

Historical Society Celebrates the 200th Anniversary of the Creation of the Supreme Court of the Michigan Territory

On October 18, 2005 the Historical Society joined the Michigan Supreme Court in special session at the Hall of Justice in Lansing to celebrate the 200th anniversary of the creation of the supreme court of the Michigan Territory. The program, which began at 4:00 in the afternoon, featured a legal vignette by Professor David G. Chardavoyne, the unveiling of an official court portrait of Justice Augustus Woodward, and remarks by Chief Justice Clifford W. Taylor.

Historical Society President Wallace D. Riley opened the session with his annual report to the Court detailing the Historical Society’s activities in 2005.

The legal vignette, *The First Decade of the Supreme Court of the Territory of Michigan*, was given by Professor David G. Chardavoyne. Professor Chardavoyne is a lawyer, teacher, and author. After twenty-one years as an associate and partner at Bodman LLP, Professor Chardavoyne left to pursue his love of history and of teaching. Since 2001, he has taught at both Wayne State University Law School and the University of Detroit-Mercy School of Law as an adjunct professor. He has written extensively on the legal history of Michigan’s early years, and his study of

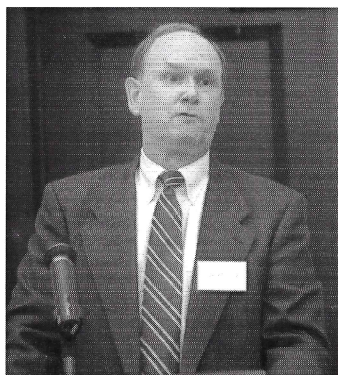
the history of capital punishment in Michigan, *A Hanging in Detroit*, published by Wayne State University Press, was named a Michigan Notable Book of 2004 by the Library of Michigan Foundation.

The Woodward Project

Wallace D. Riley recounted the history of the “Woodward project” and called upon John Fedynsky and Robert Maniscalco to unveil the portrait.

Woodward is known for many things, including early publications regarding the rights of citizens in the territory of Columbia, his work on the Territorial Supreme Court, the establishment of the University of Michigan, and his plan to redesign and rebuild the city of Detroit. Recognizing his many contributions, a young man named John Fedynsky first approached the Historical Society a year ago to present the idea of commissioning a statue of Woodward to be placed in downtown Detroit. Recognizing that Woodward did indeed deserve to be honored, the Historical Society decided instead to commission a portrait of the Justice to be presented to the Court.

Only one picture of Woodward is known to exist – a crude line drawing that is rumored to be a caricature of the Justice. Using this and a few scattered verbal descriptions of the Justice, our artist would have to craft an historically accurate picture of Woodward almost from scratch. Recognizing the difficulty of this



David G. Chardavoyne

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Line Drawing of Augustus B. Woodward (Photo Courtesy of the State Archives of Michigan.)

project, the Historical Society sought an experienced artist with an awareness of the importance of historical context.

Robert Maniscalco, a Detroit-based portrait artist was a logical choice. He is an experienced painter, a conscientious presenter, and an expert in the arts. Having worked with him on several other portrait projects, including the posthumous portraits of Justices Black, Moody, Reid and Sharpe, we selected Robert to paint this important portrait.

The Portrait Unveiled

Having been commissioned nearly 200 years after Woodward's death, the painting of a portrait of Justice Woodward was an historical adventure. Artist Robert Maniscalco described for the Court the process of painting the portrait.

As an amateur historian, I embarked on several failed attempts at finagling myself into the great historic homes in

Charleston...For weeks I visited museums, law firms, fraternities, schools, plantation homes, restaurants, Inns, antique stores, tour homes...Finally, as it always goes, when hope was all but lost, I stumbled upon the perfect setting: The Thomas Elfe House on Queen Street, built around 1770, one of the oldest private homes in the Charleston peninsula. The proprietor, Bill Ward, a prominent collector of antiques from the period, was more than happy to assist me in putting together the authentic setting you see before you.

Meanwhile, I had to find the right person to play Woodward. After staging several impromptu lineups in grocery stores or at parties—several women suggested their ex-husbands as perfect for the part!—I found my man. Dr. Patrick O'Neill is the head of the Medical Weight loss center at MUSC. He happened to be the same height and build as Woodward; he was even a career bachelor, like Woodward. But most importantly, he was willing to play dress up with me. He towered over the desk and was perfect for the part, all decked out in a period costume, provided by Bruce Bryson of Theatrics

Unlimited.

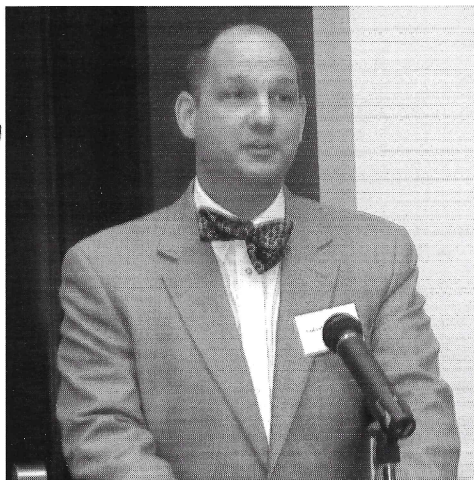
I took digital photos paying careful attention to lighting. I wanted to get the glow of the candle light and oil lamps used at the time. The rooms from the period were usually cramped and the front room of the Elfe House was no exception. I put my unwitting model through the ringer, experimenting with every conceivable pose I could imagine Woodward ever striking. I ended up with this simple, confident pose, which I believe evokes Woodward's complexity and stature. Though he was known for his poor posture, I imagined he would have stood tall for his own portrait.

Alone in my studio, I faced this most intriguing challenge: how to combine my historically accurate reference photos with an unflattering caricature, a political cartoon really, that happened to be the only known visual depiction of Judge Woodward. If it please the court, I believe my charge as a portrait painter is to find the greatness in my subjects, not advertise their flaws. On the other hand I believe there is power and grace in the naked truth, which should always be the goal of the artist. So what

was I to do in this case, with the limited visual information available? How could I get to "the truth" hiding beneath this lampoon? The written descriptions, though detailed and evocative, were no less critical. I set out to capture the slight scowl of the original drawing yet bring a warmer, more natu-



John Fedynsky and Robert Maniscalco unveil the portrait of Justice Woodward.



Portrait Artist Robert Maniscalco.

ralistic depiction of this enigmatic figure, adjusting for some of the original artist's obvious sarcasm and how shall we say, lack of technique. I sharpened his downward gaze and brightened his expression slightly and trimmed up his nose a bit. In the case of my depiction of Augustus Woodward, I hope any artistic purists will forgive me for erring on the side of his strength and nobility.

Robert included several historical elements in the painting and described them to the audience:

The painting features a number of significant artifacts that I'd like to touch on, if it please the court. All the furnishings and "props" included in the painting are authentic antiques from the Colonial and Federalist periods, what they call, "Adamsesque" in the south.

A desk from 1790 anchors the composition and sets the stage for a number of historically significant features. Piles of books, a period quill, pewter ink fountain, indicia, wax and sander help to create a sense of his characteristic clutter. A notebook, which Woodward always carried with him, rests at his fingertips. An authentic wine bottle and glass suggest the less formal judicial proceedings of the day. The fire spills (used to light fires/candles, etc) in a container on the top of the desk represent the burning of Detroit. Woodward's solution to the Detroit fire of 1805, his controversial "spoked" street plan for Detroit, is framed above the desk. And, of course, the lamp



of knowledge, resting atop blue and gold books on the mantle over Woodward's left shoulder is the symbol taken from the first seal of the University of Michigan, which he co-founded in 1817.

Chief Justice Taylor Speaks

The special session of the Court was concluded with remarks from Chief Justice Taylor.

When I was asked to close today's ceremony, it was suggested that I contrast the territorial court of 1805 with the Supreme Court of today.

There are many obvious differences, of course. Judges Woodward, Bates and Griffin took office a little more than 20 years after the end of the Revolutionary War, in a turbulent territory of a brand-new nation. That same fledgling country is now the dominant power in the world.

The Michigan territorial court imported much of their precedent from English common law and the decisions of New England courts. My colleagues, while we still on occasion look to such sources, have inherited generations of Michigan-crafted precedent and are the beneficiaries of this collected learning.

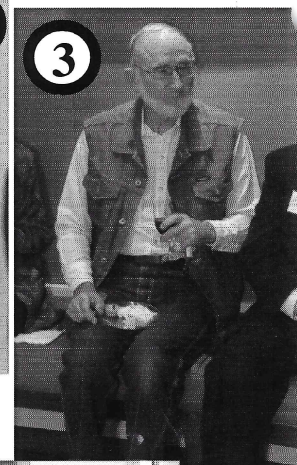
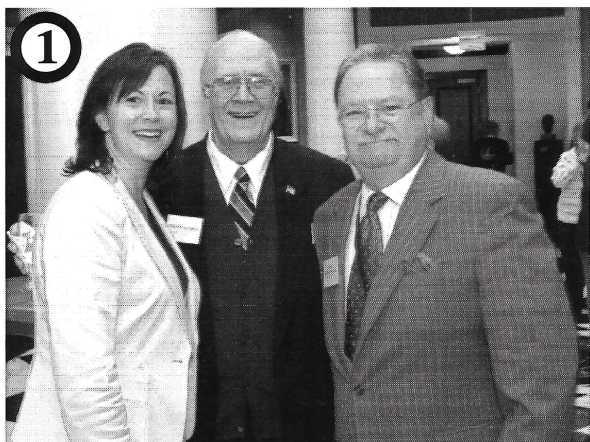
Also, unlike Augustus Woodward, my fellow Justices and I have never arrived in town on the heels of a major fire and been charged with helping to rebuild the city.

Moreover, we do not, as the first Michigan judges apparently did, serve as both jurists and legislators; a fact that surely is a source of immense relief to our citizens.

We, today, serve under a state

Continued on page 5.

Images from the 200th Anniversary Reception



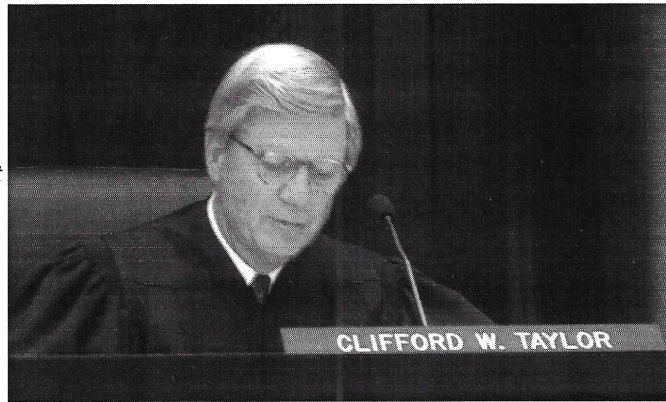
Pictured: (1) A Society guest poses with Society Secretary Charles R. Rutherford, and Justice Michael Cavanagh (2) Justice Maura D. Corrigan and Society board member Judge Avern L. Cohn (3) Alan Grant, who plays Woodward for the annual Woodward Cruise in Detroit (4) Society board member John T. Berry, John Fedynsky, and Robert Maniscalco (5) Society guests enjoy the food offered at the reception (6) Carl Gromek, Justice Robert A. Young, and Michael Gadola (7) Justice Elizabeth A. Weaver speaks with Society board member Alfred M. Butzbaugh (8) Society board members Judge Michael J. Harrison and Lawrence P. Nolan (9) Justice Marilyn J. Kelly speaks with State Representative Aldo Vagnuzzi (10) John Fedynsky and Justice Stephen Markman

Continued from page 3.

constitution; they did not. For better or worse, this Court does not hold proceedings in taverns, and, I think it's safe to say, it's been years since any of my colleagues, or our predecessors, have been challenged to a duel (I'm not counting teenage children here).

I could go on, but it seems to me that the more challenging and important question is whether the territorial court of 1805 has any lessons for us today.

In that regard, I'd like to draw your attention to a guest editorial that appeared in the *Wall Street Journal* last week. It's entitled, "The Finest Court in the Nation." ...I think there is one line in particular that captures both this Court's work and its heritage from Justice Woodward: the writer, Patrick J. Wright, states that "Under public scrutiny, the Michigan Supreme Court has developed a body of generally consistent legal interpretations of key relationships between the judiciary, the legislature and Michigan's citizens."



I think that line nicely sums up the charge shared by this Court and the territorial court of 1805. It is a challenging enough task, even now, to sort out the relationships among branches of government, with the risk always present when doing so that to incorrectly handle it may disrupt the balance of powers of this most successful form of government yet devised by man. This balancing could be seen recently in *Hathcock v County of Wayne* where it was our duty to articulate the boundary between the private ownership of land and when, if ever, the government can brush aside those rights for the benefit of the community. How much more challenging must it have been 200 years ago to define these and other

thorny governmental relationships in a country, and indeed in the frontier of that country, initiating a yet untried federal system! Further, the Constitution itself had been in place for little over a decade and the type of

government it envisioned was largely unprecedented. So it isn't surprising, for instance, to see Judge Woodward while struggling mightily with such seemingly pedestrian issues as whether the common law allows service of process on Sundays, to also focus on constitutional matters. We, who are the successors of Augustus Woodward, and of all the other Justices who followed him, are properly humbled by what they did. As the first in the long line of jurists of this Court, his is properly understood as a life worthy of study.

To view the full text of speeches given at the Special Session, go to www.micourthistory.org and click on Recent News.



The First Decade of the Supreme Court of the Territory of Michigan: A Legal Vignette by David G. Chardavoyne

I am honored to be part of this celebration of the 200th anniversary of the Supreme Court of the Territory of Michigan and the presentation of the new portrait of the man who dominated the court for eighteen years, the eccentric and brilliant Augustus Brevoort Woodward. During the life of the territorial court, from 1805 to 1836, Michigan changed from a handful of precarious settlements of no more than 4,000 European inhabitants, most of whom spoke no English, to a thriving agricultural community stretching from Detroit to Lake Michigan with more than 87,000 settlers and still growing by leaps and bounds. The men who served as judges during the court's first difficult decade had much to do with this change, and I would like to tell you something about them.

The Genesis of the Michigan Territory

Congress created the Supreme Court of the Territory of Michigan, like the territory itself, on January 11, 1805. But, in order to explain how that came about, I must go back eighteen years to creation of Northwest Territory itself. In the mid-1780s, the Continental Congress faced a crisis relating to what was then known as the Old Northwest. The United States received this vast wilderness of 265,000 square miles, larger than France and now the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, and eastern Minnesota, from Great Britain in

the Treaty of Paris, which ended the Revolution. The problem was who owned it and what to do with it. Virginia claimed all of it while Pennsylvania, Massachusetts, Connecticut, and New York claimed large parts for themselves. Other states objected to those claims and refused to ratify the Articles of Confederation unless Congress reached some other solution.

That solution, enacted in July 1787, was a law, the Northwest Ordinance, which provided that the Old Northwest was to become a single territory, governed by officials chosen by the United States, but with the promise that, as settlement occurred, the territory would become between three and five new states admitted to the Union on a basis equal to the original thirteen. One of the proposed states was described as lying "north of an east west line drawn through the southerly bend or extreme

of Lake Michigan." The government of the Northwest Territory was to be in the hands of five officials appointed by the federal government, including an executive branch (a governor and a secretary) and a court of three judges "who shall have a common-law jurisdiction." The governor and judges would also serve as a legislative board, enacting laws by majority vote.

Despite the Treaty of Paris, Great Britain refused for many years to give up Detroit and its other lucrative fur-trading posts in the Northwest, while the Native Americans were not willing to accept American control over the Northwest. It was not until 1796, after more bloodshed and another treaty, that the United States took actual possession of the Old Northwest. Then, though, settlers did flood north into what are now Ohio, Indiana, and Illinois (although Michigan remained a sparsely populated

backwater). As population grew, borders changed: in 1800, Congress split a new Indiana Territory from the Northwest Territory, and, in 1803, Ohio became the first state in the Northwest.

But, what was welcome news in Ohio was not received well in Detroit. Congress included what is now Michigan in the Indiana Territory which had its capital in Vincennes, on the banks of the Wabash, far way. Residents of Detroit and Mackinac, in English and French, pleaded with Congress: "Compel us not to



Division of the Northwest Territory as of 1805

wander seven hundred miles thro' inhospitable deserts" to Vincennes. Their distance from government would, they feared, lead to "outlawry, oppression, and anarchy, leaving murderers unpunished and creditors unpaid." The Democratic Congress paid attention (Detroit was Jeffersonian, Indiana was Whig), and passed the Michigan Territory Act on January 11, 1805, creating, effective June 30 of that year, the Michigan Territory with its capital at Detroit.

The Michigan Territory's southern boundary was, as in the Northwest Ordinance, described as "north of a

short, bloodless war. The description of the western boundary is also subject to different interpretations in the Upper Peninsula—but that uncertainty did not matter because few people who lived in the Upper Peninsula recognized American sovereignty anyway. In 1805, except for a few fur traders at Mackinac and Sault Ste. Marie, almost all of the population of the Michigan Territory lived in or near Detroit.

The Governor and Judges

The Michigan Act provided that the territory was to have a govern-

court, William Sprigg. Two men did accept, though: Augustus Brevoort Woodward, a lawyer practicing in Washington, D.C., and Frederick Bates who was then serving as Detroit's postmaster.

Michigan would not have three judges until September 1806 when John Griffin accepted a transfer from the Indiana Territory's high court, but, three months later, Michigan was back to two judges when Judge Bates accepted the position of secretary of the Louisiana Territory and moved to St. Louis. Two more appointees declined in 1807 (John Coburn of Kentucky and Return Jonathon Meigs, Jr., another judge of the Supreme Court of Ohio), and the court reached full strength again only in April 1808 when James Witherell, a Congressman from Vermont (and a doctor, not a lawyer), agreed to take the third seat. After Witherell's arrival, the court went from instability to a solid permanence as the triumvirate of Woodward, Griffin, and Witherell proceeded to serve together until 1824.

Who Were the Judges?

Augustus Brevoort Woodward was born in 1774 in New York City, and so was only thirty years old when he arrived in Michigan. He graduated, in 1793, from Columbia College, where a classmate noted that he was very fond of showing off his intellect, a trait that he kept throughout his life. Physically, he has been compared to Ichabod Crane, of Washington Irving's *Legend of Sleepy Hollow*. He was six feet three or four inches tall, rail-thin and stooped, with a large nose and sallow skin. He was slovenly—his clothes were usually dirty and his idea of a shower was to take a chair and sit out in a rainstorm, fully clothed. He was, though, very fastidi-



Michigan Territory, 1805 (Photo courtesy of the Michigan State Archives.)

line drawn east from the southerly bend or extreme of Lake Michigan, until it shall intersect Lake Erie," and its western boundary was "a line drawn from such southerly bend through the middle of said lake to its northern extremity and hence due north to the northern boundary of the United States." Unfortunately, we do not know what map, if any, Congress consulted, and Ohio later claimed that Congress had been misled as to how far south Lake Michigan extends, resulting in decades of conflict and a

ment "in all respects similar to that provided by" the Northwest Ordinance. President Jefferson quickly appointed a governor (General William Hull of Connecticut) and a secretary (Stanley Griswold of New Hampshire), but he found it very difficult to fill, and keep filled, Michigan's three territorial judgeships. His first choice in 1805, Samuel Huntington, Chief Justice of the Supreme Court of Ohio, respectfully declined, as did another judge of that

ous about his thick, brown hair.

Mentally, he was brilliant, he had broad interests in the arts and sciences, and he was fluent in Greek, Latin, Spanish, and French. By 1805, he was one of the leading members of the bar of the District of Columbia, a member of Washington's first elected city council, and a close friend of Thomas Jefferson. He was, though, somewhat eccentric and sometimes impractical. One Detroit critic reported that: "Our chief Judge is a wild theorist, fitted principally for the 'extraction of sunbeams from cucumbers.'" Governor Hull said once that: "His very singular opinion of things generally would baffle any little sagacity." Hull also complained that: "Every thing in this Territory was perfectly tranquil, until his arrival. Since that time he has been doing all in his power to create parties and excite tumult."

Judge Woodward's exhaustive (some might say pedantic) scholarship often seemed, to detractors, as snobbish showing off. In one opinion, where the issue was fairly simple—the validity of service of a summons on a Sunday—he cited, among other authorities, the Apostles John, Luke, and Paul; Byzantine Emperors Theodosius, Constantine, and Anastasius; Pope Gregory; the 6th century kings Childebert of France and Gontran of Burgundy; and the Kings of England Edward I, III, and VI, William I, Henry II, VI, and VIII, James I, and Charles II. In that same opinion, he opined that the common law, a developing body of jurisprudence, became complete upon the coronation of "Richard Coeur de Lion," so that the court's "common-law jurisdiction" did not include anything more recent than 1189.

Because he had the unquestioned support of Judge Griffin, Judge

Woodward controlled voting both on the court and on the legislative board. This power tended to create hostility towards Woodward. In 1808, one John Gentle was indicted for libeling Woodward in newspaper articles, and he caused John Whipple to be indicted "for using abusive language to a judge." In 1810, George McDougall, a prominent attorney, challenged Woodward to a duel on a Thursday and then again on Friday. When Woodward refused to comply, McDougall wrote him, stating that he was "no longer doubtful of Mr. Woodward's unrelenting enmity," and, therefore, withdrew his promise to dine with the judge. In 1811, another man, Whitmore Knaggs, did not wait for Woodward to accept a dueling offer but, instead, got into a wrestling match with the judge at a soiree (and soon found himself indicted).

Frederick Bates was born, in June 1777, in Belmont, Virginia, one of 12 children of a Quaker family friendly with both President Jefferson and Secretary of State James Madison. He did not attend college, and, although he studied law, he never practiced. He arrived in Michigan in 1797 as an Army quartermaster, and by 1805 he owned a store in Detroit, was the postmaster, and served as the receiver of public money. Although he did not serve long as a judge in Michigan, he was very popular with the population.

John Griffin was born in 1774 in Scotland, the son of a Scottish baron's daughter and of Cyrus Griffin, a member of the Continental Congress from Virginia and later a United States District Judge in that state. John graduated from William & Mary College and then studied law. In 1800, President John Adams appointed him to the Indiana Territorial Court, but he was unhappy there—he

complained that the climate at Vincennes was not good for his many physical complaints. So, in 1806, Cyrus Griffin prevailed on President Jefferson to transfer his unhappy son to Michigan.

Descriptions of John Griffin may sometimes include terms like "tasteful and polite," but more often he was remembered as "a hypochondriac," "woefully inert," and "one of the most petulantly dissatisfied office-holders of all time." During his seventeen years in Michigan, he conducted a ceaseless (and fruitless) campaign for another job, any job, so long as it was not in Michigan (or Indiana presumably). He was also a timid and indecisive judge, totally dependent on, and subservient to, Woodward. Like Woodward, he never married, and they became known in Detroit as the "Old Bachelors."

James Witherell, joined the court three years after Woodward and two years after Griffin, and though he was their senior by fifteen years, he became the longest sitting judge of the territorial supreme court, serving for twenty years. He was born in 1759 in Massachusetts, and he fought in many of the major battles of the Revolution. After the war, he moved to Vermont where he practiced medicine and was elected to Congress in 1807. At President Jefferson's pleading, he soon resigned to become a judge in Michigan.

Judge Witherell was described by his contemporaries in Michigan as "a man of great originality and great force of thought," and as "a patriot of unquestioned integrity, mental independence and firmness of purpose that nothing shakes." Although he was devoted to the constitution, he disliked legal technicalities and despised the common law for its British origin—an interesting trait in a common-law

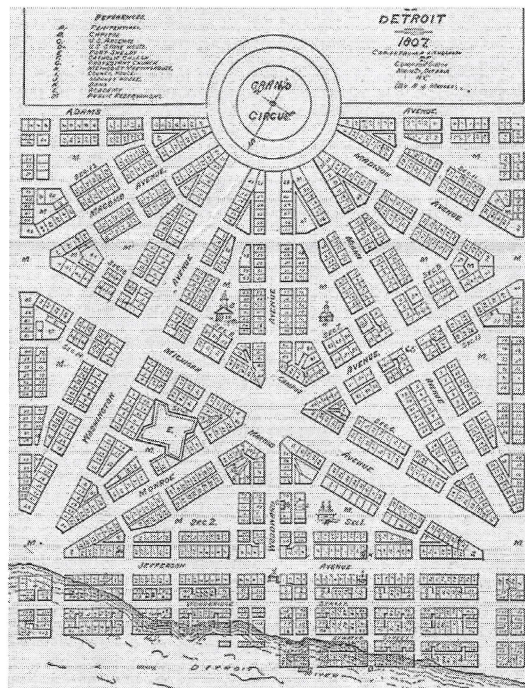
judge. Although both he and Woodward were disciples of Jefferson, they agreed on little else, and it was his fate to spend sixteen of his twenty years on the bench in perpetual conflict with Woodward and Griffin.

Michigan's Fiery Birthday

Why Woodward left the nation's capital for the capital of the Michigan Territory is not clear. Certainly, it was not for the money: in 1802, he earned more than three thousand dollars in legal fees, whereas the annual salary of a judge in Michigan was just \$800. Whatever his reason, he must have had serious second thoughts when he arrived in Detroit on June 29, 1805, after weeks of travel from Washington. Not quite three weeks earlier, on June 11, the entire two-acre town had burned to the ground—every home and business, St. Anne's Catholic Church, the military barracks, and the defensive palisade. Only the fort was left standing. The five hundred residents had all escaped alive, but now they were camped out in tents or in lean-tos or were bunking with friends and family who lived outside town.

Frederick Bates met Woodward as he disembarked, and, when Governor Hull and Secretary Griswold arrived the next day, they set about the long job of raising Detroit from the ashes. The plan Judge Woodward devised for that renaissance was the first glimpse that his constituents had of his eccentric genius. He was familiar with Pierre Charles L'Enfant and his plan for the streets of Washington, D.C.—a grid pattern of streets overlaid with broad diagonal avenues meeting in “circles” or “circuses.” Woodward decided to adopt that plan to Detroit, beginning at the waterfront and with its first

circus at what we know as Grand Circus Park (it was not, as some have claimed, the place where a traveling circus performed) and then to be repeated as the town grew. Although Woodward received permission from Congress for the first stage, the people of Detroit were upset. That one iteration was designed for a population of 50,000 inhabitants while Detroit's current population was less than a thousand men, women, and children who just wanted title to a nice square lot near the river where they could build a cabin before winter came. Woodward's plan seemed to mock their condition. Although that first stage can be seen in the map of



1807 Map of Detroit (Photo Courtesy of State Archives of Michigan.)

downtown Detroit, it was never repeated.

Firsts for the Supreme Court of the Territory of Michigan

Given the conditions they found, it is not surprising that the officials of the territorial government did not inaugurate the territorial court for a few weeks after they were sworn in on

June 30, 1805. Finally, on July 24, Woodward, Bates, and Hull convened as legislators and enacted “An Act concerning the Supreme Court of the Territory of Michigan,” thus giving the court its name. The act provided for one court term each year, beginning on the third Monday in September (you do not get two terms for \$800, it appears).

The supreme court held its first session five days later, on July 29, 1805, “Chief Justice” Woodward and “Senior Associate Judge” Bates presiding, at the home of James May (where Woodward was lodging), at what would later be the north side of Larned Street between First and

Second Streets (about where the Lodge Freeway passes Joe Louis Arena). During that first session, the court named Peter Audrain as its first Clerk of the Court. Born in France, he emigrated to Pennsylvania before the Revolution and arrived in Detroit before the British left. Before the American army arrived, he was the only American citizen in Michigan. Although he was already seventy years old, over the next decade Audrain would serve as clerk of just about every court, board, or meeting in the territory.

The court next met on July 30, 1805, to admit the first two members of the Michigan bar. Elijah Brush, then 33 years old and a graduate of Dartmouth College, was Detroit's first American attorney, arriving in 1796. He later served as territorial treasurer, and attorney general. Solomon Sibley, 36 years old, earned his degree from the College of Rhode Island (now Brown University), moved to Ohio, and then joined Brush in 1797. Until Sibley arrived, times were difficult for Brush, but then both prospered, thus proving

the saying that two attorneys will prosper where one attorney would starve. Sibley was Detroit's first mayor, Michigan's first United States Attorney, and a judge of the territorial supreme Court from 1824 to 1836.

The supreme court's first regular term began on Sept. 16, 1805, at the Dodemead Tavern, located at what is now the southeast corner of Jefferson Avenue and Shelby Street. Until 1828, the territorial supreme Court was principally a trial court, although one with the great advantage of being its own appeals court of last resort because Congress did not allow appeals from the territory to the United States Supreme Court. In addition to its common-law jurisdiction, the territorial supreme court had also received from Congress jurisdiction over all cases involving the United States, principally criminal and

customs matters, thus saving the cost of a separate U.S. District Court. The first of the ten cases filed in the court in 1805, and the first tried in the history of the court, was one of those United States cases.

United States v. Boards, Planks and Shingles claimed by Isaac Bissell, Jr. & Henry Fitch involved a claim to seize goods for not paying customs duties. Solomon Sibley represented the United States, and Elijah Brush appeared for the owners of the lumber. Trial began on September 18 and was completed on September 19, before Chief Justice Woodward and Senior Associate Judge Bates. The evidence established that, on July 6, 1805, the Collector of Customs at Detroit, Dr. Joseph Wilkinson, seized 4,968 feet of pine boards, 3,249 feet of pine plank, 1,795 feet of pine weather-

board, and twelve packs of pine shingles, floated across the river from Canada to be used in rebuilding the town. The owners of the lumber, Bissell and Fitch, had a customs permit, but for one raft only. Brush argued that, because of a labor shortage, his clients had had to divide the raft for which they had obtained a permit and make two trips across the river. Brush also accused

Wilkinson of seizing the lumber just to harass Bissell for personal reasons.

On September 24, 1805, the court issued its first written opinion, authored by Woodward and ruling in favor of the United States. Woodward held that a customs permit to land one raft meant just that, one raft. So Wilkinson's seizure of the lumber was affirmed, but Brush may have been right about Wilkinson's motives. In 1808, the Collector was jailed for embezzling \$4,600 in customs duties he had collected.

An International Incident

The court's first term ended on September 30, 1805, with ten cases filed. Over the next few years, the number of cases did increase: in 1806, 34 cases; in 1807, 46 cases; and in 1808, 79 cases. Most of the cases were routine matters: criminal prosecutions, customs seizures, and commercial disputes. There were, though, some cases of more lasting interest, including one in 1806.

United States v. Adam Muir, John S. Lundie, and Henry R. Brevoort involved a problem common to the armies stationed on both sides of the border: desertion. It was just too easy for a bored or resentful soldier to leave his post and avoid punishment by crossing the river. The officers on both sides arrived at an agreement to help each other capture and repatriate deserters. Civilians in Michigan, though, did not like the idea of British soldiers arresting people in the United States. One Sunday morning in December 1805, two British officers, Captain Muir and Lieutenant Lundie, entered Joseph Weaver's tavern at the mouth of the River Rouge after arresting a deserter. Deputy Marshal Thomas Nowland called out a posse, freed the deserter, and took him to Detroit. That night, Muir and Lundie,

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Signature _____

accompanied by two American officers, Lieutenants Brevoort and Hull (the governor's son), broke into the home in Detroit where the deserter was hiding. In the tumult that followed, Muir shot himself in the leg and he, Lundie, and Brevoort were arrested and ordered to appear nine months later at the supreme court's next session, in September 1806.

By the time Judges Woodward and Bates began the trial on September 19, 1806, at the May House, the arrest had become an international incident and diplomatic salvos were booming between Washington and London. Passions were also still high in Detroit. the charge was assault and battery, and a jury quickly found all three defendants guilty. Captain Muir's sentence was applauded—a fine of \$40.40 and seventeen days in jail—but even those people most vocal in favor of prosecution were stunned by the harsh sentences meted out to Lieutenants Lundie (\$8,800 and six months) and Brevoort (\$250 and 75 days). More so because, as the attorneys pointed out to the court, under the controlling statute the maximum fine for their offense was a \$100. Judge Woodward proceeded to amend the sentences, deleting all of the jail time and reducing the fines to 2.5¢ for Muir, 7.5¢ for Lundie, and 5¢ for Brevoort.

The War of 1812 and After

On May 18, 1812, Judge Woodward held the court's last session before Governor Hull surrendered Detroit to the British on August 12 of that year. Judge Griffin was off job-hunting, but Judge Witherell, as a militia officer, was taken to Canada as a prisoner of war and eventually exchanged. Judge Woodward, after much soul-searching, decided to remain in Detroit to help the residents

deal with the occupation. He was particularly successful in rescuing soldiers taken prisoner by the Indians allied to the British and in preserving the promise of the American return to Michigan. He eventually became so annoying that the British expelled him from the territory.

The three judges of the Supreme Court of the Territory of Michigan did not sit again until Judge Woodward called the court to order at the home of John Kinsie, in Detroit, on October 7, 1814, a few weeks after the British evacuated Detroit. After that hiatus, the court held its term each year until the territory became a state, although

the judges did, eventually, change. In 1824, Judges Woodward and Griffin were not reappointed and were replaced by Solomon Sibley and by John Hunt, who died in 1827 and was, himself, replaced by Henry Chipman. In 1828, Judge Witherell agreed to switch jobs with Secretary William Woodbridge, who sat until 1832 when he and Chipman were replaced by Ross Wilkins and George Morell. The trio of Sibley, Wilkins, and Morell continued until 1836 when, in anticipation of statehood, the Supreme Court of the Territory of Michigan gave way to the Michigan Supreme Court.

Join the Eastern District of Michigan Chapter of the Federal Bar Association for its Annual Rakow Scholarship Award Luncheon

November 17, 2005
Crowne Plaza Pontchartrain
11:30 a.m. Reception
12:00 p.m. Luncheon

The Chapter will be presenting Rakow scholarships to an outstanding student from each of Michigan's law schools. The scholarships are in memory of Edward H. Rakow, who served as Assistant Regional Administrator for the Securities and Exchange Commission in Detroit for 26 years, and who was instrumental in founding the Chapter.

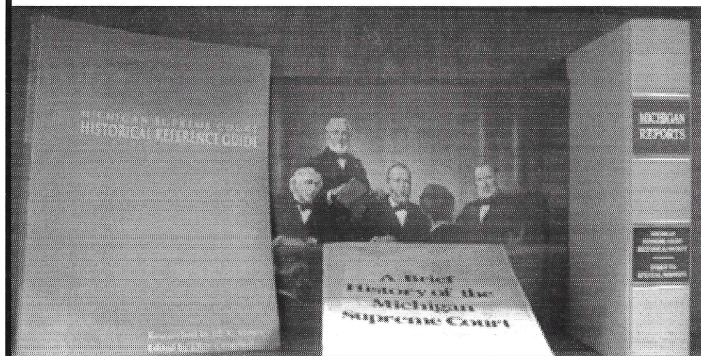
The luncheon is held in conjunction with the Annual Meeting of the U.S. District Court Historical Society. The Historical Society will present a documentary that it commissioned concerning the federal prosecution of six leaders of the Communist Party during the "red scare of the 1950's." The film's producers are Judith Monteil, who received an Academy award nomination for best documentary in 1991, and Ronald Aronson, Distinguished Professor of Humanities at Wayne State University.

Tickets are \$25.00 for Chapter members, \$30.00 for non-members, and \$20.00 for judicial clerks.

To register on-line for the luncheon, visit the Chapter's website at www.fbamich.org and click on Events and Activities. For more information, contact Program Chair Elisa Angeli at (313) 496-7635 or e-mail at angeli@millercanfield.com.

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Mission Statement

The Michigan Supreme Court Historical Society, a non-profit 501(c)(3) corporation, collects, preserves and displays documents, records, and memorabilia relating to the Michigan Supreme Court and the other Courts of Michigan, promotes the study of the history of Michigan's courts, and seeks to increase public awareness of Michigan's legal heritage. The Society sponsors and conducts historical research, provides speakers and educational materials for students, and sponsors and provides publications, portraits and memorials, special events and projects consistent with its mission.

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