

WESTERN WRITERS OF AMERICA

ROUNDUP

December 2015

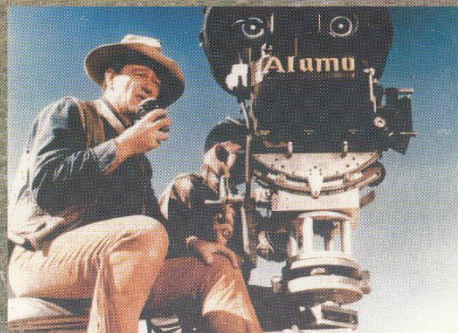
MAGAZINE

Volume 23.76, Number 2



Remembering John Wayne's *The Alamo*

By Thomas D. Clagett • pg. 10



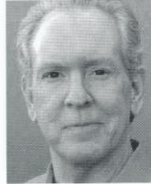
CONTRIBUTORS

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DOREEN CHAKY
Doreen Chaky is the author of *Terrible Justice: Sioux Chiefs and U.S. Soldiers on the Upper Missouri, 1854-1868*, (University of Oklahoma Press), a Spur Award finalist in 2013 for historical nonfiction.

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THOMAS D. CLAGETT
Thomas will see his second novel, *West of Penance*, published by Five Star in January. A film lover, he is the author of *William Friedkin: Films of Aberration, Obsession and Reality*. He lives in Santa Fe, New Mexico, with his wife, Marilyn, and their cat, Cody.

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EMIL FRANZI
This music, movie and book lover is host of the Tucson, Arizona-based radio program *Voices of the West*. Emil was awarded the Lariat Award in 2014 for his "exceptional support for WWA and for the literature of the

American West."

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STEPHEN LODGE
Stephen's Hollywood writing credits also include *The Honkers*, *Kingdom of the Spiders* and a short, *One Block Away*, which he directed and helped produce. His novels include *Shadow of Eagles* and *Nickel-Plated Dream*. Stephen lives in Rancho Mirage, California, with his wife, Beth.

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MONTY McCORD
Monty is a retired police lieutenant and graduate of the FBI National Academy. He writes fiction and nonfiction books about lawmen and outlaws from the Old West period to the mid-20th Century. He lives in

Nebraska.

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R. ELI PAUL
Eli co-authored *Eyewitness at Wounded Knee*, which was re-issued in 2011 as a University of Nebraska Press Bison Classic. He is the editor of *Sign Talker: Hugh Lenox Scott Remembers the West* (University of Oklahoma Press, 2016).

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VICKY J. ROSE
A *Roundup* review of Vicky's novel *Treasure Hunt in Tie Town* calls her "one heck of a writer" and describes *Treasure Hunt* as a great book. She's a 2014 Spur finalist for her short fiction story, "A Promise Broken, A Promise Kept," which appeared in La Frontera's *Broken Promises* anthology.

CALENDAR

JANUARY 25-30

National Cowboy Poetry Gathering
Western Folklife Center
Elko, NV
WesternFolklife.org

MARCH 5-6

Cowboy Days
New Mexico Farm and Ranch Heritage Museum
Las Cruces, New Mexico
WWA host: Ollie Reed Jr.
NMFarmAndRanchMuseum.org

MARCH 12-13

Tucson Festival of Books
University of Arizona
Tucson, Arizona
WWA host: Johnny D. Boggs
TucsonFestivalOfBooks.org

MARCH 16-20

Virginia Festival of the Book
Charlottesville and Albemarle County, VA
VABook.org

POETRY

The Jackrabbits

By Larry D. Thomas

mind not the vultures
soaring in cobalt thermals
above them, patient as granite
in their wait for death,

the vultures whose shadows
cascade down arroyos
like flashfloods
of jet-black ink.

It's the raptor
for which they live in fear, rapt
in his icy prayer of devourment:
the raptor, which,

in his dark wisdom,
won't hesitate
to eat them whole, alive:
the raptor for which their great ears,

mobile as elongated satellite dishes,
twitch and turn ad infinitum,
desperate to pick up
the least faint signal for survival.

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Digging into old trials: a lawyer's perspective

By Vicky J. Rose

A few years ago, the Bastrop (Texas) County Bar Association hit upon a fundraising idea to provide scholarships for area high school students. They would research an old trial in the county courthouse archives and do a re-enactment of it during Bastrop's annual Yesterfest celebration. Attorney David F. Bragg offered to do the digging.



David F. Bragg, P.C. Courtesy of the author

What he found surprised him. Bragg, a tall man with white hair, pink cheeks and twinkling eyes could hardly believe the wealth of information residing in the courthouse, in old newspapers and in half-forgotten memories of its historically minded citizens.

"I had no idea there was so much information available or that Bastrop County citizens were so interested in their history," Bragg said. He also found himself shocked by the rough life early pioneers endured. "I did not realize how many times people got killed for no good reason. That was just a way of life back then," he said. "I understand now why they carried guns."

The trial picked for re-enactment involved the killing of a Lee County sheriff's deputy, Isaac "Bose" Heffington, who rode into the lawless town of McDade on a wintry evening in 1883 and soon afterward received a shot in the dark. Before he died, Heffington supposedly wrote out a statement naming Jeff Fitzpatrick as his assailant. Heffington's wife, a stern-faced, tight-lipped woman who was used to sitting on a stump in her front yard at night with a shotgun to protect herself and her children when he was away, neither confirmed nor denied her husband's supposed declaration.

Fitzpatrick was put on trial; the jury found him "not guilty." Why? Bragg was determined to find out.

In earlier years, courthouse records weren't guarded and people could and

did walk in and carry documents away. It disheartened Bragg to find some things missing, but there was still a trove of information about the murder. "It was hard to corral all of it," he said.

Back in the 1800s, however, courts did not keep official transcripts. At the end of a trial, the clerk would write a



Deputy Sheriff Isaac "Bose" Heffington



Clara Harrison Heffington

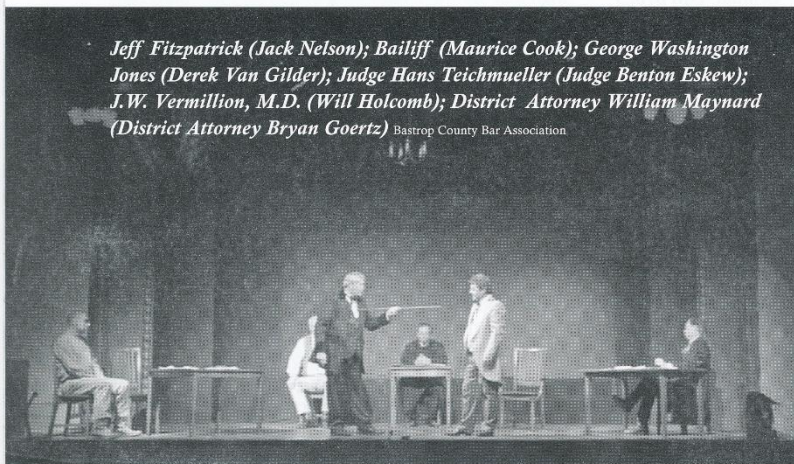
summation. "People would line up to read what he wrote," Bragg said, "and either agree with it or request that it be corrected."

When looking at the sources in one author's book about the incident, Bragg was surprised to find citation after citation referencing transcripts that simply never existed. It took him a while to figure out what had happened. When a lawyer would request a subpoena for a witness to explain the reason for that subpoena, he would write down what he thought the witness would say at the trial. For example, "Witness saw accused leaving the saloon." He may or may not have, but the lawyer thought he did and that was the reason he was being summoned.

"The author was taking what was written on those summonses," Bragg said, "and citing them as official statements."

Luckily, the shells of the buildings in McDade where the murder took place were still standing, and the curator of the local museum proved to be of invaluable help. "She would call me repeatedly, remembering something she had forgotten," Bragg said. "She would put me in touch with someone who knew something, and then they would

Jeff Fitzpatrick (Jack Nelson); Bailiff (Maurice Cook); George Washington Jones (Derek Van Gilder); Judge Hans Teichmueller (Judge Benton Eskew); J.W. Vermillion, M.D. (Will Holcomb); District Attorney William Maynard (District Attorney Bryan Goertz) Bastrop County Bar Association



put me in touch with another person who knew something.”

In a crazy coincidence, Bragg found out one of his wife's best friends was deputy Heffington's great-great-granddaughter. One descendant remembered playing with a gun his grandfather had described to him as belonging to Heffington. Another relative had a gun he had been told once belonged to Billy the Kid. Believing the Billy the Kid story to be highly unlikely, Bragg then wondered if both relatives were talking about the same pistol and asked him to describe it. He described it exactly as his cousin had, and Bragg knew that he had found the six-shooter Heffington was carrying the night he was murdered.

One source recalled a story her great-grandfather told about a cousin being the true killer – a man who had once been put on trial for killing two German store clerks in nearby Fedor. He was acquitted by a non-German jury that was supposedly terrified of him. She said Heffington's widow had trained her son to hate this man, saying there was a feud between the Heffingtons and the Fitzpatricks, and that was why his widow saw no reason to exonerate the accused.

The incident of believing a gun was once owned by Billy the Kid only reiterated what Bragg already knew – he couldn't take the word of just one person, but had to weave all things into account. The man accused of killing the store clerks had a well known reputation for viciousness, Fitzpatrick had been involved in trouble with a family the Heffingtons were listed on a census as one time residing with, and, most importantly, Heffington's son eventually did attack and kill the man his mother supposedly trained him to hate. But what about that declaration naming Fitzpatrick as the killer? The one written by a dying man who was weak and probably unconscious most of the time?

“In all cases,” Bragg said, “there is a thread, that once pulled, will unravel and solve the whole mystery.”

The thread proved to be a time factor. Using detailed newspaper

accounts, among other sources, Bragg found several witnesses had placed Fitzpatrick leaving the saloon and immediately after hearing gunfire. Since it had been documented where the saloon sat and where Heffington stood when he met his demise, “There was no way Fitzpatrick had time to race to where Heffington was, say a few words and shoot him,” Bragg said.

With present-day judges portraying those from the 1880s, the district attorney acting as that long ago D.A. (“He could strut sitting down,” Bragg said with a chuckle), other attorneys being lawyers for the defense and a former Texas Ranger pretending to be the bailiff, the bar association played to sellout crowds. Just as their forefathers had, they too voted Fitzpatrick “not guilty.” “I couldn't believe the enthusiasm it generated,” Bragg said.

As receptive as people were to the play, it still brought up sensitive feelings among some of the people who helped Bragg write his story. One of Fitzpatrick's descendants was so overcome she felt she couldn't face seeing it re-enacted. “I did not know that something that happened 100-plus years ago could still bring such emotions to the surface,” he said.

Bragg concluded by saying: “I always thought there were relatively few people interested in history, but that's not true. People really are interested in it. They want to know, ‘What is the history of this place?’”

The D.A.'s tips

√ Always rely heaviest on primary sources, and then match with other accounts.

√ Don't be surprised by the emotions your research might dredge up, even if the event happened a century ago.

√ Look for the one fact that when taken into account, will pull the entire story together.

Ordering information

To order a copy of David F. Bragg's booklet “The Killing of Deputy Sheriff Isaac ‘Bose’ Heffington,” write to the Bastrop County Bar Association, P.O. Box 1038, Bastrop, TX, 78602.

TRAIL NOTES (from page 22)

Newsmakers

√ *Death of a Texas Ranger, A True Story of Murder and Vengeance on the Texas Frontier* by **Cynthia Leal Massey** has been honored with a 2015 San Antonio Conservation Society Publication Award, which recognizes the authors of the best recently published books on Texas history.

√ **Miles Swarthout** presented his *Shootist Show* in August at the Loft Theatre in Tucson, Arizona. Swarthout helped adapt his father's Spur-winning novel *The Shootist* for the screen, which became **John Wayne's** last movie. The event was a fund-raiser for the Empire Ranch Foundation. Ticket sales went to preserving this historic cattle ranch, where another Wayne Western – *Red River* (1948) – was filmed. WWA member and *Voices of the West* host **Emil Franzi** organized the event.

√ **Johnny D. Boggs's** *Poison Spring*, a Spur Award finalist this year as Best Juvenile Fiction, has been selected the juvenile winner for the 2015 Arkansiana Award by the Arkansas Library Association. The award was presented at the Arkansas Library Association State Conference in October in Little Rock.

√ **Jean A. Lukesh** has announced the publication of her new book from Field Mouse Productions: *Secret Brother: The Story of Solon Borglum, “Sculptor of the Prairie,”* part of the Noteworthy Americans and Legends of the Plains Quick-Reading Biography Series for Young Adult/Juvenile through Adult.

√ *Logan: The Honorable Life and Scandalous Death of a Western Lawman* by **Jackie Boor** earned first place in the 2015 Midwest Independent Publishing Association competition for best history book of the year. The award recognizes creativity in content and execution, overall book quality and the book's unique contribution to its subject area. *Logan* also placed in two categories of the 2015 Eric Hoffer Book Awards: a da Vinci Eye finalist for superior cover artwork and honorable mention as a Historical Reference Book. The Eric Hoffer Book Awards are among the largest international book awards for small, academic and independent presses.