

# LAWYERS, GUNS INSURANCE MONEY

*by Leonard J. Padilla*

**IN FACT, A LEGAL  
DISPUTE OVER  
INSURANCE MONEY  
WAS AT THE VERY  
CENTER OF THE MOST  
NOTORIOUS EPISODE  
OF FRONTIER VIOLENCE  
IN NEW MEXICO  
HISTORY: THE LINCOLN  
COUNTY WAR.**

**A**lthough I had no concrete idea what was meant by the term "insurance defense," my first employer following graduation from law school was an insurance defense firm, one of the largest in New Mexico. I quickly took stock of our custom-built and beautifully appointed offices. I heeded the salaries of the dozens of attorneys and staff scurrying about or intent at their work. I realized all this was made possible by fees charged insurance companies for defending claims made against their policies. I searched in Martindale-Hubbell and discovered that insurance defense fees contributed mightily to the size and success of other large law firms. The major role insurance companies occupy in our lawyer-filled society became evident. It's a role not always fully recognized and appreciated, absent inside knowledge of the insurance industry.

Eye-opening as my new job was, history proves that New Mexicans have battled over insurance money since territorial times. In fact, a legal dispute over insurance money was at the very center of the most notorious episode of frontier violence in New Mexico history: The Lincoln County War. The collection of life insurance proceeds by the only lawyer in Lincoln County, Alexander McSween, ultimately led to anarchy, federal inquiry, arrests and incarcerations, escapes and, ultimately death. But the opening salvo fired in the Lincoln County War was from a courthouse, not a gun.

In 1875, Alexander McSween and his wife, Sue, moved to New Mexico Territory and settled in Lincoln. They arrived in Lincoln with few possessions, but he was clearly ambitious and in time developed a respectable country practice.

In the late 1800's Lincoln was, with few exceptions, a collection of squat adobe dwellings. Lawrence G. Murphy owned, and used as a store, one of the biggest buildings in town. Murphy arrived in New Mexico Territory with the California Column, sent by the federal government at the close of the Civil War to remove Texas-led Confederates. However, the Column arrived too late as the Confederates withdrew just ahead of them. Rather than pursue Texans, the California Column stayed in the territory to help subdue,

and place on reservations, Apache and Navajo Indians. Many soldiers remained in New Mexico when their enlistment expired.<sup>6</sup>

Murphy and his fellow officer, Emil Fritz, opened a flourishing trading post at Ft. Stanton.<sup>7</sup> Fraudulent dealings with the Mescalero Indian Agency evidently was one contributing factor to the success of the business. However, their business practices eventually grew so corrupt that Murphy and Fritz were banished from the fort.<sup>8</sup> Lincoln was decided upon as their new base of operations.

The success of the Murphy-Fritz enterprise depended on filling government contracts for beef, grain and other staple items for distribution to the soldiers of Ft. Stanton and to the Indians in their charge. To fill government contracts, Murphy-Fritz and their new partner, James J. Dolan, purchased virtually all the goods produced by local farmers and stock growers.<sup>9</sup> The "House," as the Fritz-Murphy-Dolan enterprise was called, extended credit at exorbitant interest rates to farmers and ranchers who traded at their store. When it came time to sell their product at the store, the farmers and ranchers received no cash, only more credit.<sup>10</sup> It comes as no surprise that much of the local population soon found themselves heavily indebted to the House. When the producers fell behind on their payments, the House retained Alexander McSween to collect the debt.<sup>11</sup>

One day, while traveling through Santa Fe on business, McSween met John H. Tunstall, an Englishman on an expedition to find a suitable investment for his family's money, particularly land and cattle.<sup>12</sup> At McSween's urging, Tunstall visited Lincoln and, enthused by the opportunities it presented, he settled there. The Englishman and the lawyer's financial interests and investments soon merged, not only in land and

cattle, but also in mercantile and banking.<sup>13</sup> These two businessmen found an ally in John Chisum, the Pecos River cattle baron whose thousands of cattle needed a market and whose capital was quite welcome.<sup>14</sup> Together they bid on government contracts and became flourishing merchants and money lenders, which threatened Lincoln's existing power structure – the House of Murphy.

When Emil Fritz became ill and died, his estate hired Alexander McSween to collect the proceeds of a life insurance policy.<sup>15</sup> McSween was ultimately successful in collecting the \$10,000-life insurance policy with Merchant's Life Insurance Co. of New York, but it was not easy. He was forced to travel to New York and hire lawyers and bankers there to assist him.<sup>16</sup>

Complicating matters, Spiegelberg Bros., a prominent New Mexico mercantile firm, claimed that Murphy had assigned to them the proceeds of Fritz's life insurance policy in satisfaction of a debt.<sup>17</sup> Further complicating matters, the life insurance company was in receivership and unable to meet all its obligations.<sup>18</sup> Spiegelberg Bros. eventually settled for \$700 and McSween arranged for a bank to pay them.<sup>19</sup>

Near financial collapse due to maturing loans and increasing competition from Tunstall enterprises, the House was desperate.<sup>20</sup> Informed of the money due merchants, bankers and lawyers to settle the insurance claim, the House became enraged by the small amount of Fritz's remaining share. This dispute over Fritz's share of insurance money became the catalyst for a succession of violent acts that quickly spread out of control.

The insurance money was deposited in a St. Louis bank and McSween requested release from all responsibility and a final settlement.<sup>21</sup> The House pressed for criminal charges through their allies, Sheriff William

Brady and District Attorney William Rynerson.<sup>22</sup> Fritz's sister was enlisted to swear out an affidavit against McSween for embezzlement.<sup>23</sup> She also filed a civil lawsuit against him.<sup>24</sup> Judge Warren Bristol, no enemy to the House, issued an arrest warrant. None other than U.S. Attorney Thomas B. Catron aided in McSween's arrest.<sup>25</sup> Not long before, Catron had lent the House money and taken a mortgage on its property.<sup>26</sup>

As security in the civil suit, Sheriff Brady moved to attach McSween's and Tunstall's assets.<sup>27</sup> Tunstall was driving a herd of horses to another ranch for safekeeping when a posse met him on the trail and killed him.<sup>28</sup> Tunstall was a British citizen at the time of his death and his murder cast international concerns the State De-

## THIS DISPUTE OVER FRITZ'S SHARE OF INSURANCE MONEY BECAME THE CATALYST FOR A SUCCESSION OF VIOLENT ACTS THAT QUICKLY SPREAD OUT OF CONTROL

partment could not ignore.<sup>29</sup> The federal government sent Frank Angel Warner to investigate the Lincoln County War.<sup>30</sup> His report provided information that was critical of Gov. Samuel Axtell's performance.<sup>31</sup> Lew Wallace, attorney and author from Indiana, was appointed as the next territorial governor charged with ending the war.<sup>32</sup>

After Tunstall's death, the cycle of violence escalated. No mention of the Lincoln County War is complete  
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without including the gunfighter known by many names, but known today primarily as Billy the Kid. An employee and friend of Tunstall, the Kid was nearby when his employer was gunned down.<sup>17</sup> The Kid repeatedly avenged his friend's death, first by killing those posse members responsible, and ultimately by ambushing Sheriff Brady in Lincoln.<sup>18</sup> Of course, many other men died as well. Like an expanding fire, the war raged out of control, consuming the territory and captivating the nation with its violence.

The biggest blaze in this conflagration was the Five Day Battle waged in the town of Lincoln itself, where the fighters on both sides had assembled. This episode even involved the United States Army as participants, a questionable action by its commanders, given the nation's laws prohibiting use of army soldiers as *posse comitatus*.<sup>19</sup>

At the climax of this confrontation, McSween was killed in a volley of gunfire as he exited his burning house and attempted to surrender.<sup>20</sup> The Kid and others escaped.<sup>21</sup>

Sue McSween lived. She hired a newly arrived lawyer from Oregon, Huston Chapman, to settle her husband's estate.<sup>22</sup> The aggressive Chapman also advocated Sue McSween's cause against the army's, particularly Col. Dudley's, role in the Five Day Battle.<sup>23</sup>

The major antagonists in the war decided to parley and a tenuous peace was reached.<sup>24</sup> Afterwards, celebrating their new arrangement, the former antagonists drank heavily and turned violent. Chapman encountered these men on the street where he was shot and killed by one of the old Murphy gang.<sup>25</sup> The Chapman murder focused new attention on the still unresolved war.

Lew Wallace himself traveled to Lincoln to meet with Billy the Kid.<sup>26</sup> Wallace assured the Kid protection

from prosecution for Sheriff Brady's murder if the Kid would identify Huston Chapman's killers.<sup>27</sup> The Kid agreed to testify and indictments were returned against the men responsible. However, none of the indicted men ever stood trial.<sup>28</sup>

Instead, in a twist of fate and a show of the House's continuing grip on New Mexico politics, Judge Warren Bristol issued arrest warrants for the Kid.<sup>29</sup> Gov. Wallace joined the fray by offering a \$500-reward for the Kid's capture.<sup>30</sup> Pat Garret, new Sheriff of Lincoln County, apprehended the Kid at Stinking Springs near Taiban.<sup>31</sup> The Kid was transported to Mesilla to stand trial where he was found guilty of killing Sheriff Brady.<sup>32</sup> Judge Bristol sentenced the Kid to hang and he was moved to Lincoln to await his end.<sup>33</sup>

In one last gasp at life and immortality, the Kid escaped the hangman's noose and rode out of Lincoln.<sup>34</sup> Garrett again located the Kid, this time in Pete Maxwell's bedroom in Ft Sumner.<sup>35</sup> Garrett's gunfire illuminated the dark room and the Kid fell mortally wounded. There ended the Lincoln County War. Most had forgotten how it started.

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