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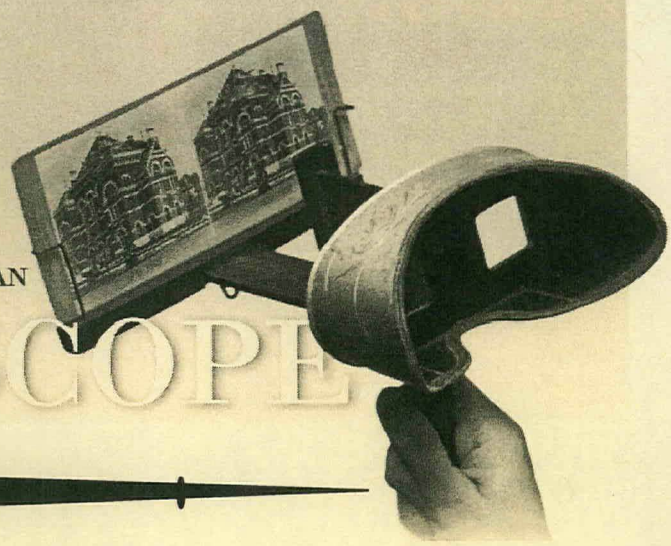

# Our First District Judge and the Civil War

By David J. Gass

To the north of Hall Street where it bisects Grand Rapids' Oak Hill Cemetery—just a stone's throw from the cemetery house—sits the Withey mausoleum. More than 121 years ago, on May 7, 1886, Solomon Withey was laid to rest there at age 66. Upon his death, in San Diego, *The Grand Rapids Daily Eagle* reported: "He went to California some four months ago, in the hope of recruiting his health, which had been precarious for some time previous. But instead comes the end provided for all."

*Solomon L. Withey*

Withey was our first district court judge. On March 12, 1863, President Lincoln nominated him, when he was a 42-year-old Grand Rapids lawyer, as U.S. district judge for the newly-created Western District of Michigan. This occurred at the midpoint of the Civil War and at the low point of the Union's prospects for victory. Two difficult years of war remained—although, at the time, it seemed as if the end might never come. Judge Withey served for 23 years, and during his tenure he was the only judge for the Western District.

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Judge Withey's portrait hangs high on the back wall of Chief Judge Robert Holmes Bell's courtroom. But few among us know much about him, and that is too bad. For he was a remarkable man who in his time was admired by both the bar and the community, and it so happened that he also served during a pivotal period in American history. Here are some accounts of his life, written upon his death.

### *The Grand Rapids Daily Eagle*, April 26, 1886

To say that the event created a profound sensation of sorrow and regret, not only in the fast diminishing circle of those who came here prior to 1840, but the entire community with which he has been so long identified, is but to state it modestly.

### *Grand Rapids Daily Democrat, April 27, 1886*

The sad news of the sudden death of Judge S. L. Withey at San Diego, California, on Sunday evening at 7:30 o'clock was received in this city yesterday afternoon about one o'clock in a telegram from his daughter Miss Eleanor Withey to her brother Mr. E. W. Withey. A year ago last month Judge Withey was, while on the bench, taken with a sinking spell caused by some derangement of the heart, and had been unable since then to attend to the active duties of his office. In January last the judge in company with his wife, daughter and several friends went to California, in the hopes that it would improve his health. He and the members of his family who were with him spent the winter in Pasadena, and a short time since went from there to San Diego, where he died.

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In the spring of 1863 he was appointed by President Lincoln United States district judge for the western district of Michigan and at once entered upon the duties of that office. To him was due in a large degree the bringing about of the division of Michigan into two judicial districts and he was the unanimous choice for the position of judge. In 1869, when the United States circuit courts were established, Judge Withey was offered the position of judge of the Sixth circuit and his commission which had been signed by President Grant, was declined, he preferring to continue in the performance of the duties of the district which he had organized. His career on the United States court bench has been a very commendable one. His decisions have stood the test which settles the ability of a judge, his conception of the law has been clever, his judgment just and his court conducted with proper decorum.

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About one year ago his health failed and a constitution never rugged, gave way in such a manner that grave fears were entertained of an immediate fatal result, but he seemed to be improving and early this year sought the far west to build up if possible the waning vitality, but in vain, and yesterday the lawyer, judge, friend and Christian passed to his reward. Peace to his ashes.

***The Grand Rapids Daily Eagle*, April 28, 1886**

Judge Withey is dead. Like a brave old oak that has withstood the storms of many years, the crash of whose fall in the silent woods is heard amid all the fields, one of the noblest and most honored citizens has fallen out of our ranks.

***

**"In the early days of Grand Rapids, when the city was filled by a crowd of adventurers and other lawless characters, Judge Withey stepped to the front with others in the behalf of religion and humanity."**

Judge Withey was fitted, in an eminent degree, for the position—Judge of this United States District Court—he so long filled with distinguished ability and honor. He possessed the judicial instinct in a very marked degree. With a keen mind and large self-control, he was able to look at all questions from every standpoint, giving every fact due consideration, and reaching decisions without prejudice which were always as clear as the light. His impulses were quick and strong; but, under the control of an overmastering will, they kindled only against wrong and meanness. He was as sensitive for the right as most men are for their honor. He looked upon all wrong as a crime, and was ready to defend the right with what power he possessed. He was kind and compassionate, but there was no more modern, sentimental gush in him than in a granite rock.

He was a brave man. Fear was not in him. He dared stand alone, and could without trembling. He was an incorruptible man. No one who knew him would sooner think of attempting to bribe him than they would the law. He was affable and gentlemanly, but he was as hard as iron in his moral character. He hated shams from instinct.

No man lives in this city who is more justly honored and loved. He loved the people and was ready always, with open hand to help the needy. He was a model judge and a grand, good man.

The old settlers are rapidly dropping out of our ranks. Soon the leaders will be comparatively young men, the sons of those who have crossed over the river. But the lives of these old pioneers, hardened into pure character, are a richer legacy to the incoming generation than gold. Great truths and principles live in the lives of these old men, to be read and reread through all coming time. Character, the gnarled life of good men, is the beacon light of the ages.

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***Grand Rapids Daily Democrat*, May 6, 1886**

When he came to Grand Rapids thirty six years ago, Judge Withey was a leader in everything on the right side. He was then but 30 years of age. It was his [H. J. Hollister's] privilege to have enjoyed the friendship of Judge Withey for years. He was a man who did not readily give his friendship, but when once a friend he was always such. In the early days of Grand Rapids, when the city was filled by a crowd of adventurers and other lawless characters, Judge Withey stepped to the front with others in the behalf of religion and humanity.

**Attorney Roger W. Butterfield of Grand Rapids, June 8, 1886[1]**

While Judge Withey did not have the advantage of what is generally known as a liberal education, he had what has been called the better education of circumstances. As a lawyer he not only had a wide and thorough knowledge of the books, but this knowledge was supplemented by the possession to an unusual degree of that happy balance of the reasoning faculties, commonly known as common sense; added to this was a sagacity and knowledge of men and things that enabled him to separate the true from the false. In the trial of cases he had the faculty of getting at the substance of the matter at issue; of putting to one side all extraneous circumstances, all prejudices and false coloring.

Pre-eminent above all his other characteristics, to my mind, was his love of justice and its orderly administration in court. This was manifested in the simplest arrangement of the trial calendar of his court, that every cause should have a full and speedy hearing on its merits. It was manifested in the constancy in which with feeble health and with everything to induce him to relaxation, he continued at work in all times and seasons, lest some one should ask at the door of his court for justice and find it closed. It was the

main-spring of patience and industry with which he examined every detail of a case hoping and seeking for the last ray of light that might fall upon it.

It was said as we spoke of him after his death, that he was a man of but little pride of opinion; that frequently after he had announced his views upon a legal question arising in the course of a trial, he was so willing to change them if convinced that the weight of reason and authority was the other way. I do not believe that mere want of pride of opinion explains this. Like all men whose opinions are worth anything, Judge Withey had a very proper pride of opinion, but in his mind the end to be obtained, in the trial of a cause, was the administration of the law, and the security of justice. In comparison with these ends which seemed to him so important, the mere question of pride of individual opinion was nothing; with him the first, last, constant and only duty of a judge was to do justice and the doing of this duty was never absent from his consciousness.

**"He possessed the unbounded confidence in his integrity of both suitors and lawyers; and his judicial life was without reproach. No prouder epitaph need be inscribed on his tomb."**

**Chief Justice Champlin of the Michigan Supreme Court,[2] June 8, 1886**

It is . . . of his character as a judge that I would more particularly speak upon this occasion. When he was appointed to that position he was forty-three years of age. His judicial labors extended over a period of nearly twenty-three years. He possessed those qualities of mind which eminently fitted him for judicial investigation. He was diligent and painstaking and free from partisan feelings. He was well grounded in the principles of the law, and exhibited in a marked degree the ability to discern and apply those principles to the cases which came under his consideration. He came to conclusions only after the fullest investigation, and a conclusion once reached assumed the force of conviction. Upon doubtful questions he scrutinized every argument, weighed every reason, and sought for a solution which would mete out substantial justice to the parties litigant.

So long as courts are established for the attainment of justice, the substantial merits of a controversy can never be lost sight of in the disposition of a cause. It is often a reproach to the administration of the law, that the ends of justice are delayed and sometimes defeated by the interposition of some legal technicality which determines no rights, and leaves the merits of the controversy untouched.

Judge Withey always took broad and conservative views, and overlooking technicalities, and avoiding all side issues which would draw him away from the substantial issues, gave judgment in accordance with what he regarded as the right and justice of the case as established by the testimony submitted to him. Few challenged the correctness of his decisions, and none regarded them other than the unbiased and impartial convictions at which he had arrived. He possessed the unbounded confidence in his integrity of both suitors and lawyers; and his judicial life was without reproach. No prouder epitaph need be inscribed on his tomb. The record he has made demands no apology; and his memory will remain a grateful remembrance to all who shared his friendship or possessed an intimate acquaintance with him. It is with sorrow that it must be said that the affectionate husband and father, the good citizen, the true friend, the wise counselor, the impartial judge is dead. Dead!

So, who was this man, how did he get to be district judge, and what were his court and his community like during the first two years of his tenure—which coincided with the last two years of the Civil War? And why should we care?

## Pre-War Years

At Solomon Withey's birth—in 1820 in St. Albans, Vermont—Thomas Jefferson and John Adams still lived,[3] and the United States, at 44 years, was still young. Abraham Lincoln was an 11-year-old schoolboy in Indiana. Withey's grandfather, Silas, who had fought in the Revolutionary War, would live into his grandson's teenage years.

After spending his youth in Vermont, Withey journeyed to Grand Rapids in 1838 following his father, who, for reasons unknown, had moved from Vermont

two years earlier. Withey taught school for a year and then studied law with local attorneys. He was admitted to the Kent County Bar on May 17, 1843, becoming the tenth lawyer in a village with a population of 1,500. His admission came 20 years to the day before he first took his seat on the federal bench.

In addition to practicing law in a number of partnerships, Withey also served as a probate judge and later as a state senator during the first years of the Civil War. During his term, the legislature held extra sessions to "meet the exigencies of the rebellion." He was a prominent businessman and served as an officer of First National Bank—and was (surprisingly for us) elected as its president during his judgeship. He was also a charter member of Park Congregational Church, which still stands today, across from Veterans Memorial Park.[4]

## Grand Rapids in 1860

To really appreciate how different life was like in Grand Rapids in 1860 would require setting aside all of the political and social history and economic progress that has occurred and immersing oneself, uncontaminated by history, into the life and spirit of the times. That is hard to do. Grand Rapids was still very much a frontier town. The "original" settlers started arriving just 27 years before, in 1833, most escaping the rocky soil of New England and New York and seeking fertile and attractively priced farmland, as well as adventure, opportunity, and fortune.[5] Life was hard and often short, and the future was anything but certain. They struggled—not to enjoy life, but simply to live.[6]

The early speculative bubble that attracted many of the original settlers from the East abruptly burst with the financial panic of 1837, which pushed the entire nation into a deep, long-lasting depression.[7] Conditions of everyday life worsened, and hope for the future dimmed. Not until the Civil War did the economy fully recover. In short, very little in life was easy for inhabitants of Grand Rapids in the years before the Civil War.[8]

The uncertainty that attended everyday life for the city's residents was every bit as present for the nation. The United States was still a young experiment in democracy, experiencing one political crisis after another. The fragility of the country, since its 1776 founding, cannot be exaggerated. No one knew whether, how, or in what form it would endure. The historical track record for this form of government was poor.[9]

But despite difficult times, the people were resilient and kept striving for a more prosperous life and a better community. Most lived peaceably on farms and in small villages. War—much less war against their fellow countrymen—was unthinkable.

## Creation of the Western District of Michigan in 1863

Michigan had been admitted to the Union on January 26, 1837. The federal court district for Michigan was created even before that—on July 1, 1836—in anticipation of statehood. President Andrew Jackson appointed Ross Wilkins as the first district judge for the statewide district, and he sat in Detroit. Out west, in the remote and yet-to-be incorporated Grand Rapids, original settlers were still arriving by horse and wagon.

In 1845, the first bill aimed at dividing Michigan into two judicial districts was introduced in Congress. This was a year before a 37-year-old Springfield, Illinois lawyer and future president was elected to his only term in Congress. The House Committee on the Judiciary reported that "[s]uch a division is inexpedient." Another attempt was made in 1858. Once again, the Committee reported that "[t]here is no necessity at this time for a division of the state into two judicial districts." We do not know why these efforts were made or why they failed.

Another bill was introduced in February 1862, and it passed the House of Representatives on July 17. The bill met some resistance in the Senate, but finally passed on February 21, 1863, by a vote of 25 to 11. Presumably, the increased number of federal laws enacted because of the Civil War's demands, Grand Rapids' growth, and Detroit's distance (travel by slow-moving—18 mph—trains on a single track did not connect the cities until 1858) had by then made the creation of the Western District more attractive. The fact that Lincoln had carried Grand Rapids and Michigan probably helped.

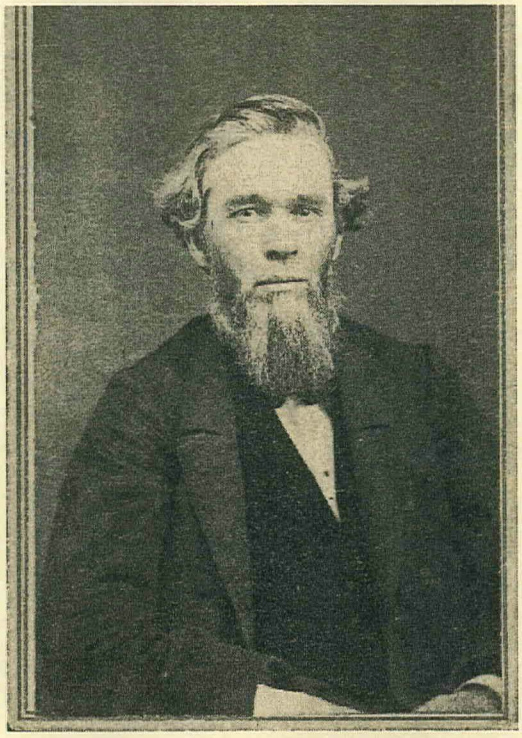
According to the February 25, 1863, Congressional Record, President Lincoln signed the bill into law on February 24:

> A message was received from the President of the United States, by Mr. Nicolay, his private secretary, notifying the House that he did, on the 24th instant, approve and sign bills of the following titles, viz:
> H. R. 267. An act to divide the State of Michigan into two judicial districts, and to provide for holding the district and circuit courts therein.

Interestingly, nearly a year later, on February 15, 1864, a resolution was introduced in the House of Representatives to consider abolishing the Western District:

> RESOLVED, That the Committee on the Judiciary be instructed to inquire into the amount of business done in the United States district court for the western district of Michigan, and to report whether the public interests would not be best subserved by abolishing said district and incorporating the territory embraced therein with the eastern district of Michigan.

Again, the reasons for its introduction and failure are lost to history.



*An earlier photograph of Judge Withey.*

President Lincoln appointed Judge Withey on March 11, 1863, and the Senate confirmed him the next day. His appointment came almost exactly half-way through the Civil War, so his first two years of service coincided with the last two years of "the most wicked rebellion that ever cursed any people," as the July 20, 1863, edition of *The Grand Rapids Eagle* phrased it some two weeks after the Battle of Gettysburg. Judge Withey was appointed for life "or good behavior," and his annual salary was $3,000–$50,000 in today's dollars.[10]

## Grand Rapids During the Civil War

Judge Withey's appointment must be placed in context with the times. Once the rebel guns exploded on Fort Sumter in the pre-dawn hours of April 12, 1861, the survival of the nation as it then existed was placed in doubt. This was the bloodless opening to the bloodiest war in American history, and no one knew how or when the war would end or what the future held.

At the outset, the southern insurrection inspired Michigan citizens with patriotic fervor.[11] Fathers and sons eagerly enlisted; some youngsters lied about their age in order to get in. Volunteers were enthusiastic about the cause and eager for adventure. Mrs. Withey acted as secretary for an organization of Grand Rapids women who resolved on April 23, 1861:

> That the ladies of the Valley City are not unmindful of the perils which threaten our country, and they appreciate the patriotism which impels their fathers, husbands, brothers and sons to take the field in defense of the Flag of our Union.[12]

But as expectations of a short conflict became disappointed, and as the war dragged on and casualties escalated, such enthusiasm turned to anxiety and despair.

War pervaded virtually every aspect of daily life. Grand Rapids and Kent County had populations of 8,000 and 30,000, respectively.[13] The county sent 4,214 men to war (all volunteers except for 93 draftees).[14] Of those, some 536 died, and many more suffered amputations and other grievous wounds as well as psychological scarring from unspeakable battlefield horrors.[15]

While so many sons, brothers, and fathers fought epic battles in far-off countrysides, those remaining at home devoted themselves to contributing in their own way, as recognized in *A Citizens' History of Grand Rapids, Michigan*:[16]

> While the men of Grand Rapids were fighting for their country, the people organized for every kind of relief work. Committees were formed to care for the wives and other dependents of those who had gone to the front. In every church there were aid societies, composed of women whose every spare moment was given to war work, the relief of the sick and the destitute. In every home surplus sheets and pillow slips were made into bandages and the worn table linen scraped into lint and sent to hospitals and battle fields

for the surgeons' use. Men, women and children engaged in patriotic work.

* * *

But, as has been observed, this city's part in the Civil War—both in the field and at home—was glorious.

Hardly a moment passed when the war did not dominate the city's mind.

## The First Session of Court

The very first session of court for the Western District occurred on May 18, 19, and 20, 1863. The bloodiest day of the war, the Battle of Antietam, had taken place during the previous September, the Union had suffered disastrous defeats at Fredericksburg in December and at Chancellorsville in early May, and the prospects for victory seemed bleak. The Battle of Gettysburg—the most important battle ever fought in the Western Hemisphere—would take place in six weeks. Grant's siege of Vicksburg had just begun. Thirty-nine year-old, iconic General Stonewall Jackson had died eight days before, from friendly fire.

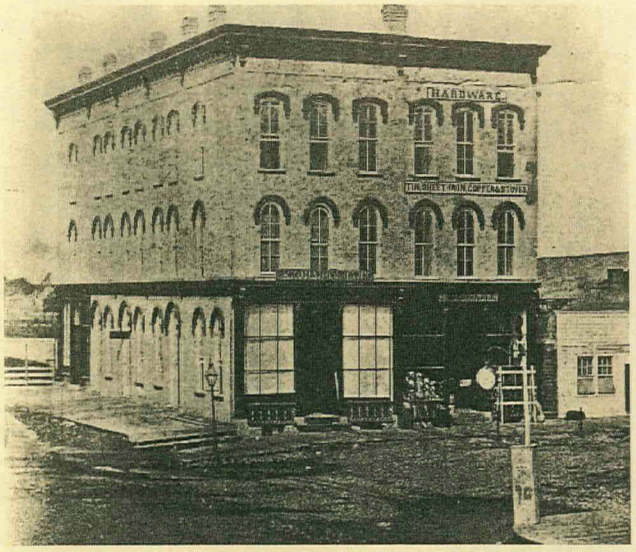
Court was held at "the District Court Room." We do not know where that room was then located. During those three days, while cannons thundered in distant battlefields, the court quietly attended to ceremonial and ministerial duties such as reading the commission from President Lincoln appointing Judge Withey, making appointments, and procuring a seal and record-keeping books.[17] The court admitted 21 "Attornies" and heard no cases.[18]

## The New Courtroom

The next session did not take place until July 1 and 2, 1863. While the Battle of Gettysburg fiercely raged some 500 miles to the southeast, the newspaper reported on the grand opening of the new federal courtroom located in Ball's Block—a three-story building on the northwest corner of Pearl and Canal (now Monroe), where the Amway Grand Plaza now stands. Daniel Ball's Bank and McConnell Hardware were also located there.[19]

***The Grand Rapids Daily Eagle,* July 1, 1863**

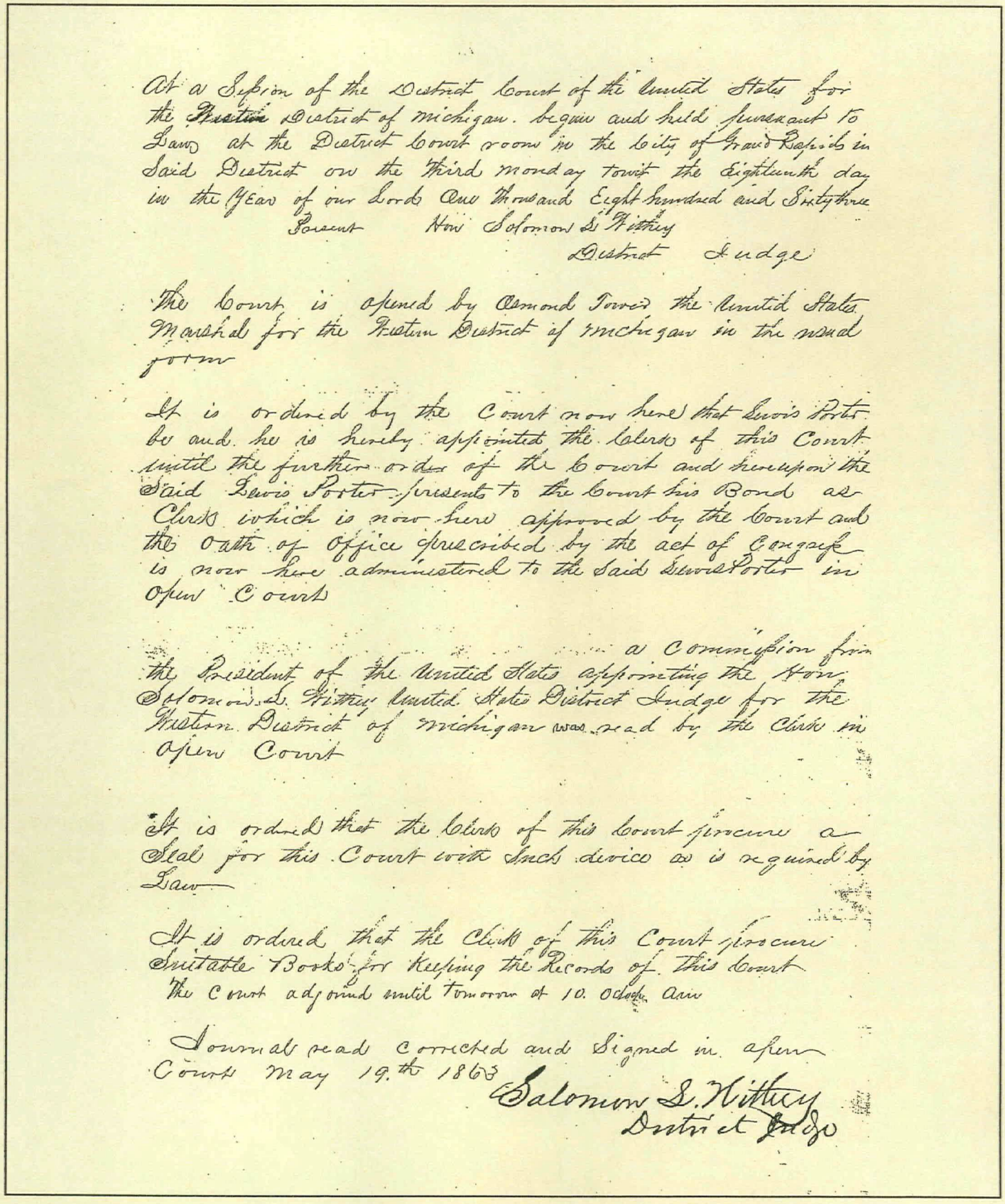
U.S. Court Room. A large, convenient and well lighted room has just been finished, in splendid style, in Ball's Block, for a U.S. courtroom. The walls, doors, window frames, etc., have been painted and grained in the best style of the painter's art. Tasty inside blinds, matching the walls in finish, have been put upon the windows, and a




*First federal courtroom in this building—at 2 Ball's Block (1865).*

*Another view of the building containing the first federal courtroom, looking down Monroe Avenue (1859).*

*Same building, with additions—became Sweet's Hotel in 1869. Location of the courtroom changed twice before the government building was completed in 1879. (1872 photo)*



At a Sepion of the District Court of the United States for the Western District of michigan. begun and held pursuant to Laws at the District court room in the City of Grand Rapids in Said District on the third monday towit the Eighteenth day in the Year of our Lords One Thousand Eight hundred and Sixty three

Present Hon Solomon L Withey
District Judge

The Court is opened by Osmond Tower the United States Marshal for the Western District of michigan in the usual form

It is ordered by the Court now here that Lewis Porter be and he is hereby appointed the Clerk of this Court until the further order of the Court and thereupon the Said Lewis Porter presents to the Court his Bond as Clerk which is now here approved by the Court and the Oath of Office prescribed by the act of Congress is now here administered to the Said Lewis Porter in Open Court

a Commission from the President of the United States appointing the Hon Solomon L. Withey United States District Judge for the Western District of michigan was read by the Clerk in Open Court

It is ordered that the Clerk of this Court procure a Seal for this Court with Such device as is required by Law

It is ordered that the Clerk of this Court procure Suitable Books for Keeping the Records of this Court
The Court adjourned until tomorrow at 10. Oclock Am

Journal read Corrected and Signed in Open Court May 19.th 1863

Solomon L. Withey
District Judge

*A clerk's journal entry for the first day of court, May 18, 1863, signed by Judge Withey.*

finely finished, elevated bench, for His Honor, Judge Withey, has been erected at one end of the hall, with a desk for the Clerk, to match in appearance, in front of it. To make the room complete in appearance and comfort, the floor has been covered with grass or hemp carpeting, and the room is to be provided with arm or office chairs. Altogether, this is one of the most convenient and tasty court rooms we ever saw, alike creditable to the man who planned the work and the artists who did it.

***

U.S. Court in Session. An adjourned session of the Court for the Western District of Michigan—Judge Withey—opened in the new court room in Ball's Block, this A.M.

No photographs or drawings of the courtroom are known to exist. The reference to a "well lighted room" refers to the size and number of windows. The only artificial light would have come from candles and whale oil or kerosene lamps.[20]

Transportation to the courthouse was by foot, horse, or carriage. Some traveled long distances by the few trains available. The judge and the small number of lawyers knew each other well.

That room served as the courtroom until approximately 1869 when the building was expanded and became Sweet's Hotel. The "government building" was completed in 1879, and the first court session was held on October 7, on the third floor.[21] [22] [23] Judge Withey presided there for about six years, until his death. That building was demolished in 1909 and replaced by a larger building, which eventually housed the Grand Rapids Art Museum until this year.

Just two days after the first session in the new courtroom ended, on July 4, 1863, the citizens of Grand Rapids celebrated the 87th anniversary of the nation's birth, as Judge Withey presided:

1863. City full of people. Steamboats and excursion trains crowded. President of the Day, Judge S. L. Withey; Orator, U.S. Senator Jacob M. Howard. Exercises on Island No. I [one of four islands – located where the Amway Grand Plaza Tower sits]. Balloon ascension from same place, by Prof. Ayeres.[24]

During these festivities, Grand Rapids was yet unaware of the horrific details of the epic battle in the Pennsylvania countryside that had concluded on the previous day with Pickett's disastrous charge. Neither did they yet know that, on this day, Vicksburg would surrender to Grant's army, cutting the Confederacy in half and giving control of the Mississippi River to the North. Only much later, after the war had ended, would it be understood that these events represented the turning point of the war.

## The First Case

The court, presumably having little business at first, adjourned until September 6, 1863, for its fall term. The very first case, like most of Judge Withey's cases during his first two years, had direct ties to the war. It was a habeas corpus case and was described in the newspaper:

***The Grand Rapids Daily Eagle*, September 8, 1863**

His Honor, Judge Withey, was occupied, yesterday, in the consideration of an important habeas corpus case. The Provo Marshal was ordered to show cause why the writ should not issue and discharge Geo. W. Champlin, who was in custody as a deserter from the 21st Regiment of Michigan Volunteers.

The application was made by the father, on the ground that Champlin was illegally enlisted, being only seventeen years of age, and not having the consent of the parent to such enlistment. Champlin was enlisted and mustered into the service at Ionia, where his father lived, and had been in the service about six months receiving bounty, pay, and rations, to the knowledge of his father. He deserted in Tennessee; and, on his return home, was arrested by the vigilant Provost Marshal of this Congressional district.

D. W. Jackson, Esq., of Ionia, appeared for the petitioner, and B. D. Ball, Esq., Assistant U. S. District Attorney, appeared for the respondent. The case was very ably argued by the respective counsel. The argument of Mr. Ball was an elaborate exposition of the law touching the subject, and was, indeed, a masterly effort—one of the finest legal arguments we have heard in this city.

The Court held that the enlistment of a minor was a contract to which the consent of the parent or guardian was necessary, but that such consent need not be in writing; that it might be verbal or implied; that Champlin, having been enlisted, mustered into the service, where he remained for six months, with the knowledge of his father, receiving bounty, pay, and

rations, and no effort having been made by the father for his release, until he was arrested as a deserter, he was thereby estopped from setting up the want of consent to his enlistment. The writ was, therefore, denied.

This was Judge Withey's only habeas corpus case during the war, because President Lincoln suspended the writ (for the third time) just eight days after Withey decided this case.[25] [26]

## *The New York Times* Reports

Another case during that fall 1863 term was of such notoriety as to be published in *The New York Times*. It involved a violation of the postal monopoly.

***The New York Times*, November 15, 1863**

A case of more than usual importance to the business community was decided by the United States Court for the Western District of Michigan, at Grand Rapids, on the 27th of October, 1863, the particulars of which were as follows:

Business men on the line of one of the principal railroads have been in the habit of sending their business correspondence on the freight and mail trains, marked R.R.B., or R.R.S., in violation of the 159th section of the postal laws, which is to the following effect:

"That all persons whatsoever, who shall transmit by any other means than the regular mail service, any letter, package or other mailable matter, excepting newspapers, magazines and periodicals, or who shall deliver or deposit for the purpose of being transported by such unlawful means, the said mailable matter, shall forfeit and pay the sum of $50."

The attention of Special Agent VanVechten was called to the matter, a quantity of letters seized, and the parties sending them were presented to the Grand Jury for indictment, and a bill found against three prominent business men. In one bill there were nineteen counts, the other two one count each. The parties were arraigned and pleaded guilty.

This custom had become general on the line of many railroads—so much so that the Post-office Department suffered great loss.

The attention of the railroad officers has been called to the 157th and 158th sections of the postal law. Those sections make the railroad company liable to a fine of $100 for each and every letter carried outside of the mail, except those written by the officers of the road or their agents to the officers of the road or employees, unless said letters are inclosed in a Government stamped envelope of suitable denomination, and of the same value as the legal postage would be, were it sent by mail. The envelope must be addressed with ink and sealed. The law also imposes a fine of $50 on the conductor of the train for each and every letter carried in violation of said section.

The arrest of the parties above-mentioned created considerable excitement among the business men, as many more had been engaged in the violation, but did not happen to get caught. It is but fair to state that the parties pleaded ignorance of the law, and this article is for the purpose of calling the attention of others who have in like manner violated the law, innocently.

Four days after this article appeared, President Lincoln gave, in three minutes and 269 words, what is widely regarded as the most noble and stirring speech in American history. This prescient review of the address appeared in *The Grand Rapids Daily Eagle* on November 30, 1863:

President Lincoln's Little Speech. —Of this speech—which we published a short time since—the Springfield (Mass.) *Republican* says:

"Surpassingly fine as Mr. Everett's oration was in the Gettysburg consecration, the rhetorical honors of the occasion were won by President Lincoln. His little speech is a perfect gem; deep in feeling, compact in thought and expressed tasteful and elegant in every word and comma. Then it has the merit of unexpectedness in its verbal perfection and beauty. We had grown so accustomed to homely and imperfect phrase in his productions that we had come to think it was the law of his utterance. But this shows he can talk handsomely as well as act sensibly. Turn back and read it over—it will repay study as a model speech. Strong feelings and a large brain were its parents—a little painstaking it accoucheur."

## The Court's Irregular Schedule

It is remarkable how infrequently the court was in session during the first two years:[27]

1863: May 18-20, July 1 and 2, September 8, and October 22–November 17

1864: May 16–June 16 and October 18–December 6

1865 (first half): January 9–19 and May 16–June 2

The Court proceedings typically began at 10 a.m.

## Grand Jury Proceedings

A considerable portion of Judge Withey's duties involved the grand jury. He assembled one in the fall of 1863 and another in the spring of 1864. Only men were allowed to serve. (And in almost every case, only men were defendants.) Names of jurors were published in the newspaper, as were resolutions of thanks once their duty concluded. Judge Withey's May 1864 charge was published in the paper. It reads in part:

***The Grand Rapids Daily Eagle,***

**May 19, 1864**

GENTLEMEN OF THE GRAND JURY: In the prosecution of criminal cases in the Courts of the United States, it becomes necessary before a trial can be had, that the person prosecuted should be first solemnly charged by a Grand Jury with the particular charge for which he is to be arraigned after diligent and impartial inquiry by them concerning the guilt of the person accused.

You are called from among your fellow citizens to discharge the duty of Grand Jurors for the present term of the Federal Court, in the interest alike of the Government and of the people, and on you rests the obligation of saying who shall be put on trial for violation of the laws of Congress. I say laws of Congress, because this Court has no authority to try causes other than such as arise under the statutes of the United States. We have no common law jurisdiction.

I trust you will find your duties sufficiently defined in the brief instructions I shall give you, and, although the presentation of a citizen as an offender against the law, may not be to you, in all respects, a pleasant duty, yet those who shall be proven before you to have incurred its penalty, it will be your imperative duty to present for trial through the forms of an indictment.

In criminal statutes, gentlemen, that which is enjoined as a duty or prohibited from being done, is enforced by fines and penalties. There is a class of cases that may be presented by civil or criminal proceedings – perhaps in the more common or restricted sense they hardly rank as crimes – and yet, growing as they do out of the relation and supreme obligation of every man to the State, are regarded criminal and punishable as misdemeanors.

They are distinguished as wanting in that moral turpitude which characterizes the higher grade of offenses, like murder, arson, larceny, assault with intent, etc. because consisting in a mere disobedience of a public law, enjoining upon the citizen a duty to the State or Nation, the doing or omitting to do which would be wholly wanting in the element of wrong were it not for the statute commanding or forbidding the act.

Were it not for the statutory enactment, the doing of the thing complained of would in such cases be perfectly proper – but becomes publishable as a misdemeanor or offense when done in violation of express law. Cases of this character arise under most public statutes prohibiting acts and enjoining duties.

**". . . this Court has no authority to try causes other than such as arise under the statutes of the United States. We have no common law jurisdiction."**

Strictly speaking, a CRIME is that which is CONDEMNED; any act which violates a law, divine or human. But we have to do with crime only in the sense of violating public law. The higher grade of offences, such as murder, arson, theft, etc. involve higher moral turpitude than the minor wrongs against public rights which we call misdemeanors, but these latter are more than technical legal wrongs. They involve moral wrong, because there is a breach of moral duty. The duty is created by the statute, but it is a duty none the less.

In all this class of cases, like the mere aggravated crimes, the question for the jury is, simply, as to the GUILT or innocence of the accused, and not as to the policy of the statute.

Congress, the supreme law making power, has determined the question of public policy, by the passage of a penal statute; and the good of the citizen and of the Government, depends quite as much on a rigorous enforcement of such laws by indictment and punishment of the offender, as on enforcing the law to punish those offenses of a deeper and more atrocious nature.

The obligations and duties of the Grand Jury are not always understood, as I have reason to believe from a somewhat careful observation, during nearly twenty years practice in the Courts.

I do not mean to be understood as saying that such is the case with all Jurors. On the contrary, the majority of almost every Jury, probably, entertain very correct views of the duties of that body. What I do mean to say is, that there are almost always some jurors of the panel, who are disposed to allow their judgment, not unfrequently, to be affected by various considerations which really have no place in the jury rooms, and ought never to influence the judgment in determining whether a bill shall be found. Sometimes these considerations operate to the prejudice of the individual whose case is before the jury for investigation – and sometimes operate to the injury of the public good. Let me call your attention briefly to this subject.

The penalty imposed by the Statute in a class of cases, when applied to an individual case, may seem quite too severe, and in such instances jurors sometimes feel disposed to excuse both offenses and offender altogether.

Now it is just here, that your attention should be arrested by the consideration, that you are not to inquire about the penalty at all for whether the measure of punishment is to be much or little, is with the law and the Court, and not for the jury.

**"... there are almost always some jurors of the panel, who are disposed to allow their judgment, not unfrequently, to be affected by various considerations which really have no place in the jury rooms ..."**

Your duties are not affected by the question of penalty or measure of punishment. Your single inquiry is, whether, according to the evidence adduced, the accused has violated the law, and thus incurred its penalty, without regard to the amount of that penalty. The Court will, in the exercise of that discretion committed to it, determine, under the statute, and in the light of all the circumstances of the case, the measure of punishment for each offense on conviction of the offender.

Again, the jury are sometimes disposed to say the public good does not require that a class of cases shall be prosecuted – and therefore jurors will vote "no bill." There may occasionally be a case where the temptation will be very strong to indulge in this view – instances where the offense charged and proven, is apparently of little public concernment – but I find no way of escape for the Jury – the law and your oaths will not justify your so doing.

The Grand Jury cannot be supposed to know, in the jury room or out of it, that the public good does or does not require a given case to be presented and prosecuted, for even the case may be, in itself considered, of slight moment, yet in its wider influence on the public weak, and in its importance as an example to teach others the military lesson of yielding implicit obedience to the laws, it may be of incalculable moment. Indeed, public policy demands that every one guilty of an offense shall be held for trial. The law making power has determined that public policy requires all who do certain acts, or omit to do others, contrary to expressed enactments, shall submit to certain penalties, otherwise the legislature would not have made the requirement.

So that, while you are to present no one from motives of public policy merely, you are to ignore no bill from any such motive. While you are to present no person who is not shown to be guilty, you are not to omit presenting him if shown to be guilty; and, while no man is to be accused by you because the penalty seems too great for the particular offense; you are to find a bill against no person, however slight the penalty, who is not first shown to be liable. This view is in harmony with what I before said. You meet herein the interest alike of the government and of the people. With these general views for your guidance, I proceed to call to your attention to some particular acts of Congress under the provisions of which, I am advised by the honorable District Attorney you are likely to be engaged a portion of your sitting.

A later, similar charge to the grand jury was published in *The Grand Rapids Daily Eagle* on November 12, 1864.[28]

## The Sparse Record

No transcripts or files exist from the first two years of Judge Withey's term. The one known opinion[29] (a published one, at that) was decided on November 11, 1863, eight days before Lincoln's Gettysburg Address.

To understand what was happening in the court then, our only recourse is to the clerk's handwritten journal entries (stored at the National Archives Regional Center in Chicago) and occasional reports of court proceedings published in *The Grand Rapids Daily Democrat*

and *The Grand Rapids Daily Eagle*. And on a very few occasions, those newspapers printed Judge Withey's own words—such as his charges to the grand jury and his remembrances of President Lincoln.

During its first two years, the court's business was largely dedicated to criminal violations of federal laws that had been enacted during the Civil War. The accompanying chart shows the criminal cases presented to the court during its first two years.[30]

Almost all of these cases had some connection to the Civil War. There were also civil cases, but they were not widely reported in the newspapers.

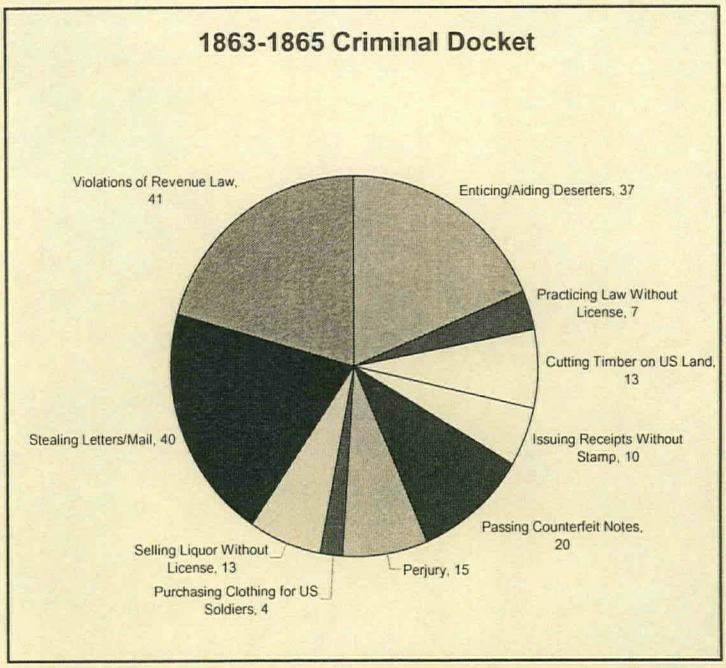
## Military Service Cases

Grand Rapids was a recruiting, training, and embarkation center for soldiers in the war. Volunteers arrived from all over, and they trained at Camp Anderson (located where the Job Corps Center now sits, on the site of the former Grand Rapids South High School) in an almost festive atmosphere. Soldiers departed—with great pomp, pageantry, and tears—from the railroad depot (which was located on the southeast corner of Plainfield and Leonard) to Detroit and then on to Washington.[31]

While so many volunteered and courageously served, desertion plagued the army—more so as the war dragged on. Causes included sheer terror, the daily hardships of war, forced marches, thirst, suffocating heat, disease, delayed pay, loneliness, and monotony.[32] The number of Union deserters exceeded 200,000.[33]

Many prosecutions were brought in federal court, but not against the deserters themselves, who were dealt with harshly—sometimes by death—under military justice. Rather, the military cases brought before Judge Withey involved charges such as "aiding a deserter" or "enticing or advising a soldier to desert." Four charges were also brought for "purchasing clothing for U.S. soldiers," the civilian clothing apparently intended to be used to facilitate desertion.

The Union resorted to a draft when President Lincoln signed the Enrollment Act on March 3, 1863. The Act required the enrollment of every male citizen between the ages of 20 and 45 and made them eligible for the draft. It also permitted payment of a $300 ($5,000 in today's dollars) fee for an "exception" for one draft. Selections were by lottery. The New York riots in the




summer of 1863—where over 100 people died—were the most dramatic of the incidents attending the general outcry against the law.[34] [35] [36]

Judge Withey also presided over perjury cases involving draft evasion. For example, one defendant was charged with "swearing falsely, for the purpose of obtaining exemption as a drafted man,"[37] and another with "making an affidavit that he was an alien, and had never voted in [Kalamazoo] County."[38]

## Revenue Cases

The federal government required a tremendous amount of money to finance the war machine, and it therefore enacted "revenue laws" intended to accomplish that end. It imposed taxes on liquor, tobacco, manufacturers, professionals, railroads, banks, and insurance companies. In addition, in July 1861 it passed the United States' first income tax, a three-percent flat tax on all net income above $800 ($13,300 in today's dollars[39]). In 1862, the government passed legislation that made the tax progressive: three percent on income of $800 to $10,000 ($165,600 in today's dollars[40]) and five percent on income above that. These revenue laws contained expiration dates because they were temporary war-time expedients.[41]

Human nature being what it is, the tax laws were destined to be evaded. Some people got caught and, as a result, prosecutions were brought for failure to pay income taxes and failure to pay for stamps or licenses.

In his 1864 charge to the grand jury, Judge Withey described the importance of these laws:

> No doubt, gentlemen, you will be called on by the Government to consider a number of cases for alleged violation of the internal revenue laws. Perhaps it would be enough for me to say that, what I have urged upon your attention in regard to enforcing the laws of Congress is applicable to revenue cases, but I cannot turn from the subject with so little consideration.
>
> The internal revenue laws are based on the necessity of the Government for increased revenue. The public good demands that these laws shall not only be respected but obeyed. We enjoy, through the protection given to us by the Government, all our rights and privileges, and when our country demands extra aid, it is only asking what it has a right to ask, and what every citizen ought to be willing to render. The American Government has asked less contribution from the people than any other Government in the world, and at the same time has conferred upon the citizen more privileges and protected him in the enjoyment of more rights than any other Government.

**"And if you would aid the Government in this time of her need and trial, you will examine most thoroughly and completely into every alleged infraction of the revenue laws . . ."**

> But if these things were not so, the principle would not be changed, that of the obligation of the citizen to the Government and the right of the Nation to demand revenue and enforce the demand. When a Nation is in war men are necessary to make up its armies, but without money to pay, clothe and enlist these armies, the men would soon disappear and the Nation would be without a single arm of defense, and the people would cease to have its protection. In paying taxes to the State, in supplying revenue to the Government, we are only paying a part of what we justly owe.
>
> And to refuse to pay what is justly due from us to another, or seek in any way to withhold it, it is not honest, but when we do this toward the Government, it is more than dishonest, it is criminal, and it can have no sympathy with the person who seeks to avoid so plain a duty, and in the present emergency of our country.
>
> The laws of Congress prohibit, under certain penalties, the making of a promissory note or other enumerated instruments in writing, without a stamp, or the carrying on of certain branches of business, without paying for and obtaining license therefor and also requires payment of a given tax on all income in excess of $600, and makes other requisitions upon us pecuniarly.
>
> ***
>
> Your duty appears very plain, in regard to those whom the Government may prove to you to have been guilty, under the internal revenue laws, of violating their obligations.
>
> And I say to you, gentlemen, that time enough has passed since the enactments of Congress were promulgated, so that none ought to offer the plea of ignorance of the law as an excuse – even if it were a valid plea if true. But inasmuch as a defense is not proper before a Grand Jury, and no such excuse can be there offered, I instruct you, that you are to presume as the law does, that no one is ignorant of the law. On the contrary, you are to presume that every one knows the provisions of the statutes of Congress, and hold him responsible for his acts done in violation of such statutes.
>
> ***
>
> You are to be no respecters of persons, gentlemen, but you are to present every man truly, according to the evidence which shall be given before you. And if you would aid the Government in this time of her need and trial, you will examine most thoroughly and completely into every alleged infraction of the revenue laws, and leave no man unpresented from fear, favor, or hope of reward – for thus you will bring to punishment the guilty, and teach the unwilling that his true interest is to render unto Government the things which belong to it.

Indeed, the only existing Withey opinion from the Civil War years involves two charges brought under the revenue laws. In *U.S. v. Chapel* and *U.S. v. Crosby*, 25 F. Cas. 395 (Nov. 11, 1863), Judge Withey held that engaging in business as a lawyer without a license (fee of $10) and neglecting to affix stamps to a promissory note were both indictable offenses under the revenue laws.

## Post Office Cases

Citizens regularly gathered at the post office, located where the Fifth Third Bank building now stands, and it became a chief center of community life. Judge Withey,

who had clerked there when he first came to Grand Rapids, heard a surprising number of cases involving stolen mail—usually mail containing money or valuables. He described the importance of the U.S. mail in his 1864 charge to the grand jury:

> The mail is the great vehicle of communication between different localities, and into it goes communications of great importance, and packages of large as well as small value. The government employs the most efficient agents to watch over this great interest and ferret out all violations of the postal laws, and to bring offenders against these laws to punishment. Nevertheless, men are found who will take the risk of detection–and letters, money and valuables are often stolen from mails and post offices.

He further explained that "robbing the mail is the most wanton offense, and should receive your very particular attention. The laws against these crimes should be most rigorously enforced."

## Timber Cases

Grand Rapids sat amidst a vast forest—pine to the North and hardwoods to the South—and harvesting lumber became one of the primary economic activities that drew people to the region. Huge quantities of logs were floated down the Grand River to Grand Rapids sawmills, and then lumber was shipped on riverboats to Lake Michigan.

Quite a few cases brought before Judge Withey involved criminal charges for cutting timber on federal land. According to Judge Withey's charge to the grand jury, someone who engages in this activity "recognize[s] the wrongfulness of his act and is, therefore, entitled to no clemency at the hand of court or jury."

## Counterfeiting Cases

On February 25, 1863 (one day after the bill creating the Western District was signed into law), President Lincoln signed the National Bank Act, which, for the first time, created a national currency.[42] Naturally, this attracted counterfeiters. In discussing this crime with the grand jury, Judge Withey stated:

> The Government of the United States has issued a National currency which is likely to supercede to the paper currency now in use issued by private banking associations, and it concerns all alike to protect the Government currency from being counterfeited or altered from a less to a greater denomination, and then put in circulation as genuine.
>
> Congress has passed ample laws to punish offenders who counterfeit the National currency, and it is enough that I recommend to your attention its provisions. I have no fear that you will permit an offender against its penalties to go without punishment so far as your duties go, and I am advised by the District Attorney that you are likely to be occupied with business arising under these laws.

He sentenced one convict to hard labor at Jackson for five years.[43]

## Comments on the Civil War

We know that the enormous catastrophe called the Civil War consumed the citizens of Grand Rapids and affected them for the rest of their lives. In his concluding remarks to the Grand Jury on May 18, 1864, Judge Withey reflected on the war, which had been waging for three wearying years:

> GENTLEMEN OF THE JURY: – I cannot let the hour for convening the Court pass, without expressing, what all our hearts unite in rendering, gratitude to God for the success in recent battles which has attended the armies of our country.
>
> It is a subject for joy and gratitude, as well as an occasion of congratulation, that we have larger and renewed evidences day by day that the Government will surely triumph, speedily, over all its enemies, and a glorious peace be ushered in.
>
> May the God of Battles and of Nations continue to attend our armies and crown their heroism and patriotism with complete victory, and blessings be vouchsafed to our cause and country.

These remarks came just a few days after the Union had initiated a massive spring campaign leading to bloodbaths at The Wilderness (May 5-6), Spotsylvania Court House (May 8-12), and Cold Harbor (June 1-3). Even by this time, victory for the North was by no means assured.

In March of that year, President Lincoln had appointed 41-year-old Ulysses S. Grant as lieutenant general in command of the largest army in the world. He had earlier said of Grant after the battle of Shiloh: "I can't spare this man—he fights." The spring of 1864 was among the darkest periods of the war for the Union cause, and many feared that combat would never end.

ABRAHAM LINCOLN

But of course, it did, lasting not quite another year—until April 1865. That was also when President Lincoln was assassinated, making it one of the most remarkable months in American history.[44 45]

## President Lincoln

Judge Withey was a Republican (the party having been founded in Jackson, Michigan—or, by some accounts, in Ripon, Wisconsin—in 1854) and a Lincoln appointee. His remarks on the April 14, 1865 assassination reflect his admiration and respect for the fallen president.

***The Grand Rapids Daily Eagle*, May 17, 1865**

But little business was done in the U.S. District Court, Judge S. L. Withey, on the bench, yesterday, save the empanneling [sic] of the grand jury, administering the oath and the Judge's charge to them. The Judge's charge is spoken very highly of, by those who heard him, as being remarkably able, clear and comprehensive. The matters of interest belonging to the court and the duties devolving upon the grand jury, were briefly and clearly stated. Notice was given in the attorney's present, that they would, in obedience to a late law passed by Congress, be compelled to take the oath of allegiance before practising in the U.S. District Court.

In Judge Withey's closing remarks to the grand jury, he spoke at some length in befitting and eloquent words, upon the close of the great rebel war, and the condition and prospect of our country at the present time. He also spoke of the death of President Lincoln, in his closing remarks, as follows:

While we mourn the assassination of one of the best and greatest men our Nation ever honored with the Chief Magistracy of our Republic—a man who was loved by his countrymen, and will be revered and remembered by us and by our descendants while the world has a page of history left—slain by that rebellion which has slain half a million of our fellow citizens; for the spirit that begat the rebellion was the spirit of assassination—while we mourn the loss of Abraham Lincoln, the wise and just man, I congratulate you, gentlemen, upon the return of peace to our country; upon the practical disappearance of the grim visage of war; upon the overwhelming disaster and confusion to all rebels and public enemies, and for the crushing out by our army and navy of that intolerant spirit which originated the war; and I congratulate you that the chief conspirators are likely to realize the fruits of their evil hearts and evil deeds.

***The Grand Rapids Daily Eagle*, June 3, 1865**

The following remarks were made by His Hon. Judge S. L. Withey, on the preamble and resolutions, drawn up by a committee of members of the Bar, in the United States District Court, on the 31st ult., in honorable memory of our late President Abraham Lincoln. In ordering them placed upon the Journal of the Court the Judge said:

Gentlemen of the Bar: I assure you, gentlemen of the Bar, of my entire concurrence in the sentiments you have uttered, and that it affords me great pleasure in ordering the preamble and resolutions you have presented recorded in the Journal of this Court, in memory of our murdered President. I desire to remember his virtues, and I would that all men, through all generations, remember and profit by the life and patriotism of Abraham Lincoln.

The atrocious act which deprived Mr. Lincoln of life, is abhorred by all mankind. Enough has been said in the past month and a half to impress upon every mind—not only the abhorant [sic] character of

the deed, if there was need to do so much, but the execration in which it is held throughout the civilized world. It came upon the people of our country with paralyzing effect—as a blow aimed at our National life no less than at that of President Lincoln—and in this double purpose, produced a shock never before experienced by the people of our country.

**". . . I would that all men, through all generations, remember and profit by the life and patriotism of Abraham Lincoln."**

All were plunged into profound grief—affliction rested on all—the fountain of every loyal heart was opened, and tears flowed from the eyes of a mourning people. So many tears of sincere sorrow were never shed for the death of any man as were shed for our murdered President. We mourned when the blow was but just given, when our hearts were first smitten; and again, we now feel to return to the grave of this great and good man and let our mourning break out afresh. It is fitting in this Court, which is a branch of the Federal Government for the administration of its laws, to give expression to our sorrow for the death of him who was chief of our Republic.

In every view I can take of the life and character of Mr. Lincoln, there is exhibited the highest style of man. I would imitate his upright character, and purity of life, and count it my chief honor always to be right rather than great—in which he was truly great.

Abraham Lincoln will live in history with perfect luster; his wise, patriotic and just deeds have adorned his noble life—advanced the welfare of mankind, and enshrined his memory in the hearts of his countrymen.

Let the preamble and resolutions be entered of record upon the journal of the District Court.

## Judge Withey, Post-War

After Lee's April 9, 1865 surrender at Appomattox Court House, Judge Withey, who was then just 45 years old, served another 21 years on the bench—through the 12 years of Reconstruction. For the rest of his life, the war and its aftermath exerted a powerful impact on him, on his court, and on the life of Grand Rapids and the nation.

President Grant nominated Judge Withey to the Sixth Circuit in 1869, but he declined, preferring to remain on the district court bench.

He was married for 40 years to Marion Hinsdill (whose parents were original settlers and who outlived him by 26 years), and the couple had five children. They resided on College Avenue (at the head of Washington Avenue, south of Fulton) when he died. Their home, across and down the street from the Voigt House (built in 1896), has been demolished.

On September 17, 1885, on the 23rd anniversary of the Battle of Antietam and just seven months before Judge Withey died, the Civil War monument that stands today at Fulton and Division was dedicated in a grand ceremony attended by thousands.

Renowned Grand Rapids historian Albert Baxter knew Judge Withey and described his judicial service in his 1890 *History of Grand Rapids*:

> Judge Withey had many characteristics that not only made him eminent as a judge, but endeared him to and made him respected by the people; he was clear, pure minded, conscientious, and disliked to believe evil of another. In the administration of criminal law, he had a strong leaning toward mercy, in all cases seeming to arise from human frailties, but was stern and relentless in cases of premeditated, deliberate wickedness. Judge Withey was pre-eminently a religious man, possessed of decided opinions, but at the same time was broad-minded, catholic, and tolerant of the opinions of others. As a judge he was gentle, kind, and greatly beloved, especially by the members of the bar, and that not only in his own State, but in the States of Ohio, Kentucky, and Tennessee, where he frequently sat in the United States Circuit Court. He was never arrogant, but always quietly firm, and had a dignity of manner that no one ever presumed upon. If at any time he found himself in error, he readily, cheerfully, and without ostentation, corrected himself. He dealt justly, and loved mercy; but little better can be said of him than that he was a Christian gentleman in every relation of life.[46]

Judge Withey's bearded visage in Judge Bell's courtroom will continue to watch over members of the bench and bar long after our careers have concluded. Our glances back at him should remind us of the historic times during which Grand Rapids' first federal judge presided and the exemplary standards that he set for all of us.

## About the Author

***David J. Gass*** graduated cum laude from Harvard Law School in 1980. He has been with Miller Johnson for 25 years. Mr. Gass would like to thank Gordon Olson, Joan Byerly, Hon. Hugh Brenneman, Jon March, Mike MacDonald, Kathy Vance, Lisa Greenwood, Jan VanOtteren, Coral Shaw, and Ruth Ann Brevitz for their contributions. Mr. Gass can be reached at gassd@millerjohnson.com.

## Endnotes

1 59 Mich (1887) at pp. xxvi - xxvii.

2 See note 1, pp xxix - xxx.

3 Rivals Thomas Jefferson and John Adams died within hours of each other on July 4, 1826, the 50th anniversary of America's independence. Adams' last words were, "Thomas Jefferson still lives." As it turns out, he was wrong.

4 Albert Baxter, *History of the City of Grand Rapids*, Munsell & Company, Publishers, New York and Grand Rapids, 1891, at pp. 747-8. This is the definitive history of Grand Rapids before the 20th century. A stained glass window above the altar in Park Street Church was dedicated to Judge Withey in 1904.

5 Francis Parkman, *The Oregon Trail, Sketches of Prairie and Rocky Mountain Life*, Barnes & Noble, New York, at pp. 5-6. Parkman, a Boston lawyer, wrote this classic book in 1849 about his travels along the Oregon trail. His musings about why people migrated west might very well apply to those who left their homes in the East and traveled to Grand Rapids:

> I have often perplexed myself to divine the various motives that give impulse to this migration; but whatever they may be, whether an insane hope of a better condition in life, or a desire of shaking off restraints of law and society, or mere restlessness, certain it is, that multitudes bitterly repent the journey, and, after they have reached the land of promise, are happy enough to escape from it.

6 Franklin Everett, A.M., *Memorials of the Grand River Valley*, The Chicago Legal News Company, 1878, Republished by Grand Rapids Historical Society, Grand Rapids, MI, 1984, at p. 5.

7 Everett, note 6 at pp. 21, 38, 42-44.

8 James M. McPherson, *The Illustrated Battle Cry of Freedom*, Oxford University Press, 2003. See, generally, "America at Mid-Century," at pp. 7-40.

9 Jay Winik, *April 1865, The Month That Saved America*, HarperCollins, 1st ed, 2002, at pp. xiv, 13, 20.

10 http://eh.net/hmit/ppowerusd/dollar_question.php.

11 Baxter, note 4 at pp. 575-576.

12 William J. Etten, *A Citizens' History of Grand Rapids, Michigan*, A. P. Johnson Company, 1926, at p. 144.

13 Baxter, note 4 at p. 789.

14 Etten, note 12 at p. 145.

15 Baxter, note 4 at pp. 614-621.

16 Etten, note 12 at p. 147.

17 Journals of handwritten clerical entries of court proceedings stored at the U.S. National Archives Regional Center in Chicago.

18 *The Grand Rapids Daily Eagle*, May 18, 1863.

19 Geo. E. Fitch, *Old Grand Rapids, A Picture Story of Old Conditions,* 1925, revised and updated by James VanVulpen and Gordon Olson, Grand Rapids Historical Society, 1986, at p. 25.

20 Private communication from Grand Rapids City Historian, Gordon Olson.

21 United States Attorney's Office, Western District of Michigan, "History of the Western District of

Michigan," www.usdog.gov/usao/miw/history1.html.

22 The 1879 City Directory shows the new address of the court to be "Government Building. Block bounded by Lyon, Division, Pearl and Ionia." This is where Withey presided until his death.

23 Before the federal courthouse was completed, the court sessions were held at Ramsey Block (near the Amway tower) and Phoenix block (near Fifth Third's offices). Presumably, Ball's Block was no longer available because the building was expanded and became the Sweet's Hotel in 1869.

24 Baxter, note 4 at p. 169.

25 Craig R. Smith, "Lincoln and Habeas Corpus," http://www.csulb.edu/~crsmith/Lincoln.html (4/29/2007).

26 *The Grand Rapids Daily Eagle*, Sept. 17, 1863, "The Suspension of the Writ of Habeus Corpus."

27 See note 17. That may account for efforts in Congress in 1864 to abolish the district.

28 *The Grand Rapids Daily Eagle,* Saturday, November 12, 1864.

> United States District Court.
> But little business of public interest was transacted, in the United States Court, yesterday, save the empanelling of a Grand Jury and the charge to them delivered by his Hon. Judge S. L. Withey, on the Bench: We give below a brief synopsis of the most important items in the charge, as follows:
>
> He called their attention to the fact that the Grand Jury system had been in practice abolished, in the State Courts. But that that "time honored institution" was the only way by which a man accused of an offense could be brought before the United States Courts for trial. The Jury was also instructed as to the manner in which they were to proceed in the discharge of their duties.
>
> You, of course, in your deliberations are to consider the rights of the citizen as well as of the public, hence in your deliberations you should see that no person is presented by you for trial who is not provided before you to be an offender against the law. In your inquiries the proceeding is strictly exparte. There is but one side presented before you, and that is the Government, and upon this evidence alone you judge whether an indictment should be found against him or not, so that however good his defense may be when he comes before the court and jury for trial, if you are satisfied the evidence before you shows the party to have committed an offense against the statutes of the United States, you are to present each person for trial by lodging an indictment in this court. You will not notice any other laws than the acts of Congress, and however persons may have committed offenses against the State, or have committed those offenses that are technically called offenses at common law, with these you have nothing to do, for in the federal courts there are no offenses except those that are made by laws passed by Congress. The State courts alone have jurisdiction over those offenses which are a violation of its laws, and except where Congress has given the power to try and punish you have nothing to do.
>
> I have heretofore called the attention of Grand Jurors to the statutes of Congress likely to come under their consideration, but now I deem it unnecessary, because some of these laws were then of recent enactment, especially the revenue laws. They were first made during the present rebellion, and the people were not acquainted with the principles upon which they are based, and I deemed it my duty to instruct them particularly in reference to these laws. But the subject has become somewhat familiar, and it is generally known what these laws are, and by decisions of the courts what are the citizen's obligations under them. What I have said on a former occasion I need not say again. It is sufficient for me to say without reference to the statute, that while the Government may prosecute for offenses un-

der the revenue law by an action of debt, yet the Government has a right to present an offender against that law as a wrong does, and elect to proceed by indictment, and in case the Government has a right to present an offender against that law as a wrongdoer, and elect to proceed by indictment, and in case the Government bring before you any such cases, it will be your duty to entertain those cases as well as any others that may come before you of a criminal nature, for there is no doubt of the right of the Government to prosecute the wrong doer by indictment.

The Judge also called their attention to the manner of the organization of their body, and some other matters of practice connected with their proceedings.

The only case of public interest brought before the court to-day was that of Isaac V. Schermerhorn, who was arraigned on a charge of having made a fraudulent return of his income, for the year 1862. He plead not guilty, and the trial of the case was put over until next week, the defendant being held in the sum of five hundred dollars, to appear from day to day ready to answer.

29 *United States v. Chapel; United States v. Crosby*, 25 F.Cas. 395 (W.D. Mich., Nov. 11, 1863).

30 See note 17.

31 Gordon L. Olson, "Our Pet Regiment ... has departed ...," The Civil War Diaries of Rebecca Richmond (Manuscript).

32 "Desertion in the Civil War Armies," http://www.civilwarhome.com/desertion.htm.

33 Winik, note 9 at p. 153.

34 Bruce Catton (Nar.), *The American Heritage Picture History of the Civil War*, 2003, at p. 485.

35 "Enrollment Act (1863) (The Conscription Act)," http://www.answers.com/topic/enrollment-act-1863-the-conscription-act?print=true.

36 "Conscription (Military Draft) in the Civil War," http://www.civilwarhome.com/conscription.htm.

37 *The Grand Rapids Daily Eagle*, May 25, 1865.

38 *The Grand Rapids Daily Eagle*, May 19, 1865.

39 http://eh.net/hmit/ppowerusd/dollar_question.php.

40 See note 39.

41 "A Brief History of U.S. Law on the Taxation of Americas Abroad," http://www.aca.ch/hisustax.htm.

42 Catton, note 34 at pp. 395-396.

43 *The Grand Rapids Daily Eagle*, November 6, 1864.

44 Winik, note 9.

45 The events occurring during the week of April 9,1865, in particular, are almost unimaginable in their impact upon the psyche of the citizenry. On Sunday, April 9, Lee surrendered, and the long war had finally ended. The newspaper accounts of April 10, 11, and 12 reflect a childlike gleefulness and irrepressible exuberance.

*The Grand Rapids Daily Eagle*
Monday, April 10, 1865
**Jubilate! Jubilate!!**

The end has come. The morning is so far advanced that the sun of peace shows his edge above the horizon, presaging a cloudless day—a day that shall not go down again until time shall be no more—a day that shall flow with universal freedom, and blossom with progress.

Last night, the Nation lay down divided, distracted, bleeding—a giant in battle-harness matched against his brother. This morning we wake, still in battle-harness, the greatest, grandest, freest, most powerful Nation of earth. To-day our kindly, generous, wise, great-hearted President, Abraham Lincoln, (whom the nations attempted to sneer down but yesterday,) stands the central figure of the nineteenth century. "Honest Old Abe" stands at least one hundred feet taller than any other ruler in Christendom to-day.

* * *

And over this ruin and this triumph, this fall and this glory, brothers strike hands again, and States unite in the old, but grander family circle, as one nation, under

one flag, with one President. And Freedom seals the compact for all. The Declaration of Independence belongs now to all the States, and the souls of the early martyrs of Liberty are marching on with John Brown's.

Let the bells ring, then, and the cannon thunder. Let all our citizens join in the demonstration of joy. Let us hold one grand universal enthusiastic joy-meeting this evening, at some suitable place, either within or without of doors, and congratulate each other. Let every building in the city blaze with light this evening.

*The Grand Rapids Daily Eagle*
Tuesday, April 11, 1865
**The Day.**

Yesterday was a glorious day in our city, as it was, doubtless, in every other place where the news of the surrender of Gen. Lee's army was received. The joyful tidings burst upon our people like a thunderbolt, a perfect halo of light and glory. The news had no sooner been received here than it spread over the city like wild-fire, calling the people from their work shops, stores and places of business, until the streets swarmed with an enthusiastic multitude. Steam whistles, and everything else capable of making a noise, were sounded, long, loud, and strong, until the city was a perfect Babel of discordant sounds. Ere ten o'clock in the morning every business place in the city was closed and their fronts ornamented with the red, white and blue. Flags were run-up on all the poles and flag-staffs in the city, and suspended from the windows and doors of private and public houses throughout the town.

Boys ran to and fro up and down the streets alone and in groups, blowing horns and whistles, and ringing cow bells and beating drums, and men mounted rode through the streets with bells upon their horses, waving flags, singing and hurrahing like persons wild with joy.

Ere it was noon the band was out and a procession involuntarily formed, which, led by Major Foote, circulated up and down the streets and through the city singing and shouting as though the men composing it had brass throats, and an inexhaustible supply of wind. The procession was made up of men in carriages, carts, drays, on horseback and on foot. One carriage in the procession contained some twenty men, most of those who had been members of the glorious "Old Third," and they bore aloft their tattered and torn battle flags hitherto carried by that regiment. In another carriage was carried a large portrait of President Lincoln. Most everybody in the procession carried a flag, a bell, a horn or something else with which to make a show or noise, one or both and nearly every house passed was greeted with shouts of joy, and the rejoicing was responded to by the waving of flags and white handkerchiefs in the hands of fair ladies.

In the evening the city was in a blaze of light, it being illuminated throughout. Business blocks, public buildings and private houses were brilliantly lighted up, making a splendid appearance. We would be pleased to make mention of several buildings making, as they did, a particularly fine appearance, but cannot for want of time and room. The day's display closed, with a grand rally, in the evening, in front of the Rathbun House, where speeches were made by T. B. Church, Rev. Mr. Eldred, Jacob M. Ferris, Rev. Dr. Smith, Rev. Jas. Ballard, Geo. Gray and James Miller. The news was glorious, and gloriously was it received and welcomed by our people. All is well; Hail Columbia!

*The Grand Rapids Daily Eagle*
Wednesday, April 12, 1865
**What they Celebrated.**

The people of the country at large, and of the citizens of this city, celebrated, on Monday, something more than the triumph of Gen. Grant, something larger than the

triumph of any one man or one party, something grander than the success of any single idea. They celebrated the restoration and redemption of a Nation, the return of peace, and the revival of prosperous and peaceful industry, the end of drafts, the cessation of war expenses, and various other good events, general and particular, patriotic and selfish. The motives at the bottom of the general joy were as various as men's politics and principles.

But, in a large sense—in a sense that cannot be escaped or overlooked—the people generally, and the Copperheads in particular, celebrated the triumph of the policy and the party of which Abraham Lincoln is the official exponent, and of which Gen. Grant and his army are the battle-champions. With whatever self-deceptions and mental reservations those orators who declared the war a failure last fall, and who refused to join in the celebration of our victories on the 4th of last month, for fear they might be understood to endorse the President, may season the event to the sick appetites of convalescent Copperheadism, yet it is a fact patent to everybody, that they were hurrahing and speechifying in honor of the success of Abraham Lincoln and his administration, the triumph of his policy, and the victory of the measures recommended and supported by the Republican party. The very thing these men would not do on the 4th of March, they did do on the 10th of April.

But for those who have stood by the President, and the Government, and the armies, Monday was a day of unclouded glory. It was a day in which they celebrated the complete success of all they have prayed for, hoped for, fought for, labored for and voted for. It was the fulfillment of every prediction made by their leaders. It was the triumph of every policy advocated by them. It was the success of the measures they have supported. It was the second birth of Freedom, whose sacred cause they have championed. It was the death of slavery, whose party they have opposed. It was the redemption of the Union, which is solely due to the valor, wisdom, and endurance of the unconditional Union men of the Nation. It was the funeral of Copperheadism and secession, which they have opposed and exaggerated. It was the triumph of nationality, which is the chief plank of Union politics. It was the death of State sovereignty, which is the "Democratic" foundation of secession.

But then, on Friday night, April 14, Lincoln was shot at Ford's Theatre, and he died early the next morning. Saturday's newspaper report of the assassination—in language unique to the times—reflects the unspeakable grief and despair caused by the first ever murder of a president—less than a week after the war of rebellion had ended. Fear and uncertainty had suddenly returned.

*The Grand Rapids Daily Eagle*
Saturday, April 15, 1865
**VALE! VALE!**

The wine of life is spilled; the royal cup, of fine gold, is broken. Domestic faction, with horrible instruction, has taught the Nation the utter malignity of secession. Treason has done its worst, and on our noblest. The bloody dagger's point has touched the Nation's soul, with poison in its wound, to carry grief, horror and consternation through all our veins; and, as the numbness of the shock wears off, and healing begins, it will wake a fever of fury, whose end and effect none can foretell.

The times are dark again. Sudden and disastrous eclipse has rushed upon the morning of peace and returning fraternity, but a moment since without a cloud upon its glory, or a chill in its breath of balm.

All is again uncertainty; state policy and chance, government and faction, law and

anarchy, freedom and slavery, battle and truce, revenge and mercy, order and chaos, jostle each other in the dark, and no man can now see whither the majestic ship of state (whose cable has been cut in the night by an assassin's knife) is drifting; whether out of this event shall come evil or good to the nation and the world; whether we shall again moor in the haven of peace and union, or have but opened the harbor to be mocked with our last glimpse of national brotherhood.

The President is dead—the greatest, purest, kindest soul Heaven and man ever conspired to crown with public honors—the safest, surest, truest friend, leader and reflex of the people. Great beyond the times, he was at once the grandest hero of history and the kindest and commonest of the ordinary crowd of men. His last act was a benediction. Rather than disappoint the populace, who expected his presence at the theater, he went to his death, though both himself and his wife were ill; thus falling a sacrifice in this little, this homely, this common and natural act, which his death has gilded with immortality. He was of the common people; he died, in a sense, for the common people. He was the pattern of the common people, and the ripe fruit of American Democracy; at the same time the unchallenged peer of history, and the certain master and top of living greatness. Heaven's evident and commissioned instrument, he was crowned with success and with immortality in the same week.

46 Baxter, note 4 at p. 748.

## The Annual Meeting Reception for the Historical Society was provided by:

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