



THE COURT *Legacy*

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The Additional Court of Michigan Territory, 1823-1836

By Dr. Patrick J. Jung

This is the second of a two-part article on the Additional Court. In this issue Dr. Jung discusses some of the early cases, the unique circumstances encountered by the court and the ability of Judge Doty to establish justice under this new system of law.

In the first part of this article I discussed the establishment of the additional Court and its effect on the affairs of the territory. Judge Doty was instrumental in bringing balance to legal affairs that had been dominated by autocratic army officers and Indian agents. In fact, one of the first cases heard by Judge Doty and discussed in the last issue involved the prosecution of an army officer for assaulting and imprisoning a trader near the garrison at Green Bay.

Early Cases

Army officers and Indian agents in other parts of Doty's jurisdiction suffered similar fates. A Métis trader named Jean Brunet led a logging expedition to the upper Mississippi River in 1829. The Indian agent at Prairie du Chien, Joseph Street, heard of Brunet's activities and requested Major Stephen Watts Kearney, the commander of nearby Fort Crawford, to arrest Brunet and his party for trespassing on lands that still belonged to the Indians, a clear violation of the trade and intercourse laws. Brunet brought charges against Street and Kearney for false imprisonment and initiated a civil suit to recover two thousand dollars in damages. Kearney and Street argued that Brunet had not yet been given American citizenship, and for this reason, he had no right to enter the Indian country. With predictable deftness, Doty countered by stating that the Mississippi River was a public highway open to all, and that Brunet had as much right as anyone to use it.

Street voiced his opinions about Doty and the prospect of facing a Métis jury when he wrote that he had "no prospect of a fair trial before the *presiding judge* . . . and little hope that an impartial jury can be promised at this place" since it was composed of "ignorant Canadian French and mixed breed Indians, not one in 20 of whom can read or write." Not surprisingly, the jury decided in Brunet's favor.

In the end, Street and Kearney lost nothing, for Congress voted to reimburse them. A similar outcome occurred that same year when an American trader named Daniel Whitney had his lumber camp destroyed by troops from Fort Winnebago at the portage of the Fox and Wisconsin Rivers. Whitney sued Street and the Fort Winnebago commander, Major David E. Twiggs, but he dropped his suit due to a lack of evidence. Twiggs brought a criminal case against Whitney for trespassing on Indian lands, and, not surprisingly, he initiated it in the Supreme Court of Michigan Territory, where he believed the judges would be more sympathetic. However, Twigg's case was riddled with legal weaknesses, and it was withdrawn by the prosecuting attorney in Detroit.

Trade and Intercourse Acts

In the end, juries found several Indian agents and army officers guilty of violating the rights of fur traders, but their allies in Detroit and Washington consistently reimbursed them or rescinded their fines. Nevertheless, the possibility of being sued and arraigned on criminal charges struck a chord of fear in the hearts of federal officials. Arbitrary justice quickly began to disappear in the area under the Additional Court's jurisdiction, and by 1830 such incidents had almost ceased to exist. For this reason, all of the inhabitants west of Lake Michigan, whether they were Indians, Métis, or newly-arrived Americans, saw the court as the principal foil against arbitrary justice.

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THE COURT LEGACY

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These cases, like so many others in the Additional Court, originated out of the trade and intercourse acts. These laws also brought Indians under the aegis of federal and territorial law in particular instances, especially crimes between Indians and whites. Legal matters between Indians were not covered, but such cases were occasionally brought before the court. A case in 1823 involved an Ojibwa Indian from Mackinac named



A sketch of an Ojibwa warrior dressed in the same manner as those who appeared in the Additional Court of Michigan Territory. From George Catlin, *Letters and Notes on the Manners, Customs, and Condition of the North American Indians* (1841).

Mat-way-way-ge-shic who had killed another Ojibwa named Aish-kuns. Doty should not have let the case proceed since it involved two Indians. The trade and intercourse laws clearly stated that such crimes were not within the court's jurisdiction. However, Doty's writings reveal that for many years, he had assumed that the trade and intercourse laws covered any crime by an Indian that had occurred on lands sold by the tribe to the United States. The murder occurred under such circumstances, and thus, Doty let the trial proceed.

The trial would have been farcical had it not involved a capital crime. All of the witnesses were Indians, and the court-appointed attorney for Mat-way-way-ge-shic argued that Indians were not allowed to give testimony in court since they believed in neither the Christian God nor the Scriptures. The prosecution countered by stating that Hindus and Muslims did not profess Christianity, and they could give testimony in English courts. Doty struck a balance by saying that he would allow the testimony of Indians in the case only if they believed in a higher power who would punish them

1832

German Poet Johann Wolfgang von Goethe finishes *Faust*, and dies. During his lifetime, Goethe published 133 volumes on a variety of subjects, including 14 on science

1833

Oberlin College opens, the first American college to admit women and African Americans

for lying. Doty did not admit the testimony of two Indian witnesses because their answers were unsatisfactory. One woman, the wife of the deceased, gave testimony after she asserted that she believed in the Great Spirit, stood in fear of him, and believed he would send her to a “bad place” if she lied to the jury. Despite her vivid testimony and the overwhelming evidence that Mat-way-way-ge-shic had committed the crime, the jury acquitted him. The details of this case are sketchy, but it would seem that the jury, composed mostly of Métis jurors, believed that it was a matter for the Ojibwas to handle among themselves.

In fact, the jurors did what Doty should have done in the first place, but the fact that he did not is indicative of the spartan conditions under which the judge and lawyers of the Additional Court labored. Doty, the prosecuting attorney, and Mat-way-way-ge-shic’s court-appointed counsel all believed that the court had jurisdiction in the matter due to the wording of the 1802 Indian Trade and Intercourse Act. However, none of them were aware of the fact that a newer federal law had been passed in 1817 that negated this interpretation. Indeed, Doty did not find out about the law until he received a new compilation of federal Indian laws in 1827. In 1824, Doty had even nullified a judgment against a Menominee Indian at Green Bay who bit the thumb off a Métis trader during an altercation. Doty’s reasoning was that the crime had been committed on Indian lands, where federal and territorial laws were not valid. When Doty found out about the 1817 act three years later, he noted that his findings in this case were in error.

Flexible Standards

After reading the 1817 act, Doty was able to more accurately render decisions in cases involving Indians. Two cases in particular are excellent examples of how Doty went to great lengths to insure that Indians were treated fairly in his court. Doty’s writings reveal that he thought it was wrong and inhumane to “compel [the Indian] to submit to regulations of which it is impossible he should know anything.” Doty’s sentiments could not

change the fact that federal statutes brought Indians under the aegis of the law, but he consistently expressed his sentiments by attempting to apply those laws in as sparing a manner as possible.

This was certainly the case when the leaders of the 1827 Winnebago Uprising were tried for murder. The uprising itself was a short-lived affair that resulted only in a few horrific murders of whites and Métis by Winnebago tribal members in southwestern Wisconsin. In the end, three Winnebago men were to be tried, but the leader of the uprising, Red Bird, died in jail while awaiting trial. During the trial at Prairie du Chien in 1828, it became evident that Red Bird’s two accomplices, The Sun and Little Buffalo, had not murdered anyone and had even tried to dissuade Red Bird from committing the acts. However, white and Métis inhabitants of the region had been shocked by the killings and had little interest in extending leniency to the two men. The jury came back with a guilty verdict after deliberating only forty-five minutes, and Doty sentenced the men to hang. However, The Sun and Little Buffalo’s lawyer filed a motion to suspend their sentences since the jury had arrived at the verdict despite a weight of evidence to the contrary. Doty agreed, and there is some evidence that he even lobbied President John Quincy Adams to pardon the two men. Adams issued the pardon in November 1828, and the two men were spared from the gallows.



Two sketchings of Winnebago warriors dressed in the same manner as those who appeared in the Additional Court of Michigan Territory. From George Catlin, *Letters and Notes on the Manners, Customs, and Condition of the North American Indians* (1841).

1834

Whig Party is formed; Cyrus McCormick invents the reaper and John Deere the steel plow; and Louise Braille invents system of raised point writing

1835

Polka is first danced in Poland; and children employed in the silk mills in Paterson, New Jersey go on strike to limit work to eleven hours a day and six days a week

1836

Martin VanBuren elected President; William McGuffey publishes his first reader; Davy Crockett dies at the Alamo; Arkansas admitted as state; first Crickett match played in London; and Transcendentalist Movement develops as Ralph Waldo Emerson publishes his essay on *Nature*

Doty took a more active role in the acquittal of Chief Oshkosh of the Menominees two years later. Oshkosh and two other Menominees had killed Antoine, or O-ke-was as he was also known, an Indian slave who lived for many years with a Métis family at Green Bay. When Antoine accidentally killed a Menominee in a hunting accident, Oshkosh and two other tribal members stabbed him to death in accordance with the Menominee custom that his life be taken to atone for their dead kinsman. A grand jury in Green Bay indicted Oshkosh and his accomplices one month later, and when Doty asked the three men through an interpreter to enter a plea, they stood silent and refused to answer. Their silence should not have been surprising since Oshkosh had earlier stated that the white man's justice "always came to nothing." Moreover, the three Menominees believed that they had acted in accordance with their tribal law and therefore should not have been tried.

The jury that heard the case was dominated by Métis and American fur traders, all of whom were familiar with the Menominees and their customs. They found Oshkosh and his accomplices guilty of murder, but since the killing had been done in accordance with Menominee custom, they believed that malice aforethought could not be presumed, and thus, this reduced the charge to manslaughter. Because they were not familiar with the law in such cases, they referred the case to Doty for a final decision.



Chief Oshkosh,
Menominee

It was in this case that Doty's ideas concerning Indians and Anglo-American justice are most evident. His ideas would be considered less enlightened today, but in the context of the early nineteenth century, they were very much ahead of their time. He believed that Indian law codes were "barbarous" but had to be respected since holding Indians to any other standard

would be "like punishing the blind because he cannot see, or the deaf because he does not hear." He maintained that an Indian "is not a member of our society, and is not subject to the laws." Thus, Doty steadfastly maintained that territorial and federal laws could not be applied uncritically. More importantly, Antoine was an Indian, and crimes between Indians were not covered under any American laws. Doty subsequently acquitted Oshkosh and his accomplices.

Doty continued to fight for Indians in the Additional Court even after he was no longer judge. He failed to regain appointment to the Additional Court in 1832, and a Virginian, David Irvin, became the court's second judge. Shortly after Irvin took his seat, the Black Hawk War shattered the relative quiet of the Wisconsin frontier, and in the aftermath, seven Winnebago men were arrested for committing outrages against white settlers in the lead-mining region. The seven men languished in the jail at Fort Winnebago for a year and a half without being charged with any crime. Doty took up their case. He began by having a writ of *habeas corpus* issued so the Winnebagos could be released from confinement. The case went no further, for the United States attorney sent to prosecute the case could not find any witnesses who could place the seven men at the scene of the crime. Although indictments still were presented against the seven Winnebagos in 1833, no trial resulted and all charges against them were finally dropped in 1837.

District Court Established

The Additional Court went out of existence in 1836 when Michigan was admitted to the union and the lands to the west of Lake Michigan were reorganized as Wisconsin Territory. With this development came a proliferation of new settlers, new counties and new tribunals that were based upon the earlier legal organization of Michigan Territory. These new courts serviced a population that was dominated by white settlers from the east and Europe. The judges who sat on the new circuit courts lacked Doty's sensitivity to Indian and Métis societies, as did the jurors who

1837	1838	1839
The panic of 1837 occurs; Charles Dickens publishes <i>Oliver Twist</i> ; Victoria becomes Queen of Great Britain; and Morse Code introduced	Northern Abolitionists organize the Underground Railroad	Henry Wadsworth Longfellow publishes <i>Voices of the Night</i> ; Charles Goodyear vulcanizes rubber; Audubon publishes <i>Birds of North America</i> ; Swiss physicist Karl August builds the first electric clock; first bicycle constructed by Scotch inventor Kirkpatrick MacMillan; and Detroit Boat Club, oldest survivor of the early American rowing clubs, formed

decided cases. Thus, the creation of Wisconsin Territory presaged the passing of an earlier time under the Additional Court when the law was truly a system of fair and impartial justice to some of Wisconsin's earliest residents. ■

Sources:

1. Blume, William W. "Circuit Courts and the Nisi Prius System: The Making of an Appellate Court." *Michigan Law Review* 38 (January 1940): 289-339.
2. _____. "Legislation on the American Frontier." *Michigan Law Review* 60 (December 1961): 317-72.
3. Blume, William W., and Elizabeth G. Brown. "Territorial Courts and Law: Unifying Factors in the Development of American Legal Institutions." *Michigan Law Review*, Part I, 61 (November 1962): 39-106; Part II, 61 (January 1963): 467-538.
4. Doty, James D. "Judge James Doty's Notes of Trials and Opinions: 1823-1832." Edited by Elizabeth G. Brown. *American Journal of Legal History*, Part I, 9 (January 1965): 216-33; Part IV, 9 (October 1965): 350-62.
5. _____. *Papers*. State Historical Society of Wisconsin, Madison, Wisconsin.
6. Fogarty, Robert P. "An Institutional Study of the Territorial Courts in the Old Northwest, 1788-1848." Ph.D. diss., University of Minnesota, 1942.
7. Jenks, W. L. "Judicial System of Michigan under Governor and Judges." *Michigan Law Review* 18 (November 1919): 16-29.
8. Jung, Patrick J. "Forge, Destroy, and Preserve the Bonds of Empire: Euro-Americans, Native Americans, and Métis on the Wisconsin Frontier, 1634-1856." Ph.D. diss., Marquette University, 1997.
9. _____. "To Extend Fair and Impartial Justice to the Indian: Native Americans and the Additional Court of Michigan Territory, 1823-1836." *Michigan Historical Review* 23 (Fall 1997): 25-48.
10. Koppers, Donald P. "The Development and Reorganization of the Wisconsin Court System." Ph.D. diss., University of Wisconsin, 1963.
11. _____. "The Emergence of Law and Justice in Pre-Territorial Wisconsin." *American Journal of Legal History* 8 (January 1964): 20-33.

Author's Note

Patrick J. Jung received his undergraduate degree from the University of Wisconsin-Whitewater in 1986 and his doctorate in United States History from Marquette University in Milwaukee, Wisconsin in 1997. His dissertation is titled "Forge, Destroy, and Preserve the Bonds of Empire: Euro-Americans, Native Americans, and Métis, on the Wisconsin Frontier, 1634-1856." This article on the Additional Court of Michigan Territory draws heavily from his dissertation research. He is currently a full-time administrator and an Adjunct Professor of History at Marquette University. He is married and has three children.

FEDERAL JUDICIAL CENTER HISTORICAL WEBSITE

In the September, 1999 issue we told you that the Federal Judicial Center would be adding a section to their website containing information on federal court history, including biographical data, architectural information, photos and other related topics. Although a couple of months late, as of February 9, 2000 the site is "on-line."

The site was developed as part of the center's mandate to conduct and encourage history programs. It is the most comprehensive electronic resource of federal court history available in any form. It will be updated on a regular basis and expanded periodically as their resources allow. The site includes a biographical database of more than 2,800 presidentially appointed justices and judges who have served since 1789. The court section contains legislative history of individual federal courts, as well as lists of the judges on those courts and the location of official court records. The legislation section provides the original text of twenty-one of the most important acts affecting the organization and jurisdiction of federal courts. Also included in this section are essays describing the historical significance of the acts and their effect on the work of the court. Other features include an on-line version of an exhibit of historic courthouse photographs, a list of publications available through the center and links to other federal historical court sites.

This is a very interesting and well-planned website. We recommend that you take the time to visit it and explore the information available there about the federal district courts in Michigan. The site's address is <http://www.fjc.gov>. That will take you to the center's home page where you can click on "History of the Federal Judiciary." You will then be able to go directly to the five major sub-topics: Judges of the United States Courts, Courts of the Federal Judiciary, Landmark Judicial Legislation, Topics in Judicial History, or Historic Courthouse Photograph Exhibit.

1840

William Henry Harrison elected President on the Whig ticket; Edgar Allan Poe publishes *Tales of the Grotesque and Arabesque*; English physicist James Joule formulates the first law of thermodynamics which holds that energy can be converted from one state to another, but it cannot be destroyed; Amistad mutiny occurs; and Liberty Party, founded by Abolitionists, runs candidate

1841

John Tyler becomes President when William Harrison dies after serving only two months in office; first commercial use of petroleum "Rock Oil" as a medicine; James Fenimore Cooper publishes *The Deer Slayer*; the first university degree is granted to a woman in America; and Scotch surgeon James Braid discovers hypnosis

PUTTING IT IN PERSPECTIVE

This antebellum era in American history is certainly one of the most remarkable. While some historians divided these years into two eras, the Transcendental Awakening Era and the Era of Slavery Expansion, all agree that the times were unprecedented. Consider the statistics. The population of the United States in 1826 was estimated to have been around 11 million. At the beginning of the Civil War, it was nearly 33 million. The population grew at a rate of more than 33 percent per decade. Eight new states were added extending all the way to the Pacific Ocean. The land area over which the Federal government exercised control almost doubled when the territories of New Mexico, Utah and Nebraska were included. There were no railroads in 1826, but by the end of the era, there were 31,000 miles of rails. The value of farm produce increased from some \$400 million to more than \$2 billion, a six-fold increase. Immigration estimated to have been 14,000 in 1826, rose to a peak in 1851 when approximately 475,000 immigrants entered American ports. Total immigration for the period was an excess of 8 million.

The Transcendental Awakening, also referred to as the Second Great Awakening, gained strength during this period. It grew out of the development of evangelical Christian sects throughout the country. Charles Finney, a lawyer who turned preacher, conducted revivals in Utica, New York in 1826 which drew larger and larger crowds. In the winter of 1830-31 in Rochester, New York prayer meetings were filled every night as Finney and other preachers, such as Theodore Wald, used techniques of evangelizing, long meetings, entertainment and community-wide campaigns to appeal to the average citizen. The message was "everyone was a moral free agent" who could obtain salvation through his or her own effort. This message rejected the prevalent Calvinist theory that God controlled the destiny of all human beings. This approach worked well as church membership grew by 150,000 nationally in 1831. These revivals continued and, in 1836, William Miller, whose teachings became the basis for the Seventh-Day Adventists, predicted that the Second Coming would occur in 1843. At the same time the Transcendentalism Movement was flourishing. Ralph Waldo Emerson, a former Unitarian minister at Boston's Old North Church (1829-32) became one of the main proponents for the movement.

He stated its main principles in his essay on Nature in 1836. He became a noted lecturer on the subject and, from 1841 through 1844, published a series of essays, the best known being "The Over-Soul," "Compensation," and "Self-Reliance." These spiritual movements inspired attempts at many secular reforms such as temperance, abolition, anti-dueling, public education, feminism, philanthropic groups and utopian socialism.

The political and financial institutions were also in turmoil. The two major political parties, Whigs and Democrats, were slowly disintegrating. Politics grew hateful. In 1835, a radical wing of the Democrats composed of urban workers called the Loco-Focos, met and put forth a platform critical of special privilege and monopolies. In 1839, abolitionists formed the Liberty Party in Albany, New York. Although it succeeded in placing slavery on the national political agenda, its candidate for the 1840 election, James G. Birney, received few votes. However, by 1844, it had the backing of leading abolitionists, such as Senator Salmon P. Chase, and, although again not successful with its presidential candidate, was successful in forcing other candidates to take anti-slavery positions. This helped Democrat James Polk defeat Whig Henry Clay by splitting the Whig vote. In 1848, the Liberty Party split. Many supporters joined other Democratic and Whig anti-slavery factions to form the Free-Soil Party, which nominated Martin Van Buren. However, he only received 10 percent of the vote. By 1852, the Whig Party ceased to exist as its policy of compromise on the slavery issue was no longer viable. In 1854, the Know-Nothing Party was formed with a platform opposed to immigration and Catholicism. The party later evolved into the American party in an attempt to unify the North and South on the basis of race and religion. This same year the Republican Party was organized by former Whigs and Democrats opposed to the extension of slavery.

During this period, there were two financial crises known as panics. Panics are characterized by runs on banks causing failures, rapid fall of the securities market and resulting bankruptcies. The first, in 1837, was a result of English banks stopping the issuance of credit to Americans at the same time the price of cotton declined. The second panic, in 1857, was the

result of the failure of the Ohio Life Insurance and Trust Company. It triggered a serious depression in which thousand of businesses failed.

Scientific discovery and invention abounded. Much of the invention was directed at simplifying and expediting daily tasks, both at home and in the work place. In the early 1830s Cyrus McCormick, born in 1809, invented the reaper and other like innovations that are essential features of the harvesting machines that are now used in farming. In 1800, it took fifty-six man-hours to grow and harvest an acre of wheat. By 1840 it took only thirty-five man-hours. This was due to the development of such innovations as the steel plow, reapers, grain drills, corn and cotton planters, and iron harrows and cultivators. By 1860 the country had over two million farms, and farm products made up eight-two percent of the country's exports.

In 1832, the horse-drawn streetcar, popularly known as the horsecar, was developed by John Mason in Manhattan. Prior to that the only public transportation available was the omnibus, which was essentially a horse-drawn coach, operated pursuant to a government franchise, along a given street at certain minimum levels of service. The introduction of iron rails improved the efficiency, smoothness and all-weather capability of the system. The next innovation came in 1852 when Alphonse Loubat developed a grooved rail that lay flush with the pavement.

In 1833, a Chicago carpenter, Augustus Deodat Taylor, invented balloon-frame house construction. This new building technology revolutionized construction of private homes, making them affordable to middle- and low-income families. It persists today whether the outside of the home is made of stucco, stone or brick. Traditional construction at that time used heavy hardwood beams fastened by hand-cut dowels or hand-wrought nails. An entire frame wall was fitted on the ground and then lifted into place by a crew of about twenty laborers. This type of construction was very durable, but expensive, and required the expertise of skilled craftsman. On the other hand, the balloon frame was based on light pre-cut two-by-four-inch studs positioned sixteen inches apart and held together by factory-produced nails.

Although this type of frame was lighter it was just as strong as the stress was spread over a large number of studs. Additionally, the standardized lumber cut in mills and the factory production of nails increased the speed with which a home could be built and reduced the number of workers required.

In 1837 Alfred Lewis Vale, an assistant to Samuel Morse, devised the Morse Code. Morse was in the process of perfecting his ideas for an electric telegraph which was first used in 1944 between Baltimore and Washington. The same year John Deere invented the steel-toothed plow needed to farm the prairies. In 1839, Charles Goodyear, a Philadelphia hardware merchant, after years of experimenting to find a way to keep rubber from sticking and melting in hot weather, developed the process of vulcanization. This made possible its use in commercial products. However, even though he patented the invention in 1844, he died in 1860 in poverty. Also invented in 1839 was the power loom for weaving carpet. It was developed by Erastus Bigelow of Massachusetts. Prior to that time, carpets were woven in hand looms.

In 1851, Isaac Singer patented the sewing machine, and from 1851-65 made twenty improvements on its mechanism. However, he lost an infringement suit to Elias Howe, an apprentice to a Boston watchmaker. Howe first exhibited his sewing machine in 1845, patented another in 1846 and sold a third the same year in England. After several patent infringement suits, Howe finally obtained a judgment for royalties in 1854. However, by that time, the Singer Company was so well established that it became the leader in the business through a combination of manufacturers and the pooling of patents.

In 1853 George Cayley developed the glider which carried him on a trip of five hundred yards across a valley. Although powered flight was not possible at this time, Cayley experimented enough with wing design and the concepts of vertical tail surfaces, steering rudders, rear elevators and air screws to be able to calculate the power required for various speeds and loads, sixty-four years before the Wright Brothers flew at Kitty Hawk. ■

Daniel Goodwin: United States Attorney, 1834-1841

By Ross Parker

This is the second in a series of articles that will be appearing on the history of the United States Attorney's Office. As reported previously, U.S. Attorney Saul Green has embarked on a project to record the history of his office from 1815 until the present.

Daniel Goodwin was appointed United States Attorney for the Michigan Territory by President Andrew Jackson in 1834, and served until 1841.

Daniel Goodwin was born in Geneva, New York in 1799. He attended Grand Union College until 1819, when he commenced the study of law with John C. Spencer in Canadaigua, New York. After being admitted to the New York bar, he practiced in Geneva before moving to India for a short time. In 1825, Mr. Goodwin moved to Detroit where he practiced initially with Elon Farnsworth and, later, with George E. Hand. He also served as quartermaster general in the "Toledo War." By the time of his appointment as United States Attorney, Mr. Goodwin had appeared in the Michigan Supreme Court more than 75 times.

During Mr. Goodwin's term, the great influx of settlers known as Michigan Fever made it the most popular destination in the country for pioneers heading west from New York and New England. The population in Detroit doubled from about 5,000 in 1834 to 10,000 in 1841. Steam navigation on the Great Lakes made Detroit a busy port where the wholesale and retail trade flourished. The government land offices also did a brisk business as settlers purchased land on which to establish farms.



Daniel Goodwin

Mr. Goodwin practiced law as United States Attorney initially in courts which were located in a privately owned block of buildings at Jefferson Avenue and Bates Street in Detroit. In 1836, the courts were re-located in the Old City Hall located in Cadillac Square.

Between 1805 and 1836, the Territorial Supreme Court, sitting as Circuit and District Court of the United States since 1805, heard cases in the following categories:

- Admiralty 309 cases
- Customs forfeitures 117 cases
- Actions of debt 44 cases
- Naturalization proceedings 10 cases
- Counterfeiting 13 cases
- Encouraging dueling 5 cases
- Passing counterfeit coins 5 cases
- Breach of embargo laws 4 cases
- Embezzlement from mail 2 cases
- Murder 2 cases
- Treason 2 cases
- Wage claims against vessels 2 cases
- Larceny 1 case
- False census return 1 case
- Importing goods without permit 1 case
- Resisting revenue officer 1 case
- Trespass on Indian land 1 case

In 1835, Mr. Goodwin filed a series of civil actions of covenant for breach of agreements to build roads. The federal government had contracted with the builders to construct particular miles of the road being constructed from Detroit to Chicago. It is unclear whether actions such as *United States v. Henry Cowen* for failure to build the 126th and 131st miles of the road were ultimately successful.

Although the temperance movement was active in Michigan after 1830 and there were several legislative efforts to prohibit or limit the sale of intoxicants, they were largely unsuccessful. In 1834, there were 100 saloons and 100 blind pigs located in Detroit.

1842	1843	1844	1845
Massachusetts law limits childrens' (under 12) work day to ten hours; ether first used as surgical anesthesia; and Treaty of Nanjing ends Opium War between Great Britain ceding Hong Kong to Britain and opening five ports to British trade	Marcus Whitman crosses America on Oregon Trail mapped out the year before by U.S. Army Lt. John Charles Fremont; and Charles Dickens writes <i>A Christmas Carol</i>	James Polk elected President defeating Whig leader Henry Clay; YMCA founded in England; and wood-pulp paper invented	U.S. annexes Texas; John O'Sullivan coins term "manifest destiny;" first organized baseball team, the Knickerbockers, established in New York; the U.S. Naval Academy opens in Annapolis; the great potato famine in Ireland; and Edgar Allen Poe writes <i>The Raven</i>

Detroit had over 1,000 buildings with 55 brick stores. There was no lack of entertainment in the city. Dances were common in hotels and taverns. Military balls were held regularly. Ice racing on the Detroit River was a popular sport. The more sedate stayed home and played euchre and whist, or went to one of the theaters in the city.

On January 26, 1837, after considerable controversy both in the territory and in Washington, D.C., President Jackson signed a bill from Congress making Michigan a state. Much of the controversy concerned a boundary dispute over a strip of land between the Michigan Territory and the State of Ohio. Ultimately, in a compromise in which United States Attorney Daniel Goodwin was consulted, Michigan agreed to accept the Upper Peninsula in exchange for releasing its claim on the disputed land near Toledo. In the celebration at Woodworth's Hotel in Detroit, Governor Mason offered a toast which provides some historical context to the Michigan-Ohio rivalry which exists to this date – to Ohio “our neighboring sister, and her boasted million of free men – Michigan neither FORGETS or FORGIVES...”

When Michigan became a state, its judiciary had to evolve from a unified territorial court system in which the court simply changed its designation from territorial Supreme Court to federal circuit or district court, or into separate state and federal court systems, each with a distinct jurisdiction. Under an Act of July 1, 1836, Congress established a U.S. District Court for the District of Michigan, but no judge was appointed that year. The district was assigned to the Seventh Circuit. President Jackson appointed Ross Wilkins in 1837 to be the first United States District Judge for the District of Michigan. During his service on the bench for 33 years, nine United States Attorneys appeared before him in several hundred cases involving the United States. Judge Wilkins' son, Col. William D. Wilkins married the granddaughter of Solomon Sibley, Elizabeth Cass Trowbridge.

One of the first published opinions from the federal circuit court in Michigan was *United States v. Pearce*, 27 F. Cas. 480 (C.C.D. Mich. 1837). Mr. Goodwin obtained an indictment charging an assistant to the Shiawassee Township Postmaster, Lemuel Brown, with detaining two packages of letters. Apparently, Brown left the area for three months and left Josiah Pearce in charge. Pearce, however, removed the office to his house. When Brown returned, Pearce refused to deliver the letters to him or hand over money he had received for postage. Pearce, believing that he had obtained the appointment as postmaster when Brown left, continued to deliver the mail even after he was arrested. Although the opinion criticized Pearce's actions, the jury concluded that he had no criminal intent in retaining the letters, and the defendant was acquitted.

During 1837-1838, Daniel Goodwin prosecuted several United States citizens who went across the Detroit River into Canada in order to assist in the insurrection against England with violating the neutrality laws of the United States. However, the prosecutions were unpopular in Michigan and were criticized in the press.

In another criminal case, William Vansickle was charged with corruptly obstructing the United States Marshal in the service of a subpoena in a criminal case in which Vansickle and others had been charged. *United States v. Vansickle*, 28 F. Cas. 36 (C.C.D. Mich. 1840). The subpoenaed witness was a woman named Remember Lummis. The defendant had taken her from place to place for several weeks to avoid service and had promised her land if she avoided process. Eventually, she made herself available and, at trial, testified against Vansickle. The defendant's attorney, George Bates, who would be appointed United States Attorney in a few months, argued that he should be able to inquire of defense witnesses about whether Ms. Lummis was a lewd woman in general estimation. The trial court, however, limited cross-examination to inquiry about the impeached witness' general character of veracity and

1846	1847	1848	1849
U.S. declares war on Mexico; settlers of the Donner Party stranded; Smithsonian Institution established; and sewing machine patented by Elias Howe (improved 1851 by I.M. Singer)	American Medical Association established; and gold discovered in California	Zachary Taylor elected President on Whig Party ticket; first Women's Rights Convention in Seneca Falls, NY; U.S. wins Mexican-American war; Steven Foster publishes <i>Oh Susanna</i> ; Marx publishes the <i>Communist Manifesto</i> ; Wisconsin becomes a state; and first appendectomy performed	First female physician, Elizabeth Blackwell, graduates from Geneva Medical College

whether the impeaching witness would believe her under oath. The jury found the defendant guilty, and he was sentenced accordingly.

Apparently, the bulk of the United States Attorney's practice during this time period involved the collection of debts owed to the United States. The transience of the debtors and their lack of assets upon which to execute a judgment frequently precluded the collection of the amount owed. In addition, the convoluted and formalistic requirements for collecting a debt and the uncertainties as to the proper procedures further encumbered the process. For examples of these types of cases read *United States v. Lyon*, 26 F. Cas. 361 (C.C.D. Mich. 1840); and *Lawrence v. United States*, 15 F. Cas. 81 (C.C.D. Mich. 1841) (collection on postmaster's bond). Mr. Goodwin, as well as several predecessors, were compelled to write to the Secretary of the Treasury, and others in that department in Washington, D.C., to seek guidance on the procedures and methods they should employ to collect on debts owed to the nation.

Daniel Goodwin's salary as United States Attorney was apparently between \$1,000 and \$1,200 annually based on fees he collected in litigation. In addition, he maintained an active private practice which added considerably to his income.

It is important to remember what a limited role in people's lives the federal government had in 1837. After statehood, even the most essential function of government, the maintenance of law and order, was assigned primarily to state and local officials. There were virtually no federal law enforcement officers and no federal prisons. The United States Attorney and the U.S. Marshal were forced to rely on local officials for whatever personnel and logistical support they needed. Even the Attorney General of the United States was a part-time position until Caleb Cushing assumed the position in 1853. It would be three quarters of a century after Mr. Goodwin's term before federal legislation would change the role of the federal government and increase the responsibility of the United States Attorney and his office.

After his term as United States Attorney, Daniel Goodwin practiced law until the governor of Michigan appointed him to the Michigan Supreme Court in 1843. This position required that he preside over the various circuit courts of the counties in the first circuit, as well as attend sessions of the Supreme Court.

In 1846 he resigned the position because of the rigors of the circuit court responsibilities. In 1850 he was overwhelmingly elected president of the state constitutional convention. The convention was part of the national movement to implement principles of Jacksonian democracy. The constitution developed by the convention placed restrictions on the legislature and made all principal state officials elective, including supreme court justices who had been appointed by the governor. Although aliens intending to become U.S. citizens and "civilized" male Indians were given the right to vote, the same was not extended to black males. The "colored suffrage" issue was submitted to the voters, who defeated the proposal by a margin of 32,000 to 12,000 votes. The Constitution of 1850 also failed to give women the right to vote although it did give them property rights.

In 1851 Mr. Goodwin was elected district judge of the Upper Peninsula, a position he held for 30 years until his retirement in 1881. In 1867 he was selected to represent Wayne County at the state constitutional convention.

Daniel Goodwin died in Detroit, Michigan on August 25, 1887. ■

Author's Note

Mr. Parker has been an Assistant United States Attorney assigned to the Detroit office since 1978. He is currently working with Cathy Beck on a book about the history of their office. Mr. Parker thanks Ms. Beck for her assistance in researching this article.

1850	1851	1852	1854
President Millard Fillmore replaces Zachary Taylor who dies in office; Fugitive Slave Act passed; Nathaniel Hawthorne publishes <i>The Scarlet Letter</i> ; and Levi Strauss invents blue jeans	Erie Railroad connects NYC with Great Lakes displacing Erie Canal; YMCA founded in Boston; and Herman Melville publishes <i>Moby Dick</i> which sold only about fifty copies during his lifetime	Franklin Pierce elected President; and Harriet Beecher Stowe publishes <i>Uncle Tom's Cabin</i>	The Kansas Nebraska Act of 1854 passed; the Republican and Know-Nothing parties founded; Henry David Thoreau publishes <i>Walden</i> ; Horace Smith and Daniel Wesson invent a gun; Alfred Wallace publishes his theories on genetics; and Alfred Tennyson publishes <i>The Charge of the Light Brigade</i>

PONTCHARTRAIN GATHERING AND ANNUAL MEETING OF THE HISTORICAL SOCIETY

On Tuesday, November 9, 1999 Judge Cornelia Kennedy, Senior Judge of the United States Court of Appeals for the Sixth Circuit, addressed the joint meeting of the FBA and the Historical Society at a luncheon held at the Pontchartrain Hotel. Also included was the presentation of the FBA Edward H. Rakow awards and the Historical Society Annual Meeting.

Judge Kennedy was introduced by Judge John Feikens, who showed his great respect and admiration for Judge Kennedy by relating several anecdotes about her life and career. When Judge Kennedy stepped to the podium she added stories of her legal career, starting with law school and ending with her appointment to the Sixth Circuit. For an account of her career and her remarks refer to the July issue of the Michigan Bar Journal. Below are a few pictures of the annual meeting:



President Bill Winsten conducts the annual meeting.



President Winsten and Judge Feikens thanked Judge Kennedy for her informative presentation.



Officers of the Historical Society, Bill Winsten, John Dise and Jeff Sadowski met for a few minutes with Judge Kennedy.



Judge Zatkoff accepts the gift of the framed and enlarged photo display of the "Million Dollar" courtroom from Irwin Alterman.

1855

Walt Whitman publishes *Leaves of Grass*; and David Livingstone discovers Victoria Falls

1856

James Buchanan elected President; "Big Ben" is built in London; cigarettes are introduced in Europe by soldiers who fought in the Crimean War and observed them in Russian bars; and Dred Scott case decided ruling that the Missouri compromise was unconstitutional and that Congress had no power to limit slavery

1859

William Smith strikes oil in Titusville, Pennsylvania; John Brown raids Harper's Ferry; work begins on Suez Canal; and Charles Darwin publishes *Origin of the Species*

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- Exhibit preparation
- Educational programs
- Other (*please describe*): _____

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