

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



Vol. 12, No. 9; September 2015

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### Meeting and Event Announcements

The Defense Bar meets the second Friday of the month. This month the meeting is on the 14th.

The September Douglas County Bar Association Brown Bag CLE program will be on Thursday, September 17, from 12:00 p.m. to 12:50 p.m. in the Jury Assembly Room in the Judicial and Law Enforcement Center. The presenter and topic were not available at the time of publication. One hour of CLE

credit is pending approval. When available, handout material can be downloaded from the [DCBA website](#).

### Current Art Gallery Exhibition

The August/September 2015 Law Library and Division III art gallery exhibitions are paintings by Alice Ming Hsiang Kuo.

The exhibitions will run through the end of September 2015.

The October/November 2015 exhibitions in the Michael J. Malone Douglas County Law Library Art Gallery and the Division III Art Gallery are scheduled to be artwork by Cynthia O'Kelly. More information on these exhibitions will be in the October 2015 E-Mail Newsletter.

For more information on past, current, and future Art Gallery exhibitions, or for more information on the Art Galleries, please consult 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](mailto:info@douglascolawlibrary.org).

### **New Acquisitions**

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

ABA Child Law Practice: Helping Lawyers Help Kids, v. 34:8 (Aug. 2015).

Advance sheets of the Kansas Supreme Court and the Kansas Court of Appeals, v. 301:4/v. 51:4 (July 2015).

Juvenile Justice Update, v. 21:4 (Aug./Sept. 2015).

Kansas Annual Survey, v. 26 (2015).

The Law of Lawyering, Third Edition, Vol. 1 and Vol. 2, by Geoffrey C. Hazard, Jr., W. William Hodes, and Peter R. Jarvis.

Session Laws of Kansas, 2015, vol. 1 and vol. 2.

### **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.

August's entry was:

WordPerfect word processing software is made available to patrons on the Library's desktop computers for use by patrons.

### **This Month In Legal History**

September 1854 - Franklin M. Coleman comes to Douglas County, Kansas Territory.

Franklin M. Coleman was born around 1822. The 1850 U.S. Census for Iowa records his birthplace as Ohio, but in a later narrative attributed to him, he indicated he was a native of Brooke County, Virginia. He married Sarah A. Coleman, maiden name unknown, who was born around 1832 in Virginia. In 1849, Coleman moved to Louisa County, Iowa. Sarah gave birth to a son, Clark N., in December that year. The 1850 Census records that Clark was born in Virginia, so if this is correct, and if Coleman was accurate in indicating he came to Iowa in 1849, then either the family braved the trip in the cold of December with a newborn baby, or Coleman traveled to Iowa alone, leaving his pregnant wife in Virginia to give birth there before she and the baby joined him later in Iowa. At least for a while, the family lived in the large household of John Wilson, a farmer. What, if any, connection the Coleman family had with the Wilson family, other than rooming with them, is unknown. Coleman was recorded in the census as being a merchant. In April 1854, Coleman moved his family from Iowa to Kansas City, Missouri, and was proprietor of the Union Hotel while there. This was one month before the Kansas-Nebraska Act was signed into law on May 30th. The Act opened the new Territory of Kansas to white settlement, and left the question of whether it would become a state that allowed slavery when it was admitted into the Union up to a vote of the residents of Kansas. Prior to the passage and signing of the Act, the decision as to the slave status of new states had been the prerogative of the United States Congress, but that had now changed. Supporters from both sides of the slavery issue, Free State and proslavery, began coming to Kansas to insure that their side was successful. It is not known if Coleman moved to Kansas

City in anticipation of Kansas being opened for settlement. In September 1854, the Union Hotel was sold to the Massachusetts Emigrant Aid Company, who planned to use the establishment to house newly arrived Free State men and women<sup>1</sup>. That same month, Coleman moved with his wife and six-year-old son to Hickory Point, a small settlement on the Santa Fe Trail, also known locally as the Santa Fe Road, in what would become Douglas County, Kansas Territory, approximately ten miles southeast of Lawrence, the headquarters of the Free State movement. There was a second settlement also named Hickory Point in what would become Jefferson County, but it does not figure into this story. Coleman favored Kansas becoming a slave state, and so was at odds with the Free State supporters in the territory. Since Kansas had only been opened to white settlement the previous May, it had yet to be officially surveyed, so at the time, no one could legally register a claim to property in the Territory. Instead, there were unofficial "squatter laws" in effect, by which you made a claim to land, and indicated in some way that you possessed it, either by farming it, building on it, or both. Leaving your claim was a risky business. Someone else could "jump" your claim, that is, take it over. There were a number of land claims in the Hickory Point area, some occupied by their claimants and others lying unoccupied. There were several vacant claims held by men from Indiana that were jumped by proslavery Missouri men. The absentee Indiana men soon arrived and demanded their claims back. The issue went to an arbitration committee made up of men residing in the territory. The committee decided in favor of the Missouri men. Coleman related that on the strength of this, he and another person, identified by him as a Free State man named John M. Banks, jumped the claim of a man named Frasier. Jacob Branson, a Free State man from Indiana who had recently been living in Mis-

souri, arrived and asserted that he had purchased the claim from Frasier for \$50. He wanted possession of it. After some difficulty, the case was put up for arbitration, and the decision of the arbiters was to divide the claim in half, with half going to Coleman and Banks and the other half to Branson. Neither Coleman nor Branson was satisfied with the outcome. A parcel of land that abutted Coleman's claim on the east and Branson's on the south had previously been claimed by William White. White was originally from Tennessee, but had come to Missouri in 1832, settling first in Lafayette County before moving to Jackson County in 1850. He came into Kansas Territory in 1854, and laid claim to three tracts of land, one of them in Hickory Point. He had built a cabin on the claim, but left and went back to Missouri. In February 1855, White's cabin burned to the ground. At about the same time, Charles W. Dow arrived at Hickory Point and jumped White's claim. Dow was an abolitionist from Ohio, and the circumstances surrounding his jumping the claim led Coleman to charge that Branson had colluded with other Free State men to burn down White's cabin so that Dow, a Free State man, could jump the claim and take the property away from White, a proslavery man. Despite the rocky start, Coleman and Dow were able to work out a mutual agreement on the location of a conditional boundary line between their two claims, pending the completion of the official survey. Trouble between the Free State and proslavery advocates in Kansas began to worsen. In the election for the territorial legislature on March 30th, thousands of Missourians came into Kansas and voted, which resulted in a proslavery legislature known to the Free State proponents as the "Bogus Legislature" because of the fraudulent nature of the balloting. The actions of the legislature and the governmental officials appointed by it, along with the appointment of proslavery sympathizers by the

Federal Government, led Free State men to organize to protect themselves from what they perceived as a hostile government. This increased the tensions in the territory. When the boundary of the land reserved for the Shawnee Indian Tribe, the so-called Shawnee Reserve Line, was surveyed, Free State settlers in the area began recognizing the location of land claims based on that line. This resulted in the north-south boundary lines between all claims in the area, including Coleman and Dow's, moving two hundred and fifty yards to the west. As with other proslavery men, Coleman did not recognize this as the official government survey, and so did not recognize any changes resulting from it. He continued to cut timber on land that Dow now thought to be his. A dispute arose. On the morning of November 21, 1855, Coleman was working on the disputed land with a man named Moody. Dow and Branson went to confront Coleman. Branson was armed but Dow was not. On the approach of Dow and Branson, Coleman stopped cutting timber and left. Seeing Coleman leave, Dow went on to a blacksmith shop located along the Santa Fe Trail to get some repairs made to a wagon skein, a heavy metal cone that fits on the end of a wooden axel around which the wheel hub rotates when in use. He arrived there around noon. Upon leaving the disputed claim, Coleman first went to his proslavery neighbor, Josiah Hargis, and then to his cabin, where he got his shotgun that was loaded with buckshot. He returned to Hargis' house and spoke with a proslavery man named Harrison W. Buckley, who was there with Hargis. Buckley and one or two other proslavery men had supposedly agreed to help Coleman and Hargis that afternoon to determine the exact boundary between their claims. This is where accounts of what happened next begin to differ. According to a book published in early 1856 that included an interview with Coleman giving his account Buckley informed Coleman that he

was going to a whisky store opposite the blacksmith shop, and that he should not wait on him. Before Buckley left, the three agreed to meet at Coleman's cabin. Coleman left alone and headed home. On his way, he stopped by the house of William McKinney and stopped to talk. Dow stayed at the blacksmith shop until the repair work was completed and then began walking home down the Trail, carrying the repaired skein. Coleman left McKinney's, and as he entered the Trail, he encountered Dow. The two men talked while they walked, discussing the disputed claim. They stopped near Coleman's house, that he said was 75 yards off the road, where they continued the conversation. Eventually the conversation ended and the two parted. Dow began to walk away. According to Coleman, "Dow walked on his way for a few paces, and then turned round and recommenced quarrelling, high words passed, and Dow advanced upon me with the wagon-skien [*sic*], which he was carrying in his hand, raising it as he did so, in an attitude to strike. I leveled my gun as he came on, brought it to bear on him, and pulled the trigger; the cap exploded but not the charge. Dow then paused, and turned as if to go away. Seeing this, I put my gun down upon the ground, which Dow had no sooner perceived that he faced towards me, and again advanced upon me with the skien [*sic*], at the same time crying out, with an oath 'You've bursted [*sic*] one cap at me, and you'll never live to burst another;' hearing this, and believing that my life was in danger, I again leveled my gun and fired upon him, as he came rushing on; the shot struck him (as I have since ascertained) in the neck and breast, and he fell--dead." Coleman's account of the shooting concludes with his observation that the shooting was observed by Hargis and Moody, who were referred to by Coleman as friends of his, and by a man named Wagoner, who Coleman referred to as an enemy of his. An account written by John H. Gihon, M. D., private secretary to

the third Kansas Territorial Governor John W. Geary, and published in late 1857, presents a picture of the incident different from Coleman's account. In Gihon's account, Buckley did not go alone to the area of the blacksmith shop. Hargis, and Coleman went with him, and all arrived there together. They confronted Dow, and Buckley cocked his gun and pointed it at him. Dow implored that he not shoot. Buckley did not shoot, and Dow left, walking down the Santa Fe Road on his way to Branson's cabin. At that time, Dow was boarding with Branson. Coleman, Buckley, and Hargis followed, with Coleman in the lead and the other two keeping a short distance behind. Coleman caught up to Dow, presumably in the vicinity of McKinney's house, and the two walked on together to the vicinity of Coleman's house. Coleman stopped and Dow walked on. Coleman raised his shotgun, aimed at Dow, and pulled the trigger. The percussion cap exploded but the gun did not discharge. Dow heard the noise and turned to Coleman, motioning with his arms and imploring him not to fire. Coleman replaced the exploded cap with a fresh one, aimed, and pulled the trigger again. The gun fired and Dow dropped dead in the road, having been hit in the chest by at least nine lead slugs. Buckley and Hargis came up to Coleman, and the three "appeared to rejoice" over the death of Dow. Dow was left lying for most of the afternoon, until Branson got word of it, came to claim his friend's body, and took it back to his cabin. Gihon's account of the shooting concludes with a report that in addition to Buckley and Hargis, Moody and a wagoner<sup>2</sup> witnessed the incident. Fearing retaliation from Dow's friends, Coleman fled to the Shawnee Mission in Johnson County, which was serving as the Territorial Capitol at the time, hoping to find sanctuary with Territorial governor Shannon. The governor was absent, but Coleman turned himself in to the sheriff of Douglas County, Sam Jones, who was in the

area. Like Coleman, Jones was a proslavery man. He took Coleman to Lecompton, the headquarters of the proslavery movement in the territory and at the time the county seat of Douglas County. He was released on \$500 bail. He then moved his family to Westport, Missouri. Coleman had been up for appointment to the office of Justice of the Peace, and received a commission for it on November 24th, but he never took office because of the shooting of Dow. The killing of Dow infuriated Free State men, as did the apparent lack of action by the authorities to secure Coleman for trial. This sparked off a series of confrontations between Free State and proslavery supporters. Coleman's house was burned on November 26th. Proslavery men believed it was done by friends of Dow, and some Free State men said that it was done by proslavery men in order to falsely implicate Free State men. Branson was arrested just after midnight on November 27, 1855, by Sheriff Jones, for supposedly making threatening comments about Coleman. Before dawn that same morning, a group of Free State men forced Sheriff Jones to free Branson. They took him to Lawrence, and Governor Shannon ordered a large force of proslavery men to march on the town to suppress its rebellious activities. The town fortified itself, and instead of attacking, the proslavery men put Lawrence under siege. Governor Shannon brokered a peace treaty that was signed on December 8, 1855, ending the incident that became known as the Wakarusa War. In the spring of 1856, the violence in the territory began increasing. Lawrence was attacked by a large posse of proslavery men led by Sheriff Jones on May 21st. Over the night of May 24th/25th, five proslavery men were killed by men led by the abolitionist John Brown in what became known as the Potawatomie Massacre. As a result of the Massacre, a 24-year-old Virginian named Henry Clay Pate was appointed as a deputy United States Marshal to "get Old Brown." He recruited as his posse

a militia from Westport, Missouri, that called itself the Westport Rifles. Coleman also joined the posse, but whether he was a member of the Westport Rifles or joined on his own is not known. The militia changed its name to Shannon's Sharpshooters in honor of the Governor when he issued federal firearms to them out of the federal arsenal in Liberty, Missouri. They proceeded to scour the countryside looking for Brown. As they did so, they confronted Free State supporters and attempted to coerce them to leave Kansas. Brown and his militia were also looking to confront Pate's militia. They met on June 2, 1856. Pate had camped the night of June 1st at Black Jack Springs, a campground along the Santa Fe Trail in southeast Douglas County, when two Free State militias, one led by John Brown, attacked them early the following morning. After an intense three-hour battle, Pate and his men were defeated and taken prisoner. As it became apparent that the proslavery militia was going to be defeated, Coleman decided to kill the Free State men who Pate and his men had earlier taken prisoner. As Coleman approached the tent where the prisoners were being held, they bolted, running for their lives. One, a Dr. Graham, ran towards the Free State lines. Coleman fired, and Graham was wounded twice, once in the thigh and once in the back, but he made it to safety. The injuries were not life threatening, and he would recover from his wounds. After taking Pate, Coleman, and the rest of the proslavery militia prisoner at the conclusion of the Battle of Black Jack, Brown and his men took them to Prairie City, a town on the Santa Fe Trail three miles west of Black Jack. They then traveled eight and a half miles southwest to camp on land along Middle Creek owned by Brown's friend Tauy Jones. On June 5th, a troop of dragoons from Fort Leavenworth arrived and forced Brown to release his prisoners. After that, Coleman disappears from the historical record<sup>3</sup>. He was never tried for killing Dow, or

for any actions taken in his support of the proslavery cause in Kansas.

1 The word proprietor usually indicates ownership, so if Coleman was owner of the Union Hotel while he was in Kansas City, Missouri, and sold out to come to Kansas to promote the proslavery cause, it is ironic that the buyer was the Massachusetts Emigrant Aid Company, later the New England Emigrant Aid Company, the most well know organization who brought Free State emigrants to Kansas. S.C. Pomeroy was the company's agent who conducted the transaction, so if Coleman was the owner, he may not have known to whom he was actually selling the hotel, as Pomeroy may not have divulged that information. There is also the possibility that Coleman did not own the hotel, but was only serving as the manager.

2 There was obviously confusion over the identity of the fourth man to witness the shooting. Coleman's account reports that the man's name was Wagoner, while Gihon's account has him being an unnamed wagoner, that is, someone who drives a wagon. Since Coleman identifies the man as an enemy of his, he likely knew his name. Gihon could easily have mistaken the man's name for his occupation when he was told the story. There is always the possibility, however remote, that the man was a wagoner named Wagoner, and both men were correct. To further complicate the matter, another account of the incident has the man's name spelled Wagner.

3 There are two local legends about Coleman. One has it that while he was being chased by Free State men sometime after the murder, he took cover in a cave that collapsed on him due to his own gunfire. The other legend is that Coleman was attacked not by Free State men after the killing of Dow but by robbers as he was returning from the Pike's Peak Gold Rush. He supposedly took cover in the cave, which then collapsed as in the other legend. The gold rush lasted from July 1858 until roughly February 1861, which would have been at least three years after the killing of Dow. By this time, the Free State movement had all but won out over the proslavery cause, so if this legend were true, why would Coleman not avoid the area instead of coming back from the gold fields through an area where he might be attacked or arrested for murder? If either legend were true and a man as important to the early history of Kansas and Douglas County as Coleman was did meet his doom in the cave, purported to be located near Eisenhower Street in Baldwin City, Kansas, there should be significantly more information on it than that contained in local legends.

From: Franklin M. Coleman, 1850 U.S. Census, Jefferson Township, Louisa County, Iowa, 9/10/1850; The War in Kansas: A Rough Trip to the Border, Among New Homes and a Strange People, by George Douglas Brewerton, Derby and Jackson, New York, 1856, [pp. 223-232](#); Transactions of the Kansas State Historical Society, Embracing the Third and Fourth Biennial Reports, 1883-1885, Volume 3, Kansas Publishing House, Topeka, 1886, [p. 290](#); The Murder of Dow, A Standard History of Kansas and Kansans, Volume 2, William E. Connelley, Lewis Publishing Company, Chicago, 1919, [p. 484](#); Letters of Cyrus Kurtz Holliday, 1854-1859, edited by Lela Barnes, The Kansas Historical Quarterly, Vol. 6, No. 3 (August 1937), [Note 31](#); S. C. Pomeroy and the New England Emigrant Aid Company, 1854-1858 [Part One], by Edgar Langsdorf, The Kansas Historical Quarterly, Vol. 7, No.2 (August 1938), [p.232](#); Geary and Kansas: Governor Geary's Administration in Kansas ..., by John H. Gihon, M.D., J.H.C. Whiting, Philadelphia, 1857, [pp. 49-51](#); [Pike's Peak Gold Rush](#), Wikipedia website; and, [Charles W. Dow](#), Wikipedia website.

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 11<sup>th</sup> Street, Lawrence, Kansas, 66044. The Law Library's telephone number is: 785-838-2477. The Library's e-mail address is: [info@douglascolawlibrary.org](mailto: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.



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E-Mail Newsletter**

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