

A Portrait of Augustus B. Woodward

May it please the Court:

I count it a singular honor, Madam Chief Justice, that you have invited me to address the court and the assemblage gathered here on the occasion of this historic session of the Supreme Court of Michigan.

While it is proper that the court normally sits in the state capitol, it is especially fitting that the justices have agreed to convene here at Wayne State University in the very heart of the City of Detroit as a special observance of the 300th anniversary of this great metropolis.

The charge I have been given by the court and by the Michigan Supreme Court Historical Society is a daunting one: To shed some light on the earliest system of justice in these precincts and to comment upon the connections between the Supreme Court and the establishment and growth of this fair city.

Tuesday, June 11, 1805 began like most days in Detroit except for an unusually brisk breeze on the river. At sunrise, the garrison turned out and stood reveille in the fort. The boom of the morning cannon echoed across the river and woke the 500 residents of the town.

Many of the French families, whose farms were stacked along the river on either side of the stockade — the Campaus, the Rivards, the Beaubiens and such — ambled into town to attend Mass at St. Anne's. Father Dilhet and the rector, Father Gabriel Richard, were presiding over a special celebration that morning.

John Harvey, the town baker, was up early baking bread. Around 9:00 a.m., having run out of flour, he decided to hitch up his wagon and drive over to May's mill to get a fresh supply.

As he led his horse out of the barn, Harvey paused to tamp out his pipe, tapping it against the heel of his shoe. A plug of burning tobacco fell to the ground and was promptly blown into the barn where it burrowed into a pile of dry hay.

In a matter of minutes, the barn was in flames.

The Detroit of 1805 occupied about four acres and consisted of roughly 300 frame buildings, separated by 20-foot wide streets. By 3:00 that afternoon, the city was a charred ruin. Only a few blackened chimneys stood forlornly pointing skyward among the ashes.

That was the desolate scene that greeted Augustus Brevoort Woodward when he stepped ashore on June 30, 1805 to undertake his duties as

Chief Justice of the territorial court of the newly established Michigan Territory.

If the court please, it has been the privilege of the Michigan Supreme Court Historical Society on a number of occasions, to present portraits of former members of this bench.

It would be particularly appropriate on this day, when we mark the 300th anniversary of the City of Detroit, to present the portrait of Augustus B. Woodward, the first Chief Justice of the Michigan Territory.

Unfortunately, no such portrait exists. Neither are there any photographs, sketches, or other memorabilia from which a likeness can be reconstructed.

So with your indulgence, Madam Chief Justice and Justices, I will try to paint a word picture of the man so that we can share a few insights about one of our most important antecedents.

His parents named him Elias. He didn't like the name. It was too commonplace. He chose to be called Augustus, perhaps in admiration of the Roman Emperor, Augustus Caesar.

He was the son of a New York merchant, John Woodward, a patriot who fought in the Revolutionary War and who lost his business and his fortune because of it.

Augustus entered Columbia College in 1789 at the age of 15. There he earned an A.B. degree and received an excellent classical education. He studied Greek and Latin and became fluent in French.

He also exhibited a keen interest in the physical sciences. In fact, even before attending Columbia, when he was yet 14 years of age, Woodward conceived of the idea of classifying the sciences. It was a project he was doggedly to pursue for the rest of his life.

After graduation, Woodward moved to Virginia where he taught school, studied law, and met Thomas Jefferson.

Jefferson and Woodward, though a generation apart, had a great deal in common. They were both republicans, with a small "r". They believed that the sovereignty of a nation or a state should be exercised by representatives elected by the people. They were dreamers. Free thinkers. Visionaries.

Today we would say that they pushed the envelope. They knew how to think outside of the box. The two men became fast friends, and about the time Jefferson went to Washington as Vice President, Woodward also moved to the capitol city, where he

was one of only 11 lawyers.

His biographer, Arthur M. Woodford, whose work I have liberally used in preparing these remarks, describes young Augustus on the day he was sworn into the D.C. bar:

Woodward arrayed himself in his best attire. This consisted of a long, loose fitting, blue coat with enormous brass buttons, a scarlet cravat, and a buff waistcoat. The latter was worn open, and from it protruded an immense mass of ruffles.

These last, together with the broad ruffles at his wrists were invariably so soiled that it might almost be doubted whether they had ever been white.

His pantaloons hung in folds to his feet, meeting there a pair of boots which were always well greased.

Woodford describes Judge Woodward as ungainly if not grotesque, a prototype of Irving's Ichabod Crane. He stood six feet three or four inches tall, and was thin, actually gaunt, and stooped. His complexion was sallow. His long, narrow face was dominated by a big nose. His only vanity was a generous crop of thick, black, hair.

We're talking here about a bachelor. A man who never married. A man whose modest one room apartment, which served both as his office and his living quarters, was strewn with books and papers. On the floor. On the chair. On the table.

Dirty laundry tossed in the corner. No sign of a broom anywhere.

Woodward was known for his slovenliness.

He seemed to revel in appearing bizarre or eccentric.

The historian Silas Farmer concludes, "Whatever was odd and unreasonable, he was sure to do. If there was a thunderstorm, his chair was placed outside the door, and he would calmly sit and take his shower bath."

Augustus Woodward was, in fact, a walking breathing mass of contradictions.

On the one hand, he was an odd ball. A gawky, funny looking character, who seemed always to be in a fight with someone.

Contentious. Partisan. Self absorbed. Arrogant. Capricious.

On the other hand, he was a genius. A patriot. A leader. A builder. A wise and hard working judge who enjoyed the respect of the bar and the community.

It was common practice for the territorial court to convene at mid-day in a private home or a tavern and stay in session until two or three o'clock in the

morning.

During these marathon sessions, the court and counsel would share food and drink while debating the law or arguing the facts.

Woodford describes the scene in these words, "judges ¼ and attorneys eating lunch and passing the bottle back and forth between bench and bar while a hearing was in progress."

"There was no love lost," Woodford tells us, "between Woodward and his colleague Witherell." The two usually sat with their backs to each other.

If he was bored, Woodward would sometimes tell the clerk to mark him absent, then tilt back in his chair and fall asleep. On one such occasion, a lawyer took the opportunity to say a few things highly critical of the good judge. Witherell couldn't resist poking Woodward and teasing him about the attack.

Woodward sat up and began to berate the lawyer, threatening him with contempt of court. To which counsel astutely replied, "You can't cite me. You're not here. The record shows that you are absent." Not to be bested, Woodward roared at the clerk, "Mark me present." And proceeded to give counsel a dressing down.

In 1822 there was a vacancy in the office of clerk of the court. The local bar petitioned Woodward to appoint one Trowbridge, then the deputy clerk.

Woodward visited with Trowbridge, congratulating him on the support of the bar, and suggesting that, upon his appointment as clerk, he ought to name one Lucius Lyon, a young friend of the judge, to be his deputy.

Trowbridge replied that he didn't need a deputy, could do all the work himself, and wanted to save the expense.

Next morning, Woodward handed down an order appointing his father, John Woodward to be the new clerk of the court. John, who still lived in the East was then nearly 80 years old. He died at Erie Pennsylvania on his way to Detroit.

The Chief Justice's action, as you can well appreciate, was roundly criticized. It sometimes seemed as though he was trying to be unpopular. Certainly he was indifferent to what people thought of him.

Woodward never had much use for William Hull, the first governor of the Michigan Territory. The feeling was mutual. The two men bickered almost constantly.

History has judged Woodward to be the better man.

It was Hull who ignominiously surrendered Detroit to the British without a shot being fired. He was ultimately court-martialed, convicted, and sentenced to death. Pardoned at the last minute by President Madison, Hull spent the rest of his days trying to regain some measure of public respect.

Woodward, on the other hand, stayed in Detroit during the British occupation. The military commander was under instructions to leave the American civil and common law intact, and Woodward was approached to become the secretary of the territory under the British.

He responded by saying that he was subject to the rule of the United States, and wrote to Washington for instructions. None came, so he never accepted the office.

Woodward was criticized in some quarters for fraternizing with his captors, but in truth he was a strong voice for his fellow Americans, urging protection against Indian massacres and raising money to assist victims of Indian atrocities.

Justice Campbell later called Woodward a brave and good man who loved his countrymen. Woodward's fellow Detroiters saw him as their champion. One episode during that melancholy period illustrates the judge's character.

On June of 1811, Woodward was assaulted by one Whitmore Knaggs, a ruffian who had been kidnapped as a child and raised by Indians. Knaggs had a commission in the militia from Governor Hull, and being grateful for the patronage, took it upon himself to punish Judge Woodward for censuring the governor during a legislative session.

Knaggs found Woodward at an afternoon tea party, had him summoned outside, and proceeded to berate and threaten the judge, shaking his fist in Woodward's face and finally hitting him in the chest, causing him to stumble backwards.

Woodward rose to the challenge, and the two men exchanged blows until they were finally separated by spectators. Knaggs, being well bloodied, left and Woodward returned to the tea party.

The next day, Woodward issued a warrant for Knaggs' arrest. When the defendant was brought before the bar of justice he found his victim sitting in judgment.

Knaggs' attorney accused the judge of a conflict of interest, and sought to have him disqualified. Woodward refused to step aside. Knaggs was tried to a jury and convicted.

Woodward's adversaries promptly wrote to

Washington urging that he be impeached.

Now let's move ahead two years.

Detroit is in British hands. William Henry Harrison is raising an army in Ohio to liberate the Michigan Territory. He sends a division of Kentucky soldiers under General Winchester to establish a foothold on the Raisin River at a place called Frenchtown, now the City of Monroe.

The British surprise the American forces, and after a spirited fight, accept the surrender of Winchester and his troops. Tragically, the Red Coats allow their red-skinned allies to get out of hand. In what Woodford describes as "an orgy of blood letting" 397 Kentuckians were murdered, scalped or carried away into the forest.

Judge Woodward responded to the massacre by setting up a relief committee, raising ransom money, tracing known survivors, and communicating with the families of the victims.

One of the residents of Frenchtown was Woodward's old adversary, Whitmore Knaggs.

After the battle Knaggs was indicted by the British for violating parole by bearing arms against them at Frenchtown.

In spite of their former animosity, Judge Woodward stepped forward to make an eloquent and effective defense of Knaggs, whom, incidentally, he called a "an ignorant and turbulent man." Woodward obtained affidavits from eyewitnesses that proved that Knaggs had not fought against the British, but had merely attempted to protect his family from the Indians.

In time, Woodward became such a thorn in the side of the British command that he was granted safe passage to New York.

There he was received as a hero, and lionized by the American press, one Georgetown newspaper saying:

We cannot therefore but express our high approbation of the very correct course pursued by Judge Woodward $\frac{1}{4}$ he determined to remain on the spot consoling his fellow citizens, assisting them, encouraging them, protecting them as far as practicable. No one will hesitate to approve and applaud his conduct which was humane and intrepid.

While much more could be said about Augustus Woodward, the patriot, I would turn now, if the court please, to another aspect of the man which needs viewing.

No portrait of the judge would be complete without some mention of his scientific attainments. It

has been said that Woodward was among the first to recognize the coming of the scientific age.

In 1816, he published his seminal work, A System of Universal Science. It is difficult to imagine how vast a challenge the man undertook. His purpose was no less than to organize and catalog all human knowledge.

Explaining his book, Woodward declared, “The power of intellect appears inadequate to grasp the mighty mass; and a correct and satisfactory division of the knowledge at present in the possession of the human race or an elegant and appropriate classification and nomenclature of the sciences have not yet been effected.”

Among his incredibly ambitious goals, the judge wanted to enunciate the principles upon which a great national institution could be constructed; an institution which he saw as becoming the seat of all the learning, talents, erudition, and genius of the United States of America.

Like his mentor, Thomas Jefferson, founder of the University of Virginia, whose system of cataloging books was used by the Library of Congress until 1899, Woodward was a man of action as well as dreams.

In company with Reverend John Montieth and Father Gabriel Richard, Woodward drafted a charter for an institution he called the Catholepistemiad or the University of Michigania.

His plan was to create an organism which would propagate the Epistemic System he had expounded in his treatise.

On August 26, 1817 the Governor and Judges of the Michigan Territory signed the university act into law.

It was, from the first, enormously controversial, but then it was enormously ahead of its time.

In time, the Catholepistemiad would mature into the University of Michigan. Near the end of the 19th century, its president, James B. Angell would say, “In the development of our strictly university work, we have yet hardly been able to realize the ideal of the eccentric but gifted man who framed the project of the Catholepistemiad.”

Woodward’s plan was not a mere charter. It was a detailed blueprint for the organization of a university. What made it particularly controversial was Woodward’s invention of words to describe his various concepts.

Faculty were called didactors. The curriculum was not called the curriculum. It was called the

didaxia. The individual departments or sciences were not called sciences or departments. They were called didaxiim. And they were each given strange sounding names. Anthropoglossica was the name for literature. Mathematica referred to mathematics. Physionostica was natural history and science. Physiosophica was the word for philosophy.

Despite the fact that Woodward worked out his Epistemic System with great scholarship and attention to detail, his detractors found it fertile soil in which to plant their ridicule.

Governor Cass called the Catholepistemiad “a pedantic and uncouth name.”

Isaac Christiancy thought it was unchristian.

And Justice James V. Campbell said it was “neither Greek, Latin, nor English ¼ [but merely] ¼ a piece of language run mad.”

Another wag wrote a piece for the Detroit Gazette, which announced that the Pig Tail Club was being reorganized as the Pigtailania Society of Michigania and would henceforth meet at the Gruntania Place.

You can see that the politics of the early 19th century were not a whole lot different than they are today.

One last bit of color must be applied to our portrait of Judge Woodward if it please the court. Mention must be made of his judicial personality, and I think the best way to describe it is to tell you about two cases he decided, which I will call the Denison case and the Pattinson case. Both involved the issue of slavery.

Woodward’s personal opinion about the institution of slavery fairly leaps from the pages of his biography.

In this territory, “ he said, “slavery is absolutely and peremptorily forbidden. Nothing can reflect higher honor on the American government than this interdiction. The slave trade is unquestionably the greatest of the enormities which have been perpetrated by the human race. The existence at this day of an absolute and unqualified slavery of the human species in the United States of America is universally and justly considered their greatest and deepest reproach.

But as much as Woodward deplored slavery, he also felt the duty, as a judicial officer, to uphold the treaty of 1794 with Great Britain, which guaranteed the protection of the property rights of British settlers in America.

The Denison family were slaves owned by one

Catherine Tucker, a widowed British citizen. The Denisons claimed that they were entitled to their freedom under a Canadian law enacted in 1793, which called for the emancipation of all slaves on their 25th birthday.

Judge Woodward concluded that the emancipation statute was in conflict with the treaty, and that under the constitution of the United States treaties made under the authority of the United States were the supreme law of the land. So saying, he dismissed the writ of habeas corpus and restored the Denisons to Mrs. Tucker.

The second case involved some slaves belonging to a Richard Pattinson and others who were the property of one Matthew Elliot. Both lived across the river in Ontario.

Elliot was a British Indian agent who many people blamed for inciting a number of uprisings and atrocities against American settlers. When Elliot came to Detroit to reclaim his slaves who had escaped across the river with Pattinson's people, he was greeted by a hostile mob of Detroiters.

Elliot took refuge at the home of his attorney, Elijah Brush. Brush tried to reason with the crowd assembled at his doorstep, assuring them that Judge Woodward would see that justice was done in the matter.

Since it was only a few months after the Denison decision, there was some skepticism among the townspeople about what Woodward might do.

Squire Smyth, the town's leading innkeeper and self-appointed spokesman informed attorney Brush that the people of Detroit were willing to support the constitution, but if Woodward should decide that Elliot's slaves were to be restored to him, Judge Woodward himself was going to be tarred and feathered.

Four days later, there was in fact an application of the traditional tar and feather punishment just outside the back door of Squire Smyth's tavern. It seems that one James Heward, an employee of Mr. Elliot, came to Detroit to testify on behalf of his employer. He stopped in to Squire Smyth's place to get a drink of grog. The other patrons greeted him with stony silence. Heward made the mistake of ingesting too much alcoholic courage, becoming noisily aggressive, and declaring that all in the room were "a damned rascally set of beggars."

After a long night of picking at feathers and scraping tar from his skin, Heward found his wig nailed to a post on a street corner.

Judge Woodward was astute enough to consider the Pattinson case first.

He held that under the law of nations, the property of a subject or citizen of one country found within the territory of another country ought to be restored, but that there is no obligation to restore persons.

Woodward went on to hold that there could be no property right in persons under the common law, and since the Northwest Ordinance prohibited slavery, there were only two instances when persons might be held to service: those in actual possession of British settlers when the territory was occupied by the United States, and those who were fugitives from a state of the American union in which slavery was permitted.

Since there was no treaty between the United States and Great Britain requiring the return of fugitive slaves, Woodward ruled that those who escaped across the river were entitled to freedom in the United States.

His opinion was greeted with delight by the people of Michigan and generally approved throughout the Northern states.

Thomas Cooley later observed that the Northwest Ordinance was the beginning of the end of slavery in America.

Augustus Woodward's decision in the Pattinson case advanced the cause of freedom in Detroit and reflected the sentiments of her people. In the decades that followed, Detroit became a bustling terminus of the underground railroad.

Little wonder that nearly two centuries later, this great city and its environs are home to great numbers of persons of African heritage.

If the court please, it is with this word picture of the first chief justice in mind that I would like to return to the arrival of Augustus Woodward on these shores.

Despite the fact that the city was a charred ruin on June 30, 1805, the people of the town turned out to receive their new jurist. His reputation had preceded him. The villagers were anxious to get a glimpse of this important figure; this close friend of President Jefferson; this powerful leader who would somehow help them to rebuild their city. There was a high sense of anticipation.

The next day, governor William Hull arrived and promptly administered the oath of office to Woodward and to Frederick Bates, another member of the first territorial court.

Obviously the first order of business confronting

the governor and judges was the rebuilding of the city.

Augustus Woodward was given the job of laying out a plan. He tackled the assignment with his customary energy and with a vision reaching far beyond the horizons of his contemporaries.

Woodward's scheme was intended to be expandable, beginning at the banks of the Detroit River and spreading north, east, and west as generations of new inhabitants would swell the population of the city.

He envisioned great thoroughfares 200 feet wide and large, open, circular, plazas with space for parks, churches, schools, and public buildings. The basic unit of Woodward's design was an equilateral triangle of which each side was 4,000 feet. The apex of the first unit was at the present site of Grand Circus Park, where Bagley, Washington Boulevard, Madison and Broadway converge on the grassy hub like the spokes of a wheel.

The first phase of Woodward's plan was intended to accommodate a population of 50,000; about a hundred times the number of persons then living in Detroit. The locals simply couldn't understand it. Detroit hadn't changed much in its 500 years. They couldn't imagine a future in which tens of thousands would make their homes in the city. Woodward's plan was abandoned after only 11 years.

But here again, history has confirmed the genius of the eccentric judge. Experts have declared the Woodward plan to be amazing; a startling matrix for a modern city.

One leading city planner observed: "Nearly all the most serious mistakes of Detroit's past have arisen from a disregard of the spirit of Woodward's plan."

Woodward intended that the main highway in the renewed city would be that which followed along the course of the river. He named it Jefferson Avenue, in honor of his patron and friend.

The street he named for himself was supposed to be only a secondary road. As it gained greater importance, the designer, not wanting to appear self-aggrandizing, claimed that the avenue was not named for anyone, but was rather called wood-ward because it ran towards the wooded land north of town.

Over the intervening decades, the association of Woodward Avenue with the first chief justice has deepened, not only historically, but also symbolically. The Woodward Avenue of the 21st century, like its name giver, is an amalgam of contradictions. The City-County Building, the public library, the art museum, Blessed Sacrament Cathedral and dozens of other prominent public and private edifices stand

proudly beside the vacated sites of former landmarks. Busy restaurants share frontage with abandoned stores. Dancing neon words compete with incomprehensible graffiti for the attention of passers-by.

May it please the court, I cannot conclude this journey into the past without reflecting on the troubles of our own time and the lessons to be learned from history which may guide us and those who come after us.

The early settlers of the City of Detroit lived with the daily threat of terrorism from a native population that surrounded the city. They knew the horror of a fire that destroyed their homes and businesses and left them deprived of possessions and devastated in spirit.

Their response was embodied in the motto adopted for the City, which remains its mantra to this day, *Speramus Meliora, Resurgit Cineribus* "We hope for better days, it will rise again from the ashes."

Life itself, may it please the court, is full of inexplicable contradictions. We poor mortals will never understand why an omnipotent and merciful creator would allow evil, and pain, and tragedy, and horror, and grief to be visited upon his people.

And yet we see, rising from the ashes of our sorrow the inspiration of heroes, the crescendo of patriotism, the wellspring of generosity, and the benediction of sacrifice which have, for more than two centuries been the stout bulwarks of American freedom.

As this city and this nation enter a new and uncertain time fraught with danger and doubt, challenging the very foundations of our faith and our resolve, the example of people like Augustus Woodward should help to inspire us to a new level of confidence, a new commitment to our common purpose and a new hope that the aspirations we share for our children and grandchildren will indeed be realized.