Northwest Ohio Quarterly

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President's Page

Double Jeopardy

"... Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb. . . ."

IN ENGLAND and on the European continent at and prior to the time of the adoption of our Federal Constitution, the accused could be indicted, brought to trial, and where it developed during the trial that the evidence was insufficient to convict, the jury could be discharged and the defendant ordered to be held for an indefinite length of time until further evidence could be gathered which, in the opinion of the prosecutor, would be sufficient to convict him. In many instances the accused would be indicted again, and if he claimed that he had been brought to trial before for the same offense, the judge would hold such defense insufficient on the ground that the accused had not been put in jeopardy by his first trial.

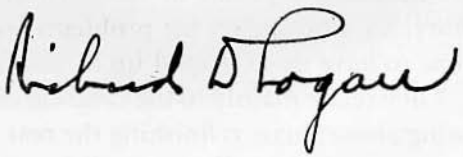
To prevent such injustices in this country, the above Clause was incorporated in the Fifth Amendment, and it is to protect our citizens against what is known as "double jeopardy." Its purpose of course is to prevent any person from being subjected to long and several successive prosecutions for the same offense under the guise of justice, and to prevent him from being held indefinitely for further trial or trials until the prosecution has exhausted its efforts in securing evidence.

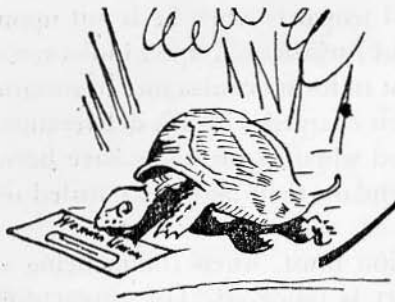
It will also be noted that the Clause includes protection not only to the life but the limb of the accused. This is possibly due to the fact that punishment for a criminal offense in England and on the continent was not only taking of life, but involved corporal punishment and torture, although the death penalty there as late as the 19th Century was invoked for many crimes which now bear but a mild prison sentence. Thus the expression "twice put in jeopardy of life or limb" has descended from days when sanguinary punishments were usual and frequent.

A person is said to be in legal jeopardy when he is put upon trial, before a court of competent jurisdiction, upon indictment or information which is sufficient in form or substance to sustain a conviction, and a jury has been charged with his deliverance. A jury is said to be thus charged when its members have been impaneled and sworn. The defendant then becomes entitled to a verdict.

In this country the prosecution must, when commencing a trial, continue it until a verdict is rendered. The prosecutor cannot, after the trial has been once commenced, and finding his proof insufficient to convict, dismiss the case against the accused, and then continue the old trial or institute a new trial, when and if he collects more evidence. If the accused be found not guilty by a jury, this ends the case for him and he must be discharged.

On the other hand, if the accused be convicted, he may ask the court for a new trial, or he may prosecute an appeal of his conviction to a higher court. In either event if the court find that some substantial error in the trial prejudicial to the defendant has been committed, the accused will not be discharged but he will be granted a new trial. If a jury disagree as to the guilt of the accused, and be discharged for that reason, or if, for any reason, there be a mistrial which prevents a verdict from being rendered, the accused again will not be deemed to have been placed in jeopardy, and he therefore will not be released but must face a new trial. Such new trial is not considered as placing him in double jeopardy.





News

The Hayes Memorial Library

The Hayes Memorial Library at Fremont has not been behindhand with its own post-war planning. The past seven years have been devoted mainly to organizing its bibliographical facilities for scholars. Now, the Ohio State Archaeological and Historical Society, which administers the property, and the Hayes Foundation, in charge of the library and the historical development, are planning extensive alterations to the interior. The have called in the assistance of a distinguished committee including Mr. William A. Gosline, President, and Dr. Blake-More Godwin, Director, of the Toledo Museum of Art; Mr. C. C. Britsch, architect, of the firm of Britsch and Munger; Dr. Randolph G. Adams, Director of the William L. Clements Library; and Dr. Edward P. Alexander, Director of the Wisconsin State Historical Society. This Committee has turned in a report which is being used as a basis for the planning. Mr. E. C. Zepp, vice-director of the Ohio State Museum and Dr. Curtis W. Garrison, Director of Research of the Hayes Memorial Library, are working on the problems presented by the report and hope to have them shaped up by the fall of 1946.

They relate mainly to the creation of a lighter and more interesting atmosphere, refinishing the rear portion to conform to the front part, better library facilities, complete redecorating, replanning of lighting, more office space, and certain mechanical and engineering problems. An entirely new organization of exhibits in new cases with construction of new exhibits will be necessary. When this has been accomplished, Northwestern Ohio

will present her distinguished son's memorial in a setting more befitting the beautiful Spiegel Grove background which was his home. In the meantime, those who visit the Hayes Memorial Library now go away with a new interest in R. B. Hayes and his times. It is open from 8:30 to 5 every day except Sunday. Saturday it closes at 12. After April, it is open on Sunday from 1 to 5 through October, and possibly it will be open Saturday afternoons.

On November 10, 1945, the Alpha Kappa chapter, University of Toledo, of Phi Alpha Theta (Honorary Historical Fraternity) visited the Hayes Memorial Library. They were accompanied by guest students in historical courses. After a trip through the grounds and the Memorial, they had a picnic lunch at Harrison's Rock, about five miles southeast of Fremont, where General William Henry Harrison is reputed to have breakfasted one morning in 1813 on his way to Fort Meigs.

Personal Notes

Howard S. Burtch, Associate Professor at the University of Toledo, died after a short illness on December 14. He taught in both the History and Sociology departments. Before coming to the University of Toledo in 1930 Mr. Burtch had had eight years of experience as a high school principal, including six years at Rossford, Ohio.

Captain Willard A. Smith, for many years a resident of Toledo and a former instructor in the History Department at Lake Forest College, Illinois, has recently been discharged from the Army. He had served in the Intelligence Service in North Africa. He is returning to Harvard University, where he will resume work on his Doctor of Philosophy degree, for the second semester of 1945-1946.

An Open Letter to the Board of Trustees and Members of the Historical Society of Northwestern Ohio

January 1, 1946

The undersigned members and officers of the Historical Society of Northwestern Ohio, whose professional lives are directly concerned with historical interests, wish to call attention to the critical condition with respect to the study of local history and to opportunities now open to us. The Trustees have been aware of the situation, but the war years prevented direct action. We believe the membership should now rally around their President, their Trustees and Officers, and encourage them to undertake the program necessary to rescue the situation within the next few years.

The President and Trustees have, with commendable forethought, initiated the NORTHWEST OHIO QUARTERLY, a very respectable and interesting magazine, which should command a wider public.

The basic reason for this appeal is the need for a greater interest in and understanding of the meaning of local history in Lucas County and throughout northwestern Ohio. Other interests receive the support due them, as witness the healthy activity in artists' affairs, music, international affairs, nature study, and other subjects. In contrast to local history organizations in Cleveland, Marietta, Chillicothe, Cincinnati, Lima, Dayton, Tiffin, and other centers, our society has remained small and relatively inactive.

The state has now come forward with an act effective in September, 1945, which encourages county commissioners to donate funds to county historical societies to be used in publication, in the preservation of records, or in encouraging local history in any way except for buildings or maintaining buildings. The local society, to get these funds, should be incorporated, and then must affiliate with the Ohio State Archaeological and Historical Society. This is a simple procedure. But in order to be

worthy of public support, we believe the Historical Society of Northwestern Ohio should broaden and enlarge its activities.

Let us look at the present situation. The Society at this date (January, 1946) has about one hundred individual memberships and about thirty institutional memberships. Out of a population of over 300,000 in Lucas County alone and possibly close to a million in all northwestern Ohio, this figure speaks in an inaudible whisper. The Toledo Artists' Club has a membership of over 500. The Seneca County historical society has close to 300 members. Our poor showing is probably due to historical and geographical conditions: certainly Mr. Sherman and others worked arduously to increase the Society's usefulness against great odds. The foundation which he and others laid is good and solid. We should now prove our faith in our past founders by greater exertions now, and when annual meetings are called, respond. Only a dozen or fifteen members ever come to an annual meeting, and this number includes the Trustees. Historical societies cannot be run like corporations and maintain their influence and respect.

The financial situation reflects this lack of personal interest. The annual income from dues is not sufficient to cover the annual expenditures, so each year sees us trench deeper into a small endowment fund, which in two or three years will be entirely consumed. Plans should be made before this point is reached.

It may be argued that the Society is a civic organization which deserves public support because of its public benefits. It is true that the QUARTERLY serves the public when used in libraries, but it can scarcely be claimed that it is worth five dollars a year. Other larger historical periodicals, such as the state historical society's quarterly, of greater scope, come with memberships for $2.00, $2.50 and $3.00. It is true that no other local society in Ohio puts out any publication which is the equal of ours, but these societies give a broader public service, such as maintaining libraries with reference staffs, or exhibit halls, and have stated meetings with talks and lectures. Citizens can

pay their memberships with civic pride, conscious of contributing to a civic institution. The Toledo Museum of Art is a notable example of such membership support.

Our collection of about 2,500 volumes in the Toledo Public Library has received little attention for years. Many volumes needing binding have perforce been retired. Most of the titles have been already acquired by the Library itself. There is no consistent acquisition policy. The local history room of Public Library, in which the collection is housed, is the focal point for acquisition of material on Lucas County and Maumee Valley history, but the initiative in this and in reference work has been assumed by the Library. To this work we contribute practically nothing. In fact, the reverse is true: we use the Public Library facilities. Of course there should be cooperation, but it seems strange that a local historical society should abdicate one of its most common functions, the preservation and dissemination of local history information. We might at least make the efficient head of that room, Mrs. Shepherst, our librarian, and provide a fund for purchases.

Furthermore, we have permitted invaluable records containing information on our origins to be dissipated beyond recall and have lost many important local relics.

It is not pleasant to continue a list of "those things which we ought to have done," so we pass on to some reasons for the greater encouragement of local history activities. History is a major cultural study and not a plaything for leisure moments stolen from commercial pursuits. Everyone who wants to be informed of reasons for procedure or planning in the present, even in one's own personal concerns, should know the "background" of the problems. So, in human affairs in general, "the past and the present are parts of the same unrolling scene and, whether you enter early or late, you see for the most part the still-unfinished progress of the same issues." And local history furnishes the deepest roots of those "past-present-future" issues, and these roots are also interlaced with roots of national and

international concern. In a democracy this is bound to be.

Residents of a community whose families go back three or four generations imbibe these axioms unconsciously, but newly arrived citizens and later generations must learn the backgrounds as pleasant lessons. To a newcomer certain customs, some economic trends and problems, the very atmosphere, is inexplicable until he learns the historic reasons for these phenomena. Children are uninterested and may even revolt until explanations are given them.

A growing citizenry unaware of the past tradition and history of their community is a pathetic group. Lacking an understanding of reasons for present glories and issues, they are like immature adults, without informed and enlightened actions, without proper pride of civic consciousness or concern for civic evils of long standing. Their plans for change and betterment may not be in line with historic trends.

We would feel ashamed not to know the outline of our nation's birth struggle and those great events from the Declaration of Independence to the Constitution. We should know these things, but we should also know our own beginnings. Many citizens do not know Toledo's origin, the story of the founding of towns on the Maumee, the meaning of the black swamp, the first railroad in the vicinity, and many other things.

With these thoughts, we respectfully present the following plans which may induce the members of the Society to support their Trustees in a great effort to make ourselves into a real factor in our cultural life.

1. A pilgrimage of a representative selection of members and officers to a flourishing society, such as the Western Reserve Historical Society, and also to the Ohio State Archaeological and Historical Society for inspiration, observation, and advice.
2. The appointment of a large re-organization and policy committee of representative Toledoans to investigate the kind of

a society needed and to submit plans for the future and a program of action.

3. A sub-committee of the above might consider membership and dues. This sub-committee might be advised by an expert, such as Mr. Ames or Mr. Dowd. Some metropolitan societies are maintained by endowments and high dues like our Toledo Museum of Art. The Chicago Historical Society, with its million dollar building, is one example; the Western Reserve Historical Society another. It is necessary to have a respectable home, and public contact is largely educational. Other societies have a wide membership, with graduated dues ranging down to include those with medium incomes—from patrons through to contributing members, members, associate members, student members, etc. In this connection we should observe that whole blocks of our citizens, such as those in patriotic organizations, school teachers, and those in many other professional walks are unrepresented. In fact, even our outstanding families are not well represented.
4. Another committee could investigate possibilities of a home, donated or otherwise.
5. A committee should be appointed to consider the related questions of the publications program and cooperation with the University of Toledo in a greatly extended program of instruction and research in state and regional history. It is peculiarly fitting that a municipal university should stress this field, and it should certainly be done with the aid of the Society.
6. A committee might consider a program of education in connection with the public and parochial schools and the organization of a junior branch of the society.
7. The possibility of a relationship with the county societies in northwestern Ohio might be considered; also combined dues to tie their membership up with ours. (Perhaps this could be considered by the sub-committee suggested in 3 above.)
8. A program committee ought to be apointed immediately

and a series of speakers announced for meetings open to the public.

We do not believe all of the above can be done at once. The work will open up after first steps are taken. Kindly write the editor your reactions.

ANDREW J. TOWNSEND
CURTIS W. GARRISON
REV. JOHN J. VOGEL
ALMEDA MAY JANNEY
FOREST BLANCHARD

The Chief Justice from Northwestern Ohio

RICHARD D. LOGAN

THE Supreme Court of the United States has, under the late Mr. Roosevelt and his New Deal, been given unusual prominence in the minds and thought of the people of this country. According to Professor C. Herman Pritchett of the University of Chicago, "The Supreme Court is going through one of the most crucial periods of its history. There have been disagreements before, but the volume of dissent and more particularly its change in character mark off the present from previous crises."[1]

It therefore may be interesting to our members to recall a portion of our history when the policy of the administration in Washington was to keep the Court out of politics.

The Federal Constitution was not ratified by the requisite number of states until June, 1788, and it was not declared to be in effect until Wednesday, the 4th day of March, 1789.

The Judiciary Act providing the necessary legislation for the Supreme Court was enacted by Congress on the 24th day of September, 1789.

The first day of February, 1790, was the day appointed for the Court's organization, and the Royal Exchange Building, located at the foot of Broad Street in New York City, was the place fixed for its first meeting. But the Court did not organize on that day. There were but two Justices present in addition to the Chief Justice, and hence no quorum, as the Court then consisted of the Chief Justice and five Associate Justices. Those present adjourned until the following day. On this day, the 2nd day of February, 1790, another Justice arrived, and the quorum consisting of four Justices proceeded to organize the Court.

During the one hundred and fifty-five years since the first session of the Supreme Court there have been but twelve Chief Justices, and seventy-seven Associate Justices. Of these Associate Justices, six came from Ohio; viz., John McLean of Lebanon, Noah H. Swayne of Coshocton, Stanley Matthews of Cincinnati,

William R. Day of Canton, John H. Clark of Cleveland, and Harold H. Burton of Cleveland.

Of the twelve Chief Justices, two had resided in Ohio for the greater portion of their lives, viz: Salmon P. Chase, of Columbus, and Morrison R. Waite, of Toledo. A third, William Howard Taft, who had been a citizen of Ohio until the last few years of his life, was residing in Connecticut at the time of his appointment.

The Chief Justices of the United States (sometimes erroneously referred to as Chief Justices of the Supreme Court) and their respective places of residence at the time of their appointment, were:

John Jay of New York, who served six years from 1789 to 1795

John Rutledge of South Carolina, who served but a few months in 1795 and 1796

Oliver Ellsworth of Connecticut, who served four years from 1796 to 1800

John Marshall of Virginia, who served thirty-four years from 1801 to 1835

Roger B. Taney of Maryland, who served twenty-eight years from 1836 to 1864

Salmon P. Chase of Ohio, who served nine years from 1864 to 1873

Morrison R. Waite of Ohio who served fourteen years from 1874 to 1888.

Melville W. Fuller of Illinois, who served twenty-two years from 1888 to 1910

Edward D. White of Louisiana, who served eleven years from 1910 to 1921

William H. Taft of Connecticut, who served nine years from 1921 to 1930

Charles E. Hughes of New York, who served eleven years from 1930 to 1941

Harlan F. Stone of New York who was appointed in 1941 and remains the Chief Justice.

Henry M. Waite was the father of Morrison R. Waite. The father was born in Lyme, Connecticut, on February 9, 1787. This town had been the home of the Waite family since 1700. The father attended Yale University and graduated in 1809 and at one time served as a member of the Supreme Court of Connecticut.

Maria Seldon Waite was the mother of Morrison R. Waite. She was also a member of one of the old families of Lyme.

Morrison R. Waite was born on November 27, 1816, just twenty-seven years after the founding of the government under the Constitution. Like his father, he received his college education at Yale. As a boy and young man he showed no extraordinary traits. From boyhood however, his close contacts were with the legal fraternity. Some of his father's relatives were members of that profession. He entered Yale at the age of seventeen in the autumn of 1833. Among the members of his class were William M. Evarts, who later became President Hayes' Secretary of State, and Samuel J. Tilden, at one time Senator from New York, who was that Samuel J. Tilden involved with Rutherford B. Hayes in the election contest for the Presidency in 1876 at the time Morrison R. Waite held the office of Chief Justice. William M. Evarts represented Rutherford B. Hayes in that election contest.

While in Yale young Waite took a prominent part in the activities of the debating societies and many questions of a political and constitutional character, including slavery and secession, supplied subjects for many debates. He also majored in subjects treating of political science and constitutional law.

He graduated from Yale in the year 1836. In spite of the advantages which his father's position in the law and the families of his father and mother in Lyme and the vicinity would have given him, he decided to go elsewhere to practice his profession.

Waites' uncle, Horace Waite, was a merchant and an influential citizen residing in Maumee City (now the Village of Maumee) "at the foot of the Rapids of the Miami of Lake

Erie." In 1839 young Waite left Lyme for the strange but friendly West, equipped with a diploma from Yale and a Phi Beta Kappa key. He arrived in Maumee on the 21st day of October of that year.

Shortly after his arrival Waite commenced the practice of law in the office of Samuel M. Young, which was situated on the second floor of a two-story frame building on Conant Street in the Village of Maumee. Mr. Young was the father of Morrison Waite Young, late of Toledo, who was President of The Toledo Trust Company from January 14, 1908, to October 1, 1924, and Chairman of the Board of The Toledo Trust Company from October 1, 1924, to June 30, 1932, the time of his death. Morrison Waite Young was also one of the founding fathers of The Historical Society of Northwest Ohio, and more than any other member of the Society has, through substantial financial contributions, made possible the publication of its Quarterly Bulletin.

The first census taken in Maumee a year after the arrival of young Waite gave the village population at 840. According to the last census its inhabitants numbered 4,683.

Maumee City originally was the County Seat of Wood County. In 1835 it became the County Seat of Lucas County upon the organization of that County. It remained the County Seat until 1852, when the County Seat was moved to Toledo.

The law firm of Young and Waite, anticipating the removal of the County Seat, moved their law offices to Toledo in 1850, and consequently were established there for two years prior to the time it became the County Seat.

Samuel M. Young was one of the leading lawyers of Northern Ohio. The firm of Young and Waite bore an excellent reputation throughout the Maumee Valley from Toledo to Ft. Wayne. Young Waite's fame as a good lawyer spread far and wide during the subsequent years until he became known as one of the leading lawyers of Ohio. In the first years of his practice legal fees did not involve large sums of money. Any case involving a fee of $25.00 or more was considered an important one. The

administration of estates and real estate law which involved the settlement of titles to and boundary lines of land, and foreclosure of mortgages, constituted a substantial portion of a lawyer's practice in those days. The annual income of some of the leading lawyers of Ohio one hundred years ago was considered substantial if it amounted to $1,000.00. There were but few corporations, and no corporate bond issues, preferred share issues, or other corporate law, which constituted the major portion of a successful practice in later years.

During the period from the commencement of Waite's practice in 1839 to the time of the Civil War in 1861 he had argued some forty cases before the Supreme Court of Ohio, an average of two cases a year. During the later part of this period several of his cases involved railroads which he represented. By the year 1860 Waite's income from his law practice averaged $8,000.00 a year.

Mr. Young retired from practice in 1856, at which time Waite's younger brother, Richard, joined him in the practice in Toledo under the firm name of M. R. & R. Waite.

Waite's law practice did not interfere with his taking an active interest in the political questions of the day. In 1838 he was a delegate to the Whig State Convention in Columbus, and actively supported General Harrison in his campaign for President in 1840, the "Tippecanoe and Tyler Too" campaign. Mr. Waite was Secretary of the local Whig Committee in Lucas County and was instrumental in forming Tippecanoe Clubs throughout the County. These clubs took an active part in the campaign.

In 1849 Waite was elected to the Lower House of the Ohio Legislature, where he served one term. In 1862 he ran for Congress but was defeated by James M. Ashly of Toledo.

While too old to become a soldier of the line during the Civil War, he was, however, a faithful and industrious leader in his community and state in support of the prosecution of the war in all its phases. He was one of the advisers to Governor Brough, Ohio's war governor, and rendered valuable assistance in that capacity.

Strange as it may seem to those whose ancestors served in the Union Army, a substantial portion of the citizens of Ohio were opposed to the Civil War. Learning of this, the Ohio soldiers at the front became greatly discouraged. The officers and men of many Ohio regiments in 1862 sent an appeal to the people of Ohio to organize and support the Army and Mr. Lincoln's administration. The response of the Ohio citizens to this appeal was almost immediate. Mass meetings were held in numerous localities. Mr. Waite was Chairman of the meeting in Toledo, which was said to be the largest meeting for any purpose ever held in Toledo up to that time. Waite was designated to write the reply to the appeal of Ohio soldiers in the Union Army. This reply with similar ones from other localities in Ohio, had a great share in sustaining and encouraging the Union soldiers at that critical time, as the adverse sentiment toward the war of so many Ohio people became known throughout the nation.

As an indication of the condition of affairs in Ohio during the Civil War, the Copperhead, Vallandigham, then an exile in Canada, was nominated for Governor of Ohio on the Democratic Ticket in 1863. Ohio's war Governor, the Honorable John Brough, was the opposing candidate. While Vallandigham was defeated, he received 187,492 votes and 288,374 votes were cast for Governor Brough in that election. Morrison R. Waite actively participated in the campaign in behalf of Governor Brough.

Through the Civil War Waite was one of the leaders in various other activities which furnished aid and comfort to the Union soldiers in the field.

Waite became nationally famous when he was appointed by President Grant as one of counsel to the American Arbitrator, Charles Francis Adams, who represented this country in the arbitration proceedings held at Geneva in 1872 for the settlement of this country's claims against England arising out of the damages inflicted during the Civil War by the Alabama and other vessels of the Confederacy alleged to have been fitted out in British ports. The result of the arbitration reflected much

credit upon those representing this country, the Geneva Tribunal awarding to the United States the sum of $15,500,000.00 in gold as damages. It was known generally throughout the country that Mr. Waite took an active and important part in the arbitration proceedings resulting in this award, and this circumstance, perhaps more than any other, was responsible for his appointment to the Supreme Court.

It was shortly after this appointment, and prior to the meeting at Geneva, that a public dinner was given in Waite's honor by the leading professional and business men of Toledo at the old Oliver House on December 18, 1871. The menu for this dinner has been preserved and is reproduced on the opposite page. The Oliver House still stands at the corner of Broadway and Ottawa Street near the High Level Bridge spanning the Maumee River.

Waite was acting as President of the convention called in the later months of 1873 for the adoption of a new constitution for Ohio, when word of his nomination for Chief Justice was publicly announced on January 19, 1874.

Chief Justice Salmon P. Chase died on May 7, 1873. He had been appointed by President Lincoln in 1864. President Grant had made some effort to confer the honor on another state. Prior to Waite's appointment, the office had been offered to Senator Roscoe Conkling of New York, who declined, and in succession to Attorney General George H. Williams of Oregon and Caleb Cushing, a lawyer of Massachusetts. These names were withdrawn by the President when he learned that neither nominee could be confirmed by the Senate. The appointment of Mr. Waite however was confirmed by a unanimous vote of the Senate.

The new Chief Justice's moral courage and ability were demonstrated by an incident which occurred a few days after his arrival in Washington. Justice Clifford had been the Presiding Justice since the death of Chief Justice Chase, and at the first session of the court attended by Justice Waite, it was suggested by Justice Clifford that the new Chief Justice permit him, Clifford to continue to preside until the Chief Justice

Complimentary Dinner

TO THE

HON. M. R. WAITE,

BY THE

CITIZENS OF TOLEDO,

At the Oliver House, Dec. 18th, 1871.

OYSTERS. SARDINES.

SOUPS.

Mock Turtle. Oyster.

FISH.

Kenebeck Salmon. Broiled White Fish.

REMOVES.

Roast Sirloin of Beef. Roast Saddle of Venison.
Ham, braized, Champagne Sauce. Roast Turkey with Oysters.

RELEVES.

Tenderloin of Beef with Mushrooms.
Escaloped Oysters. Vol-au-vent de Huitres.
Omelette au Confiture.

GAME.

Roasted Prairie Chicken. Roasted Pheasant. Wild Turkey.
Quail with Oysters. Haunch of Venison.

COLD

Boned Turkey. Aspic of Quail. Beef a la Mode.
Chicken Salad. Chartreause de Perdreaux. Aspic of Oysters

VEGETABLES.

Fried Potatoes. Stewed Mushrooms.
Sugar Corn. French Peas.
Mashed Potatoes. Green Peas.

PASTRY.

Lemon Custard Pie. English Plum Pudding.
Assorted Cake. Charlotte Russe. Assorted Candies.

DESSERT.

California Pears. Masina Oranges. Almonds & Raisins.
Madeira Jelly. Vanilla Ice Cream. Malaga Grapes.

became more familiar with his duties. The Chief Justice advised Justice Clifford that since he (Waite) was the Chief Justice, that he would immediately enter upon his duties, and that he expected to be able to discharge them in a proper manner, which he proceeded to do.

Chief Justice Waite's services extended through a portion of President Grant's second term, the administrations of Presidents Hayes, Garfield, and Arthur, and President Cleveland's first term. During this period the court consisted of men of great learning and strong character, such as Justices Samuel F. Miller of Iowa; Stephen J. Field of California, a brother of Cyrus Field of Atlantic Cable fame; Joseph P. Bradley of New Jersey; and Noah H. Swayne of Ohio, who was the father of Noah H. Swayne, Jr., one of Toledo's leading citizens of a few years ago, a close friend and relative (a brother-in-law) of Morrison Waite Young, hereinbefore referred to, and a member of the Board of Directors of The Toledo Trust Company when Mr. Young served as its President and Chairman of the Board. It has been said that at this time the Court probably consisted of the ablest group of Justices ever to sit at the same time. Never was there a period during the entire history of the Court when the general public held it in higher esteem. During these years the Court was almost immune from public attack or criticism. It was out of politics. There were no Democrats or Republicans or New Dealers.

About a year after his appointment to the Court, the Chief Justice was discussed as a possibility for the office of President. Many newspapers throughout the country, including *The New York Times, The New York Tribune,* and all three Toledo papers, *The Blade, The Commercial,* and *The Bee,* contained favorable editorials and comments upon his character and ability for such office.

To a request that he declare himself a candidate for the office of President, the Chief Justice replied in a letter to one of his constituents:

"But do you think it quite right for one, who occupies the first judicial position in the land, to permit the use of his name for a mere

political office? The Presidency, although high, is only political. . . .

"The Court is now looked upon as the sheet-anchor. Will it be if its Chief Justice is placed in the political whirlpool? The office has come down to me covered with honor. When I accepted it, my duty was not to make it a stepping-stone to something else, but to preserve its purity and make my own name as honorable, if possible, as that of my predecessors.

"I appreciate all the kindness of my friends, but ought not the Constitution to have provided that a Chief Justice should not be eligible to the Presidency? If such ought to have been the Constitution, can I with propriety permit my name to be used for the formation of political combinations? If I do, can I remain at all times and in all cases an unbiased judge in the estimation of the people? If I am not, shall not I degrade my office? . . ."[2]

The Chief Justice's declination of the Presidency was acclaimed throughout the land. The following appeared in *The Nation* under date of December 2, 1875:

"Chief Justice Waite, who has been talked of for the Presidency, has made a really valuable contribution to political literature, not only by declining to allow his name to be used for any such purpose, but by pointing out the gross impropriety of making the bench of the Supreme Court a stepping-stone to something else."

Chief Justice Waite came to the court when many important new economic and social problems were presented, and he assumed a major portion of the work of the court. Many of his earlier opinions concerned cases involving the privileges and immunities of citizens under the Fourteenth and Fifteenth Amendments to the Constitution which had been adopted but a few years before he came to the court.

The so called Granger cases which related to rates established by railroads and public grain elevators and public warehouses were the occasion for the development by the court of the law with respect to the Fourteenth Amendment, which provides, among other things, "No state shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law. . . .

Probably the Chief Justice's most famous opinion is in the

case of Munn *v.* Illinois, which involved an Illinois statute fixing the maximum charges for storage of grain in public warehouses. The statue was attacked by the warehouse owner on the ground that the fixing of a maximum charge deprived him of property without due process of law in violation of the Fourteenth Amendment. The Chief Justice wrote the opinion upholding the statute on the ground, that the State of Illinois had the right, under its police power, to regulate charges by owners of a business affecting the public interest, and that the grain elevator business, which had been established many years before, had grown so that it affected the entire commerce in grain, and having become a business in which the public had a direct interest, the statute fixing a maximum charge on storage of grain was lawful and constitutional. While the question was a novel one for that time (Justice Field having dissented) no one would question legality of such a statute at this time.

While this opinion has in later years been modified to some extent, the basic principle announced by it has become the law of the land. On the same day the court upheld the validity of similar statutes in Illinois, Wisconsin, Iowa, and Minnesota, fixing maximum rates for passengers and freight for railroads operating in those states.

The name of Chief Justice Waite is prominently connected with these revolutionary changes based upon a new interpretation of the Fourteenth Amendment, and the broadening of the police powers of the individual states. He became known as the guardian of the public interest and the protector of this interest against combinations of wealth and monopoly.

The Chief Justice's later opinions ranged far and wide and covered other subject's of commerce, and also covered rights guaranteed by the Bill of Rights, questions of taxation, jurisdiction of Federal Courts, international law, and many property cases, including patents and copyrights.

Chief Justice Waite died in Washington of pneumonia on March 23, 1888. An impressive ceremony was held in the hall of the House of Representatives on March 28, and funeral

services took place in Toledo on March 29. Throughout Toledo flags floated at half staff and half mast. There was a general cessation of business.

Special trains brought members of the Supreme Court and Congress, Governor Foraker of Ohio and other state officials.

After a short service in Trinity Church at the corner of Adams and St. Clair streets in Toledo, the doors of the church were opened and thousands of people of the Maumee Valley passed by the casket. Final services were held in Woodlawn Cemetery.

Bruce R. Trimble, one of his biographers, has said,

"History may not place him among the most illustrious of Chief Justices of the United States. His success was not attained because of any particular genius. His reward came through careful and painstaking toil, and, when he attained the supreme goal of his profession, he kept in mind the words of Webster in his characterization of Story, 'Judge, judge the distinguished Judge,' and strove to emulate the record of his predecessors. His many great opinions, especially those like the Munn case, Water Works Company vs. Schottler and Stone vs. Mississippi, which prevented the ravaging of society by corporate combinations, are sufficient to place him high in American Constitutional history. While the purity of his private life entitles him to the characterization of his friend, Evarts, 'He was a good Judge.' "[3]

NOTES

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The German Element in Toledo

STEPHEN J. BARTHA

THE settlement of Toledo was weak indeed for a time after the many crises which she had to overcome in the first years of her existence. The boundary quarrel with Michigan in 1835, which verged on tragedy and seems almost farcial today, was followed by the world-wide panic of 1837 and had its effects in Toledo. A great drought in 1838 and an epidemic of malarial fever were further adverse conditions which the newly incorporated city of Toledo faced in its earliest years. The severity of the drought may be readily appreciated when one realizes that no rainfall was recorded in the period from July 3 to October 15 of 1838.[1] These troubles, however, may have been blessings in disguise, for the panic bankrupted most speculators and the fever discouraged all except the most hardy. As a result their places in the community were taken by a sturdy industrious group of citizens whose interests lay in the permanent prosperity of the city.[2]

Recovery from this series of adversities was greatly accelerated by completion of the Miami and Erie Canal, extending from Toledo to the Ohio River in Cincinnati, in 1845. Shortly thereafter, Toledo became a terminal point of the canals, and the resulting opportunities for employment and business brought many new inhabitants to the city. Among these were large numbers of Germans.[3] While Toledo has never been called a "German City" in the sense that Milwaukee and Cincinnati are so-called, this Teutonic element has taken a very prominent part in Toledo's development. Up to 1920 it was the largest foreign element in the city's population. Since that time they have been surpassed only by the Poles, who have been the leading foreign group during the past quarter of a century. The following table shows the general growth of the German-born population of Toledo since 1870, based on United States Census reports.

German-Born Population of Toledo

Year	*Population*
1870	5,341
1880	6,809
1890	11,962
1900	12,373
1910	15,308
1920	8,476
1930	7,512
1940	4,890

Long before Toledo was incorporated as a city, one of the first white owners of the real estate on which this city was founded was a German, Martin Baum of Cincinnati, who with others in 1817 bought tracts of land from land companies. Because of rivalries among these speculator groups, little of this land was taken by actual settlers until after 1824, when claims of rival owners were adjusted. Thereafter, many German names are recorded as buyers of 80 and 160-acre tracts. Trapp, Forke, Weiss, Brehm, Strayer, and Neubert are among those listed.[4]

The first German in Lucas County to apply for naturalization papers made his appearance at an early date during the fourth term of the Common Pleas Court in 1838. He was Philip Adolph Hagenburgh of Mecklenburg, Germany, who arrived here in 1834 at the age of eighteen.[5] By 1840 there must have been a sizable group here, as Salem Lutheran Church, the oldest Lutheran Church in Toledo, was organized by the German Iowa Synod to provide for the spiritual needs of these German citizens of Toledo.[6]

While the religious motive may have induced some Germans to come to Toledo, it was not a primary one. The chief reasons for their coming were political and economic. The former reason was especially important among the "forty-eighters," who were forced to flee from their fatherland because of their own political activities; others left because they were opposed to the political conditions that followed the failure of the revolutionary movements.[7] Nevertheless when they did reach

Toledo, they established churches, and by 1850 there were enough Germans to sponsor a Methodist church, and in 1854 a German Catholic church was founded.[8] The establishment of these distinct religious institutions is indicative of the rapid growth of the German colony, which was originally along Cherry Street and later spread to South St. Clair Street.[9]

Churches may be useful barometers of population, for it seems that the first institution organized by any foreign element in a large city was a church. With the spiritual needs of the group provided for, the church offered social opportunities as well.

German people belonged to several faiths and up to the time of the Civil War numerous German-speaking Protestant churches, as well as a German-speaking Catholic church, were well established. St. Francis de Sales was the only Catholic church in Toledo up to 1854, and the German portion of this parish was steadily increasing. In November, 1853, a petition signed by over 200 German members asked permission to build a church where they could worship in their own language. This petition was granted and in the following January the Rev. Charles Evrard was appointed first pastor of St. Mary's Church. Erection of the $57,000 edifice began that summer at the corner of Cherry and Orange Streets.[10] It was rather ironical that the first pastor of this German church should have to be a Frenchman with little knowledge of the German language. However, his spirit and zeal and the devotion with which he went at his work were so great that he saw his church not only completed but expanded as well, and St. Mary's soon became one of the landmarks of Toledo.[11]

A German colony of Catholics grew up on the East side, and in 1883 the "Church of the Sacred Heart" was dedicated to provide for the spiritual needs of this group. By 1888 the parish numbered 120 families and had a parochial school with an average attendance of ninety pupils.[12]

If number of churches are indicative of faith, it would seem that most Toledo Germans were followers of Luther. Up to

1922 there were twenty-six Lutheran churches in Toledo, and they represented the largest Protestant denomination in this city.[13] Of this group, eleven were organized by German people or are still patronized by the German element in Toledo.[14] It was this German Lutheran group that opened the St. John's Orphan Asylum on a 40-acre tract on Seaman Street in August, 1860. Subsequently an "Old People's Home" was also established in conjunction with the children's home.[15]

Other sects with smaller memberships were also organized in Toledo including a German Evengelical Reformed Church started in 1853 at Scott Street and Canton Avenue,[16] and in 1871 the First German Presbyterian Church began its spiritual mission at Canton Avenue near Beacon Street.[17]

Further minor sects were included in Toledo's Protestant group, which would prove quite conclusively that the Germans were a devout people. By 1888 there were eighteen Christian German-speaking churches in this city, together with two Jewish Synagogues.[18] Supplementing the Christian churches were twenty benevolent societies to provide any special social and fraternal needs.[19]

> "Where the lyre reigns, they fear no wrong,
> Good folk alone know the might of song."

The above old German proverb, which holds true in any land, is put into evidence wherever German folks gather and was evident in Toledo at an early time. The opportunity "to trip the light fantastic" was given Toledo's Germans in 1840 at Michael Schoenacker's Hall on Water Street.[20] However, it was in the field of music that Germans excelled and they engaged in both instrumental and vocal music with great energy. First mention of a German band concert was on February 2, 1854, by the Kossuth Band. From then on their numbers grew and in 1887 five instrumental musical groups still survived.[21]

This city's musical history practically parallels that of Louis Mathias, whose father was a clarinet player with Napoleon's army in the Spanish campaign and who thoroughly groomed his son in a knowledge of music. Mathias was born in Germany

in 1826 and emigrated to Philadelphia in 1850. He came to Toledo on a concert tour in 1853, and something in the atmosphere of this little town of 4,000 induced him to remain. Within a year he started one of the first of Toledo's orchestras known as *The Musicverein.* A little later he founded the singing club called *The Gesangverein.* When the two groups were officially organized on October 15, 1854, the entire membership of twenty-two members was Teutonic.[22]

The most outstanding German singing organization in Toledo is the *Teutonia Männerchor,* which was formed in 1867 with twelve members. In 1935 this male chorus had fifty-five active and one hundred sixty sustaining members to maintain and continue the tradition of the numerous *Gesangvereins* of the old German villages.[23]

That a strong body usually accompanied a keen mind has always been a basic belief of the German people, and the "old country" *Turnvereine* was transplanted to Toledo in 1854, when the society met in a hall on Oak Street for gymnastic programs. With the outbreak of war in 1861 most able-bodied members enlisted in the Union army and the organization died out. After peace was again restored, remaining members of the *Turnvereine* united with another Teutonic group called *The Saengerbund* in forming the *Deutsche Gesellschaft* in 1866 and erected the German Hall on South St. Clair Street for their uses. Up to 1882 this hall was the center of most German social activities, balls, concerts, etc.[24] The distinctly Teutonic name of these gymnasts was not frequently used; they were usually just called "The Turners." In 1934 this group became known as The German-American Athletic Club and bought new and larger quarters on Collingwood Avenue, where classes were held for men, women, and children.[25] The unfavorable general attitude toward anything German was felt by the Turners, as by all other German groups, with the growth of the Hitler regime and most of their activities were gradually suspended. Further the Selective Service absorbed most males, who had been the primary mainstay of the organization.

Being a very socially minded people, the various German

groups have organized at least thirty-five separate societies and clubs in Toledo, but these lacked any central organization. The *Deutscher Zentralbund* attempted this in the 1890's but was replaced in 1900 by the German-American Alliance, which included representatives from all of the city's separate German groups. This Alliance functioned feebly until 1918, when war hysteria caused the federal government to revoke its charter.[26] With this failure, the last centralized organization of Teutonic groups disappeared.

As a rule, Germans settled wherever a satisfactory location was available and usually became home owners. The two previously mentioned settlements were later supplemented by a third German section just prior to the first World War and included Hawley, Vance, Dorr, and Ewing Streets.[27] Today, however, there is no area in Toledo which can be labeled a German section in the sense that we still have a Syrian, Polish, Hungarian, or Bulgarian section. These Germans and their children are fairly well distributed over Toledo. Indeed, the early German settler prided himself more on his provincial origin than on the country itself. "I am a Swabian" or "I am a Bavarian," was a much more probable statement of nationality than "I am a German."[28] The fact that Germany did not have any political unity until 1871 after she had defeated France accounts for some of this local idealism; however, it did not interfere with their being Americanized.[29]

The traditional zeal of the German for community service is well shown in his political interests and activities. With the large immigration of 1849 and thereafter came an enthusiasm and an unselfish patriotism that has left a lasting impression on the character of this city. This energetic spirit was kindled by the unsuccessful revolutionary aspirations of many Germans and was transplanted to these shores by the masses of immigrants, who saw active participation in most political and philanthropic movements.

The early Germans were for the most part Democrats as the Whigs were suspected of nativism. Furthermore, they liked the

word "Democratic"; it seemed more in harmony with their political views.[30] However, after 1856 they tended to lean toward the Republican party with its mixture of anti-slavery Whigs, anti-Nebraska Democrats, and Free Soilers, and the Republican successes in Toledo from 1861 to 1872 may in a large measure be credited to their efforts. Germans who attached themselves to the Republicans felt that it upheld their advanced political views and was more in sympathy with them than any other political party.[31] Further, the slavery controversy in the midst of which many Germans landed brought some disillusionment to them and their idealistic sense was so appealed to that they threw themselves into the struggle with a youthful vim. This slavery issue greatly helped to Americanize these early Germans as it substituted interest in an American question for a European one.[32]

Know-Nothingism was the first great force in opposition to which all German sentiment was unified and the Germans were not willing to stand by and allow the movement to proceed without registering their discontent. An opposition group known as the *Sag nichts* arose in 1855. To what extent it existed is not certain, but it was limited. Its name indicates a Teutonic origin; membership, however, was made up of other nationalities too, to offset this nativistic pressure of the Know-Nothing party.[33]

Their love of freedom and their intense feeling against the forces of slavery were reflected in the responsive manner in which they supported the Union's cause during the Civil War. A company of German soldiers, the "German Rifles," was not accepted when the first volunteer groups left for further training in Cleveland, but they did go later and became part of the Fourteenth Ohio Infantry.[34] The Thirty-Seventh Regiment, organized in 1861, was composed substantially of Germans from Toledo, Cleveland, and Chillicothe and was the third German regiment raised in Ohio. Louis von Blessingh of Toledo was lieutenant colonel of this group. Three-fourths of the men reenlisted when their terms were up and many participated in

General Sherman's famed "march to the sea." The regiment was mustered out August 7, 1865.[35]

At the time of the first World War, German patriotism was questioned frequently and their institutions were looked upon with great suspicion. The German-American Alliance was the object of most of this criticism, and one of the most bitter and persistent opponents of this Alliance was Gustavus Ohlinger, whose maternal grandparents were born in Germany. By the time of this first world conflict the Alliance had grown to a national organization of considerable prestige. Through its local units, it had been in the forefront of the battle to present the pro-German view of the war to the American public. Its members also raised funds for their stricken German kinsmen and opposed what German-Americans called pro-British neutrality of the American government.[36] Ohlinger, who was also president of the Toledo Chamber of Commerce, had a decided distrust of this organization and attacked the group in an article on "German Propaganda in the United States" which appeared in the *Atlantic Monthly* for April, 1916. This attack was renewed in a booklet, *Their True Faith and Allegiance,* which followed shortly afterward.[37] In his attacks Ohlinger took great pains to demonstrate that the Alliance was an instrument of pro-Germanism in America. He further described the organization as the tool of pan-Germans, whose purpose was to keep the German population in foreign countries a solid bloc, and to prevent their being assimilated.[38]

An editorial in the *New Yorker Staats-Zeitung* retaliated and denounced Ohlinger's charges as "vaporings of an irresponsible person." It argues that whatever the German-American Alliance attempted or had accomplished in this country up to the time the United States entered the war was only what any other group of American citizens was entitled to attempt or accomplish. Throughout the Federal Government investigations, Ohlinger was a principal witness against the Alliance, and while no direct acts of disloyalty could be attributed to its members, their pro-German sentiment was readily seen. On July 2, 1918,

with practically no discussion, the charter of the National German Alliance was repealed by the United States Congress.[39]

The influence of the German element could perhaps explain the vacillating policy of Congressman Isaac R. Sherwood, Democrat from the Toledo area, who was one of the fifty in Congress who voted against war in 1917. At the time of the sinking of American ships he declared he would vote for war, but at roll call he voted against the war resolution. Some Toledoans were inclined to attribute Sherwood's change of heart to pacifist demonstrations at that time in which Frank Hillenkamp, president of the German Historical Society, was said to have had an active part. Hillenkamp was reported to have argued with Sherwood against going to war with Germany.[40] Sherwood was an astute politician, sensitive to the wishes of his many German and Hungarian constituents, both of enemy countries, who must have appreciated his stand, for in the 1918 election those groups gave him their solid support. In spite of severe criticism by the influential *Toledo Blade* and the National Security League, he was re-elected to Congress by a sizable majority vote.[41]

The attitude of many German-Americans of the time is illustrated by an incident which took place on April 6, 1917, the very day Congress voted to go to war, when an aged carpenter was knocked down with a piece of gas pipe by a pro-German sympathizer during a political argument. The staunch Teuton was pulled away and somewhat abused by loyal American bystanders.[42]

German loyalty was questioned again during the time of the unsettled conditions in Europe, when the Hitler mania seemed to be spreading among Germans even in this country. Four hundred "Friends of Germany" met in Swiss Hall at 735 South St. Clair Street on Sunday February 3, 1935. A picture taken by Charles Byers, of the *News Bee* staff, shows the hall jammed with men, women, and children, hand upraised in Nazi salute. Draped on the stage was an American flag and flanking it on either side were German and Nazi flags. Large posters bearing

inscriptions in German were streamed around the walls. The official name of this organization was the "American League of the Friends of New Germany."[43] Their uniform was simple and consisted of black trousers, a white shirt, and a Sam Browne belt. All wore arm bands of red, white, and black bearing the swastika in black on a white circle.[44] Chairman of the meeting was a Charles Von Hoff, who claimed there were sixteen members enrolled in the Toledo chapter.

This loyalty was further questioned on October 19, 1938. when existence of a German-American Volkesbund, the national organization of which Fritz Kuhn was the head, was made known. The group had a chapter in Toledo with a membership of less than one hundred. Police Inspector Joseph Fruchey claimed he knew of their meetings, but said nothing was found to warrant interference by the police.[45] The Bund was meeting resistance from old-time Germans, who in some instances even attempted boycott of several local industries which employed Bund leaders. Ostracism of that type was even more effective than police interference and helped serve notice that the majority of Germans in Toledo were loyal to this country. This same spirit prevailed in local German organizations where several over-active Bundists were dropped from membership because of their objectionable Bund association.[46] Those forces must have been fairly effective, for William Fritz, local Bund leader, asserted there were only two active members in Toledo in 1938. He explained that the Toledo chapter had been formed in 1934. However, he could recall no meetings of the group in 1938 or 1937 and remembered of only one social meeting held in 1936.[47] Of course, this poor memory was prompted by the unsavory reputation the Bund had acquired, as association with it had become a discredit to any real American. Actually the Bund had been functioning with meetings held at various places, including Swiss Hall. Because of recent public lashings, however, meetings were being held at secret times in private homes.[48]

As a result of alleged un-American activities, the Bund, on

October 20, 1938, was prohibited from using Swiss Hall for their meetings. Henry Wirz, manager of Swiss Hall, declared that the Bund held only three meetings in his hall and that these were never attended by more than five members.[49] Wirz' statements, too, had to be discounted, as his association with the local Bund and with the national officers was generally known. Loyal Americans of German descent were quick to disclaim any association with Fritz, Wirtz, or their organizations. Carl Rampendahl, president of the Toledo Turners, vigorously denied that his club had anything to do with the Bund. "Our club is solely for the purpose of providing athletic training and a social time," he said. He added that no political activities, not even talks, were permitted at the Turner Hall on Collingwood Avenue.[50]

In spite of this unfavorable publicity which actually involved only a very small minority, the greater proportion of the German population in Toledo were loyal Americans. Most of the 4,800 German-born residents had lived in the city for a long time. Their children were born and reared under American conditions which helped loosen ties to the old-country and strengthen their love for the United States. Hardly a single German family was not represented in some branch of the government's service forces fighting for those freedoms which the Hitler government usurped in Germany. Although their loyalty had been under suspicion, it was not found wanting.

At least four Toledo mayors were German born, namely: Guido Marx, Jacob Romeis, George Sheets, and William Kraus. German social habits may have been responsible for the failure of Mayor Kraus' re-election because he permitted and participated in Fourth of July celebrations when this national holiday fell on a Sunday during his term of office in 1869. The ill feeling this created among more devout Toledoans contributed to his defeat at the following elections.[51]

Jacob Romeis was probably the most successful of this quartet. He first came to Toledo in 1849 from Bavaria and was elected mayor in 1879. After serving three terms as mayor he

was elected representative to the United States Congress, where he also served two terms.[52]

As numerous and intelligent as these Germans were, they naturally did not long remain without some form of journalism. The first issue of a weekly titled the *Ohio Staats-Zeitung* was distributed on December 27, 1853. It was owned and published by Emil, Guido, and Joseph Marx and Heinrich M. Hanschild under the firm name of Marx Brothers and Hanschild. After 1856 it became a daily. Quite outspoken, it was anti-slavery and consequently Republican in its tendencies. This publication wielded considerable influence in shaping the German mind in this vicinity.[53] As a daily the paper was short-lived and in 1860 it became a weekly again and was distributed as the *Toledo Express.*[54]

Other German papers endured only a short existence and included the following: *Demokrat,* from 1859-1863; *Volksfreund,* from 1878 to 1896; and *Freie Presse,* from 1887 to 1890. All were weekly except the *Freie Presse,* which published a daily edition.[55]

The German language, as an integral part of the school program, was introduced into Toledo's public schools at an early period in November, 1854. Julius Voltriede was called here from Louisville, Kentucky, to take charge in both the elementary schools and the high school. Seventy students were enrolled in his first classes, which ended in June, 1855. Elementary instruction in German was not successful and was discontinued after the first year,[56] but it has been maintained in the high school up to the present time.

Representative Germans are found in all walks of life in Toledo. Many are skilled factory workers; some settled on farms; others became businessmen and merchants. Probably the largest wholesale grocery firm in Toledo, the Bartley Company, was founded by Rudolph A. Bartley in 1872. He was born in Wurtemburg and emigrated to Toledo in 1867.[57] Among the early German settlers, there were few engaged in the fields of law, medicine, engineering, or art.[58] Later generations, how-

ever, entered these professions in great numbers. Perhaps the first German doctor in this city was Dr. Franz Joseph Klauser, who was educated at Heidelberg and came to Toledo in 1850. Dr. Frederich Hohly, from Wurtemburg, followed shortly after in 1853. The political disorders in the homeland caused the emigration of both men.[59]

Toledo owes much to her citizens of German extraction. This is not said in disparagement of any other race or nationality, but is especially noticeable, because of their great numbers and the wide range of their activities. No one would minimize the influence of a group who were the leading foreign element in this city for almost a century.

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The Siege of Fort Meigs
Year 1813

An Eye-Witness Account by COLONEL ALEXANDER BOURNE

Concluded from October, 1945, issue.

CHAPTER VII

Decisive battles at Fort Meigs, & raising of the siege—

It was known during the siege, that a brigade of Kentucky militia under the command of General Green Clay was on the march to reinforce us—& on a dark stormy night about the 3d of May, Captain Oliver was sent on horse back, to run the gauntlet thro the surrounding rapids, about 20 miles from Fort Meigs, & returning safely through the indians the next night, gave the information—The next morning, May 5th. Genl. Harrison sent Captain Hamilton & part of his company to meet Genl. Clay, & order him to detach 800 men to storm the brittish batteries on the north side of the river—spike their guns—cut down their wheels & then immediately retreat towards our fort, where they would be assisted across the river, under the cover our guns—Captain Hamilton carried the spikes, & gallantly lead on the storming party, & as the morning was foggy, & the main brittish army being down at the old fort, & only the artillerists & a fatigue party at the batteries, they were completely surprized—

The 750 Kentuckians under Colonel Dudley, stormed & carried the batteries in fine style—spiked the guns—cut down their flag staff & let it lay—for seeing some indians in the edge of the woods—(& every Kentuckian is crazy at the sight of an indian,) they rushed into the woods after them, contrary to positive orders & the efforts of their officers—& pursued them into an ambush—while the brittish army below, hastened up, retook their batteries—raised up their flag again, (for the Kentuckians thought it more honor to fight indians than to take a brittish standard,) & attacking the Kentuckians in the rear, the contest was soon decided—Col. Dudley & 220 of his men were killed—180 retreated across the river—350, including Capt. Hamilton, were taken prisoners—marched down to the old fort—& after

the indians had there deliberately killed 40 of the prisoners in the presence of the brittish officers, Captain Elliot stopped the massacre—On the same day, two small batteries in our rear were stormed—the guns spiked, & two lieutenants & 40 privates of the veteran 41st brittish regiment taken prisoners by Colonel Miller, with a detachment of the regular infantry & volunteers—Our success was complete—we were reinforced by about 1000 men, & had rendered the enemy's cannon useless—

On the 6th. of May, Genl. Proctor sent Major Chambers towards our fort with a flag of truce, to propose an exchange of prisoners—& Genl. Harrison sent Major Hukill with a flag to meet him between the lines—Major Hukill's guard of honor, or escort made a fine show—He was probably the handsomest man in the U. States—& with his rich draggoon uniform, & grecial helmet, exceeded any thing I ever saw—His Officers & men also exhibited the finest equipment we could muster—they were in full uniform, the Officers with splendid eppaulets & ostrich feathers, & the sergeants with silver mounted swords all borrowed for the occasion, astonished the brittish officers—outshone them five to one—for no brittish subaltern is allowed to wear bullion eppaulets, but only embroidered shells on the shoulders—On the 7th. the exchanges were completed—& on the 8th. the brittish army raised the seige & marched off—having first attempted to unspike their cannon, by heating them in burning logheaps, but without success—

This was the longest seige during the war—& the whole number of killed & wounded, was perhaps equal to that of any other battle which was fought—viz—killed on the south side, 77—on the north side 260—total killed 337—Wounded on the south side, 187—total killed & wounded 524—General Proctor was either cowardly, or lacked sound judgment—for instead of building his batteries two thirds of a mile off—he ought to have come over on the south side—brought up his heavy cannon & mortars within 250 yards, either by regular approaches or a direct sap, & he would have knocked all our defences down in a short time —& we expected he would do it—I know that Genl. Harrison was determined, if the enemy stormed the fort, to ask for no

quarter, & give none—for one of his Aids came to me one evening during the seige, with verbal confidential orders—"That from some movements of the enemy, it was expected they would storm the fort that night—& I was ordered to rake the ditch with cannister shot, until they succeeded in cutting down the pickets & marching to the inside of the fort—then wheel the cannon to the door, & fire on them there until my men were all cut down—then spike the gun & defend myself with my sword to the last extremity, & that *every man must fall in his tracks*"! I found on enquiry, that the other commanders of batteries & blockhouses received the same orders—& we should have obeyed them to the letter—Our militia officers, generally, were very ignorant & they were determined not to leave their duty—The militia officers rank next after the regular officers of the same grade—that is—a militia Captain ranks after a regular Captain, but before a regular lieutenant—but two of our Ohio militia captains, after they had been two or three months in the service, thought that the regular sergeants out ranked them, & when on guards of regulars, actually asked leave of the sergeants, to go to their dinners—They were also entirely ignorant of correct military art & discipline, & had no military books—The Company officers knew the manual exercise, & how to march & wheel, without time or dress—The field officers knew how to form & display columns, according to Baron Steuben—but had no idea of drilling to time—the service of the guards—or how to form in the order of battle—After the batteries in the rear were stormed & taken, the Draggoons were ordered out to scour the woods, & drive off the indians who might be lurking there—& our little Ohio militia battalion was ordered to march out—form in order of battle, & support them if necessary—

Major Pitzer had been wounded, & Major Lodwick was ordered to command the battalion—but also to divide it into two demi-battalions & give me the command of the left one—This was irregular—because it was the right of the Senior Captain to command it, & not the Adjutant—but it is the first duty to obey orders, & so I took the command—Major Lodwick had formed the battalion, as when mustered for inspection, in open

order—the officers & non-commissioned officers in front of the line, & between it & the enemy—When I came on the ground I ordered the officers & non-commissioned officers to the rear—formed the privates in close order, shoulders touching—the Captains in the front rank, on the right—the 1st. sergeants covering them in the rear rank—the other sergeants & corporals as file closers in single rank, & open order, two paces in the rear of the privates, the 2d. sergeant on the left—then the lieutenants & ensigns were formed in open order, in the rear of the file closers, & took my post in their rear—I then told the file closers it was not their duty to fight personally, but to see that the privates fought, & did their duty—& when any of the men were killed or wounded, to drag them back, & close up the files to the right—I told the subaltern officers it was their duty to enforce the obedience of the file closers & to cut down every man who attempted to retreat without orders, & that I intended to do so—but fortunately for us, we were not attacked—for how Major Lodwick would have managed his command if suddenly attacked—history does not inform us—If he suddenly passed to the rear, it would cause a panic, & all his men would run away—if he continued in front, he & the other officers would be taken prisoners—because the men could not fire without killing their officers, & being without officers or orders would surely run away—The term gentleman soldier is a perfect absurdity—for all military command is necessarily despotic, & when a corporal is commanded to take two or three files of men & perform a given service, his authority is as absolute & unquestionable as that of the Autocrat of all the Russians—

In this siege, we passed through a terrible conflict, which tried our souls & bodies—As there were about fifty officers in the garrison, whose rank was higher than mine, & my name was the 14th. mentioned in the general order thanking us for bravery & good conduct, I had no reason to complain—Soon after the siege, Genl. Harrison returned to Ohio & Kentucky—leaving Genl. Clay in command & as he was generally sick, Capt. Wood, the Engineer, as volunteer Aid de camp, appeared to exercise the real command—We had nothing to do, & as the warm

weather came on, the troops became quite sickly & many died—About the first of June, I was obliged to report myself on the sick list—It was reported in the latter part of June, that the brittish had repaired their losses, & were coming to give us another trial—I went to Captain Wood, & told him that I thought I was able to stand by my gun, & would report myself for duty—He gave me my choice of all the blockhouses on the rear line—& I chose No. 7, at the southwest angle of the fort, with four embrasures—a fine brass 12 pounder, which raked all the ground on which they could storm the fort to advantage—& I was very anxious to see them on the plain in front of me—The alarm, however, false one—the brittish were not coming *then*—but did come & reconnoitre our position & situation two or three weeks afterwards, & finding the yankees were well prepared for another tug—retreated again—sailed to Lower Sandusky, & were there defeated by Capt. Croghan & about one company of men—As my sickness continued & rather increased—the Surgeon certified, that my life depended on returning to the settlements where I could get fresh provisions, & Genl. Clay gave me a furlough, until my health would be restored—

I had no horse—having sold mine for 22 dollars less than I gave for him, soon after arriving at the fort—for there was no forage to be had—No officer kept a horse, except Genl. Harrison, & the Draggoons, & many of theirs were killed during the siege—At length the quartermaster Genl. let me have an old pack horse, on my receipt, & I purchased an old saddle & bridle for ten dollars—Then I could not go safely alone—for the parties of hostile indians were still lurking around us—but the next day, a small detachment of Officers & friendly indians was ordered to the interior, & I went with it as long as I could keep up—It consisted of Major Lodwick, on furlough—Major Heaton under arrest—a Captain Rankin of Kentucky—two or three other whites, & 8 or 10 indians under sub-chief Johnney, all better mounted than I was—It was unsafe to take any of the military roads, & we shaped our course straight through the wilderness, towards fort Amanda, near the head of the Auglaise river—guided by Capt. Johnny—

The first day we saw a few hostile indians watching us—but we occupied a strong position at night, & they did not attack us—The next day my old horse began to lag behind, & I could not keep up with the party—Major Lodwick had borrowed ten dollars of me, & Capt. Rankin five dollars, & both promised to stand by me to the last extremity—but they both broke their promise of honor, & left me behind—One of the indians came back to me, & said he would ride behind my horse, & whip him up if I would give him money, & I gave him about a quarter of a dollar a mile—but my horse soon refused to trot, & no whipping could urge him out of a walk—The indian then told me, that he dare not stay with my any longer, as the hostile indians would overtake us, & leaving me towards night, he galloped away after the party—I continued to walk my horse slowly on the trail, until it became so dark that I could no longer see it—then dismounted, & turned the old horse loose—believing that he would be of no further use to me—I fired my pistols, to let the party know where I was, if they were near enough to hear—went a short distance out on the north side of the trail, & stretching my single blanket, lay down in my clothes, trusting in Divine Providence for protection—I reloaded my pistols, laid them by my side, & with sword, tomhawk & knife, determined to sell my life dearly if attacked—The night was dark & stormy, with thunder & high wind in the latter part—I then regretted that I had not selected a camp out of the reach of dead limbs broken from the trees, & turning my back uppermost as the strongest side, waited for the morning—one small limb striking me on the hip without damage—

I got up somewhat rested, as soon as it was light enough to see the trail, & found that I had about two ounces of bread in my pocket, & nothing else to eat—I took my knapsack, blanket, fireworks, tomhawk, knife & sword—leaving saddle, bridle, holsters, & pistols, & walked slowly on the trail—I thought I should live to reach fort Amanda, if the indians did not overtake me—because I knew it was not far to a large branch of the river—I could probably find a turtle, a fish, or some berries—or some-

thing to eat, & keep the trail of the party into the fort—probably not more than thirty miles—but my little piece of bread appeared to be very precious—& travelling on sick, sad, hungry, & weary, about 9 o,clock, came to an old field on Blanchards fork of the Auglaise river, where the old Ottoway indian town formerly stood—& behold! there were the indians still in camp—Capt. Johnny & my scurvy brother officers having ridden on all night to get to a place of safety—but the indians would not march in the morning until they had dried their blankets, according to their custom, & this probably saved me.

I hired two indians to go back to my camp for the articles left there—they let me ride a sumpter horse, whose load of provisions had disappeared—& that night we all got into fort Amanda—where we were comparatively safe—The next day I went over to Fort St. Mary, & the next day into the white settlements on the Miami river—I have never seen Rankin, or the five dollars he borrowed since—he was a stranger—but the inhuman conduct of the two majors, in leaving a brother officer of the same brigade sick on the trial behind them, to be picked up by hostile indians, was too mean for contempt, & their lying, was beyond the skill of a boatman—Lodwick never paid me the ten dollars—but his son paid it about two years afterwards—

After several days, I arrived at Chillicothe—& gave up the public horse for the one I turned loose—I had drawn no pay—was nearly out of money—& could find but very few friends—Genl. McArthur wishing to send his wife & second daughter to the Kentucky springs for their health, proposed that I should escort them there & back—have one of his horses, & all expenses paid—& thought it would also restore my own health—I thought so too, & immediately accepted his proposal—We all rode on horse back—& as I still belonged to the service, & the war was popular, I wore my undress uniform—We had many small incidents but few worth relating—After crossing the Ohio river at Maysville, we turned off to the right into Bracken County, to look up an offshoot of the McDonalds—where we could stay all night, without expense—got lost, crossed fields, fences, & woods,

according to the direction of negroes which we saw, & about dark found the house, & also found that we ought to have inquired for McDaniel, instead of McDonald—

In the morning we concluded to go to the Upper blue lick spring first—& in due time arrived there—found but little company, for the lower lick was the fashionable resort—We staid several days, Mrs. McArthur & Margaret going to the spring after breakfast & dinner & drinking the water—& I, amusing myself as I could sometimes riding about the country &c—The boarding house was kept by Major Finley, an officer of the revolutionary army, who was good company, but rather superstitious—As Mrs. McArthur complained of the tooth ache—the Major told her he could cure it by a charm—& having rubbed her tooth with a red string, he went into the woods to find a particular dogwood tree, standing in a particular position, around which he must tie the string—I laughed so much at the old lady, that she became angry, & would not tell me whether the Major had cured her tooth ache, or not—The spring was not embellished with a marble fountain & basin—but rose through a hollow sycamore log, called a "gum", about three feet in diameter, set in the ground—It was clear & copious—mineralized with salt & sulphur, & nauseous to the smell & taste—One morning, a man whom we met there, & living near the spring, informed us, that a Mrs. Rachford, a very large fat woman, who was there just before we came, had lifted up her clothes, got into the water, & sat down in it—her big backside just filling up the gum—& we had been drinking after her—Oh, snakes, toads, & dung worms—the upper blue lick was done over! You need not speak of it again in fifty years! The Major was almost raving mad—it would drive all company away from the Lick! & Mrs. McArthur let out in fine style—I laughed it off without any damage, found my health was perfectly restored—& we all set out immediately for the lower lick—leaving the Major in a very uncertain condition—

We had a pleasant ride down the Licking river, & arrived just before night—We there found a considerable company of the higher order—The house was kept by a rough old Scotch High-

lander named Bellinggall—& when I introduced my ladies as Mrs. & Miss General McArthur, he took me to be the General himself, whom he had not seen, but had heard of—& he almost claimed to be of kin to me—& when he asked me before the company, if my lady's health was improving, I twisted every way to keep from laughing, & told him I thought it was—while Mrs. McArthur looked like, *"all gone"!* but we soon had a fair understanding—I was much interested in the appearance of the ground in the vicinity of the spring—the soil being all licked off by Buffaloes, & other wild beasts in early ages—The place has also, interesting historical associations—for here was fought the most bloody battle in Kentucky—In the early settlement of the country, the indians of the territory northwest of the Ohio river, were continually at war with the settlers—& a large war party, having murdered some people & stolen many horses near when Lexington now stands, the settlers, headed by Colonel Garrard, snatched their rifles, mounted their horses, & pursuing in hot haste, came near the indians at the crossing of the Licking river, near the lower blue lick, where there is a narrow ravine on the north side, in which the trail extended up to the high ground—Some of the party proposed to send over a few men first, to see if the indians had not halted in ambush—but Col. Garrard, calling them all cowards, spurred his horse across the river & up the ravine—the whole party followed, & while some were in the river, & the others entangled in the ravine—the indians lying in ambush on both sides & at the head, poured in a deadly fire—a bloody struggle, hand to hand ensued, & the greater part of the Kentuckians were killed & scalped—& I was informed, that a few years before I was there, their bones might be seen blanching on the ground—

Almost every Kentuckian has had relatives killed by the indians—the recollection of their losses is constantly cherished—& I suppose they have not yet fully glutted their revenge—for when the celebrated Chief Tecumpse was killed at the battle of the Thames, every Kentuckian that could, took off a piece of his skin for a razor strop—After spending about a week at the

lower Lick, & making some acquaintances, we returned to Chillicothe in August, all well—

I now found my health fully restored, & my six months term of service expired—but I was not present when the regiment was discharged & paid, & I was without money or business—My friend Hough the Auditor, gave me something to do in his office, & so I laid down the sword, & took up the pen again—