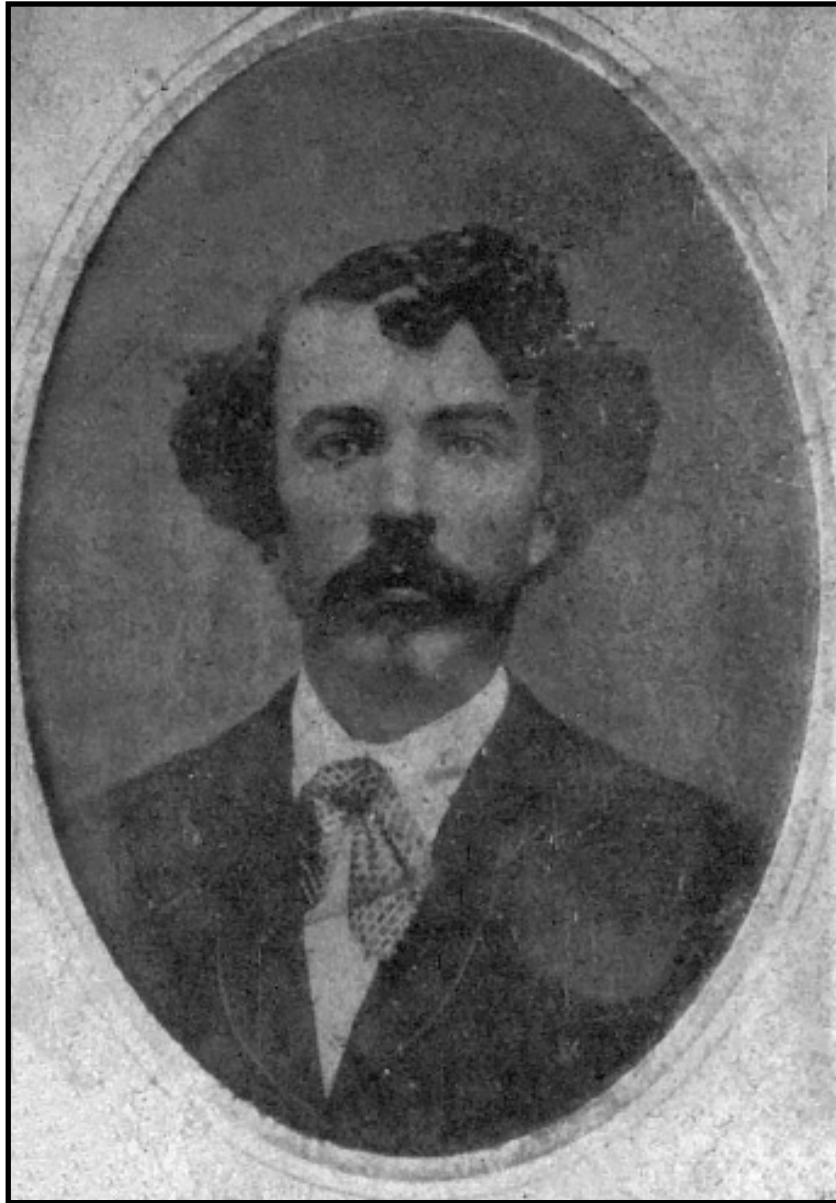


CLELL MILLER

EXHUMATION POSTPONED

James A. Baily and Margaret B. Bailey



Clelland "Clell" D. Miller before the Northfield Raid (Authors' Collection)

It was the summer of 1876, when the James-Younger Gang started planning yet another bank robbery but this one would be in Minnesota.¹⁻² Masterminding the heist were Jesse James, Bob Younger and Bill Chadwell. At the outset, Frank James, Cole and Jim Younger, Samuel Wells (also known as Charlie Pitts) and Clelland D. Miller were opposed to the plot, but finally agreed to go with the gang on what was supposed to be one of the gang's biggest and last robberies.³⁻⁶

Robbing a bank in Minnesota meant journeying a greater distance than they typically travelled for their robberies. The distance from Kearney, Missouri to St. Paul, Minnesota was approximately four hundred miles. Calculating travel by horseback at a conservative pace, in 1876, with regular intervals of rest, they could possibly have traveled about thirty miles a day. Thereby, the travelers on horseback could have reached St. Paul in approximately two to three weeks. If some of the gang departed Missouri in early

July, those who may have travelled by horseback could have arrived in Minnesota in late July or early August.

In fact, Cole Younger and some of the other robbers were seen in St. Paul in early August. They could have made the entire trip on horseback, train or a combination of the two. While August 19 marked Bob Younger's and Miller's arrival when they were seen disembarking from a train in St. Paul.⁷⁻⁸

Once they arrived in St. Paul, the gang behaved like wealthy country gentlemen rather than robbers. They engaged in purchasing fine horses, playing poker, dining, drinking and socializing. The undetected James-Younger gang finalized plans to execute the bank robbery practically in the presence of the citizens of St. Paul and Minneapolis. As the fateful day drew closer, the shrewd Missouri robbers scouted out several towns near the targeted destination in preparation of the robbery.⁹

Actually, some of the gang was spotted in a number of Minnesota towns and communities just a few days before the Northfield Raid. Citizens of Albert Lea, Cannon City, Freeborn, Faribault, Janesville, Lake Crystal, Madelia, Mankato, Millersburg, Minneapolis, New Ulm, Red Wing, Shakopee, St. Paul and St. Peter reported seeing the horsemen in their respective towns.¹⁰⁻¹¹

After winding up their stay in the St. Paul area and surveying some of Minnesota's southern communities near Northfield, the end of August was almost upon them. So the gang left St. Paul and made their way due south. They camped near Northfield for a week or more in order to familiarize themselves with Northfield, the local residents and the geography of the area.¹²⁻¹³

On 7 September 1876, when their plans were finalized, the James Younger gang rode into Northfield around 2 o'clock in the afternoon to rob the First National Bank.

In the aftermath of the robbery, the First National Bank's acting cashier, Joseph Haywood, lay dead in the bank and two gang members, Miller and Chadwell, lay dead on Division Street. A citizen, Nicholas Gustafson, died four days later from complications of a gunshot injury he accidentally received from an unknown shooter.

Henry Mason Wheeler, a medical student, was across the street when he observed the robbers enter the bank. During the robbery, he went to the Dampier House Hotel where he borrowed Edward Dampier's



Mae McCulloch Wheeler, Henry "Hank" Wheeler, and Dr. Henry Mason Wheeler, circa 1927 (Photo Courtesy of Mae Wheeler's niece and nephew-in-law, Margaret and Martin Dodson, Regina, Saskatchewan, Canada.)

.50 caliber carbine. From an upstairs window in the Dampier House, Wheeler shot and killed Miller. A. R. Manning, a hardware merchant, located on the street, shot and killed Chadwell.

After the robbery, Wheeler joined the posse to pursue the gang, but before leaving town he asked Northfield officials for the gang members' bodies. At first he was given permission but then the official recanted the offer but said the bodies will be in shallow graves.¹⁴⁻¹⁵

While on his way out of town with the posse, Wheeler saw and asked fellow medical school students, Charles Dampier and Clarence Persons, to disinter the bodies and make arrangements to ship them to the University of Michigan where they could be used as specimens in their anatomy classes.¹⁶

Initially, the two dead gang members killed in Northfield were unidentified. When their bodies were searched, even their personal possessions did not provide any clues about their identity.¹⁷⁻¹⁸ In addition, overzealous and inaccurate reporting impeded the identification of the gang members. Discrepancies in reports providing physical descriptions of the dead gang members also contributed to confusion in the process of personal identification.¹⁹⁻²⁰

The bodies were removed from the street, propped up in order to prepare them for the photographers. Photographs of the dead robbers were taken for identification purposes but also for profit by local photographers. When photographed, the images captured details about the robbers' gunshot wounds.

April 4, 2012

Mary H. Dudley, M.D.
Chief Medical Examiner
Jackson County Medical Examiner's Office
660 East 24th Street
Kansas City, Missouri 64108

Dear Dr. Dudley,

My name is Ruth Coder Fitzgerald and I reside in Fredericksburg, Virginia. I am next of kin to Clelland "Clell" D. Miller who is buried at Muddy Fork Cemetery in Clay County Missouri. In lieu of recent events, I have concerns about the identity of the individual buried in Clell's gravesite.

Clell Miller was shot and killed in Northfield, Minnesota on September 7, 1876 by Henry M. Wheeler during a bank robbery. He and James-Younger Gang robber William Chadwell, who was also shot and killed during the robbery, were first buried in Northfield, Minnesota and subsequently disinterred by two of Henry Wheeler's medical school colleagues. The two bodies were shipped to Michigan Medical School at Ann Arbor to be used in an anatomy class. My family learned of Clell's fate and sent his brother, Edward, and Mr. Samuel Hardwick, a lawyer formerly from Liberty, Missouri, to retrieve his body. A body was shipped to Missouri and buried. Whether it was Clell or Chadwell is unknown. Subsequent to the events surrounding the robbery, Dr. Wheeler finished medical school and practiced medicine in Grand Forks, North Dakota most of his career. Dr. Wheeler retired in 1923.

Until recently, the family believed the body buried at Muddy Fork Cemetery was Clell Miller. However, Dr. Wheeler claimed to have kept Clell's body. In addition, Wheeler had a skeleton that he used in his medical practice as an anatomical specimen that he identified as the robber he killed in Northfield. Although the skeleton was reportedly lost in a fire in 1884, Wheeler reportedly donated the skeleton to the Odd Fellows Lodge when he retired in 1923.

About twenty years ago a skeleton was discovered in the Odd-Fellows Lodge in Grand Forks, North Dakota when the Odd Fellows disbanded and sold their property. One of the Odd Fellows identified the skeleton as the Wheeler skeleton. A local resident

Mary H. Dudley, M.D.
April 4, 2012
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obtained the skeleton. In February 2012, a paper was presented at the American Academy of Forensic Sciences in Atlanta wherein a CT scan of the Grand Forks skeleton was superimposed with known Clell Miller photographs. The skull from the Grand Forks skeleton could not be eliminated as belonging to Clell Miller when compared to the post mortem photograph.

Given the cause of death resulted from violent circumstances and since there is a question of the identification of the person buried at the Muddy Fork gravesite, as next of kin and on behalf of the family, I would like to request an exhumation. Assistance from the Medical Examiner's office as you deem appropriate is appreciated. Drs. Douglas D. Scott, and Melissa Connor, Archaeologists, have agreed to grant their expertise in order to carry out the exhumation. Also, Dr. James Bailey, retired Minnesota State University Mankato professor has agreed to collect forensic evidence in this case to assist in determining the identity of the person buried in the Muddy Fork gravesite.

Therefore, as Clelland D. Miller's next of kin and on behalf of the Miller family, I authorize the Jackson County Medical Examiners Office to exhume the gravesite of Clelland D. Miller so forensic testing can be completed in order to identify the remains buried at Muddy Fork Cemetery.

Sincerely,



Ruth Coder Fitzgerald

cc: Michael Henderson
Douglas D. Scott
Melissa Connor
James A. Bailey

Ruth Coder Fitzgerald's letter to medical examiner requesting exhumation. (Author's Collection)

Miller had a gunshot wound in the left shoulder area. He also had some abrasions to his forehead near the hairline. Due to the size of the entrance wounds presented in the photograph to Miller's forehead, those injuries were likely from J. B. Hyde's shotgun which was loaded with buckshot. Elias Stacey also fired a shotgun at the robbers but his shotgun was loaded with bird shot which would have produced much smaller wounds.²¹ Chadwell had a gunshot wound in the left thoracic area a few inches to the left of the midline. No other evidence of gunshot trauma or injuries to Chadwell's body was indicated in the photographs.

In preparation of the inquest, "the dead robbers were stripped of their clothing and washed clean..."²² An inquest was held the next day, September 8, at 11:00 a.m. The inquest was brief and their findings were that, "J. L. Heywood came to his death by a pistol shot by an unknown man attempting to rob the First National Bank of Northfield. That the two unknown men came to their deaths by the discharge of firearms in the hands of our citizens in self-defense, and in protecting the property of the aforesaid Bank!"²³

Even though it was reported that both men were buried in Northfield City Cemetery, potter's field,

after the inquest, there are no records of their burial in the surviving cemetery register.²⁴ However, Joseph Heywood and Nicholas Gustafson, referred to as "the Norwegian" [Swede], were recorded in the cemetery register.

The medical students retrieved the bodies and transferred them to Robert Carmichael's farm for storage and shipment to the University of Michigan Medical School. Carmichael, who was known for his meat curing skills and lived in the nearby Castle Rock community, placed the bodies in large lead-lined pickling boxes with some type of preservative.²⁵ Some theorize that Carmichael could have preserved the bodies in a brine solution. This concentrated salt solution would have been the most inexpensive method to preserve the bodies. Another preservative in use at the time was alcohol; however, alcohol would have been a much more expensive preservative. It is also important to note there is no evidence that Miller's body was ever embalmed before or after it was shipped to Ann Arbor, Michigan.

The actual arrival date of the bodies at the University of Michigan is unknown; but, the St. Paul Pioneer Press and Tribune republished a brief article



MARY H. DUDLEY, M.D.
JACKSON COUNTY MEDICAL EXAMINER

660 East Twenty Fourth Street
Kansas City, Missouri 64108

(816) 881-6900
FAX (816) 494-1345

Daniel White
Clay County Prosecutor
11 South Water Street
Liberty, Missouri 64068

April 19, 2012
Dear Dan,

I am writing to you to ask for a court order granting permission to exhume the body of Clell Miller from the Muddy Fork Cemetery in Kearney, Missouri according to the Missouri State Statute Chapter 58, Section 58.720. (See attachment 1)

Clell Miller was shot and killed in Northfield, Minnesota on September 7th, 1876 during a bank robbery. Reportedly, Mr. Miller was buried in Minnesota and later the body exhumed and given to a medical school. Approximately two months following the shooting, a body, presumed to be Mr. Miller, was returned to Missouri for burial. Since there was a question of the identification of the body at Muddy Fork gravesite, the Miller family has requested exhumation for forensic examination and identification of the body. (See attachment 2)

A team of forensic experts from Minnesota and Nebraska have written to me to ask for permission for exhumation and assistance from the JCMEO in the examination of the body. (See attachment 3) Our office has a contract with Clay County to cover all forensic services and I serve as Chief Medical Examiner for Clay County.

I have enclosed emails from James Bailey summarizing correspondence and agreement of our roles and responsibilities of our agencies in this project as well as who

will pay for the expenses incurred in the exhumation, transport, examination, reinterment and forensic services. (See attachments 4 & 5)

Given the cause of death resulted from violent circumstances and the positive identification has not been established, I support the exhumation and forensic examination. We are hoping to proceed with the exhumation once we receive a court order from Clay County. Please let me know if you need any more information prior to approval of the exhumation. Thank you for your assistance in this request.

Regards,

Mary H. Dudley, MD
Chief Medical Examiner – Clay County, Missouri
Jackson County Medical Examiner's Office

Attachments:

1. Missouri State Statutes
2. Letter from Ruth Coder Fitzgerald, next of kin for Clell Miller.
3. Email from
Doug Scott, PhD.
Adjunct Professor
Department of Anthropology
Lincoln, NE.
4. Email from
James Bailey, PhD.
Professor Emeritus
Department of Political Science and Law Enforcement,
Minnesota State University Mankato
Wilmington, NC

Letter from Dr. Mary H. Dudley, Medical Examiner to Clay County Prosecutor requesting court order for exhumation. (Authors' Collection)

about the bodies from The Ann Arbor (Michigan) Register on September 20, 1876. The article stated, "The two Northfield, Minnesota, robbers who didn't escape, have had their attention turned to scientific pursuits, and will devote the remainder of their bodily existence to the interests of science. In other words, they will attend the medical department of the University this year, having already arrived."²⁶ Therefore, the bodies were in Ann Arbor on or before September 20, 1876, thirteen days after they were killed.

On October 12, 1876, Samuel Hardwicke, an attorney for the Miller family, and Ed Miller, Miller's brother, went to the University of Michigan to retrieve Miller's body. As a result of their efforts, a body was shipped to Clay County for burial. The body was shipped sometime after October 12, 1876 and there was a funeral service for Miller sometime before November 6, 1876.²⁷⁻²⁸

Before the body was shipped to Missouri, typically it would have been kept in a vat of brine and anatomy students would have retrieved a body from the vat during dissection. Also, in 1876, the University of Michigan used a solution of arsenic and brine to

preserve medial specimens.²⁹

By the time the body arrived in Clay County sometime before November 6, 1876, it would have been approximately sixty days since the gang members were killed in Northfield.³⁰ A brine solution would inhibit some bacterial growth on the surface of the skin; however, autolysis would continue to occur within the body. In all likelihood, there would be bloating, purplish or blackish skin discoloration, skin slippage and other postmortem changes after sixty days of decomposition.³¹ Given those conditions, visual identification would almost certainly have been unlikely at an interval of approximately sixty days after death. Certainly family and friends wanted to believe it was Miller; however, the returned body could easily have been Chadwell or the body of an unknown person retrieved from the vat of anatomy specimens.

After Wheeler completed medical school in Michigan, he furthered his medical studies in New York and eventually returned to Northfield where he practiced briefly. In 1881 he left Northfield and settled in Grand Forks, North Dakota where he established a medical practice. He took short trips back to



Jim Roberts (left), spokesman for the Clay County Prosecutor's Office and Bob Thompson (right), Muddy Fork Cemetery caretaker. Photo taken September 14, 2012 (Photo by Authors)

Northfield but Grand Forks was his home until his death in 1930. While in Grand Forks, Wheeler had a skeleton on display in his office and claimed it was Miller's.³²⁻³⁶

At some time during his career in Grand Forks, Wheeler donated a skeleton to the Grand Forks Independent Order of Odd Fellows (IOOF) where he was a member, according to the owner of the Grand Forks skeleton. During the mid-1980s, the Odd Fellows Lodge closed and the property was auctioned. At this auction, a skeleton was discovered, allegedly, the one Henry Wheeler donated. A local individual acquired the skeleton.

In 2010 the local individual in Grand Forks who owned the alleged Wheeler skeleton was discovered. Soon afterwards, in an effort to determine if the skeleton could belong to Miller, the owner was contacted and permission was granted to examine it. After personally examining the skeleton and not finding any marks indicating the individual had any obvious bullet injuries to the bones, additional examinations and forensic analysis were

recommended to the owner.

One examination for identifying skeletal remains is to compare the cranium of the skeleton to a known photograph of the deceased person in question. This process is called cranial facial superimposition. Often in historical cases, known photographs are unavailable. However, in this case, there were known photographs of Miller. So in order to make the comparisons, the cranium and mandible from the skeleton were scanned using computer tomography (CT) to reconstruct a 3-D model of the skull. This 3-D image allowed superimposition of the skull to Miller's photograph. The process involved overlaying the image of the cranium onto a photograph of Miller. The concordance of craniometric and cephalometric landmarks between the cranium and the photograph were so similar that the skeleton could not be eliminated as being Miller.³⁷

The next attempt at identification was to analyze a sample of DNA from the skeleton since the cranial facial superimposition could not eliminate Miller as a possible match. Known Miller relatives supported the research and provided DNA samples for comparison. Also the owner of the skeleton supported the research and permitted a sample to be collected for DNA comparison. Since it is impossible to visually examine bone to determine if DNA can be extracted or to determine if a laboratory can successfully obtain DNA from a sample, a specimen from the femur, the bone with the highest probability of recovering DNA, was harvested from the skeleton. Unfortunately, the laboratory was unable to extract any DNA from the sample taken from the skeleton's femur for comparison. After consulting with the DNA specialists about the condition of the sample and the DNA results, it was concluded additional DNA analysis would yield the same results. In view of this, other options were explored, namely an exhumation of the Miller gravesite.

To determine if Miller's body was returned to Clay County, Missouri for burial, Douglas Scott, an archeologist, was consulted regarding possible exhumation of the Miller grave in Clay County. Scott contacted a Missouri state archeologist to determine the requirements for exhuming Miller. The procedures in the State of Missouri are as follows: an attorney representing the next of kin may apply directly to the court or the next of kin must submit an exhumation request to the medical examiner. If the medical examiner finds reasonable grounds for the

exhumation, the M.E. submits a request to the county prosecutor, in this case Clay County. The prosecutor schedules an exhumation hearing and then a judge rules on the request. In the event, an attorney applies to the court; the request would first be submitted to the county prosecutor. Then the prosecutor determines if a hearing before the judge is scheduled.³⁸

In order to comply with Missouri's guidelines, Miller's next of kin, Ruth Coder Fitzgerald, family historian and a journalist, was contacted in February 2012. Mrs. Fitzgerald originally believed the body shipped back from the Michigan medical school to be Miller's. But, after learning more about the body's physical condition subsequent to approximately sixty days of decomposition and the discovery of the skeleton in Grand Forks, she agreed it should be investigated and consented to the exhumation. Mrs. Fitzgerald said she would contact the medical examiner who served Clay County, Missouri and request the exhumation.³⁹

Scott discussed the Miller case with Dr. Mary Dudley, Chief Medical Examiner, Jackson County Medical Examiner's Office (JCMEO) in Missouri.⁴⁰ Dudley also serves as the medical examiner for Platte, Cass and Clay Counties on a contractual basis. She directed Michael Henderson, her chief investigator, to research the requirements for exhumation in Clay County.⁴¹ Henderson responded, "I do believe since both subjects died a violent death and there is a question of identification, it should be handled out of this office under our supervision."⁴²

Henderson also reported to Dudley that he "researched this and recovered several pictures of Miller and Chadwell both before and after death. Interestingly, there is some confusion in the pictures of which one is Miller and which one is Chadwell (His alias is Stiles). There are two research articles that I [Henderson] have found. Both are from Dr. Henry Wheeler's account of switching the bodies after they were killed and Dr. Wheeler apparently kept the body of Miller for years after. According to the articles no one is actually sure if the skeleton that Dr. Wheeler had and was later given to the family and buried in Missouri was indeed Miller or the other outlaw Chadwell (AKA. Stiles). So right now, no one is actually sure who is buried where and if indeed Miller was buried in Missouri."⁴³

At this time, Dudley indicated she would proceed with Miller's exhumation and provided instructions. "Have the family send a written request to me



Clell D. Miller's original grave marker with "C.D.M." initials at top of stone. Permission courtesy of Elizabeth Beckett, Executive Director, Jesse James Farm and Museum, Kearney, Missouri. (Photo by Authors)

[Dudley] at the address below giving the Jackson County Medical Examiner's Office (JCMEO) authorization for exhumation stating the reason for exhumation and request for forensic testing." The medical examiner's office "will request a court order granting permission for exhumation from a Clay County judge. The JCMEO will be present at the exhumation and pay for the body to be transported back to the facility for examination." Dudley said her office will provide free assistance and X-ray services and "would like to be recognized in assisting with this project in any publications or presentations that may follow." Dudley further stated it was the responsibility of the family or forensic researchers to finance the exhumation and any forensic analysis. The researchers agreed to provide forensic services at no cost to the M.E.'s office, Clay County or the family.⁴⁴

In an email, Dudley wrote, this is "a very interesting and exciting project and our office is happy to assist in any way."⁴⁵ She added, once my office receives the letter from the family "we can move forward with our plans."⁴⁶



Ruth Coder Fitzgerald with back to camera standing next to Clell Miller CSA marker. Photo taken September 14, 1991 at the Clell's Cousins' Dedication Ceremony of the CSA marker installed on Clell Miller grave. (Authors' Collection)

On April 15, 2012, Dudley received the following letter from Mrs. Ruth Coder Fitzgerald dated April 4, 2012 requesting the exhumation of Clell Miller.

On May 9, 2012, Dudley received a letter from the Clay County prosecutor, Daniel White, who had some concerns with the exhumation request. White wanted to know if DNA tests were conducted on the Grand Forks skeleton and what would become of the remains if they were not Miller's. White did not want the exhumation to become a spectacle like the Jesse James exhumation and he wanted assurance that the project would be at no cost to Clay County. To determine if the exhumation could proceed, Dudley asked for a response to White's questions.⁴⁷ In response, White's concerns were addressed and assurance given to the prosecutor that the remains would be treated with dignity as well as respect and re-interred at no cost to Clay County. Next, he raised the issue of security.⁴⁸

Henderson advised Dudley he could request the Clay County Sheriff's Office or Kearney Police Department to assist with security while excavating the grave. If White considered sheriff's deputies "standing by" while at the site an expense to the county, then Henderson said he would ask Jackson County to provide security at the scene.⁴⁹ Chief Carey of Kearney said he was interested in helping with security and there would be no charge for services.⁵⁰ The researchers agreed to provide security at the gravesite during the period the grave was open and while the remains were being examined at the M.E.'s office.

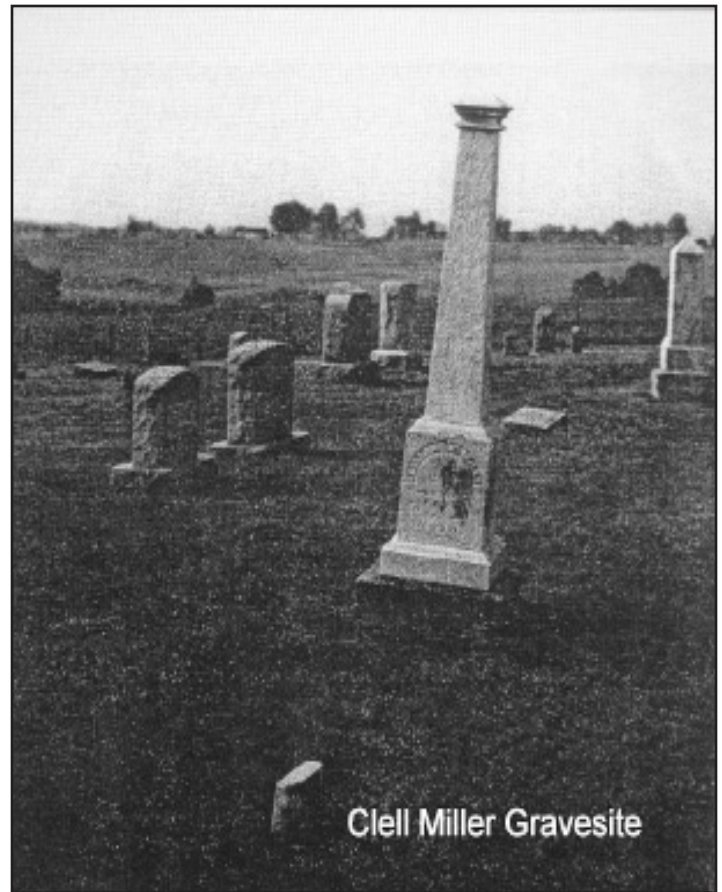
On June 29, 2012, Dudley advised the researchers that the "family does not want the body returned to their family burial site, if it turns out not to be Mr. Miller."⁵¹ This had previously been discussed with Mrs. Fitzgerald and it was a surprise when the

medical examiner raised this issue. Subsequently, Mrs. Fitzgerald was contacted again to determine if she had changed her mind. She said she had not been contacted by anyone from the medical examiner's office or the prosecutor's office regarding what to do with the remains if they were not Clell's. Mrs. Fitzgerald said she had the same position as she had before, she did not object to reinterring the remains to the gravesite.⁵²

On the morning of the hearing, September 13, 2012, a meeting was held at the medical examiner's office in Kansas City with Dr. Dudley, her two investigators, Michael Henderson and Tom Hensley to review the case.⁵³ Also, a local anthropologist attended at the M.E.'s invitation. There was some unanticipated opposition to the exhumation during the review. At the conclusion of the review, those attending traveled to Kearney where a pre-hearing meeting and luncheon with Clay County Prosecutor White took place to discuss the exhumation. The researchers, M.E. and the two investigators as well as the local anthropologist attended the pre-hearing meeting with White and Chief Assistant Prosecuting Attorney Wesley M. Rogers.

Miller's case was presented to the prosecutor and at the end of the presentation just prior to presenting the case to the judge, Henderson, Hensley and the local anthropologist objected to proceeding with the exhumation. In contrast, during the months of planning prior to the hearing, the M.E.'s investigator's supported the research. However, at the pre-hearing meeting, the investigators and the anthropologist suggested additional DNA analysis on the Grand Forks skeleton before exhuming the Miller gravesite. As explained in the meeting at the M.E.'s office, the DNA experts advised against additional DNA testing. The investigators and anthropologist appeared to have little or no understanding of the methods and techniques used to extract and amplify 19th century DNA from bone.

At the conclusion of the discussion and presentation to the prosecutor, the hearing began. It took place at the James S. Rooney Justice Center in Liberty, Missouri, September 13, 2012. The presiding judge was A. Rex Gabbert. Dudley was sworn and testified to receiving a request from Mrs. Ruth Fitzgerald requesting an exhumation due to possible misidentification of the remains returned to Clay County for burial in 1876. After a summary of the research was presented to the court, Judge Gabbert



Miller spire in family cemetery plot, Muddy Fork Cemetery. Clell Miller's original grave marker. Francis M. Miller's grave marker is in the forefront. Photo taken circa 1967. (Authors' Collection)

asked a few questions about the exhumation process. Despite objections from the M.E.'s investigators and the local anthropologist during the meeting with the prosecutor, no one came forward to object to the exhumation during the hearing. Judge Gabbert issued the order for the exhumation and it was scheduled for early October 2012.

On September 18, 2012, an email was sent to the M.E. recommending the ground penetrating radar (GPR) survey be done before beginning the exhumation.⁵⁴ On the same day, Dudley responded that a GPR had been conducted and there were four graves located on the east side of the Miller family spire. Dudley expressed that, "3 of the 4 bodies would match DNA from the Miller bloodline, if one of the bodies were that of Clell. I do not have court permission or desire to exhume 4 bodies at this gravesite given our new information from the GPR. I [Dudley] spoke with Jim Roberts today regarding our concerns and new findings. I [Dudley] am waiting to hear back from the court, but do not plan to move forward with the



Miller plot with Clell Miller CSA marker, Muddy Fork Cemetery August 2014. Spatial differences between the Miller gravesite circa 1967 and 2014 gravesite result from different focal length camera lens. Also the angles are different. (Photo by Authors)

exhumation the first week in October.”⁵⁵

Dudley consulted with James L. “Jim” Roberts, Criminal Services Coordinator and spokesman for the Clay County Prosecutor’s Office.⁵⁶ He agreed “that we should not proceed with the exhumation at this time. We are not exhuming any graves at Muddy Fork in October. We are preparing an affidavit for the court to withdraw the current motion.”⁵⁷

In an effort to clarify this issue and prevent cancellation of the order, a photograph confirming the location of the gravesite was emailed to the M.E. and Roberts. Also, the communique included an explanation and description of the gravesite. The M.E. responded with the following directive, “Please do not send any correspond [sic] to Jim Robert’s directly and send all correspondence regarding the Miller case to me in the future and I will forward it to Jim Roberts, if needed. I would prefer that Jim Roberts not be cced in our correspondence, as I explained to you before

that all of his Email is subject to the Missouri Open Records law and mine isn’t.”

Although the medical examiner preferred to operate in secrecy, the exhumation team never tried to conceal any information from the prosecutor or the public. Dudley never responded to the communique which included the photograph and explanation. Instead she proceeded in withdrawing the order and refused to discuss any further evidence pertaining to the exhumation.

Knowing many of the team had already made plans to travel to Kansas City, the M.E. expressed her regrets that the “team will incur a financial loss” for their travel arrangements. In addition, the M.E. ignored further documentation submitted about the gravesite location. A copy of the GPR report was requested more than once from Dr. Dudley but she replied, “I do not want to promise to share any reports at this time...”⁵⁸⁻⁵⁹

The Miller research team as well as the Miller and Chadwell family members were frustrated that the M.E. abruptly withdrew the exhumation order. More than a year of planning and coordinating the exhumation efforts had taken place leading up to the hearing. Also, to exasperate the problem by not providing a reasonable logical explanation, Dudley elected to keep the GPR data secret. Since the medical examiner chose to keep the GPR data secret from the researchers and public, one cannot help but question why and what was achieved by not releasing the findings? Did the GPR data actually reveal four gravesite signatures or did it reveal something quite different?

In this case, the medical examiner's office used Construction Solutions, a GPR and Consulting Company to survey the Miller family plot. According to their website, Construction Solutions temporarily uses survey flags to identify gravesites when surveying large plots but the flags are removed when the GPR team completes the survey. So, the company leaves the location the way it was before the survey was performed. When the survey is completed, a drawing representing all marked and unmarked graves is given to the client who requested their services. Therefore, if the employees at Construction Solutions adhere to their own procedures, someone from the medical examiner's office apparently marked four grave sites with survey flags and marker paint in the Miller plot.⁶⁰ If the M.E. investigators marked and outlined the four graves, presumably it was based on the GPR data Construction Solutions gave to them.

Hensley made the GPR survey arrangements in July with Construction Solutions, a GPR company in Kansas. He agreed to the following with Mark Deschepper before the survey was conducted, "As we talked last week, it is understood that there are no funds available for use of your equipment or expertise in generating a report for the GPR scan performed at the cemetery. No agency, counties or individuals will be billed for services performed."⁶¹ Whether the GPR survey was pro bono or a paid service of the medical examiner's office, why were the results sealed in secrecy? Also, why will the medical examiner's office not disclose who marked the four grave?

When the medical examiner requested that the exhumation order be withdrawn, Scott, withdrew from the research team. However, Ron Schirmer, archeologist with the Anthropology Department, Minnesota State University Mankato, replaced Scott.

Given the controversial circumstances surrounding the 1876 burial in Muddy Fork Cemetery, the exhumation could still answer questions about the identity of the remains. Although it was believed in 1876 Miller was interred in the gravesite, it is possible William Chadwell's body was interred instead, whether deliberately or erroneously. If this is the case, questions for the Chadwell family could be answered. Then there is also the possibility that an unidentified body altogether could have been returned to Missouri.

Mrs. Fitzgerald expressed she never clearly understood the medical examiner's decision to withdraw the order for the exhumation. She supported the exhumation research and hoped to see it through. However, she died unexpectedly in April 2013 without knowing whether her cousin or someone else occupied the gravesite in the Miller family plot she visited over the course of her lifetime. Subsequently, in May 2013, on the family's behalf, a relative expressed continued support and submitted a letter of support to the researchers requesting that the Miller gravesite investigation continue.

It was never the intent to exhume but one gravesite. The exhumation efforts were always concentrated specifically only on the body in the gravesite identified with Clell Miller's grave marker. Moreover, there was no interest in exhuming the unmarked graves on either side of Miller's gravesite.

Harold "Sonny" Wells, on behalf of a Civil War historians group, erected a CSA marker on Miller's gravesite in 1990.⁶²⁻⁶⁴ Miller's original headstone was positioned at the foot of Miller's grave. That small marker originally placed by the Miller family contained only Miller's initials, "C.D.M". Unfortunately, souvenir hunters chipped away at the marker damaging the small modest stone.

In 1991, "Clell's Cousins" gathered at Clell's gravesite to dedicate the CSA marker. Ruth Coder Fitzgerald, the organizer of "Clell's Cousins" and Miller's first cousin three times removed took the small marker because it was no longer attached to its base but was lying at the foot of Miller's gravesite. She donated the marker to the Jesse James Farm and Museum where it is currently on display.⁶⁵

Dudley executed legal action to withdraw the motion to exhume the remains in the Miller gravesite. However, the basis for her decision was inconsistent with known information about the location of Miller's grave. Presumably, her decision was based on the GPR data that she obtained from a private company

and kept secret. The explanations given publicly by the M.E. to withdraw the exhumation motion are inconsistent with known facts in the case. In fact, Mrs. Fitzgerald identified the location of Miller's gravesite since she had visited it on a number of occasions before and after the CSA marker was installed. Mrs. Fitzgerald's husband, Barry Fitzgerald, photographed the gravesite on one of these visits to Muddy Fork Cemetery.⁶⁶

Although forensic expertise and services were available to proceed with the exhumation in October 2012, the identity of the individual buried in the 19th century gravesite in Muddy Fork Cemetery remains a mystery. Despite the unexpected cancellation of the exhumation, the prospect that the mystery can be solved is plausible, provided the contents of the gravesite can be examined utilizing twenty-first century forensic techniques. Dr. Henry Lee, an internationally renowned forensic scientist, recently spoke at a forensic conference in Kuala Lumpur, Malaysia and in concluding his presentation, he remarked, "in historical cases, forensic scientists have a responsibility to seek answers to the mysteries of historical questions."⁶⁷ Given the circumstantial evidence surrounding the death and treatment of Miller's remains, it is historically important to answer the question of whose remains rest in the Muddy Fork Cemetery gravesite. •

NOTES

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- 28 "Clell Miller's Brother," *Minneapolis Tribune* (Minneapolis, MN), October 19, 1876, 2.
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- 34 J. W. Vennes and P. A. McGuire PA. *Heal Thyself: The Story of the First Hundred Years of the School of Medicine and Health Sciences, the University of North Dakota*. (Grand Forks, ND: University of North Dakota School of Medicine and Health Sciences Press, 2005), 21-22.
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- 36 Henry Mason Wheeler Necrology File, Bentley Historical Library, University of Michigan, Correspondence from Clarence E. Persons to Dr. Edwin C. Goodard, June 2, 1937.
- 37 J. A. Bailey, G.B. Brogdon and Brandon Nichols, "Use of Craniofacial Superimposition in Historic Investigation," *Journal of Forensic Sciences*, 2014, Vol. 59 No. 1.
- 38 Doug Scott, Email to authors, March 19, 2012.
- 39 Fitzgerald, Interviews, April 18, 2011 and March 19, 2012.
- 40 Authors' Note: Mary Helen Nicodemus Dudley is from the Philipsburg and Osceola Mills area of Pennsylvania. After graduating from high school, she attended the University of Pennsylvania and received a diploma in nursing, a bachelor's degree in nursing from Metro State University and a Master's

degree from the University of Colorado. She graduated from American University of the Caribbean School of Medicine in 1987 and completed a residency in pathology at Penrose Hospital in Colorado Springs, Colorado. She then completed a fellowship in forensic pathology from the University of New Mexico, Albuquerque, New Mexico. She was employed in Sedgwick County, Kansas and Maricopa County in Phoenix, Arizona before employment with Jackson County Missouri in 2006.

41 Authors' Note: Mike Henderson joined the Jackson County Medical Examiner's Office in 2007 as Chief of Forensic Operations and Investigations. At the time of the exhumation, Henderson was with the Jackson County Medical Examiner's Office in Kansas City, Missouri but has since retired.

42 Michael Henderson, Email to Mary Dudley, Copies forwarded to D. Scott and J. Bailey, March 29, 2012.

43 Ibid

44 Mary H. Dudley, Email to Douglas Scott. Copy forwarded to J. Bailey, March 29, 2012.

45 Dudley, Email to J. Bailey. April 8, 2012.

46 Ibid

47 Dudley, Email to J. Bailey received a copy of the correspondence. May 9, 2012.

48 Daniel White, Email to Mary H. Dudley. J. Bailey received a copy of the correspondence, May 10, 2012.

49 Michael Henderson, Email to Mary H. Dudley. J. Bailey received a copy of the correspondence, May 17, 2012.

50 Henderson, Email to Mary H. Dudley. J. Bailey received a copy of the correspondence, June 14, 2012.

51 Dudley, Email to J. Bailey, June 14, 2012.

52 Fitzgerald, Interview, July 1, 2012.

53 Authors' Note: Tom Hensley was previously an ambulance paramedic and coroner in Plattsburg, Missouri before becoming a death investigator for the Jackson County Medical Examiner in 1991. During the exhumation efforts, his position was deputy chief death investigator.

54 J. Bailey, Email to Mary Dudley, September 18, 2012.

55 Dudley, email to J. Bailey to, September 18, 2012.

56 Authors' Note: Jim Roberts is Criminal Services Coordinator and spokesman for the Prosecuting Attorney's Office in Clay County, Missouri and has worked for Clay County since 1989. He has a degree in Political Science and Business Administration from Illinois Wesleyan University and has worked as a radio reporter and weekly newspaper reporter. On October 5, 2012, Roberts released to a reporter with the Northfield News, Northfield, Minnesota that the exhumation has been postponed until additional evidence is obtained.

57 Dudley, email to J. Bailey to, September 19, 2012.

58 Bailey, email to Mary Dudley, September 19, 2012.

59 Dudley, email to J. Bailey, September 20, 2012.

60 Authors' Note: The researches contacted Deschepper to inquire about the surface markings at the Miller plot in Muddy Fork Cemetery. However, Deschepper would not disclose whether or not he outlined the four gravesites with marking paint and flags. He also said all future inquiries should be directed to the medical examiner's office. According to Constructions Solutions' website, no visible marks or flags are left at job sites after a GPR survey is completed. <http://www.construction-solutions.net/gpr-applications/graves/view>

61 Tom Hensley, Email to Construction Solutions. July 17, 2012.

62 "Quantrill Group Slates Reunion," Liberty Tribune, (Liberty,

MO), August 29, 1990, 5. Authors' Note: On Saturday, September 1, 1990, "at 4 p.m. the group [Quantrill Society] will reconvene at Muddy Fork Cemetery, four miles north of Kearney, where they will install a Confederate veteran's tombstone on the grave of Clell Miller, who in later years was better known as one of the men killed at Northfield, Minn., bank robbery."

63 "Quantrill Society Holds Reunion," *The Kearney Courier*, (Kearney, MO), August 30, 1990, 7.

64 Kevin Wells, Interview, September 25, 2012. Authors' Note: Kevin Wells was at the cemetery site the day the CSA stone was installed. He helped Sonny Wells, his father, install it. The old marker, a small stone with Clell's initials, was moved from the headstone position to the footstone position. Wells said, "I know we set the CSA marker on Clell Miller's grave. The CSA marker was installed where the smaller stone had been located. That was in 1990." [Mrs. Ruth Fitzgerald told the researchers on September 23, 2012 that on the day of "Clell's Cousins' Dedication Ceremony," September 14, 1991, she picked up the footstone that had the initials "C. D. M." on it because it was broken off at the ground but she didn't disturb the portion left flush in the ground.

65 Fitzgerald, Interview, September 23, 2012. Authors' Note: "Clell's Cousins' Dedication Ceremony" of CSA Marker on September 14, 1991, Muddy Fork Cemetery, Clay County, MO.

66 Ibid.

67 Authors' Note: Henry Chang-Yu Lee was an invited speaker for the 11th Indo-Pacific Congress on Legal Medicine and Forensic Sciences, Kuala Lumpur, Malaysia, October 7 – 10, 2013 Lee is a Chinese-born American forensic scientist. He is one of the world's foremost forensic scientists and founder of the Henry C. Lee Institute of Forensic Science. The institute is part of University of New Haven for the advancement of forensic sciences. In 1960 Lee graduated from the Central Police College with a degree in Police Science in Taiwan and began working with the Taipei Police Department. He later immigrated to the U.S. with his wife in 1965. After coming to the United States, he earned a B.S. degree in Forensic Science from John Jay College of Criminal Justice in New York, an M.S. degree in biochemistry at New York University in 1974 and a Ph. D. in Biochemistry in 1975. He is the former director of the State of Connecticut Crime Laboratory. Some of Dr. Lee's high-profile cases include: JonBenét Ramsey murder, the Helle Crafts wood chipper murder, the O.J. Simpson and Laci Peterson cases, the post 911 forensic investigation, the Washington, DC sniper shootings and the reinvestigation of the assassination of John F. Kennedy. Dr. Henry C. Lee has consulted on more than 8,000 criminal cases in 46 countries.