

Green Bay's Federal Court

180 Years on the Docket

For 180 years, judges traveled to Green Bay to preside over federal cases, but the city didn't become host to a permanent federal court until November 2002.

by Steve Dries

When United States District Judge William C. Griesbach moved his chambers from Milwaukee to Green Bay in November 2002, it was the first time Green Bay became a permanent host to a federal court. While Griesbach is the first federal judge to have permanent chambers in Green Bay, he is not the first federal judge to hold court in the city. His recent installment as U.S. District Judge for Green Bay presents a timely opportunity to look back at Green Bay's relationship with the federal judiciary, a history dating back to pioneer times.

Many Green Bay motorists may be familiar, if only by name, with some of the early figures in local judicial history. Though judges, such as Doty and Irwin, have been memorialized by street signs, the early roots of the federal court they worked for was humble.



Judge James Doty

The area now known as Wisconsin was a territorial hot potato in the early part of the nineteenth century. Wisconsin was originally governed as part of the Northwest Territory. Afterwards, it was governed variously by the Indiana, Michigan, and Illinois territories. Finally, it became a territory itself in 1836. During these early years, Wisconsin was a fur-based economy with only a scattered presence of white Europeans in the Green Bay, Portage, Prairie du Chien, and Milwaukee areas. In fact, the census of 1820 listed only 651 civilians and 804 soldiers.

Into this arena stepped James Duane Doty, a native New Yorker, whose roots went back to the *Mayflower*. Doty had gone west to the Detroit area and had distinguished himself in that city's legal community. While there, he served as a clerk of court and also man-



Governor Lewis Cass

Neville Public Museum of Brown County

Courtesy of the National Museum of the U.S. Army Art Collection

Federal Judge James Doty presided over the controversial trial of Menominee Chief Oshkosh. The 1914 mural, by Albert Herter, is located in the Supreme Court Hearing Room.

At the time, territorial law was such that appeals of county court decisions, capital cases, and civil cases involving more than \$1,400 were required to be instituted at the territorial Supreme Court in Detroit, a court of three judges that was both a territorial appellate court and a federal district and circuit court. But the great distance from the western Michigan Territory deprived many litigants of an opportunity to be heard. It proved to be a great hardship on witnesses as well.³

When Doty returned to Detroit from the expedition, he became involved in advocating and planning a new district court for the western Michigan Territory. His plan, which was ultimately chosen over several other plans, was to create an additional court in the western part of the territory, a court that would be largely independent of the Supreme Court in Detroit. The U.S. Congress adopted Doty's plan and created the additional court on January 30, 1823.⁴

The new judge was to preside every summer in each of the only three counties then existing in the western Michigan Territory — Brown County in the east, Crawford County in the west, and Michilimackinac (Mackinac) County in the north. The additional court was unceremoniously dubbed "The Circuit Court of the United States for the Counties of Mackinac, Brown and Crawford."⁵ While the Supreme Court in Detroit could issue writs of error in civil cases, which proved a rare occurrence, the new court had the final say in all criminal cases, an unusually broad grant of power.⁶

With the help of Governor Cass, Doty became President James Monroe's somewhat surprising choice for the judgeship. Although his commission was signed on February 17, 1823, Doty was not appointed without controversy. As Doty was only twenty-three years old at the time, a more experienced colleague observed, "A boy, who in any other place than this, would be learning his profession or at most a practitioner in a County Court, is not the man who ought to be appointed Judge."⁷ Nevertheless, Doty, who was newly married, set out for the western territory and held his first court session on Mackinac Island between July 21 and July 28 of 1823, where his first order of business was to impanel a

aged to become friendly with Lewis Cass, governor of the Michigan Territory. In 1820, Cass undertook a four-month canoe expedition through the western part of the Michigan Territory, i.e., Wisconsin, with Doty accompanying him as the trip's secretary.¹

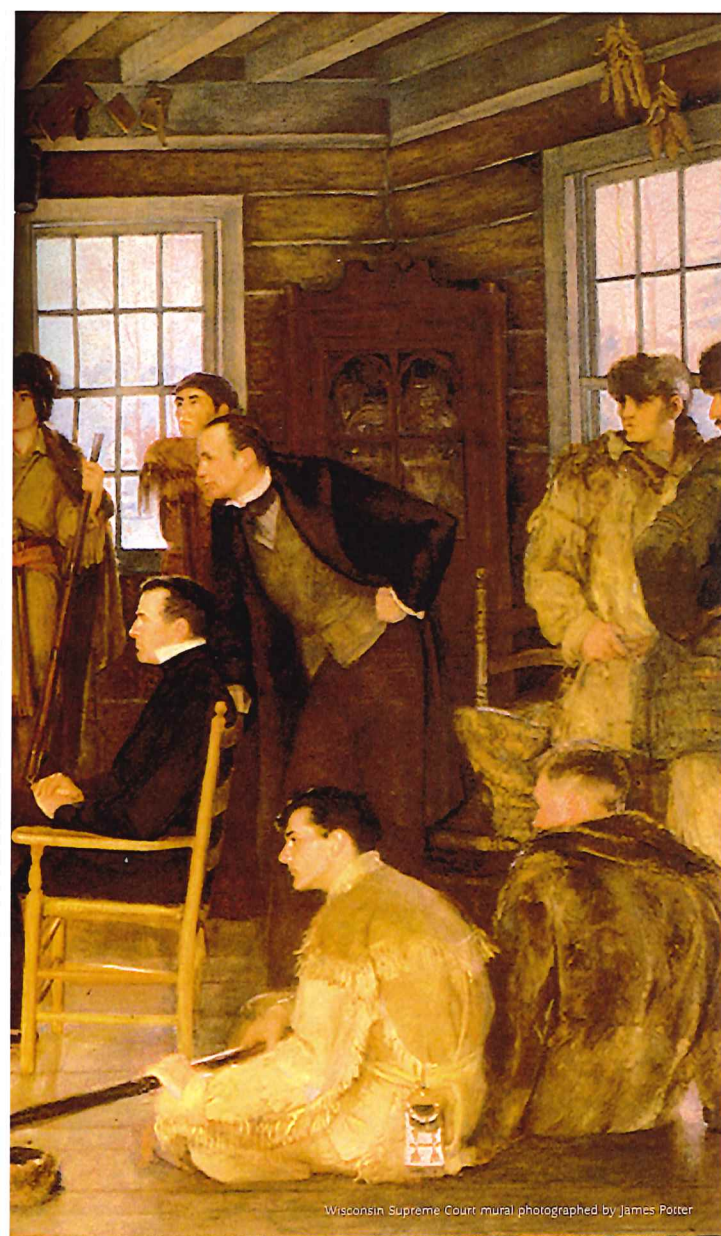
The trip, which was federally funded, led Doty into such impenetrable "swamps and morasses" that he doubted that even Indians would attempt passage.² But the expedition was a success. It allowed young Doty a first-hand glimpse of Indian-dominated lands of 1820s Wisconsin.

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Even more importantly, the trip allowed Doty a chance to hobnob with some of the leading political and business figures of the territory, the kind of exposure that must have been priceless for a fledgling and ambitious young attorney.

grand jury to investigate violations of Michigan's Blue Sunday laws restricting gambling and horse racing.⁸

Doty then made his way down to Prairie du Chien, where he spent the winter tutoring a would-be lawyer. He also became the town's first postmaster. Doty did not



Wisconsin Supreme Court mural photographed by James Potter



H. Marc Larson, with permission of the *Green Bay News-Chronicle*.

The New Federal Courthouse is located in the former Kellogg Public Library, built by Andrew Carnegie. It is appropriately located on the corner of Doty and Jefferson streets.

find the town particularly hospitable and looked forward to his next post in Green Bay. But before leaving, he was startled to learn that the government did not consider his position a standard Article III position. According to Article III of the Constitution, the judges, "both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."⁹ This meant then, as today, that federal judges were appointed for life and their salaries may never be reduced. To Doty's dismay, he learned he was subject to reappointment every four years, a fact that eventually changed his future.

For a man in his early twenties, Doty was neither shy nor cautious. Upon arrival in Green Bay, he began buying land overlooking the Fox River on which he eventually had a large frame house built, indeed, possibly the first frame house built in Wisconsin.

Thus settled, he was able to concentrate on the cases before him. For example, in his first year sitting in Green Bay, Doty handed down a surprise ruling that foreshadowed his ruling in the famous trial of Chief Oshkosh six years later. An Indian man was accused of biting the thumb off a white man. Though the jury found the Indian guilty of the offense, Judge Doty set the man free. His

finding was that "however impolitic or unjust it may seem" to permit such an offense, a court cannot punish a man "who is not punishable by law," because, in his view, the criminal law enacted by the Michigan Legislature did not extend to Indian country.¹⁰

Once settled in office, Doty continued to travel the circuit of Prairie du Chien, Mackinac, and Green Bay. One of his traveling companions, attorney Henry S. Baird, described the journeys in an 1870 article in *Green Bay Gazette*. Baird recalled that they traveled across the state in a bark canoe, often holding court in log cabins or barns, with jurors sometimes left to deliberate in stables.¹¹ Occasionally they even encountered gunfire.

Perhaps the most famous case to come before Doty was the trial of Chief Oshkosh, an event memorialized in a large mural in the state Capitol painted by Albert Herter. (See page 30.) Oshkosh, a Menominee, was accused of murdering a Pawnee in retaliation for the Pawnee's accidental killing of Oshkosh's Menominee tribesman. Found guilty by the jury, Oshkosh was nevertheless set free. Echoing his long-held views on the Indians, Doty noted that it was customary practice in

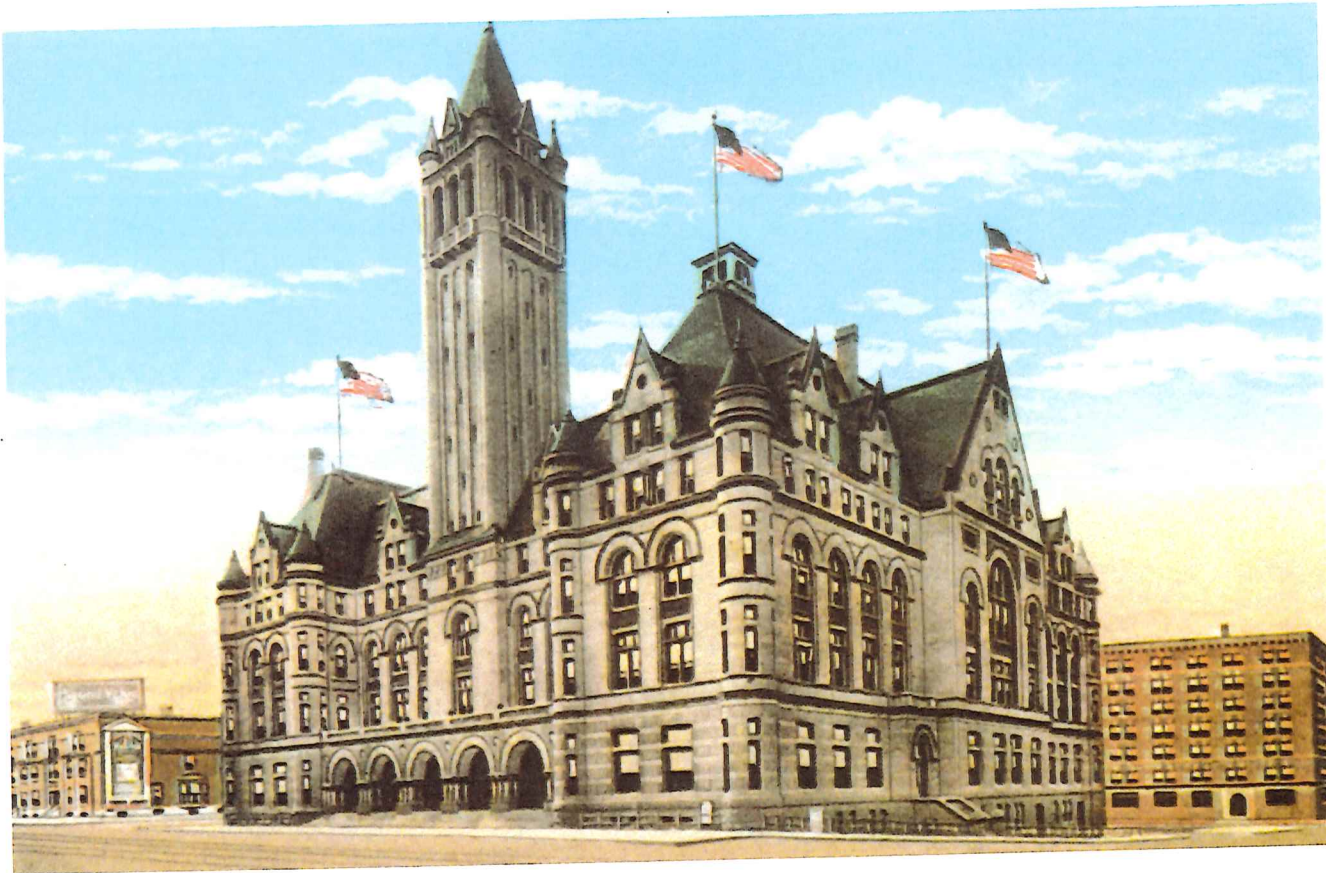


Green Bay Press-Gazette photograph by B. A. Rupert

U.S. District Judge William Griesbach, Green Bay's first permanent federal judge, received his official robe from daughters Maryanne (left), Elisa, and Rachel in 2002.

Menominee culture to retaliate in the way Oshkosh had. Doty believed that it would be unjust to require Oshkosh to conform to rules of which he was not previously aware.

This line of reasoning brought about Doty's eventual loss of power. Doty had been reappointed in 1828 by President John Quincy Adams, but by 1832, the word had gotten to President Andrew Jackson that Doty might be a bit too friendly to the Indians. Doty's position was not



District Court Library

Until November 2002, all judges in the Eastern District of the Wisconsin federal court system had chambers in the Milwaukee Federal Building and U.S. Courthouse above. Today Green Bay has one permanent federal judge.

Understanding the Modern Federal Court System

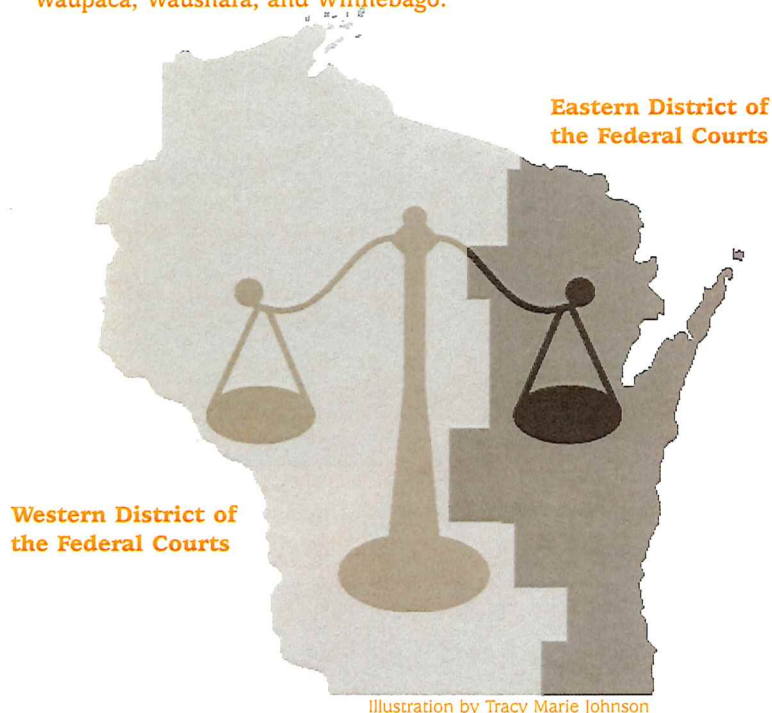
Today's federal court system is divided into district (trial) courts, circuit (appellate) courts, and the Supreme Court. Most judges in all federal courts are appointed by the president with the advice and consent of the Senate. Under Article III of the U.S. Constitution, they serve life terms and are paid a full salary (currently \$158,100 for district judges) even after retirement. Other judges, called magistrate judges, serve eight-year terms and are authorized to hear all civil cases as well as all preliminary proceedings in criminal felony cases.

Most cases filed in this country are filed in state, rather than federal, courts. For example, all family and divorce cases, and probate (wills) cases, as well as most property, contract and criminal cases, are brought in state courts. Federal courts preside over cases involving federal law or the U.S. Constitution, such as civil rights, labor and employment law, and patents and trademarks. They also preside over disputes between citizens (usually corporations) of different states when the amount of money in controversy exceeds \$75,000. Federal courts also hear a relatively small number of criminal cases, most involving federal drug and gun laws or white-collar crimes.

Wisconsin's federal court system is divided into eastern and western districts. The Western District is located in Madison and is served by two district judges and one full-time magistrate judge. The Eastern District is based in Milwaukee and since 2002, has had a division in Green Bay. The Milwaukee courthouse houses four full-time district judges and one senior (semi-retired) district judge, as well as three magistrate judges. Judge William C. Griesbach presides over the Green Bay division and is assisted by one part-time magistrate judge.

Appeals from both districts are heard by the U.S. Court of Appeals for the Seventh Circuit. Based in Chicago, the Seventh Circuit hears all federal appeals from Wisconsin, Illinois and Indiana courts, except appeals involving certain specialized matters such as patent law or claims against the United States. Litigants, whether criminal or civil, are allowed to appeal any final decision or judgment of the district court as a matter of right. Cases on appeal are heard by a three-judge panel drawn randomly from the court's eleven circuit judges and five senior circuit judges. Once the Seventh Circuit has ruled, however, the chance for further review in the U.S. Supreme Court is low. Thus, the Court of Appeals in Chicago is the court of last resort for all but a few citizens.

Counties in the Green Bay Division of the Eastern District of Wisconsin include Brown, Calumet, Dodge, Door, Florence, Fond du Lac, Forest, Green Lake, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Oconto, Outagamie, Shawano, Sheboygan, Waupaca, Waushara, and Winnebago.



renewed. But had Doty been granted the life tenure of an Article III judge, he might not have been prompted to set out for other pastures. Eventually he became known as the father of Madison, Wisconsin, and finished his career as governor of Utah. (For more about Doty, see page 44.)

Doty was succeeded in 1832 by David Irwin, who was described in a 1924 newspaper article as “a bachelor who brought to Wisconsin in addition to his full-blooded horse Pedro and his pointer dog York, an immense fund of anecdotes all laid in his native Virginia.”¹² Irwin was

Doty believed that it would be unjust to require Oshkosh to conform to rules of which he was not previously aware.

the federal judge until 1836, when Wisconsin became a territory and organized a territorial supreme court of its own. Following statehood in 1848, President Martin Van Buren appointed Andrew G. Miller to be the first bona fide Article III judge in Wisconsin. The federal District Court of Wisconsin, however, was seated in Milwaukee, a recognition of the growing importance of the southern port city compared to Green Bay.

The present structure of the federal court system did not arise until the passage of the Evarts Act in 1891. That act created the circuit courts of appeals as they are known today, and Wisconsin became a part of the Chicago-based Seventh Circuit.¹³

Following the completion in 1907 of the U.S. Post Office and federal building in downtown Green Bay, federal district judges occasionally held court in the upstairs of the post office building, where a new courtroom was

built. According to a 1907 article in the *Green Bay Gazette*, “Green Bay by reason of the fact that it can boast a federal court with its attendant pomp and dignity is placed on a footing with the metropolitan city of the commonwealth.”¹⁴ The judge in the Eastern District of Wisconsin at the time, Judge Joseph Very Quarles, held court annually in Green Bay, though his chambers were located in Milwaukee. The Green Bay staff included a U.S. marshal, a bankruptcy referee, and a court commissioner, whose duties included presiding over preliminary hearings in criminal cases. Succeeding Judge Quarles was the Hon. Ferdinand Geiger, who did not often, if at all, hear cases in Green Bay. But the practice of holding court in Green Bay was revived by Judge Francis Duffy, who held court in the post office building as recently as the late 1940s until he was appointed by President Harry S. Truman to the Seventh Circuit Court of Appeals in Chicago.¹⁵

More recently the federal judiciary has not had a significant presence in Green Bay. Since 1991, Magistrate Judge James R. Sickel has handled preliminary criminal matters. And federal bankruptcy judges, such as the recently retired Hon. Russell Eisenberg, have consistently held monthly hearings for the benefit of Northeastern Wisconsin litigants. But until recently, both judges lacked adequate facilities and were often forced to hold hearings in hallways or private offices when courtroom space was not available.¹⁶

Despite the lack of federal judicial presence in Northeastern Wisconsin, this region has produced two prominent federal district judges who served with dis-

tinction in the federal court in Milwaukee. Judge John Reynolds was a man who always introduced himself as “John Reynolds from Green Bay,” and who decorated his Milwaukee chambers with pictures of Lambeau Field, Heritage Hill State Park, and downtown Green Bay.¹⁷ Reynolds had a distinguished career as a Democratic party leader, eventually becoming governor in the 1960s, following a stint as the state attorney general. Following service as governor, he was appointed to the district bench by President Lyndon Johnson in 1965, and he continued to serve until his death in early 2002.

Judge Robert Warren, a Republican, was the Brown County district attorney, became the state attorney general in 1969, and was appointed to the federal bench in 1974. Trivia buffs might also know that his nomination on August 8, 1974, was signed by President Richard Nixon on the day Nixon announced his resignation.



Green Bay Press-Gazette photo courtesy of Owen Monfils

Gubernatorial candidate John Reynolds went to a 1962 Packers-Detroit Lions game with Governor Gaylord Nelson (far left), U.S. Attorney General Robert Kennedy, and 8th District Congressional candidate Owen Monfils (far right).

Warren was well-liked by his staff, and it was said that a "sense of fairness and fair play" were the cornerstone of his actions.¹⁸ He served until his death in 1998.

Both Reynolds and Warren were involved in unsuccessful attempts to obtain a federal venue in Green Bay during the 1970s. In a 1973 report to the federal courts

administrator in Washington, Reynolds requested that a deputy clerk be assigned to sit in Green Bay.¹⁹ The statute governing the Eastern District of Wisconsin, 18 U.S.C. 130, authorized court to be held in Oshkosh, Green Bay, and Milwaukee. But by the judges' custom, federal court in the Eastern District had generally not been held outside Milwaukee since the 1940s. A full-time deputy clerk, who would handle case management and record minutes at trials and hearings, would clear the way for judges to occasionally sit in Green Bay.

A Green Bay federal presence was exactly what some judges wanted. For example, Warren, who was a self-described member of the Green Bay Mafia, wryly informed the circuit's chief

judge in 1978 that he already had his "jack under the northwest corner of the [Milwaukee federal] building ready to haul it north."²⁰

But judges with Green Bay roots were not the only ones interested in obtaining a court presence in Green Bay. In 1976, as a result of Governor Patrick Lucey's

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Wisconsin's Article III Federal Judgeships

	Wisconsin District	Eastern District	Western District	Total
1848	1			1
1870		1	1	2
1954		2	1	3
1966		3	1	4
1978		4	2	6
2000		5	2	7

Illustration by Tracy Marie Johnson

In 1870, Wisconsin was divided into two judicial districts: the Eastern and Western districts. The state now has four Article III judges in Milwaukee, two in Madison, and one in Green Bay.

Retrocession of Jurisdiction Proclamation, the federal government assumed criminal jurisdiction over the Menominee Reservation. Thus, the chief federal prosecutor in the Eastern District wrote to Reynolds requesting the commencement of the holding of court in Green Bay and the addition of a half-time magistrate judge.²¹

Local bar associations also passed resolutions requesting the presence of a federal court in Green Bay. Nothing came of these numerous efforts until the creation of the Green Bay Division of the Eastern District of Wisconsin in 2002. Due largely to the efforts of the state's two U.S. senators and Rep. Mark Green, as well as U.S. District Judge J. P. Stadtmueller, the court in Green Bay was authorized by Congress on December 21, 2000, and the court opened for business in November 2002.

The new federal court in Green Bay is supported by the latest technology and computer network systems. Court proceedings are digitally recorded onto a hard disk, and filings are now made via e-mail more often than by paper. In addition to Judge Griesbach, the court is staffed by two law clerks, a judicial assistant, and three court security officers. The judge is also served by the U.S. Marshals Service, three clerks of court, and four probation officers. The contrast with the spartan early days of the federal presence in Northeastern Wisconsin could not be more stark. But one feature of the new court fits the court's history quite well — its location in the former site of the Kellogg Public Library, a building in the *National Register of Historic Places*. Appropriately enough, the building was hand-picked by Reynolds in 1976. He noted that "it is a beautiful building that Andrew Carnegie built, and it might well be suitable for court facilities."²² Even more

appropriate, perhaps, is the building's downtown location on the corner of Jefferson and Doty streets. Judge Doty might be proud that Green Bay has finally landed a permanent life-tenured Article III federal judge even if it took almost 180 years to get one.

NOTES

1. Wisconsin Historical Collection, Vol. XIII, 163.
2. Wisconsin Historical Collection, Vol. XIII, 208-209.
3. "Judge Doty's Court," Wisconsin State Journal, 13 July 1884, (n.d.) <<http://www.wisconsinhistory.org>>, (September 12, 2003).
4. Ibid.
5. Alice Elizabeth Smith, James Duane Doty (Madison: State Historical Society of Wisconsin, 194), 41.
6. Ibid.
7. Smith, James Duane Doty, 31.
8. Smith, James Duane Doty, 42.
9. U.S. Constitution, Article III, Section 1.
10. Smith, James Duane Doty, 62.
11. "Incidents in the Early Judicial History of Wisconsin, No. 3," Green Bay Gazette, 2 April 1870.
12. "Judicial Humor of State's Early-Day Bench and Bar," Milwaukee Sunday Journal, 29 June 1924.
13. Rayman Solomon, History of the Seventh Circuit, 1891-1941. (Bicentennial Committee of the Judicial Conference of the United States, 1981), 4-5.
14. Green Bay Gazette, November 1, 1907.
15. Interview with Hon. William Duffy (ret.) (no relation), who may have been an attorney in the final federal case in front of Judge Francis Duffy in the 1940s.
16. Judge Susan Kelley, who was invested as a United States Bankruptcy judge on August 13, 2003, now presides over bankruptcy hearings on a monthly basis in the Green Bay federal courtroom.
17. Interview with attorney Owen Monfils, a personal friend of Judge Reynolds.
18. Paul Gossens and Daniel Hanley, Jr., Unfinished Oral History of United States District Judge Robert W. Warren (Epilogue), available in the library of the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Milwaukee, WI 53202.
19. Letter, Hon. John Reynolds to Rowland Kirks, Director of the Administrative Office of the U.S. Courts, dated April 19, 1973.
20. Letter, Hon. Robert W. Warren to Hon. Thomas E. Fairchild, dated February 10, 1978.
21. Letter, U.S. Attorney William J. Mulligan to Hon. John Reynolds, dated February 27, 1976.
22. Letter, Hon. John Reynolds to Hon. Thomas Fairchild, dated March 8, 1976.