



THE COURT *Legacy*

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Frank A. Picard: An Introduction

By John H. Dise, Jr.

It was March 1949, six months before Judge Picard would turn 60 years old and 10 years after he was appointed to the federal bench. It was almost midnight and, in his customary fashion, he stepped briskly into the cool spring night onto a Bay City street familiar to him since his youth. He had just delivered his famous monologue, "The Trial of Christ." The presentation in the Le Chateau Hotel, to a group of lawyers attending the Bay County Bar Association Legal Institute Program on the history of the Bankruptcy Act, followed dinner. Walter I. McKenzie and Archie Katcher, both United States referees in bankruptcy for the Eastern District, presented the seminar. In attendance were the State Bar President, Frank H. Boos, who spoke briefly, and the Chief Justice of the Michigan Supreme Court, Edward M. Sharpe, who answered questions about appellate issues. The seminar was one of many presented on a regular basis and sponsored by various bar associations around the state to contribute to the continuing legal education of bar members, a function that has now been replaced by ICLE. After dinner, the Bay County Bar Association President, B. J. Tally, introduced Judge Picard.



Left to right: Lloyd W. Bartlett, Archie Katcher, Walter I. McKenzie, Frank H. Boos, State Bar President, Chief Justice Edward M. Sharpe, Judge Frank A. Picard, and B. J. Tally

Judge Picard's presentation was based on his interpretation of what happened in Judea during the week that culminated in the Crucifixion. The first of his many lectures on the subject was to the Rotary Club of Saginaw in 1925. He became interested in the topic when he was at the University of Michigan Law School and heard a lecture by Professor Jerome Knolton on Jesus before Pilate. He then spent five years studying the topic, searching the Bible, the Talmud, ancient jurisprudence and every other article he could find on the subject. In the early nineteen sixties the issue of whether the Christian Church had fostered racial and religious hatred – particularly against the Jews – was in the news. Judge Picard, at 71, described as "silvery haired and shaggy browed," was still presenting his classic lecture. He was praised as one of the earliest advocates for the position that the Jews were being done a great injustice because of the popular belief that they were responsible for the Crucifixion of Christ. A newspaper article stated, "This masterful presentation given uncounted times and heard by literally thousands of members of church, school, fraternal and civic groups, seeks to place the blame for the Crucifixion where it belongs – on individuals, Jew and Gentile, but certainly not on any race or religious denomination."¹ In March 1950, The Detroit News would print an expanded version of the lecture in 12 installments, daily and on Sunday, which ran right before Good Friday. There is no audio or video recording of the Bay City presentation, or any of the other presentations, but it followed his regular outline and, in his normal dramatic, punctuated style, he was quite riveting. The official title of the article in the News was "The Trial of Jesus From a Lawyer's Viewpoint." The introduction was titled, "He Stood Alone," words that he repeated strategically throughout the opening as he stood before the Bay County audience, while setting the stage for the trial.

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THE COURT LEGACY

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He started, "The greatest criminal trial in the history of civilization didn't rate a single line in any newspaper or magazine. There were none. No moving picture camera snapped that defendant going to and from the courthouse. Likewise – there were none. Curious men and women did not follow its procedure, jamming the tribunal as witnesses, sympathetic with the defendant, put ever on the alert for details of sordid testimony. No pickets with glaring banners circled the cathedral of justice. At this trial people did not bring their lunches, coming early to avoid the rush. In fact, it would have been necessary for them to have brought their beds, since, for the greater part, its activities took place under cover of darkness as was meet and just with the work to be performed and the means of accomplishment."² His introduction to the trial continued with an aside which displayed his attitude toward the crime of treason, a viewpoint which he would also express from the bench five years later, in 1954, when he sentenced the defendants in "The Little Smith Act" trial. Mixing in the theme about standing alone, he said, "In the modern trial even the most despicable defendant; even one charged with treason – yes – even he who may have fallen to the lowest estate of humanity – will have at least one friend in court. One person to whom he can turn for encouragement. One human being he might suppose is willing to share his burden. At least one – THIS MAN STOOD ALONE. He, Who had never harmed a single person; He, Who had comforted the sorrowful – and encouraged the failures; He, Whose many followers had pressed upon Him along the journey; at His time of need, HE STOOD ALONE."³

Judge Picard then put the activities surrounding the trial, and the villainy during the trial, in context from the standpoint of the politics, and the views and interests of the different factions at that ancient time. He also used the time to impart his belief that each new generation, whether from 33 A.D. or 1949 A.D., never learned from "the lessons of the past or the story of years gone by." He argued that we all need to be aware of the "causes prevailing in the world that pave the way to the effect." He expressed a hope that perhaps by "the year 2000 or 3000 A.D." society would be better able to see the "causes as they arose so that bad things could be avoided."⁴ He continued his lecture, talking about Jewish law of the day, and what he called the "official record" which he said was provided by the four Evangelists.

His discussion of the Talmud, which he described as the "Blackstone of Judea," and the origin of Talmudic law was very detailed and interesting, and will be discussed further in later articles concerning Judge Picard's judicial philosophy. In his concluding remarks, he described the facts of the trial and the malevolent actions culminating in the Crucifixion. The presentation was well received and reported in the Michigan Bar Journal.⁵

Judge Picard, the seventh of ten children, was born on October 19, 1889, in Saginaw, Michigan. He had seven sisters and brothers, besides two step-brothers. When he was young they called him "Zip." He played at many county fairs as a boy, teaming up in a singing and dancing act with one of his sisters. He also read gas meters to pay part of his expenses in high school. Immediately after graduating from high school, until 1909, he was a reporter and editor for the Saginaw Exponent and Saginaw Courier Herald.⁶ He wanted to fly through the air in the big tent with his four brothers as one of the Flying Picards, and started learning the art of trapeze at the age of ten. His French-Canadian father, Alfred Picard, made it clear that circus life was not in his future. However that didn't stop Frank A. Picard from his desire for stardom as he became captain of the high school football team that won the state title in 1907 and, at 141 pounds, the star quarterback of Fielding H. Yost's 1910 and 1911 University of Michigan football teams.⁷ These years formed his strong spirit and aversion to criticism. When blamed for a fumble that led to a Cornell 6-0 win he responded quickly, telling everyone decisively, there's "[n]ot an ounce of truth to it." Not being able to forget the accusation, much later he wrote to a friend that he wanted to correct the record "while I'm alive so my children and grandchildren won't have to live it down."⁸ He had four children, Frank II, Ruth Mary, Patricia Eve, and John Alfred, whom he called his "rollicking tribe," from his marriage to Ruth Doersam. Saginaw remained his home all his life.⁹

He served as an Assistant Prosecuting Attorney in Saginaw County during 1913, and as Saginaw City Attorney from 1922 through 1928. From 1917 through 1919 he enlisted in the Army and was sent to Fort Sheridan. His ability to speak French fluently caused him to be transferred to Camp Custer as a liaison officer where he was in charge of visiting



Judge Picard as a new Federal Judge and his family. Standing (left to right) are Frank A. Picard II, Ruth Mary, Patricia Eve and John Alfred. Seated is his wife Ruth

French officers. He then went to France with the 85th Division. During his ten months overseas he was promoted to Captain of Headquarters and later to Secretary of the General Staff of the Sixth Army Corp. When he returned home, he commented, "I chased the war all over Europe. Never could catch up with it."¹⁰ After returning home, he became a Major in the Infantry Reserve Corp. During this time period, off and on, he was also engaged in private practice. One of his clients was Blackstone the Magician. While representing Blackstone he became an expert at card tricks.

Near the end of the judge's public life, Mark Beltaire, in the Town Crier column in the Detroit Free Press, described him as "a wondrously humorous, philosophical guy who enjoyed going to Briggs Stadium on warm afternoons and sitting in Nate Shapero's box when the crowds were thin and the battling on the field didn't amount to much." His philosophy was based on the words of Demosthenes when asked about oratory: "Action, action, and still more action," which he learned as a boy. From the time he awakens in the morning, and "begins splashing his bath and bouncing the soap against the ceiling so his muscles won't go stale," until late at night when sleep finally overtakes him he is in action every minute. It was said that when studying law at Michigan Law School "he could read Blackstone, talk on the telephone, fill his pipe and wash his hands, all at the same time." He never lingered over decisions. He made judgments, although thoughtful, quickly. "When he walks, it is with quick, space-eating strides. When he talks,

the words fairly gush from him. When he shakes hands, he exhibits the grip of a bricklayer. When he drinks – non-alcoholic beverages of course – he drains a glass before most persons have finished the first sip.”¹¹ He always had a “twinkle” in his eye, and you never knew for sure when he was jesting.

Judge Picard had a very active, interesting and successful career. He was an athlete, bellhop, newspaper editor, baseball umpire, author, lawyer, the first chairman of the Michigan Liquor Control Commission, organizer and director of the Michigan Unemployment Compensation Commission, judge, orator, a caring father and a politician. The one area in which he never met his goals, however, was in politics. At the urging Woodbridge N. Ferris, he ran for lieutenant governor in 1920 as a Democrat, but was swamped in the Republican landslide that elected Harding president. In 1934 he ran for United States Senator. One Detroit newspaper described him as the "most colorful candidate a Michigan senatorial race has seen in years." As a youngster who "had to be a fighter to survive, with self-respect, boyhood in Saginaw Valley in the lumber days," the papers predicted a strong showing against "Republican Senator Vandenberg in November." However, he lost again, but only by 54,000 votes, a margin which he had pared down from an estimated lead of 600,000 votes at the beginning of the campaign. An attempt by supporters to put him in the governor's office in 1936 by a coalition of veteran's groups never got past the petition stage. He was also mentioned prominently for attorney general, but he preferred to assist his old friend, William A. Comstock, in a successful campaign for governor.¹²

At the beginning of 1934 Frank Picard was the Chairman of the State Liquor Control Commission. His term was up in December, but as early as May questions began to arise concerning his continuance in the position while he was running for senator. He was the first Commissioner under the new liquor control statute and intimately familiar with the “old beer law.” He helped draft the new statute and it was generally conceded to be “Picard's brain child.” He was very proud of the control system that he had put in place and his immediate objective was the establishment of a chain of designated merchants throughout Michigan to supplement the state liquor store system. By the fall of 1934 Michigan was more

successful than any other state, “selling whiskey for less and putting more money in the state coffers from taxes.”¹³

However, he wanted to run for senator and was being criticized because employees of the Liquor Control Commission were circulating nominating petitions. He responded to the criticism by indicating that he thought it was natural for his employees to support him, just like other employees of state departments support their leaders, but he submitted a letter of resignation. By the end of August, Governor Comstock, a Democrat, had accepted Picard's resignation in a long and very complimentary letter. He said, “Under your forceful, honest and courageous leadership, I sincerely believe there has been established in Michigan a system of control which, if adhered to in principle and built upon wisely, will make for temperance and will do away with most of the objectionable features of the liquor traffic.”¹⁴ However, the criticism continued right up until election time. In a radio program on Sunday, October 28, Picard was still deflecting questions about Commission employees working for his election. He said, “when I was Chairman I did everything in my power to help them and be fair with them. Certainly they appreciate it. Although you will find no Democratic literature in any of our liquor stores, no coercion of licensees, or promises of licenses to be given ... it is not to be wondered at that in their spare moments these men and women speak for my candidacy.”¹⁵ He added that his opponent, the “Junior Senator from Michigan,” was always in favor of the 18th Amendment, and that in the next session of Congress the taxation of beer and wine would be addressed. He ended by suggesting that the industry could be taxed out of existence by those who favored the 18th Amendment.

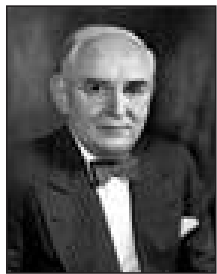
The theme of his candidacy was support for President Roosevelt, which he conveyed through mixed military metaphors. In an address at the nominating convention he said, “the State of Michigan is out of line. It is out of step with the rest of the army. We are for the time being the 'lost battalion',



Photo taken in 1934 for campaign

away from supporting troops while the Commander in Chief awaits eagerly to note whether Michigan shall surrender or fight its way back to be an aid and help to him.” He said the Democratic Party “legions are the young and old, the rich and poor, all nationalities, all religions, all colors. It’s only oath of allegiance is that its soldiers join hands unselfishly and be ready to submerge the individual in his rights when those rights interfere with the welfare of the majority.”¹⁶

He continued by recounting the achievements of Roosevelt in keeping the promises of the 1932 platform, and railing against the Republicans for their unprincipled resistance. He listed specifically



Senator Vandenberg

all the beneficial programs that Senator Vandenberg voted against and how much money it cost the state. When he wasn’t referring to Senator Vandenberg as the “Junior Senator” he was tying him to the “Old Guard” of the Republican Party. He said the Republicans were “in the saddle fighting desperately,” but for them it was

“Custer’s last stand.” He started winding down by saying that President Roosevelt and the Democratic Party were “defending the spirit and the letter of our Constitution and that everyone should re-dedicate themselves to continuing the fight.” And closed with, “Let us go forth as Knights of old not in search of the Holy Grail but mounting to the battlements and ramparts and piercing the enemy’s country, we battle for the benefit of the many to the end that the rich may not be so few and the poor may not be so many.”¹⁷

In his stump speeches during the campaign he told his audiences, “I know you want him backed up. You want him supported wholeheartedly, not halfheartedly. You want him supported 100 percent, not 50 percent of the time.” He told them, “I know you want the President to know that Michigan is in-step, not out-of-step, with the marching army of progress.”¹⁸ He pledged, a pledge that he said was inviolable, that from the time he was elected senator that he would support President Roosevelt. He argued that the “Junior Senator from Michigan” voted against every proposal presented by the President and proposed nothing in its place. He told the story of the little boy who didn’t want to eat his spinach.

When his mother said that “hundreds, yes, thousands of little boys not only eat their spinach, but they like it,” the boy hesitated a moment, looked at his mother doubtfully and said, “name one.” He then challenged his opponent, the “Junior Senator from Michigan,” to name “just one constructive piece of legislation which he has offered in the Senate in the place of those Roosevelt measures which he voted against.”¹⁹

He ended these speeches by discussing his three theories of government. He said the first theory is conservative, “exemplified in the Republican Party’s principles of the last four years – a reactionary theory based on the Hamiltonian theory of class legislation.” (Senator Vandenberg had written a book praising Hamilton and his contributions to government.)



1939

“The other extreme is Communism,” he said. He finished, “the third theory is found in the politics of President Roosevelt. The basic thought behind this theory is that fair play can be shown to both Capital and Labor. There’s a place for both and unless each gets a fair deal, the United States of America, as we know it, cannot survive.”²⁰ As predicted, candidate Picard engaged in a colorful campaign which will be detailed in future articles.

At this point in the article, I want to “fast forward” to 1954, and introduce the topic for presentation at our annual meeting in November. It involves Judge Picard, the “Million Dollar Courtroom” and the case known as “The Little Smith Act” trial or the trial of the “Michigan Six.” Fred W. Kaess was the U.S. attorney and Earnest Goodman, the defense attorney. The Smith Act essentially prohibited advocating the overthrow or destruction of the government of the United States, or the government of any state. It was part of the Alien Registration Act of 1940, signed into law by President Franklin Roosevelt, and was used to prosecute more than 140 Communists leaders throughout the United States. The trial in Detroit involved six defendants and lasted more than four months. At the end, after just six hours of deliberation, the jury came back with a guilty verdict for all six.

A few days later all six were sentenced. Judge Picard's remarks at the sentencing probably received as much coverage as the trial itself and were reprinted in full in US News and World Report. He said, "It is not my desire to prolong the embarrassment this morning or abuse you as some people might desire. There is no satisfaction and seldom anything accomplished by kicking a man when he's down, and you people are down. You have been convicted of one of the gravest offenses of which a citizen may be guilty – a plot – conspiracy – to overthrow your government by force and violence – a plot that has been in existence for a number of years."²¹ The Judge then went on to describe the history of Communist infiltration in Poland and Czechoslovakia, the rise of Germany, the fight against Franco in Spain and the resulting tensions after World War II.



1961

He continued, "[y]our admiration for Russia is so great that there isn't any doubt in my mind, and there wasn't any doubt in the jury's mind, that there is nothing you wouldn't do – lie, cheat, or even worse – in order to attain your objectives. That you know you are a part of an international conspiracy to rule the world by communism." He then made an offer to the defendants: "Now, I'll tell you this. I have the power to change my sentence, any sentence I give today, within sixty days, and if any of you would like to go to Russia to live and I can arrange it, I'll be inclined to change your sentence to make that possible." This caused the people in the courtroom to applaud.²²

All defendants were sentenced to between four and five years in jail, and fined the maximum allowed by statute. The case was appealed all the way to the United State Supreme Court, and eventually remanded for retrial. However, based on a Supreme Court ruling in another like case, at the time for retrial the government moved for dismissal because "the evidence which is now available is insufficient to warrant a retrial of the matter." The trial, and the circumstances surrounding the trial, are very interesting and instructive. More information about this trial will be provided in a documentary film which is being presented at the November annual meeting of the Historical Society. I urge you to attend. ■

End Notes

1. Harold Schacern, "Church Fosters Bigotry, Detroit Jurist Charges," *The Detroit News*, 11 Mar 1961.
2. Frank A. Picard, "The Trial of Jesus From a Lawyer's Standpoint," *The Detroit News*, 26 Mar. 1950.
3. *Id.*
4. *Id.*, 27 Mar., 1950.
5. Michigan State Bar Journal, July 1949, p. 32.
6. "Picard Retires as U.S. Judge," *Detroit Free Press*, 24 Mar. 1961.
7. "Thwarted as Trapeze Artist Picard Swung Over to Law," *Detroit Free Press*, 10 Feb. 1939.
8. "U.S. Judge Picard Dies in Saginaw," *Detroit Free Press*, 1 Mar. 1963.
9. "Thwarted," *loc. cit.*
10. James Haskins, "Liquor Control Board Head Known as Fighting Leader," *Detroit Free Press*, 14 May 1933.
11. Mark Beltaire, *Detroit Free Press*, "A Most Honorable Man," 2 Mar. 1963.
12. Haskins, *loc. cit.*
13. Will Muller, "Picard Retires as Judge," *The Detroit News*, 23 Nov. 1961.
14. "Picard to Quit Board September 15," *The Detroit News*, 29 Aug. 1934.
15. "Picard Replies to Criticisms," *The Detroit News*, 29 Oct. 1934.
16. Frank A. Picard, Transcript of Speech, dated September 27, 1934, Bentley Historical Library, Papers 1907-1963.
17. *Id.*
18. Frank A. Picard, Transcript of Speech, dated October 7, 1934, Bentley Historical Library, Papers 1907-1963.
19. *Id.*
20. *Id.*
21. Frank A. Picard, "A Judge Tells – What Makes A Communist 'Tick'," *U.S. News & World Report*, 19 Mar. 1954: 89-91.
22. *Id.*

Author's Note

Mr. Dise is Vice President of the Board of Trustees of the Historical Society for the United States District Court for the Eastern District of Michigan. He has been a member of the board since 1995 and editor of *The Court Legacy* since 1998.

State Bar Freedom Road Milestone Dedicated

By Naseem Stecker
State Bar of Michigan Media and Public Relations Manager

The words on the bronze plaque tell the tale – how 158 years ago, the residents of Cass County rallied to protect runaway slaves in the Kentucky Raid of 1847. The plaque, commemorating important cases and events in Michigan’s rich legal history, was unveiled at a ceremony August 16, 2005 at Southwestern Michigan College in Dowagiac. The marker will be installed by the State Bar of Michigan and the Cass County Bar Association on the south side of the 1899 courthouse in Cassopolis. The text on the plaque appears below:

MICHIGAN LEGAL MILESTONE Freedom Road

Beginning in 1829, Penn, Calvin, and Porter townships in Cass County were settled by Quakers who migrated there. Free Blacks also settled there and both groups lived in harmony. Blacks in Cass County enjoyed many rights, such as the right to own land, the right to trial by jury, and the right to vote in elections – rights not available to all blacks in the nation until the passage of the 14th and 15th Amendments to the U.S. Constitution. The Free Blacks and Quakers in this area were the backbone of the Underground Railroad, a network that provided food, shelter, employment, and assistance to those fleeing bondage while on the road to freedom in Canada, where slavery was illegal.

In August 1847, in one of the largest of many raid in Michigan, about 20 to 30 heavily armed men from Kentucky sought to recapture those who had escaped Kentucky slavery and remained in Cass County. The Kentuckians captured nine fugitives from four Quaker farms. Free Blacks and Quakers surrounded the raiders and persuaded them to go to Cassopolis for a legal decision. On the fugitives’ assertion, 14 raiders were arrested for assault and battery, kidnapping, and trespass. A Berrien court commissioner heard the case, and released the fugitives because the raiders could not produce a certified copy of the Kentucky statutes showing slavery was legal, although they did have bills of sale. While the Kentuckians were on trial, 45 fugitives, including the nine captured in the raid, escaped to Canada. The Berrien Commissioner was later found not to have jurisdiction.



Photo by Michael M. Smith

Immediate Past President of the State Bar Nancy J. Diehl and speakers (left to right) Roosevelt Thomas, Hon. Dennis Archer, Senator Ron Jelinek, Dr. Michelle Johnson, Professor Debian Marty, and Cordell Jones presented an inspiring program about the 30th Michigan Legal Milestone entitled “Freedom Road”

Seven Quakers were sued in U.S. District Court in Detroit for the value of the escapees. The trial ended in a hung jury, but, facing a retrial, two of the defendants paid damages and court costs in the final settlement. Incidents like these infuriated southern slave owners who influenced Congress to adopt the Fugitive Slave Act of 1850, making it easier for them to recover runaways. Michigan passed a Personal Liberty Act in 1855 to try to neutralize the federal law, and the 13th Amendment to the U.S. Constitution, ratified soon after the Civil War, made slavery illegal in the United States. ■

Intemperate Habits and Appetites: Temperance Laws in Early Michigan

By David G. Chardavoyne

Long before the “great experiment” of the 18th Amendment to the U.S. Constitution led to rum-running across the Detroit River and the Purple Gang, French, British, and American governments struggled with the question of how rein in Detroit’s thirst for alcoholic beverages. The full story those attempts is worthy of its own book, but the temperance movement of the early days of the State of Michigan are worthy of a brief discussion here because of the intense interest in the efforts of state and local authorities taken by Ross Wilkins, the first judge of the United States District Court for the Michigan District.

Alcohol abuse in Detroit was one of the first problems to confront the new American government of the Northwest Territory after Britain finally evacuated the post. Local merchants and tavern owners, all or almost all British citizens who decided not to follow the British troops across the Detroit River, refused to stop serving alcohol to the soldiers stationed at the fort. In 1798, the commanding officer, Col. David Strong, ordered that no person “within the chain of sentinels,” upon pain of court martial, was to sell liquor to a soldier without the permission of his officer. Most tavern keepers refused to obey, and one, John Dodemead, “declared that he would pay no attention to the order, but would proceed to sell liquors when and as often as they pleased to call.” After Dodemead sold liquor to some soldiers who then reported for guard duty drunk, Strong placed a sentinel at Dodemead’s door. Not at all intimidated, Dodemead sued Strong for trespass. Although the case was decided in favor of Col. Strong, he did not stay in Detroit much longer.¹

Tavern Licensing

The Michigan Territory was born on June 30, 1805. Two months later, Governor William Hull and two of the three territorial judges, Augustus Woodward and Frederick Bates, in their role as the territorial legislature, passed a law intended to limit alcohol

sales by a distinction that is still with us: sellers of alcoholic beverages by the glass were to be regulated much more strictly than sellers in bulk. Only licensed taverns could sell by the glass, and those taverns had to promise to maintain rooms for rent for travelers and to bar gambling and other leisure activities. Merchants without a license were allowed to sell “wine, rum, brandy, whiskey, or other spirits, or strong drink,” but only in quantities of no less than a quart as well as “cider, beer, or ale,” but no less than a gallon at a time.² Two decades later, Detroit’s Common Council had to face the fact that this distinction was not working. A kind of unlicensed saloon known as a “grocery” had proliferated on street corners throughout the city, selling liquor by the glass to busy working people who grabbed a quick, cheap drink while shopping or at work. Banning groceries was not politically wise, so, in September 1824, the Common Council, disregarding the tavern law, instead tried to regulate them and passed an ordinance to license “victualing houses, ordinaries and groceries, where spirituous liquors in quantities less than one quart, and cider, beer and ale in quantities less than one gallon are or shall be sold” even though they could not qualify as taverns.³

Grocery Licensing

Over the next decade, the grocery licensing law did little to slow alcohol sales, although it did swell the city’s coffers. The Common Council rarely rejected an application for a tavern or grocery license, and license fees represented more than ten percent of the city’s receipts from 1824 to 1833. Strikingly, the city collected more than four times as much for grocery licenses (\$4,835.69) as for tavern fees (\$1,146.81) during that decade.⁴ In 1833, according to a committee of the Common Council, Detroit’s 46 licensed groceries, one for each thirteen families living in the city, sold 54,722 gallons of “ardent spirits” at a cost to consumers of \$88,923, enough “wasted” money to buy 500 sheep, 500 cattle, 500 horses, and “four brick seminaries of learning.”⁵ In reaction to this report, the Common Council passed a new ordinance that raised the license fee for groceries from \$5 to \$50, while most taverns paid far less. Although the council hoped, naively, to receive the grocers’ support, Detroit chronicler Silas Farmer remembered that: “The action of the council

was soon nullified by the dealers, and in November, 1834, with a population of only 4,973, fully one hundred persons were selling liquor.”⁶

Temperance Organizations and Prohibition

The Detroit Association for the Suppression of Intemperance was founded in 1830 and advocated moderation by drinking only ale or beer. Frustration led to the Association’s replacement by the Temperance League and other organizations for which prohibition was the only acceptable solution. As Michigan Supreme Court Justice Warner Wing explained, “experience has taught the friends of temperance and the drunkard, that he who had been long accustomed to get intoxicated by the use of spirituous liquors could accomplish the same result by the use of ale and strong beer.... The object, then to be accomplished, was to get rid of all palliatives, and to strike at all that would intoxicate by its use as a beverage.”⁷ Michigan’s prohibitionists seemed to have accomplished their object in the state’s 1850 constitution which provided that: “The Legislature shall not pass any act authorizing the grant of license for the sale of ardent spirits or other intoxicating liquors.”⁸ As with other attempts at prohibition, however, the result, particularly in Detroit, was a black market of home-brewed and imported liquor. Hoping to gain some control over matters, in December 1851 the Common Council defied the constitution and passed a licensing ordinance allowing licensees to sell alcohol in quantities greater than a quart.⁹

The forces of abstinence were not long in responding: they gathered and presented to the Michigan Legislature a petition 1,300 feet long asking for a positive ban on alcohol sales. The legislature responded, in February 1853, with a law prohibiting the manufacture, sale, and possession of “intoxicating beverages” except for medical or “mechanical” purposes.¹⁰ That act had, however, a serious flaw: it would go into effect only if it were approved by the electors on the third Monday in June 1853.¹¹ Although the electors did approve the law, opponents of prohibition, as well as many lawyers sympathetic to the cause, argued that the law was unconstitutional because it delegated the duties of the legislature to the electorate. The Michigan Supreme Court did uphold the law, four justices to four,¹² but doubt remained.

In his dissenting opinion, Justice Abner Pratt asked: “Can it be possible that any man of mature years believes that, under our representative system of government, statute laws can be constitutionally enacted in this way? And can it be possible that any American citizen, out of a mad house, is desirous, even in a legal manner, of establishing in this country such a system of government?”¹³

Judge Ross Wilkins

U.S. District Judge Ross Wilkins saw fit to make his agreement with Pratt public, even though this was a matter of state law, not federal. In a letter to Pratt printed in the *Marshall Expounder* and the *Detroit Free Press*, Wilkins stated that: “On the same question involved of reference to the electors of the State, your argument to my mind is conclusive and I have no hesitation in saying this from my examination of the act.... To countenance such legislation, now I think for the first time introduced in our State, would encourage similar representative infidelity hereafter and there is no saying where the evil would stop. As a Judge you have kept your garments undefiled.” Although, “so far as consistent with our fundamental law I would advocate the absolute and entire suppression of the liquor traffic.... I can never countenance any infringement of the Constitution, even to affect so great a blessing to this and succeeding generations.”¹⁴

Judge Wilkins’ public expression of interest in a state prohibition law was in character. Appointed to the Supreme Court of the Territory of Michigan by President Jackson, he arrived in Detroit from Pittsburgh in 1832. He was soon actively involved in the effort to make Michigan a state, serving as a delegate to the Constitutional Convention of 1835 as well as to the first and second Conventions of Assent in 1836. He was a candidate for lieutenant-governor in the first state elections in 1835, and his involvement in local affairs continued after he received his commission as judge of the United States District Court in January 1837. He served as a Regent of the University of Michigan from 1837 until 1842, and he was elected Recorder (vice-mayor) of the City of Detroit in April 1837. Although he was a Catholic when he died, for most of his life Judge Wilkins was a devout and strict Methodist, always sitting in the “amen corner” at camp meetings.¹⁵ Two years after the

letter to Judge Pratt, in January 1856, Judge Wilkins again showed his interest in this issue of state law by sitting on the Supreme Court bench during oral arguments on the constitutionality of the “ironclad” 1855 Prohibition Act.¹⁶

Even after the Supreme Court upheld the 1853 Prohibition Act, sales of alcohol continued as before as local authorities turned a blind eye and juries refused to convict sellers. In 1855, the legislature passed a law which allowed only pharmacists to sell alcohol, and then only for health or mechanical reasons. The Supreme Court, with or without Judge Wilkins’ advice, again upheld a prohibition law,¹⁷ but within a month of its effective date the saloons in Detroit reopened. Siles Farmer remembered that: “Many persons were arrested for selling, but most of the cases against them were appealed and then dismissed. The number of bars was not perceptibly diminished, and the law soon became a dead letter in Detroit.”¹⁸ The Common Council resisted all efforts to enforce the 1855 law, and, while it did pass an ordinance in 1861 requiring saloons to close on Sundays, “this law, like its predecessors, was soon a dead letter.”¹⁹

Although the 1855 Prohibition Act remained law until 1875, it was not enforced, and the constitutional provision barring licenses to sell alcohol was rescinded in 1876. Prohibitionists turned their efforts to laws forbidding the sale of liquor on Sundays, but, despite some legislative success, alcohol continued to flow from the bottles and taps of Detroit taverns and bars on Sundays as on every other day. As the federal government learned decades later, it takes more than laws to keep Detroit from drink. ■

End Notes

1. Solomon Sibley to Jacob Burnet, March 2, 1799, Solomon Sibley Papers, Burton Historical Collection, Detroit Public Library.
2. Laws of the Territory of Michigan, I: 42 (August 29, 1805).
3. Journal of the Detroit Common Council, 5 (October 8, 1824).
4. Journal of the Detroit Common Council, 258 (March 15, 1834).
5. Journal of the Detroit Common Council, 266-69(April 15, 1834). Alderman Stevens T. Mason, soon to be Michigan’s “boy governor,” co-authored the report.
6. Silas Farmer, *History of Detroit, Wayne County and Early Michigan: A Chronological Encyclopedia of the Past*, (Detroit: Silas Farmer and Co., 1890), 838-39.

7. *People v. Hawley*, 3 Mich. 330, 332 (1854).
8. Michigan Constitution (1850), Art. IV, sec. 47.
9. Farmer, 840.
10. “An Act to prohibit the manufacture of intoxicating beverages and the traffic therein,” 1853 Mich. Pub. Acts No. 66 (February 12, 1853).
11. *Id.*, sec. 18.
12. *People v. Collins*, 3 Mich. 343 (1854). The court had eight justices until the 1963 constitution.
13. Judge Pratt found much to dislike in the statute. Regarding a provision that placed the burden of proving innocence on any person caught with alcohol, Pratt charged that: “A more disgraceful, unjust provision than this, was never incorporated into a statute book.” As to the rationale of prohibiting the manufacture of alcoholic beverages just because some people abuse them, he railed: “There can be no doubt that in consequence of indolence and want of physical exercise, the imprudent and reckless manner of dressing, and especially the feet, thousands of the American youth, and particularly females, have gone and are constantly going to premature graves. Neither can there be any doubt that these improvident and reckless habits are tending to reduce the American race in stature, strength, mind and health; and that, unless this lamentable course can be arrested, these pernicious habits must in time become a national calamity. Yet, who can help it? What can be done on the subject? Has the legislature the implied power under the constitution to prescribe exercise and dress or to inhibit the youth of the country from dressing as they please? Clearly not.”
14. Detroit Free Press, April 21, 1854.
15. Friend Palmer, *Early Days in Detroit* (Detroit: Hunt & June, 1906), 300.
16. 1855 Mich. Pub. Acts No. 17 (February 3, 1855). “The argument as to the constitutionality of the liquor law in the Supreme Court excited considerable interest – the courtroom was filled with auditors – Judge Wilkins of the United States District Court occupied a seat upon the bench.” Detroit Free Press, January 18, 1856.
17. *People v. Gallagher*, 4 Mich. 243 (1856).
18. Farmer, 841.
19. *Id.*

Authors’ Note

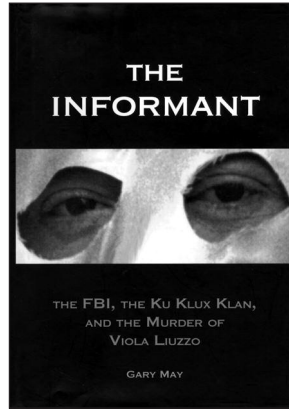
Mr. Chardavoyne is an attorney in private practice in Farmington Hills, Michigan, and a member of the Board of Trustees of the Historical Society for the United States District Court for the Eastern District of Michigan. Mr. Chardavoyne’s book, *A Hanging in Detroit: Stephen Gifford Simmons and the Last Execution Under Michigan Law*, was published in the summer of 2003 by Wayne State University Press.

The Informant, the FBI, the Ku Klux Klan, and the Murder of Viola Liuzzo – a book by Gary May

(Yale University Press, 2005)

Members of the Historical Society may recall that in November 2002 the Society presented a program on the Viola Liuzzo case. For those who weren't in attendance, the November issue of the *Court Legacy* describes the case in some detail. To briefly recount the facts, Viola Liuzzo was a Detroit housewife and mother who went to Selma, Alabama, in 1964 to assist in the Selma to Montgomery march for civil rights. She was gunned down on a lonely road outside Selma by four members of the Ku Klux Klan, one of whom was an FBI informant by the name of Gary Rowe. Based on the testimony of Gary Rowe, the other three men, William Orville Eaton, Eugene Thomas and Collie Leroy Wilkins, Jr. were arrested and charged with Ms. Liuzzo's murder. The first trial of Collie Leroy Wilkins, Jr. ended in a hung jury and a mistrial was declared, much to the delight of the Klan. A second jury found Wilkins not guilty but there was not much time to celebrate since a federal indictment had been handed down accusing all three men of violating Ms. Liuzzo's civil rights. The jury in this case found all three men guilty and District Judge Frank M. Johnson, Jr. sentenced them each to ten years in prison.

In retelling the story of Viola Liuzzo's death and the involvement of the Klan and the FBI, Gary May had access to previously classified FBI records that more clearly outlined the role of Gary Thomas Rowe, the FBI informant. The author writes about the recruitment of Rowe by the FBI and his subsequent participation in various racial incidents in Alabama including the beating of the Freedom Riders.



While there is no question that Rowe's testimony was critical to the prosecution of the other men in the car the night Viola Liuzzo was killed, there has always been a lingering question of whether Rowe himself might have either prevented the killing by informing the FBI of the group's plans that night or if, indeed, Rowe might have fired the shot that killed Ms. Liuzzo.

May's book attempts to get to the bottom of these questions which were the basis of the lawsuit the Liuzzo family filed in 1979 and decided in the government's favor by Judge Charles Joiner who ruled against the family saying, "Rowe was dispatched to obtain information. The fact that, in the process of getting information and protecting his cover, he did not act to prevent an assault certainly cannot impose liability on the Government." Judge Joiner said that Rowe was a hero. Mays generally agrees with Judge Joiner that Rowe did not shoot Ms. Liuzzo and should not be held responsible for her death, but he does raise provocative questions about the use by the FBI of informants and whether, in an effort to protect their informant, the FBI became complicit in the deeds of Rowe's Klan associates. This has proved to be a problem for the FBI in more recent times and May's book is very timely in highlighting what happens when criminal activity is condoned because of the supposed value of an informant. I recommend this book highly to anyone who is interested in this case; it adds greatly to the body of information previously available and Mr. May has done an excellent job of weaving it all together whether or not you agree with his conclusion. ■

– Judy Christie

Annual Meeting

Do not forget to mark your calendar for **November 17, 2005, at 11:30 a.m.** That is the date and time for our Annual Meeting at the Hotel Pontchartrain in conjunction with the FBA Edward H. Rakow Awards Luncheon. Tickets are available through the FBA, \$25 for FBA members and \$30 for non-members. To make reservations or for more information, please contact Elisa Angeli at (313) 496-7635 or angeli@millercanfield.com. Reservations must be made by November 4, 2005. The program will include a the premiere presentation of the documentary film on "The Little Smith Act" trial to be shown on PBS channels throughout the country.

MEMBERSHIP APPLICATION

Annual membership dues:

(Complimentary to Federal Bar Association members)

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|--|----------------------------|
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