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New Mexico—Past or Prologue?

Presented by the State Bar of New Mexico Historical Committee



"If we live only in the present we suffer from memory impairment, a kind of social amnesia, not knowing whence we came or whither we are going."

Harold J. Berman, *Law and Revolution, II.*

Even those of us who might agree with Professor Berman know many people who are very successful, some we admire, who seem very content with living only in the present. Lawyers, however, cannot ignore history because they must employ it in the service of clients, perhaps most obviously as advocates, but also as counselors and advisors. In the employment of history on behalf of others, lawyers also learn that what happened in history is never quite black and white; that facts, motives and rules are all subject to interpretation and finding a new way of looking at things is part of the process.

The Historical Committee hopes that this special issue of the *New Mexico Lawyer* will provide "enrichment" for readers. If not, we will be satisfied to have provided an opportunity for respite from the rigors of the practice of the law.

Mark Thompson, for the Historical Committee



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Dance Josefita Dance:

A Short History of Valencia County Courthouses

By Judge John W. Pope

Dance, Josefita, dance. Dance on the remains of the good broad hardwood floors upon which your great grandmother may have danced the night away. Of course, when she danced there was a roof and windows, and the floor she danced on had been part of the Valencia County Courthouse in Tomé only a couple of years earlier.

The ghosts of courthouses and county seats speak to anyone who will listen, of lives lived, deaths recorded, family dramas, passion plays in courtrooms that would make scriptwriters blanch. Valencia County, as in all things, has a particularly interesting history of courthouses and county seats involving families, politics, murder, religion, and did I mention politics?

The Valencia County seat moved five times between 1844, when it was originally established in the Village of Valencia, and 1874. The early days of Valencia County and its courthouses were filled with drama. The county seat moved to Peralta in 1848, acknowledging the allegiance of the Otero family to the Americans. The court there was formerly a small church and after the county seat moved, it became the chapel of the Otero family. Some of the ruins may still be visible off the plaza in Peralta. The county seat was moved to Tomé in 1852, when citizen government was established in Santa Fe. Tomé was the logical choice, having been the seat of what had been called the Kingdom of Valencia, which stretched from California to Texas for centuries. The courthouse there was a simple but functional building consisting of one salon, a large room serving as the courtroom, three regular rooms and calavoso, or jail. It was adobe and almost square, very similar to those described in other counties in New Mexico.

It was in this courthouse that the first murder trial under territorial law occurred. In 1852, months after the first territorial legislature met and established county boundaries, the jury in that case stated: "We the juro find Felipe Garsilla gilte of murder and worthy of deth." With these words, Felipe Garcia became part of history. He was the first person to be sentenced to death under the new American territorial government. The details of the crime are best summarized by the grand jury:

That Philllipi(sic) Garcia, late of the County of Valencia, laborer, not having the fear of God before his eyes but being moved and seduced by the instigation of the Devil, on the

Twenty-third day of April, in the year of our Lord, One thousand Eight Hundred and fifty-two—at Tomé—upon Thadeus E.C. S. Canter . . . feloniously wilfully and of his malice aforethought did strike and cut—and—give unto said Thadeus E. C. S. Canter two mortal wounds of the length of two inches and of the depth of five inches —of

which said mortal wounds the said Thadeus E. C. S. Canter languished and languishingly did live for three hours and die.



Felipe Garcia was tried on April 29, 1852. The verdict was returned on the same day, and Garcia was sentenced to be hanged on the 25th day of May 1852. Note that the crime was committed on April 23, the grand jury met and returned its indictment on April 27, the trial was held on April 29, and the sentence was carried out on May 25, 1852. Within the space of one month and two days, the crime was committed and the defendant executed. It is generally assumed that the

trial was conducted in Spanish and English, although it might have been difficult to translate old Anglo-Saxon legalisms into Spanish, because the Spanish legal system was completely different.¹

In 1874, the county commission decided to move the county seat back to Tomé from Belen. Why it had been moved to Belen in 1872 is a bit of a mystery, unless it was a temporary location while the beautiful new courthouse was being built in Tomé. While in Belen, the courthouse was housed in a decommissioned Catholic church in the Casa Vieja.

In any case, the county seat and the beautiful new courthouse in Tomé was of the territorial style very similar to the courthouse at Lincoln. It was a large two-story structure built of adobe with a shingle roof. Court functions were held on the second floor, and county administrative functions were on the first floor. The second floor was reached by an outside stairway and balcony in the center of the building. A very sturdy jail was attached. This was a building for the ages, or one year, whichever came first.

Reflecting the growing power of Solomon Luna in Los Lunas, the county seat was moved to Los Lunas in 1875, the sixth and final stop for the county seat. Which brings us back to Josefita's

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Not “in New Mexico”

Legal Limbo in Los Alamos, 1946-1949

By Judith Humphrey

Two New Mexico Supreme Court cases, *Arledge v. Mabry*¹ and *Chaney v. Chaney*,² provide a snapshot to the pivotal time in postwar Los Alamos history that led to Los Alamos' establishment as New Mexico's thirty-second county.³ When Los Alamos made its debut to the world in August 1945, New Mexico was informed, officially, that it had been neighbors to a secret military town of 6,000 people right “in its own front yard.”⁴

Set on 68,991.30 acres in Sandoval and Santa Fe counties, land making up the “Los Alamos Project” was appropriated by the U.S. War Department for the Manhattan Project, the development of the atomic bomb, in 1943. The majority of the acreage was national forest reserve land, and approximately 9,000 acres were obtained through condemnation proceedings against the Los Alamos Ranch School and a number of homesteading families.⁵ Subsequent ambiguities as to the effectiveness of New Mexico's cession of Project land and the government's acceptance of exclusive federal jurisdiction hounded Project officials for years thereafter.⁶

By late 1946, any doubts as to the postwar future of the Los Alamos Project were laid aside once the War Department transferred custody of the military Manhattan Engineer District land to the newly formed Atomic Energy Commission (AEC).⁷ The advancement of atomic energy in Los Alamos was there to stay. To retain and attract talented staff, Project officials facilitated the development of housing subdivisions and other comforts of a permanent community.⁸ Nevertheless, residents were mindful that although they paid New Mexico taxes and obtained New Mexico license plates for their vehicles, they were still turned away from voting in local elections. As the Sandoval County clerk cited residence on federal land as the reason for their disenfranchisement, Los Alamos residents rallied behind local politicians to push through Senate Bill 200 (1947),

which amended the New Mexico election code to allow people living on federal reservations to be residents for voting purposes.⁹

However, a hint that something still wasn't quite right with Los Alamos' legal status surfaced in a 1947 divorce case, *Bowden v. Bowden*.¹⁰ District Judge David Carmody held that although the recent legislation may have given Los Alamos residents the vote in New Mexico, exclusive federal jurisdiction still obstructed residency for divorce purposes. Before Judge Carmody could facilitate an appeal to the New Mexico Supreme Court, the Bowdens reconciled.¹¹

The jurisdictional dilemma climaxed in the 1948 primary election for the Democratic nomination for 2nd Judicial District judge. Los Alamos went to the polls in Sandoval County Precinct 17 to cast their votes. A final canvass after a targeted recount revealed that candidate D.A. MacPherson beat his opponent R.F. Deacon Arledge by a mere 78 votes. Perhaps aware of the jurisdictional questions raised in *Bowden* and the high

probability of a Los Alamos swing vote, Arledge sued Governor Thomas Mabry for a canvass of the vote, but this time to exclude all voting divisions of Precinct 17. In *Arledge v. Mabry*, Justice Daniel Sadler explained, in restrained detail, the complicated jurisdictional character of the Los Alamos Project and ruled that land acquired by the United States via condemnation was not “in New Mexico” within the meaning of the New Mexico Constitution defining qualifications of electors.¹² However, jurisdiction over former forest preserve land from the public domain was found not to have been ceded by the state of New Mexico, and people living upon it were New Mexico residents.¹³ Therefore, votes cast by residents living in the condemned area of Los Alamos were declared void, and the election in that part of Precinct 17 was invalid.¹⁴



Los Alamos Dormitories 1950s, #56389, Photo by Robert R. Bruce. Courtesy Palace of the Governors (MNM/DCA) www.palaceofthegovernors.org/photoarchives

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UNM Graduation, 1893

The first commencement exercises “of a high order” at the University of New Mexico were held in May 1893. Among several presentations, the “crowded house” heard a “pleasing address,” a “most excellent recitation” in German and a “well-written essay.” What made all this most notable? There was not a single graduate.
-*Albuquerque Daily Citizen*, May 31, 1893*



Blood and Thunder by Hampton Sides

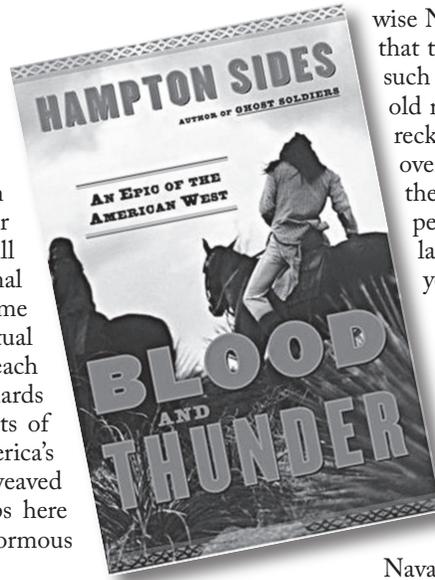
A Review by Eric Sedillo Jeffries

New Mexico history buffs will find a banquet to feast upon in Hampton Sides' new book *Blood and Thunder*. Not since Paul Horgan won the 1955 Pulitzer Prize for *Great River: The Rio Grande in North American History* has a historian captured so much of our culturally rich history. Like Paul Horgan, Hampton Sides is a transplanted fellow New Mexican. He is a magazine editor-at-large for Santa Fe's *Outside* magazine and best selling author of *Ghost Soldiers*.

For history buffs, many of Sides' stories about General Kearney, Kit Carson and Governor Armijo are familiar. Sides has elevated those stories and all New Mexico history from the 1820s to the 1860s from intriguing to epic grandeur by painting his character studies on a nationwide canvass that captures the fervor of a country driven by the implacable will of President Polk's fulfillment of his personal Manifest Destiny. In the American prism of time Sides has not ignored the prior centuries of mutual cruelty the Spanish and Navajos forced upon each other. Navajos raided for sheep and Spaniards raided for Navajo slaves. The frequent contacts of centuries between the two cultures created America's only pastoral Indian tribe that herded sheep, wove magnificent blankets and raised seasonal crops here and there during their migrations over the enormous Dine' Beke'yah or Navajo lands.

Kit Carson is the narrative thread that elegantly weaves this spell-binding historical tapestry. As sketched by Sides' skillful pen, Kit Carson was a short, compassionate man of immense personal bravery. A Missouri native, he was multi-cultural. Although illiterate, he spoke five Indian languages and Spanish fluently; he lived among and married two Native Americans, and died bereaving his beloved Josefina, his Mexican wife, who shortly before widowed him. We travel with the young Kit Carson during the short, colorful history of mountain men who disappeared with the popularity of beaver skin hats. We meet him again as Fremont's guide in the conquest of California and after General Kearney's successful invasion of

New Mexico. He is in the midst of New Mexico's civil war battles and leads the merciless conquest of the Navajo Nation, starved in Canyon de Chelly and then herded in the infamous Long Walk to barren Bosque Redondo, now Fort Sumner. There Kit Carson turned from warrior to a passionate bureaucratic savior of the people and culture he vanquished amidst the steep walls of Canyon de Chelly.



Among the most fascinating characters is the tall and wise Navajo leader Narbona who in his 80s recognized that these "new men," the Americans, were arriving in such increasing numbers and determination that the old raiding days would soon be ended. Foolishly and recklessly, a U.S. trooper shot him during a dispute over Narbona's warrior's theft of a horse, thus ending the best chance the "new men" had to negotiate a peace with a significant portion of the decentralized, large and powerful Navajo tribe. Instead, twenty years of resistance led to the Long Walk.

Santa Fe is at the epicenter of most all the stories in so many ways. It was the old Spanish territorial capital almost forgotten by the authorities in Mexico City. With pathetically meager resources, Santa Fe governed an immense empire under collapse. New Mexicans were subject to death, theft and kidnappings in frequent raids from Indian tribes. The

Navajos were a relatively merciful tribe. Navajos would resourcefully leave enough survivors and ewes to assure a fresh herd in future raids. Santa Fe was also the terminus of the immensely profitable Santa Fe Trail that became the road of conquest for General Kearney's "Army of the West" that conducted the longest march in our military history.

It is amusing to read the love/hate relationship the U.S. troops had with New Mexico and its people. However, I predict your relationship with this book will be pure love.

Eric Sedillo Jeffries has long been a practicing trial lawyer who remains enchanted with New Mexico.

1915 Baseball Game

In 1915, the Albuquerque Bar challenged the Santa Fe Bar to a baseball game. Albuquerque had the edge, according to the Albuquerque Morning Journal. Isaac Barth was to play shortstop because "nothing could get through the infield with Mr. Barth standing there." M. E. Hickey would be the catcher because it would "not be a long walk back to the bench after his work." Judge Mann "had spoken" for second base because all other positions had been taken. Judge Craig and John Venable "engaged in a deadly struggle as to which shall play first base." Harry C. Miller and Judge John Baron Burg battled for third, "each feeling his build, grace and agility entitled him." Judge Heacock, John W. Wilson and A. B. McMillen were selected for the outfield because



"it isn't expected that the outfield will have anything to do;" and further, "All signs point to Henry G. Coors, Jr., as the pitcher of the outfit. He looks the part."

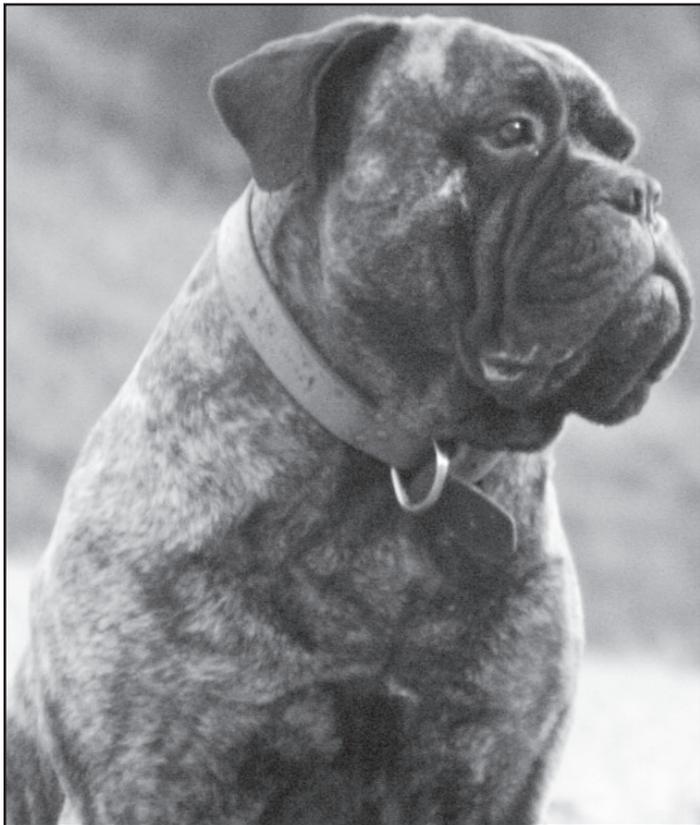
At the time of this story, Santa Fe hadn't accepted yet, but the reporter felt they would. Senator Catron "wants a position nearest the shade." Attorney General Clary "will consult authorities before deciding where he'll play." Harry Bowman "is ready, willing, and eager, no questions asked." A. H. Renehan "has been approached by the Federal league and is holding out to see what inducements they will offer."

- Albuquerque Morning Journal, August 1, 1915*

The Dog Who Solved a Murder Case

A Short History of *Territory of New Mexico v. Vialpando*¹

By Joel Jacobsen



In early 1895, a storm dumped six inches of snow on southern Santa Fe County. On January 20, as the storm slackened, 32-year-old Tomás Martínez rode out to check on the family's cattle, accompanied by his bull mastiff, Gallardo. Later (by some accounts as long as four days later), Gallardo returned home alone. He was covered in blood and had no interest in food. Gallardo "began to bark and howl, and taking hold of [a man's] trousers, would pull at them, then run a little distance towards the same direction from where he came."² He repeated the performance until Tomás's younger brother, Maximiliano, saddled up a horse. Gallardo led Maximiliano eight miles through the snow onto Ojo de la Vaca Mesa. Man, horse and dog arrived at a half-destroyed corral, the evident site of a recent bonfire. Many of the corral's wooden fence posts had been torn down to fuel the fire, and snow was melted for quite a distance around the large pile of ashes. The carcass of a recently-slaughtered cow lay nearby, some of its ribs missing, steaks hacked from its hindquarters.

The dog, ignoring the dead cow, dug frantically in the ashes. He drew out a boot, and inside the boot, all too plainly, was a human foot. Maximiliano recognized the boot, still wearing what was described in the trial transcript as a "cloth overshoe."

Maximiliano raced home and sent a messenger to Santa Fe County Sheriff William P. Cunningham. A posse retraced Gallardo's route up the mesa to the corral, then followed the tracks of five horses to a depot on the Santa Fe Railroad. The depot keeper gave a detailed description of four strangers who warmed themselves at his fire just a few days previously. A person described in *The New Mexican* as a "one-armed Arab peddler,"³ reported that he had just been robbed

by four men. He led the posse straight to the robbers. The sheriff arrested them, gave the peddler back his goods and transported his prisoners to the Santa Fe jail.

While the newspapers trumpeted the capture of Tomás's killers, it didn't take Sheriff Cunningham long to figure out he had robbers in custody, not killers. One of them, Orecensio Martínez, told the sheriff that on the night of January 20, four men leading a riderless fifth horse had passed through the village of Gusano. Two of the men were Jesús Vialpando and Feliciano Chávez.⁴ Young Orecensio's father confirmed his son's tale. Sheriff Cunningham made a deal with them: he would let Orecensio go, and even put some money in his pocket, if they promised to telegraph the moment they learned where Vialpando and Chávez had holed up.

In about a week, the telegram arrived. Vialpando was at his mother's house in Las Vegas. Cunningham set off with a heavily-armed group of men, but Vialpando surrendered peacefully. The posse searched his mother's house and found Tomás Martínez's saddle and bridle.

Vialpando took the stand at his trial and admitted killing Tomás, but, he said, there were extenuating circumstances. He and his companions had traveled all day in near-blizzard conditions with nothing to eat but a six-inch square of meat. In this near-extremity, they resorted to killing a cow. Unfortunately, just as they were roasting some meat, a cowboy came riding up with his dog. "How do you do, friends?" the cowboy said. Vialpando invited him to dismount and join them. The following is Vialpando's testimony (through an interpreter).

He was close to the fire warming himself, and I could see the belt around his waist and cartridges. When I saw the cartridge belt I became afraid of him that he might be the owner of that animal that we had killed there. Then I made a sign to Mr. Feliciano with my eyes to embrace him (grab him in a bear hug from behind) and take his pistol away from him.

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ALBERT B. FALL AND COLONEL ALBERT JENNINGS FOUNTAIN

Did a Former District Judge Conspire in the Murder of a Prosecutor?

By Gloria McCary

The disappearance and presumed murder of Colonel Albert Jennings Fountain and his youngest child, eight year-old Henry, on Feb. 1, 1896, remains a mystery. Colonel Fountain was a lawyer, politician, owner and editor, and a privately retained prosecutor. He disappeared from Chalk Hill in the White Sands, near present-day New Mexico Highway 70 while returning from court in Lincoln. He had obtained cattle rustling indictments against a number of suspected rustlers, including rancher Oliver Lee and two of his ranch-hands, Bill McNew and Jim Gilliland, who were all close friends of former territorial Democratic Party member and District Judge Albert Bacon Fall. The bodies of the Fountains were never found.

Fountain, a young lawyer serving in the Union Army, came to New Mexico in 1862 with California troops sent to reinforce the Union presence. The California Column arrived at its post at Ft. Fillmore near Mesilla, New Mexico, after the Confederate invasion under General Sibley had been defeated. Fountain was eventually stationed at Ft. Craig near Socorro and participated in the Apache Wars as a brevet colonel. Fountain married Mariana Perez, the daughter of a prominent Mesilla family, in October 1862. The Fountain family eventually settled in Las Cruces where Col. Fountain opened a law practice, started a newspaper, *The Rio Grande Republican*, and became prominent in Republican Party politics.

Albert Bacon Fall, the son of a Confederate soldier, was born in Kentucky in 1861 and made his way west to New Mexico through Texas. Originally interested in mining, Fall read the law and began practice in Las Cruces. An ardent Democrat, he became famous as a defense lawyer and newspaper owner of *The Independent Democrat*. Fall and Fountain were rival candidates for seats in the territorial legislature.



The growth of the cattle industry throughout the western frontier in the 1880s, coupled with the influx of small ranchers and homesteaders, led to inevitable conflict between the larger established ranchers and the newcomers. In 1892, Grover Cleveland was elected President of the United States, the first Democratic Party President since the Civil War. The political scene in New Mexico mirrored the national democratic sweep, and Albert B. Fall defeated Republican Fountain for a seat in the territorial legislature.

In March 1893, President Cleveland appointed Fall U.S. judge in the 3rd Judicial District, New Mexico Territory. Fountain and other prominent Republicans bitterly opposed the appointment, presenting petitions alleging Fall's unfitness for office. Fountain, an appointed assistant district attorney, often appeared before Fall in district court. Fall tried unsuccessfully to have Fountain removed from his post.

As a sitting judge, Fall deputized Oliver Lee and Lee's ranch-hands, Bill McNew and Jim Gilliland, as deputy U.S. marshals. Fall had successfully defended Lee, a lifelong friend, of cattle rustling and two murder charges, which a jury found to be "justifiable homicides."

In 1894, the Fountain-Fall feud heated up, with charges of vote tampering made against Fall and other Democrats. A campaign to remove Fall as district judge was launched and in February 1895 U.S. Attorney General Olney requested, and received, Fall's resignation.

Fountain re-entered private practice in 1894 and was privately retained as a prosecutor by the Southern New Mexico Cattle Growers Association. After obtaining some rustling indictments,

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Doctors v. Lawyers

"Friday at Las Vegas a baseball game between lawyers and doctors was played. The game was brought to a close at the end of the fourth inning by the breaking of both bones of the left leg of O. A. Larrazolla, one of the attorneys. The fall came with a slide to third base. Mr. Larrazolla was Delegate Rodey's opponent for Congress."

*-The Albuquerque Journal-Democrat, June 2, 1902**



Justice Betrayed: A Double Killing in Old Santa Fe by Ralph Melnick

A Review by Fred Federici

In *Justice Betrayed: A Double Killing in Old Santa Fe* (UNM Press, 2002), author Ralph Melnick, a library director from Massachusetts, revisits the once-famous 1931 Santa Fe murder case of Angelina Jaramillo. At the time of her death, Angelina was a beautiful 18 year-old schoolgirl from a prominent New Mexican family. She was sexually assaulted and killed in her bedroom. Tom Johnson, a 31 year-old African-American man and an itinerant worker who had a history of property crimes to his name, was convicted of the murder. He became the first person to die in New Mexico's electric chair.

From the day Angelina was found murdered until the time Johnson was convicted was but three weeks.

The premise of Melnick's book is that Johnson was framed for the murder by a powerful U.S. senator, the presiding judge, the prosecutor, the police and possibly even one of the victim's own family members. According to Melnick, these players were driven to condemn an innocent man to the gallows out of racism and a desire to protect the victim's family from the embarrassment of having the true murderer exposed.

This book, in many respects, is a worthwhile read. It is generally well researched, and the true crime subject matter is historically intriguing. Further, as Melnick's treatment makes clear, many disturbing incidents, such as Johnson's interrogation at the end of a billy club, a trial that came all too swiftly, and racist media coverage of the events, serve to make Johnson's fate, at the very least, a disquieting episode in New Mexico history.

Yet, in this reader's opinion, particularly in light of the circumstantial evidence that did point to Johnson's guilt, Melnick never convincingly substantiates his most sensational and vilifying claims of an active group effort to frame Johnson. Indeed, despite his research, Melnick unveils practically no new reliable information about the crime itself,

and he makes no direct allegation that the jury was unfair. Rather, the heart of the book lies in Melnick's detailed review of the dry, trial transcript—a review in which, nearly three quarters of a century later, Melnick either freely indulges in making credibility judgments amongst the witnesses to resolve all material disputes in Johnson's favor, or simply seems to register no concern about witnesses who contradicted Johnson's testimony. For example, the night

of the murder, on Johnson's way to stealing a getaway car, Johnson admitted that he had repeatedly struck a co-worker in the head with a hammer and then left him for dead. Johnson claimed that the blow was self-defense during a fight over a \$2 debt, but his victim testified that the blows came out of nowhere.

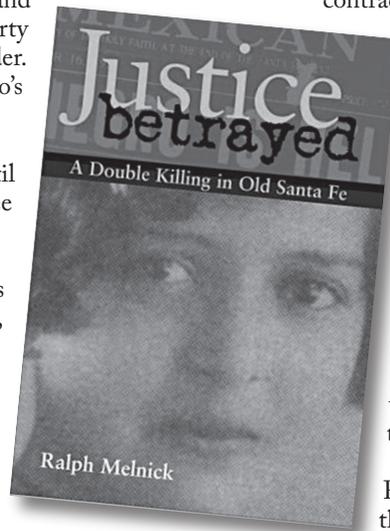
Melnick's occasional tendency of ascribing nefarious motives, without real support to otherwise mundane decisions, is also distracting. For example, when the judge ordered a recess without any apparent explanation, Melnick asserts, without qualification, that the reason was to disrupt the momentum of the defense's cross-examination.

Finally, Melnick's apparent endorsement of some of the defendant's claims of trial error on appeal further undercuts the book's objectivity and conclusions. For

example, Melnick describes the state's fingerprint expert referring to a known set of fingerprints as coming from Johnson as an "obvious problem" that the trial judge bungled. The State Supreme Court, however, seems to have easily dispatched this defense claim as much ado about nothing, as the undisputed exhibit that was apparently at issue had been admitted without objection.

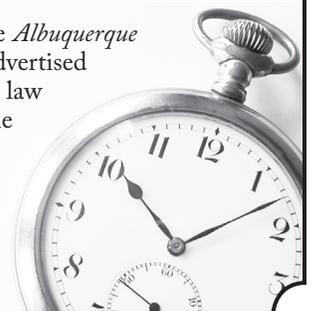
This book has its strengths, but its less dispassionate theories do not add to its appeal.

Fred Federici has been an attorney for 16 years. He practiced civil law with the firm Venable, Baetjer, Howard & Civiletti in Washington D.C. and currently practices criminal law in New Mexico.



Hypnotic Attorney

“Versatility is one of the characteristics of the people who inhabit the new state of New Mexico,” the *Albuquerque Morning Journal* reported. Dr. G. S. Montoya, L.L.B., attorney from Las Vegas, New Mexico, advertised in a program of the Young Men's Dramatic Club that he was a famous veterinary surgeon, an attorney at law (giving special attention to probate cases) and a professional hypnotist. “If this isn't versatile, what is?” the *Journal* observed. “Fancy the advantage of hypnotism in the practice of law. By placing the jury under the ‘influence’ a skilled practitioner could get most any kind of a verdict, no doubt. With a few mystic passes [a veterinarian] could take the kick out of a mule.”
—*Albuquerque Morning Journal, May 4, 1911**



great grandmother. A beautiful building was lying fallow in Tomé. Human nature certainly would not allow fine wooden floors to go to waste. While a county ordinance prohibited the courthouse being rented for dances or shows², after decommissioning, the courthouse had a fairly lively, if not ribald, life, evidenced by family stories. The wood floors were still in evidence into the 1960s, and remnants of the jail still can be seen.

After the county seat was moved to Los Lunas in 1875, a new courthouse was built in the same style as the old one. In 1880, the courthouse was the scene of a daring escape engineered by a legendary young man, Elfego Baca. Baca's father, Francisco, had been town marshal for Belen and had run afoul of a powerful political family over horse racing. He was convicted of murder and was awaiting trial for a second murder in 1881 in the Valencia County Jail. His son Elfego, sixteen at the time, led several other men in a daring rescue of his father. On Saint Therese's feast day, a day of large celebration, the rescuers made their way to the second floor courtroom, sawed and augured their way to the first floor, and freed Francisco and several other prisoners.³ It was an interesting start for a future lawman and district attorney. Elfego Baca later served a term as district attorney in Socorro before practicing law in Albuquerque for many years.

The courthouse served the county until 1913 when it burned down under mysterious circumstances. A movement had begun in 1909 to build a new state-of-the-art Federalist style courthouse to reflect

the growing prosperity of Valencia County. At the same time, Belen started a strong push to move the county seat to Belen. Los Lunas contended the fire was set so that Belen could argue that it should be the county seat. In the end, however, the courthouse was built in Los Lunas, where it and the county seat have remained. Now known as the old courthouse, it was one of the finest examples of Federalist style courthouses in the country. It was torn down in 1960 to make way for the current courthouse. The 13th Judicial District, Valencia County, will move to its new judicial complex in December 2007. The new complex reflects the proud and colorful history of its many predecessors.

ENDNOTES

¹Boeckl, Jim, "Dear Sir, I have a warrant for your arrest. . . ." Valencia County News Bulletin, Sept. 18, 2004.

²Minutes of the Board of the County Commssioner, 1902-9, Vol. A2.

³Tittman, John, "The Last Legal Frontier," New Mexico Historical Review, Vol ii, No. 3, July 1927.

District Judge John W. Pope has been on the district court bench for 14 years and has received the Outstanding Judicial Service Award from the State Bar of New Mexico twice. He has been a college professor for 24 years teaching at the University of New Mexico and has been an adjunct professor of law. He has received two Excellence in Teaching Awards for his classroom teaching. He is also a published poet and historian.

Not "in New Mexico" continued from page 4

Arledge now drew undivided attention to the apparent checkerboard of jurisdiction and its impacts upon Los Alamos residents. AEC records describe jurisdictional lines cutting over permanent housing areas that divided neighborhoods as to legal status.¹⁵ In fact, 35 houses sat directly atop jurisdictional boundaries, leading to joking speculation that the part of the house in which one slept determined one's legal residency.¹⁶ Other issues besides voting became heated as well, especially New Mexico hunting and fishing licenses which were considerably less expensive for those who lived "in New Mexico."¹⁷ Divorce also continued to be a problem. In *Chaney v. Chaney*, the New Mexico Supreme Court followed the reasoning of *Arledge* to hold that Sibyl Chaney, a resident in permanent housing on condemned land, could not bring a petition for divorce in New Mexico courts. Quite simply, she was not a resident of New Mexico as required by New Mexico divorce statutes.¹⁸

However, while the *Chaney* legal drama unfolded, local, state and federal officials were taking decisive action to retrocede exclusive jurisdiction of the entire Los Alamos Project land to the state of New Mexico and end the legal confusion "one way or another."¹⁹ Finally, on March 4, 1949, President Harry Truman signed Public Law 14 to recede the federal lands, and on March 15, at 2:29 p.m., Governor Mabry signed to accept jurisdiction for New Mexico.

ENDNOTES

¹ 52 NM 303, 197 P.2d 884 (1948).

² 53 NM 66, 201 P.2d 782 (1949).

³ Essential reading on this topic is Marjorie Bell Chambers' book, *The Battle for Civil Rights, or How Los Alamos Became a County*, Los Alamos Historical Society, 1999.

⁴ *Santa Fe New Mexican*, "Los Alamos Secret Revealed by Truman," 8/6/45.

⁵ *Arledge*, 52 NM at 307-308. The adequacy of the homesteaders' compensation was only recently settled in 2004.

⁶ Chambers, *Battle for Civil Rights*, 24-36.

⁷ Executive Order 9816 (12/3/46).

⁸ Jon Hunner, *Inventing Los Alamos: The Growth of an Atomic Community*, Norman: University of Oklahoma Press, 2004, 125-130.

⁹ Chambers, *Battle for Civil Rights*, 12.

¹⁰ No. 21038, Santa Fe County District Court, 1947; Chambers, 15-16.

¹¹ *Id.*

¹² *Arledge*, at 317-318.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Chambers, *Battle for Civil Rights*, 22.

¹⁶ *Id.*, at 23.

¹⁷ *Los Alamos Skyliner*, 1/27/49.

¹⁸ *Chaney*, 53 NM at 70.

¹⁹ *Los Alamos Skyliner*, 2/3/49.

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Dog Who Solved a Murder

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After that, according to Vialpando, Tomás, unarmed, “turned the cow,” examined the brand and said that it belonged to his father. Then, when Vialpando was trying to light a cigarette in the wind, Tomás sneaked up from behind and grabbed the revolver from his belt. Like a dime novel villain, he made the classic mistake of gloating before shooting. “You want to kill me,” he yelled, “but I am going to kill you first!” As he said those words, Tomás stepped backward onto a snow-covered log and fell into the fire. Vialpando and Chávez both shot him and left him there to burn.

The story fit the physical evidence, at least, but another story did so even better, and that’s the one the jury believed: Vialpando and Chávez killed Tomás without warning to avoid the penalty for cattle rustling, then built up the huge bonfire to cremate the corpse. If not for the courage and strength of Gallardo, they would have gotten away with it. The hero dog was brought into court as a living exhibit during the trial.

Vialpandos and Chávez were hanged on November 19, 1895, not quite ten months after Gallardo’s valiant run.

Albert B. Fall

continued from page 7

Fountain and son Henry set out from Lincoln to return to Las Cruces. During the trip of several days, Fountain told several people he encountered on the route that he was being followed by three horsemen. He expressed fear that he would be ambushed.

Saturnino Barela, a mail carrier between Las Cruces and Luna’s Well, saw evidence that a buggy had left the trail on Chalk Hill. Barela, who had spoken with Colonel Fountain the day before where he saw the men following Fountain, rushed to Las Cruces and told the Fountain family of what he had seen. Barela joined a search party formed by two of Fountain’s older sons.

At Chalk Hill, the party found evidence that a buggy or buckboard had left the road and stopped. They found the footprints of three to five men and horses, knee and boot prints, along with two spent rifle cartridges and cigarette papers. A blood pool and a blood spatter about six feet long were found in the area. The posse followed the tracks of the buggy and found it abandoned twelve miles east of Chalk Hill. Some personal items, including Henry’s blood-soaked handkerchief, were found along the trail. A search of the abandoned buggy revealed that the rustling indictment papers were missing. Tucked into a corner of the buggy was an anonymous note threatening that Fountain would not make it home if he didn’t drop the indictments.

*Our thanks to
Howard W. Henry
who researched and contributed
the anecdotes.



ENDNOTES

¹Except as noted, the source for all information is the Supreme Court file in *Territory of New Mexico v. Jesus Vialpando and Feliciano Chaves*, Case No. 627, in the New Mexico State Records Center and Archives, Collection 1982-135: United States Territorial and New Mexico Supreme Court Records, folder # 627.

²Rosario O. Hinjos, “The Murder of Tomás Martínez,” Museum of New Mexico File No. WPA 5-5-3 # 29.

³*The Santa Fe New Mexican* of Nov. 19, 1895, as reprinted in West Gilbreath, *Death on the Gallows: The Story of Legal Hangings in New Mexico, 1847-1923* (Silver City: High Lonesome Books, 2002), p. 157.

⁴Both of whom had been members of Vicente Silva’s notorious Las Vegas gang. Carlos C. de Baca, *Vicente Silva: The Terror of Las Vegas* (1968), p. 7.

Albuquerque attorney Joel Jacobsen, a longtime appellate specialist, has 96 published opinions to his name (or, rather, 93 to his name and 3 to Joel Jacobsen’s). He is the author of the book Such Men as Billy the Kid: The Lincoln County War Reconsidered and the law blog, Judging Crimes: A View of the Bench from the Trenches (www.judgingcrimes.com).

The posse followed horse tracks from the area of the abandoned buggy. As they approached Oliver Lee’s ranch in Dog Canyon, Lee’s ranch hands drove a herd of cattle across the tracks, obliterating them. Posse members were sure that a gray horse observed at the Lee Ranch was the horse they had been tracking.

Two years after the Colonel’s disappearance, homicide indictments were obtained against Lee, Gilliland and McNew. Trial was held in Hillsboro, New Mexico. The men were defended by Albert B. Fall and were acquitted of murder. The two salient books¹ on the subject come to different conclusions as to whether there was a Fall-Lee conspiracy to kill Fountain. The case against Fall-Lee is circumstantial, but certainly there was motive, means and opportunity to kill the Fountains.

ENDNOTE

¹Owen, Gordon R. *The Two Alberts: Fountain and Fall*, 1996 Gibson A.M., *The Life and Death of Colonel Albert Jennings Fountain, U. of Oklahoma Press, 1965.*

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