

Rough Rider Clears Name in the U.P.

Theodore Roosevelt v George A. Newett
Hon. Richard C. Flannigan, Presiding

By Peter W. Strom and Paul L. Strom

In 1913, one of the most remarkable libel cases in American history went to trial in Marquette Circuit Court. The plaintiff was the former President of the United States. The local trial judge eventually became a justice of the Michigan Supreme Court. The defendant was the editor of the Ishpeming weekly newspaper. The courthouse was later used as the movie set for John D. Voelker's novel *Anatomy of a Murder*, filmed in 1959. This article summarizes the history of *Roosevelt v Newett* and the career of Upper Peninsula's Honorable Richard C. Flannigan.

Theodore Roosevelt, famous for organizing the renowned Rough Riders in the Spanish American War, became President in 1901. He served two terms as a Republican until 1909, then broke with the party in 1912 when he failed to win nomination for a third term. He started a third party, the National Progressive Party, also known as Bull Moose. The Rough Rider first came to the Upper Peninsula in October 1912 as the Bull Moose candidate, running for President against Howard Taft (Republican) and Woodrow Wilson (Democrat). He traveled by train from St. Ignace to Munising to Marquette to Houghton, making campaign speeches along the way.¹

George A. Newett, Ishpeming's most noted newspaperman, was the editor of the *Iron Ore*. Mr. Newett, an "Old Guard" Republican angry with Roosevelt for splitting the party, opposed the use of liquor. After hearing Roosevelt speak in Marquette on October 9, 1912, Newett published a brief article reporting that Roosevelt lied, swore, and was "not infrequently" drunk on his trip through the area.² Theodore Roosevelt sued Mr. Newett for libel. The trial commenced after the presidential election, in which Roosevelt beat Taft, but lost to Wilson. Judge Richard C. Flannigan presided as the trial judge.



Theodore Roosevelt, May 1913
Photo from collection of Marquette County
Historical Society

In 1909, Governor Warner appointed Richard C. Flannigan to fill the unexpired term of Judge Stone, who had been elected to the Supreme Court.³ Richard C. Flannigan was born in the village of Ontonagon on December 15, 1857. He was the first true-blue Yooper to be circuit judge in Escanaba and Marquette. In the early 1880s, the Menominee iron range offered opportunities. Richard C. Flannigan moved to Norway, Michigan (then part of Menominee County) in 1881, where he first served as Menominee County Prosecutor. He helped incorporate the village of Norway and was elected mayor.⁴ He served as circuit judge from 1909 until 1927.⁵

The *Roosevelt* case was tried before a 12-person jury at the Marquette County courthouse from May 27, 1913 to June 4, 1913. Roosevelt was represented by attorneys James H. Pound (Detroit), W. S. Hill (Marquette), and William H. Van Benschoten (New

York). Plaintiff Roosevelt wanted the jury to consist of workingmen. Attorneys Horace Andrews (Cleveland) and William P. Belden (Ishpeming) represented defendant Newett.

The defense team sought to disqualify jurors who had a grudge against Old Guard Republicans. One potential juror was excused after the court learned he had been beating up anyone in town who spoke against Roosevelt. Another man came to court wearing a large Bull Moose pin, claiming to be objective.⁶ The jury selected contained four miners, three teamsters, two farmers, one blacksmith, one locomotive fireman, and one lumberjack.⁷

John P. Norton, editor of the *Escanaba Morning Star* reported that, "Probably never in the history of Michigan has the trial of a civil action been marked by such a great number of prominent men appearing as witnesses as in the action here today."⁸

Roosevelt, the first live witness, testified "with all possible strength that he had *never* been drunk in his life."⁹ He testified with "laborious pains" on the ways he spent his time while at the head of the nation. The trial focused national and international attention on the Marquette County courthouse. His personal history and habits were explored in detail. A highlight in the trial came when, on direct, Roosevelt's attorney asked if he had been wounded during the Spanish-American War, and Roosevelt rolled up his cuff to display a deep scar on his powerful forearm. The Rough Rider had never before reported the wound. On the stand he stated, "I wasn't officially wounded. I never went to an aid station. Somebody wrapped a bandage around my arm and I went on."¹⁰

Roosevelt's attorneys then presented one celebrity after another, all testifying that Roosevelt never became intoxicated. The celebrities included Edwin Emerson, noted

war correspondent and member of the Rough Riders; Gifford Pinchot, former head of U.S. Forestry Department and originator of the Conservation Movement; James H. Garfield, former Secretary of the Interior and son of President Garfield; Edmund Heller, Curator of the Smithsonian Institute; Robert Bacon, former Ambassador to



*Portrait of Honorable Richard C. Flannigan
Photo from collection of Delta County
Historical Society*

France; Judge Albert Z. Blair, Judge of Common Pleas Court Portsmouth, Ohio; Philip J. Roosevelt, Cub Reporter and son of Colonel Roosevelt's cousin; plus many other notable cabinet officers, department heads, and newspaper moguls.¹¹

There was publicity about Judge Flannigan's impartial style before the trial began. John P. Norton reported that with Judge Flannigan there would be "no royal road to the courtroom."¹² Public seating was first come first served. When the courtroom was filled to a comfortable capacity, the doors were closed. Many attorneys appeared in the trial. They were given "customary privileges of the courtroom."¹³

Early in the trial, Judge Flannigan made two evidentiary rulings that received widespread attention.¹⁴ The first ruling went Colonel Roosevelt's way. The judge held that defendant Newett could not introduce statements from other newspapers or show that it was a general report among men that Mr. Roosevelt was frequently intoxicated. Thus, the defendant was prohibited from showing justification by reliance on other news re-

ports. The second ruling favored Mr. Newett. The judge ruled that Mr. Roosevelt's general reputation previous to the alleged libelous publication was an issue. This ruling would have allowed Mr. Newett (when it became his turn) to introduce admissible evidence, such as the testimony of witnesses who had personal knowledge, that Mr. Roosevelt frequently became intoxicated. Flannigan's ruling also allowed Mr. Roosevelt (who had first turn) to call persuasive witnesses who

a verdict of six cents. In an extended statement, the judge made it clear that the reputation of Colonel Roosevelt for sobriety had been fully and unequivocally established.

Theodore Roosevelt thanked Judge Flannigan for his "eminent fairness" and for the "dignified manner in which he had conducted the case."¹⁷ Of Judge Flannigan, Roosevelt said: "I must say that the presiding judge in this court is one of the most fair; one of the most learned and one of the most

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personally knew him and could prove he was always sober.

Roosevelt's proofs crushed Newett. After the plaintiff rested, George A. Newett took the stand and announced that he was unable to prove true the charges. He read a statement explaining that all of the witnesses he relied on before he published the libelous article were unwilling to swear to their statements. He admitted that he could not refute the exceptional case presented by the former President and was mistaken in publishing the article. He testified that up until the trial and all the proof from the eminent witnesses, he truly believed that Roosevelt frequently got drunk, but in face of the facts, he conceded his mistake. His only defense was that he did not make the libelous statements with malice.¹⁵

After Newett testified, the defense rested. Roosevelt's attorney moved for a directed verdict for the entire amount of \$10,000. Roosevelt disagreed with his attorney and requested leave to make a statement. Judge Flannigan allowed Mr. Roosevelt to address the court. Roosevelt asked the court to instruct for only nominal damages. Roosevelt said he did not come for money but that he wished to "once and for all, during my lifetime . . . deal with these slanders, so that never again will it be possible for any man in good faith to repeat them. I have obtained my purpose and I am contented."¹⁶ Judge Flannigan then instructed the jury to return

dignified with whom it has been my pleasure to sit before. I consider Judge Flannigan to be the ideal type of the true American jurist; than that no higher compliment can be paid to any man."¹⁸

Fourteen years later, Governor Fred Green appointed Richard C. Flannigan to the Michigan Supreme Court.¹⁹ The local press proudly announced his advancement by stating, "Judge Flannigan . . . was endorsed by all political parties at every election in which he ever offered his services."²⁰ Indeed, Judge Flannigan seemed to have widespread public support, as his appointment commanded "universal approval of judiciary, bar, people of the peninsula at large."²¹

Justice Flannigan became very ill and was hospitalized in Chicago. He returned to the Bench of the Supreme Court to author several opinions, but became deathly ill and passed away on February 17, 1928.²²

Justice Flannigan was said to have possessed a stern exterior with a gentle heart.²³ He was known as hard working, straightforward, blunt, yet intensely human.²⁴

AUTHORS' NOTE: This article is an edited excerpt from the larger unpublished work, *History of the Delta County Circuit Judges*. Portraits of the circuit judges decorate the circuit court room in Escanaba. The authors, as volunteers of the Delta County Historical Society, are working to complete the collection, which is missing the portrait of Daniel Goodwin. ♦



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FOOTNOTES

1. Boyer, *Roosevelt-Newett Trial*, 1913, Vol XIII, No 232, April 19, 1959 (Peter White Library Collection, Marquette, Michigan).
2. *Marquette Monthly MM*, "Presidential Visitors to the U.P.," Thumbs Up Publishing Inc., February 1998, p 6; see also *Escanaba Morning Star*, May 27, 1913, p 5 where complete complaint is published.
3. Alvah L. Sawyer, *A History of the Northern Peninsula of Michigan and Its People*, Volume 1, The Lewis Publishing Company, Chicago, 1911, p 235.
4. Richard C. Flannigan, 247 Mich xvii-xlix (1930).
5. *Id.* at pp xlix-l.
6. Rydholm, *Superior Heartland, A Backwoods History*, Vol II, Book Four, C. Fred Rydholm, Marquette, Michigan (1989), p 1063.
7. *The Detroit News*, "Jay Hayden Recalls Teddy Roosevelt's Day in a Michigan Court," March 28, 1965.
8. *Escanaba Morning Star*, May 28, 1913, p 1.
9. *Id.*
10. *The Detroit News*, March 28, 1965, Section D.
11. *Escanaba Morning Star*, May 30, 1913 pp 1, 8.
12. *Escanaba Morning Star*, May 24 p 1.
13. *Id.*
14. "Libel Laws Interpreted Judge Flannigan's Decision is Clear Cut and Decisive on Matter," *Escanaba Morning Star*, June 4, 1913 p 1. The law in this area has been modified by *New York Times Co v Sullivan*, 376 US 254 (1964), and its progeny.
15. The entire statement of George A. Newett, which includes his history and background, is quoted in *Escanaba Morning Star*, June 1, 1913 p 1.
16. *Id.*
17. 247 Mich at p 1 (Remarks by Hon. J. J. O'Hara).
18. *Escanaba Morning Star*, June 1, 1913 p 1.
19. *The Escanaba Daily Press*, October 1, 1927, p 4.
20. *Id.*
21. Sawyer, *supra*, Volume 1 at p 235.
22. Richard Flannigan, *supra*, 247 Mich at liii.
23. *Id.* at lvi (Remarks of Justice Wiest).
24. *Id.* at lii-liv (Remarks by Myron J. Sherwood).