



A portion of Frederick Remington's The Santa Fe Trade, 1904.

MURDER ON THE SANTA FE TRAIL

The United States v. See See Sah Mah and Escotah

by William E. Foley

The popular PBS program *History Detectives* recently began an investigation into the circumstances surrounding President Millard Fillmore's decision to commute the death sentence of See See Sah Mah, a Sac Indian convicted of murdering trader Norris Colburn in 1847 on the Santa Fe Trail near Hickory Point, about ten miles south of present-day Lawrence, Kansas.¹ The current owner of See See Sah Mah's 1851 presidential pardon posed two questions to the television show's host Tukufu Zuberi: who was See See Sah Mah, and why did the American president choose to intervene in his case?

But the import of Fillmore's commutation order extends far beyond the responses to those initial queries. It is rooted in the larger story of Indian-white relations and the U.S. government's attempts to subject native people to the dictates of an American legal system that differed markedly from the ways of customary Indian law. As early as the 1790s Congress had authorized the states to try Indians accused of committing crimes within their borders and assigned the federal government jurisdiction over Indian cases in the U.S. territories. Both state and federal authorities generally chose to leave the adjudication of crimes involving only Indians in tribal hands, but in cases involving whites, American officials expected Indians to surrender the alleged culprits and comply with the rituals of U.S. justice. Mindful that powerful tribes still retained a decided advantage in Indian country, national legislators waited until 1817 to extend the arm of American justice into those regions. Only then did Congress grant the federal courts jurisdiction over cross-cultural crimes committed on Indian lands.

Murder cases were especially problematic, and attempts to try Indians on those charges seldom satisfied anyone. Frontier residents scoffed at efforts to safeguard Indian rights and angrily complained when the alleged perpetrators were not promptly executed. Although local juries seldom hesitated to pronounce them guilty, condemned Indian felons often managed to elude the hangman's noose by having their convictions overturned on appeal or by securing a reprieve, usually in an attempt to prevent reprisals and minimize future violence. All the while, those who criticized clemency for Indians steadfastly refused to sanction the punishment of any white person who killed an Indian.

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The author thanks producer Shervin Hess and the research staff at *History Detectives*, Jim Holmberg, Pat O'Brien, Lori Cox-Paul, Reed Whitaker, Eugene Morris, Ken Winn, and Jay Buckley for their assistance.

1. Louise Barry, *The Beginning of the West: Annals of the Kansas Gateway to the American West, 1540–1854* (Topeka: Kansas State Historical Society, 1972), 668–69. The *History Detectives* episode featuring the See See Sah Mah pardon airs in July 2009 on PBS stations nationwide.



An experienced western traveler, Norris Colburn was no stranger to the Santa Fe Trail. The previous summer he had completed the journey from Santa Fe to Independence, Missouri, in a record-setting twenty-four and a half days. Colburn's pace would have made stops, like the one pictured here near Pawnee Rock in Barton County, Kansas, few and far between.

If white citizens found much to criticize in the judicial system devised for handling Indian cases, Indians did not regard it any more favorably. Hangings and incarceration may have been the norm for Americans intent on assigning blame and punishing offenders, but those practices seemed bizarre to Indian people who had developed systems of ritual recompense that deflected individual punishment and emphasized reciprocity. See See Sah Mah's lengthy judicial ordeal graphically illustrates the consequences of long arming Indians into American courtrooms. From the moment he first landed in U.S. custody, the beleaguered Sac had to cope with language barriers, racial prejudice, and a bewildering judicial process.²

Neither the intervention of the president of the United States nor the involvement of a nationally prominent and politically powerful family proved sufficient to forestall an unhappy end for See See Sah Mah. His sad tale captures the

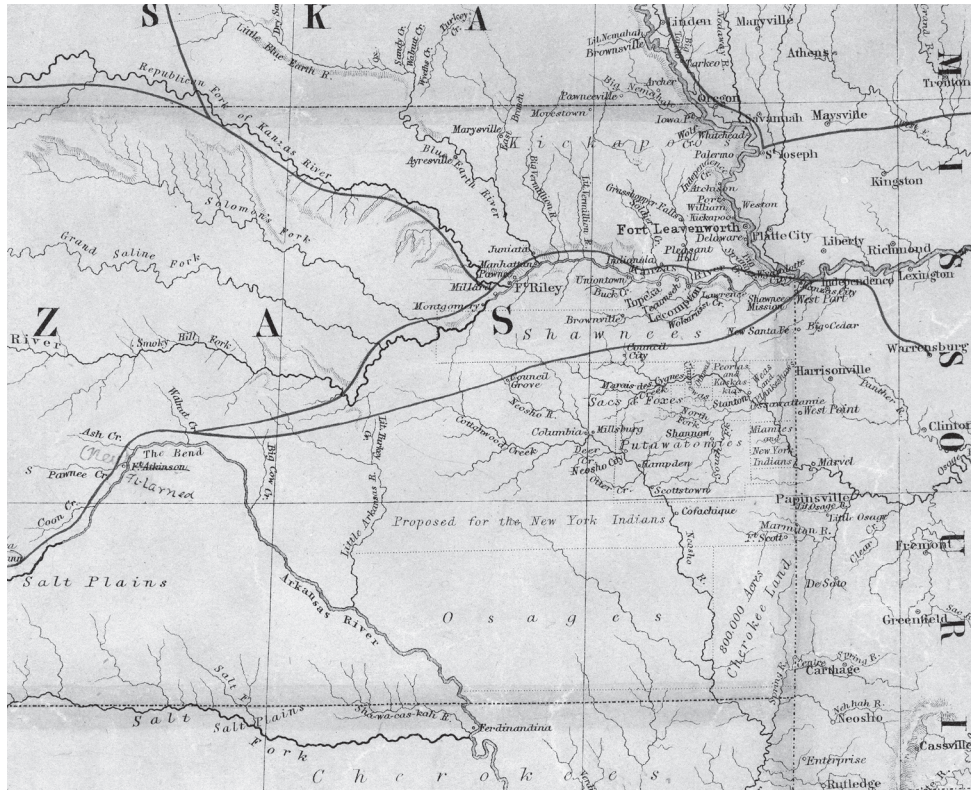
2. For a more extended discussion of these matters, see William E. Foley, "Indians on Trial: The Missouri Cases," in *A History of Missouri Law*, ed. Mark Carroll and Kenneth H. Winn (Athens: Ohio University Press, forthcoming); Foley, "Different Notions of Justice: The Case of the 1808 St. Louis Murder Trials," *Gateway Heritage* 9 (Winter 1988–1989): 2–13; Kathleen DuVal, "Cross Cultural Crime and Osage Justice in the Western Mississippi Valley, 1700–1826," *Ethnohistory* 54 (Fall 2007): 698–700.

plight of nineteenth-century America's dispossessed Indian populace. Forcibly removed from their native lands, once dominant tribes found themselves stateless and subject to the laws of an alien government. And so it was for See See Sah Mah and the proud and formidable Sac and Fox bands exiled to the prairies west of Missouri in the 1840s.³

When Colburn, a St. Louis merchant who had come to Santa Fe on a business trip, uttered adios to his New Mexican friends and associates in March 1847, nothing seemed amiss. To the contrary, these were flush times for the veteran trader who was heading back to Missouri carrying saddlebags filled with gold dust, coins, treasury notes, and checks worth perhaps as much as \$12,000.⁴ An experienced western

3. William T. Hagan, *The Sac and Fox Indians* (Norman: University of Oklahoma Press, 1958), 225–29.

4. *Darby v. Charless* (13 Mo. 600 [1850]). Colburn was active in the Santa Fe trade. In 1845 he formed a partnership with William T. Smith of Santa Fe. He also was a member of the firm E. Leitensdorfer & Company, which included brothers Eugene and Thomas Leitensdorfer. Colburn married Josephine Leitensdorfer, a sister of Eugene and Thomas, on April 2, 1846. See Mark Gardner, ed., *Brothers on the Santa Fe and Chihuahua Trails* (Niwot: University Press of Colorado, 1993), 152n86.



Once their caravan reached Walnut Creek in Indian country, which stands on the 1857 map above at the fork in the road on the left, Colburn and Leitensdorfer struck out on their own. A short time later Leitensdorfer showed up alone in Independence, Missouri, at the right of the map reprinted here. When asked to explain his partner's absence, Leitensdorfer reported that after Colburn's mule had given out at Elm Grove, about thirty-five miles southwest of Independence, he had left him behind and forged ahead to seek assistance.

traveler, Colburn was no stranger to the Santa Fe Trail. The previous summer he had completed the journey from Santa Fe to Independence, Missouri, in a record-setting twenty-four and a half days, and many expected him to equal or exceed that mark on this trip, which he took with his new brother-in-law and business partner Thomas Leitensdorfer.⁵

Once their caravan reached Walnut Creek in Indian country, Colburn and Leitensdorfer placed the teams under the care of their traveling companions and struck out on their own. A short time later Leitensdorfer showed up alone in Independence with the money, which he deposited with local saddler and Santa Fe freighter John Lewis for safekeeping. When asked to explain his partner's absence, Leitensdorfer reported that when Colburn's mule had given out at Elm Grove, about thirty-five miles southwest of Independence, he had left him behind and forged ahead to seek assistance. Many thought it curious that they had chosen to separate and questioned why Leitensdorfer had taken a circuitous route to Independence after leav-

ing Colburn. Understandably the finger of suspicion was quickly pointed in his direction.⁶

With the suspect relative in tow, a hastily organized search party set out to find the missing trader. Their failure to locate Colburn raised new doubts about the veracity of the brother-in-law's story, but family and friends in St. Louis rushed to his defense, citing his good character and the absence of any apparent motive for harming his

6. The Walnut Creek crossing, near present-day Great Bend, Barton County, was a well-known location on the Santa Fe Trail, as was Elm Grove (also known as Round Grove or Lone Elm), a familiar camping ground in southwestern Johnson County. The several contemporary accounts of the exact place the two men parted company are somewhat confusing and contradictory, but it seems most likely that it was somewhere near the present Douglas-Johnson County line, between "the Narrows" (Black Jack Grove/Park) and Elm Grove. *Daily Union* (St. Louis, Mo.), April 19, 1847; *Daily Union*, April 17, 1847; (Columbia) *Missouri Statesman*, May 7, 1847; *Darby v. Charless* (13 Mo. 600 [1850]). Testimony of Thomas Leitensdorfer, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d.; B. Gratz Brown, Synopsis of Trial, n.d., in Petitions for Presidential Pardons, RG 59, Records of the Department of State, entry 893, Petitions of Pardon, 1789-1860, National Archives, College Park, Maryland, hereafter cited as "Petitions of Pardon, 1789-1860, RG 59, entry 893, NA-College Park." See also "The Santa Fe Trail in Johnson County," *Kansas Historical Collections, 1909-1910* 11 (1910): 457; Gregory Franzwa, *The Santa Fe Trail Revisited* (St. Louis, Mo.: The Patrice Press, 1989), 56-57, 61, 101; Barry, *The Beginning of the West*, 599.

5. (St. Louis) *Missouri Republican*, September 2, 1846.



United States officials wasted little time in bringing *See See Sah Mah* and *Escotah* before the American bar of justice. In late August 1849 a military detachment from Fort Leavenworth escorted the pair to Independence, Missouri, for a preliminary hearing. The city's courthouse is pictured above.

partner. Their contention that a party of vagabond Indians had likely taken Colburn captive failed to persuade the skeptics. When Colburn's mutilated body was finally discovered several weeks later, partially covered with sand, stones, and leaves in a steep gorge well off the trail, an initial press account declared, "The general opinion on the frontier is, that he was not killed by Indians."⁷

Contradictory reports about how and where Colburn died deepened the mystery. According to one early version making the rounds, he had been shot in the head and his body rolled in a blanket and weighted down with stones in the ravine. Another account, however, claimed that wild animals probably had dragged the body into the gulch where Nondawa, an Oto Indian, came upon it after observing wolves and buzzards circling about. Nondawa reported his discovery to the authorities in Independence, and they dispatched an investigative party to the site where the body had been found about a quarter mile off the Santa Fe road near Willow Spring, north of the Osage boundary line.⁸

Determining the cause of death was no easy task. The victim's flesh had been eaten away everywhere except on the hands and feet. Officials could not positively confirm that the mutilated remains were in fact Colburn's until a local dentist identified his distinctive artificial and plugged teeth. A small round hole in the side of the victim's head had led Nondawa to believe a gunshot had killed him, but Samuel Ralston, an Independence farmer and businessman dispatched to the scene to investigate, concluded that the assassin had likely used a hatchet or knife.⁹ There were signs of a scuffle, and footprints made by a boot or shoe, not a moccasin, formed a track leading from where the body was found to a nearby stream where Ralston surmised the killer had washed his hands before heading up the hill in the opposite direction. That suggested to him that, "a white man did the deed." Suspicious that Leitensdorfer might be the culprit, he measured the footprints and compared them with a pair of boots the prime suspect had left behind at a nearby way station. When they failed to match, the search for the killer shifted elsewhere. The uncertainty surround-

7. *Boonville (Mo.) Observer*, April 22, 1847; *Daily Union*, April 17, 19, and May 6, 1847.

8. *Boonville Observer*, May 6, 1847; *Missouri Statesman*, May 7, 1847; *Daily Union*, May 11, 1847; testimony, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d., in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park.

9. *Liberty (Mo.) Tribune*, May 15, 1847; testimonies of Nondawa, Samuel Ralston, and Dr. Belt, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d., in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park. Ralston, who occasionally outfitted traders going to Santa Fe, later sided with Missouri bushwhackers, and one of his daughters married the notorious outlaw Frank James. See W. Darrell Overdyke, ed., "A Southern Family on the Missouri Frontier: Letters from Independence, 1843–1855," *The Journal of Southern History* 17 (May 1951): 216–37.

ing the cause of death and the paucity of tangible evidence left matters in limbo.¹⁰

Following an inquest, Colburn's Masonic brothers claimed his remains at the courthouse and presided over their interment in a local burying ground. In an effort to solve the case and clear his brother Thomas's name, Santa Fe merchant Eugene Leitensdorfer offered a \$1,000 reward for the apprehension and conviction of Colburn's killer. Meanwhile the deceased trader's partners and creditors battled over his assets. His complicated business relationships left a financial and legal tangle that eventually landed in the lap of the courts.¹¹

When news of the lucrative reward reached Indian country, Josiah Smart, a former government interpreter, plotted to claim the money by implicating See See Sah Mah, a defenseless and mentally retarded Indian. Charles N. Handy, the newly appointed agent for the Sac and Fox bands residing at the headwaters of the Osage River in what would become Kansas, lent an eager hand, albeit unwittingly. When Smart informed him of See See Sah Mah's alleged complicity in the crime, the ambitious agent, urged on by the scheming interpreter, seized upon the allegation to extort a confession from the hapless Indian. No doubt the neophyte official hoped that his role in resolving the two-year-old case would boost his fledgling career in the Indian service.¹²

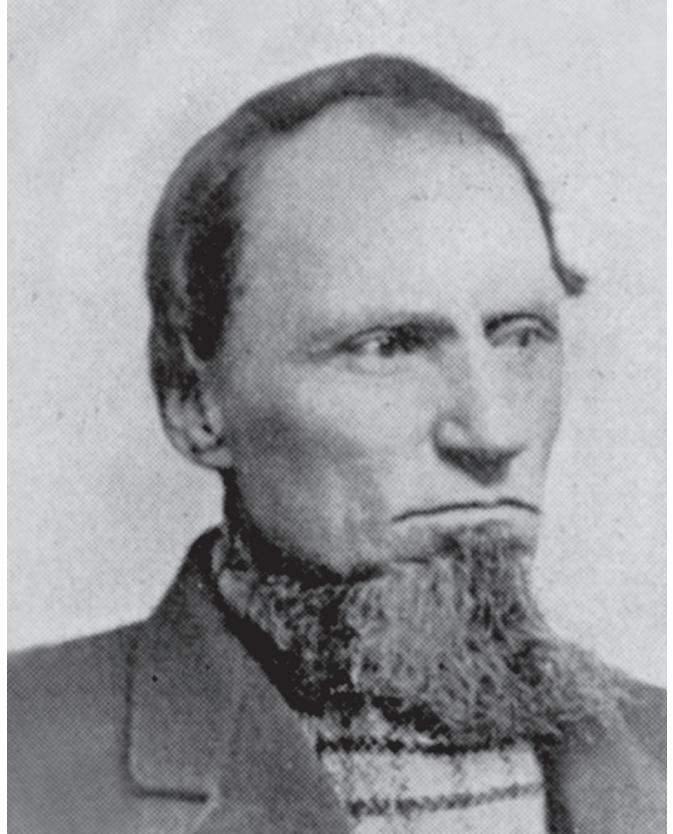
Under interrogation, the terrified See See Sah Mah supposedly incriminated his friend Escotah. Both men were quickly taken into custody and hauled off to Fort Leavenworth to await their fate. In his eagerness to close the books on Colburn's murder, Handy did not hesitate to employ extreme measures in his dealings with the Sac prisoners. See See Sah Mah's attorneys subsequently alleged that their client was a person of unsound mind who had been coerced to admit his guilt "under circumstances of terror and affright."¹³

10. Testimony of Samuel Ralston, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d., in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

11. *Liberty Tribune*, May 15, 1847; *Darby v. Charless* (13 Mo. 600 [1850]). The situation no doubt had been further exacerbated when the firm E. Leitensdorfer & Company was forced to close in 1849.

12. *Sunday Republican* (St. Louis, Mo.), July 8, 1849. This information originated with Josiah Smart a former government interpreter for the Sac and Fox Indians who sought to collect the reward for the capture of Colburn's killer. See Rich M. Cummins to Josiah Smart, March 6, 1849, Chouteau Papers, Missouri Historical Society, St. Louis.

13. *Sunday Republican*, July 8, 1849; B. Gratz Brown and F. P. Blair, Jr., Statement of Counsel, January 16, 1851, U.S. Circuit Court for the Eastern District of Missouri, Eastern Division, St. Louis, Missouri, Records of the District Courts of the United States, RG 21, Law, Equity, and Criminal Case Files, 1838–1912, Case No. 569, *U.S. v. See See Sah Mah and Escotah*, National Archives and Records Administration-Central Plains Region, Kansas City, Missouri, hereafter cited as "*U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City."



John Goodell, pictured here, was assigned to interpret for the accused Sacs at various stages during their incarceration. Goodell, along with his friend and partner Josiah Smart, a former government interpreter, manipulated the trial of See See Sah Mah and Escotah by extracting questionable confessions, attempting to enter false pleas, and recruiting perjurious prosecution witnesses.

Handy countered that his swift and forceful actions had solved the case. "There is no doubt of their guilt and they are now in the hands of the United States marshal and will be tried in April at St. Louis," he wrote in his 1849 report to St. Louis Indian Superintendent David Mitchell.¹⁴ Undoubtedly to his great delight, a communiqué published in the St. Louis *Sunday Republican* sang Handy's praises: "The friends of the lamented Mr. Colburn will, no doubt, be pleased to learn that the murderers (two Sac Indians) have been arrested. Much praise is due Maj. Handy, their new agent, for having them taken at the payments last week. They have acknowledged the murder, and are now secure at Fort Leavenworth."¹⁵

14. Report of Indian agent C. N. Handy, 1849, in Ida M. Ferris, "The Sauks and Foxes in Franklin and Osage Counties, Kansas," *Kansas Historical Collections*, 1909–1910 11 (1910): 344.

15. *Sunday Republican*, July 8, 1849. Handy secured the confessions while he was distributing government annuity payments to the Sacs.

United States officials wasted little time in bringing See See Sah Mah and Escotah before the American bar of justice. In late August 1849 a military detachment from Fort Leavenworth escorted the pair to Independence for a preliminary hearing. Smart enlisted the services of his friend and partner John Goodell who had been assigned to interpret for the accused Sacs while they were incarcerated in the Jackson County jail. The interpreter used the occasion to extract new confessions, undoubtedly with the intent of strengthening the case against the accused. Since the federal courts had jurisdiction over crimes committed in Indian country, a local magistrate ordered the detainees transferred to the custody of the U.S. District Court in St. Louis.¹⁶

In mid-September U.S. Marshall John W. Twichell escorted the prisoners across the state onboard the steamboat *Suranak*. The *Daily Missouri Republican* noted their arrival in St. Louis and informed readers that they would be tried during the district court's April term. The newspaper correspondent, seeing little need to wait for the judicial process to run its course, supplied a motive for the crime and rendered a verdict against the suspects. Relying on information in all likelihood provided by Goodell, the published report declared that the Indians had murdered Colburn to avenge the killing of one of their relatives by whites.¹⁷

Their removal to St. Louis for trial did not go unnoticed in Indian country and the following spring, shortly before the judicial proceedings were scheduled to begin, Moses Keokuk, son and namesake of a famed Sac leader, arrived in Missouri with a tribal delegation.¹⁸ The Indians likely were in the St. Louis courtroom on April 4, 1850, when members of a grand jury handed down a true bill charging that in 1847 See See Sah Mah and Escotah "with force of arms in and upon one Norris Colburn, a white man, (not an Indian) . . . did make an assault and with knives, clubs, axes and hatchets did each of them then and there willfully, feloniously and of their malice aforethought strike cut and stab the said Norris Colburn in and upon his head, back, shoulders and breast giving to the said Norris Colburn several mortal wounds" that caused him to die instantly.¹⁹

16. *Liberty Tribune*, August 31, 1849; *Daily (St. Louis) Missouri Republican*, August 31, 1849; testimony of John Goodell, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d., in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park.

17. *Daily Missouri Republican*, September 15, 1849.

18. *Daily Missouri Republican*, March 26, 1850; Barry, *The Beginning of the West*, 906.

19. *Daily Missouri Republican*, March 26, 1850; True Bill, April 4, 1850, *U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City.



The removal of See See Sah Mah and Escotah to St. Louis for trial did not go unnoticed in Indian country, and the following spring, shortly before the judicial proceedings were scheduled to begin, Moses Keokuk (ca. 1820–1903), son and namesake of a famed Sac leader who died in Kansas in 1848, arrived in Missouri with a tribal delegation. The younger Keokuk, pictured here between 1875 and 1880, and his delegation likely were in the St. Louis courtroom on April 4, 1850, when members of a grand jury handed down a true bill charging that in 1847 the two Sacs assaulted Colburn "with knives, clubs, axes, and hatchets," mortally wounding him.

Twenty-one individuals had been summoned to testify before the grand jury, but the bailiff was unable to locate seven on the list, including several key witnesses for the defense. Pequalo, a Sac woman who did show up, was a star witness for the prosecution. Recruited by Goodell and Smart, she claimed to have been present when See See Sah Mah and Escotah killed Colburn. Her account of the murder and Goodell's rendering of the two accused men's confessions were more than enough to persuade the grand jurors to indict.²⁰

20. Subpoenas dated April 4, 1850, U.S. District Court, *U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City; D. D. Mitchell to War Department, April 11, 1850, U.S. Superintendency of Indian Affairs, St. Louis Records, 1807–1855, 9:264–65, Kansas Historical Society, Topeka. Pequalo's expenses were charged to the Indian Department, and while Mitchell acknowledged the correctness of the accounts he questioned if his department was responsible for them.

With the way cleared to proceed to trial immediately, the clerk of the court directed the U.S. marshal to impanel forty prospective jurors for service and the judge appointed attorneys to represent the defendants—standard practice in Indian criminal cases tried in U.S. courts. Since the claimants of the reward needed a conviction to collect their spoils, Goodell attempted to use the confessions he had obtained to enter guilty pleas on behalf of See See Sah Mah and Escotah before they conferred with legal counsel. The court rejected that proposal and, with assistance from St. Louis County Law Commissioner John Watson, the defendants petitioned to have the case carried over to the next term. The postponement was needed to give their lawyers time to prepare for a trial and to summon witnesses from Indian country. The application was not, they contended, “made for the purpose of vexation or delay but in order to obtain a fair trial.” When the court reconvened on April 10 the judge granted the continuance and ordered the prisoners returned to jail.²¹

Francis P. Blair, Jr., better known as Frank, and his cousin and law partner Benjamin Gratz Brown, usually called Gratz, had been retained to represent the two accused Sacs following their arraignment. Members of the Blair clan loomed large in nineteenth-century American politics. The family’s patriarch, Francis Preston Blair, Sr., served as a confidant and political adviser to presidents Andrew Jackson, Martin Van Buren, and Abraham Lincoln. His sons Montgomery and Frank settled in St. Louis where they practiced law and plunged into Missouri politics. Frank later represented the state in the U.S. House of Representatives and the U.S. Senate and was the Democratic Party’s 1868 vice presidential nominee. Meanwhile, Montgomery served as Lincoln’s postmaster general. Gratz Brown, who was closely tied to his Blair relatives, had joined Frank and Montgomery in St. Louis and embarked on a political career that propelled him to the U.S. Senate and Missouri’s gubernatorial mansion. In 1872 he secured the Liberal Republican Party’s vice presidential nomination. The Blair family’s Washington, D.C., residence, located directly across the street from the White House, allowed them to rub elbows with America’s ruling elite.²²

21. Court order signed by Clerk Ben F. Hickman, April 5, 1850; Petition for Postponement, April 8, 1850; List of Prospective Jurors, April 10, 1850, *U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City.

22. William E. Parrish, *Frank Blair: Lincoln’s Conservative* (Columbia: University of Missouri Press, 1998), 1–14; Kenneth H. Winn, “Benjamin Gratz Brown,” in *Dictionary of Missouri Biography*, ed. Lawrence O. Christensen et al. (Columbia: University of Missouri Press, 1999), 121–24. Today the still proud Blair mansion serves as the nation’s official guesthouse.



Francis P. Blair, Jr., better known as Frank and pictured above, was a St. Louis lawyer and politician, who later in life represented Missouri in both the U.S. House of Representatives and Senate and was the Democratic Party’s 1868 vice presidential nominee. In 1850 the twenty-nine-year-old Missouri attorney was recruited as one of the lawyers for See See Sah Mah and Escotah. Portrait courtesy of the Library of Congress, Prints & Photographs Division, Washington, D.C.

Fortuitously for See See Sah Mah and Escotah, the well-connected Blair and Brown had consented to handle a case that promised little in the way of compensation or political advancement. The assignment came at a time when Blair’s growing involvement in Missouri politics and his recent marriage left him with neither the time nor the inclination to take on new legal work.²³ Moreover, neither he nor Brown had shown any particular interest in Indian causes. To the contrary, Blair’s strong Anglo-Saxon bias had once prompted him to write to his brother, “I must confess that I am getting tired of Indians & Mexicans, especially the latter, such a lying, thieving, treacherous, cowardly, bragging & depraved race of people it has never been my lot to see.”²⁴ Why then did he and Brown agree to represent a hapless pair of Indian clients?

Blair’s less experienced junior partner was eager to hone his courtroom skills, and, in all probability, had let it be known that he was seeking criminal cases. A few weeks earlier, in a letter to his uncle, Brown boasted that he “had several triumphs already in the courts,” claiming that fol-

23. Parrish, *Frank Blair*, 31–49.

24. *Ibid.*, 20.



Along with his cousin Frank Blair, Benjamin Gratz Brown, usually called Gratz, was retained to represent the two accused Sacs following their arraignment. Brown, above, worked more closely on the case than Blair, perhaps because he was a younger lawyer still attempting to make a name for himself. He later embarked on a political career that would take him to the U.S. Senate and Missouri's gubernatorial mansion. In 1872 he secured the Liberal Republican Party's vice presidential nomination and ran on the ticket with Horace Greeley. Portrait courtesy of the Library of Congress, Prints & Photographs Division, Washington, D.C.

lowing his maiden speech in criminal court, two potential clients had rushed to hire him before he could leave the courtroom.²⁵ Brown took the lead in handling the Indians' case, but Blair was sufficiently involved to affix his signature to key defense motions and appeal documents.

Blair undoubtedly knew a fair amount about the circumstances of Colburn's murder long before he signed on to serve as counsel for the defense. In late 1845 he had traveled west on the Santa Fe Trail to join a buffalo hunting party, hopeful that the fresh air and exercise might improve his flagging health. During the course of his western trek, the United States declared war on Mexico, and General Ste-

25. On March 10, 1850, Brown advised Orlando Brown that his maiden speech in court had gone well and generated business for him, but he declined to give any specifics about the cases lest his uncle think that he was bragging. Gratz Brown to Orlando Brown, March 10, 1850, Orlando Brown Papers, Filson Historical Society, Louisville, Kentucky.

phen Watts Kearney prevailed upon him to serve as prosecuting attorney in New Mexico's new provisional government.²⁶ He almost certainly crossed paths with Norris Colburn and Thomas Leitensdorfer in Santa Fe, where the business house of Thomas's brother Eugene was a popular gathering place for American traders. Eugene, who had married the daughter of a former Mexican governor, also served with Blair in the provisional government, but their acquaintanceship may have originated in St. Louis, where Eugene resided before moving to New Mexico.²⁷

Colburn, a trader in his own right who had once been arrested, tried, and fined for smuggling gunpowder into New Mexico, joined forces with the Leitensdorfer brothers in 1846 shortly after marrying their sister Josephine.²⁸ Colburn's untimely death the following year and the subsequent efforts to settle his estate contributed to the strains that threatened the Leitensdorfers with financial ruin and landed them in court charged with devising schemes to defraud their creditors. With his fortunes in decline, Eugene closed up shop in 1849 and headed for El Paso, Texas.²⁹

Blair's return to St. Louis in the spring of 1847 coincided with the discovery of Colburn's body in what would become Kansas. The trader's mysterious death was all the talk in western Missouri when Blair passed through there on his way home, making him privy to the initial speculation implicating Thomas Leitensdorfer in the crime. The St. Louis attorney could scarcely have imagined that two years later his law firm would be assigned to represent two Indians accused of killing Colburn.

The case of *U.S. v. See See Sah Mah and Escotah* was placed on the federal district court's September 1850 Jefferson City docket but, when some of their witnesses were no shows, the defense attorneys succeeded in again having it carried over to the next term. The witnesses' failure to appear was no accident. Hard Fish, for example, later testified that Goodell had advised him to go hunting to avoid being tied up by the soldiers and dragged to Jefferson City. Smart allegedly lured others away by bribing them to begin their annual fall and winter hunt with offers of powder and lead. Goodell sought to explain away the witnesses' absence by claiming that they were simply too poor to bear

26. Parrish, *Frank Blair*, 19–30.

27. Howard Roberts Lamar, *The Far Southwest, 1846–1912: A Territorial History* (New Haven: Yale University Press, 1966), 47, 59, 64.

28. Gardner, *Brothers on the Santa Fe and Chihuahua Trails*, 152n86; Henry P. Walter, *The Wagonmasters* (Norman: University of Oklahoma Press, 1966), 138–39.

29. *Leitensdorfer v. Webb* (1 N.M. 34 [1853]); Solomon Sublette to Frances Sublette, July 24, 1849, Sublette Papers, Missouri Historical Society, St. Louis.



The case of *U.S. v. See See Sah Mah and Escotah* was placed on the federal district court's September 1850 Jefferson City docket, but some of the summoned witnesses were no shows. Their failure to appear was no accident. One witness, for example, later testified that Goodell had advised him to go hunting to avoid being tied up by the soldiers and dragged to Jefferson City. Smart allegedly lured others away by bribing them to begin their annual fall and winter hunt with offers of powder and lead. Goodell sought to explain away the witnesses' absence by claiming that they were simply too poor to bear the expense of traveling from Indian country to Missouri's capital city, pictured above.

the expense of traveling from Indian country to Missouri's capital city.³⁰

The defense team's insistence that the Indian witnesses be present ultimately carried the day, and when the long-delayed trial finally got underway on January 8, 1851, the full cast was on hand. United States District Judge Robert W. Wells presided before a packed Jefferson City courtroom. In a report filed for the *Daily Missouri Republican* its correspondent stated: "There is a number of persons from the upper country and a party of Indians in attendance as witnesses. The testimony, I am told, will be very positive

30. Clerk's directive to U.S. Marshall to summon prospective jurors, August 26, 1850; List of jurors summoned, September 9, 1850; Sworn affidavit of John Goodell, September 11, 1850; Deposition of Kah Che Na Ko, September 19, 1850, *U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City. The same file contains subpoenas for numerous Indians, but the defense briefs suggest that some crucial witnesses failed to appear. A report in the September 14, 1850, edition of Jefferson City's *Jefferson Inquirer* stated that the failure of some witnesses to reach the city had forced Judge Wells to continue the case over to the next term. Also see testimony of Hard Fish, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d.; B. Gratz Brown to Daniel Webster, n.d., in *Petitions of Pardon, 1789-1860*, RG 59, entry 893, NA-College Park.

against the Indians. They will be defended by Messrs. Blair and Brown. . . . The lobby is rapidly filling up with 'lobby members.' St. Louis has full representation."³¹

Blair and Brown clearly had their hands full in a trial where greed, bribery, perjury, anti-Indian bias, and an unsympathetic judge weighed in to tip the balance of justice against their clients. Language barriers further compounded their problems. Since neither the defendants nor the principal Indian witnesses spoke English, the court was forced to rely upon interpreters to provide translations for those on both sides of the linguistic divide, and in this instance the government interpreter had a stake in the outcome.

In presenting their case, the prosecutors relied heavily on the confessions Goodell had extracted in the Independence jail. He stated under oath that See See Sah Mah had, without inducement, acknowledged that he and Escotah had jointly killed a man on the Santa Fe road in

31. *Daily Missouri Republican*, January 7, 1851.

1847 to get his money. He failed to mention that Colburn had no money with him or that Leitensdorfer had taken it to Independence. The interpreter further swore that Escotah had confirmed his participation. Under cross-examination Goodell admitted that he and Smart were partners and related by marriage but insisted that Smart alone was seeking the \$1,000 reward. Gratz Brown was quick to notice that in his testimony Goodell had contradicted statements he previously made to the grand jury.³²

Equally crucial was the testimony of Pequalo, who was Goodell's mother-in-law, Smart's aunt, and Escotah's former wife. When the prosecution summoned her, the defense counsel objected on grounds that at the time of the alleged murder she had been married to the defendant Escotah and was ineligible to testify against her spouse. Following a brief discussion of Indian marriage customs, Judge Wells denied their motion and allowed her to take the stand. The opening sentences in the judge's subsequent justification for that ruling speak volumes concerning his perceptions of native people: "This Indian man and woman *had cohabited or lived together as is usual among Indians, and especially of this tribe, and which is the only kind of marriage known among them.* That among them there is no law or rule of conduct which is enforced as law or which has any sanction."³³

Pequalo's recounting of the events she claimed to have witnessed placed blame for Colburn's murder squarely on the shoulders of the two defendants, but her story was riddled with discrepancies and untruths. For example, after detailing a long conversation between the alleged killers and their white victim, she was forced to admit that none of them could understand the other's language. A parade of defense witnesses, mostly Indians, impeached her character and her truthfulness and contradicted critical portions of her story. Under Brown's cross examination the poor woman, who repeatedly had been branded a liar and a whore, broke down. The Indian witnesses were equally disparaging of Goodell, labeling him a wolf who did "not talk straight."³⁴

32. Testimony of John Goodell, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d.; B. Gratz Brown, Synopsis of Trial, n.d., in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

33. Testimony of Pequalo, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d.; Opinion of the Court in regard to the admissibility of an Indian wife to testify against her husband, signed by R. W. Wells, n.d., in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

34. Various testimonies, copy of evidence from notes taken by Judge R. W. Wells, *U.S. v. See See Sah Mah and Escotah*, n.d.; various testimonies, B. Gratz Brown, Synopsis of Trial, n.d., in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

See See Sah Mah's acquaintances described him as a simpleton who had never caused problems. His courtroom demeanor and conduct seemed to confirm their assessment and led some observers to develop misgivings about the reliability of his confession. Escotah received high marks for his character from defense witnesses. Brown's compelling case for the defense raised sufficient doubt to cause the jurors to advise Judge Wells that they could not possibly come to an agreement. Unmoved, he insisted that they continue their deliberations, but he did allow them to return to their residences at night and ordered the marshal to see to their needs. Among other things the bailiff supplied them with rations of liquor at least three times daily throughout the proceedings.³⁵

Observers at the trial schooled in the law were especially dismayed that in his instructions to the jury, Judge Wells stipulated "that no such principle as that of 'a reasonable doubt' was recognized by the law." After two days the holdout jurors succumbed, and notwithstanding the questionable nature of the evidence they agreed to convict both men. One jurymen later explained that in his view, "any evidence was sufficient to justify the hanging of an Indian."³⁶

Following the verdict the prisoners' counsel moved for an arrest of judgment on behalf of both men, citing as justification the insufficiency of the evidence, judicial errors, and irregularities in the conduct of the trial. Citing an opinion from a New York case, they claimed that the distribution of liquor among the jurors by itself offered sufficient grounds for declaring a mistrial. Judge Wells summarily rejected their joint motion for a new trial, but he did agree to hear a separate motion on behalf of Escotah with See See Sah Mah as the principal witness. In a statement that puzzled even Brown, the defendant insisted that he alone had killed the white man and that Escotah had come along after the deed was done. Given his impaired mental faculties and the difficulties of translating his remarks, both the purpose and the reliability of See See Sah Mah's final words in court remain open to question. They were, however, sufficient for Judge Wells to set aside Escotah's conviction.³⁷

35. See sources cited in previous note; Francis P. Blair, Jr. and G. Gratz Brown to David D. Mitchell, April 2, 1851, in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

36. B. Gratz Brown to Daniel Webster, March 24, 1851; J. B. Colt, Judge of St. Louis Criminal Court, to Secretary of State Daniel Webster, March 29, 1851; Francis Preston Blair, Jr., and B. Gratz Brown to David D. Mitchell, April 3, 1851, in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

37. Motion in arrest of judgment in *U.S. v. See See Sah Mah and Escotah*, January 16, 1851; Motion of a new trial in *U.S. v. See See Sah Mah and Escotah*, January 18, 1851; Francis Preston Blair, Jr., and B. Gratz Brown to David D. Mitchell, April 3, 1851; Judge R. W. Wells to Secretary of State Daniel Webster, May 9, 1851; Notes of statement of See See Sah Mah made in separate support of motion of Escotah for a new trial, 1851, in Petitions of Pardon, 1789–1860, RG 59, entry 893, NA-College Park.

With that ruling See See Sah Mah alone stood convicted of Colburn's murder. When he appeared in court on January 18 for sentencing, he had nothing further to offer in his defense. The judge ordered him to be hung by the neck until he be dead and set March 14 as the execution date. Having exhausted all judicial remedies for overturning See See Sah Mah's conviction, Blair and Brown turned to the executive branch. The Blairs were notorious for seeing any fight through to the finish, but it is highly unlikely that the St. Louis attorneys would have taken the extraordinary step of petitioning President Fillmore for clemency if they thought that See See Sah Mah had murdered Colburn. To the contrary, Brown fervently believed that his client had been unjustly and illegally convicted. In a letter to Secretary of State Daniel Webster, he asked the secretary not to turn a blind eye to this injustice because "the life of a poor Indian ignorant of our laws & at the mercy of our Courts is involved."³⁸

As the day of execution drew near, Brown became increasingly disturbed by the prospect of See See Sah Mah swinging from the gallows. In an urgent telegraph to his friend U.S. Attorney General John J. Crittenden, requesting a sixty-day presidential reprieve, Brown closed with the observation that it "will be a foul murder to hang him." The Blair family connections worked their magic. In forwarding Brown's message to President Fillmore, Crittenden appended a note attesting that he was "well acquainted with Mr. Gratz Brown from whom on this morning the within dispatch was received by telegraph. He is a lawyer of St. Louis of high reputation & talent & of unquestionable integrity & truth. I venture to recommend that the president grant the reprieve requested by Mr. Brown. I know nothing more of the case than is stated by him in the within communication." On March 13, the day before See See Sah Mah's scheduled execution, the president issued a temporary reprieve. As Brown later advised Secretary Webster, notification of the executive order had reached officials in St. Louis with only twenty minutes to spare. The president's prompt response and the telegraph had saved the day. Problems in transmitting additional documentation supporting the pardon request to officials in Washington caused President Fillmore to extend the stay for a second time on April 11.³⁹

38. B. Gratz Brown to Daniel Webster, n.d. [1851], in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park.

39. B. Gratz Brown to Attorney John J. Crittenden, telegraph message, March 11, 1851; Note of J. J. Crittenden to President Fillmore, March 13, 1851, attached to letter of B. Gratz Brown to Millard Fillmore, March 1851; B. Gratz Brown to Daniel Webster, March 24, 1851, in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park; Affidavit of John W. Twichell, October 1, 1851, in *U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City.



As the day of execution drew near, See See Sah Mah's lawyers became increasingly alarmed by the prospect of his swinging from the gallows. In an urgent telegraph to the U.S. Attorney General John J. Crittenden, requesting a sixty-day presidential reprieve, Brown closed with the observation that it "will be a foul murder to hang him." The Blair family connections worked their magic and President Millard Fillmore, pictured here, issued two temporary reprieves and, later, a commutation of the Sac's death sentence. Portrait courtesy of the Library of Congress, Prints & Photographs Division, Washington, D.C.

In making their case for a pardon, Brown and Blair marshaled an impressive array of support. Judges, members of the Missouri bar and legislature, the U.S. marshal, the clerk of the federal district court, and eight members of the jury that had convicted See See Sah Mah submitted letters and signed petitions endorsing a presidential reprieve. John Watson, the law commissioner of St. Louis County wrote, "I feel no hesitancy in expressing my conviction that great injustice has been done in the matter—and that perhaps the antipathies to his race had more effect in bringing about the finding of the jury than any conclusive evidence that was advanced." The petitioners were divided on whether the president should grant a full pardon or commute the sentence to life in prison. In the end the president decided upon the latter, and on May 10 he signed an order commuting the Sac defendant's death sentence and directing that he be confined in the Missouri State Penitentiary for

Millard Fillmore.

President of the United States of America.

To all to whom these presents shall come - Greeting:

Whereas, at the winter term 1850. of a United States Circuit Court for the District of Missouri, an Indian by the name of See-See-Sah-mah or See-See-Sah-mah, was convicted of murder on the Santa Fe road, and sentenced to be hung on the Fourteenth day of March 1851.

And whereas, the execution of said sentence was respited until the Eighteenth day of April 1851: and whereas, a further respite of the execution of said sentence was granted on the Eleventh day of April 1851. to the twenty third day of May 1851:

And whereas divers good and sufficient reasons exist for commuting the sentence of death passed upon the prisoner to imprisonment for life

Now, therefore be it known, that I,
Millard Fillmore, President of the United

This handwritten order, signed by President Millard Fillmore, commuted See See Sah Mah's death sentence and directed that he be confined in the Missouri State Penitentiary for the remainder of his life, since no federal prison was available to house him. In truth the presidential order placing See See Sah Mah in the notorious Jefferson City prison was not that great a favor. Although his date of death is not recorded in the prison's inmate register, it is likely that his tenure there was brief. Pardon courtesy of PBS's History Detectives.

States of America, in consideration of the
premises, divers other good and sufficient reasons,
me thereunto moving, have granted and do
hereby grant unto him the said Indian Sec-
see Sha mah or Sec-Sec-Sab-mah, a pardon
of the offence of which he was convicted, upon
condition that he be imprisoned in the peniten-
tary of the State of Wisconsin during his natural
life, that is, the sentence of death is hereby
commuted to imprisonment for life in the
penitentiary of the State.

In testimony whereof, I have hereunto
signed my name, and caused the
Seal of the United States to be
affixed to these presents. Done at the
City of Washington, this Tenth day
of May, A.D. 1857 and of the
Independence of the United States
the Seventy-fifth.

By the President

Millard Fillmore

the remainder of his life, since no federal prison was available to house him.⁴⁰

In truth the presidential order placing See See Sah Mah in the notorious Jefferson City prison was not that great a favor. A leasing system placed the institution in the hands of private contractors who operated it for profit. Their agreement to waive any fee for accepting the federal prisoner suggests that whatever provisions he received were likely sparse. One can only imagine what prison life would have been like for an Indian who was mentally retarded and spoke no English.

The penitentiary's inmate register recorded See See Sah Mah's arrival there on May 11, 1851. As with all prisoners his register entry included information about his height, color of hair and eyes, complexion, and distinctive marks and scars. In a final column reserved for indicating the prisoner's date of parole or death, someone hastily penciled in the word "died," with no mention of either the date or the causes. One suspects that his tenure there was brief.⁴¹

Pardons for Indians convicted of murder were infrequent but as previously noted not unprecedented. In 1806 in Missouri (then the Territory of Louisiana) Governor James Wilkinson pardoned Hononquise, a Kickapoo allegedly involved in a killing for which two of his tribal brothers had already been executed, and four years later President James Madison pardoned Little Crow, a Sac convicted of murder in an 1808 St. Louis trial.⁴² Both of those pardons were intended to forestall possible retaliation or revenge killings by members of their still powerful tribes. Forty years later the relocated Sac and Fox retained sufficient fighting prowess to hold their own on the prairies of Indian country against the numerically superior plains tribes, but they no longer posed an immediate or substantial threat to white settlements in neighboring Missouri.⁴³ Even so, a few proponents of presidential intervention invoked the risk of retaliation to justify their requests, and still others ques-

tioned the propriety of subjecting Indians to a legal system that was entirely foreign to them. But a belief that a grave miscarriage of justice had taken place was the reason most frequently cited in letters supporting presidential action in See See Sah Mah's case.

As for the trial's other principals, the conduct of agent Charles Handy and interpreter John Goodell cost them their positions in the Indian service. Officers of the court elected not to file perjury charges against Goodell, Smart, or Pequalo, but it seems highly unlikely that either Goodell or Smart ever collected the reward money. Judge Wells remained firm in his belief that the verdict had been the proper one. Although he was known for often siding with the accused in criminal cases, in this particular instance an anti-Indian bias may have clouded the judgment of the frontier jurist who remained on the federal bench until his death in 1864.⁴⁴ Thomas Leitensdorfer moved to Colorado, where, true to form, the litigious entrepreneur became entangled in a protracted legal dispute over an immense land claim that dragged on until he died sometime in the 1870s.⁴⁵

One crucial question remains. Who killed Norris Colburn? Had a heated disagreement on the trail caused Thomas Leitensdorfer to take his partner's life and dump the body in a ravine to cover up the deed? Or had some other unknown person killed the well-dressed trader with an expectation that he was carrying money? There had been other travelers in the vicinity at the time of the murder. And what is one to make of See See Sah Mah's final confession in court? Is it possible that he was in fact the murderer? Credible evidence suggests otherwise. The boot tracks leading away from the scene of the crime would not have been his. His principal accusers perjured themselves and stood to profit from his conviction. His impaired mental faculties made him impressionable and easily influenced by others around him. And how reliable were the interpreter's renditions of his testimony?

Gratz Brown was clearly perplexed by See See Sah Mah's closing statement. He had given the case his best and believed in his client's innocence. How then could he account for the Indian's admission of guilt? The lawyer suggested several possibilities. He noted that those most

40. B. Gratz Brown to John J. Crittenden, April 8, 1851; Petition signed by eight jurors, March 1851; John Watson to Millard Fillmore, April 4, 1851; Commutation order signed by President Millard Fillmore, May 10, 1851, in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park. Affidavit of John W. Twichell, October 1, 1851, in *U.S. v. See See Sah Mah and Escotah* Case File, NARA-Central Plains, Kansas City.

41. Missouri State Penitentiary Inmate Register, A:144, B:16, Missouri State Archives, Jefferson City.

42. "Pardon issued by Governor James Wilkinson, July 8, 1806," in *Territorial Papers of the United States*, ed. Clarence E. Carter (Washington, D.C.: U.S. Government Printing Office, 1934–1962), 12:542–43; Pardon issued by President James Madison, February 25, 1810, copy in Louisiana Territorial Superior Court Minute Book II, 1810, Missouri Historical Society, St. Louis.

43. Hagan, *Sac and Fox Indians*, 225–29.

44. Robert W. Wells to Daniel Webster, May 9, 1851, in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park; Lawrence H. Larsen, "Robert William Wells," in *Dictionary of Missouri Biography*, 788.

45. *Craig v. Leitensdorfer* (127 U.S. 764 [1888]).

well versed in Indian ways doubted the truthfulness of the confession. They opined that the unfortunate Sac hoped that his act of contrition might benefit him or at the very least shield others in the tribe. They also pointed out that the simpleminded soul had merely repeated a garbled version of the tales told by the infamous Pequalo.

Brown also acknowledged that some observers took the Indian at his word. Such differing perceptions were hardly surprising in a trial where prejudice, passion, and sympathy held sway. Nonetheless the unresolved issues of the case, the difficulties of correctly interpreting a for-

eign tongue and a language of gestures, and the inscrutable nature of Indian character to the uninitiated left the counselor with grave doubts. While he could not positively rule out that See See Sah Mah might have spoken the truth when he admitted to having killed a white man on the plains four or five years earlier, he seriously doubted that Norris Colburn had been his victim.⁴⁶ The conscientious Brown's inability to resolve the mystery suggests that the identity of Colburn's killer is destined to remain forever unknown, but the enigmatic See See Sah Mah's tragic and compelling story will continue to captivate and confound. [KH]

46. B. Gratz Brown to John J. Crittenden, April 22, 1851, in *Petitions of Pardon, 1789–1860*, RG 59, entry 893, NA-College Park.