

The Michael J. Malone Douglas County Law Library E-Mail Newsletter



Vol. 14, No. 1; January 2017

Contents

- Meeting and Event Announcements
- 2017 Law Library Registration Fee Due By January 16th
- Current Art Gallery Exhibition
- New Acquisitions
- Did You Know?
- This Month In Legal History
- Law Library Volunteer Opportunities
- Feedback
- Submitting Articles for Newsletter
- To Subscribe
- Back Issues
- Classified Ads

Meeting and Event Announcements

The Defense Bar meets the second Friday of the month. This month the meeting is on the 13th.

The January 2017 Douglas County Bar Association Brown Bag CLE program will be on Thursday, January 19th, from 12:00 p.m. to 12:50 p.m. in the Jury Assembly Room in the Judicial and Law Enforcement Center.

Rebecca Gerhardt will present *Recent Changes to the DCF Finding Structure and Burden of Proof*. Check the [DCBA website](#) for more information on the program, on the CLE credits available, and for handout material.

2017 Law Library Registration Fee Due By January 16th

The 2017 Law Library Registration Fee for attorneys required to register with the Law Library is due in the Law Library no later than 5:00 p.m., January 16, 2017. It is also time for attorneys who do not have to register and pay the fee, but do so anyway to have access to a library key, to renew their annual registration and pay their fee.

K.S.A. 20-3126(e) states: "For the purposes of this section, an attorney shall be required to be registered in the county: (1) Where the attorney's principal office is located, if such attorney is a resident of Kansas or a resident of another state; or (2) where the attorney resides, if such attorney's principal office is located in another state. The principal office shall be the principal office of the attorney

and not the principal office of such attorney's firm.”

Attorneys who are required to register and pay the fee and do not do so by the deadline are barred from filing anything on eFlex for Douglas County until they register and pay the fee. There are no exceptions. In addition, attorneys who are delinquent in their registration and fee payment will have their library card deactivated and will have to pay a \$25.00 reactivation fee in addition to the registration fee.

If you have not already paid your 2017 fee, please fill out, print, sign, and date the form, and, along with your 2017 fee payment of \$50.00 made out to the Michael J. Malone Douglas County Law Library, get it to the Law Library no later than January 16th.

A 2017 Law Library Registration Form was e-mailed to all attorneys for whom the Library had an e-mail address. If you need it re-sent, please contact the Library. The form is also available in fillable PDF format on the Law Library's website by clicking [here](#).

Current Art Gallery Exhibition

The December 2016/January 2017 Law Library and Division III art gallery exhibitions are photography by Deborah Kai. The exhibitions will run through the end of January 2017.

The February/March 2017 exhibition slots in the Michael J. Malone Douglas County Law Library Art Gallery and the Division III Art Gallery are scheduled to be photography by Camron Flanders. More information will be in the February 2017 E-Mail Newsletter.

For more information on past, current, and future Art Gallery exhibitions, or for more information on the Art Galleries, please con-

sult the Art Gallery page on the Law Library's website.

If you would like to exhibit your art in our galleries, or know of local artists who would like to show their original art here, contact the Law Library at 838-2477 or by e-mail at info@douglascolawlibrary.org.

New Acquisitions

Newly acquired material added to the Law Library's holdings:

Kansas Ethics Handbook, Third ed., J. Nick Badgerow, ed.

Kansas Employment Law, Third ed., Joseph Mastrosimone, ed.

Law Library Journal, v. 108:4 (Fall 2016).

Did You Know?

Every month, a bit of Law Library trivia is posted in the Law Library and on the Law Library's website. The previous month's "Did You Know" tidbit is then published here in the Newsletter. The hope is for this to improve communication between the Law Library and its users.

December's entry was:

With the swearing in of the Honorable Amy Hanley as a Seventh Judicial District Court Judge, she became a member of the Michael J. Malone Douglas County Law Library Board of Trustees.

This Month In Legal History

January 25, 1906 - Judge Charles A. Smart rules on "The Incubator Baby".

Charlotte E. Thompson was born in February 1880 in Guelph Township, Sumner County, Kansas, to Robert and Ora Thomp-

son. Lottie, as Charlotte was known, was the second of four children, with an older brother named Henry and two younger siblings, Beecher and Kate. Their father made his living as a druggist. Sometime between 1880 and 1900, the family's situation changed, when Robert died and Ora moved her children to Leavenworth, Kansas. By 1900, both she and Henry were working there as school teachers. Lottie met a young man named Joseph J. Bleakley, who had been born in November of 1877 to Joseph and Alicia Bleakley. He was living with his parents on their farm in Reno Township in Leavenworth County, northeast of Lawrence, Kansas. The two young people began a relationship and were married on August 13, 1903. The newlyweds moved in with his parents. Lottie became pregnant, but when this occurred is unclear. Later court testimony indicates that her husband did not want her to have the baby, and that he tried to make her terminate the pregnancy, maybe going so far as attempting to cause her to miscarry. This was too much for Lottie, and she left Joseph, eventually making her way to St. Louis, Missouri. The reason she went there is unclear. The Louisiana Purchase Exposition, better known as the St. Louis World's Fair, was scheduled to open in the spring of 1904, and many young people were attracted to St. Louis because of the anticipated excitement and opportunity for employment. Regardless of the reason, that is where Lottie went, arriving there on December 17, 1903. A group of Protestant women in St. Louis had been concerned about keeping the female transients arriving in their city safe from "temptation in all its forms," and had opened a shelter. It is likely that Lottie took advantage of this and stayed there. She was also given assistance in looking for employment, and soon found a job with a Mrs. Wheeler. On February 9, 1904, she went to what was later described as "a lying-in hospital or sanitarium," run by a midwife named Mrs. Merrifield¹, and on

February 15, 1904, Lottie gave birth. As she was coming out from under chloroform anesthesia, Lottie was shown a dead baby and was told that it was her baby and that it was stillborn. She agreed to pay \$15 for half of the funeral expenses, which included a "nice white casket". Two days later on the 17th, Lottie contracted scarlet fever. On February 23rd, she wrote to Joseph, informing him of the death of the baby and asked him to send her \$15 for the other half of the funeral expenses. Lottie's brother came to St. Louis in response to a telegram and found her condition "to be deplorable." He contacted a Dr. Buford and had her transferred to Bethesda Hospital on February 27th. Around that time, Lottie sent for her mother, who came to St. Louis to help care for her daughter. Lottie eventually recovered and was released from the hospital. On April 22, 1904, Mrs. Merrifield called the office of a doctor at Deaconess Hospital in St. Louis who was in charge of infant incubators. Incubators to help premature and sick infants survive were a relatively new invention, and an exhibition of them was to be part of the World's Fair, scheduled to open at the end of the month. The exhibit was to include live infants in the incubators. The doctor at Deaconess Hospital was in charge of the incubator exhibition for the Fair. Mrs. Merrifield told the doctor that she had an infant girl that was sick, and presumably a good candidate for the exhibit. The next day, a nurse named Kelly from Deaconess Hospital picked up the sick infant from Mrs. Merrifield and took her to the hospital, where she was put in an incubator. Some later accounts contend that money exchanged hands during the transaction. The hospital named the girl "Edith Brown." The infant was also known there as "Edith Merrifield" and "Edith Darwin Brown," "Darwin" because she looked like a chimpanzee. Around the first of May, Lottie was brought home to Kansas. At that same time, the incubators from Deaconess Hospital, including the one containing Edith

Brown, were moved to the exhibition at the Fair. The infant soon began to thrive in the incubator. Around this time, people began to refer to her as "The Incubator Baby²". James G. Barkley³ and his wife Stella Barkley, who were purported to be a wealthy couple from Elmira, New York, came to St. Louis. James was in charge of an exhibit of agricultural implements at the fair from Deere & Mansur Company. Stella viewed the incubator exhibit and saw baby Edith. Stella eventually was employed at the incubator exhibit, and was there every day. The Barkleys were childless, and Stella became enamored with the by then healthy infant. After she tracked baby Edith's origins back to Mrs. Merrifield's hospital, the couple applied to adopt it. Several attempts were made to convince Lottie to sign a statement that The Incubator Baby was not hers, including a trip to Kansas by an employee of the incubator company. Several letters passed between Stella and Lottie, which seem to indicate that both Lottie and Stella thought the baby might be Lottie's. Lottie signed adoption papers with the understanding that her father-in-law Joseph Bleakley would take them to St. Louis and determine for certain if the baby was hers or not. Only after he was convinced that it was not Lottie's would he give the signed adoption papers to the Barkleys. Apparently he did not do what Lottie had expected him to do when he arrived in St. Louis, and instead just turned the adoption papers over to the Barkleys, who were then granted the adoption. They named the baby Dorothy Edith Barclay. Lottie soon became suspicious that her father-in-law had not done what she had wanted, and traveled back to St. Louis to find out the truth herself. She went to the hospital where she had given birth and confronted Mrs. Merrifield, who eventually admitted that The Incubator Baby was actually the infant born to Lottie on February 15, 1904, and that she had substituted a dead baby born to an actress named Edith Stanley

for Lottie's child. Lottie went to the authorities. Stella Barkley got word that Lottie had shown up and fled St. Louis with "Dorothy". Stella and the baby were stopped in Rock Island, Illinois, under a warrant for kidnapping. On May 26, 1905, Lottie filed a writ of habeas corpus in circuit court in Rock Island declaring her right to the child, and on July 14, 1905, Circuit Court Judge Emery C. Graves found Lottie to be the mother of the infant and awarded her custody. She left Rock Island with the baby she had named Marion Roberta Bleakley and traveled back to Douglas County, Kansas, where they settled in Lawrence. Stella Barkley and her husband filed an appeal in Illinois, but did not wait for the outcome and traveled to Kansas. On September 5, 1905, they filed a writ of habeas corpus in Douglas County District Court alleging the baby was being held by Lottie due to a judgment in Illinois in which she had lied about being the baby's mother. By this time the controversy over the parentage of the now famous Incubator Baby was making national news, with reports on it appearing in newspapers across the country. After hearing the case, Douglas County District Court Judge Charles A. Smart ruled on January 25, 1906, that the adoption was legal and awarded custody of the child to the Barkleys, giving Lottie six hours in which to surrender the baby. While a deputy sheriff waited in the Bleakley home, Lottie slipped out the back door with Marion in her arms and escaped on a train. The story is that someone posed as a police officer who supposedly had her under arrest, and by this subterfuge she and the child were conducted safely back to Rock Island, where she felt safe because the court there had found her to be the child's mother and had awarded her custody. Hours after Lottie had fled Lawrence with the child, an appeal was filed in Kansas on Judge Smart's decision, and in July of 1906, the Kansas Supreme Court found that Judge Smart had erred, reversed the decision, and issued a

writ of mandamus for Lottie to have another trial, which apparently never occurred. Lottie and her daughter Marion lived in Rock Island until the Barkley's appeal of the earlier decision by Judge Graves made its way to the Illinois Supreme Court. On April 10, 1907, the court reversed the decision by Judge Graves, finding that the best interests' of the child would have been for it to have been left with the Barkley's, and that they should have custody. Lottie again bundled up Marion and fled back to Kansas before the Illinois authorities could enforce the decision. In an article published in late spring of 1908, it was noted that the Barkleys had spent \$50,000 in their attempt to gain custody of the child, in contrast to Lottie, in which "About \$5,000 has been contributed to help her by public subscription", and that "Several famous Kansas lawyers have handled Mrs. Bleakley's case free of charge." It seems that public opinion was on the side of Lottie, who was seen as fighting a wealthy family trying to buy its way to a favorable outcome in court. Not content with the decision of the Kansas courts, Stella Barkley did not give up her attempts to get Marion away from Lottie. Sometime in the winter of 1908/1909 there was an attempt to kidnap Marion when the family was in Sedan, Kansas, but it failed. There is no indication of who was responsible for the attempt, but subsequent events lead to the conclusion that Stella was behind it. In August of 1909, she arranged with a detective named Joseph Gentry to help her take Marion away from Lottie. Lottie and Marion were living in Topeka, and on the morning of August 21st, the young girl was being cared for at Lottie's home by her grandmother Ora Thompson and a cousin named Clarence Belknap. At around 11:00 a.m., there was a knock on the door, and when Ora answered it, she found a woman who said that she was selling perfume. She asked for permission to come in and show her wares, but when Ora refused her entry, she forced her way in, and at the

same time called to a man who broke in the rear door of the house. Clarence confronted the man, who then knocked Clarence to the floor with a blow to the head from a revolver, opening a nasty cut across his temple⁴. Ora grabbed Marion and rushed upstairs, going into a bedroom and locking the door behind them. The man forced the door open and tore the screaming child from her grandmother's arms. He held the revolver on Clarence while he and the woman took Marion out the back door. They boarded a buggy waiting in the alley behind the house, and a third man in the driver's seat lashed the horses and the buggy sped off, with Marion screaming all the way. Despite his injury, Clarence ran after the fleeing kidnapers until he lost sight of them. Someone with an automobile took off in pursuit, but was unsuccessful in catching up to the fleeing party. They eventually boarded a Chicago, Burlington & Quincy Railroad train heading east. Two detectives named Frank Lyngar and Charles Lewis, who were accompanied by several Topeka police officers, boarded the train in Kansas City late on the 21st and found Marion in the possession of the detective James Gentry and Stella Barkley. Marion was put into protective custody. Stella was quoted as saying she was trying to get to Missouri because she had the adoption papers she had originally taken out in St. Louis in 1904, and that "If I thought for one minute there was a drop of Mrs. Bleakley's blood in the child I wouldn't have her for an instant. But I know to whom she belongs. She is the child of an actress. And, by the way she is the exact picture of her." She was also quoted as saying this was the last attempt she would make to get the child. Lottie arrived in town on the 22nd, but was prevented from taking Marion home until a court could make a decision as to who had the right to take her. Stella filed two writs of habeas corpus, one to prevent Lottie from taking Marion and the second to prevent herself from being re-

turned to Topeka for trial. The habeas corpus writ that prevented Lottie from taking Marion was dismissed, and the mother and daughter were reunited. The attempt by Stella and the two detectives who helped her kidnap Marion to keep from being sent back were not successful. All three were brought back to Topeka for trial. Joseph Gentry was convicted of kidnapping and the assault on Clarence Belknap during the kidnapping, and F. H. Tillotson, the other detective, was convicted of kidnapping. Both were sentenced to from one to five years in the Kansas State Penitentiary in Lansing. Stella Barkley was scheduled to be tried for kidnapping, but before the case when to trial, the charge of kidnapping was dropped around October 19, 1910, following an agreement between Lottie Bleakley and Stella Barkley. Presumably, the agreement was that Stella would stop trying to take Marion from Lottie in exchange for the charges against her being dropped. A disagreement between the Kansas Supreme Court's decision in favor of Lottie Bleakley and the Illinois Supreme Court's decision in favor of Stella Barkley eventually made its way to the United States Supreme Court, who on January 20, 1914, dismissed the case in favor of Lottie retaining custody of Marion. The decision, made less than a month before Marion's 10th birthday, gave Lottie permanent undisputed custody of her daughter. On November 5, 1925, Marion married Dewey W. Brown of Holton, Kansas, in a ceremony in St. Joseph, Missouri, and became Marion Brown, coincidentally the same last name that Deaconess Hospital had given her when they had "acquired" her from Mrs. Merrifield. The marriage did not last however, and by 1930 she was the divorced head of a household in Topeka that included Lottie and Marion's two-year-old daughter Grace. What were the fates of Marion and Grace after that is not known, but Lottie died in 1977 and was buried in Topeka Cemetery.

¹ Her name is spelled Merryfield in some accounts.

² She was not the only baby in the exhibit, and so not the only incubator baby at the fair. It is unclear whether she became "The Incubator Baby" while she was in the incubator exhibit or later during the subsequent custody controversy.

³ Her name is spelled Barclay in some accounts.

⁴ Some later accounts incorrectly have Clarence having been shot.

From: Thompson, Robert, 1880 U.S. Census, Guelph Township, Sumner County, Kansas, 6/1-2/1880; Thompson, Ora, 1900 U.S. Census, Leavenworth, Leavenworth County, Kansas, 6/8/1900; [Joseph Bleakley](#), William G. Cutler's History of the State of Kansas, Leavenworth County, Part 41; Bleakley, Joseph J., 1900 U.S. Census, Reno Township, Leavenworth County, Kansas, 6/1-2/1900; In Her Place: A Guide to St. Louis Women's History, by Katharine T. Corbett, Missouri Historical Society Press, St. Louis, 1999, [pp. 183-185](#); Barclay v. People, 132 Ill. App. 338; Lawrence Daily World, v. 18, no. 157 (August 21, 1909), p. 1; Lawrence Daily World, v. 18, no. 158 (August 23, 1909), p. 3; Lawrence Daily World, v. 18, no. 159 (July [August] 24, 1909), p. 1; Lawrence Daily World, v. 18, no. 160 (August 25, 1909), p. 1; Evening Kansas-Republican, v. 31, no. 218 (September 3, 1909), p. 1; Salina Daily Union, v. 13, no. 113 (October 22, 1910), p. 14; The Leavenworth Times (May 12, 1912), p. 2; The Evening Star, v. 14, no. 198 (January 21, 1914), p. 5; [Marian Roberts Bleakly \(Topeka, Kansas\) married Dewey W. Brown \(Holton, Kansas\) - November 5, 1925, St. Joseph, Buchanan County, Missouri](#), FamilySearch website; and , Brown, Marion, 1930 US Census, Topeka, Shawnee County, Kansas, 4/24/1930.

Each month, an event from "This Month In Legal History," the history of law and jurisprudence of Douglas County that occurred during that month, is included in the Newsletter. The current entry is also posted for the month on the Law Library's website. Entries from past months are [archived](#) on the website. Submissions from readers are welcome and encouraged.

Law Library Volunteer Opportunities

The Law Library Volunteer Program provides a capable and dependable volunteer

work force to assist with the day-to-day operations of the Law Library and with its special projects. This work force supplements the paid Library staff and allows the Library to provide the best possible service to attorneys, local judges, and the public.

The Volunteer Program is instrumental in linking a valuable community resource - the citizens - with a valuable community institution - the Michael J. Malone Douglas County Law Library - for the benefit, growth, and enrichment of both.

If you or someone you know might be interested in volunteering for one of them, or if you would like more information on our program and/or the positions we have open, please contact the Library or visit the "Volunteers" page on the Law Library's website.

Feedback

This Newsletter is intended to be useful to its readers. As in any enterprise, feedback on how the Newsletter is fulfilling this goal is crucial to our achieving it. If our articles are helpful, let us know. If they are not, let us know. If you have suggestions on how to improve the Newsletter, or comments and suggestions on the Law Library itself, please let us know. For your convenience, there is a link to a [feedback form](#) available on most pages of the Law Library's website. Thank you.

Submitting Articles for Newsletter

The Editor encourages readers to submit articles for publication and/or make suggestions on material to be included in future issues of the Newsletter.

To Subscribe

Contact the Law Library by mail, e-mail, or telephone and request a free subscription to

the Newsletter. It will be sent to you as a PDF attachment to an e-mail. The Library's mailing address is: Michael J. Malone Douglas County Law Library, Judicial and Law Enforcement Center, 111 East 11th Street, Lawrence, Kansas, 66044. The Law Library's telephone number is: 785-838-2477. The Library's e-mail address is: info@douglascolawlibrary.org.

Back Issues

Back issues of the Newsletter are [archived](#) on the Library's website.

Classified Ads

Free classified ads may be placed in the Newsletter by contacting the Law Library. The Editor reserves the right to refuse anything deemed inappropriate and to add restrictions as the need arises.

No Ads this Month.



Michael J. Malone Douglas County Law Library E-Mail Newsletter

Editor: Kerry Altenbernd

Published monthly by:

The Michael J. Malone Douglas County Law Library,
Judicial and Law Enforcement Center,

111 East 11th Street,

Lawrence, Kansas 66044

Phone: 785-838-2477

Fax: 785-838-2455

E-mail: info@douglascolawlibrary.org

Website: <http://www.douglascolawlibrary.org>

© 2017, by the Michael J. Malone Douglas County Law Library