

Murder on the White Sands

The Disappearance of
Albert and Henry Fountain

Corey Recko

Number 5 in the A. C. Greene Series

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To Meg

Thank you for putting up with me during the creation of this
book. I know it wasn't easy.

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Introduction

It was the end of January 1896 when the Grand Jury adjourned in the town of Lincoln, Territory of New Mexico. Colonel Albert Jennings Fountain had just worked to bring indictments against several men in order to combat the cattle rustling that ran rampant in New Mexico.

His work finished, Fountain, with his eight-year-old son Henry who was along for the trip, left Lincoln on the thirtieth day of January. The pair headed southwest, towards their Mesilla home. The journey, some 150 miles, would take three days. It was a journey that the father and son would not complete, for on the third day they disappeared near the White Sands, an area known for mysterious disappearances. What became of them remains one of New Mexico's greatest mysteries.

The disappearance of the prominent Colonel Fountain and his young son caused outrage throughout the territory. The sheriff, whose deputies were quickly becoming suspects, did little to solve this mystery. His standing was shaky anyway, as his right to the office was being contested in the courts due to charges of fraud in the previous election. The governor, anxious to get action in the Fountain case, sought outside help.

First he called on Pat Garrett, the man who fifteen years earlier had killed Billy the Kid. Then he brought in the Pinkerton National Detective Agency, who sent operative John Fraser. What Garrett and Fraser found was a lawless land torn apart by a political feud, a place where theft and murder often went unpunished. What followed was an investigation that put the lives of every participant in danger.

Along with Pat Garrett, some of New Mexico's most famous citizens were involved in the investigation and subsequent trial.

The list includes Albert Fall, Oliver Lee, Thomas Branigan, Miguel Otero, and Thomas B. Catron.

Albert Fountain, who was equally loved and hated wherever he went, had been a reporter, Indian fighter in the United States Army, lawyer, and newspaper editor, as well as having served in the Texas Senate and New Mexico legislature, the former of which he was majority leader and the latter of which he was speaker. A civic and political leader, Colonel Fountain made as many enemies as friends. More than one attempt was made on his life.

The Territory of New Mexico did not become a state until 1912. A number of reasons contributed to the delay of New Mexico's acceptance into the Union, though the primary reason was the widespread lawlessness. Of all the murders in New Mexico in the years preceding statehood, none did more to damage the territory's standing than the murder of the Colonel Albert J. Fountain and his eight-year-old son Henry.

one

Albert Jennings Fountain

Born Albert Jennings on Staten Island, New York, on October 23, 1838, Albert was the son of Solomon and Catherine Jennings. The name Fountain came from his mother, who descended from a French Huguenot family named de la Fontaine, which later turned into Fountain.¹ Why Albert took the last name Fountain is unknown. One theory is that a mysterious murder in the Jennings family caused many members to take other names.² Another suggests that Albert took the Fountain name so as not to give himself away as he searched in China for his then missing father.³

Fountain was educated in New York public schools and at Columbia College. It was said that during his Columbia days, at age fifteen, he and five other students went on a tour of Europe and the Far East. It was during this stage of Albert's life that his father, a sea captain, was purportedly lost at sea. In Solomon Jennings's last letter to his wife, written somewhere in the Orient, he wrote that food was running out and his crew was getting restless. He was never heard from again.

In the latter half of the 1850s, Fountain arrived in northern California.⁴ He worked various jobs until his introduction to journalism, when he took a job as a reporter for the *Sacramento Union*. On one of his first assignments, he was sent to Nicaragua to cover the William Walker expedition. When Fountain sent back reports that Walker planned to establish a slave-holding republic in Nicara-

gua, with Walker as president, Fountain was arrested and sentenced to execution by firing squad. The resourceful Fountain, disguised as a woman, slipped aboard a steamship to escape.⁵ It would not be the last time he would face death.

He spent the next two years as a clerk in a law office and passed the California State Bar. Then civil war broke out and before the young man could be certified he enlisted in the Union army.⁶ On August 26, 1861, Fountain enlisted in Company E, First California Infantry Volunteers. His service record describes him at five-foot seven and one-half inches tall, with brown hair, blue eyes, and a light complexion.⁷

Fountain's company trained in Camp Downey near Oakland. As Fountain quickly moved up in the ranks, his company moved to southern California and then marched east. They never met Confederate forces while in Arizona and New Mexico but did battle the native Apaches.⁸

While stationed in New Mexico, Fountain, now a sergeant, met teenaged Mariana Pérez, who on October 27, 1862, would become his wife.⁹ Albert and Mariana's first son Albert had just been born when Fountain, then a lieutenant, was discharged in 1864.¹⁰ Family was very important to the couple. In all, they would have ten children: Albert, Marianita, Edward (killed in 1891), Maggie, Thomas, Jack, Fannie, Henry (died in infancy), Catarina, and finally little Henry.¹¹

Amidst Indian raids in New Mexico, Fountain re-enlisted. He nearly lost his life while pursuing some uprising Navajos who had left the Bosque Reservation. He and another man, Corporal Val Sánchez, located the renegade Indians, but before they could return to Fort McRae to notify the colonel of the Indians' location, the fugitives became aware of the pair's presence. The two eventually split up and Fountain was alone when cornered in a narrow pass. His horse was killed and he was shot multiple times, with a bullet left in his thigh, an arrow in his forearm, and another arrow in his

shoulder.¹² Fountain described the last attacker who tried to get at him through the pass as “a villainous-looking fellow whose only garment was a red shirt.”¹³ Fountain shot him dead as he charged. He spent the night alone, trapped under his dead horse.

Sánchez, meanwhile, had arrived at Fort McRae and Fountain was rescued early the next day. He was taken first to McRae and then to Fort Bliss, where he had the arrow removed.¹⁴ During Fountain’s recovery, he was seen frequently in the streets of El Paso and became acquainted with the town. When healthy, he moved his wife and now two children to El Paso, where he started a law practice. He became a civic leader, joined the Free Masons (Aztec Lodge No. 130), was appointed and served as customs inspector and chief assistant to the collector of customs, was elected county surveyor, and became a leading organizer of the Republican Party in western Texas.¹⁵

With the Civil War over and the Reconstruction of the South underway, President Lincoln pushed a reconstruction plan criticized by some as too soft. Following Lincoln’s assassination neither his decree nor Congress’s rival and far tougher Wade Davis Act was implemented as the fight over what to do with the South continued. The “radical” Republicans wanted the Confederate States to be treated the same as were conquered provinces. Andrew Johnson, the new president, adopted a plan that many thought favored the Southern planter elite, permitting them to pass “black codes” that sought to restrict the rights of freed people and restore land to former owners. As a result, Congress passed the Fourteenth Amendment, stating that persons born in the U.S., regardless of color, were U.S. citizens, and restricting a state’s power to limit their rights. Congress also passed a series of Reconstruction Acts that limited state powers and set the terms of rebuilding.¹⁶ Fountain, now a leading Texas Republican, supported the Radical Reconstruction, or “hard-peace.”

In the elections of 1869, the Radical Republicans in Texas swept all state offices from the “soft-reconstructionists,” including the

election of new Governor Edmund J. Davis and of Albert Fountain to the state senate.¹⁷ Fountain served in the Texas Senate for one four-year term. His time in the senate saw Texas readmitted into the Union in 1870. As a senator, Fountain served as majority leader and spearheaded the Frontier Protection Bill, which reactivated the Texas Rangers. During this time, he was a founder of St. Clement's Church.¹⁸

The senator had another brush with death, this time as the result of a political feud. A man named Frank Williams had become upset with Fountain and Judge Gaylord Clarke. Williams was angry when Fountain failed to find him a patronage job after he had supported him. During a subsequent trial, Clarke issued a "severe and emphatic reprimand" to Williams when his conduct as an attorney in Clarke's court became "abusive and disrespectful."¹⁹ Because Williams was now openly hostile towards the two, Fountain attempted to avoid him.

During a verbal attack on Fountain in Dowell's Saloon, Williams drew his gun on the unarmed Fountain, who had only a cane to defend himself. There is disagreement as to whether Fountain attacked Williams with his cane first, or Williams shot first. Either way, what is known is that Fountain was shot three times. One bullet struck him in the arm, another hit his scalp and sent blood running down his face, and a third penetrated his coat and five letters before striking his pocket watch. Williams retreated after emptying his gun. Fountain, Clarke, and a posse of three men went after him. When the five men found him, Williams shot and killed Clarke at point-blank range, which was followed by a shot from Fountain, who, fifty yards away, fired a bullet that hit Williams in the chest. Williams spun around and hit the ground. As Williams reached for his pistol, another man in the posse shot him in the head.²⁰

In 1873, the Fountains, now with five children, returned to settle in Mariana's former home of Mesilla, on the outskirts of Las Cruces. Fountain quickly established a law practice there.²¹ Still loy-

al to the Free Masons, he joined Aztec Lodge No. 3 of Las Cruces. The members included Numa Reymond, who would be involved in a fight to become the Doña Ana County sheriff when Fountain disappeared, and prominent New Mexicans William L. Rynerson and James J. Dolan. William H. H. Llewellyn, who would go on to become a good friend of Fountain, joined the lodge in 1883. Fountain became a leading member of the lodge, serving such posts as deputy grand master, senior grand warden, master, senior warden, and senior deacon.²²

In 1874, Fountain organized the Mesilla Dramatic Association and designed and painted sets, rewrote plays, and acted. He also founded the newspaper *Mesilla Valley Independent*, publishing its first issue on June 23, 1877. He was chief editor and translated for the weekly Spanish edition, *El Independiente del Valle de la Mesilla*.²³

It was in 1881 that Fountain, as a court-appointed defense attorney, defended his most famous client, William H. Bonney, also known as Billy the Kid. Though Bonney was found guilty of the murder of Sheriff William Brady, he wrote positively about Albert Fountain. “Mr. A. J. Fountain was appointed to defend me and has done the best he could for me. He is willing to carry the case further if I can raise the money to bear his expense.”²⁴ Bonney was brought to the town of Lincoln and held on the second floor of the courthouse to await his execution. He killed two deputies and escaped. He was eventually tracked down and killed by Pat Garrett on July 14, 1881.

Fountain continued his successful law practice and, as a result, he was appointed an assistant United States district attorney.²⁵ As captain of the Mesilla Scouts, he led the militia that defended the town from Indian raids. His service in protecting the settlers would move him up further in the ranks, and in 1883 Fountain reached the rank of colonel. His work with the militia brought him into close contact with the area’s Indian population, many of whom he went on to befriend.²⁶

Fountain also became involved in New Mexico politics. A Republican himself, he took on a group of Republicans known as the “Santa Fe Ring.” The ring concentrated on amassing wealth and landholding for its members through control over federal patronage and favors from the territorial government. The head of the Santa Fe Ring was undoubtedly Thomas B. Catron. Its members included such notables as William L. Rynerson, James Dolan, and even lifelong Democrat Lawrence G. Murphy. During and after the Lincoln County War, in which Murphy and Dolan led one side and had close ties to Rynerson, Fountain left the Republican Party, helped form, and was elected president of a party he called the Law and Order Party. At this time, he also relinquished control of the *Mesilla Valley Independent*. Soon after, however, Fountain returned to the Republican Party and worked to fix its problems from the inside.²⁷



Albert Jennings
Fountain in Militia
Uniform
(Date and photog-
rapher unknown.
Courtesy Palace of the
Governors [MNM/
DCA], Negative No.
9873)



Mesilla. The Plaza, circa 1880
(Courtesy New Mexico State University Library, Archives and Special Collections, Joe Lopez Family Photographs, RG84-159)

Major Fountain's
Militia in 1883.
Standing (L-R):
Lt. Pedro Pedragon,
Lt. Albert Fountain,
Lt. Maclovio Botello;
Seated: Capt. Eugene
Van Patten, Maj.
Albert J. Fountain,
Capt. Francisco
Salazar.
(Date and photog-
rapher unknown.
Courtesy Palace
of the Governors
[MNM/DCA],
Negative No. 13148)





From inside cover of one of Albert Fall's law books. (Author's collection)