

## ***Saddlebag* Newsletter**

**September 2020**

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Editor**  
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**A supplement to the  
WWHA Journal**

**Available Only Via  
www.wildwesthistory.org**

# **WWHA**

## ***Six-Shooter Awards***

### **2020**

By the usual time of publication of the Fall issue of our *Saddlebag* newsletter, we have conducted another great WWHHA Roundup. But.... you know the story of this year's meeting cancellation.

One thing, however, that was completed was the selection of Six-Shooter Awards honorees. Awards chair, Pam Potter, with the able assistance of Jim Dunham and Carroll Moore, moved forward with all the usual steps in acquiring nominations, judging the nominations, selecting winners and notifying both them and the WWHHA membership. The only thing that could not take place was the public presentation of awards at our Roundup. Plans are still developing for presentations at various regional meetings or special occasions when an award winner is present.

Below are listed the 2020 winners of each awards category for work accomplished in 2019 (except Silver Star and Lifetime awards):

#### **WWHA Article of the Year for 2019**

Roger Peterson, "Wyatt Earp - The Boomtown Sport"  
*WWHA Journal*, March 2019

#### **General History Article**

Linda Wommack, "Confidentially Told in Brown's Park"  
*Wild West* magazine, June 2019

#### **Scholarly Article**

Mark Lee Gardner, "Jesse James: Rise of an American Outlaw"  
*National Geographic History*, January/February 2019

#### **Best Book Award**

Roy B. Young, Gary Roberts, Casey Tefertiller, editors  
*A Wyatt Earp Anthology: Long May His Story Be Told*  
University of North Texas Press, 2019

#### **President's Silver Star Award:**

Gerald "Doc Shores" Schaefer, for his many contributions to the life and activities of WWHHA, especially the "Gunfighters" membership program.

#### **Lifetime Achievement Award:**

Jim Dunham, President of WWHHA, historian, author, artist, and for his world-renowned gun handling demonstrations.

Wild West History Association expresses our congratulations to each honoree. The awards for 2020 accomplishments will be presented at the rescheduled Fort Smith Roundup next July.

*Roy B. Young*, Editor



## **WWHA Roundup** **Rescheduled** **to** **July 14-17, 2021** **Doubletree Hotel**

The Fort Smith Roundup Committee, Elizabeth Weathers, Charlotte Steele and Michael Wallis, wish to announce the rescheduled Fort Smith Roundup 2021.

Events will be held in the same hotel as announced, the Doubletree. Previously selected speakers and programs are being re-confirmed, as are plans for our receptions, daily meals, the Six-Shooter awards luncheon, bus tours, "Gunfighter" activities, and the concluding events: "Boots and Spurs" banquet, silent and live auctions, and entertainment.

Announcements regarding Roundup plans will be made as they are confirmed. Watch for multiple news releases and announcements via our website: [www.wildwesthistory.org](http://www.wildwesthistory.org), our Wild West History Association Facebook page, and by e-mail blasts to every member who has submitted their e-mail address.

### **Hotel Reservations**

Guest room reservations are now being accepted by the Doubletree Fort Smith City Center Hotel. Please request the Wild West History Association rates, group code WWH, for rooms July 14-17, 2021.

The reservation number is: 479-783-1000.

We have all missed seeing one another and sharing in our love for WWH. Let's plan now to attend and participate in the Fort Smith Roundup!

### **WWHA Board Meeting**

The next meeting of the WWH board of directors is now scheduled for Friday, January 22, 2021 at the Radisson Airport Hotel, Phoenix, Arizona.

Though the annual summer board meeting at the Roundup had to be cancelled, the board has continued to be in regular contact. An effort was made to hold a fall board meeting but with the on-going situation with COVID19, this was deemed unwise.

The business of the association has continued to be conducted via e-mail and one ZOOM meeting, organized and arranged by board member Paul Marquez.

Any member wishing to be on the January meeting agenda should contact WWH President, Jim Dunham at [1876jim@gmail.com](mailto:1876jim@gmail.com).

In conjunction with the board meeting in Phoenix, WWH board members will have a promotions table at Brian Lebel's 31st Annual "Mesa Old West Show & Auction," January 22-24, 2021.

The board expresses its appreciation to all WWH members for their patience, cooperation, and encouragement during these trying times.

### **WWHA Regional Roundup**

Plans have been made to again have a WWH Regional Roundup in conjunction with the annual Tombstone Territory Rendezvous, October 21-25, 2020. Saturday, the 24th, will be WWH Day.

This year's theme is "Myths, Mysteries, Legends, and Lies: The Torture of the Truth." The program is loaded with WWH members, including: Paul Johnson, Gil Storms, Ron Woggon, Bob Palmquist, Wayne Sanderson, Donna Harrell, Chuck Smith, Jean Smith, Garner Palenske, Garth Gould, Mike Mihaljevich, Roy Young and others to be announced.

Programs will be held at Tombstone's historic Schieffelin Hall. Special events include a performance of Pam Potter's TTR Troupe, Green Trolley Mystery Tour, Good Enough Mine Tour, book panels and book signings, reenactment of *Territory of Arizona v. Dr. Warnekros*, Dinner at Tombstone Monument Ranch and Cowboy Church.

The second annual "Luncheon at the Birdcage" will be hosted by WWH members Bill and Paula Hunley. See TTR 2020 Ad in this Saddlebag.



WWHA wishes to express condolences to the families of our members as well as Wild West friends and associates whose deaths are noted since the last *Saddlebag* newsletter in March 2020.

**David Snell**  
**1946-2020**

David Snell, WWHA member and contributor to our *Journal*, passed away July 11, 2020. A second-generation Arizonan, "Dave" attend Tucson High School and the University of Arizona, graduating with a BS in Public Administration. He worked for the City of Tucson from 1970-2000, serving as Assistant City Clerk in Administration.

He was an accomplished historian and published author with a focus on Billy the Kid as well as all 19th century southwestern U.S. history.

He is survived by his wife of 50 years, Betsy Snell. Memorials may be made in the name of David Snell to the Community Food Bank of Southern Arizona: [www.communityfoodbank.org](http://www.communityfoodbank.org).

**Harold Leland Edwards**  
**1927 - 2018**

Leland (Lee) Edwards died on July 25, 2018 in Bakersfield, California. Leland was born to Morgan and Katherine Edwards in Hanford, California on December 28, 1927.

Leland attended Kings County schools in Lemoore and Armona before his family relocated in Visalia in 1936, graduating from Visalia Union High School in 1945. He earned an AA degree from College of the Sequoias and later a BA from Fresno State College.

Immediately after his high school graduation he entered the United States Navy for World War II service. However, the war ended just as he

completed basic training and he was assigned to Headquarters Squadron, Fleet Airwing on Naval Air Station, North Island, San Diego, California. In 1946 he was transferred to Naval Air Station Alameda for service in Naval Air Transport Squadron 2. He was honorably discharged in 1946. However, he saw military service again when he joined the United States Coast Guard in 1959 as a port security man. He did his active duty tours with the Coast Guard Port Authority in San Francisco. He was honorably discharged in 1962.

On July 1, 1948, Leland married Eula Mae Thompson whom he had known in high school. The marriage was a successful one, lasting 70 years and producing two children, Barbara Ann and Glen.

In May of 1955, he became employed as a group supervisor for the Tulare County Juvenile Hall which began his career in corrections. In June, 1955 he was promoted a grade as a group supervisor and on December 1, 1955, he was promoted to Deputy Probation Officer, a post he held until August, 1960 when he became a Parole Officer for the California Youth Authority, stationed in Bakersfield. In 1965, he was promoted to assistant District Chief in Van Nuys, however, he was requested by the department to return to Bakersfield in the assistant's position. In January, 1969, he was promoted to Administrative Assistant to the Chief of Parole for Southern California, headquarters in Los Angeles. A year later he was transferred back to Bakersfield as District Chief, a three county operation; Kern, Inyo and Mono. He held this position for ten years before completing his career as a staff officer for the chief of the parole division in headquarters office, Sacramento. In 1982 he retired to his home in Bakersfield.

Leland had always been fascinated by the outlaws and lawmen of old California and the southwestern United States. As a result of this interest he researched and wrote over 200 non-fiction articles for national and local historical publications: magazines *True West*, *Old West*, *Real West* and *Wild West* as well as the monthly *Tombstone Epitaph*. In addition, he wrote over 60 articles for the Tulare County Historical Society's *Los Tulares* with further publications in the Kern County Historical Society's *Historic Kern* and NOLA Quarterly and WOLA Journal. He also authored three books, *The Killing of Jim McKinney*, *Goodbye Billy the Kid*, and *Train Robbers and Tragedies*, a biography of the old Tulare County outlaw, Chris Evans.

He also held memberships in the Western Writers of America, and the Wild West History Association. As a member of NOLA, he served several terms of the club's board of directors and two terms as the association's president. In 2007 he was inducted into the NOLA Hall of Fame. In February 2013, he was inducted into the College of the Sequoias Alumni Foundation's Hall of Fame for his contribution to the published history of Tulare County and the old southwestern United States as well as for his years of public service, a special honor he cherished to the last of his days. Recently, he and his son, Glen, joined Sons of Confederate Veterans.

He is survived by his loving wife, Eula Mae, his daughter, Barbara Ann and her husband Richard Hughes. He is also survived by his granddaughter, Elaine and her husband Francis Moore, as well as his great grand children, Olivia Landis, Ryker Moore and Gianna Moore. He is also survived by his son, Glen Edwards. All reside in Bakersfield. He also leaves behind a brother, Leonard Edwards of Conover, North Carolina as well as numerous nieces and nephews.

### **Max Evans 1924-200**

Max Evans, a New Mexico author who wrote western novels such as *The Rounders* and *The Hi Lo Country*, has died.

Evans, author of more than two dozen works of fiction and nonfiction, including *The King of Taos*, a novel published this year by the University of New Mexico Press, died Wednesday in hospice care at Albuquerque's Raymond G. Murphy VA Medical Center.

Survivors include Pat, his wife of 71 years, and their twin daughters, Sheryl and Charlotte.

Evans, an Albuquerque resident since 1967, would have been 96 on Saturday. He had been hospitalized since falling at home and breaking a hip on June 19, 2020.

Evans' novel *The Rounders*, a riotous tale about two beat-up cowboys and a maniac-wild roan horse named "Old Fooler," was made into a 1965 movie starring Glenn Ford and Henry Fonda. His 1961 novel *The Hi Lo Country*, the story of two hard-living, hell-raising cowboy pals who fall in love with the same woman, who also happens to be married,

became a 1998 film with Woody Harrelson, Billy Crudup and Patricia Arquette in the leading roles.

## **Order of the Indian Wars**

The Order of the Indian Wars has found it necessary to cancel its 2020 annual gathering, another victim of the COVID19 pandemic.

Chief Executive Officer Michael Koury has announced the next meeting is now set for October 7-10, 2021 in Oklahoma City. The host hotel will be the Embassy Suites, Will Rogers International Airport.

Among the speakers will be John Carson, great, great grandson of Kit Carson, recently retired as park ranger and interpreter of Old Bent's Fort, and Roy B. Young, editor of the Wild West History Association's *Journal* and *Saddlebag* publications.

Bus tours will include Fort Sill, Fort Reno, Fort Gibson, and sites in and around Tahlequah, Oklahoma.

For further information see the organization's website: indianwars.com.

## **Doña Ana County, New Mexico Sheriff Kim Stewart shuts law enforcement museum.**

***"We are law enforcement, not  
museum curators."***

Algernon D'Amassa, *Las Cruces Sun-News*

The county's Historical Museum of Lawmen sits to the right of the front lobby at the Doña Ana County Sheriff's Department on Motel Blvd. The county calls it "the region's only museum dedicated solely to law enforcement."

Besides photographs of past sheriffs, service badges, vintage weapons and other memorabilia, the collection includes artifacts related to former sheriff Pat Garrett, famed for killing the outlaw Billy the Kid in Fort Sumner in 1881. The museum also featured a memorial to fallen law enforcement officers.

It once was open during business hours Monday through Friday, and occasionally on Saturdays. More recently, tours were available by appointment, per the county website. The museum



is curated by retired deputy Jim Beasley. Now, however, the museum has been permanently closed and most of its inventory has been dispersed over the past several weeks.

Retired DASO Lt. West Gilbreath, who founded the museum 30 years ago, returned to Las Cruces on Aug. 4th to collect uniforms, badges, vintage handcuffs and other items he had donated to the museum, including a roll-top desk used by Sheriff Pat Garrett that Gilbreath personally rescued from the dump in the late 1990s. "There's very little left," he said. "Most everything is gone."

Gilbreath, who retired from the department in 2001, said the museum evolved from a display in the lobby of DASO's previous headquarters, which he organized with the approval of Sheriff Ray Stortment.

When the current DASO building was in the design phase, Gilbreath said space for a museum was incorporated from the beginning. The collection made its home at the new headquarters in 2006. "It was a place for citizens of Doña Ana County to see Old West history," Gilbreath said. "Former retired deputies could take their families there and say, 'This is what I was part of.'"

Up to his retirement in 2001, Gilbreath said the museum was a popular attraction for tour groups and school visits. But Sheriff Kim Stewart, who holds an undergraduate degree in history herself, said the museum drew few visitors anymore and most of its artifacts were collectibles with items of significant value kept in storage.

Moreover, she said much of the collection was on loan to DASO and not insured. "We are law enforcement, not museum curators," Stewart wrote in a statement. "Proper display and maintenance is a profession, and we don't have those skill sets."

Documents of historical value have gone to New Mexico State University's library archives and special collections, "where they will be properly maintained and open to the public for review," Stewart said.

Gilbreath said he learned of the museum's closure when Beasley contacted him, thanks to a written agreement returning items to Gilbreath if the museum was ever eliminated. He expressed concern Monday that some items may be disposed of before donors without such contracts have an opportunity to reclaim them.

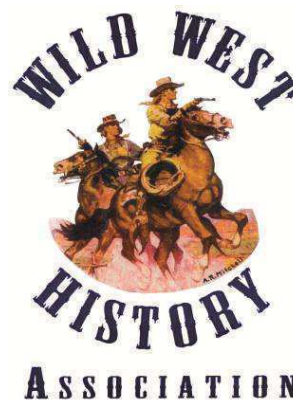
As an example of potential losses, Gilbreath said he was saddened to see a 2,000-pound safe that

was displayed inside the museum. The safe, which has been county property since 1881, sported original artwork inside and out, but at an unknown date was moved outdoors. On Monday, rust covered the surface of the safe, which sat on a patio outside DASO near an antique service vehicle.

A memorial to fallen officers remains outside the building's main entrance.

In 2012, the horse-drawn hearse that carried former Dona Ana County Sheriff Pat Garrett to his final resting place in 1908 was installed at the museum after being very carefully transported from Pinos Altos. Las Cruces resident Cal Traylor, a history buff with a particular interest in Garrett, acquired the hearse and donated it to the museum. The New Mexico Farm and Ranch Heritage Museum in Las Cruces confirmed that the hearse will be added to its collection for possible display in its main gallery.

### **Upcoming Publications: December and March *Journals*, Spring 2021 *Saddlebag*, Fort Smith Roundup Program**



The next publications of WWHHA will be the December and March issues of the *Journal*. Advertising and news items have deadlines of November 1st and February 1st.

The Spring issue of the WWHHA *Saddlebag* Newsletter will contain a detailed preview of the Fort Smith Roundup and will be posted on the website: [www.wildwesthistory.org](http://www.wildwesthistory.org) no later than March 15, 2021.

The Fort Smith Roundup program has a May 1st deadline for advertising.

**REQUEST:** WWHHA would like to be informed of any Wild West related activities in your area. Additionally, authors, please tell us what you are working on: articles, books, hosting an event, etc. With no Roundup in 2020, keeping up with all our members' and friends' Wild West activities has been difficult. Let us hear from you!

# Marshall Ashmun Upson: The Investigation of a "Grave" Matter

*Pam Potter, Eddie Lanham, Roy Young  
and Kurt House*

Several WWHA members, including Pam Potter, Eddie Lanham, Roy and Charlotte Young and Kurt House were sitting around the campfire at Mission Sin Caja, near Three Rivers, Texas, discussing various mysteries of the Old West. One of the subjects that arose was the demise of Ash Upson, best known as the "ghost writer" of the first (1882) account of the killing of Billy the Kid, *The Authentic Life of Billy the Kid* supposedly authored by his killer, Lincoln County, New Mexico Sheriff Pat Garrett.<sup>i</sup> Although Garrett is listed as the author, most historians agree that it was mostly written by Garrett's ever-faithful friend Ash Upson, a professional author with a larger vocabulary and experienced style. Garrett's demise under mysterious circumstances on the road from his ranch to Las Cruces on February 29, 1908 is well documented, but what happened to Ash Upson?

Accordingly, four of us initiated a search for the answer to Upson's fate. Notwithstanding various brief accounts in western literature about Ash's life, recent news indicates that a full length biography on this important character in the Lincoln County War will soon appear. But where is he buried? How did he die, and when, where?

Meager facts gleaned from the literature confirm that Marshall Ashmun Upson was born on November 23, 1828, died on October 6, 1894 and was buried in Uvalde, Texas. He was married for a few years to wife Helena, surname unconfirmed, but divorced shortly thereafter, having had no children. The circumstances of why he was buried in Uvalde soon became apparent to the four researchers, who vowed in the Spring of 2020 to find his grave. The researchers called themselves "Team Upson," and the first thing found was that his grave yet remained unmarked. Yes, it was somewhere in a Uvalde, Texas cemetery but which cemetery and where?

In July 2020, Team Upson made an initial field trip to Uvalde to locate Upson's grave. In spite of the important role played by Upson in New Mexico



**Marshall Ashmun "Ash" Upson**  
(WWHA Files)

history as a career newspaper man, postmaster of Roswell, a Lincoln County justice of the peace, Sheriff Pat Garrett's office deputy, as well as an accomplished author of some renown, the team could not find the grave location in the literature.

Reaching Uvalde, Texas in July, 2020, after stops at several other historic southern Texas sites, the team located the city cemetery where Upson was supposedly buried. One of the team, (Lanham) located a reference in the book, *Violence Was No Stranger*, Volume One,<sup>ii</sup> that Upson was buried in an unmarked grave in Uvalde in Lot 54 between John P. Baker and Will Gibson. John P. Baker was an alternate delegate from New Mexico to the 1898 Democratic National Convention; Pat Garrett was one of five delegates selected.<sup>iii</sup>

A document with the City of Uvalde Cemetery Section revealed that plots 923, 924, 925 and 926 were purchased by Pat Garrett and, later, at least one space was transferred to Upson. On a hot July day the plots were located on Row 6, Site C, Lot 54, but we still did not know which one of the four was occupied by Upson and no tools were at hand for probing. We quit our work late in the day and

resolved to visit Uvalde again after establishing more local contacts.



### **Members of "Team Upson"**

**l to r: Eddie Lanham, Pam Potter, Kurt House, Charlotte Young, Roy Young**

In the subsequent trip, August 20, 2020, we were fortunate to have developed several helpful local contacts who steered us to the appropriate city and county officials. According to the city cemetery records, the grave dimensions are 5 feet by 7 feet in a 21 by 42 feet plot, and there are twelve graves in the plot, therefore the four grave spaces purchased by Garrett are verified by the cemetery records as in the first row contained in the 21 feet width. Photos and measurements were taken to insure accuracy of location of Upson's actual grave.



### **Kurt House Pointing to Garrett Plot Where Ash Upson is Buried**

The team met with local Uvalde County historian Ginger Davis and El Progreso Library Director Mendell Morgan who not only physically visited the grave sites in advance but furnished

fascinating details from local sources and facilitated our connections. One of the surprises uncovered by the library staff was Pat Garrett's bar bill from the Heard Saloon in Uvalde on which was Ash Upson's charged bill, as well as a photo of the Heard Saloon. The team also learned that although Pat Garrett's ranch house in Uvalde, where Ash Upson died, is gone, his barn is still standing at 909 Fort Clark Road; the team visited and photographed it as well.

The team also visited the grave of infamous Texas outlaw King Fisher in the small Pioneer Cemetery in Uvalde. Two of us (Young and House) also decided that more local research should be done on Billy the Kid gang member Tom O. Folliard, who was also from Uvalde and buried next to Billy and Charley Bowdre at the old Ft. Sumner military cemetery near a tombstone engraved with the word "PALS." These two team members anticipate a report on Folliard's Uvalde family and life for an upcoming issue of WWHA's *Saddlebag* Newsletter.

Since these two visits to Uvalde, Team Upson was provided with a copy of a letter from Pat Garrett to Emeline M. Upson Downs on the occasion of the death of her uncle Ash Upson. The letter contains fascinating details of the relationship between Garrett and Upson, among them being that Garrett was "...an avowed atheist..." that "...We buried him (Upson) in the city grounds at my expense....." and that "...he has a trunk here and clothing. What should I do with them....."? If only historians could locate that trunk said to contain a manuscript about Upson's life experiences and details of the Lincoln County War!

The fine El Progreso Library has a nice file of Garrett/Upson items. Among them the above mentioned 1892 page from Lawrence Pike Heard's Store and Saloon showing the "bar bill" of Pat Garrett. Among the items charged to Garrett were games of billiards, bottles of beer, doho, and miscellaneous drinks upon which Garrett made irregular payments of from \$5.00 to \$25.00. In July, 1894 Garrett was credited with \$40.00 for a cow.

Most notable on Garrett's bill is a notation that \$44.45 from "Upson's account" was absorbed by Garrett. Upson was a long-term alcoholic as several incidents in Roswell, New Mexico will attest. Additionally, this was not the first time Garrett bailed out Upson; a similar payment on an Upson bar bill took place at Toyah, Texas in 1891.



## P. F. Garrett

1892

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On a previous research trip in July 2020, Team Upson investigated the area on a Live Oak County ranch containing the campsite of the Somervell Expedition of 1842 that spawned the Texas revolution story of the Mier Expedition which resulted in the famous drawing of the beans; if a prisoner drew a white bean he was saved, but if he drew a black bean he was executed.

Fulfilling a goal of The Mission Sin Caja Foundation, the group also made field trips to Goliad to visit the 18th Century Spanish fortress of La Bahia and Mission Espiritu Santo in order to investigate the origins of ranching in North America at the missions. Another day trip was to Yorktown in DeWitt County to locate the graves of Dr. P.H. Brassell and his son George who were murdered in 1876 during the Sutton-Taylor Feud, the ghost town of Frio Town which contains the graves of Ben and Minerva Slaughter, parents of pioneer Arizona cattleman and lawman John Slaughter, the Chisholm Trail Museum in Cuero, and the roots of the cattle trail called the Chisholm Trail in Live Oak, McMullen, Atascosa and surrounding counties. But these previous adventures of Team Upson are stories that will have to wait for another telling.

#### Acknowledgements:

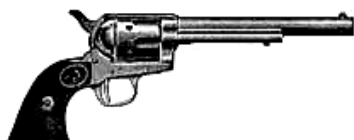
The authors wish to acknowledge the help of Mendell Morgan and Ginger Davis of El Progreso Library, Uvalde, and Jennifer Potter of the City of Uvalde, Cemeteries Section. Additionally, to Robert Buckley who assisted Eddie Lanham with information from the Browning book and William S. Bryan for a copy of the Garrett/Downs letter.

#### Endnotes:

<sup>i</sup> Garrett, Pat F. *The Authentic Life of Billy the Kid*. (Santa Fe: New Mexico Printing & Publishing Co., 1882).

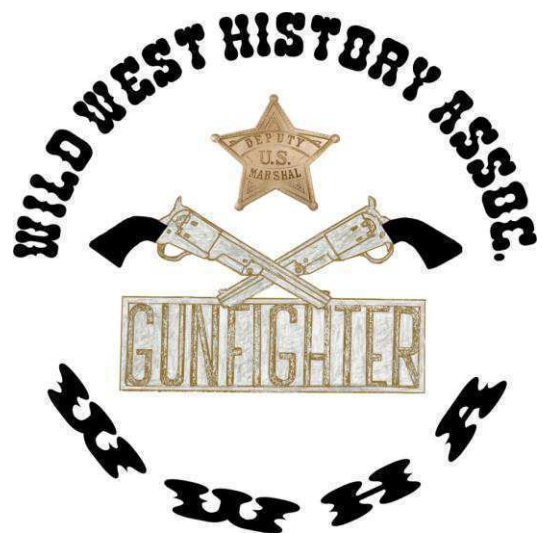
<sup>ii</sup> Browning, James A. *Violence Was No Stranger*, Volume I. (Stillwater: Barbed Wire Press, 1993), p. 263.

<sup>iii</sup> Keleher, William A. *The Fabulous Frontier*. (Albuquerque: University of New Mexico Press, 1962 and a revised edition with a foreword by Marc Simmons, (Santa Fe: Sunstone Press, 2008).



# WANTED!

## WWHA MEMBERS TO JOIN THE "GUNFIGHTERS"



Your donation at any of the one, two, or three year Gunfighter membership levels includes your dues plus additional special Gunfighter benefits.

You will be helping to support WWHA's Roundup, our publications, and other association activities. It also shows your additional commitment to WWHA's efforts toward preserving Wild West History. Gunfighter memberships include a single person or a husband and wife together for the same membership fee. Current Gunfighters say: "We would be honored to have you join us!"

See: Membership Rates in WWHA *Journal* on "Contents" page.

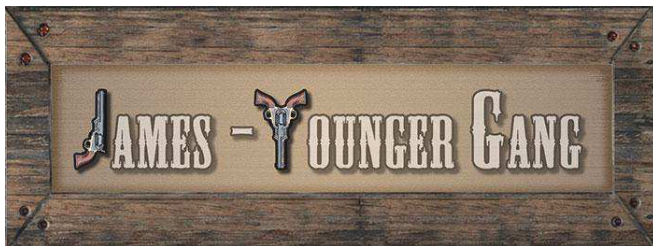


## WWHA's Sister Associations

One aspect of the work of WWHA is to share with our readers the news of our sister history associations. As we did last year with the English Westerners, in this issue of the *Saddlebag* we wish to share with our members information on both the James-Younger Gang and the Billy the Kid Outlaw Gang.

These two associations have similar purposes as that of WWHA but have centered their focus on one individual and his associates or two families and their allies.

We celebrate the good work of these two associations and anticipate future times when we can work together for our common purposes.



By **Dan Pence, President**

The James-Younger Gang is an organization for those who enjoy studying a unique aspect of American history - the history of a group of young men caught up in Civil War struggle and bushwhacker devilry followed by eight years of daring bank and train robbery and magical disappearing acts. Our mission is to preserve and promote the true story of the James-Younger Gang, their families, and their Civil War associates, and of the exciting time in American history in which they lived.

The James-Younger Gang is an educational and historical Missouri-based organization that serves as a source of exchange for writers, historians, and family descendants. We sponsor an annual conference for our membership, typically held in locations around the nation that are significant to James-Younger era history. We celebrated our 25<sup>th</sup> anniversary during our October 2018 conference in Tombstone, Arizona. Our 2019 conference was based in Liberty, Missouri with day trips to Independence, Kansas City, and the James Farm in Kearney in conjunction with the annual meeting of the Friends of the James Farm. Unfortunately, our

2020 conference has been canceled due to the covid-19 pandemic.

Anyone who enjoys studying the history of this exciting and romantic era is welcome to join. The Gang helps to support the James Farm and Museum, Liberty Bank Museum, Northfield Historical Society, Patee House Museum, Bushwhacker Museum, Milton F. Perry Research Library, and other historic sites and institutions preserving James-Younger Gang era history. We offer news about research, member projects, field trips, book releases and reviews, and museums through our quarterly *James-Younger Gang Journal*, available in print or electronic form. The annual "Milton F. Perry Award," sponsored by the Gang, recognizes authors, writers, and researchers for the best contributions to James-Younger history each year. We encourage those among you who are authors to submit relevant articles to the James-Younger Gang for publication in our journal.

We are governed by three officers: president, vice-president, and secretary-treasurer, each elected for a term of one year, and a nine-member board of directors elected for staggered three-year terms in accordance with our by-laws.

We invite you to ride with us. Individual memberships are \$30 per year for U.S. residents, \$35 elsewhere. Family memberships are \$40 and \$45, respectively. For additional information, please visit our website at [www.jamesyoungergang.club](http://www.jamesyoungergang.club).



By **Lori Ann Goodloe, President**

Of the many enduring stories of the Old West, none are as legendary as that of Billy the Kid. Since his death in 1881 he has been portrayed as a villain, a rebel, and a maniac. In reality, he was a caring son, a loyal friend, and a remarkable leader.

Orphaned at fourteen, he had to make his own way in the world and life wasn't easy in the territory

of New Mexico. Early in his career he fell in with horse thieves, but when he met John Tunstall, Billy gave up thievery for honest work. When Tunstall was murdered at the start of the Lincoln County War, Billy sought vengeance on the men responsible. Governor Lew Wallace promised Billy a pardon for his testimony against these men, but later reneged. Billy wanted the fighting to end more than anyone—he wanted to be left alone so he could live a normal life—but the greed and corruption in the territory kept him on the run. No, life certainly wasn't easy for Billy, but he was always cheerful—laughing and joking about everything regardless of how dire his circumstances were. "What's the use of looking on the gloomy side of everything?" he said after his arrest at Stinking Springs.

Billy knew that if he waited for the right moment the hangman's noose would never be wrapped around his neck. His moment came on April 28th, 1881 when he made what was one of the most daring jailbreaks in American history and rode out of Lincoln "whistling like a free man." But Billy's life came to a tragic end on the night of July 14, 1881 when he stumbled upon Sheriff Pat Garrett in a darkened bedroom in Fort Sumner. Shot through the heart, Billy was killed at the age of twenty-one and laid to rest by his friends in the Old Fort Cemetery.



**Billy's Grave next to those of his "Pals"  
Charley Bowdre and Tom Folliard**

His legend spread and he grew to be one of the most infamous outlaws in history. Had his life not been cut short, had he not been pursued relentlessly across the territory, and if Lew Wallace had granted the pardon he promised, Billy could have accomplished great things. He was braver and more honest than the men in power at the time and it is for this reason that Billy the Kid became New Mexico's favorite folk hero.

One hundred and six years later, 1987, a museum opened in Hico, Texas—a museum dedicated to a man named Brushy Bill Roberts, or as they like to call him: Billy the Kid. These folks claim that Billy didn't die at the hand of Pat Garrett in Fort Sumner; they say Billy escaped to Texas where he lived and died as an old man in the 1950s.

When she heard about this museum, Maryln Bowlin of Taiban, New Mexico, was outraged. She did the only thing she could think of: she gathered some like-minded friends and started the Billy the Kid Outlaw Gang. Our mission from the beginning has been to preserve, protect, and promote the *true* history of Billy the Kid in New Mexico.

For over thirty years the Outlaw Gang has worked with the State of New Mexico and Old West historians to fulfill this mission. We've joined with the state tourism department to erect roadside historical markers, have given presentations at local schools and Old West days, performed reenactments of Billy's life, supported museums and monuments in Lincoln and Fort Sumner, and produced publications that illustrate the *true* history of Billy the Kid. With the support of our members around the world, we have done our best to make sure Billy's legacy has not been forgotten.

You are invited to visit our website at [billythekidoutlawgang.com](http://billythekidoutlawgang.com) to learn more about this infamous outlaw and help us preserve, protect, and promote Billy's history by becoming a member of the Outlaw Gang.

**Note:**

WWHA members are encouraged to recommend other "sister" organizations that we may feature and promote.

After all, the membership of our associations is not getting any younger with meetings filled with gray hair and bald heads. Let's work together to promote Wild West history and its famous and infamous characters for the next generations.



**TOMBSTONE TERRITORY RENDEZVOUS**  
**TTR 2020**  
**OCTOBER 21-25 TOMBSTONE, ARIZONA**

**MYTHS, MYSTERIES, LEGENDS, AND LIES**  
**THE TORTURE OF THE TRUTH**

MC: Eric Erdman

Presenters include: Roy Young, Paul Johnson, Gil Storms, Ron Woggon, Bob Palmquist, Wayne Sanderson, Lonnie Underhill, Donna Harrell, Chuck Smith, Garner Palenske, Nancy Sosa, Jean Smith, Gary Mitrovich, Christine Rhodes, Mike Mihaljevich, Garth Gould, and others to be announced

Tailgate Party at Four Deuces • Presentations at Schieffelin Hall • Pam Potter's TTR Troupe •  
Green Trolley Mystery Tour • Good Enough Mine Tour • Book Panel: The First Books on Tombstone •  
Book Signing • Territory of Arizona vs Dr. Warnekros Court Case •

Lunch at the Bird Cage hosted by the Hunleys • Saturday Night Dinner at  
Tombstone Monument Ranch • Drawings • Free Time to Explore Tombstone

\$50 Registration per person - Event Schedule & Registration  
posted online at BJ's Tombstone Discussion Board  
and Tombstone Territory Rendezvous Facebook page



Wild West History Association Regional Roundup at TTR

Saturday, October 24

\$30 registration fee for those attending Saturday Regional Roundup only  
Includes Saturday Night Dinner at Monument Ranch

# The Vendetta 1882: Legal, illegal...or

## *“let’s just look the other way.” Part One*

Edited by *Roger S. Peterson*

### **Saddlebag Editor's Note:**

The following exchange of e-mails related to what is commonly known as Wyatt Earp's "Vendetta Ride" took place in July 2020 between several good friends who had and have questions about the legality of Wyatt's posse and the killings of Frank Stilwell and others during the months of March and April, 1882.

Participants were: Tom Gaumer, Gary Roberts, Jeff Morey, John Boessenecker, Casey Tefertiller and Roy Young. Roger Peterson volunteered to assemble all the e-mails for the purpose of publication.

We hope those of you who are Earp/Cow Boy aficionados, authors, or arm-chair buffs will find the exchange enjoyable and perhaps profitable.

### **Introduction:**

It all started one June Sunday evening on CBS's *60 Minutes*. A segment started with a “quote” from Wyatt Earp regarding gunfights and quick draws. After initial emails among assorted Earpaholics sought verification of the quote, the quote itself fell from both lips and fingertips and succumbed to a fiery 10-day exchange that made an October afternoon on Fremont Street look like just another scuffle.

Ok, a tad dramatic. What is significant about the long, July 2020 email exchange was its collegial tone compared to the shoot-outs (whoops, sorry) that characterized Earp discussions in previous years.

This editor suggested the questions that needed clarification. In doing so, the ball was open...*there I go again*. Those questions prompted detailed responses worthy of sharing with all WWAH members. But this thread is long. We will keep you hanging (geez Roger!) in suspense.

So, tune in next week (I mean, next issue) for another exciting episode of... *The Vendetta*.

Note: The emails are in chronological order. Responses to specific posts were matched sequentially as best as possible.

- Define the word ‘posse’ in 1882 terms?
- Describe the differences for a county posse, and one Marshal Dake could assemble?
- When is a posse in force, i.e. time duration, how long does a posse last? When does it end?
- Who had primary jurisdiction re: Stilwell’s death, city, county, Arizona Territory?
- Why did Stilwell’s death prompt an indictment rather than the deaths of Curly Bill et. al.?
- Was the indictment from a grand jury or an inquest?
- What were jury instructions like for an A.T. grand jury in the 1880s
- Why was Dake involved and how? What authority did he have in a territory such as A.T.?
- How were deputy U.S. marshals’ tenure decided in the 1880s in a territory? For a specific duration? How are such positions revoked?
- What authority did a deputy U.S. Marshal have to assemble a posse without Dake’s approval?
- Who could apply political pressure then, e.g. Arizona Cattlemen’s Association, President Arthur, others?
- The street fight almost produced indictments. This goes back to the previous question above. Was Stilwell’s killing just the last straw that couldn’t be overlooked without embarrassment to territorial authorities and the feds?

### **Tom Gaumer, July 1, 2020:**

If Stilwell was involved in Morgan’s murder, wouldn’t the jury find Wyatt and company innocent in that time and place? I think someone, maybe from Georgia, said many of what would seem like murders now were dismissed then as acceptable. Sometimes a mere threat from one man was enough for the other man to have the presumed right shoot him then or later.

**Roy Young, July 3, 2020:**

Who knows what a jury would have done in the case of the murder of Stilwell. You know I feel strongly that the Earp party was a renegade posse and definitely not working within the law as a federal posse.

Though I'm a Stilwell descendant, I am not going to be Frank Stilwell's champion; the facts speak for themselves and a man needs to be a little smarter than to choose the companions with whom he chose to associate. Frank had great potential, not unlike that of Billy Bonney, but at some point he was "bent" in the wrong direction. Yet, being murdered for something he was only alleged to have done was nothing less than premeditation on Wyatt and Doc's part.

**Tom Gaumer, July 3, 2020:**

I do not fully understand the situation regarding the Earp posse. Wyatt's resignation as a deputy U.S. marshal had been rejected by Dake, if I understand correctly? Thus, it may have been a legal posse. Was it within the law? Suppose you put one shot into a corpse as opposed to many? Does it matter to the corpse? No. Does it matter to others and how much, especially back then? I don't know. I notice the attempt to bring Doc Holliday back for trial from Colorado failed. However, it wasn't tried again. Why? Did Johnny Behan not being in power mean an end to chasing Earps? Maybe. If so, was the issue political as much or more than legalism? Indian Charlie was murdered by the posse but, again, if the charges were about the law rather than politics why did it all go away when Behan did? Did it compromise the posse's legality that they were killing rather than arresting? Remember what Judge Stilwell is reported to have said to Wyatt, "Leave them in the brush" or close to that.

Was the posse within the law for that time? If they were not, what would explain the indifference to the charges after Behan. Earp was in the newspapers as well as Doc. Their location was known from time to time. Yet never even bothered by the police? Why, if they had violated the law and anybody cared?

Was it just more trouble than it was worth to pursue the case? Was the case impossible to win as the witnesses were so widespread. Was Stilwell

without champions as he was so difficult or crooked?

When there was an effort to get Wyatt returned to Arizona at the time of the prizefight in San Francisco by a newspaper, why did no one care enough to even try to do it?

Could it all have been in the past by then and no one cared? Was Stilwell bad enough, no one thought it was worth the effort?

I don't know how the case or the posse's credibility would have gone back then as it didn't seem anyone cared to push the issue after Behan went away?

**Roy Young, July 3, 2020:**

Tom, it's still the age-old question of whether or not the so-called "posse" or "party" was still legally constituted. Whatever it was, Wyatt ran away from the potential consequences of another preliminary hearing and possible indictment resulting in some form of punishment. For me, it will always be the "cold-blooded" murder of Frank Stilwell as an act of vengeance by Wyatt and his accomplice, Doc Holliday. The statue at the train depot in Tucson must be the only one in the world designed to commemorate a murder.

**John Boessenecker, July 3, 2020:**

I agree with Roy. Wyatt started out doing proper law enforcement and using reasonable force, then after the shootings of his brothers he turned into a vigilante. In my new book, I titled the two chapters on this episode, "Wyatt Earp, Frontier Marshal," and then "Wyatt Earp, Frontier Vigilante." That said, given what I say about Stilwell and the McLaurys, I shudder to think what Roy and Pam will do to me the next time we meet in person!

**Dr. Gary Roberts, July 4, 2020:**

I find this discussion oversimplified. Both the Earp posse and the Behan posse were "legal," strictly speaking, meaning that each was constituted according to law. Of course, the argument can be made that the vendetta posse overstepped the line, but then, again, the Behan posse was composed largely of Cow-Boy partisans and can hardly be regarded as a "properly constituted," good faith force. Heck, when you



consider that Jack Stilwell could not stand the company of Behan's crowd, well, what can you say? The Earps had the greater "body count," but it has always struck me that Behan didn't really want to catch the federal posse. He ran out of "Depends" somewhere along the way. Behan was good at building up mileage, but little else.

As for the Earp posse, it is notable that Dake never "disowned" it. Whether the good judge actually told Wyatt to "leave them in the brush" or not is debatable, I suppose, but the "law and order" interests, not only sanctioned, but also underwrote the Earp posse from the get-go. I have had a working hypothesis for a long time that the breakdown of law in the wake of Virgil's shooting and Morgan's murder convinced the Republican establishment that extreme methods were necessary to restore order. They saw in Wyatt Earp's rage over what had happened to his brothers, an opportunity, and essentially unleashed the posse to do what was "necessary." Paul Cool and I planned years ago to make a trip to the National Archives in Washington and Maryland to explore the records of the Justice Department, the State Department and other agency records to expand a document search. Most of the searched records (what we have already) are closely confined to a few names—Dake, his subordinates, Arizona political officials, and some key Washington officials.

To my knowledge, no one has ever made a serious search of Attorney General records and U.S. Marshals' records, for correspondence of corporate interests—Wells, Fargo, the Atchison, Topeka, and Santa Fe Railroad, the Southern Pacific, and mining or other business interests. We do know that Dake was courting Wells, Fargo. We do know, thanks to Bill Shillingberg, that the Customs Department was involved in the Cow-Boy question. We do know that New Mexico's governor had a force in the field under the command of Albert Jennings Fountain, specifically charged with dealing with the "Cow-Boy Question." We do know that Wells Fargo and the Santa Fe and even the U.S. Army provided direct assistance to the Earp posse, not only in Arizona, but in their subsequent departure to Colorado. We know that prominent cattlemen like Henry Hooker aided and abetted the Earps.

I am convinced that if the records are explored more fully, we could very well uncover a calculated campaign to end the Cow-Boy problem along the border that ultimately not only involved the Arizona authorities, Wells Fargo, the Santa Fe, and mining and cattle interests, but extended to collusion with groups in New Mexico and Colorado. The departure of the Earps from Arizona was calculated and well-planned. The Earps were assisted in Silver City and Albuquerque and essentially ignored in Colorado. I doubt seriously that there would have been a move on the part of Arizona authorities to extradite the Earps, if it had not been for the wild-card shenanigans of Perry Mallon. His scheme in arresting Doc Holliday forced the Arizona authorities to do something, but I don't believe that they ever seriously intended to bring Doc or the Earps back to Arizona. The record suggests pretty clearly that Doc thought he was safe when he got to Colorado. He went straight to Denver. He did not hide out. In fact, he introduced himself to local authorities. And when he was arrested, the mobilization of support on his behalf was rapid and well-organized. Doc didn't have the funds to hire the high-end legal team that came to his assistance. And the last thing that Arizona authorities—especially Republicans—wanted was to bring any of the Earp party back to stand trial for crimes connected to the vendetta ride. The political repercussions were too problematic. When you look at the Holliday extradition effort, it was careful, well-planned, and the Earps were kept out of it.

Tucked away in Gunnison, the Earps almost seem removed from what was going on. But why would the likes of the prominent attorneys, influential businessmen like Crummy, newspapermen, and lawmen like Bat Masterson intervene on behalf of Doc Holliday? I suspect it was because the last thing that the power structure in Arizona (and beyond) wanted was for anybody associated with the Earps to show up in Tucson or Tombstone. The political consequences could have been devastating. In spite of all of the talk about Wyatt returning, the Republicans were quite contented that Doc's extradition failed, and I wouldn't be surprised if one of the things that went on in Gunnison was a serious conversation

about why the Earps returning to Arizona would be a bad idea. In any case, I have a list of names I'd like to run through the federal records, including at least three governors, three U.S. marshals (Arizona, New Mexico, and Colorado), several railroad men, various mining men and cattlemen from New Mexico and Arizona, to see who among them were involved in letter writing and various legal maneuvers designed to make sure that there were no major legal actions, after the fact. In other words, the Earps were given a blank check (within limits) and assisted when, where, and how needed. When Congressman Bean visited Wyatt in Aspen a couple of years later, there's no evidence that Wyatt was in any kind of jeopardy. Unfortunately, Paul and I never made our search, and, at this point, it is unlikely that I will. And the National Archives is not as "user friendly" as it once was, when there were people working there who actually knew where to look for things.

I'd also like to see the Cow-Boy files from Hermosillo that Shillingberg used. But, to the point ya'll have been discussing, when the Earps left Arizona, they were still legally constituted, if not acting legally. Look at the number of times, members of the Earp party returned to Tombstone or met with army officers, Wells Fargo and other business interests, and were assisted by cattlemen or lawmen. It may not have been publicly endorsed, but the vendetta was certainly supported by agencies of power and influence.

### **Roy Young, July 6, 2020:**

Gary, thank you for your always well-thought-out responses. The fact that you've taken time to share your thoughts is very much appreciated. None of the following is in anywise meant in disrespect.

I feel just the opposite to your "oversimplified" point; I think way too much is made of what should be very simple to determine. A few questions:

1. When is a posse actually a posse?
2. What is meant by a posse "constituted according to the law"?
3. What is a "good faith force"?

When is a posse actually a posse? The fact that Wyatt et.al. traveled together to Tucson with

Virgil and Allie, does not mean they were then acting as a "properly constituted" posse on this occasion. Once a posse always a posse? Twenty-four hours a day? If so, anytime two or more of these men were together, they would be a posse. That can't be. If they were sitting down to dinner at the Cosmopolitan Hotel in Tombstone, would that make them, then and there, a posse?

What's the difference between "Cowboy partisans" and "Earp partisans"? How is Ringo a partisan and Sherm McMaster is not? You can't have it both ways.

Who says Jack Stilwell "could not stand the company of Behan's crowd"? He spent up to two weeks in and out of Tombstone with such men as Pete Spence and I know nothing of him speaking against any of those who rode with him in this period.

What is there in the laws of the Territory of Arizona that tells us that in order for a resignation to be in effect, the resignation has to be "accepted"? I would like book, chapter, and verse, please. If I hand, or submit in some form (including publication in the newspaper), my resignation to my boss, walk away and never return to work under his authority, am I still his employee anyway? Where is the proof that Wyatt or Virgil Earp continued to be paid from federal funds as deputy United States marshals, following their resignations? No, Dake didn't publicly "disown" them, but how can a party of men for whom duly signed warrants are in the hands of Bob Paul, a requisition from the territorial governor, and Paul's own efforts to arrest the men, especially Holliday, said to still be a federally and/or legally constituted posse? At what point do these men cease to be a posse if not when the resignations of Wyatt and Virgil were submitted and published, or if not when they are under warrants for arrest, or when they are under requisition from the governor? If fact, even if Dake never accepted their resignations - were they still deputy marshals a month later? a year later? until they died? No. They were no longer marshals and could no longer legally form a posse from the moment they submitted their resignations. And, Gary, you can't "unleash" a posse to commit murders no matter who thought it

"necessary." Who gets to determine when murder is necessary?

I don't care what the involvement was of Wells Fargo, the railroads, mining, or other business interests - none of these held the authority to "authorize" a posse to commit murders. And your word "collusion" betrays your thesis that the Earp party was a legally constituted posse when you recognize the definition of collusion: "a secret or illegal cooperation or conspiracy, especially in order to cheat or deceive others." All the aiding and abetting, even among fine people such as Henry Hooker, doesn't make what the Earp party did legal, or add to the concept of them being a legally constituted posse.

The requisition papers were given to Paul before Mallon entered the picture; Mallon only disrupted what was otherwise a "must" effort on the part of the Territory of Arizona to have the Earp party extradited from Colorado to Arizona. Even if the Earp party was not guilty of murder, multiple murders, they were under arrest warrants and this required the territory to have the men extradited to settle the matter. And, that this effort failed was not the fault of Bob Paul, as some have suggested, no matter what machinations of thought can be developed in an effort to explain why he returned to Arizona empty-handed. I have personally gone through all the known papers of Governor Pitkin from this period and anything and everything that might be related to the case is missing, either pilfered in later years or trashed by Pitkin and his minions who bowed their heads to Masterson and those behind him trying to save Wyatt's and Doc's skin.

You make a good point, Gary, when you state that the "power structure" in Arizona did not want the Earps returned to Tucson or Tombstone, or anywhere else in the territory. I'll think about this. But I will say: the Earps couldn't have wormed their way out of murder charges this time! No justice of the peace was going to hold a hearing on this matter and in the end the charges be dropped. Not this time.

Finally, please give me book, chapter, and verse in Arizona Territorial law that states how and when a posse was legally constituted. Book, chapter, and verse from Arizona Territorial law that states when a deputy's resignation was

"official." When submitted, when accepted, or by some other means (such as publishing for public record one's resignation)?

With honor and respect to everyone's considered opinions on these matters, I remain,  
Roy B. Young

#### **Dr. Gary Roberts, July 6, 2020**

Roy, I'll have to spend a little time responding to this one. And it may take an extra day or two.

Your response to my email about the vendetta posses, etc., is very interesting. You make some good points about the admixture of posses--complicated even further by the Jackson posse--and I am eager to give it the attention it deserves. But it will take me a little while to respond. You ask a couple of questions that will require some time to review my materials. I haven't gone over the details in a while that led me to most of my conclusions several years ago, so I'll need to review the sources. I'm looking forward to the challenge. I'm glad to be associated with this crowd. It helps me work on my cognitive issues!

I have been interested in the nature of western violence for a long time. And I have considered doing a book that would start with a revised version of my essay on Western violence that I did back in 1976. I wanted to add to it a series of chapters also based on research I never quite finished, including an account of Tom Smith; a revised look at Billy Brooks; a much more detailed account of Anthony Cook, aka Corporal Melvin King, than the one *Real West* published years ago; an updated account of William Raynor (and possibly another on Hamilton Raynor); a revision of the article I did for *American West* on the David Neagle/Judge Terry fight that led to the Supreme Court decision, *In re: Neagle*, and perhaps something on Michael Meagher. Most of the topics are too long for articles and too short for books. Then I'd finish it off with a bibliographical essay along the lines of "The West's Gunmen" that I also did for *American West*. In effect, I'd offer my hypothesis on the nature of Western violence, and use the various characters as case studies, and finish it off with the historiography of the personal gun violence in the West. Actually, Bob DeArment did a good job on Meagher and a nice revision of the Billy Brooks story.

**Dr. Gary Roberts, July 7, 2020:**

Both the positions of sheriff and federal marshal are transplants from the English system. Both were and are closely connected to the court system, insofar as law enforcement is concerned. The sheriff's powers are somewhat broader because sheriffs report to county governments. In the case of the Western territories that meant the sheriff was the chief law enforcement officer, jailor, executioner, and an officer of the court. Their primary function was collecting taxes. Sheriffs had broader authority over a wider range of duties. Sheriffs had a limited number of deputies (modern police structure was still in its early phases). The specific rules of law that specified sheriffs' responsibilities were the product of territorial legislatures (although as a practical matter, new territories frequently began with the legal frameworks of older territories and modified over time).

The Posse Comitatus concept was necessary at times when manhunts were deemed necessary, because of the usually small number of deputies. Consider the size of most of the counties and the small number of regularly appointed lawmen at all levels. Sheriffs acted by serving warrants issued by judges and grand juries and in response to criminal activities that needed an immediate response—bank robberies, murders, larceny, etc., and other crimes with a sense of urgency. Posses were raised both as the result of warrants and in direct response to need. This “power of the county” was based either on common law or statutory law. The law varied. Some territories restricted who could be posse members (no criminals or indicted persons, for example); others did not. Posses could act either with or without warrants, and considerable latitude was given to sheriffs. Practically, this meant that on some occasions, posses became mobs. Governor Fremont, troubled over lawlessness in southern Arizona tried to have a law passed in the legislature to allow the territories to use the military to help in the suppression of crime, but the *Posse Comitatus Act of 1878*, specifically prohibited the use of the army in civilian criminal matters. John Gosper pressed the point as acting governor, and was one of the people who pressed Congress to amend the 1878 act. President Arthur

brought this to Congress in his first annual address. Governor Tritle continued to apply pressure, and a Senate committee advised the President already had authority to put down the problems in Arizona, which led to his May 3, 1882, proclamation, in which he threatened to use the army if order was not restored. Notice, that this situation (prompted by what was going on in Cochise County and other border counties), would have allowed the use of the army for posses in cooperation with the territorial government and counties. This did not extend to cooperation with U.S. Marshals.

U.S. marshals were appointed by the President (later judges could make interim appointments). U.S. marshals were essentially “officers of the court” and responsible to federal judges and U.S. district attorneys. This could have been complicated because the territorial judges (those who tried cases in the counties) were also the judges who handled cases in federal courts. What kept this from being a serious problem was the different codes of law that applied. When judges were acting as territorial officials, they were subject to the statutory law of the territory. When they were supervising U.S. marshals in their duties, they were constrained by the federal code. Judge Stilwell, for example, had two different robes and two different sets of law books. Which set he used depended on whether the cases before him were territorial or federal. In addition to the U.S. marshal for the territory, there were also appointed deputies—like Joseph Evans and Virgil Earp. Deputy U.S. marshals were usually part-time appointments, which is why you see Virgil holding a position as deputy U.S. marshal and chief of police of Tombstone. They worked as federal deputies primarily on a fee system.

Still, they were the work-horses of the system. The U.S. marshal was primarily an administrator, and appointed deputies had the authority to serve the process of federal court, deputize temporary deputies, and to put together their own posse comitatus as needed. Members of federal posses were officially designated “possemen.” Appointed deputies included both office deputies and field deputies. Virgil Earp was a field deputy. One problem—and this can be seen

in Arizona with Marshal Dake and Deputy Marshal Earp—was that the marshal's office was inadequately funded, undermanned, and, at times, had trouble securing possemen. From the 1850s to 1878, the military could be used when there were inadequate civilian volunteers. The responsibilities of the U.S. Marshal were large. They were charged with the duties of protecting public lands, defending Indians against encroachments, and quelling domestic disturbances. Note this last for the Earp story. By the winter of 1881-1882, Arizona's governor and U.S. marshal were characterizing the Cow-Boys as a "domestic insurrection." This is why Dake took an aggressive position and sought assistance from business and cattle interests. I'm not sure what the relationship was between the customs agents (who were active on the border) and the federal marshals. The former reported to the Secretary of the Treasury, and the latter to the Attorney General.

U.S. marshals also enforced federal laws involving transportation, postal services, and other contract services with the federal government. A stage line could expect assistance from federal deputies if it was robbed by outlaws. The postal contracts alone would guarantee that. Murder was not a federal offense, so that, for example, the deaths of Roerig and Philpott, would fall to Cochise County to prosecute, but other crimes committed in the robbery attempt would make federal charges possible. I will have to dig a little deeper to know for sure—John may have this already nailed down—but attempts on the lives of federal officers would, I believe, be subject to possible federal charges. The short answer to the question of when posses could be formed would be whenever a sheriff or a federal field deputy deemed it necessary. Warrants were preferred, of course, but they were not always essential. In the case that we're all interested in, both the marshals and the territory, via Cochise County, had jurisdiction—at least theoretically, though for different crimes. The Cow-Boys continued to provide Earp with possible charges by robbing or attempting to rob stages. In many cases, the sheriffs and the deputies cooperated and worked together. Of course, this was not the case in Cochise County.

It was difficult to remove U.S. marshals, as political appointees, but deputies were not immune to removal by the U.S. marshal, and the judges had ways of applying pressure as well. I do not think—though I could be wrong—that the deputies had terms of service. The marshal could end their tenure, and newly appointed marshals could replace or add to the deputies. The posses did not have time limits, although you might have possemen drop out. You stayed on the trail until you caught somebody or you gave up or your animals and supplies gave out on you.

This does not deal with all of the issues you raised in your response to me, but I decided to look into this. I should add that the laws governing the U.S. marshals changed a number of times through the years. And it would be wise to check the policies in place during Dake's tenure, which I have not done. I might add that city marshals/chiefs of police had little, if any, use for Posse Comitatus. They could, on occasion, deputize additional officers if deemed necessary. In some instances, you had situations of hot pursuit in the wake of a killing or a robbery, but when a crime was committed within the city limits of a town like Tombstone, serious crimes were handled by the county, while the town lawmen had arrest powers for serious crimes occurring in town limits, the county court took jurisdiction at trial. Even justices of the peace were county officers. You did have city courts, of course. This is all very preliminary, but I think we need more than a collection of opinions. I will add, emphatically, that while I don't mind contributing to the effort, I've got too much on the table to take on another project right now. I'm more than happy to stir the pot, however! More, when I can. Roy gave me a lot to answer.

#### **Jeff Morey, July 6, 2020:**

Roy, you ask many good questions. However, you seem to simply assume that Wyatt Earp was clearly guilty of murder during the so-called "vendetta ride." But as Leslie Poles Hartley once sagely said, *"The past is a foreign country; they do things differently there."* In an Old West where John Selman could brazenly walk into the Acme Saloon and methodically put a bullet into the back of John Wesley Hardin's head and then claim self-



defense resulting in a hung jury at his trial, the question of just what distinguished "justifiable homicide" from "murder" on the frontier has long puzzled and perplexed me. I frankly and humbly admit that this question has defeated all of my many attempts to wrestle it down into complete submission. Has anyone ever written anything clearly addressing this question? It certainly seems like a rather central question to address when considering violence in the Old West. Obviously, anti-Earp partisans believed Wyatt Earp had murdered Frank Stilwell in cold blood. Just as obviously, Earp partisans, such as the ever so self-righteous George Parsons, believed Wyatt Earp's killing spree was entirely desirable and fully justified. For the rest of his life, George Parsons absolutely venerated Wyatt Earp. Both sides can't be right. Yet, the bitter political divisions which divided Tombstone 140 years ago shouldn't continue to divide historians at this late date. So, how can the contentious debate over "murder" verses "justifiable homicide" relative to the "vendetta ride" ever be finally and indisputably resolved?

**Roy Young, July 6, 2020:**

Thanks, Jeff, for replying to what I, and others like you, believe to be a basic question on just what happened during the "Vendetta" ride, starting right there at the Tucson Depot. I always enjoy your input on topics such as this.

I'm not sure, even yet, what it truly means to be "anti-Earp." I know I was considered to be in that camp early on in my foray into this territory, and, likely, now, too, by some. And, I don't read in your e-mail that you are now including me in that camp. But, it's a question that perplexes me. Actually, I love the Wyatt Earp story - every bit of it. That's why I teamed with Gary and Casey to do *A Wyatt Earp Anthology*. That Wyatt, Doc, and the others killed, murdered, assassinated (or whatever one may call it - and the same for what happened to Morgan, by whoever) Frank Stilwell and how many others in the so-called Vendetta Ride, is simply part of the story of Wyatt Earp. Right now there is a big picture of Wyatt Earp staring down at me in my office; in my front entry there is the Bob Boze Bell portrait of Wyatt. I love his story, but I don't lionize him. He

had feet of clay, like the rest of us, just to a more public and lasting degree. Recall my article "The Good Side of a Bad Man" in the anthology.

That Wyatt, or anyone else in his party (or posse), would have been determined by a court of law to be legally guilty or legally not guilty of murder is only part of the question, in my estimation. Courts and juries get it wrong a good bit of the time. Wyatt said sometime later, "It was our boys who killed Stilwell." (I'm paraphrasing here.) How could it be called "justifiable homicide," without Stilwell having faced a court of law for the murder of Morgan and the attempted murder of Virgil (as well as a possible charge of attempted murder of Wyatt the night Morgan was killed). What makes homicide justifiable? That someone told Wyatt it was Stilwell? That Wyatt thought it was him? Neither of those make what Wyatt, Doc, et.al. did to Stilwell justifiable homicide (in my estimation).

I hope none of this discussion will become contentious because everyone on this e-mail thread are valued friends and/or associates in a mutual quest to know the truth about Wyatt Earp (and I'm not using that phrase in the same sense as Richard Erwin did).

I'm adding Bob Palmquist to this set of e-mails hoping he still has the same e-mail address following his move "up north." Are you out there, Bob?

**Jeff Morey, July 6, 2020:**

Roy, one major problem with the case against Wyatt Earp in the killing of Frank Stilwell is that, remarkably, there were no witnesses. So, for the sake of argument, imagine that Wyatt was apprehended and stood trial. At his trial, he uses the "Curly Bill defense." That is, he claims he believed Frank Stilwell was at the train station to kill him and/or Virgil Earp. He says he ran Stilwell down in the darkness and, as a deputy U.S. marshal, he held his shotgun on Stilwell in an attempt to arrest him for Morgan Earp's murder. However, Stilwell reached out and grabbed the barrels of the shotgun and both barrels of the scattergun immediately discharged instantly killing him. The other bullets in Stilwell's body were fired into his carcass by those in Earp's group who had come up only after Stilwell was already

dead. Without any witnesses to contradict Earp, convicting him of murder would not have been as cut and dried as some seem to think.

**John Boessenecker, July 6, 2020:**

I agree with Jeff, to a point. As I point out in my book, Frank Stilwell was wanted for murder, was armed with a revolver, and was running from a federal officer. Under the law, Wyatt had every right to shoot him in the back to stop his flight. Today, law enforcement officers cannot shoot fleeing felons unless they pose a significant threat of death or serious physical injury. However, in Earp's era, American peace officers were legally authorized to shoot unarmed, fleeing suspects, such as thieves and burglars.

But instead Wyatt gunned down Stilwell, then his posse riddled him with lead. That is the big problem for Wyatt as he went from lawman to vigilante in that crucial moment.

**Jeff Morey, July 7, 2020:**

Roy, I became an Earpaholic one day in the Summer of 1956. Lying on my bed, one Sunday afternoon, I was reading Stuart Lake's *Wyatt Earp: Frontier Marshal*. When I came to the killing of Frank Stilwell. I almost leapt off the bed because I was so stunned by what I had just read. There was absolutely nothing in Lake's book that prepared me for that shocking moment. Part of me was appalled. Yet, another part of me wanted to cheer. Frankly, from that moment on, I didn't know what to make of Wyatt Earp. And, I still don't know what to make of Wyatt Earp. It is the deep ambivalence that Earp's story evokes that lends the story its endless fascination. The reason the story is told and retold over and over again is that it is just so difficult to come to a final and definitive moral conclusion about Earp's actions. To me, Earp is a vexing conundrum that demands resolution. I don't believe in "taking the law into one's own hands." However, I know, full well, that frequently over time justice has not been well served by the powers that be and that unfettered lawlessness on the frontier often required drastic action. "Rough justice" was all too frequently practiced on the frontier. In that time and place, in those confounding circumstances, what Wyatt Earp did elicited intense condemnation as well as

deeply felt admiration. He was a hero to some and a villain to others. He was a man people either swore at or a man people eagerly swore by. The classical definition of "murder" is the willful killing of an innocent person. By the light of this definition, if Stilwell was not guilty of the murder of Morgan Earp, Wyatt Earp murdered Frank Stilwell in cold blood. However, if Frank Stilwell did murder Morgan Earp, his execution by Wyatt Earp was not murder at all. It was a case of justifiable homicide. This debate has ebbed and flowed over the years. Frankly, I doubt it will ever conclude. "Long may his story be told." Indeed!

**Roy Young, July 7, 2020:**

Thanks, Jeff. More to contemplate. In 1956, I was a nine-years old boy enthralled with Wyatt Earp, Wild Bill, but more so with Hoppy! My first two Wyatt books were Stewart Holbrook's and a now obscure "Big Little Book," by someone named Johnson, I think. Burns and Lake didn't come along until a good many years later.

I've often said that Wyatt was simply a man of his times. But very few men did the things Wyatt did, either as a lawman or as a lawbreaker. So, that little saying means exactly that - little. He's a hard man to figure. I think I would have liked the "old" Wyatt better than the man we are most accustomed to in Dodge, Tombstone, etc. His relationship with John Flood would be more like I would want if I could have had it.

What is the best definition of "justice" in the sense we are trying to put it. Basically, "to justify" means nothing more than "to set right." But that's a pretty weak definition when one tries to determine what is "right." Now, add in the concept what it takes to have "justification" for something that might otherwise be illegal. It's only in one's mind, isn't it? It can't be "right" and be "illegal" at the same time, can it? Either Wyatt legally killed Frank Stilwell, or he illegally killed him. What do the laws of 1882 in Arizona Territory say? And, I'm again hoping no one tries to make this a "morally" justified act, because there was nothing moral about it. And, again, I'm not in any way trying to make Frank Stilwell out to be anything more than he was in all of this, except that he was a victim of a deadly action that cannot be justified in any sense, unless it can be proven Wyatt was

still a deputy U.S. marshal and had the legal right to shoot a fleeing man in the back, even if he was only carrying a chicken in his arms.

Jeff, who has the right to enact "justifiable homicide"? I've never heard this classical definition of murder you mention. Is murder ever justified? And, whether we are in the times of "rough justice" on the frontier, or living within perfect law and order, murder is still murder. Isn't it? Help me here.

You see why we settled on "Long May His Story Be Told" for the WE Anthology. I still love the story. It's just all the nuances that make me wonder. Thanks for sharing.

**Jeff Morey, July 7, 2020:**

Roy, you say something can't be right and illegal at the same time. That's clearly absurd. Germans hiding Jews in Nazi Germany were right to do so even though their act was illegal. Those who helped escaped slaves through the underground railroad were doing something illegal that was also the right thing to do. When Thomas Jefferson educated his slaves, he was breaking Virginia law which expressly forbade the education of slaves. When John Thomas Scopes taught evolution in his high school biology class in Dayton Tennessee, he was right to do so even though it was definitely illegal. Most people forget Clarence Darrow lost that case when the jury took only nine minutes of deliberation to find Scopes guilty. Why should anyone obey unjust or wrongheaded laws?

If "an eye for an eye, a tooth for a tooth" is not a moral injunction, what in blazes is it?

**Roy Young, July 7, 2020:**

Jeff, I stand corrected based upon these worthy examples. I failed to consider such atrocities and how going against the law was morally right in these, and other similar, cases. Thank you.

Seeing the eye for an eye and a tooth for a tooth concept or "moral injunction" comes from the Biblical source, in effect during the Mosaic dispensation, we would be getting into a much more expansive discussion to pursue the right or wrong of these in the Christian dispensation in which we live. Neither the eye or the tooth

example would be legally right today, don't you agree? Similarly, we don't live under the Articles of Confederation, as good and as wise as they were then; we live under the United States Constitution and nothing in the Articles is now in effect unless it is repeated under the Constitution. I don't think we should expand the current discussion this broadly, should we? So much to consider.

**Jeff Morey, July 7, 2020:**

Roy, in philosophy, "an eye for an eye..." is called the principle of proportionality. Simply put, penalties for wrongs committed should be proportionate to those wrongs. In other words, proportionality is essential for justice to be achieved. That's why Lady Justice holds a scale. If proportionality is not an essential requirement for justice, what are the essential components for justice? Is O.J. Simpson walking about freely today justice? If Fred Goldman put a .45 caliber slug into O.J.'s head tomorrow, would that illegal act result in justice? These questions may seem far-fetched, but they get to the heart of why Wyatt Earp's actions elicited support from people like George Parsons.

**Tom Gaumer, July 7, 2020:**

Why might Wyatt believe it was justifiable, whether legally justifiable or not? Did he know more than we do about it? After Morgan was killed, Wyatt must have investigated what happened. What did he find that is not in the record as it sits now, if anything? It seems to me he had to believe Stilwell guilty or how could he step outside his life experience to kill like that. I believe Gary Roberts once said those put on trial for murder in the Arizona at that time were usually found not guilty yet the charges were brought by people who thought those charged were guilty. So, beating the charge of murder was not uncommon if you had almost any justification.

So, would the murder of Morgan justify private citizen Wyatt Earp killing in revenge in the eyes of the people? I think it easily could. Would a jury of people who thought that way vote 12 to zero for conviction? Seems unlikely.

How about Deputy U.S. Marshal Wyatt Earp doing the same thing for something like the same reason?

He did get indicted for it. Yet no serious effort, or any effort, was made to arrest him once he had left the state. Behan's effort to get him before he left is debatable. After Wyatt left he could be found, yet he apparently was not sought. An attempt to extradite Doc Holliday failed but Wyatt was not sought although in the same state. In 1896, a Tombstone newspaper pointed out the indictment against Wyatt was still in effect and why wasn't any lawman sent to San Francisco to seek extradition and trial. The article was ignored and nothing happened.

Regardless of legalisms, it sounds to me like the real world had decided, in not pursuing the accused, it was justifiable homicide. This was done in spite of the later emergence of Roy Young!

**Dr. Gary Roberts, July 7, 2020:**

As a practical matter, it is unlikely that formal warrants had been issued in the case of Morgan Earp's death. On Saturday night, March 18, Morg was murdered. Incidentally, Briggs Goodrich mentioned to Wyatt earlier that day that Frank Stilwell had spoken with him about the Earps. On Sunday, March 19, Wyatt and associates escorted Morg's body to Contention, and from there James took charge of the body and travelled with it to Colton and their parents' home. That same day, the coroner's inquest was held, and the coroner's jury concluded that Morgan had been killed by "Pete Spence, Frank Stilwell, a party by the name of Freis [who was later exonerated] and two Indian half-breeds, one whose name is Charley, but the name of the other was not ascertained." Warrants were ordered, Spence turned himself in, and other arrests were made later in the week. It appears that the warrants issued were handled by the sheriff's office, which would be normal.

But it is important to remember a couple of things: First, and perhaps most importantly, Wyatt Earp knew that Frank Stilwell had been named by the coroner's inquest as one of Morgan's killers. Second, remember that on the way to Contention to put Virgil and Allie on the train, Wyatt was told (likely by Chief Deputy U.S.

Marshal Evans) that Ike Clanton, Frank Stilwell, Billy Miller, and one other cowboy were in Tucson watching trains for the Earp brothers with the intention of killing them. Based on this information, Wyatt and his friends/possemen decided to proceed with Virgil and Allie to Tucson. Virgil would say later, "Almost the first men we met on the platform there [in Tucson] were Stilwell and his friends, armed to the teeth. They fell back into the crowd as soon as they saw I had an escort, and the boys took me to the hotel to supper."

With respect to warrants, please remember a couple of things. First, Judge Stilwell had already handed Wyatt several warrants (we don't know for whom) after Virgil was shot. Second, remember the confusion about jurisdiction over John Jackson's posse, and the argument that Goodrich had with Judge Stilwell over Jackson's authority. Notice, as well, that the judge gave the warrants he issued in January to Jackson, rather than Behan, which was a direct slap at the sheriff. Furthermore, when Governor Tritle arrived in Tombstone on March 27 for a meeting with members of the Citizen's Safety Committee, he created yet another posse to go after the Cow-Boys, but he put John Jackson in charge of it, rather than Behan. It is safe to say, then, that because of the conditions in Cochise County, corners were cut, warrants were issued that might not have been under different circumstances. Tritle then wrote President Arthur and blamed conditions on "the utter failure of the civil authority and the anarchy prevailing; the international trouble likely to grow out of this cattle thieving along the border, the fact that business is paralyzed and the fairest valleys in the territory are kept from occupation by the presence of the cowboys." In effect, the federal authorities--governor, U.S. Attorney, and U.S. Marshal had diagnosed the troubles in Arizona as an emergency--if not an insurrection--which allowed them, with the backing of the Justice Department and the President, to temporarily expand the jurisdiction of Dake's officers. As far as I know, no one has attempted a systematic examination of the warrants issued by the federal officials or by Judge Stilwell (who was both a federal judge and a territorial judge). I do not remember at the

moment if the Cochise County records we have include warrants; ordinarily federal warrants would not have been kept by the counties and could either be in Phoenix or possibly in the National Archives records in California.

I believe that a pretty strong case can be made against Frank Stilwell being among Morg's killers. I know the story about how it was impossible for him to have been in Tombstone, but that is shaky at best, considering that the primary witness that alibied Frank Stilwell in Tucson was Ike Clanton. Clara Brown summarized Frank this way: "his removal is no loss, however unlawful."

The public reaction probably would not have been so strong if Frank's body had not been shot up so badly.

### **Roy Young, July 7, 2020:**

Tom Gaumer, yes, Wyatt "may" have known more than we are aware he knew. That he knew more than we know, no. There is so much that's come to light about all of this that Wyatt could never have known at the time all this was taking place. Investigation? What are some of the avenues of investigation he might have used? Think of the timeline between when Morgan was killed and when Wyatt et.al. landed in Tucson. What investigation? A telegraphed message from some crank in Tucson that Ike and Frank were watching every train that arrived at the Tucson depot? How did Ike and Frank know Wyatt and company were on the way to Tucson? Telegraphed messages, possibly. If so, why were they watching "every" train? Why don't we accept the fact that the two men were waiting on their friend Jerry Barton, at whose trial they were scheduled to testify. It's not accepted because people don't want to accept it. And, no, Ike and Frank, nor anyone else, were lying on a flatcar hoping for a chance to kill Wyatt or one or more of his party.

What then were the possible forms of justification? As a lawman, as a brother, as a citizen? Of the three, he was the latter two only "if" his resignation as a deputy marshal was legitimate. If I state in the newspaper that I've resigned, that should mean to Frank Stilwell, Ike Clanton or anyone else that I have resigned (they

are giving no thought to whether or not Dake would accept the resignations). So, Wyatt now has only the roles of brother and citizen from which to base his justification for the killing of Stilwell. Are either of these legal reasons? I've heard of "citizen's arrest," but not "citizen's murder." So, now we're down to his role as a brother, and the "eye for an eye" was not a legal reason at that time, nor at this time. So, justification exists only in Wyatt's mind, supposing he is even considering, thinking about, looking for a reason, that will justify in his mind the murder of the man who killed (supposedly) his brother. I truly wonder if justification even crossed Wyatt's mind. Vengeance is what was on Wyatt's mind, nothing less. And, I would bet neither Wyatt nor Virgil were wearing deputy U.S. marshal badges on this excursion (not that this really has anything to do with it, just a thought.)

I think the role of Behan's and Jackson's posses are today put in the worst possible light because neither was successful, much less any "posse" work by Jack Stilwell, Spence, et.al. Remember - Wyatt and Bob Paul, etc. had recently been on a failed posse chase. Not all posse chases were successful.

Keep in mind, please, I've not said one good word about Frank Stilwell in this whole exchange. I'm not fighting for Frank. In fact, if I can get it tightened up, my speech at TTR in 2018 "Who Murdered Morgan Earp" will be a feature in the December 2020 *WWHA Journal*. Not a promise, but a plan.

Thanks, Tom. You're the one who kinda got me on this diatribe. "A diatribe, also known less formally as rant, is a lengthy oration, though often reduced to writing, made in criticism of someone or something, often employing humor, sarcasm, and appeals to emotion."

### **Tom Gaumer, July 8, 2020:**

Roy, I would not mean to suggest that rants could not be justified and think they regularly are justified, especially when I do them.

After Morgan was killed, there was a coroner's hearing that listed Stilwell and three others as prime suspects in Morgan's murder (Tefertiller, page 230). This would give a lawman the right to arrest him. They had reasons and two

witnesses to support their conclusion, Mrs. Spence and her mother. They may have had a prejudice. The coroner could determine that from her testimony and they would require other evidence. At first it was decided Stilwell couldn't move fast enough to get to Tucson on the required schedule. Other people later said he could ride it and others showed a train schedule that would allow him to make it. Wyatt's investigation would cover anything and everything he might turn up in talking to people in Tombstone. We can't know what they told him as he didn't say. Wyatt knew what the coroners hearing came up with and enough to want to kill Stilwell and others. Wyatt says he was warned about a possible attack on Virgil and continued to Tucson to defend against that after first intending not to go that far. That can be doubted but not dismissed. The desire to kill Stilwell and the others represented a change in his approach to life up until then. Whether you believe Stilwell was guilty or not, it is virtually impossible to believe Wyatt did not believe him guilty in my opinion.

If a crank told Wyatt that Ike and Stilwell were waiting in Tucson for the train, Stilwell's presence there confirms the crank was half right. I believe Wyatt said he saw Ike there and Ike was in Tucson. Do you know that Jerry Barton was on that train? Would he be a good character reference? What was Stilwell's reputation? I doubt Ike and Stilwell were watching "every train." They might have been telegraphed of that particular one? They were not the kind of men that would enter the train if they knew Wyatt and his posse were aboard. They might shoot at a crippled Virgil from ambush like from a flat car? How can you know they weren't on that flat car or that they were?

I seem to remember that after Wyatt and Virgil resigned Dake boasted of their efforts to rid the country of outlaws? If he wanted to accept the resignations, why not do it formally and thank them for the effort he praised? I don't think you can ignore the likelihood Wyatt was still a deputy U.S. marshal and felt he was acting in that role. I think they resigned by letter without Dake responding by letter. You might be right but where's the definitive evidence? Why would Wyatt care what thought Ike or Stilwell were

giving to whether he was still a deputy marshal or not? What thought was given to whether Morgan was still a lawman or not?

Neither brother or citizen are legal reasons? Although both might count in whether anyone pursues punishment for injustice or not. Little effort was made to punish. Why?

Vengeance would not be sought if justification did not exist in Wyatt's mind. Why would you seek vengeance for no reason?

There are several stories about Behan's posse's efforts. I don't know of one that reflects well on them or their leader. Why did Behan seek a cannon from the fort near Hooker's if he didn't know where the Earp's were. How come neither Behan or any of the men with him could not follow a trail left by half a dozen men? One of the Earp group wrote to the paper mocking Behan for not being able to follow a trail almost anyone could follow, etc. Behan bungled that job as he bungled others or he dodged the Earps even though he had the advantage. He had done dodging before that before also.

### **Casey Tefertiller, July 8, 2020:**

Just a quick note on Roger's questions. But I will start with anecdote.

When I was covering baseball in the 80s, I tried to stay on top of the technical rules. That was complicated. At one point, I asked Walt Jocketty, the assistant general manager of the A's, if I could have a copy of the secret rule book that governed baseball. He laughed. He said there is no real rulebook; that it was mass of directives that had been sent out by the commissioner's office over the years, and he kept them in a binder and had to try to figure out the rule every time something difficult came up.

So back to Roger's question. I spent enormous hours trying to figure most of them out. I could find very little in writing that defined most of these points, and many seemed to have been done based on precedents or directives. I think the federal marshal — in this case Dake — had wide latitude to make decisions and appointments. Sometimes the deputy marshals — such as the Earps — also exercised wide latitude.

As best I can understand, this was pretty well accepted. Perhaps Palmquist or Boessenecker has

come up with something I could not find, but that was how I saw it 25 years ago. I don't think the answers to Roger's questions can be found in some Manual for Marshals, or something similar. So that makes Roger's questions virtually impossible to answer.

**Roy Young, July 8, 2020:**

Thanks, Casey, for your input. Still - a rule is a rule or it is not a rule. If my player is called out, I have a right to know by which rule it was determined he was out.

There simply must have been some form of federal guidance for federal marshals, territorial guidance for county sheriffs, etc. Granted, not every situation could be thoroughly covered in a manual, but there had to be something by which determinations could be made by the courts if something was legal or illegal. Perhaps there is some Arizona Territory case law that covers a similar situation. This one is awfully complicated, though, isn't it?

I still think of what Judge Stilwell is alleged to have said to Wyatt about leaving some of them "in the dust."

**To be continued in the next issue of the *Saddlebag*. The "manual" question and many other aspects of this topic will be covered in part two.**

**An Interesting Letter from  
"Cactus Jack" Garner to  
Pat Garrett  
December 14, 1901**

Capt. P.F. Garrett  
Las Cruces, New Mexico



Dear Captain:

I was most agreeably surprised when I picked up yesterday's paper and noticed that you had been struck by Presidential lightning. All our friends in this place are

jubilant over your appointment, and of course, expect you to make a barrel of money.

Of course, I join in their views and jubilation, but I do not tell them that I am confident that at the end of your term of office, you won't have a cent more than you have now, because in a big game, I suppose you could lose a year's salary in two or three sittings; and you always imagined you could play poker, but I know that your money is a gift.

Of course, it seems strange that a friend would write another in this manner when he has just been appointed to a high office, but as you know, I am noted for speaking the truth under all conditions and circumstances.

Of course, you will tender me an appointment under you, as soon as you take the oath of office. I may not be able to accept it as I expect to go to Washington in the capacity of Congressman after the next election.

Of course, if the good people should not know a good thing when they see it, and make the mistake of keeping me at home, and I should go broke in the law business, I will accept the office of porter in your Custom House and [take] and win your salary, when I am off duty.

Really, laying all joking aside, we are exceedingly glad to know that you have been appointed, and trust that you will make a complete success.

We are confident you will take a friend's advice and quit speculating, and you will be all right. Write me a long love letter, and tell me how you are getting along. I am, as ever, your friend,

*John N. Garner*

Note: The letter is courtesy WWA member Jim Kenney.

Garner, from Uvalde, Texas, won the election to which he referred and served as a United States Congressman from 1903 to 1933. Subsequently, he became Vice President of the United States under President Franklin Delano Roosevelt.

Garner was instrumental in Garrett's 1901 appointment as Collector of Customs at El Paso and his subsequent move to Uvalde in 1902; they remained friends until Garrett's death in 1908, Garner living to be 99 years of age and only 15 days short of being 100 in 1967.





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# BRIAN LEBEL'S 31<sup>ST</sup> ANNUAL MESA OLD WEST SHOW & AUCTION

## MESA, AZ JANUARY 22-24, 2021

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### The 31st Annual Mesa Old West Show & Auction

Old West Show: Friday - Sunday, January 22-24, 2021  
At the Mesa Convention Center.

Old West Auction: Saturday, January 23<sup>rd</sup> - 5:00 pm  
At the Delta Marriott Mesa, adjacent to Show.

Visit our website for details, discounts, show tickets, auction catalogs,  
or to join our mailing list.

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### Historic and Collectible Auction Highlights Include:

#### The Montana History collection of Jerry "Buzz" Nyhart

Important and rare collection of Montana Territory historical firearms, with a major focus on the Montana Vigilantes. Included among the many outstanding items is the personal diary and other items relating to the infamous Montana pioneer and vigilante, John X Beidler.

#### The Roger Wilmot Collection of Fine Bits & Spurs

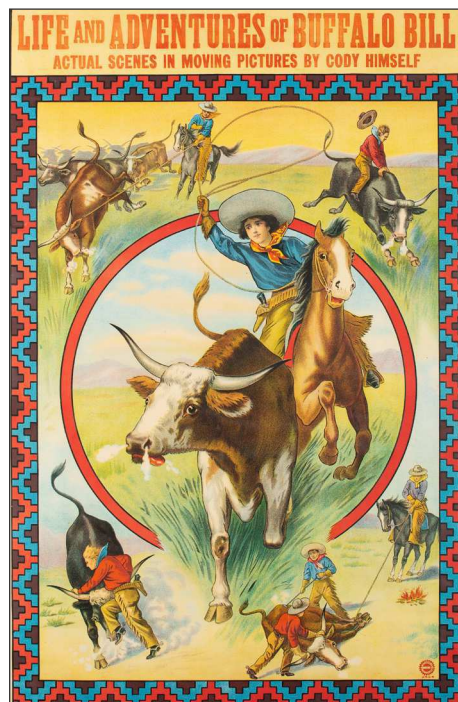
Includes rare and diverse examples of collectible cowboy trappings, including such notable makers as Phillips & Gutierrez, G.S. Garcia, Visalia, Morales, Schnitger, H.P. Pollard, Hulbert, Kelly Bros and many more.

#### Western Decorative Antiques and Arts from the David Little Collection

Bronzes, bookends, beadwork, decorative pieces, Native American artifacts, and more, from the late 19th century through the Art Deco period.

Offering live, online, phone and absentee bidding.

Visit our website or call us for more details or to join our mailing list.



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Reputation matters.