> There is no use in preaching the gospel of despair. There is no use in being pessimistic about the future. I challenge the man who finds fault with the period in which he lives. God gave us one existence on earth. Human history is replete with changes that have occurred in government and basic institutions that we

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[22] Fortune Magazine, January, 1937, pp. 53-54.

> thought to be founded upon the rock of permanency. But throughout it all human nature has trod, the world has gone forth, civilization has progressed, but who are we to get up and say that the world of progress has stopped because we stubbed out toe . . . .
>
> It [the depression] was a concurrence of economic forces that had been released and unleashed, when the world for a period of four years interrupted its orderly progress and devoted itself to the destruction of wealth.[23]

To a "Con" Kelley, the orderly progress of the world could only be measured in the achievements and improvements in the human situation brought about by business. In a speech at his alma mater, the University of Michigan, he recounted and emphasized the importance of higher education as the springboard from which successful business enterprises are launched, thus insuring an orderly progress in the future. Kelley also dwelt on the intricacies of the business world, and interrelatedness of its individual components on each other. From the primitive to the modern, business had led the way.

> The modern plants that today are used to extract from beneath the earth's surface its richest treasures have replaced the primitive miner's crude appliances. Huge mills have been erected where once the village

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[23]C. F. Kelley, speech to Great Falls, Montana, Chamber of Commerce, June 8, 1936, reprinted in the Rocky Mountain Husbandman, June 11, 1936.

> forge sufficed to meet local needs. Countless plants house the most ingeniously devised mechanical equipment moving in a constant rhythm to supply human needs and wants . . . . In short, all the agencies that form the fabric of that all embracing term "business" and which in their daily use create astonishment and bewilderment, bespeak the effort and result of higher educations in business . . . . Business is not an abstract or theoretical endeavor. In the final analysis it represents the aggregate of the day to day transactions of the millions of people whose activities are reflected in the purchase and sale of goods or services . . . . The ability to purchase and the willingness to sell are the foundation stones of the business structure. Moreover the whole vast complicated scheme of modern business is a finely adjusted mechanism that can be easily thrown out of gear, and if there is any all important fact that the recent depression has taught, it is that no particular line of business can prosper if the whole does not. In other words the interdependence of business activities, one on the other, has been thoroughly demonstrated.[24]

Business during the Progressive era became keenly interested in its social responsibility; businessmen learned that stability and hence production depended greatly on the contentment of the workers and of the community. To insure progress and increase productivity,

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[24]C. F. Kelley, speech at the University of Michigan, June, 1937, copy in Kelley File.

the business mind viewed itself as the natural leader to which the workers would turn.[25] In a 1920 speech to the Montana Bankers' Association, Kelley echoed these ideals and identified the bankers as the guardians of wealth at the front of the drive to provide leadership and educate the public. Kelley had been President of Anaconda for less than two years and a member of the corporation's executive department for less than ten at the time he gave the speech. Here Kelley indicated that he had learned the intricacies of the corporation and that he subscribed enthusiastically to the notions held by the business community at the time. Said Kelley:

> Never before have we so needed strong and liberal leadership to pilot us out of the barren wastes of financial sophistry and false economies into the promised land of production and security. And by liberal leadership I mean neither the reactionary nor the radical. I mean the kind of leadership which will give fair consideration to the viewpoint and interests of capital, and at the same time remain the staunch and helpful friend of labor.
>
> And what group of citizens is better fitted to provide such leadership than the bankers of America--custodians alike of the earnings of capital and the savings of labor?

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[25] James Weinstein, The Corporate Ideal in the Liberal State, 1900-1918 (Boston, Massachusetts: Beacon Press, 1968), p. 172, 40, 61.

> The public must be educated. It must be taught that finance does not mean speculation: that it does not mean destruction; that it means mobilizing and organizing the nation's wealth; that it means creating new wealth, making new opportunities for workers . . . .[26]

To "Con" Kelley the education of the public by the industrial and financial leadership would result in a benign spirit of co-operation between the corporation and the community. Kelley brought this point up in speech after speech throughout his career. He constantly preached the idea that, in order for anyone, any company or community to benefit, a spirit of mutual co-operation and teamwork had to exist. During the Depression of the 1930's, this idea became paramount, especially after 1934, when a strike re-established unionism in the Butte mines.[27] The violence of the radical I.W.W. unionism Kelley encountered in his youth no doubt burned in his memory when he delivered a major address in Butte in 1936. Kelley pleaded with the community to forsake radicalism and join with Anaconda in a co-operative spirit. Said Kelley:

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[26]C. F. Kelley, speech to Montana Bankers' Association, Butte, Montana, August 6, 1920, Kelley File.

[27]Howard Zinn (ed.), New Deal Thought (New York: Bobbs-Merrill Company Inc., 1966), pp. 195-220.

> I am not unmindful that in this community today there is a small and utterly insignificant band who gloat at the opportunity to provoke trouble and industrial disorder . . . . It is the duty of this community to call that leadership to account. I ask you to support us in the effort to maintain industrial peace . . . . Do not permit this community with its traditions . . . to become the prey of a little group who have never worshipped our flag and who would rather see the crossed hammer and sickle on the red flag of Communism prevail.[28]

Obviously, progress to "Con" Kelley meant the advancement and fruits of industry as they were applied to the betterment of man's social welfare. Progress could only come about, however, in an atmosphere of stability. The maintenance of this stable envireonment rested with the business community and those individuals whose concern it was to direct the world's finances. Only by intimate cooperation, both within the industrial world itself and between management and workers, could stability be maintained.

As the business philosophy of Cornelius Kelley developed, so too did his fear of socialism. In many of his public speeches, especially those dealing with the nature of progress, Kelley again and again spoke of

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[28] Montana Standard, June 5, 1936, p. 1.

socialism as the antithesis of progress. His first contact with socialism apparently came in his own formative years in Butte, with the I.W.W. As has been noted, when Kelley entered the executive department of Anaconda, socialist elements simultaneously were capturing not only the leadership of the Butte Miners' Union but also the elected offices of the City of Butte.[29] From 1910 until 1920, labor troubles overshadowed almost everything else in Butte. The outbreak of war in 1914, the extent of Irish anti-war feelings in Butte, and the disruption caused by the Bolshevik revolution all crystallized during the second decade of the Twentieth Century to leave a lasting impression on those who were active during the period. "Con" Kelley surely felt the impact of these events and interpreted them as a serious threat.[30]

It would be difficult to overemphasize the importance of the labor (I.W.W.) agitation in Butte during the period 1910-1920. Anaconda and the smaller producers

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[29]Norma Smith, "The Rise and Fall of the Butte Miners' Union, 1878-1914" (Unpublished Master's thesis, Montana State College, Bozeman, 1961), pp. 45-57.

[30]For a look at Kelley's attitudes toward Socialism, see his testimony before the Commission on Industrial Relations, Final Report, VI, 3683, 3711, 3859.

reacted quickly and harshly to it; in some cases they over-reacted. After the violence of the summer of 1914, which divided the Butte Miner's Union, Anaconda severed its relations with any and all unions. Only men holding valid rustling cards were even considered for employment, and the Company absolutely refused to recognize organized labor. To enforce these new Company policies, Kelley hired three-hundred gunmen to protect Company properties.[31] Indeed, Kelley and the Anaconda were determined to crush socialism and violent unionism in the bud.

Anaconda tried in a variety of ways to force the workers in Butte to avoid the I.W.W. and to stay with the more conservative union leaders. In January of 1916, Anaconda offered its workers a voluntary wage increase. Notices were posted in all the mines saying, in effect, that although the serious labor troubles had forced it to cease recognition of all unions, the Company still recognized its working men and held to the old sliding scale of wages. This move caused the Engineering and Mining Journal to remark:

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[31]Melvin Dubofsky, We Shall Be All: A History of the International Workers of the World (Chicago: Quadrangle Books, 1969), p. 306.

> They [the miners] are beginning to realize that the corporation is not acting on those narrow selfish lines that are usually credited to corporations by labor agitators. Socialism has received a blow in Butte by this last voluntary wage increase that means its death knell.[32]

Unrest continued through 1917, reaching an apex in the summer of that year with the lynching of I.W.W. Frank Little in June by persons unknown.[33] In July of 1918, the I.W.W. presented Anaconda with an ultimatum, demanding a wage increase to $6.00 per day and threatening a strike the following Saturday if the demand was not met.[34] Kelley's reply came immediately. Delivering a welcoming speech for the visiting John D. Ryan, Kelley answered the demand the same night it was received. His reply excited his audience and forever branded him an enemy of the I.W.W.:

> 'They [I.W.W.] don't have to wait until Saturday,' he said, 'they have their answer right now. The demand will not be granted. The company I represent and the other

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[32] Engineering and Mining Journal, 101 (January-June, 1916), 239-240.

[33] Anaconda Standard, July 11-31, 1917; Butte Miner, July 11-31, 1917; Jensen, Heritage of Conflict, pp. 430-451.

[34] Jensen, Heritage of Conflict, p. 446.

> operating companies in Butte will listen to any request from organized labor, but we will not deal with or recognize the Wobblies.'[35]

Kelley continued, saying that he would see grass grow on the muck piles in Butte before he would consider the demands presented by the I.W.W. This remark was preserved in an I.W.W. protest song entitled "Cornelius Kelley." Written by someone known only as "Scottie," it is part of a group of songs about Butte and its labor troubles. The song is worth note because its baseness and vulgarity represents the mutual feeling of hate shared by Kelley and the socialists:

CORNELIUS KELLEY

> Of all the men in old Butte City,
> That needs contempt or even pity,
> There's one that rules on the Sixth Floor
> That's got them all skinned, by the score.
> This old gent's name is Cornelius Kelley,
> Was meant to crawl upon his belly,
> But listen, boys, he's good and true
> The Company's interests to pull thru,
> But when it comes to working men,
> He'd rather see them in the pen,
> Or burning in eternal hell,--
> His nostrils would enjoy the smell.
>
> The grass would grow, so says this plute,
> In Anaconda and in Butte,

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[35] Engineering and Mining Journal, 106 (July-December, 1913), 423.

Before I meet the men's demands,
As this is final as it stands.
All right, old boy, the time will tell,
You cannot stop the ocean's swell;
It's we who dig the copper ore,
While you lie in your bed and snore;
It's we who fold our arms and stand
Until we get our just demand.
Five months ago we told you so--
(The grass is coming very slow).[36]

One of the most potent weapons used by Anaconda during this period to quell unrest was the charge that any activity on the part of the workers to interrupt the flow of raw copper into the war effort was un-American. Viewed in the broad context of patriotic fervor that prevailed in the country during World War I, one can see the effectiveness of such a charge. In Butte, however, the situation was complicated by the fact that the large Irish population was indeed less than enthused about the war effort, at least prior to 1917; and if not pro-German, they were at least anti-British.[37]

The war's disruption of the orderly flow of business Kelley viewed as a most serious threat. This was the

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[36]Joyce L. Kornbluh (ed.), Rebel Voices: An I.W.W. Anthology (Ann Arbor, Michigan: University of Michigan Press, 1964), pp. 302-303.

[37]Jensen, Heritage of Conflict, p. 431.

subject of Kelley's 1920 speech to the Montana Bankers' Association. Kelley opened the talk with what was one of the most eloquent and intelligent utterances of his career. He began by saying:

> We have all become part and parcel of the intricate and unavoidable workings of that vast machine which comprises the agricultural, industrial, commercial, and financial efforts of contemporaneous man--affected in a general way by each condition which exercises a governing influence on the body politic as a whole . . . .
>
> During the past six years this truism has been demonstrated tragically and momentously by the sanguinary ordeal through which the world has passed. Who was there so versed in international politics, so skilled in the analysis of social forces or so superhuman in prophetic vision as to have foretold that the spark from the pistol shot of an impassioned nationalist, fired in a remote and comparatively unimportant country, would start the devouring flames of a conflagration which would [sic] compass the world, crumbling institutions rooted in age old traditions, obliterating imperial boundaries created by centuries of war, diplomacy and ambition, devastating and leaving in ruin cities innumerable, whose names were synonymous with the history, the art, the supposed culture and civilization of mankind, consuming with relentless fury the accummulated treasure stores of nations and sacrificing upon blood soaked fields millions of the picked manhood of two generations, until opposing forces crushed and destroyed [sic], the

> curtain finally descended upon a world stupified with horror, incensed at the provocateurs of the cataclysm and confronting the future with doubt and misgivings.[38]

In the same speech, Kelley demonstrated his belief that war and its resulting instability constituted the greatest threat imaginable to the American system.

> The disturbance of the social equilibrium afforded abundant opportunity on foreign soil for wild theorists and unstable idealists to spread their poisonous propaganda. . . . Directed chiefly by the spawn from the foul breeding places of Europe, the attempt has been made to fasten upon our own soil the pernicious doctrines of class hatred and the destruction of American institutions . . . . through the utterances of its spokesmen it proclaims the destruction of individualism, the establishment of socialism and the extermination of industrial and commercial activity . . . .[39]

While Kelley believed the orderly conduct of day to day business transactions constituted the means of achieving social progress, the heart of such progress lay beyond business and beyond the cooperative spirit; to "Con"

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[38]C. F. Kelley, speech to Montana Bankers' Association, Butte, Montana, August 6, 1920, Kelley File.

[39]Ibid.

Kelley the heart of progress was law. His legal training always remained at the center of his social thought. His fundamental religious, patriotic, and economic beliefs were all legally oriented. In an address to his colleagues in the Montana Bar Association, Kelley delivered a speech which brought into perspective his basic ideals. The year was 1925, and Kelley occupied the presidency of the Anaconda Copper Mining Company. It had been seven years since he assumed that position and fourteen years since his entrance into the executive branch of Anaconda's hierarchy.

Kelley began by defining law as the means by which man left the cave and became civilized. He pointed out that all laws are designed to place a restraint upon the individual's liberty, and that " . . . too often the primary truth that law is a restraint had been overlooked."[40] Kelley then turned his attention to the legislative process and the dangers stemming therefrom:

> To the most superficial student of comparative jurisprudence two striking facts are at once apparent with reference to the trend of legislation in the United States.

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[40]C. F. Kelley, speech to Montana Bar Association, Butte, Montana, July 9, 1925; complete text printed in Anaconda Standard, July 10, 1925, p. 7.

> The first is its volume and the second is its departure from certain fundamental ideas that were accepted as axiomatic until the most recent period in our history as a government . . . .
>
> Legislation cannot reconcile the differences in the hearts of men and should not attempt to do so.[41]

He directed his remarks specifically to the Montana legislature, no doubt with the recently passed constitutional amendment raising mine taxation firmly in mind.[42]

> The Revised Codes of Montana contain 12,552 statutory enactments. Without doubt much of the legislation is necessary and serves some useful public purpose, but it cannot be gainsaid that a large volume of it consists of useless, purposeless and ineffective attempts to control, regulate, and circumscribe with bewildering complexities and never ending penalties the ordinary conduct of a rational people in their social business and civic relationships . . . .[43]

Kelley demonstrated his basic conservative nature when, in a section of the speech entitled "Nostrums that Menace," he singled out what he described as "the solecism of recall" and "the catch phrase of government by injunction" as graphic representations of the attack on progress.

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[41]C. F. Kelley, speech to Montana Bar, July 10, 1925.

[42]Toole, "History of Anaconda," pp. 212-219.

[43]C. F. Kelley, speech to Montana Bar, July 10, 1925.

To combat these forces, Kelley called for a program of public instruction, and he delegated its implementation to the legal profession.

> It is my conviction that the Bar should assume a position of leadership in an effort to bring about, through public education a systematic effort to reduce the general volume of restrictive legislation and to improve the character and standards of that which may be passed.[44]

In a lengthy review, Kelley cautioned his colleagues that in many cases legislators failed to realize that all law is based on moral law:

> What is right from a legislative standpoint and what may be right from a moral standpoint are not essentially the same thing . . . .
>
> My plea is that the road of legislation that seeks to compel the reformation of the world overnight is marked by the ruins of coercively established religion. The inspiration for law must be the voice of the Creator speaking to the conscience of man.[45]

As previously suggested, this speech provides a penetrating glimpse into the ideals of Cornelius Kelley, and when viewed in the context of his past and future utterances presents an overview of his beliefs. It is

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[44]C. F. Kelley, speech to Montana Bar, July 10, 1925.

[45]Ibid.

extremely significant also because of the time of its presentation. Fifty years of age at this time, Kelley had emerged as a key figure in the metals industry. This speech to the Montana Bar can be considered a summarization of attitudes which had been developed over the previous fifty years.

The Twenties' marked a turning point of sorts in Kelley's career. These years saw his emergence from his period of development and into his period of national prominence. The last thirty-seven years of his life (1920-1957) would be marked by the application and development of the ideas learned during the previous twenty-five years (1895-1920).

Kelley's development as an industrial personality coincided with a new sophistication in the Twentieth Century business world. In his speeches and addresses, he mirrored all the corporate ideals of the age. His legal conservatism, fear of socialism and sense of community responsibility made him a graphic representative of the ideals of welfare capitalism prevalent during the period.

CHAPTER VI

NEW YORK AND BEYOND

Anaconda moved Kelley to New York in 1914. He was 39 years of age at the time and had been a member of Anaconda's executive department for only three years.[1] Although now in New York, Kelley continued to play a large part in the events of Montana. By the second decade of the century, however, Anaconda's eyes turned to other areas, and "Con" Kelley began to play an increasingly larger role in the development of Anaconda's future.

One of the first moves out of Montana came in 1914 when Anaconda purchased the International Smelting and Refining Company in Utah and various smelters and refineries in Indiana, Arizona, and New Jersey. The following year the Company moved outside the borders of the United States by acquiring the Greene Cananea Copper Company in Mexico. Kelley figured largely with Ryan in all of these acquisitions.[2]

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[1] Anaconda Standard, May 19, 1955, p. 1.

[2] "Anaconda Copper," Fortune Magazine (December, 1936), p. 93; K. Ross Toole, "A History of the Anaconda Copper Mining Company" (Unpublished Ph.D. Dissertation, University of California at Los Angeles, 1954), pp. 235-238; Issac Marcosson, Anaconda (New York: Dodd, Mead and Company, 1957), p. 149.

World War I truly altered the course of Anaconda's development. The Company's war profits between the years 1915 and 1918 amounted to $122 million--more than the Company's entire assets in 1910.[3] But then, as the demand for copper ceased after the armistice, the bottom fell out of the copper market. This was precisely the type of fluctuation in the supply and demand relationship that Kelley knew had to be avoided. With the cessation of hostilities, Kelley and Ryan looked anxiously toward the insurance of world stability. Ryan prophesied in 1916 that: "The resumption of peace in Europe will, with perhaps a brief intervening period of readjustment, be accompanied by an enormous demand for copper."[4]

At the urging of the Wilson administration, Congress passed the Webb-Pomerene Act in April of 1918.[5] The Webb-Pomerene Act permitted domestic companies to engage in price-fixing combinations in export trade, provided that

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[3]"Anaconda Copper," Fortune, p. 93.

[4]Ibid.

[5]Gabriel Kolko, The Triumph of Conservatism (London: Free Press of Glencoe, 1963), pp. 275-276; James Weinstein, The Corporate Ideal in the Liberal State, 1900-1918 (Boston: Beacon Press, 1968), pp. 218-219.

they did not attempt to interfere with domestic prices of competition. In this respect, the Act served as a market stabilizing device. Under the provisions of this act, the U.S. copper industry acted swiftly. By December, 1918, largely through "Con" Kelley's efforts, the Copper Export Association was formed. Kelley took a leading part in its development and in 1919 organized a group of the Association's most powerful members to travel to Europe in order to inspect and stabilize the European copper market which had been destroyed by the war.[6]

European buyers had begun to pit one U.S. producer against the other, and Kelley hoped that the Association might force foreign buyers to accept a single market price. Foreign copper orders were equally distributed among the members of the Association, according to each one's production capabilities. "A peculiarity of the Association was that voting was distributed on the basis of the tonnage alloted for export, a vote for each 500 tons."[7]

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[6]Marcosson, Anaconda, pp. 159-161.

[7]Toole, "History of Anaconda," p. 242.

While in Europe Kelley was asked to serve at the Versailles Peace Conference by Bernard Baruch, Wilson's Chairman of the War Industries Board.[8] For reasons not clear, Kelley hastily refused the offer and immediately returned to New York. The purpose of the European trip came to light in 1927. At that time Kelley stated:

> When we started one of the purposes [of the Export Association] was to eliminate in foreign countries the harmful speculation that caused wide fluctuations in price, unwarranted by industrial factors in European markets, which tended to destroy confidence in the integrity and stability of the business.[9]

In 1940 Kelley came under heavy questioning from a Senate committee regarding price-fixing during the active period of Copper Exports Association. At this time, Kelley admitted that it was impossible to fix foreign market prices without affecting domestic prices as well.[10]

The post war era saw Anaconda's mammoth global expansion. In 1922, Ryan and Kelley purchased the American Brass Company of Connecticut, at that time the largest

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[8] Marcosson, Anaconda, p. 161.

[9] New York Times, April 17, 1927, section II, p. 18.

[10] Ibid., January 18, 1942, p. 15.

consumer and fabricator of raw copper in the world. The copper depression following the war convinced Kelley and Ryan that market stability had to be insured. Kelley had long advocated the idea that the most efficient way to insure stability was, in effect, to control the product from "mine to consumer." Therefore, Anaconda entered the fabricating end of the copper industry. Kelley convinced the men of American Brass that, if they did not sell, Anaconda would have to begin fabricating in competition with them, thereby forcing them out completely. American Brass could never compete with a fabricator which was also a producer.[11]

Kelley and Ryan concluded the deal early in 1922, for a price of $45 million. Said Fortune: "With this Anaconda, the world's largest producer of copper now became also the world's largest fabricator of copper."[12] The acquisition of American Brass gave Anaconda a fabricating capacity 400,000,000 pounds higher per year than its production capacity. With this in mind, Kelley and Ryan began scouting for new sources of copper ore.[13]

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[11] Toole, "History of Anaconda," p. 239-242.

[12] "Anaconda Copper," Fortune, p. 94. [13] Ibid.

Ryan and Kelley focused on several open-pit operations around Katanga in the Belgian Congo, but they could not acuire these holdings because of the state ownership of the mines by the Belgian government.[14] Furthermore, their future productivity seemed dubious and could not be assured by Anaconda geologists who visited the workings.[15] Acting on a tip supplied by a friend, Thomas Cochran, Kelley and Ryan approached the Guggenheim interests about selling their mines in Chile. On March 15, 1923, Anaconda bought the Chile Copper Company for a reported $77 million, the most expensive single transaction in Wall Street history up until that time. Included was the famous Chuquicamata Mine, which contained over a billion tons of ore.[16]

Anaconda reached its financial zenith in 1920. The decade of the 1920's witnessed its tremendous expansion under the direction of Ryan and Kelley. As with most phases

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[14]Marcosson, Anaconda, p. 200.

[15]Mr. F. A. Linforth, private interview held at his home with the author, 1140 West Platinum, Butte, Montana, June 14, 1971. Mr. Linforth was one of the geologists who surveyed the Katanga properties at the time.

[16]Marcosson, Anaconda, pp. 200-201.

of the Company's history, this period is clouded with secrecy, and available evidence points to dubious financial manipulations by the Company. Kelley must be considered, of course, a part of them.[17]

When the depression struck the country, the copper industry as a whole was slow to contract its operations.[18] Anaconda found itself in a more precarious position that its competitors in 1929. The vast outlays of capital during the expansion programs of the 1920's had left the Company heavily in debt and with an acute shortage of capital.[19] Characteristically, Kelley took this problem by the horns; with a debt of $70 million in 1930, Kelley filed a new $55 million bond issue on Anaconda stock. In addition he applied 20% of Anaconda's profits toward its debt retirement. When prices rose the Company invested in its own bond issues. Anaconda lost $17 million in 1932. By 1935, however, due to Kelley's shrewd management, the Company realized a $5 million profit in the first six months.[20]

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[17]"Anaconda Copper," Fortune, pp. 213-214.

[18]Marcosson, Anaconda, p. 221.

[19]"Anaconda Copper," Fortune, pp. 214-215.

[20]"Business and Finance," Time, October 7, 1935, pp. 55-56.

In 1929 the price of copper had been stabilized at 18¢ per pound. Kelley became the acknowledged leader of those copper producers who firmly held on to that figure, even as the depression became worse. When the copper price broke in 1930 and the metal slipped to 4.7¢ per pound, contemporary observers thought that Kelley's statistical advisers had erred and thus caused miscalculations by investors.[21] However, in 1940 Kelley disclosed that in holding the 18¢ price he was acting inaccordance with government officials' hopes to avoid a "runaway market." "I felt the price should have been cut before it was cut," said Kelley. He also indicated that the Hoover administration wanted it held in 1930 too, but the producers "let it go anyway."[22]

Then came the National Industrial Recovery Act of 1933 which imposed upon the industry what Kelley had been advocating for years: a fixed price determined by productive controls.[23] Kelley played a large role in the establishment of an industry wide copper code under the provisions of the

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[21] Business Week, April 23, 1930, pp. 5-7.

[22] New York Times, January 18, 1940, p. 15.

[23] "Anaconda Copper," Fortune, p. 230.

National Recovery Administration. Copper prices stabilized at 9¢ per pound; but in an industry whose production had fallen over 75% in under four years, this price still remained well below the 18¢ per pound of 1929.[24] More significantly, Kelley saw the price control of copper slipping from the hands of U.S. producers and into the hands of European financiers and U.S. "junkmen" (scrap dealers).[25]

Responding to the challenge, Kelley invited the world's producers to join in a global code drawn up by himself and his associate U.S. producers. The world code, modeled on that set up under the N.R.A., guaranteed stability on the world market by eliminating price fluctuations. Foreign investors hastily agreed and a cartel representing 75% of the world's producers joined.[26] Kelley's initiative was instrumental in the recovery of the copper industry. His far-sightedness and expertise helped the industry as a

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[24]Marcosson, Anaconda, p. 224; "Anaconda Copper," Fortune, December, 1936, p. 231.

[25]"Anaconda Copper," Fortune, December, 1936, p. 232.

[26]Time, April 8, 1935, p. 66; "Anaconda Copper," Fortune, December, 1936, p. 231-232.

whole to recover and allowed Anaconda to liquidate its entire depression debt by 1942.[27]

On February 10, 1933, John D. Ryan died.[28] This left Kelley alone at the head of the Anaconda. Ryan had been responsible for Kelley's entrance into the business world and had had a greater influence on him than any other single individual except Marcus Daly. From the time of Ryan's death in 1933 until his own retirement in 1955, Kelley assumed a patriarchal position in the Anaconda executive structure.[29] The far-sightedness for which he had by this time became renowned was amply displayed prior to and during World War II.

On April 30, 1940, Cornelius F. Kelley reached the apex of his career. He became Chairman of the Board, succeeding John D. Ryan, who had died seven years previously. Kelley had served in a dual capacity since Ryan's death,

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[27]Marcosson, Anaconda, p. 227.

[28]Montana Standard, February 12, 1933, p. 1. All major Montana newspapers as well as the New York Times carried obituaries on Ryan.

[29]Herbert Solow, "Anaconda: One Face to the Future," Fortune, January, 1955, pp. 89-150.

acting as both Chairman and President.[30] Available evidence gives no indication or clues as to why Kelley was not appointed Chairman immediately; the corporation functioned without a board chairman for seven years. The time lag was certainly unusual and any suggestions as to its answer would be merely speculation.

Unlike many other firms, Anaconda did not greatly expand geographically during the Second World War.[31] It followed instead a path of greatly enlarged internal development. During the expansion years of the 1920's, Kelley had visited Europe. In 1925 he developed extensive workings of lead, zinc, and magnesium in eastern Germany (Silesia) and in Poland.[32] Late in 1939, with the outbreak of war, these properties were confiscated. The loss of the Anaconda workings in Poland convinced Kelley that war was once again imminent. Rather than be caught short again, as it had in World War I, Kelley believed U.S. industry should begin at once to formulate plans for war and postwar

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[30]Marcosson, Anaconda, p. 228; Montana Standard, May 1, 1940, p. 1.

[31]"Anaconda," Fortune, 1942, p. 91.

[32]Marcosson, Anaconda, p. 263.

needs. Kelley's reasoning cannot be considered purely patriotic. Several considerations came into play at this juncture, all of which pointed unfavorably toward Anaconda. First, while its competitors were using the inexpensive open-pit mthod of ore extraction, Anaconda still relied on expensive underground vein mining in its Montana operations. In case of a price freeze which would surely come with war, Anaconda would be caught short. The Company's open-pit workings, in fact the bulk of its mining operations, were located outside of the United States. In case of a general war, this could work havoc upon the corporation.[33] These ideas lay behind Kelley's adamant insistence on stock-piling and other war preparations.

Anaconda contributed enormously to the war effort. As suggested, internal development played the major role. The Butte mines, for example, produced over 9 million pounds of copper between 1942-1945, as compared to 7 million pounds between 1916-1919. Zinc and manganese workings were developed in Butte to compensate for the losses of these metals in Poland.[34]

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[33]"Anaconda," Fortune, 1942, p. 147-148.

[34]Marcosson, Anaconda, pp. 231, 232, 234.

By the end of the war, Kelley realized that to remain competitive Anaconda's production costs would have to be substantially reduced. Extensive underground mining as practiced in Butte could no longer be maintained from a cost basis. Owing to the location of the city, however, open-pit excavation seemed unfeasible. The greater portion of metropolitan Butte laid directly over Anaconda's holdings. Realizing the implications, Kelley developed what was to be his last great attempt to insure the future of his favorite city. He announced a $39 million investment in the future of Butte on September 10, 1947, at a banquet in the "Mining City." Entitled the "Greater Butte Project," Kelley's plan proposed to add at least another 130 million tons of accessible ore to the Butte operations.[35]

Briefly, the project entailed the sinking of a large central shaft, called the "Kelley Mine"; tunnels or haulage ways radiated out from this shaft. By using

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[35]C. F. Kelley, speech to Civic Clubs of Butte, Butte, Montana, September 10, 1947. This speech was printed in pamphlet form by the Montana Power Company. A copy can be found in the Kelley File, State Historical Library, Helena, Montana; also, Montana Standard, September 11, 1947, p. 1; Butte Daily Post, September 11, 1947, p. 1; Joseph Kinsey Howard, "What Happened in Butte," Harpers Magazine, August, 1948, pp. 89-96.

controlled excavation, huge caverns were carved out of the hill deep underground. The ore was transported from these to the central shaft and hence to the surface. This so-called "block-caving" method resembled open-pit mining except that it was carried out at enormous depths. Coupled with this project, open-pit excavation began in 1955 on the eastern slope of the "Butte hill." At this date the twin arms of the "Greater Butte Project," the "Kelley Shaft" and the "Berkeley Pit," are the Company's most important workings in the Butte area.[36]

Thus, in the twilight of his career, "Con" Kelley returned to the city he claimed as his own to fulfill a promise he had made over and over again. Whenever asked about Butte and its future he would reply: "As long as I live I'll never shut the old camp down." In concluding his speech announcing the "Greater Butte Project," he said: "You have the assurance of a period of community longevity that will extend far beyond the mortal expectancy of any-

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[36]Toole, "History of Anaconda," p. 274; Life, December 4, 1950, pp. 82-88; Saturday Evening Post, December 8, 1951, pp. 40-41, 124-130.

one in this room. The work outlined by us elders will of necessity be fulfilled by our successors."[37]

While speaking at the annual stockholders meetings in Anaconda on May 18, 1955, Kelley announced his retirement, after more than 55 years of service.[38] At the same meeting, he announced that henceforth the Company would be known simply as the "Anaconda Company." The name change symbolized the Company's vast diversifications. At the time of its incorporation in 1895, Anaconda was capitalized at $30 million. At that time Kelley held the position of surveyor's assistant. Sixty years later, in 1955, when Kelley retired as Board Chairman, Anaconda's net assets totaled $673 million. The Company had expanded from a single copper mine to a corporate empire encompassing every phase of the non-ferrous metal industry. In copper, aluminum, zinc, brass and all their alloys, Anaconda realized Kelley's dream of an empire stretching "from mine to consumer."[39]

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[37]C. F. Kelley, speech to Butte Civic Club, September, 10, 1947.

[38]Montana Standard, May 19, 1955, p. 1; Newsweek, May 30, 1955, p. 64; Time, May 30, 1955, p. 8.

[39]Montana Standard, May 19, 1955, p. 1.

Kelley remained in the Anaconda camp as a member of the executive advisory board until 1957. In November of 1955, his wife of over fifty years passed away in New York.[40] The shock of her passing affected Kelley very deeply. In January of the following year he suffered a massive heart attack. Never fully recovering from the seizure, Kelley entered the hospital for surgery on his damaged heart on May 5, 1957. At 1:00 a.m. on May 12, 1957, death came quietly and peacefully to the 83-year-old man.[41] News of his passing cast a pallor over Butte. Flags flew at half mast, Anaconda's offices closed and many "old timers" paused to remember "Con." Simultaneous requiem masses were conducted in New York and Butte. In New York's St. Patrick's Cathedral the elite of the business community gathered to pay their respects. Louis S. Cates, Board Chairman of Phelps-Dodge Company, J. Luther Cleveland, of Guaranty Trust Company of New York, Carroll Shanks, President of Prudential Insurance and Robert Woodruff of

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[40] Montana Standard, November 14, 1955, p. 1.

[41] Ibid., May 12, 1957, p. 1.

the Coca-Cola Company all came to mourn Kelley's passing and serve as honorary pall bearers.[42]

At St. Patrick's Church in Butte hundreds of old friends filed through the great bronze doors, donated by Kelley in memory of his parents, to recall their acquaintance, however brief, with him, and to hear Kelley's old frined Monsignor M. M. English say in eulogy: "Mr. Kelley accomplished in the industrial field the work of a giant during the last half century. At his word cities sprang to life in what had been barren wastes and brought employment and prosperity to thousands."[43]

In natural ability Kelley possessed a richness that approached genius. His ability to guess the future and capitalize upon opportunities while others hesitated propelled him to the forefront of American industry. His launching of the "Greater Butte Project" is a classic example. With this announcement Kelley demonstrated not only his executive astuteness but also the other side of his character. Although the "Project" was a bold tech-

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[42]Montana Standard, May 14, 1957, p. 1.

[43]Ibid., May 15, 1957, p. 1.

nological maneuver, it also demonstrated Kelley's firm friendship and great affection for the "Mining City" of his youth.

In this light it is impossible to apply, directly at least, the sometimes sordid reputation of the Anaconda in Montana to him. His sincerity, loyalty and honesty seemed above reproach to most of those who knew him in the State. Kelley attained the rank of a brilliant captain of industry during a most trying and complex era in the country's history. But to the people of Butte, whether water boys or executives, he was always "Con."[44]

Although Kelley acted ruthlessly on occasion, as in his dealings with labor before World War I or with farmers in the "Smoke Cases," he seems to have been--especially in contrast to the Heinzes and Ryans of Montana's copper industry--a genuine statesman of industry.

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[44]Montana Standard, May 13, 1957, p. 4.

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