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## A SIDELIGHT ON THE TUNSTALL MURDER

By FREDERICK W. NOLAN\*

The murder of John Tunstall, the English rancher and merchant, which was committed at about five thirty p.m. on February 18, 1878, some ten miles from the town of Lincoln, New Mexico Territory, brought to a boil a maelstrom of internecine strife which took nearly three and a half years to fully quell. There are still unsettled differences and controversies that arose as a direct result of the feud that followed, unsettled and bitter—and already, that strange, classic and futile conflict has been the target for many millions of written words; not only about the Lincoln County War, as history named the feud, but also about the bloody young outlaw who wrote his name as William H. Bonney, and who they called “Billy the Kid.”

It is this writer's contention that the full story of the Lincoln County War has yet to be told; nevertheless, it is an unexplored tributary of the legend-river to which I now claim colonial rights—the story of the fight to get justice for Tunstall and his impoverished family.

Soon after the murder, Alexander McSween, Tunstall's legal adviser and partner-to-be,<sup>1</sup> telegraphed to Tunstall's parents in London the shocking news that John had been killed by cattle thieves.<sup>2</sup> There can be no possible doubt that the news came as a very great shock to Tunstall's parents; they knew nothing of their son's involvements with the Murphy-Dolan combine, and their backers, the Santa Fe

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\* 95 Albion Street, New Brighton, Cheshire, England.

1. Although it had been commonly accepted that McSween and Tunstall were partners, in actual fact they were not; the partnership was to have been consummated in May of 1878, and the lawyer had already drawn up the papers to this effect. Tunstall had apparently given the administrators of the Fritz estate to think that he and McSween were actual partners as early as February 2, 1878, and it was on the strength of this, to all appearances, that the attachment against Tunstall's property was made. However, McSween's affidavit given to Judge Angel during his investigation states categorically that he and Tunstall were not to have become partners until May, 1878, so it can be readily seen that there was no actual legal ground for any posse to go to Tunstall's ranch, much less pursue and kill him “trying to escape serving the writ of attachment.”

2. This telegraphic communication was referred to in a personal letter to the writer dated February 2, 1954, from the late Colonel M. G. Fulton, of Roswell, N. M.

Ring. They were unaware that Tunstall was in any way involved in any legal matters at all, and John made no effort to disillusion them upon this score. He told them of his business transactions, of the money he eventually hoped to make; beyond this, he kept his affairs away from them.

Hot on the heels of the telegraph to Tunstall's parents, McSween wrote directly to Sir Edward Thornton, British Ambassador to the United States at Washington, D. C., and called attention to the murder of Tunstall, stating that "an impartial investigation of the circumstances which led to this foul murder" would show a "disgraceful state of affairs not only as regards the Territorial, but of the U. S. officials also."

He went on to state that he had ineffectually tried to have the murderers arrested, and had not put the warrants into the Sheriff's hands because he believed the Sheriff was "indirectly connected with the murder." He went on: "The public regard this as the most inexcusable murder that has ever taken place here, but unless you cause the matter to be looked into, I have but small hopes of the matter being prosecuted." He ended his letter (significantly) with the phrase, underlined, "In confidence."

The following day, Robert Widenmann, Tunstall's closest friend in Lincoln, also addressed himself to Sir Edward. He too indicted the Sheriff, and detailed how Sheriff Brady had the men who went to arrest Tunstall's murderers arrested themselves. "The murder can be proven beyond a doubt," said Widenmann, "but the New Mexican Ring has so complete a control over all our institutions that I doubt whether justice will be given unless a stronger hand demands it." He goes on to tell how the posse which killed Tunstall followed him "and three others"<sup>3</sup> thirty miles, obviously having "agreed to kill us all." Sir Edward Thornton covered these two letters with one of his own, addressed to the Earl of Derby. In it he seemed a little bewildered by the allegations contained in McSween's and Widenmann's letters; nevertheless he says "I deemed it my duty to address . . . Mr. Evarts

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3. The three others referred to were employees on the Tunstall ranch—Dick Brewer, Tunstall's foreman, and two ranch-hands, William Bonney and John Middleton.

... expressing the confidence that inquiries will be made into the matter, and measures taken for investigating the conduct of the Sheriff of Lincoln County, and for ensuring the arrest of the persons accused of the murder, and their being brought to trial."

Sir Edward's note to Derby outlined in main the points originally mentioned by McSween and Widenmann; "if the above (statements) are true," said Sir Edward, "it would appear that a most inexcusable murder has been committed, and that the sheriff . . . is impeding the course of justice."

In addition to writing to Sir Edward Thornton, Widenmann wrote on March 26 to a San Francisco lawyer named Guy McLellan,<sup>4</sup> informing him of Tunstall's death and asking him to "bear with the British Minister at Washington and the authorities to have the murder thoroughly investigated." It is interesting to note that Widenmann wrote to McLellan because Tunstall carried upon his person a note requesting the lawyer be notified in the event of his, Tunstall's, death. Tunstall knew he was on "the roster." McLellan sent Widenmann's letter to Governor Axtell, and a scorching reply to the former's allegations was printed in the Santa Fe *New Mexican*, acknowledged Ring journal. Axtell was, of course, in league with the forces that had destroyed Tunstall. Widenmann also wrote a letter to Tunstall's relatives in Victoria, B. C., where his father had a branch of his mercantile business run by his brother-in-law and an associate, J. H. Turner.<sup>5</sup> Turner at once telegraphed this brother-in-law, H. C. Beeton, who was at the time the letter arrived in Victoria, in the city of Milwaukee, Wisc., apprising him of his nephew's murder and pressing him to go to Ottawa and lay the whole matter before the Attorney-General there. He also informed the Attorney-General in Victoria, who promised to commence telegraphing to headquarters with a view to bringing some pressure to bear on the U. S. Government "that the whole

4. Original in collections of the late Colonel M. G. Fulton. Copy in possession of the writer.

5. J. H. Turner was a business partner of Tunstall's father in the Victoria, B. C., branch, which was called Turner, Beeton and Tunstall. J. H. Turner later became the Hon. J. H. Turner, British Columbia's first Provincial Prime Minister. The letter which Widenmann wrote to him and his reply are in possession of the Tunstall family; copies in possession of the writer.

matter might be thoroughly sifted." Turner also sent to Widenmann the address of Tunstall's father in London, so that Widenmann might write them more fully of John's death.

On March 2, McSween wrote the complete details of Tunstall's killing to Tunstall's parents. The letter reached London about March 24, and plunged the Tunstall family, father, mother, and three sisters, into deep mourning.<sup>6</sup>

Back in Lincoln, a newcomer took a hand in the battle; this was Montague R. Levenson, a naturalised Englishman who hailed from Douglass County, Colorado, and who was visiting Lincoln as the guest of McSween, with a view to establishing an "English colony" there, the Colorado climate not being suitable for them. On March 16, Levenson addressed himself to Sir Edward Thornton. Lincoln and its inhabitants were at this date seething over the conduct of Governor Axtell during his visits to Lincoln, and the proclamations<sup>7</sup> he issued whilst there; Levenson scathingly indicted Territorial, and the United States officials, and even the Governor himself, enclosing with his letter what he considered proof of the Governor's collusion, i.e., Axtell's proclamation dated March 9, 1878, at Lincoln, in which the Governor stated categorically that the warrants issued against the killers of Tunstall were issued without proper authority; that Deputy U. S. Marshal Widenmann was not entitled so to be called, and that the military forces at Fort Stanton had been enrolled to assist civil officers in quelling the disturbances, "maintaining order and enforcing process." Levenson also enclosed a copy of the Act under which Justice of the Peace Wilson had been appointed and a copy of the record by the County Com-

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6. McSween's letter to the Tunstall family is still in their possession. The writer has read this letter but had no opportunity of copying it.

7. The proclamations issued by Governor S. B. Axtell really set Lincoln in a ferment. The one in question, dated March 9, was a direct contradiction of an earlier proclamation, authorised by Axtell, to the effect that the County Commissioners were empowered, in the event of a vacancy arising through a death or resignation, to appoint a new J. P. J. P. John B. "Green" Wilson was appointed accordingly by the County Commissioners on February 14, 1877, to succeed J. H. Fairness, resigned, and was still acting in that capacity when he issued the warrants, on the verdict of the Coroner's Jury, against Tunstall's murderers. When, eventually, the Murphy-Dolan faction got around to swearing out warrants against the "Regulators," they had them issued by a J. P. at Blazer's Mill!

missioners which concerned the appointment of Wilson as J. P. It was this evidence as much as any other that resulted six months later in the removal from office of Governor Ax-tell, and the appointment in his place of General Lew Wallace, famous for his novel "Ben Hur" and for his part in the story of "Billy the Kid." Levenson urged that if enquiry was to be made, that Sir Edward ensure that an unbiased Englishman be appointed to the investigational Board, as there was, he said, "not a single U. S. officer in the Territory who is not a thief, an assassin, or the protector of thieves and assassins." He knew these assertions were strong; that was why he enclosed the evidence that he did. He also categorically stated that his only interest in the case was in the cause of "right and justice."<sup>8</sup>

Thornton was now genuinely astounded, and forthwith sent copies of the whole correspondence to his superior, the Marquis of Salisbury, Foreign Secretary, stating that "the circumstances stated by this gentleman (Levenson) are so extraordinary, and show so much apparent laxity and evil intention on the part of the U. S. authorities," that he had addressed a further note to Secretary of State Evarts. He also took the opportunity of speaking to Evarts of the matter, pointing out the state of utter lawlessness which was apparently so prevalent in New Mexico. Evarts replied that the distance was so great, and the Territory so unsettled, that it was "hard to control the actions of the authorities, who were sometimes obliged to take steps which might not be in entire accordance with the law." Evarts pacified the Ambassador by stating, however, that a "serious investigation of the . . . case would be instituted."

Thornton further states that he had received from H. C. Beeton two letters, one from Milwaukee and one from Chicago, regarding the matter; Beeton had empowered William

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8. Levenson, who had been staying with the McSween family, must, of necessity, have seen the shape of the "War" through their eyes; it seems reasonable to infer that he was influenced by them—hence their efforts to have Levenson appointed to the Investigational Board, knowing that thus they would, at least, have a chance of justice. The great and abiding fear of the McSween group was that some County officials would be chosen to make the investigation, in which event influence could easily be brought to bear by the Santa Fe Ring. Hence their later joy when Frank W. Angel of the Department of Justice, a non-County official, was appointed.

Brook Hereford, son of the pastor of the Church of the Messiah in Chicago, a shepherd resident at that time in New Mexico<sup>9</sup> "to proceed to the scene of the murder to investigate matters thoroughly and to secure what property Mr. Tunstall may have left."

Meanwhile, in Lincoln, the struggle went on, and on March 9, William Morton and Frank Baker, together with one William McCloskey, had been killed by McSween adherents led by Dick Brewer; these men were serving the alias warrants issued by Judge Wilson, and called themselves the "Regulators." In their ranks were C. M. Bowdre, J. G. Scurlock, Henry Brown, Frank McNab, Smith, French, Middleton, Wayte, and a youngster named Bonney. The Lincoln County War was beginning to burgeon forth.

On March 21, Widenmann again took to his pen, writing to Alfred Bury, a merchant of Kansas City, detailing Tunstall's death (this in answer to a letter from Bury enquiring about Tunstall, and dated March 8) and once more indicting the authorities responsible for the murder. Widenmann entreats Bury to write to Sir Edward Thornton and recommend that Levenson be placed upon the Investigational Board; "so that," he says, "we can have a thorough investigation."

On this same day of March 21, Montague Levenson wrote again to Sir Edward Thornton. He first assured Sir Edward that he was in no way interested in the "whole of the horrid business," except in the interests of right. He went on to accuse the District Attorney of the 3rd Judicial District, Ryner-son, of complicity in the Tunstall murder, once again furnishing proof in the shape of a letter from Ryner-son to Dolan and Riley; this he bluntly calls "an invitation to murder." His was a long letter—three and one-half pages single spaced typing when copied—in which he covered the whole nasty Lincoln set-up thoroughly. Again he entreated Thornton to ensure the election of an Englishman to the Commission of

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9. On April 4, 1878, Brook Hereford, Sr., wrote direct to General Sheridan, laying before him the facts of the Tunstall murder as he knew them and the subsequent difficulty in having the murderers arrested; he constrained the General to suspend military action in the area until some official enquiry was made. His letter does not appear to have carried much weight.

Enquiry, and states that he will be "happy to furnish all the assistance in (his) power."

Next, from the vantage point of Chisum's ranch on the Pecos,<sup>10</sup> Levenson wrote a postal card to Thornton stating that he had written to Senator Anthony of Rhode Island, and also General B. T. Butler; he said he had asked them to call upon Sir Edward and examine all the letters and documents appertaining to the murder, and then try to have some form of Congressional inquiry made in the event of President Hayes' failing to have a proper one made. He pleaded "give them (Anthony and Butler) every aid in your power. New Mexico is a volcano that may burst forth at any moment. . . ."

Five days after Levenson's card to Thornton, on March 29, Widenmann wrote to H. C. Beeton at New York, in answer to Beeton's letter of March 19, telling Beeton that he had written to Tunstall's parents<sup>11</sup> detailing Harry's<sup>12</sup> death, and enclosing Tunstall's will. Again there is the urging to have Levenson appointed to the Investigational Board, and Widenmann said, "Would it not be as well for you to make the short run to Washington and personally use your influence with Sir Edward Thornton?" He added that there Beeton would get a thorough insight into the whole matter.

Now the Lincoln County War had erupted; Brady and Hindeman were ambushed and assassinated by the "Regulators," and only three days later, April 4, at Blazer's Mill, another Murphy posseman, Andrew L. (Buckshot Bill) Roberts, went down before the posse's guns, taking with him Dick Brewer, leader of the Regulators, and severely wounding Middleton and shooting off the finger of George Coe. Alexander McSween, rigidly self-controlled, wrote a full report to the *Cimarron News and Press* of the killing of Brady and Hindeman, giving reasons for the whole feud, and signing

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10. The postal card which Levenson wrote to Thornton was posted from Roswell, this being the nearest post-office to Chisum's ranch; and in addition, knowing that the McSweens were at that time visiting Chisum, just out of Las Vegas jail, it is safe to assume that Levenson was also at the South Spring Ranch.

11. Widenmann is enclosing a copy of a will made by Tunstall; McSween (who was apparently not so fond of Widenmann as had been Tunstall) considered this "will" a mere power of attorney. Nevertheless, Beeton acted upon it.

12. Widenmann's reference to "Harry" means John (Henry) Tunstall. Tunstall called Widenmann "Rob" and wrote glowingly of him to his family. At Tunstall's request, Widenmann called the Englishman "Harry."



himself "Stanton."<sup>13</sup> The piece is well thought-out, and speaks well for the collectedness of McSween's thoughts during such a particularly trying period. That night, in Stanton, Levenson again went into battle, this time going right to the top; he addressed two letters, one to Carl Schurz, Secretary of the Interior, and the other to President Hayes.<sup>14</sup> He fearlessly<sup>15</sup> exposed the same official chicanery, even referring back to the Pecos War of 1877 in his letter, in order to show what a grip the Ring minions now had upon the County. Of Hayes, Levenson demanded court-martials for the Commandant of Fort Stanton, Col. Purington, and also Lieut. Smith. He begged the President to give immediate attention to the affairs of Lincoln County.

On April 4, the same day that the Regulators massacred Roberts at Blazer's Mill, McSween wrote to Tunstall pere<sup>16</sup> and gave him full details of the killing of Morton and Baker—yet strangely enough, not of the Brady killing—and told Tunstall of rumors that there is a price of \$500 on his (McSween's) head. He also asked Tunstall for the \$5000 which John Tunstall Junior gave him notes for, and explains that he hopes to "be able to pay the men who have left their ploughed fields a fitting recompense, in the shape of liberal rewards."

And at long last, urged to act by friends and family, John Tunstall's father, John Partridge Tunstall, entered the lists; his was a short, succinct letter to the newly appointed Secretary of State for Foreign Affairs,<sup>17</sup> the Marquess of Salis-

13. It was one of McSween's favourite dodges when writing to the newspapers—and one of the salient features of the Lincoln County War is the amount of writing to newspapers done by the principal participants—that he always used as his pseudonym the name of the place from which he was writing. The account of the Brady killing can be found in the *Cimarron News and Press* for Thursday, April 11, 1878.

14. Levenson's letters to Carl Schurz and President Hayes are to be found in the National Archives, Washington. A resume is in the possession of the writer.

15. I have used the word "fearlessly" here deliberately, for it seems obvious that a man whose efforts were more likely to upset their plans than many others would have come in for the attention of Murphy-Dolan-Ring threats; everyone else who tried to expose Lincoln County affairs had threats made against his life, and if there is no written record, it would be reasonable to assume that Levenson, who was no more a "fighting man" than McSween, had his share both of threats and courage.

16. McSween's letter to J. P. Tunstall is in the possession of the Tunstall family; copy in possession of the author.

17. Robert Arthur Talbot Gascoyne Cecil, third holder of the famous title of Marquess of Salisbury, was appointed to the Secretaryship April 2, 1878, succeeding the Earl of Derby, who had been Foreign Secretary when Thornton first sent word of the Tunstall murder to the Foreign Office.

bury, in which he said that "even at this critical moment in public affairs"<sup>18</sup> he felt it his duty to "draw to your Lordship's attention the brutal and cowardly murder of my son," John Henry Tunstall, "one of her Majesty's subjects . . . under circumstances, which I trust your Lordship will consider, justify me in asking for the interference of Her Majesty's Government."

He, too, indicted the Santa Fe Ring and its minions in Lincoln; he spoke glowingly of the rights of "Her Majesty's subjects," and respectfully begged the Foreign Secretary's consideration in the enclosed letter to His Excellency, and asked that the letter be sent to Thornton at the first opportunity, "with such instructions as your Lordship may deem fit." By May 10th, Salisbury had answered Tunstall's letter, and assured him that the British Government had the matter in hand; in fact, it was that same day that the letter to Sir Edward Thornton was dispatched.

Meanwhile, Sir Edward Thornton had already brought the matter to Secretary Evarts notice again, in a letter to Thornton dated April 13, assured him that he had placed the matter in the hands of Attorney-General, Charles Devens. From that official's office, enclosed with Evarts' letter, came a note from Acting-Attorney-General Phillips confirming this. Phillips also stated that he had discussed the matter with Secretary F. W. Seward. The wheels of Government were finally beginning to revolve. The Attorney-General's department decided to institute a searching enquiry into the death of Tunstall, made on the spot by a Special Investigator, who was Frank Warner Angel. He was to go into Lincoln County and examine as many of the actual witnesses and participants of the Tunstall killing as were available; and he arrived in Lincoln late in May, 1878. He immediately began to take testimonies, and the McSween faction were overjoyed at this sign that their efforts had not been in vain. They felt sure

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18. By this reference to "public affairs," Tunstall was no doubt referring to the then-current classic struggle between Gladstone and Disraeli upon the subject of Turco-Russian relationships. Russia and Turkey had been at war since 1877; Russia forced Bulgaria on to Turkey in order to get possession of one side of the Dardanelles. Disraeli backed Turkey against Russia, and Gladstone wanted the Turks cleared out bag and baggage. This conflict led eventually to the Congress of Berlin in 1878.

that this unbiased investigation would land every member of the Santa Fe Ring in jail. In a letter to J. P. Tunstall dated at Lincoln, June 5, 1878, McSween himself speaks triumphantly of having "succeeded in getting the U. S. Government to appoint and send out here a gentleman from New York to inquire into the murder of John (Tunstall). For the past week or ten days," continues McSween, "I have been very busy in taking testimony. Parties for years in the employ of Murphy have testified that sentence of death had been passed on your son . . . long before he was killed." He goes on to tell that there is a price on his own head; that full, detailed particulars of the investigation will be published by County Officers<sup>19</sup> and sent to him (J.P.T.) and that, next mail, he will . . . "also write my ideas about a monument for John."

On June 11, Widenmann wrote to J. P. Tunstall, advising him that on the 19th, Thursday, he, Widenmann, would be setting out for Mesilla.<sup>20</sup> He also details the removal from office of "our sheriff,"<sup>21</sup> and the substitution by the authorities of George W. Peppin. Widenmann stated this further evidence of the Governor's partizanship with the Murphy-Dolan crowd, and expressed the hope that "if we give them enough rope they may hang themselves." Widenmann expressed faith in Angel, who, he said, "seemed rather disgusted with their (the officials of the County) proceedings. . . ." On July 1st, Daniel M. Appel, Assistant-Post Surgeon, U. S. Army at Fort Stanton, gave his affidavit before Judge Angel on the post-mortem examination he had made on Tunstall's body. Contrary to accepted legend, he stated that

19. No County or Territorial investigation was ever made; it is possible that McSween was referring to the Angel investigation, but there may have been talk of a County investigation to run concurrently with the Angel one. Angel, of course, investigated the conduct of the officials of the Territory, but his findings were never published.

20. Widenmann left Lincoln June 19 to attend Court in the hope of getting justice for the Tunstall family. He was foredoomed to failure, and himself received what he termed "a cathauling" in Court. He went to Mesilla with a military escort, but this was "withdrawn," so that he was forced to stay in Mesilla, knowing that if he should venture out into the lonely hills of Lincoln County, he would never be found alive.

21. Widenmann's reference to "our Sheriff" refers to Sheriff John Copeland, who was elected by ballot after the killing of Brady, and who was at least sympathetic towards the McSween faction. Copeland was summarily removed from office by order of the Governor, and George W. Peppin replaced him. This was a blow to the McSween faction, but it later proved yet another reason for the removal of the Governor from his office. Even during his short tenure of office, Copeland had managed to get out a few "wanted" posters against Murphy hirelings.

"there were no marks of violence upon the body, nor was the body or skull mutilated."<sup>22</sup> He expressed the opinion that the wounds had been caused by rifle bullets rather than by revolver-bullets. The rest of his testimony consists of medical details regarding the actual bullet wounds themselves.

Eventually, Angel compiled a complete file upon the case, consisting of over three hundred pages; he remained in the Territory until about August—although not in Lincoln itself—and returned to Washington then, filing his report with the Department of Justice. As a direct result of Angel's investigations, the Hayes administration decided to give New Mexico a new set of officials. But this is ahead of itself, and I shall return to it a few paragraphs hence.

Soon, the Lincoln County War flared to its climax; on July 19th, after a drawn-out fight that had lasted three days, Murphy-Dolan forces fired the McSween home, and as a result of this blaze-up, McSween, two Mexicans, Zamora and Romero, and a young man named Harvey Morris were killed;<sup>23</sup> of the Murphy-Dolan forces, Robert M. Beckwith, a rancher, was killed, and John Kinney, Las Cruces outlaw, was wounded.

On July 24, Samuel Corbet, who had been John Tunstall's clerk, wrote the sad news of McSween's death and the looting of Tunstall's store to John Partridge Tunstall. He refers to Widenmann, from whom he has only heard once since Widenmann left for Mesilla on the 19th of June. He said "If Peppin's posse ever find him, they will kill him on sight. When they (Peppin's men) destroyed everything I left town to save my life."<sup>24</sup> He expressed concern over Tunstall's herd of cattle on the Felix; sure that they too will be taken before the

22. Appel's partisanship towards the Murphy-Dolan faction shows very clearly in his affidavit; when Judge Angel had collected all the testimonies, it became readily apparent that Tunstall had been shot down from close range, as Morton admitted to be the case. Appel's evidence was given to lend weight to the statement that Tunstall was running away from his killers, yet contradicts itself by saying that both wounds were at the front. It is also interesting to note that Appel states definitely that there was no mutilation of the head or body—so much for the blood and thunder historians!

23. Harvey Morris was a young man recently arrived in Lincoln to read law in McSween's office. He was the proverbial "innocent bystander."

24. Corbet, along with not a few other McSween sympathisers, had had to leave Lincoln to escape the attentions of Peppin and his "posse"—which consisted in main of a band of outlaws from Dona Ana County under the flag of John Kinney—and Corbet's letter is postmarked from Magado, Lincoln County.

Kinney gang, under Peppin's banner, leave town. "Mrs. McSween," says Corbet, "is left without a change of clothes; everything was burnt up." A sad letter; it is difficult to imagine what Tunstall's feelings would have been upon receiving it. His son's estate had stood valued at around \$25,000. Now it was being looted, smashed, pillaged, burned; and he was helpless to stop it happening. On July 25 a very distraught Mrs. McSween wrote to Tunstall. Even in cold print, one can read behind the words and see the fear and distraught mind of McSween's widow; she wrote Tunstall that she was "entirely destitute" and that she feared that Widenmann, too, was dead, as they had "not heard from him for about three weeks, and whilst those men were here they swore they would kill him." Her last sentence was "excuse this for I scarcely know what I am doing."

However, Widenmann was not dead; he was alive in Mesilla, but there completely helpless to do anything about going back to Lincoln. The Ring had him trapped in the little town, and there he had to stay. On July 26 he wrote to Tunstall. He told of his troubles in trying to get any action from the Courts; "nevertheless I had trouble enough . . . in court, so that justice is out of the question . . . all the roads blocked so that I cannot get back to Lincoln." He continued with the supposition that by now Tunstall will have heard about the McSween killing and the looting of the store: "I will go back to Lincoln as soon as I can," he said, "and try to arrange things and put them in shape. . . . Whether I will succeed is doubtful, and it is rather dangerous work; but right and justice will triumph in the end—that is my main hope."

In early August, Colonel Dudley wrote to Tunstall, and in his letter accused Widenmann and McSween of the murder of young John Tunstall;<sup>25</sup> aghast at this amazing accusation, on August 13, Corbet wrote again to Tunstall, and his letter gives a good indication of what Lincoln County was enduring at that time. "Mr. Dolan," said Corbet, "with a company of soldiers from Fort Stanton and about twenty Apache Indians, are now out hunting the citizens of this county who are friends of Mr. McSween and your son." Once again, Dudley

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25. This letter from Dudley has never been found.

is indicted for his part in the Three Days Fight; Corbet now intimated that he had since discovered that there were troops helping to carry goods from the store during the looting, and that "General Dudley himself was in the store." He went on to say that since the McSween killing, everything had been quiet in town, but "Peppin is liable to come in any day. Burnstein was killed on the Indian Agency on August 5 (Murphyite)."<sup>26</sup>

On September 2, Widenmann wrote his last letter from Mesilla to Tunstall; he told of the depredations in the Lincoln area being carried out by the Peppin and Kinney gangs. And also: "Mr. F. W. Angel . . . was forced to return to Washington because his life was in danger, and had been frequently and openly threatened by the New Mexican Ring; but I am certain that his labour will carry severe retribution with it. . . . My life is daily threatened, but I have become . . . accustomed to it that I don't mind much." He said there was a price of \$500 on his head, and closed with the words "the . . . inactivity to which I am condemned at present is very disagreeable and trying."

Back in London, John P. Tunstall had prepared his case for a further assault upon the Governmental bastions. He had had printed an extract from the *Cimarron News and Press* dated August 1, 1878, concerning the "tragic end" of the McSween group, together with a number of letters he had received from Lincoln County, most of these already detailed in previous paragraphs. The pamphlet included letters from McSween, Widenmann, Corbet, Gauss, and Mrs. McSween, and represented a fairly good summarisation of the McSween faction's claims and suffering. To these Tunstall added his own summarisation; his letter, dated October 9, 1878, and addressed to the M. of Salisbury, hits the nail smack-bang on the head almost immediately. "The object," he said, "of these continued outrages is to do away with the

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26. This murder was supposedly committed by the Kid, but authorities seem inclined to believe that he was innocent of this particular charge, and that the murder was committed by a bunch of Mexicans who were with the Kid and his gang to steal horses from the Indian Agency. Colonel Fulton, in his notes to Garrett's *Authentic Life of Billy the Kid* (McMillan, New York, 1927) expressed the opinion that the murder was done by a Mexican youth named Sanchez.

foremost witnesses to the premeditated assassination of my son and to accomplish the robbery and destruction of his property." This letter, unlike the first, spoke now of "an adequate indemnity from the American Government for the irreparable injury my family suffers. . . ." The letter is a complete summarisation of the why and wherefore of Tunstall's choice of New Mexico, of the financial loss now felt by him personally, sixty-three years of age and without the capital which had taken him a lifetime to accumulate. Beyond a formal acknowledgement, Tunstall got no Governmental comment; he might well have saved his time, it seemed. Now Tunstall received a letter from Issac Ellis in Lincoln, telling him that Widenmann had written him from Las Vegas that he was on his way East; that the store, John's store, was falling down. Ellis offers to repair it for a half interest . . . his p.s. is revealing of Widenmann's departure from the Territory. "Mr. Widenmann left without giving anyone charge of anything." Surprisingly, therefore, Tunstall's next letter to the Foreign Secretary, dated January 10, 1879, stated that Widenmann was in London, having "with great difficulty escaped the fate of my son at the hands of his murderers. . . ." He stated that Widenmann was ready, willing and able to give direct testimony regarding the murder of John Tunstall.<sup>27</sup>

At this time, the Angel report was sent from Devens to Evarts, from Evarts to Thornton, and (copied) from Thornton to Salisbury (again copied). John Partridge Tunstall was sent copies, which having completely perused, he attacked savagely and with force in his letter to Salisbury dated May 8, 1879; he agreed that the testimony of "the surviving assassin," Evans,<sup>28</sup> would be desirable, but went on to state that with regard to the third finding of Angel's report<sup>29</sup> the

27. Widenmann's offer to testify was apparently never taken up by the British Government; at least there is no record of such testimony.

28. On February 12, 1879, Devens had written to Sidney M. Barnes, U. S. Attorney at Santa Fe, requesting that, as of the three alleged assassins, Jesse Evans was the only one surviving, it would be admirable to have said Evans arrested and hear his testimony. Evans, however, had left the Territory, and ended his career in Fort Stockton, Texas, where he, John Gunter, and the Davis boys sacked the Fort, and in a running fight killed Ranger George R. "Red" Bingham. Gunter and Evans were sent to the penitentiary for long terms.

29. In the penultimate paragraph of his report to the Attorney-General, Angel concluded that "there was no object for following after Tunstall except to murder

evidence incontrovertibly points to the fact already-surely-proven, that "Sheriff Brady deputised Matthews, Matthews deputised Morton, and Morton admits that he shot Tunstall." The letter is a fine statement of the Tunstall family's viewpoint; Tunstall remarks that he is happy to inform Salisbury that—for lawless and corrupt practices—the Territorial Governor, the D. A., Rynerson, the Indian Agent Godfroy, and the U. S. D. A., Catron, have all been dismissed. "This," he said, "is a practical recognition of the conduct of these officers." As regards the looting of the store, Tunstall said that he had had no report on the investigation, "required by our Government in that matter," and stated that he will be happy to furnish figures of the loss sustained when necessary.

On November 12, Tunstall wrote again to the Foreign Office; he was surprised, and perhaps a little alarmed, as there had been no communication from the Governmental office regarding his comments or his claim. He speaks of a "definite issue" between the U. S. Government and himself, and enters against the U. S. Government a claim which he asked Salisbury to put forward on his behalf, stating that "competent persons" have assured him that his son was in a good position to accumulate a fortune—in six or eight years—of around \$500,000. His ending sentence revealed the beginnings of alarm at Governmental slowness: "Begging the attention of your Lordship to this matter, which to me is one of vital consequence."

On November 25th, by direction of the Marquess of Salisbury, Tunstall was informed that instructions had been furnished to H. M. Minister at Washington to report upon his (Tunstall's) statement of loss incurred by the murder of J. H. Tunstall, his son. On April 12, 1880, Tunstall again addressed the Foreign Secretary, this time in order to lodge his claim as a definite figure—this being one hundred and fifty thousand dollars, or 30,000 pounds sterling. This not to

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him . . . , and the deputy allowing these notorious outlaws to accompany him lead me to the conclusion that John H. Tunstall was murdered in cold blood and was not shot in attempting to resist an officer of the law." Then amazingly, Angel concluded: "After diligent inquiry . . . , I report that the death of John H. Tunstall was NOT brought about through the lawless and corrupt conduct of United States officials in the Territory of New Mexico." This was the paragraph with which Tunstall disagreed so emphatically.



mention the land losses or the "deep injury—not to be estimated in figures—done to my family by his murder. . . ." He closed with an undertaking to pay his son's liabilities, when the U. S. Government had satisfied his claim.

Shortly after Tunstall had written this letter, Disraeli's Conservative Government was defeated in a General Election, and once more W. E. Gladstone brought his Liberal Party into the House of Commons. On May 31, 1880, Tunstall wrote to the new Foreign Secretary, Lord Granville,<sup>30</sup> reminding him of the correspondence that had already passed, and that his letter dated 12th April was still unanswered—"owing doubtless to the change of Ministry," said the old man. His last sentence to the Foreign Office—for this was his last letter—said, "I may add that this matter has been pending more than two years."

It is likely that the old man suffered some sort of breakdown shortly after this letter was written; at any rate he wrote no further letters to the Foreign Office. Between 1880 and 1881, correspondence was carried on between the representatives of the two Governments; on January 30, 1882, F. T. Frelinghuysen, Secretary of State in America, suggested that the claim made by Tunstall's family for an indemnity should be referred to the Court of Claims or other judicial tribunal—under authorization of Congress. The British Government agreed that this would be admirable—*Providing* that the proposed adjudication be based upon prior admission of liability by the United States. The suggestion was promptly dropped.

Again the Tunstall family, now without John Partridge Tunstall, who had died some time in 1884, swung into the fray again. They issued a printed pamphlet entitled *Resume of the Facts Connected With the Murder of J. H. Tunstall and the Plunder of His Property in Lincoln County New Mexico in 1878*.<sup>31</sup> This leaflet again indicted the Santa Fe Ring and

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30. George Leveson Gower Granville, 2nd Earl Granville, succeeded Salisbury in the Foreign Secretaryship on February 6, 1880, in conjunction with the change in Ministry mentioned, which took place April 28, 1880.

31. A copy of this *Resume of the Facts* . . . is in the possession of the author. The family had a number of these printed for distribution, but very few of them can be traced today.

its leaders and followers. It quoted the old Ryerson letter that had been called "an incitation to murder." It detailed the killing, and the looting of Tunstall's store, and carried a plea for "signatures . . . to the enclosed address of Lord Granville. The matter is one of national interest as affecting the respect due to the life and property of English men abroad."

On April 25, 1885, the British Minister at Washington, the Hon. L. S. S. West, requested a re-examination of the case. A reply dated June 1, 1885, from Thos. F. Bayard, Secretary of State, replied that the claim could not be admitted. The legal grounds for the adjudication were as follows:

- (I) The laws of the various states and territories of the Union for the punishment of certain crimes committed within these several independent jurisdictions by their respective local tribunals and officers free from any control or interference of the Federal Government. (More than once it had been held in the Courts that the Federal Government was not liable for the debts or torts of officers of a Territory organized under Congressional legislation.)
- (II) A decision of Chief Justice Waite was quoted:—"There is no principle of international law which makes it the duty of one nation to assume the collection of the claims of its citizens against another nation, if the citizens themselves have ample means of redress without the intervention of their Government."

The Tunstalls had lost.\*

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\* All other correspondence, Governmental and private, referred to in this article may be found in the files of the British Foreign Office, kept in the Public Records Office, London. Copies of all letters mentioned are in the possession of the author.