

SOCIETY UPDATE YEAR IN REVIEW EDITION



FROM THE MICHIGAN SUPREME COURT HISTORICAL SOCIETY — WINTER 2000

Disorganization, Reorganization and Controversy:

The Trials and Tribulations of the Nineteenth-century Court

By Scott A. Noto

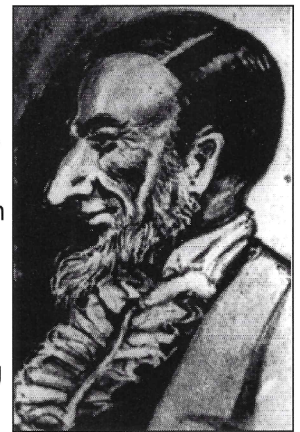
In an 1837 speech given at a celebration of Michigan's admission into the Union, state Supreme Court Justice James V. Campbell noted:

In the old world, and in most parts of the new, the judicial system and the matters with which it dealt will be found to have been naturally developed from a historic past. But in this state of Michigan...we do not look back to a long historic development."¹

As Campbell's suggestion indicates, the territory that eventually became the state of Michigan differed significantly from other states, particularly those on the east coast whose legal practices and traditions were English in origin and custom. What made Michigan unique, according to Campbell, was the role that its geographical setting played in its early settlement. The first explorers to Michigan were not English, but French. Struggle over the control of the Michigan peninsula characterized much of the history leading up to its incorporation into the United States. In 1796, Britain ceded the peninsula and what eventually became known as the Northwest Territory to the United States, marking the first time that this region came under the control of the United States government.

Michigan became an independent territory in 1805 and, thirty-two years later, after a border conflict was settled with Ohio, achieved full statehood. Of course, this transition was by no means smooth. During this period, much criticism was raised regarding the laws and procedures established during the territorial period and what role, if any, they would play in the newly established judicial branch of the state government. Many of the attacks were directed at the system, but often they took the form of attacks on the justices of Michigan's Supreme Court.

Thirty-two years before Michigan achieved Statehood, Augustus B. Woodward served as Michigan's first Territorial Justice, from 1805 to 1824.



Although born and educated in Virginia, Woodward worked tirelessly to improve the living conditions of Detroit citizens after the city's surrender during the War of 1812. A driving force in planning the city of Detroit and creating the University of Michigan, Woodward was described as "...a hardened bachelor who...slept in his office which was never swept...and was eccentric and erratic. His friends were few and his practice was so small that he hardly made a living." (Robert B. Ross, *The Early Bench and Bar of Detroit: From 1805-1850*. Detroit: Joy and Burton, 1907.)

The new state government, naturally, inherited much of this criticism from the days of the territory. The first state constitution, in fact, incorporated many of the old territorial laws and practices of government. The admission of the state of Michigan into the Union only perpetuated these criticisms. It can even be argued that issues surrounding the judicial branch, and the Supreme Court especially, were some of the most closely

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Before Thomas Jefferson appointed Frederick Bates as Michigan's second Territorial Justice, a position he served from 1805 to 1808, Bates was Postmaster of Detroit, then Receiver at the Detroit Public Land Office, then a storekeeper.



Reportedly reluctant to leave Michigan, Bates nevertheless left the bench when he was appointed as Secretary of Louisiana, residing in what is now St. Louis, Missouri. Missouri joined the Union in 1820, and in 1824 he was elected the state's second governor. He died less than one year later, at age 53.

Read more about Justices Woodward, Bates and scores of other past and current Justices in the **Michigan Supreme Court Historical Reference Guide** -- details on opposite page.

Woodward, Frederick Bates, and James Witherell.² The former two were natives of Virginia while the latter was from Massachusetts. The first session of the territorial Supreme Court was held on July 29, at the house of a Detroit resident named James May.

From July 9 through October 8, 1805, a series of statutes, known as the Woodward Codes, were created to serve as the basis of Supreme Court legal procedure in the Michigan Territory. When Michigan became a state in 1835, many of these codes were incorporated into the new state legal system. In the 1840s the codes were revised by William Fletcher, the state's first Supreme Court justice. The revisions fueled controversy over Michigan's judicial system and were the source of much ambiguous interpretation. Even before Michigan became a state, complaints had already begun to mount.³ Some issues, such as indefinite tenure, were corrected. In March of 1823 an act was passed which limited the terms of Supreme Court justices to four years, but many of the controversies endured well past the year that Michigan wrote its first constitution in 1835.

The constitution of 1835 established a peripatetic Supreme Court of three judges. Judges of the Supreme Court were appointed by the governor, with consent of the senate, for seven year terms. One session of the Supreme Court was to be held annually at specified times located in one of the three judicial

Disorganization, Reorganization and Controversy

continued from cover

scrutinized political issues of early nineteenth century state history. The majority of these arose during the interim between Michigan's first constitutional convention in 1835 and its second in 1850. During this time, several attempts were made to reform the judicial branch. It proved to be a difficult and agonizing process for supporters of judicial reform. Not only were they met with political opposition, but had to work within a legal system that was fundamentally disorganized.

The early history of the Supreme Court of Michigan is one of disorganization and reorganization. But as changes were made, the state's highest court gradually, painstakingly assumed the respect that its reformers had always felt that it could. The reorganization of the Court in 1858 was enhanced by four widely recognized jurists—known collectively as the Big Four—who are often credited with providing the Court with the direction and structure for which it is recognized today. They set the precedent that subsequent jurists followed—not so much in a philosophical or legal sense, but a precedent of honorable authority and recognition of the role that the Supreme Court could potentially play in society. Their vision set the tone for the Court in the twentieth century and is in part responsible for the relative stability that it witnessed.

The Early Years: Constitutional Quandaries

On July 24, 1805, the first Supreme Court for the new Territory of Michigan was created. Its first justices were Augustus B.

It can ... be argued that issues surrounding the judicial branch, and the Supreme Court especially, were some of the most closely scrutinized political issues of early nineteenth century state history.

circuits—Wayne, Washtenaw, and Kalamazoo. Two judges constituted a quorum. The constitution proposed a state judiciary centered around the Supreme and Circuit Courts. Judges of both the Circuit Courts and the Supreme Court were to be elected by a joint ballot of both houses of the legislature and to be paid salaries of no more than \$2,000 and \$2,100 annually for services, respectively. The constitution also provided the Supreme Court with both original and appellate jurisdiction in common law and equity cases.⁴

When the constitution was adopted few restrictions were placed on the power of the legislative branch. The Supreme Court was, in fact, the only tribunal established by the constitution. All others were provided by statute. One of the primary duties prescribed to Supreme Court justices by the original constitution was to preside over the Circuit Courts in each of their representative districts.

The jurisdiction of the Supreme Court established by the constitution of 1835 was in many ways identical to the jurisdiction of the territorial Supreme Court. This included limited original jurisdiction over actions of right, and the extra legal remedies of mandamus, quo warranto, and habeas corpus. The court was also granted appellate jurisdiction to review Circuit Court decisions by writs of certiorari. In addition, the constitution established a separate Court of Chancery, allowing for appeals from the Court of Chancery to be made to the Supreme Court. One provision that was the source of subsequent ambiguity and eventual revision allowed the equity suits and processes pending in the territorial courts to be transferred to the Court of Chancery. One exception was that those suits in which the chancellor had been a counsel or had some other interest were to be adjudicated by the courts in which they had originated, so long as the Supreme Court possessed original jurisdiction in these cases.⁵ This provision led to extended litigation in the Supreme Court that did not begin to be resolved until 1850.

Notes:

*For the early history of the Michigan Supreme Court I draw heavily from the works of Clark F. Norton, whose Ph.D. dissertation, "A History of the Supreme Court of the State of Michigan, 1836-57" at the University of Michigan was never published as a whole, but appeared in various publications. This has complicated my footnoting a bit, but I hope that my citations are clear enough.

¹ James V. Campbell, "Judicial History of Michigan" in *The Semi-Centennial of the Admission of the State of Michigan into the Union*, p. 102 (1886).

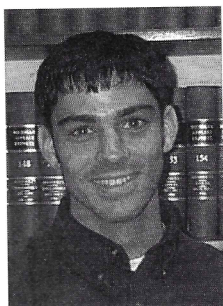
² For a complete listing and biography of all supreme court justices from 1805-1998 see Jill K. Moore and Ellen Campbell, ed., *Michigan Supreme Court Historical Reference Guide* (Lansing: The Michigan Supreme Court Historical Society, 1998).

³ Alec R. Gilpin, *The Territory of Michigan: 1805-1837*. (East Lansing: Michigan State University Press, 1970), p. 84.

⁴ For more detailed information and citations of original documents regarding the constitutional convention of 1835 see Clark F. Norton, "Michigan's First State Supreme Court, 1836-38". Also see Harold M. Dorr, *The Michigan Constitutional Conventions of 1835-36* (Ann Arbor: University of Michigan Press, 1940).

⁵ Norton, *Ibid.*, p. 304.

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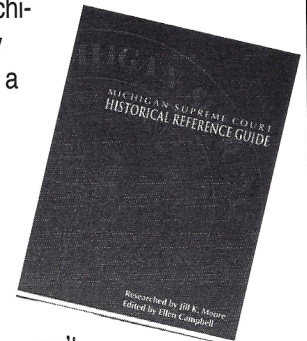
SCOTT A. NOTO was the Michigan Supreme Court Historical Society's 1999 Creighton S. Coleman Intern. During the summer of 1999, he researched and wrote a general history of the Michigan Supreme Court.

The preceding article is an excerpt from Scott's completed manuscript, which is currently being developed for publication in its entirety. Watch for announcements in upcoming newsletters for publication information.

For more information on the Coleman Internship Program, please call Jill Wright, executive director, at 517-346-6419.

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The *Michigan Supreme Court Historical Reference Guide* tells the stories of each of Michigan's first 100 Supreme Court Justices, from 1805 to 1998. Illustrated with photos of each Justice, this fascinating, 273-page volume also contains an index of special sessions of the Michigan Supreme Court, sorted both by honorees and speakers, as well as a factual chart of the Court by years, which lists the Court's composition for each year since 1805.



Order your copy now!

The Reference Guide is available to Society members for \$10; \$15 to non-members. At either price, you can't afford **not** to have this valuable piece of Michigan's legal history!

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Membership Roster

The Society groups its membership into two levels: *Life Members*, which includes the categories of Benefactor, Major Sponsor and Sponsor; and *Annual Members*, containing the categories of Contributing, Sustaining, Patron and Student. The years listed after each member's name indicates the year he/she joined the Society. An *In memoriam* list is shown at the end of the membership list.

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Vesta Svenson, 1989
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Wallacy D. Riley, in memory of Gary L. Calkins.

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In Memoriam

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President's Message: Review of 1999

Wallace D. Riley, President

Michigan Supreme Court Historical Society



Y2K has come and gone, and so has the year 1999, which included much activity for the Michigan Supreme Court Historical Society.

Perhaps the most significant accomplishment of the Society this

past year was the publication of a first-of-its-kind book, the *Michigan Supreme Court*.

Historical Reference Guide, in which each of Michigan's first 100 Justices (1805 - 1998) is biographically profiled. It also contains – for the first time – a chart of the members on the court year by year. Over 200 copies are already in circulation. It is available from the Society (see order form on page 3), at the Michigan Historical Museum gift shop in Lansing and in some Michigan law school bookstores.

Other continuing publication efforts include our quarterly newsletter, *Society Update*, which is issued each Winter, Spring, Summer and Fall.

Also in 1999, we debuted our new World Wide Web site, WWW.MICOURTHISTORY.ORG. In a visually appealing, easy-to-navigate format, it contains:

- Biographies of all past and current Justices, accompanied by photographs or images of their corresponding court portraits, where applicable;
- The complete transcripts of all Special Sessions of the Court, beginning with the 1857 Court's memorializing of the Territorial Judges, who served from 1805 to 1837;
- Full electronic versions of the Society's quarterly newsletter, starting with the first 1997 edition;
- Information about our Coleman Internship, membership and contact information;
- Important links to other sites, including a reciprocal link with the Court.

In the coming year, the Society will continue to expand the site, adding more historical information, such as the texts of old court cases, and adding a searchable database.

We continued for the second year the Creighton S. Coleman Internship. Mr. Scott A. Noto, an honors undergraduate history student from the University of Chicago, has completed his manuscript entitled, "A Survey of Michigan Supreme Court History." The Society plans to publish the manuscript in booklet format and make it available to visitors to the Court and other interested persons.

As usual we performed our annual survey of the historical portrait collection and located a portrait previously listed as missing. The portrait of Justice Issac Christiancy (one of the large, special "Big Four" portraits in the main lobby of the Michigan Supreme Court) was repaired and rehung. Some portraits were missing identification and we are in the process of affixing new nameplates.

The "Decade In Review" Traveling Exhibit has spent a semester at all five Michigan law schools. Its next and final stop is at University of Detroit Mercy Law School.

Last Spring we presented the portrait of Justice Charles L. Levin at a Special Session of the Court held in Detroit. In the Fall, we presented the portrait of Justice John D. Voelker at another Special Session held in Lansing.

We have facilitated the establishment of Portrait Committees for recently retired Justices Boyle, Mallett and Brickley, and we look forward to presenting their respective portraits to the Court in the next century.

Early last year we assisted with the Investiture Ceremony of Justice Robert P. Young, Jr. in Detroit, and last November we helped welcome to the Court Justice Stephen J. Markman at his own Investiture Ceremony in Lansing.

Last year's Annual Luncheon Meeting was held at the Kent country Club in Grand Rapids. About 100 of our members and the Court heard Judge (former Justice) James L. Ryan present the legal vignette on the life and times of Justice Thomas L. Cooley.

Finally, the Society was pleased to be present for the announcement of and groundbreaking ceremony for the Michigan Hall of Justice. In 2003, Michigan will join the majority of U.S. states that acknowledge the importance of the judicial branch by providing a separate state office building dedicated to the administration of justice.

As you can see, 1999 was indeed a busy year for the Michigan Supreme Court Historical Society. And in 2000, the activity level is likely to remain just as high. This year's Annual Membership Luncheon is being held at the Detroit Athletic Club on Thursday, April 13, 2000 at noon, and we are expecting a record attendance. As mentioned earlier, Scott Noto's manuscript on the history of the Michigan Supreme Court is being developed for publication. There are presently three active portrait fundraising efforts underway, and this year the Society is kicking off a new law firm and corporate membership campaign.

These are just a few of the activities we will be undertaking in 2000, and in future editions of *Society Update* we will keep you informed of their progress.

Thanks to all the members for their help in contributing to another successful and productive year for the Michigan Supreme Court Historical Society.



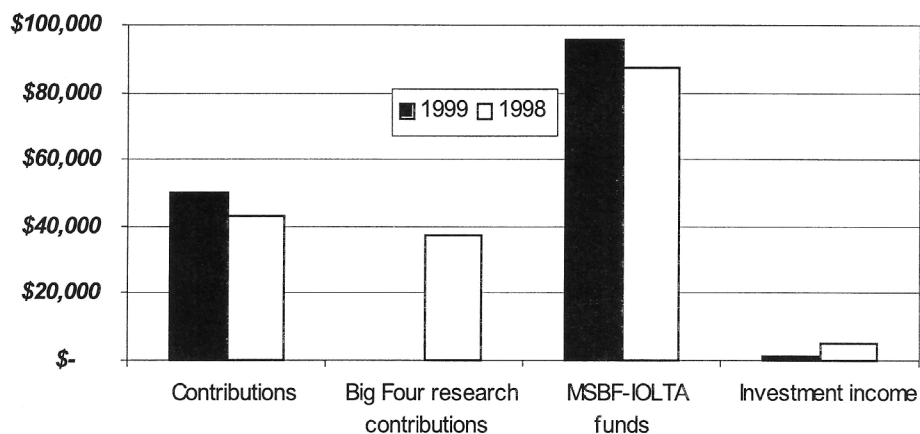
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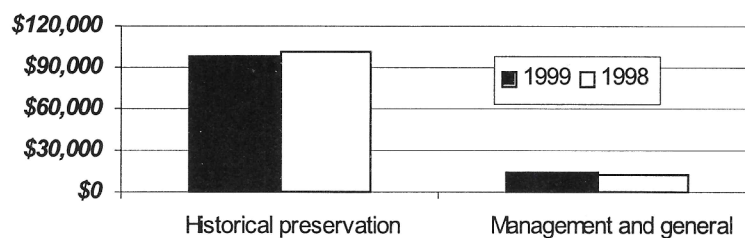
**MICHIGAN SUPREME COURT HISTORICAL SOCIETY, INC.
STATEMENTS OF ACTIVITIES - CASH BASIS
YEARS ENDED DECEMBER 31, 1999 AND 1998**

	<u>1999</u>	<u>1998</u>
PUBLIC SUPPORT AND REVENUES:		
Contributions	\$49,746	\$43,048
Big Four research contributions		\$37,250
MSBF-IOLTA funds	\$95,800	\$87,260
Investment income	<u>\$984</u>	<u>\$5,112</u>
Total public support and revenue	<u>\$146,530</u>	<u>\$172,670</u>
EXPENSES:		
Program services:		
Historical preservation	\$98,096	\$100,937
Supporting services:		
Management and general	<u>\$13,519</u>	<u>\$13,242</u>
Total expenses	<u>\$111,615</u>	<u>\$114,179</u>
Unrealized gain on investments	<u>\$4,174</u>	<u>\$14,666</u>
Change in net assets	\$39,089	\$73,157
NET ASSETS:		
Beginning of year	<u>\$255,463</u>	<u>\$182,306</u>
End of year	<u>\$294,552</u>	<u>\$255,463</u>

Public Support and Revenue



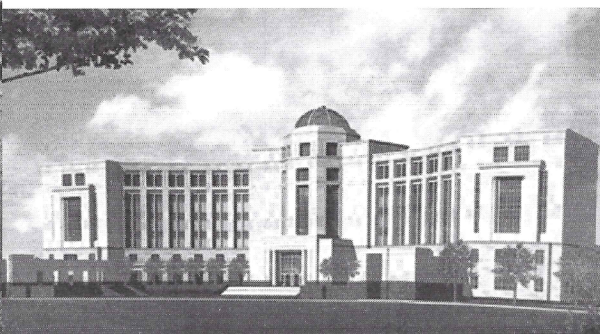
Expenses



Recent History



Michigan Supreme Court **Chief Justice Elizabeth Weaver** (left) shovels a mound of dirt at the **Hall of Justice Groundbreaking Ceremony** on Tuesday, October 12, 1999. The six-story, 270,000 square-foot building (pictured below) will be located at Ottawa and Butler Streets in downtown Lansing. Scheduled to open in 2003, it will house the Michigan



Supreme Court, the Michigan Court of Appeals and the State Court Administrative Office.

The Supreme Court has been located in the G. Mennen Williams Law Building on West Ottawa Street in Lansing since 1970. From 1879 to 1970, it was located in the Capitol Building. Prior to 1879, the Court met in various locations throughout the state.

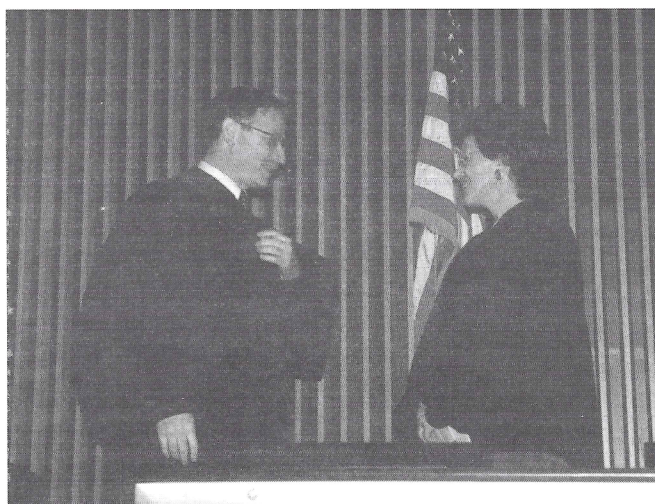
According to Willis F. Dunbar's *Michigan Through the Centuries* (New York, Lewis Historical Publishing Co., 1955), the "... early sessions of the ... court were held in Detroit homes. They also, apparently, were held on occasion in taverns and at other places ..."

Approximately 40 U.S. States have separate state buildings for their judicial branches.

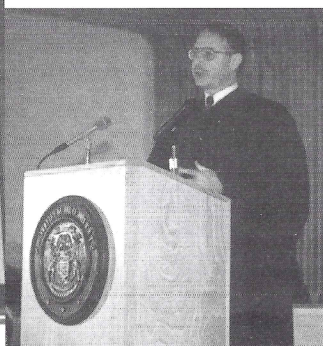
Julie Voelker Cohen (far right) proudly poses beside the portrait of her father, the late Justice John D. Voelker, who served the Michigan Supreme Court from 1957 to 1959. The portrait, painted by Rod Crossman of Marion, Indiana, was dedicated to the Court on Tuesday, October 12, 1999.

After leaving the Court, Voelker published eleven novels, including *Anatomy of a Murder*, which was made into a motion picture in 1959 and received seven Academy Award nominations.

Pictured near right, **Voelker** shares a cigar break with actor **Jimmy Stewart** on the set of *Anatomy* in 1959.



Stephen J. Markman is sworn in by **Justice Marilyn J. Kelly** becoming Michigan's 103rd Supreme Court Justice, on Friday, November 12, 1999. He was appointed by Governor Engler to fill the vacancy left by Justice James H. Brickley's retirement.



Markman has previously served as an assistant U.S. attorney general (1985-89) and U.S. attorney for Eastern Michigan (1989 to 1995). In 1995 he was appointed to the Michigan Court of Appeals.

Near left, Justice Markman shares his judicial philosophy during his investiture ceremony.

SAVE THE DATE!

Thursday, April 13, 2000--Noon

**Michigan Supreme Court
Historical Society**

Annual Membership Luncheon

**Detroit Athletic Club
Detroit**

Mission Statement

The Michigan Supreme Court Historical Society is a nonprofit, 501(c)(3) corporation dedicated to preserving documents, records and memorabilia relating to the Michigan Supreme Court. The Society produces publications, special events and other projects to achieve its goals in education and restoration. Current officers and directors are:

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