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Expert Report  
In

*Ramey v. Boslough, et al.*  
Civil Action No. 04-D-422 (MJW)

October 14, 2004

Mr. Kenneth D. Robinson, P.C.  
1136 Pearl Street, Suite 202  
Boulder Co 80302-5141

Dear Mr. Robinson,

Pursuant to your request, here are my opinions in the matter of *Ramey v. Boslough*, et al. Civil Action No. 04-D-422 (MJW). I reserve the right to modify and refine my opinions in the event that new information is brought to bear on this matter.

Sincerely,

Hal K. Rothman  
Professor and Chair  
Department of History  
Barrick Distinguished Scholar  
Harry Reid Silver State Research Award Recipient  
Nevada Writers Hall of Fame  
University of Nevada, Las Vegas

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Description of the Assignment:

To evaluate the qualifications of Sylvia Pettem as an historical expert and to assess her claims in the matter of *Ramey v. Boslough, et al.*

Qualifications:

See exhibit A for curriculum vitae of Hal K. Rothman.

## Compensation:

Hal K. Rothman is compensated at the rate of \$200 an hour for research, writing, and other tasks pursuant to preparation of courtroom testimony. He receives \$300 for deposition preparation, deposition, courtroom preparation, and courtroom testimony. This is a standard rate, applied in all expert witness matters.

As of October 14, 2004, 32 hours of work have been expended on this project.

## Summary of Materials Consulted:

This report was derived from the materials in *Ramey v. Boslough* Civil Action No. 04-D-422 (MJW) and from selected secondary sources referred to in pleadings, deposition, and other materials from the case.

In answer to your questions:

1. Is Sylvia Pettem qualified to offer expert witness opinion on the subject matter of her report?

No. She lacks the academic training to be qualified as an expert or to offer testimony of an expert nature. Nor do her opinions show the rigor and judgment associated with professional historians. Nor are her judgments based on evidence marshaled in the manner consistent with the standards expected of the historical profession.

A. What is your opinion of her qualifications?

Pettem is an amateur, not a professional historian. While she possesses a college degree, her major field of study was psychology. Her collegiate exposure to history amounted to, in her own words, “probably just one or two” required courses. No advanced topical courses in fields such as the American West, economic history, architectural history, transportation history, or any of the other topics that might pertain to this case are evident.<sup>1</sup> She did not even attempt courses in formal historical research, historical methodology, research methodology, or comparative historiography.<sup>2</sup> In short, Pettem claims expertise without having even undertaken enough credit hours for a minor in an undergraduate major at any established American university.

Pettem attempts to qualify herself through another standard. She relies on her thirty years of “on the job training,” and exposure to information derived from slide-shows on mining methods as her qualification for understanding road construction or mining methodology.<sup>3</sup> Again, her claim is specious. She made no attempt to acquire the tools necessary for such evaluation. After college, Pettem did not pursue any supplementary courses or professional training in surveying, road construction, engineering, cartography, geography, mining, mining law, or mining methods. Her entire career is based on personal interest in history and is characterized by self-teaching and training acquired from informal sources.<sup>4</sup> Even after discovering an interest in the past, she made no effort to include herself

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<sup>1</sup>Silvia Pettem, Deposition, January 10, 2003, 13:1.

<sup>2</sup>Pettem, Deposition, 13:20, 14:5; Pettem resume.

<sup>3</sup>Pettem, Deposition, 14:10, 17:11.

<sup>4</sup>Pettem, Deposition, 16:23, 17:3, 18:14-17, 18:23, 19:1.

among any circle of professionals.

B. What is your opinion of *her* claim to academic qualification?

Pettem makes the claim that another peer told her that publishing a book with an academic press was “the same as having a Ph.D.,” an assertion so specious that it would be equivalent to claiming the right to practice law in Colorado as a result of paying close attention to *The People’s Court* and *Law and Order*.<sup>5</sup> The actual steps required to attain a PhD in History are so rigorous that more than 50% of the people who qualify for entrance to an accredited Ph.D. program never reach the dissertation-writing stage and more than 80% of those who do never complete the terminal degree. Besides typically 66 hours of graduate coursework beyond an undergraduate degree and passage of oral and written comprehensive fields, reading knowledge of two foreign languages, and annual evaluation of ongoing performance, a successful Ph.D. candidate must complete a doctoral dissertation of original research and writing that is judged by a faculty committee to meet the standards of the historical profession and to significantly add to the knowledge of the field. A percentage of people who undertake the research and writing are judged to not meet these two stringent criteria. As a result, it is thought harder to attain a Ph.D. in History or other Humanities field in the United States than it is to attain any professional degree – J.D., LL.D., or MD included.

Successful Ph.D. candidates will often substantially revise their doctoral dissertation and publish them as books with university presses, but these too have a hierarchy. In western American history, presses such as Nebraska, Kansas, Illinois, Arizona, Oklahoma, and California are eminent. They consistently produce a significant number of books of importance, win academic and other prizes for those books, and maintain a professional profile that enhances their image and reputation.

There are other tiers of university presses. Some state presses hold the university press title – which means that they are supposed to put the advancement of knowledge ahead of profit – are forced by circumstances such as limited state funding, expectations of boards of regents or other administrative bodies, or changes in expectations of state legislators to engage in mercenary publishing not related to their scholarly mission. This is especially common among lesser university presses such as the Colorado Associated University Press.

Sylvia Pettem’s claim rests on the publication of *Boulder: Evolution of a City*, a 1994 from the Colorado Associated University Press. The work is little more than

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<sup>5</sup>Pettem, Deposition, 16:3.

a picture-book, a collection of historic black-and-white photos of structures in Boulder, Colorado, typical of the sort of mercenary publishing described above. It is clearly an effort to sell books to the Christmas market, an ongoing strategy of minor university presses that belies their mission to add to the corpus of knowledge. Pettem's work is merely a coffee table book; no university in the United States would award an advanced degree – even an MA – for such flimsy work.

In *Boulder*, Pettem's approach is typical of someone with an antiquarian understanding of history, but no training in how to interpret history or understand the past. She offers very little analysis, using the work of other photographers to guide the pictorial narrative. Her judgments do not reflect expertise; instead they show a shallow and local knowledge, perfectly acceptable in a coffee table book produced in an attempt to shore up a bottom line, but nowhere near the level expected for an advanced degree, much less for the designation of "expert."

C. What is your opinion of Pettem's claim to expert status based on her belief that she had been qualified by previous courts as an expert?

Pettem placed an advertisement in the *Boulder County Bar Association Newsletter* (February 2002) offering her skills as an "Historical Researcher." The text of the ad included the claim that she was an "experienced expert witness." Such a claim was either advertising hyperbole or was based on previous qualification as an expert in some legal matter.<sup>6</sup> She either willfully misinterpreted her own role in the two cases she claimed experience as an expert witness or did so from ignorance. Transcripts from *Heath v. Steen* and *Wood v. Rugg*, the two cases in which she spoke, indicate that while she offered testimony, she was never qualified by a judge as an expert witness.<sup>7</sup>

2. What is your assessment of the substance of Pettem's report and her conclusions relative to the public road?

A. Is there enough evidence to support Pettem's assertions?

The major claim Pettem makes is contained in the following statement:

"In my opinion, the road now known as the Barking  
Dog Road (between the Balarat mining camp and

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<sup>6</sup>Also see Pettem, Deposition, 46:5-25 for more of her tenuous understanding of the expert witness process and her own claims to status.

<sup>7</sup>Pettem, Deposition, 29:3, 30:16-25, 31:19-23.

South St. Vrain Canyon) was first used as a wagon road by the public to access the Balarat mining camp in 1892, and its use has continued for over 100 years. The stonework on the road is consistent with other old roads from that era.”<sup>8</sup>

There is not enough evidence for Pettem to make such a claim. Authenticating such a claim would require a combination of documentation that proved 1) the road had been built 2) the road was maintained or improved 3) wagons traveled on the road not only in 1892, but because of her use of the word “consistent,” at intervals throughout the subsequent 100 years 4) that the road was open to public traffic and 5) that the road was recognized as a road that allowed the public to travel on it. In addition, she would need to authenticate the stonework through some accepted empirical method. A simple observation that she believes the stonework to be vintage must be dismissed as irresponsible and unprofessional. The assertion that the handiwork on the road is “consistent” with her vision of the past fails to affix any specific time to its construction or use.

B. Is her interpretation correct?

Regarding the specific claim that “the stonework on the road is consistent with other old roads from that era,” Pettem does not have the expertise or evidence to make such a claim. When asked about her assessment of her own qualifications to offer that opinion, Pettem says she has lived in the mountains, hiked in the mountains, and been on many roads from that era.<sup>9</sup> She has no training in road construction, contemporary or historical, no training in surveying or engineering, no training in architectural history or architecture, no experience on the Historic American Bridges Survey (HABS) or Historic American Engineering Record (HAER) projects, the most likely places outside of industry to obtain genuine knowledge of the patterns and practices of American road construction, and no courses in stone masonry, road construction, or any other related subject. She further claims that because she has written a coffee table book about Boulder, her experience transfers to historical roads and other unrelated subjects.<sup>10</sup> She does not offer any substantive evidence that the toll road was ever built; no *evidence* that the road was from a specific year or decade; nothing that can connect it to the toll

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<sup>8</sup>Pettem report, 3; Pettem, Deposition, 86:22.

<sup>9</sup>Pettem, Deposition, 87:15; also, 89:18-90:16 references more anecdotal experience with local roads and methods for their construction.

<sup>10</sup>Pettem, Deposition, 87:20

road company or a specific era.<sup>11</sup>

As to the claim regarding use by the public, Pettem cannot substantiate the claim central to her deposition. Her own assessment of the data indicates a lack of reasoning at best, *post hoc ergo propter hoc*, one of the forms of reasoning defined as “fallacies” by the esteemed historian David Hackett Fischer, at worst. Despite having no reasonable evidence, she asserts that the road was built; this unproven assumption leads her to believe it must have been used. There is no historical data presented in deposition that proves either construction of the road or use by the public. Her opinion on whether or not there is use between 1892 and 1900, the years where the toll road would have been operational had it been constructed after the incorporation of the Balarat & Lyons Short-line Toll Road Company, is “I don’t know.”<sup>12</sup> With all the data Pettem has accumulated, with the conviction that is evident in her summary report regarding *use by the public*, she cannot definitively answer the question regarding use. Pettem’s assessment then descends into unsubstantiated opinion without evidence. She retreats to the opinion that “there had to have been a road [for there] to be use, but it could have been a road before the toll road for all I know. I don’t know.”<sup>13</sup> Later she admits that regarding public use between 1892 and 1900, she is “going on what I think probably happened in this location at that period of time.”<sup>14</sup> But there remains no substantive evidence of any kind that a road existed between Balarat and what is now Highway 7 along the St. Vrain River prior to 1902.

C. Does her methodology reflect that of the historical profession and is it sufficiently rigorous?

Her procedures and methods are neither rigorous nor in line with the standards of professional historians. In deposition, she frequently admits that she either overlooked documents that would challenge her formulation of the matter at hand or excluded documents that offered an opinion contrary to her preconceived belief that the disputed road existed. Pettem admits that she did not employ any formal standards in her assessment of the material. Her opinions are arbitrary and capricious, and they are not derived from any methodical assessment of available data. Most importantly, she confesses that she is working from a presumption of

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<sup>11</sup>Pettem, Deposition, 95:5

<sup>12</sup>Pettem, Deposition, 135:15

<sup>13</sup>Pettem, Deposition, 136:4

<sup>14</sup>Pettem, Deposition, 144:24

what she thinks probably happened at this location during this period of time.<sup>15</sup>

In analyzing data, Pettem does not employ any standards or criteria for weighing the veracity of competing pieces of evidence. When presented with the Balarat & Lyons Short-line Toll Road Company's survey map of the toll road they intended to construct, a map that clearly showed no road between Balarat and the South St. Vrain along Long Gulch, Pettem was incredulous at the possibility that a toll road company might not build the road they announced they were going to build. She balked at the possibility that a company might not do what it said was going to do. This reflects the unprofessional nature of her methods and the attendant lack of criteria on two levels:

First, Pettem repeatedly inserts what *she* would do or believe into the historical record, assuming that just because *she* finds something incredible or dubious, customary or sensible, people in the past would have felt the same way. Pettem asserts that people in the past built roads based on common sense and that any road there must have been built to haul ore downhill from mines. "That makes a lot of sense to me," she avers.<sup>16</sup> She is unaware that the people of the past are not the people of today dressed up in costume, that their values, vision, constraints, and opportunities do not reflect those of today. The people of the past made their decisions based on a calculus of their own, derived from the terms of their world, not ours.

Pettem is not aware of nor presents evidence about the success of stock companies, the proclivity of toll road companies to actually build the roads for which they incorporated, and the success rate of such companies in completing projects. She cannot fathom that people of the past, when resources were scarce, boosterism was rampant, and business enjoyed fewer constraints, might have eyes bigger than their stomachs, devise projects they could not or did not complete, or not complete projects they began. She will not acknowledge the possibility that the Balarat & Lyons Short-line Toll Road Company might advertise for bids to construct a road in 1891, incorporate for the purpose of collecting tolls in 1892, survey for a proposed toll road construction project in 1898, and never complete the road. Even the six-year interval between the incorporation and the survey of the area, which strongly suggests a company with insufficient resources to attain its objectives, makes no impression on her. Pettem interprets the existence of the bid advertisement and the incorporation papers as evidence that the road was not only planned but built.

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<sup>15</sup>Pettem, Deposition, 55:17, 56:8-12, 58:17, 139:8, 144:23

<sup>16</sup>Pettem, Deposition, 58:3

Her argument has other equally powerful shortcomings. The advertisement she relies upon never specifies what route the proposed toll road might take. The survey map clearly shows that the proposed route in 1898 would go from Lyons to Balarat via Central Gulch, not Long Gulch. Pettem offers her line of reasoning at the same time that she admits none of these documents or any document in her possession suggests the road was ever built or used.<sup>17</sup> She says: “We have nothing that absolutely says that the toll road company built the road.”<sup>18</sup> But she clings to the belief that the road exists, that because it exists it must have been built, and that because the toll road company intended to build a toll road, it must be the road she has convinced herself traverses what she calls the “Barking Dog Trail.” The degree to which she refuses to acknowledge this possibility informs her assessment of a road she is not even sure was ever built: “I guess I am interpreting the use because I can’t understand why someone would go to the expense of building a road if no one used it.”<sup>19</sup> To counter the claim that the toll road company built a road in Central Gulch rather than Long Gulch, Pettem again relies on her own opinion of what people in the past would do rather than what they did: “It wouldn’t make any sense” for that road to exist in Central Gulch.<sup>20</sup>

Pettem’s assumptions about the past are further diminished by her propensity to insert her suppositions into the historical record and to superimpose expectations derived from data pertaining to a later time onto previous eras. When she is faced with the existence of the ore road with the precipitous uphill section, which functioned as a primary connection between Balarat and Jamestown at least between 1876 and 1885, her response relies on unsubstantiated assumptions about the past. When informed that a mining company constructed a road in a way that contradicted Pettem’s unwavering belief that miners do not haul ore uphill supersedes her assessment of the evidence. Faced with the existence of the Jamestown road, Pettem remarked: “that puzzled me a bit.” She also observed: “I figured they must have had a reason for doing what they were doing. It seemed contrary to wanting to take the ore downhill, but I was—when I was forming my hypothesis about hauling ore downhill, I was also taking into consideration the many documents that we have from the (19)‘20s and ‘30s and ‘40s...”<sup>21</sup> Pettem’s

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<sup>17</sup>Pettem, Deposition, 63:18

<sup>18</sup>Pettem, Deposition, 89:13

<sup>19</sup>Pettem, Deposition, 65:19. For reference, read Pettem, Deposition, pages 65-69.

<sup>20</sup>Pettem, Deposition, 166:5

<sup>21</sup>Pettem, Deposition, 155:19, 156:19

reliance on the practices of later times as a basis of earlier behavior violates every rule of the historical profession.

Her research and review of her own documents is not rigorous or professional. Pettem makes the claim that it was customary for toll roads of the 19<sup>th</sup> century to be chartered for twenty years and then sold to whatever county in which they happened to be located.<sup>22</sup> In deposition, Pettem indicates that her basis for this understanding is not any extensive study of toll roads or any personal research or surveys of Colorado toll roads; her understanding of this “customary” practice came from a 1932 article in *The Colorado Magazine*. A review of that article reveals that the author *never* talks about chartering or any customary procedures regarding toll road charters. What the author does mention is a very important point that Pettem overlooked: “...some [toll roads] remained forever unexecuted projects, while others were only partially carried out...”<sup>23</sup> This clear and concise statement should have informed her opinion about the possibility that the Balarat & Lyons Short-line Toll Road Company never built the roads it intended to build. In addition, Pettem received a copy of the survey conducted by the Balarat & Lyons Short-line Toll Road Company of the road they intended to build, a map that clearly indicated a road from Lyons to Balarat via Central Gulch, not Long Gulch, at deposition. The absence of this document from her own research into the activities of the toll road company in question calls her credibility into question. Pettem found only the 1891 advertisement for construction bids and the 1892 incorporation papers. It is unprofessional to assert that these two documents proved the toll road company proceeded with their plans to construct the road.

Pettem’s assessment of information is amateurish. She is unaware that certain filings had to be made by toll road companies in order to maintain their rights to a road or the right to build a road along a certain route. The B&LSTRC declaration was little more than fulfillment of their legal obligations to maintain their rights to a proposed toll road.<sup>24</sup>

Summary:

Sylvia Pettem lacks training or appropriate experience to be qualified in this case. In my professional opinion, she does not even approach the minimum standard to

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<sup>22</sup>Pettem, Deposition, 68:2, 167:13

<sup>23</sup>Arthur Ridgway. “The Mission of Colorado Toll Roads.” *The Colorado Magazine* 9-5, 168.

<sup>24</sup>Pettem, Deposition, 107:10; 151:24

be called a historian, much less an expert on any aspect of history. Her knowledge does not bear materially on this case in any meaningful way.

Nor does the evidence available support her position. Her conclusions are based in her beliefs and suppositions, not in historical evidence. Her judgments do not reflect an understanding of the nature of historical inquiry, any feeling for the past, nor respect for the past on its own terms.