THE COURT
Legacy

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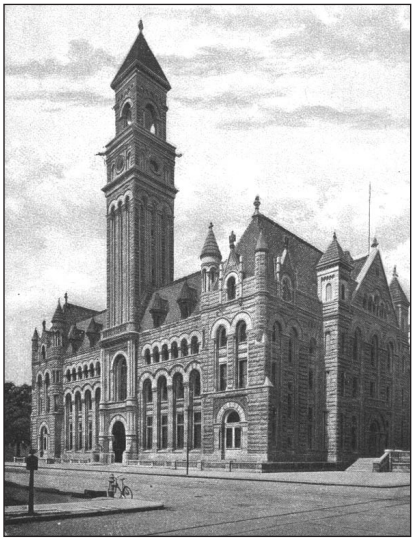
When the District Court Sat in the World's Largest Pool Hall

By David G. Chardavoyne



Federal Courthouse – 1897

Between 1897 and 1931, the United States District Court for the Eastern District of Michigan was located in the Post Office Building on the block surrounded by Lafayette Boulevard, Shelby Street, Fort Street and Washington Boulevard. That building was torn down in 1931 to be replaced, on the same site, by what is now the Theodore Levin United States Courthouse. From 1931 until 1934, when that new building was ready for occupancy, the District Court found a temporary home in an unlikely location, across Lafayette Boulevard in the Recreation Building, advertised as "the largest building in the world devoted exclusively to billiard rooms and bowling alleys."[1]

Located on the northwest corner of Lafayette and Shelby, the Recreation Building was a seven-floor brick edifice designed by famed Detroit architects Smith, Hinchman & Grylls. When it opened for business on October 1, 1917, its six upper floors boasted of 103 billiard tables and eighty-eight bowling alleys, both alleged to be a world's record for a single building. The proprietors, whose motto was "Eat, Smoke, Shave, Rest, and Play,"[2] also provided "a liberal scattering of refreshment fountains and cigar stands,"[3] as well as various retail stores on the ground floor including a drug store and lunch counter, a barber, a laundry, and a "public shine and hat works." In 1919, Detroit's Chamber of Commerce hailed the Recreation Building as "the greatest recreational temple in the world," "a great civic asset" and "the recreational center of Detroit".[4]

When the District Court transferred its operations to the Recreation Building, the fourth floor was transformed into the chambers and courtrooms for District Judges Arthur J. Tuttle,

Recreation Building – 1919 *(looking northwest)*

PHOTOGRAPH COURTESY OF THE BURTON HISTORICAL COLLECTION, DETROIT PUBLIC LIBRARY.

THE COURT LEGACY

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Charles C. Simons, Edward J. Moinet, and Ernest A. O'Brien.[5] The fourth floor also contained the offices of the Master in Chancery, the jury room, and two rooms used by prosecutors when court was in session. Court Clerk Elmer Voorheis occupied two rooms on the third floor. United States District Attorney Gregory H. Frederick and his staff were housed in twenty rooms on the fifth floor of the Lafayette Building, just across Shelby. The court's stenographers also had their office in the Lafayette Building.

The Recreation Building had advantages as a new home for the court. Files, fixtures, and furniture only had to be transported across the street, and the open architecture of the billiard halls were easy to convert into courtrooms and offices. Besides, the building's owners promised "a recreation center of the strictest moral tone and environment."[6] Nevertheless, within a year of moving, an embarrassing string of acquittals in important cases raised an alarm among judges and prosecutors about jury integrity in the court's temporary home. In January 1932 the *Detroit News* reported that federal officials were concerned that they could not control "hangers-on" in the building who might try to communicate with jurors in order to try to fix cases.[7] The *News* reported that prosecutors were "incensed at several acquittals by juries recently in cases where the Federal authorities were sure the evidence for conviction was conclusive," particularly the case of Alois Albers who had been arrested in a house where agents found ten barrels of beer. The jury deliberated only forty minutes before returning a verdict of not guilty of possession of alcohol and keeping a public nuisance. Enraged by the verdict, Judge Simons dismissed the twelve Albers jurors from the court's standing jury venire, telling them: "I am amazed that you should have reached this verdict. The evidence against the defendant was

undisputed and I don't see how you could have found him not guilty."

The *News* claimed that U.S. Attorney Frederick was investigating another possible reason for some of the acquittals: rumors that two deputy U.S. Marshals and three other federal court "attaches" shepherded jurors across the river to be "entertained on liquor parties in Canada by professional bondsmen." Frederick and F.B.I. Special Agent O.G. Hall questioned the officers and the Albers jurors, but with no success.[8] The jurors scoffed at the idea of parties in Canada, telling the *News* that their acquittal was due to the government's failure to prove that Albers had any control over the premises where the beer was discovered.

This story seems to have fizzled out, but the reporting by the *News* does provide interesting insights into the times. Instead of being happy because their jury service was over, the Albers jurors asked Judge Simons to reinstate them because "they felt they would be humiliated in their homes and neighborhoods if they were not taken back on the panel."[9] It appears that some of the jurors were also unhappy about losing the jury *per diem* of four dollars that went a long way towards supporting their families in Detroit during the Depression. Finally, in that less security-conscious era the *News* had no qualms about printing not only the names of all twelve Albers jurors but also their street addresses.

The Eastern District made its first contribution to the Federal Supplement while it was housed in the Recreation Building. The second volume of that reporter contains a decree by Judge Tuttle, dated November 14, 1932, in a patent case, *Kellogg Switchboard & Supply Co. v. Michigan Bell Telephone Co.*[10] Judge Tuttle dismissed the plaintiff's claims of infringements of several patents relating to long-distance telephone equipment.

PHOTOGRAPH COURTESY OF THE BURTON HISTORICAL COLLECTION, DETROIT PUBLIC LIBRARY.

Recreation Building – 1956
(looking northeast)

The land on which the Recreation Building stood was purchased by the Hammond family in 1889 from the First Congregational Unitarian Society of Detroit for $45,000. In 1917 the family leased the property to the Sweeney-Huston Co. which contracted with Porter Brothers Co. to construct the building for about $750,000, spending another $350,000 for furnishings. In 1928 the land alone was appraised at $900,000.[11] In the 1950s, the Recreation Building still housed billiard tables and a bowling alley as well as Silver's office supply store, Summer's Good Food, and the Federal Bar, a drinking establishment. However, it eventually reached the end of its useful life and was torn down. Since then, the site has served the District Court as a parking lot convenient for visitors to the federal courthouse. ■

Sources:

1. *Detroit Evening Journal*, September 21, 1917.
2. *The Detroiter*, January 13, 1919, p. 33.
3. *Detroit Evening Journal, supra.*
4. *The Detroiter, supra.*
5. *Polk's Detroit City Directory, 1931-1932* (Detroit: Polk & Co., 1931) *pp. 36, 1673.*
6. *The Detroiter, supra.*
7. *The Detroit News*, January 7, 1932.
8. Id., January 8, 1932.
9. Id., January 7, 1932.
10. 2 F. Supp. 335 (E.D. Mich. 1932).
11. *Detroit Evening Times*, October 21, 1928, p.2

Author's Note

Mr. Chardavoyne is an attorney in private practice in Farmington Hills, Michigan, and a member of the Board of Trustees of the Historical Society for the United States District Court for the Eastern District of Michigan. Mr. Chardavoyne's book, *A Hanging in Detroit: Stephen Gifford Simmons and the Last Execution Under Michigan Law*, will be published in the summer of 2003 by Wayne State University Press.

Historical Site

The St. Louis Circuit Court Historical Records Project has just released online two groups of historical case files. First are the Freedom Suit Case Files which include 300 petitions for freedom filed by people of color between 1814 and 1860, including the Dred Scott case which was ultimately decided in the United States Supreme Court. The second group includes 82 cases filed between 1809 and 1839 involving the Lewis and Clark expedition.

The site is: **www.stlcourtrecords.wustl.edu.** At the home page click on either "About" for a summary of the information contained in the files, or on "Search" to find a specific file.

Judges of the Court

In the very first issue of The Court Legacy (April 1993) we published a list of judges that have served in this district since its inception. The list showed the appointing President, the date of commission, the vice, the separation from service date, and whether the judge served as chief judge and the date of that appointment. Since that list, eight new judges have been appointed. They are listed below with their commission date and vice. All were appointed by President Clinton.

Presently, the Chief Judge is Lawrence P. Zatkoff who was appointed January 1, 1999. Chief judges are chosen pursuant to 28 USC 136. The chief judge must be in active service for one year or more as a district judge and senior in commission to those judges who are sixty-four years of age and younger, and not have served previously as chief judge. A chief judge serves for a term of seven years or, if necessary, until another judge is eligible. No chief judge may act as chief judge after attaining the age of seventy years. In order to be relieved of his duties, a chief judge must "so certify" to the Chef Justice of the United States and a new chief judge will be appointed.

According to Black's Law Dictionary the term "vice" means "in the place or stead." The term was first used, in relationship to the filling of judicial vacancies, in Volume I of the Journal of Executive Proceedings of the Senate. In an October 31, 1791, entry, the President, in advising the Senate of appointments made since the prior session, noted the selection of "William Lewis, District Judge of Pennsylvania, vice Francis Hopkinson, deceased." This usage is now standard. Thus, in the list below, the name of a judge in the vice column refers to the judge who either resigned or retired, or took senior status, making a place for the appointment of a new judge.

Judge	Vice	Commission Date
Denise Page Hood	Woods	06/16/1994
Paul D. Borman	Newblatt	08/10/1994
John Corbett O'Meara	Gilmore	09/15/1994
Arthur J. Tarnow	Cook	05/22/1998
George C. Steeh	Hackett	05/22/1998
Victoria A. Roberts	LaPlata	06/29/1998
Marianne O. Battani	Taylor	06/02/2000
David M. Lawson	Cohn	06/02/2000

Why are Judges' Robes Black?

By Stephen C. O'Neill

The image of a judge in a black robe is one of the most common images of the American legal system, although, until 1890 not all state court judges wore robes. It was an individual decision. Now, few American judges would be able to explain *why* they wear a robe, and why that robe is black. That it is a long-standing tradition may help to explain the wearing of black robes. That they add a sartorial dignity to the judge and the court is another explanation.[1] Lawyers and judges have almost always dressed differently from everybody else – usually in clothes outdated by a couple of centuries. In sixth century Constantinople, lawyers were known as either *advocati* or *togati*. The latter term came from the fact that they wore togas, which everyone else in the Greco-Roman world had abandoned two centuries earlier.[2] But the best answer is a story that stretches back to the very beginning of the legal profession.

The story begins in the European universities of the Middle Ages. Scholars of the 1100s were no longer content with the sequestered schools of the monasteries and abbeys. They founded the first generation of universities by the thirteenth century – Salerno, Bologna, Paris, Oxford, Cambridge, Salamanca – where the classic texts could be studied and commented on, and not just copied. Two professional fields developed in these new schools, medicine and law.[3]

At the older monastic schools, the scribes were monks who wore the hooded robes of their particular order, a tradition stretching back to Byzantine cassocks and even further back to Roman togas. Scholars at the universities, who were mostly bound for the priesthood, continued to wear the flowing garments.[4] These robes served a dual purpose. The first was practical. Robes kept a person warm in the cold, drafty buildings of Medieval Europe.

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Court of Common Pleas, West-minster Hall, ca. 1450.
From *The Order of the Coif,* by Alexander Pulling, 1884.

The second reason was status. Long robes showed that the wearer did not perform manual labor, where a lengthy garment would get in the way. "The ankle-length and sometimes awkward robes affected by men of learning emphasized their superiority over men whose livelihood necessitated more physical mobility."[5] In the communities where the schools were located, robes became the eponymous distinction between "Town and Gown." This adornment in ancient regalia symbolically transformed the lawyer from a private individual to a "law speaker" for the community.[6] These "retro" clothes that were worn by lawyers and judges remind everyone that the law is *old,* that it is not meant to change rapidly, and that it offers and stability and predictability in a changing world.

The robe also separates a lawyer or a judge from other laborers or professions. Unlike the farmer who works with the land or the physician (although wearing a symbolic white coat) who operates on someone else's body, the lawyer and judge work with the law, which is nonmaterial and intangible, for their clients or for the community at large.

Through the ages, this duty has been treated very seriously. Both judges and lawyers take oaths pledging to uphold the law regardless of their personal views. In very early Rome, the penalty for a judge who "made a case his own" or took bribes was death.[7] Since the middle ages, lawyers have been treated as "officers of the court" and are bound to work for the advancement of justice while faithfully protecting the rightful interest of their clients.[8]

Practical and symbolic, long robes became therefore a standard item of dress for university faculty and students. Professional groups and even entire classes, notably the nobility, wore robes to distinguish themselves on ceremonial occasions. In a structured and class-conscious society like Medieval England, gradations of and differences in robes that could easily identify rank quickly developed. This is what happened to legal dress as the profession left behind its ecclesiastical and academic connections at the end of the 1200s.[9] Scarlet, azure, and violet robes were introduced. Hoods took on different shapes and styles. Trimmings of ermine, mantles furred with miniver (a white or light gray fur trim), and white coifs all appeared.[10] Attorneys across Europe wore modified scholar's robes into the courts. Peers of the realm, judges, and sergeants-at-law did the same, creating an elaborate code of color and material for their apparel.[11] The English Inns of Court established their own dress standards for benchers, barristers, and students.[12]

In the sixteenth century, changes in English fashion replaced the "colorful Medieval habits" of scholars, and practitioners of the law followed their example. Somber black or "sad coloured"[13] gowns, so familiar today at countless college graduations, were adopted as the standard academic, clerical, and legal dress.[14] The seventeenth century witnessed an even more forceful application of the "plain style" with the creation of the Puritan Commonwealth in 1649. When the monarchy was restored with the flamboyant Charles II in 1660, many of the older, more colorful robes were reintroduced, but legal attire for the majority of practitioners had by then achieved some degree of easily recognizable uniformity. This was especially true when the English Bar as a whole went into mourning in 1685 over the death of Charles II.[15]

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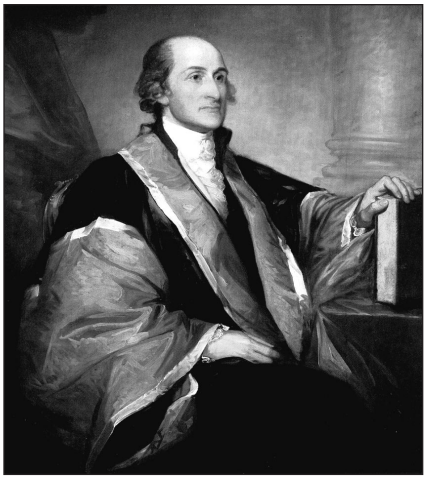
"The Habit of a Judge," engraving, ca. 1642-1646, by Wenceslaus Hollar. Reproduced in *Social England,* H.D. Traill and J.S. Mann, eds., 1903.

Prevailing British fashions were continued in the English colonies. New England during the 1600s had a particularly strong hatred for attorneys, with the result that few trained lawyers practiced in the colonies. Scholar's gowns, however, were familiar to the Massachusetts Bay and Connecticut Puritans.[16] They were a popular garment for ministers, the majority of whom had graduated from Harvard College. As acceptance of the more traditional English legal system gradually increased after 1700, Massachusetts attorneys looked for ways to emulate their English brethren at the Bar. Chief Justice Thomas Hutchinson of the Massachusetts Superior Court of Judicature ordered proper attire, robes, wigs, and gowns, to be worn by all Massachusetts judges, barristers, and attorneys in 1761.[17]

John Adams commented in his diary that suddenly he and his good friend Samuel Quincy found themselves with the added expenses for their new legal garb; "About this time, the Project was conceived, I suppose by the Chief Justice Mr. Thomas Hutchinson, of clothing

the Judges and Lawyers with Robes. Mr. Quincy and I were directed to prepare our Gowns and Bands and Tye Wiggs."[18] Samuel Quincy's younger brother Josiah, however, was one of the Bar's leading radical Patriots. In August of 1769, although admitted as an attorney, this Quincy was not "admitted to the Gown" of a barrister because of his politics, and had to argue in court "unsanctified and uninspired by the Pomp and Magic of – the Long Robe."[19]

Fashions changed dramatically following the Revolution. William Cushing of Massachusetts was appointed to the U.S. Supreme Court, but when he paraded through the streets in his pre-Revolution great wig in 1790, he was ridiculed for wearing the outlandish and old-fashioned judicial style. He immediately exchanged it for a more subdued short wig.[20] This was indicative of a general trend away from the more ostentatious clothing of pre-Revolutionary days. The Supreme Court as a whole began with its justices wearing scarlet robes trimmed with ermine. Resentment against such an English looking tribunal quickly convinced the justices to wear "'parti-colored' robes of black, salmon and white," as displayed in Gilbert Stuart's 1794 painting of Chief Justice John Jay.[21] Justice John Marshall went even further in February 1801 when he was sworn in as Chief Justice. Justice Marshall, in asserting his leadership subtly, broke with tradition when he wore a plain black robe to the ceremony even though the other justices present were attired in the traditional scarlet and ermin or their individual "parti-colored" academic gowns.[22]



John Jay, oil on canvas, 1794 by Gilbert Stuart.

Back in Massachusetts, a political squabble among the justices of the Supreme Judicial Court, actually a petty dislike of one justice for another, created a century-long hiatus in the wearing of robes. Chief Justice Francis Dana refused to don his robes to protest the appointment of Associate Justice Thomas Dawes in 1792. The other justices followed suit. It was up to Oliver Wendell Holmes, over a century later in 1901, responding to a petition from leading legal figures in Boston, to quietly resume the tradition of wearing black robes in the commonwealth's highest court.[23] The robes the court resumed wearing were the typical black gowns with gathered sleeves and a somewhat voluminous appearance when worn, very in keeping with a nineteenth-century, Victorian view of decorum and dignity.[24]

Interest was lately revived in judicial robes when Chief Justice William Rehnquist wore a robe decorated with four gold stripes on each sleeve at the Impeachment Trial of President William Clinton in 1999. The Chief Justice had actually added these stripes to his robe in 1995 after seeing a performance of the Gilbert and Sullivan operetta *Iolanthe*, where the Lord Chancellor wore a robe with striped sleeves.[25]

But resistance to wearing robes, like other ceremonial aspects of the law, is generally increasing among the judiciary in both the United States and the United Kingdom. For instance, some judges prefer to adjudicate around a conference table rather than from the bench, which could be seen as making "proceedings more affable and accessible,"[26] obviously hanging up their formal robes in the process. In fact, federal district Judge Julian Mack, a judge known for his trial abilities, refused to wear a robe when presiding at trial. He went even further, frequently holding trials in his chambers where he sat at his desk at a level with the witnesses and lawyers. He believed that plain dress may encourage plain speaking.[27]

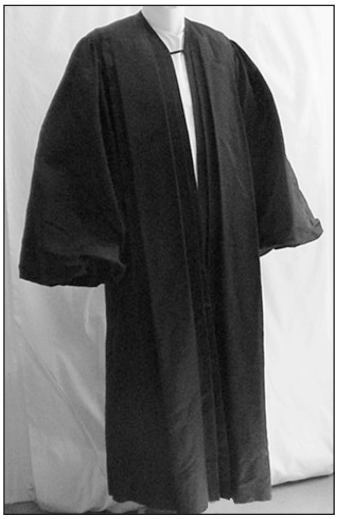
In 1945, Judge Jerome Frank of the United States Court of Appeals for the 2nd Circuit argued in an article entitled, "The Cult of the Robe," in the *Saturday Review of Literature*, that the curious way in which judges dress is a deterrent to public comprehension of the human characteristics of judges. He said, "The pretense that judicial reactions are uniform manifests itself in the demand that judges wear uniforms." He argued that robes symbolize the notion that courts must always preserve the ancient ways based on the idea that the past is sacred, and change impious. He commented further that:

> The robe of a judge is an antique garment, awkward, impractical, and, to the dispassionate eye, of no aesthetic value. It is a piece with the 'Hear ye! Hear ye!' that opens court sessions, and the quaint medieval Latin and the obsolete Norman French often incorporated in judicial opinions.[28]

Judge Frank concluded his argument by saying the time had come for all judges to discard their ancient trappings. He said:

> The robe as a symbol is out of date, an anachronistic remnant of ceremonial government. An immature society may need or like to fear its rulers, but a vital and developing America can risk full equality. A judge who is part of a legal system serving present needs should not be clothed in the quaint garment of the distant past.[29]

But dispensing with robes would take away a widely held image of impartiality and authority. It would also take away a reminder of what the robes signified in the first place: that judges should be members of an order, steeped in learning, practiced in the law, and charged with the honor of their office, the honor of wearing a black robe. ■



SUPREME JUDICIAL COURT HISTORICAL SOCIETY COLLECTION.

Robe of Stanley Elroy Qua, ca. 1934-1956.

Sources:

1. W. N. Hargreaves-Mawdsley, History of Legal Dress in Europe Until the End of the Eighteenth Century 62-63, 120 (1963).
2.* Hugh Spitzer, "Why Lawyers Have Often Worn Strange Clothes, Claimed to Work for Free – and Been Hated," *Washington State Bar News*, September 2000. The modern American judicial robe is technically a *supertunica*, a Medieval type of "closed, plain, often pleated outer dress [a *tunica*]… with close sleeves," worn over clothing as a robe.
3. Salerno was famous for its medical school while Bologna was the early center for the study of law. *See generally* Willis Rudy, The Universities in Europe, 1100-1914 (1984); Olaf Pederson, The First Universities (Richard North trans., 1997).
4. J. H. Baker, The Order of Serjeants at Law, 67 (1984).
5. *Id.* at 68. *See also* Charles M. Yablon, "Judicial Drag: an Essay on Wigs, Robes, and Legal Change," 1995 *Wis. L. Rev.* 1129, 1132-1134..
6. W.J. Windeyer, *Lectures on Legal History*, 11-12 (2nd Ed. 1957)
7.* Johnson, *Ancient Roman Statutes*, 12 (1961).
8.* "Historically, a lawyer is an officer of the court and is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients." *Hickman v Taylor*, 329 U.S. 495, 510 (1947).
9. W. N. Hargreaves-Mawdsley, *supra* note 1, at 1.
10. Baker, *supra* note 3, at 68.
11. *Id.* at 72.
12. Hargreaves-Mawdsley, *supra* note 1, at 2-3, 92-94.
13. *Id.* at 93.
14. Baker, *supra* note 4, at 82.
15. And "apparently [have] never gotten over it," according to Professor Charles Yablon of the Cardozo School of Law. Yablon, *supra* note 5, at 1133. *See also* Hargreaves-Mawdsley, *supra* note 1, at 89-90.
16. For instance, William Brewster, the *Mayflower* Pilgrim who was the Ruling Elder of the Plymouth Church from 1620 to 1644, had been a scholar at Cambridge University (but never received a degree). His probate inventory lists among his clothing "1 old gowne" valued at 9s, and "1 black gowne" valued at £2 10s, making it by far the most expensive item Brewster owned. *The inventory of the goods of William Brewster, deceased 1644*, 3 The Mayflower Descendant: A Quarterly Magazine of Pilgrim Genealogy & Hist. 16 (1901).

17. Peter Oliver, an associate justice and later chief justice of the court, wrote later that many attorneys (like James Otis, Sr., and Joseph Hawley) thought that Hutchinson "shewed too much Pride in wearing Robes on the Bench; which Robes he and the other Judges wore, in Compliance with the Desire of Gov. Bernard, who proposed the Dress in Honor of the Government." Oliver viewed this as just one of many attacks on his close friend Hutchinson. Peter Oliver, Origin & Progress of the American Rebellion: a Tory View 29 (Douglas Adair & John A. Schutz eds., 1961).

18. 3 John Adams, The Diary and Autobiography of John Adams 276 (L. H. Butterfield ed., 1962).

19. Josiah Quincy, Jr., Reports of Cases Argued and Adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay, between 1761 and 1772, at 317 (Samuel M. Quincy ed., Boston, Little, Brown, and Company 1865).

20. Clifford K. Shipton, 13 Sibley's Harvard Graduates 33-34 (1965).

21. The portrait of John Jay is on display at the National Gallery of Art in Washington D.C. Frederick S. Voss, Portraits of the American Law 29 (1989).

22.* Jean Edwards Smith, *John Marshall: Definer of a Nation,* (New York: Henry Holt and Co., Inc., 1996), 285-86.

23. See Andrea Devlin, "It is Well that Judges should be Clothed in Robes," 2 *Mass. Legal Hist.* 123-126 (1996).

24. Queen Victoria created a fashion for all things somber and melancholy when she went into mourning for forty years following the death of her beloved husband Prince Albert in 1861, which well suited the re-emergence of black robes. W. N. Hargreaves-Mawdsley points out that legal dress "in modern times…has been re-established rather than neglected and abandoned." Hargreaves-Mawdsley, *supra* note 1, at 3.

25. Henry J. Reske, *Showing His Stripes,* 81 A.B.A. J., Mar. 1995, at 35. *See also* Richard W. Stevenson, *The President's Acquittal: the Chief Justice; Rehnquist Goes with the Senate Flow, "Wiser but Not a Sadder Man,"* New York Times, Feb. 16, 1999. This isn't the only case of a justice modifying their personal robes. Retired Justice Byron Johnson of the Idaho Supreme Court chose to wear a royal blue robe while on the bench. James G. McClaren, *Judicial Robes and Idaho's "Black and Blue" Court,* 41 Advocate (Idaho), Feb. 1999, at 12-13.

26. Yablon, *supra* note 4, at 1153. *See also* Deborah Pines, *The Vanishing Sound of the Rap of the Gavel,* N.Y.L.J., June 11, 1992; *Horsehair and Red Dressing Gowns,* New Law J., June 26, 1992, at 914.

27.* Jerome Frank, *Courts on Trial: Myth and Reality in American Justice,* (New York: Atheneum, 1971), 257-59. Judge Julian William Mack graduated from the Harvard Law School in 1887. He served on the United States Court of Appeals for the 7th Circuit from 1911 through 1929. He also served on the United States Court of Appeals for the 6th Circuit for a short period thereafter and, then, on the Untied States Court of Appeals for the 2nd Circuit until his death on September 5, 1943. Prior to his appointments to the federal court he had been a professor of law at Northwestern University and the University of Chicago, as well as a judge on the Cook County Circuit Court in Illinois and the Illinois State Court of Appeals.

28.* *Id.* at 254. Judge Jerome New Frank served on the Court of Appeals for the 2nd Circuit from 1941 through his death on January 13, 1957. He graduated from the University of Chicago Law School in 1912 and had served as general counsel to the agricultural adjustment administration and special counsel to the reconstruction finance corporation railroad reorganization during the 1930's. He was chairman of the Securities and Exchange Commission from 1939 to 1941.

29.* *Id.* at 260-6.

Editor's Note

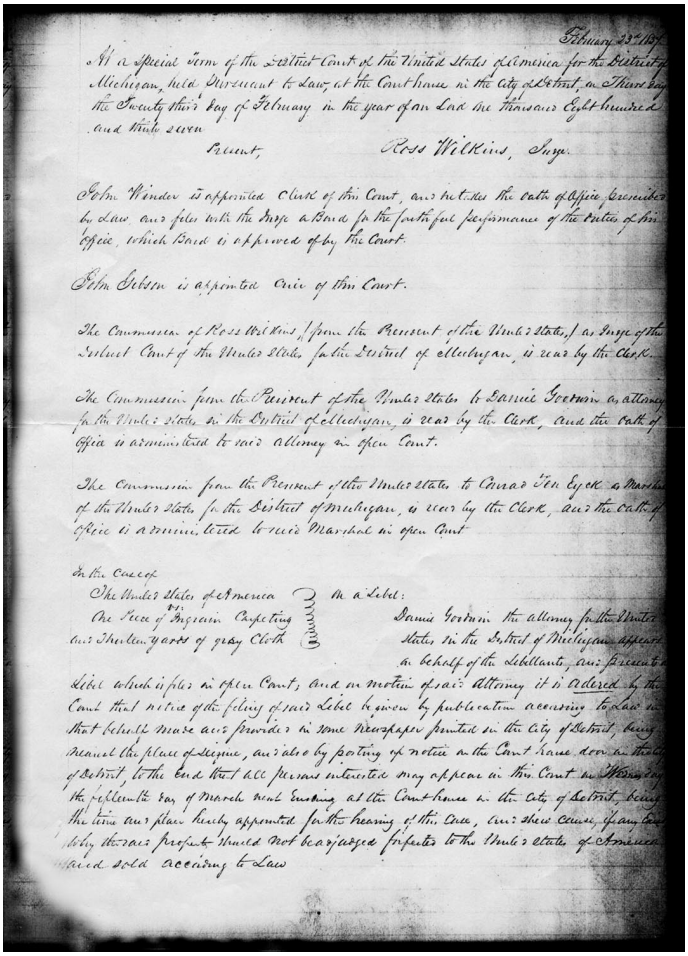
Although modified for inclusion in this newsletter, the entire article, written by Stephen C. O'Neill, was first published in *Massachusetts Legal History* Vol 7 (2001). Mr. O'Neill is Senior Writer and Curator of the Social Law Library, Boston. The article was reprinted with permission in the *Supreme Judicial Court Historical Society Journal* and provided for publication here. The original content is available from those sources.

Special thanks to Anne Peters, Deputy Director of the Supreme Judicial Court Historical Society in Boston, MA and Bruce Ragsdale, Chief Historian of the Federal Judicial Center for their assistance in obtaining the article for publication and adding to the content.

* An *asterisk* following the source note number denotes that the noted material has been added to the original article.

The First Session and First Local Rules

The journal begins, “At a special Term of the District Court of the United States of America for the District of Michigan, held pursuant to Law, at the Courthouse in the City of Detroit, on Thursday, the Twenty third day of February in the year of our Lord one thousand eight hundred and thirty seven, Present, Ross Wilkins, Judge.” Back then the proceedings were recorded in long hand by the clerk in a nine by fourteen inch, bound journal. This entry is the very first recorded for the newly established federal district court in Detroit, Michigan.



First Page of Court Journal

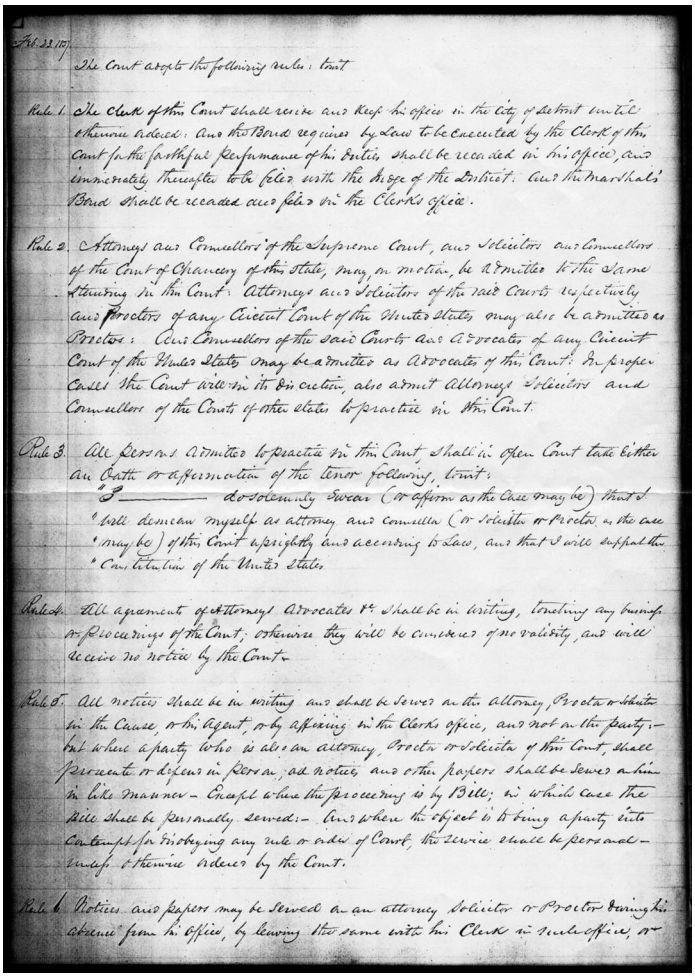
The first order of business before the court was the appointment of the clerk, John Winder, and the administration of the oath of office to him which was prescribed by law. He immediately posted a bond “for the faithful performance of the duties of his office” which was approved by the Court. Next, the “Crier of this Court,” John Gibson, was appointed. After that, the commission of Judge Wilkins from the President of the United States as judge was announced by the clerk. Then, the commissions from the President of the United States for “Daniel Goodwin as attorney for the United States in the District of Michigan” and for “Conrad Van Eyck as Marshall” were announced by the clerk, and the oaths of office were administered in “open court.”

The first case addressed by the court was a Libel which was the initial pleading filed by a plaintiff, corresponding to the complaint that is used today. The caption of the case was, “The United States of America v One Piece of Ingrain Carpeting and Thirteen Yards of Gray Cloth.” The Libel was filed in open court and, upon motion, the court ordered that publication of the “notice of the filing of said libel” be made in the Detroit newspaper and that it advise “that all persons interested” appear in court on “Wednesday, the fourteenth day of March next ... to show cause, if any exists, why the said property should not be adjudged forfeited to the United States of America and sold according to Law.” Five other cases were addressed that day, including two by citizens of the State of New York against Michigan residents in assumpsit.

Other administrative business was conducted as well. Daniel Goodwin, George E. Hand, Charles Cleland, Samuel Pitts, Henry N. Walker, Henry T. Backus, William Hale, Samuel G. Watson and Asher B. Bates, all “attorneys and Counsellors of the Supreme Court of the State of Michigan,” were admitted “and they came forward and the oath of office prescribed by the rules of this Court [was] administered.”

Finally, the Court adopted thirty five court rules. The rules addressed many of the issues found in the local and federal rules of civil procedure today, but due to the times there were some differences. For instance, service of notices and pleadings on an attorney, during his absence from his office, was allowed by “leaving the same between the hours of six in the morning

and six in the evening in some conspicuous place in such office," and if the office was locked "by leaving the same at the residence or boarding house" of the attorney if he lived within two miles of the City of Detroit. The oath required before being admitted to practice in the Court was found in Rule 3. It provided that the oath be taken in open court and that the lawyer "solemnly swear (or affirm, as the case may be) that I will demean myself as attorney and counsellor (or solicitor or proctor, as the case may be) of this Court uprightly and according to Law, and that I will support the Constitution of the United States."



Feb. 23 1837

The Court adopts the following rules: Viz.

Rule 1. The Clerk of this Court shall reside and keep his office in the City of Detroit unless otherwise ordered. And his Bond required by Law to be executed by the Clerk of this Court for the faithful performance of his duties, shall be recorded in his office, and immediately thereafter to be filed with the Judge of the District. And the Marshal's Bond shall be recorded and filed in the Clerks office.

Rule 2. Attorneys and Counsellors of the Supreme Court, and Solicitors and Counsellors of the Court of Chancery of this State, may on motion, be admitted to the same standing in this Court. Attorneys and Solicitors of the said Courts respectively and Proctors of any Circuit Court of the United States may also be admitted as Proctors: And Counsellors of the said Courts and Advocates of any Circuit Court of the United States may be admitted as Advocates of this Court. In proper Cases the Court will in its discretion, also admit Attorneys Solicitors and Counsellors of the Courts of other states to practice in this Court.

Rule 3. All persons admitted to practice in this Court shall in open Court take Either an Oath or affirmation of the tenor following, Viz:

"I ——— do solemnly swear (or affirm as the case may be) that I will demean myself as attorney and counsellor (or solicitor or Proctor as the case may be) of this Court uprightly and according to Law, and that I will support the Constitution of the United States."

Rule 4. All agreement of Attorneys Advocates &c shall be in writing, touching any business or Proceedings of the Court; otherwise they will be considered of no validity, and will receive no notice by the Court.

Rule 5. All notices shall be in writing and shall be served on the attorney, Proctor or Solicitor in the Cause, or his Agent, or by affixing in the Clerks office, and not on the party — but where a party who is also an attorney, Proctor or Solicitor of this Court, shall prosecute or defend in person, all notices and other papers shall be served on him in like manner — Except where the proceeding is by Bill; in which case the Bill shall be personally served: — And where the object is to bring a party into Contempt for disobeying any rule or order of Court, the service shall be personal — unless otherwise ordered by the Court.

Rule 6. Notices and papers may be served on an attorney Solicitor or Proctor during his absence from his office, by leaving the same with his Clerk in such office, or

The First Local Court Rules

Rule 4 required that all agreements of attorneys which touch "any business or proceedings of the Court" be in writing or "they will be considered of no validity, and will receive no notice of the Court." Rule 13 addressed the procedure for presentation of cases. It provided:

> When three or more Counsel are concerned on each side, one of the Counsel maintaining the affirmative of the issue shall open the case – state the facts – and if necessary the Principles of Law on which the case is founded – call and Examine the witnesses and read whatever papers or documents are deemed necessary. One of the opposite counsel shall then open his case and proceed in like manner. When the Evidence is closed on both sides, one of the Counsel on the affirmative side of the question shall "sum up" going fully into points of controversy, and reading all the authorities which he and his colleagues mean to produce. The two opposite Counsel shall then speak in succession. The remaining Counsel on the affirmative side shall then be heard in reply. The reply is to be confined to the points made by the opposite Counsel, and to the enforcing of those made by his colleagues.
>
> When two Counsel only are concerned on each side, the same course shall be adhered to – but alternate Speaking is prohibited.

Many of the rules adopted the practices of the state courts as they existed at the beginning of 1837. In fact, Rule 35 incorporated "the practice of the Supreme Court of this state, and the rules of court adopted by the Circuit Court for the County of Wayne and the practice therein observed in criminal and civil procedure" where an issue was not addressed in any of the thirty five rules adopted by the District Court. ■

WANTED

The Society is endeavoring to acquire artifacts, memorabilia, photographs, literature or any other materials related to the history of the Court and its members. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at (313) 234-5049.

Membership Application

Annual membership fees:

☐ FBA Member	$ 10.00
☐ Member	$ 15.00
☐ Patron	$100.00 *or more*

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We would like to know about your interests and skills. Please fill in this questionnaire and mail it with your membership fee.

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_____

_____

Suggestions for programs or projects:

_____

_____

_____

Indicate interest in Society's activities:

- ☐ Writing articles for the Society newsletter
- ☐ Conference planning
- ☐ Oral history
- ☐ Research in special topics in legal history
- ☐ Fund development for the Society
- ☐ Membership recruitment
- ☐ Archival preservation
- ☐ Exhibit preparation
- ☐ Educational programs
- ☐ Other *(please describe)*: _____

_____

This Form May Be Duplicated And Submitted With Your Membership Fee

The Historical Society
U.S. District Court
Theodore Levin U.S. Courthouse
Detroit, Michigan 48226