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The Trial of the Cayuse Indians by Caroline P. Stoel

Caroline Stoel is an associate professor of history at Portland State University and a member of the U. S. District Court of Oregon Historical Society board. This article is one portion of a chapter she is writing for a multi-author history of the court, to be published by the Society next year.

The trial of five Cayuse Indians for the November 29, 1847 murder of Marcus and Narcissa Whitman and six other members of the Waiilatpu mission (near the present site of Walla Walla, Washington) was one of the earliest and most important cases to be tried by the United States District Court for the Territory of Oregon. Many of the documents relating to the case are stored in their original state—on thin, crumbling paper, in spidery, difficult-to-decipher handwriting. Reading these old documents gives one a sense of immediacy impossible to obtain from secondary source materials. The documents, however, are enigmatic and leave unanswered many questions about the case. The account of the trial in *The Spectator* (Oregon City) adds a few details, but also some contradictions.

There is no doubt the murders were committed, and there is no doubt they were committed by the Cayuse Indians. But were the five indicted the guilty ones? Were they the only guilty ones? What happened to the two Indians who were indicted but never tried? Was the jury selection fair? Was the evidence presented by the prosecution clear and convincing? Was the judge's charge prejudicial? Why was no new trial allowed and no appeal filed? It is doubtful if the answers to these questions will ever be fully

known. However the case is interesting and worth reexamining.

Whitman and the Cayuse

During the period 1842-1847 many of the Indians of the Oregon territory's "upper country" (east of the Cascades and north of the Columbia River) became increasingly distrustful of the white immigrants who continued to arrive and to settle on Indian lands in ever larger numbers. There had been minor conflicts between the Indians and the earlier fur traders, but for the most part the Indians had displayed no great antipathy for whites. When the Indians were aroused, it was almost always the result of selfish and brutal treatment. But the arrival of the missionaries and other settlers who took lands with callous disregard for Indian rights and customs created a very different situation and the Indians' attitude changed.

In late 1836, under the auspices of the

American Board of Commissioners for Foreign Missions, Dr. Marcus Whitman with his wife Narcissa arrived at Waiilatpu to set up a mission among the Cayuse and Walla Wallas. Whitman was a sincere and dedicated man who sought to teach the Indians not only the principles of Christianity but also the ways of civilization. His efforts, however, did not meet with great success. The Cayuse have been described as "arrogant, wilful and capricious savages" who "affected to believe that they were doing a favor to Dr Whitman by receiving his instruction." (Bancroft, vol. 1, p. 330)

In the eyes of the Cayuse, Whitman regarded this land as belonging to white interlopers rather than to the natives, and they knew he was actively encouraging white settlement. In this situation the Indians felt helpless, and their initial uneasiness quickly turned to anger and hostility. The establishment of Catholic missions during this period further con-



The murder of Marcus Whitman, November 29, 1847, from Francess Fuller Victor's River of the West. (Oregon Historical Society photo)

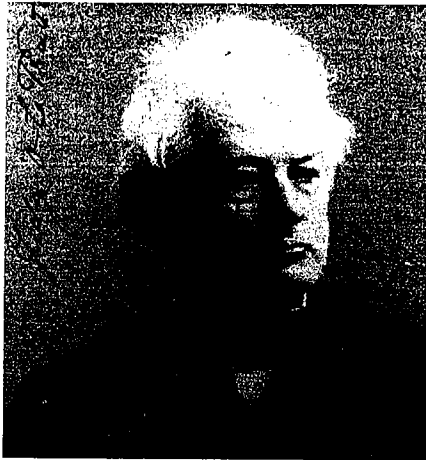
CIRCULATION DESK

fused the Indians, who had trouble understanding the presence of two rival religions. Moreover, they tended to favor the Catholics because the priests apparently understood Indian culture better and had a closer connection to John McLoughlin and the Hudson's Bay Company, with whom the Indians had had a long, satisfactory relationship. Whitman was aware of the Indians' increasing dislike of his mission and their desire to have it abandoned. In fact, McLoughlin and others urged him to move to the Willamette Valley for safety, but he ignored their warnings.

The precipitating cause of the massacre was Whitman's efforts to help the Indians during the fall of 1847. It was a season of severe sickness and, in spite of Whitman's best efforts, many of the Cayuse died of measles and dysentery. The Cayuse, like many primitive peoples, held their medicine men to high standards. Those who failed to cure their patients were believed to be sorcerers who dispensed bad medicine. Because Whitman's cures had largely failed, he was suspect. Frances Fuller Victor tells a strange tale of betrayal of Whitman by Jo Lewis, a half-breed whom he had befriended. Lewis told some of the Cayuse he had overheard Dr. and Mrs.



An artist's conception of Tomabas, the murderer of Dr. Marcus Whitman.
(Oregon Historical Society photo)



Judge Orville C. Pratt of the Territorial Court.
(Oregon Historical Society photo)

Whitman and the Rev. H. H. Spalding, who was visiting the mission, plotting to poison the Indians so the missionaries could have their lands, horses, and cattle

Yet this devil incarnate did not convince his hearers at once of the truth of his statements; it was resolved in the tribe to make a test of Dr. Whitman's medicine. Three persons were selected for the experiment; two of them already sick, and the third quite well. Whether it was that the medicine was administered in too large quantities, or whether an unhappy chance so ordered it, all those three persons died...It was then that the decree went forth that not only the Doctor and Mrs. Whitman, but all the Americans at the mission must die.
(Fuller, p. 404)

The Trial: U.S. vs. Telokite et als. (sic.)

The Oregon Territorial Act of August 14, 1848, sec. 9 (9 Stat. 323) created a supreme court with a chief justice and two associate justices. Each of these judges acted as trial judge in one of the three judicial districts, and they sat *en banc* as the supreme court, with two judges constituting a quorum. Appeals could be taken from the district courts to the Territorial Supreme Court and from there to the U. S. Supreme Court. At the time of the trial of the Cayuse Indians, Justice Orville C. Pratt was the only judge

in the territory. The trial opened on May 21, 1850, before the U. S. District Court for the County of Clackamas at Oregon City, Judge Pratt presiding. According to the court Order Book, the grand jury returned three indictments: one against Telokite et al. (Tomahas, the murderer; Clokomas; Isiaasheluckas; and Kiamasumkin), one against Frank Escaloom, and a third against Clokomas. The case file shows that six other indictments were filed by the district attorney, but these do not appear in the Order Book. All indictments are dated May 13, 1850 and are in the handwriting of the district attorney. In the several indictments, each of the accused is charged with the killing of one or more persons, either by striking with knives, tomahawks, and axes; by shooting with guns; or both. The victims named are Marcus and Narcissa Whitman, Emmon Stevens, Luke M. Saunders, Jacob H. Hoffman, Andrew Rogers, Francis Sayer, one Gillon, and one Kimball. Apparently the prosecutor proceeded on only one of the indictments, that against Telokite et al. for the murder of Marcus Whitman.

On May 22nd, the second day of the trial, the defendants came into court and by their counsel—Kintzing Prichette (the territorial secretary), R. B. Reynolds, and Captain Thomas Claiborne (army attorneys)—offered a plea in bar, asserting that they were Indians and that the crimes were committed in Indian country, which was not subject to U. S. jurisdiction or laws. In its replication the prosecution, led by Amory Holbrook, declared that an Act of Congress of 1844 regulating intercourse with the Indians and the territorial act of 1848 gave jurisdiction to the district courts over these crimes. The court overruled the plea in bar and ordered the defendants to plead to the indictments. Each of the defendants pled "not guilty." They then requested a change of venue on the ground of prejudice. After argument, this petition too was denied.

On May 23 and 24, the testimony of witnesses was presented. Witnesses for the prosecution were persons who had been present at the mission during the massacre. Eliza Hall testified that she

