



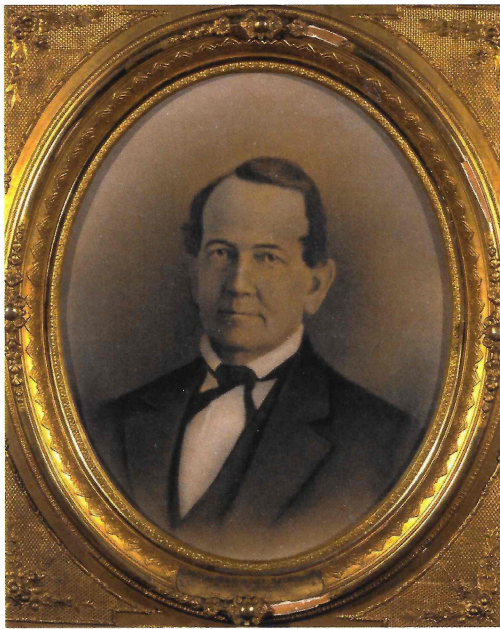
# *Society Update*

The Official Publication of the Michigan Supreme Court Historical Society

Year End 2019

## **Justice Edward Mundy: A Feisty Public Servant**

By Lori A. Buiteweg<sup>1</sup>



Born on April 19, 1794,<sup>2</sup> Justice Edward Mundy was appointed to the Michigan Supreme Court as an Associate Justice and Justice of the Western Circuit by Governor William L. Greenly in 1848. His appointment was made possible by adding a fifth seat to the bench created by the new judicial circuit court in Grand Rapids.<sup>3</sup> Justice Mundy remained on the bench for three years until he died on March 13, 1851, at 57 in Grand Rapids.<sup>4</sup>

Mundy's tenure as a justice was the culmination of a lifetime of public service to Michigan dating to 1831 when he moved to what was then the territory of Michigan from his home state of New Jersey. He had graduated from Rutgers College (then called "Queen's College") in 1812 at the age of eighteen<sup>5</sup> and began practicing law in New Jersey. Prior to settling in Ann Arbor, Mundy established an excellent practice in Illinois<sup>7</sup>, but returned to New Jersey after a fire consumed his home and property. He remained in Ann Arbor until 1848 when he moved one last time to Grand Rapids.

Additional public service positions held by Mundy included, in reverse chronological order<sup>9</sup>:

- **Attorney General:** he held this position beginning in 1847 until his appointment to the bench.
- **Prosecuting Attorney:** he was appointed to this position by the Governor and Senate in 1847
- **Lieutenant Governor:** Michigan's first Lieutenant Governor, Mundy served beside Michigan's first Governor, Stevens T. Mason. Mason was known as "the Boy Governor" because President Andrew Jackson appointed him to the position when Mason was only nineteen-years-old. Mundy was elected twice, and served from 1835 to 1840.
- **Regent, University of Michigan:** Mundy served in this position from 1837 to 1851. When he became a regent, the University was just graduating its first class, and Justice Mundy had an active interest and role in the University, and plans for its long-term success.<sup>10</sup>
- **Member, Constitutional Convention:** Mundy was a member of the Democratic party of the Convention beginning in 1835 when Michigan was preparing for admission to the Union.

While all of Mundy's stints as a public servant are notable, it was his tenure as a member of the Constitutional Convention that proved him to be a feisty, if not volatile, man. He was arrested for, and found guilty by a grand jury, of assaulting and battering a political foe in an Ann Arbor bar in September 1836 over a dispute regarding Michigan's claim to Toledo. Here is the indictment:

What were the circumstances giving rise to this indictment? Anyone familiar with the intense rivalry between the Michigan Wolverines and the Ohio State Buckeyes will likely understand! Read on.

Mundy, along with Mason, the soon-to-be-first-governor of Michigan, agreed with United States Congress that Michigan should cede the Toledo Strip in exchange for the western two-thirds of the Upper Peninsula to become a state. Whether this trade should be made was the subject of the September 1836 Constitutional Convention in Ann Arbor, and apparently the debate from the floor was as heated as the fan base on a Big 10 football Saturday in Ann Arbor's Big House or Columbus' Horseshoe.

At the end of the day, Mundy and Mason lost. It appeared for a short time that Michigan would retain Toledo at the expense of its statehood. This Affidavit (loosely transcribed below) is one of several original documents relating to Mundy's post-Convention dust-up with one Mark Howard, a Whig, who was more than happy to retain Toledo. The documents are on parchment paper, written with quill and ink, and housed carefully in the Bentley Historical Library on the University of Michigan's North Campus.

*...On the 12th day of September last, at the Washtenaw House in said Ann Arbor<sup>11</sup>, it being an election day, Mark Howard, while in conversation with one John Stafford, (upon some political subject, attracted the attention of Edward Mundy, who commenced conversation with said Mark Howard...Some words having passed between them, this deponent saw Edward Mundy kick said Mark Howard twice, which assault he believes was unprovoked) ...*

[illegible]



Deponent Edward Higby averred that John Stafford, Edward Mundy, Mark Howard, and Mr. Higby were conversing upon the subject of the admission of Michigan into the Union. Howard was opining that the decision to surrender Toledo to Ohio in exchange for the western portion of the Upper Peninsula was a politically motivated abuse of power and those supporting the exchange were deceiving the people. Howard told Mundy he considered Mundy,

*no better than a traitor*

for his support of the exchange of Toledo for the Upper Peninsula. Another deponent heard Howard tell Mundy that Mundy was,

*no better than Benedict Arnold*

and that Howard was harassing Mundy. Mundy replied with a

*single application with his right foot to the said Mark [Howard]'s hind quarter.*

Another deponent swore that Mundy kicked Howard twice, and that it was unprovoked.

There is no evidence of whether Mundy was convicted or pled guilty; however, there is a record that Mundy paid a fine of \$500.<sup>12 13</sup>



Twenty years before the brawl with Howard, Mundy married Sarah on November 11, 1816. Edward and Sarah had five children: Phinehas, Abby, Elizabeth, Julia, and James.

In this photo, Sarah seems to express her feelings about her husband's bar room brawl:

*"Really, Edward? You did what?"*

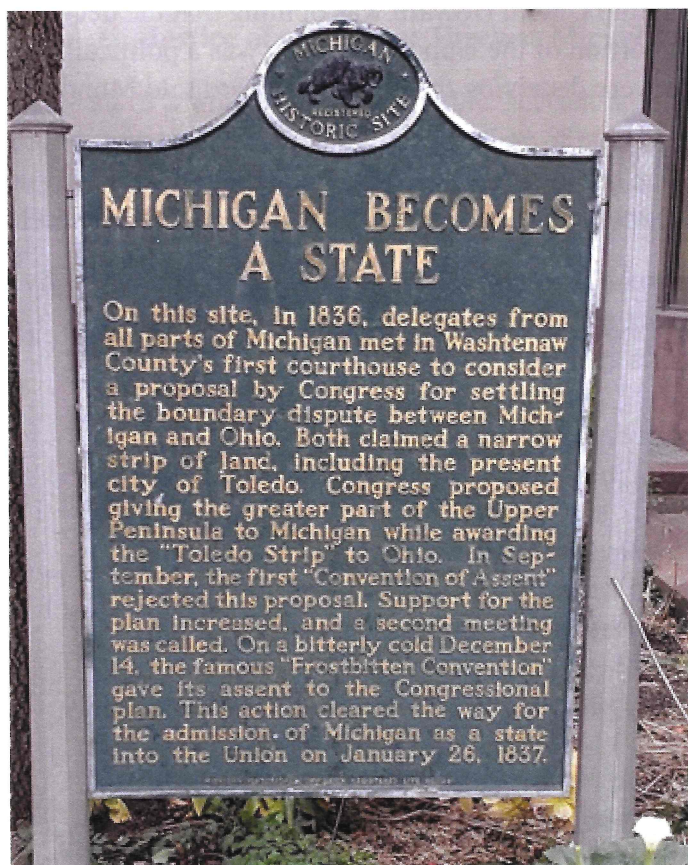
Mundy ultimately prevailed. The famous "Frostbitten Convention" of December 14, 1836, voted to trade Toledo for the Upper Peninsula after fiery debate. A little over a month later, on January 26, 1837, Michigan was admitted to the Union. Having helped pave the way for Michigan's admission to the Union, Mundy and Mason won the State's first gubernatorial election as lieutenant governor and governor, respectively.

Mundy authored approximately eleven Supreme Court opinions, all of which are housed in Volume I of the Michigan Supreme Court Reports. He opined on issues including:

**Affirmative Defense/Waiver/Process or Service**—a defendant who was served with a warrant and, after giving bail, argued the Affidavit on which the warrant was issued was not attached to the warrant at the time of service, was "too late" to object to, or deny the truthfulness of the Affidavit. *Stewart v Hill*, 1 Mich 265 (1849)

**Election Law**—A board of county canvassers' statement filed with the county clerk's office of the number of votes given for respective candidates at an election is only *prima facie* evidence of the persons elected: a party may go behind the county canvass to the township canvasses, and





Historic marker located outside the 22nd Circuit Court in Washtenaw County.

## Endnotes

<sup>1</sup> With special thanks to Miriam Saffo, J.D., Carrie Sharlow, and Janet Welch, J.D. for their various and sundry contributions to this endeavor.

<sup>2</sup> Nicholas Mundy and descendants compiled by Rev. Ezra F. Mundy of Metuchen, New Jersey, Press of Bullock Printing Company, 1907

<sup>3</sup> Michigan Reports, *supra* at xxxiv, xxxix.

<sup>4</sup> Edward Mundy, *supra*; Edward Mundy, micourthistory.org, <http://www.micourthistory.org/justices/edward-mundy/> (last visited 10/15/19)

<sup>5</sup> Joint Documents of the State of Michigan for the Year 1883, Volume II.

<sup>6</sup> Michigan Reports, *supra* at xxxvii.

<sup>7</sup> Joint Documents of the State of Michigan for the Year 1883, Volume II.

<sup>8</sup> Nicholas Mundy and descendants compiled by Rev. Ezra F. Mundy of Metuchen, New Jersey, Press of Bullock Printing Company, 1907

<sup>9</sup> Nicholas Mundy and descendants compiled by Rev. Ezra F. Mundy of Metuchen, New Jersey, Press of Bullock Printing Company, 1907

<sup>10</sup> Michigan Supreme Court, et al., Michigan Reports: Cases Decided in the Supreme Court of Michigan, xxxiv (Phelps

to the ballots, themselves, to show the number of votes cast for a candidate.

*The People ex rel. Attorney General v Van Cleve*, January Term, 1850).

**Arbitration**—A partner cannot submit matters to arbitration without the special authority of his co-partners.

*Buchoz v Grandjean and Grandjean*, 1 Mich 367 (1850).

John S. Lawrence, a United States District Attorney and Circuit Court Commissioner, said during Mr. Lawrence's presentation of Justice Mundy's portrait on November 12, 1889, "Justice Mundy was one of the most prominent [men]. His part in the early history of the State is one that may be regarded with pride by his family, and with reverence and pleasure in this place."

Mr. Lawrence was probably quite right. Notwithstanding his assault and battery indictment in 1836, Sarah Mundy must have been proud of her husband's prominent role in the creation of Michigan as a state and his roles in the state's executive and judicial branches of government. This author is particularly enamored by Justice Mundy's affiliation with Ann Arbor and the University of Michigan, and his willingness to eschew much to do with the state of Ohio.

& Stevens, Vol. 69, 1889).

<sup>11</sup> The Washtenaw House, where local dignitaries often gathered and where the altercation occurred, was probably located at or near today's Gandy Dancer restaurant on Depot Street.

<sup>12</sup> The equivalent of about \$14,000 today, <https://www.officialdata.org/us/inflation/1830?amount=500>

<sup>13</sup> Washtenaw Historical Society's newsletter called, *Impressions*, Volume VI, No. 3, June 1948 by George J. Burke, Jr.

<sup>14</sup> Michigan Reports, *supra*

---

ABOUT THE AUTHOR ... Lori A. Buiteweg is an attorney in the law firm of Nichols, Sacks, Slank, Sendelbach, Buiteweg, and Solomon in Ann Arbor. She is the 81st past president of the State Bar of Michigan. She has served on the Society's Board of Directors since 2018.

PORTRAITS OF JUSTICES is a series begun by Society President Emeritus Charles R. Rutherford in 2015 and written by members of the Society's Board of Directors about the historic Michigan Supreme Court Justices.



# Invisible Scribes

## 2019 Michigan Supreme Court Law Clerk Directory

Since 2016 we have been publishing the names and law school affiliations of the Justices' clerks as part of our Law Clerk Directory Project. The name "Invisible Scribes" came from President Emeritus Wallace Riley, who had himself clerked for Justice Talbot Smith.\* We continue to reach out in order to identify as many of the prior clerks of the Court as we can, acknowledge their contributions, and integrate them into the Society.

### **Chief Justice Bridget McCormack**

David Arnold, Senior Law Clerk, *Hofstra*  
Philip Stadler, *University Michigan Law*  
Daniel Tai, *Chicago-Kent*  
Ashley Yuill, *University Michigan Law*

### **Justice Stephen Markman**

Cheryl Nowak, Senior Law Clerk, *MSU Law*  
Joshua LaBar, *MSU Law*  
Jordan Miller  
Jonathon Regal, *WMU Cooley*

### **Justice Brian Zahra**

Brian Balow, Senior Law Clerk, *UD Mercy*  
Samantha Cook, *MSU Law*  
William DiSessa, *WMU Cooley*  
Nick Johnson, *MSU Law*

### **Justice Richard Bernstein**

Vivian Chang, Senior Law Clerk, *UM Law*  
Eaghan Davis, *Northeastern Univ School of Law*  
Daniel Ellman, *UM Law*  
Allison Horwitz, *UM Law*

If you were an 'invisible scribe', please fill out the questionnaire on the next page and send it back to the Society by email to [lawclerks@micourthistory.org](mailto:lawclerks@micourthistory.org) or by mail to the Society at 925 W. Ottawa Street, Lansing, MI 48915.

### **Chief Justice Pro Tem David Viviano**

Alicia McCaffrey, Senior Law Clerk, *UM Law*  
Henry Holland, *Wayne Law*  
Walter Pelton, *University of Chicago Law*

### **Justice Elizabeth Clement**

Adam Pavlik, Senior Law Clerk, *MSU Law*  
Elizabeth Kingston, *MSU Law*  
Brent Winslow, *UM Law*

### **Justice Megan Cavanagh**

Brett DeGross, Senior Law Clerk, *UM Law*  
Marcus Baldori, *UM Law*  
Jenelle Neubecker  
Kirsten Perry, *MSU Law*

“ We asked the clerks for their input about the job back in September. Here are a selection of their responses.

### **Why did you decide to apply for your clerkship?**

great experience for young/new attorney.

always wanted to clerk - only job I ever wanted.

experience/appellate law.

### **What are your future career plans?**

Big law/real estate

Prosecutor

Law firm/civil rights

### **What was the relationship like with the clerks in the other Justices' offices during your term?**

Very cordial

Highly collegial - very collaborative

*How will you  
remember your  
Justice?*

Fondly

”

\*Wally Riley clerked for Talbot Smith in his law practice in Ann Arbor, before he joined the Michigan Supreme Court.

# The Invisible Scribes

*Michigan Supreme Court Law Clerks Group: Past and Present*

Name: \_\_\_\_\_

Justice served: \_\_\_\_\_ Term as judicial law clerk: \_\_\_\_\_

\_\_\_\_\_

*[If you served as a law clerk to more than one Michigan Supreme Court Justice, please add all Justices' names here as well as your terms of service.]*

Other Clerkships (if any): \_\_\_\_\_

Law school: \_\_\_\_\_ College or university: \_\_\_\_\_

Home Address: \_\_\_\_\_

Current Work Address/Employment Plans: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

## Clerkship Questionnaire

Please answer the following questions regarding your clerkship(s), using another sheet of paper as necessary.

1. Why did you decide to apply for your clerkship? \_\_\_\_\_

2. What did you learn in the application and interview process? \_\_\_\_\_

3. What is one thing that you learned from your Justice that you would not have learned elsewhere?

\_\_\_\_\_

5. What was the relationship like with the clerks in the other Justices' offices during your term?

\_\_\_\_\_

6. How do you remember your Justice? \_\_\_\_\_

7. Do you recall others who clerked for the Court at the same time? Please name them here.

\_\_\_\_\_

\_\_\_\_\_



## Society Membership Registration Form

The Michigan Supreme Court Historical Society was founded in 1988 to collect, preserve, and display documents, records, and memorabilia relating to the Michigan Supreme Court and the other courts of Michigan, promote the study of the history of Michigan's courts, and seek to increase public awareness of Michigan's legal heritage. Please use this form to begin or renew your annual membership.

Name of Individual or Firm: \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ ZIP \_\_\_\_\_

Email \_\_\_\_\_ Phone \_\_\_\_\_

**ANNUAL MEMBERSHIP LEVELS (CHOOSE ONLY ONE;  
COPY FORM FOR MULTIPLE MEMBERS)**

### **SPECIAL**

\_\_\_ **Individual membership \$150.00**

\_\_\_ **Advocates Guild membership \$200.00**

*(To be eligible for membership in the Advocates Guild, one must be an individual dues-paying member of the Society and have either argued or appeared on the brief in a case before the Michigan Supreme Court, either on the merits or in a mini-oral argument.)*

\_\_\_ **Corporate/Law Firm membership \$1,000.00**

*Benefits of corporate membership: a certificate of giving; recognition in the Society newsletter and on its website and social media channels; invitations to and recognition at all Society special events.*

**Table Sponsor + Annual Corporate Membership  
for \$2,500.00**

*Take advantage of this offer by January 31, 2020!*

**Table Sponsor at Society Annual Membership  
Luncheon (regularly \$2,000.00)**

Includes reserved seating for eight of your guests\* in a prime location in the dining room, signage on your table displaying the firm's name, inclusion of the firm's name in the printed program, recognition by the Society President during introductory remarks, and name badge ribbons identifying your guests as table sponsors.

\*Table seats ten which includes a Society Board member and a Justice.

**TOTAL PAYMENT \$** \_\_\_\_\_

Check Enclosed [ ☐ ] Credit Card [ ☐ ]

*Circle one:* Visa MasterCard American Express

Name on card \_\_\_\_\_

Account Number \_\_\_\_\_

Exp. Date \_\_\_\_\_ CVV Code \_\_\_\_\_

Signature \_\_\_\_\_

*Mail to:*

**Michigan Supreme Court  
Historical Society**  
1st Floor Hall of Justice  
925 W. Ottawa Street  
Lansing, MI 48915

Or fax this form to  
(517) 373-7592



1st Floor, Hall of Justice  
925 W. Ottawa Street  
Lansing, MI 48915

### ***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.

#### ***Founder:***

Dorothy Comstock Riley

#### ***Officers:***

Carl W. Herstein, *President*

Lawrence P. Nolan, *Vice President*

Susan E. Fairchild, *Secretary*

John P. Jacobs, *Treasurer*

#### ***Directors:***

Hon. Fred L. Borchard

Lori A. Buiteweg

Hon. Alfred M. Butzbaugh

Hon. Michael F. Cavanagh

Hon. Avern L. Cohn

Bruce A. Courtade

Gregory J. DeMars

Peter H. Ellsworth

John G. Fedynsky

Julie I. Fershtman

Joseph J. Gavin

Matthew C. Herstein

Hon. Mary Beth Kelly

Mary Massaron

Hon. Denise Langford Morris

Shenique A. Moss

Charles R. Rutherford

Hon. James L. Ryan

Gregory K. Valentine, Jr.

Janet K. Welch

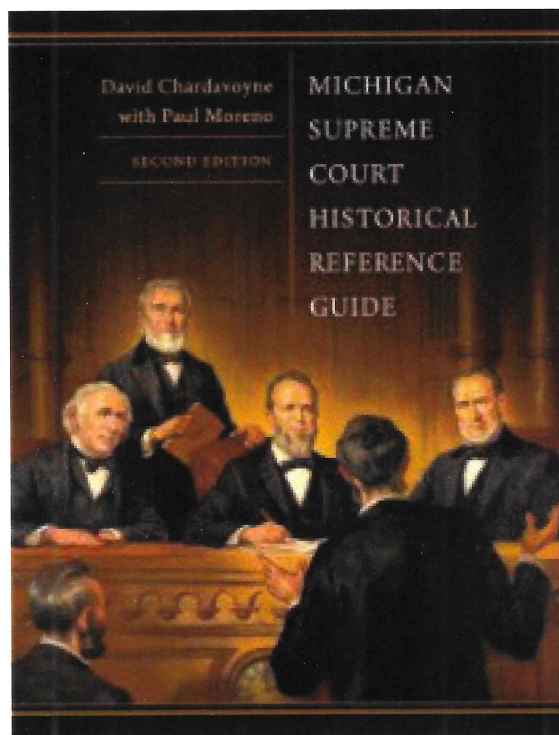
Jill M. Wheaton

#### ***Executive Director:***

Carrie Sampson

*Society Update* is published quarterly by the Michigan Supreme Court Historical Society. Writing submissions, article ideas, news, and announcements are encouraged. Contact the Society at Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915  
Phone: (517) 373-7589 Fax: (517) 373-7592

E-mail [CARRIESAMPSON@MICOURTHISTORY.ORG](mailto:CARRIESAMPSON@MICOURTHISTORY.ORG) Website: [WWW.MICOURTHISTORY.ORG](http://WWW.MICOURTHISTORY.ORG)



**Learn more** about the historic justices of the Michigan Supreme Court and their most important cases in the *Michigan Supreme Court Historical Reference Guide, Second Edition*. Found wherever books are sold.