

Michigan Lawyers in History

Marshall J. Bacon

By Carrie Sharlow



The state of Michigan was built by the lumber and auto industries, agriculture, and the lawyers who lived, studied, and practiced here. The articles in this occasional series highlight some of those lawyers and judges and their continuing influence on this great state.

In January 1850, the Michigan Supreme Court heard a case addressing the issue of fair compensation for an attorney assigned a case in an effort to fulfill the constitutional right to assistance of counsel in a criminal proceeding. Attorney Marshall J. Bacon of the Wayne County court system was assigned to the case of a murder defendant. Once the trial was completed, Mr. Bacon sent a bill to the county board of auditors for \$50 for services rendered. The bill was denied, and the county and the attorney eventually fought up to the Michigan Supreme Court.

While the Court acknowledged that the request to be paid for one's services was just, it ruled in favor of the county against Bacon.¹ The county was not liable to an attorney for defending a prisoner at the request of the court if the prisoner was poor and unable to employ counsel. Mr. Bacon had essentially worked for free.

Of course, the Michigan legislature would take up the matter of payment for court-appointed attorneys in 1857,² but by that time, Bacon was in New York.

While Bacon was born in New York State, his service in this state makes him a Michigan lawyer. He was born between 1806 and 1813; records vary too much to be sure. His father was John F. Bacon of Albany.

Bacon studied law under New York lawyer David Graham Jr., author of the legal textbook *Graham's Practice*.³ The Grahams were well known in New York legal circles, with four of the five sons being lawyers. Bacon eventually married his mentor's younger sister, Belinda (also known as Melinda and Delinda), a match many viewed as beneath Ms. Graham. Bacon would frequently name drop—"My brother-in-law David Graham"—to the annoyance of his colleagues.⁴

After completing his education, Bacon moved to Michigan for unknown reasons. Perhaps he had family in the territory; maybe it was the excitement of a new, untamed land. He was admitted to the State Bar on December 5, 1834, and served in the Detroit court system while becoming heavily involved in state and local politics. The young attorney served as justice of the peace and president of the Young Men's Society in 1835.⁵ His wife had great success in local society and was known for her beauty and intelligence.

Through his service on the Detroit City Guard, Bacon was involved in the ongoing battle with Ohio over the Toledo Strip and fought in Monroe County. In its efforts to achieve statehood, Michigan eventually conceded the war and exchanged the Toledo Strip for the "worthless" Upper Peninsula.

At the end of 1836, Bacon was elected to serve as one of 18 Wayne County delegates

to the Michigan Territory's first constitutional convention. He was appointed co-secretary of the convention,⁶ for which he was paid \$15.⁷

Michigan entered the Union on January 26, 1837, and Bacon served that year as president of the newly established Young Men's Temperance Society.⁸ He was apparently the target of frequent jokes; his ruddy complexion spurred rumors within Detroit social circles of drinking despite his obvious sobriety,⁹ and several legal documents refer to him as "the long-nosed lawyer."¹⁰

Bacon was listed as defense attorney in several cases in the Wayne County Circuit Court, defending such crimes as counterfeiting, larceny, and murder.¹¹ The specifics of the case that caused his disputed bill are unknown outside the general topic of murder. One of his colleagues and fellow defense attorneys, Jacob Merritt Howard, defended Bacon in the Supreme Court case. Wayne County was represented by David Stuart, its lead prosecuting attorney.

In 1849, when the murder in question most likely occurred, Detroit was in disorder. Bacon served as a captain of the Night Watch to keep the city safe.¹² He also served as the city recorder, putting him in a position to decide the case on destruction of Pontiac & Detroit Railroad on Gratiot Avenue.¹³ The case was discharged because of the perceived nuisance of the road.

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A year after the failure of his case before the Michigan Supreme Court, Bacon and his wife moved back to New York. He continued his legal work, eventually serving as a clerk in Washington, D.C.¹⁴ He died on May 14, 1864, and is most likely buried in New York.

But Bacon, who brought a case before the Michigan Supreme Court requesting payment for his duties as a court-appointed attorney, still lives in the early volumes of the Michigan Reports. ■



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If you are interested in State Bar history or have a suggestion for “Michigan Lawyers in History,” please e-mail her at csharlow@mail.michbar.org.

FOOTNOTES

1. Manning, ed, *Reports of Cases Argued and Determined in the Supreme Court of the State of Michigan, Vol 1* (Chicago: Callaghan & Company Law Publishers, 1880), pp 461–463.
2. See Sharlow, *Michigan Lawyers in History: Gilbert Moyers*, 90 Mich B J 48 (September 2011).
3. Ross, *The Early Bench and Bar of Detroit: From 1805 to the End of 1850* (Detroit: Richard P. Joy and Clarence M. Burton, 1907), p 18.
4. *Id.* at 19.
5. Burton, et al., ed, *The City of Detroit, Michigan 1701–1922, Volume II* (Detroit: The S. J. Clarke Publishing Company, 1922), p 1153.
6. Cutcheon, et al., *Michigan as a Providence, Territory and State* (New York: The Publishing Society of Michigan, 1906), pp 361–362.
7. *The Legislature of the State of Michigan, Passed at the First and Extra Sessions of 1835 and 1836* (Detroit: J. S. Bagg, 1836), p 142.
8. *The City of Detroit*, n 5 *supra*, p 1154.
9. Ross, n 3 *supra*, p 19.
10. Wells, *The Slave Ship Wanderer* (Athens: Univ of Georgia Press, 1967), p 66.
11. The case records can be viewed at the Michigan Archives, available at <<http://statearchives.us/michigan.htm>> (accessed September 23, 2011).
12. *The City of Detroit*, n 5 *supra*, p 1154.
13. *History of Detroit 1780–1850* (Detroit: Clarence M. Burton, 1917), p 168.
14. Ross, n 3 *supra*, p 20.

