



# THE COURT *Legacy*

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## Judicial Power and Independence in Early Michigan

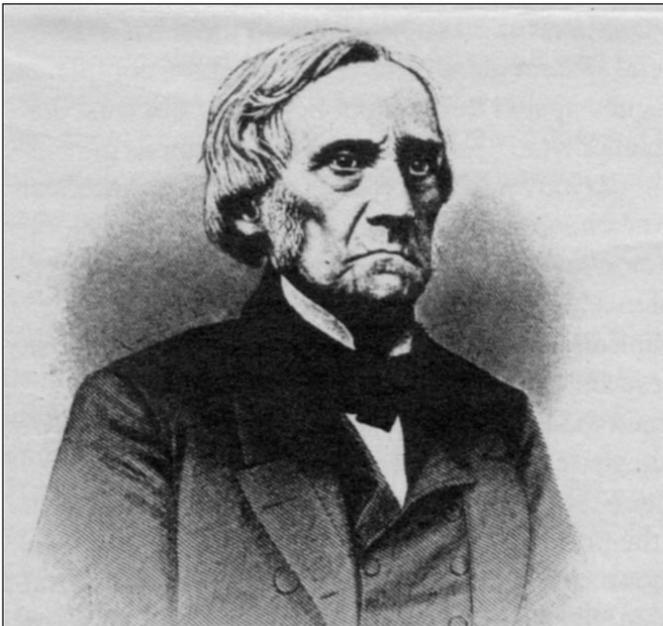
By Kermit L. Hall

Many contemporary editorial writers speak against activist judges. Students of the United States Supreme Court (and some of the justices themselves) warn of an imperial judiciary. Others frequently remind us of the need to subordinate the judicial will to the peoples' will. These issues are hardly new; they have figured prominently in the legal history of every state. Nowhere were they more obvious than in the territorial history of Michigan. The issues of judicial power and independence were thrown into

stark relief through a spectacular contempt-of-court proceeding against a newspaper editor in the territorial Supreme Court. The case raised issues of freedom of the press, the right to trial by jury, the meaning of contempt, and the scope of judicial power and independence.

In 1828 two political factions vied for control of the territorial government. William Woodbridge, secretary of the territory, headed the more coherent group termed by its opposition as the Detroit Junto. Through the *Michigan Herald*, edited by Henry C. Chipman, the Junto supported the administration of President John Quincy Adams. The opposition supported the nation's then rising political star, General Andrew Jackson of Tennessee. John P. Sheldon, the editor of the *Detroit Gazette*, provided the sharpest criticism of the Junto, Woodbridge, and the incumbent territorial officers, including the three-man territorial Supreme Court.

These two political factions shared a general concern about the administration of justice in the territory. They complained that procedural problems, the cumbersome procedures of a three-man high court, the limited scope of judges' admiralty and maritime jurisdiction, and the chronic backlog of cases in the lower territorial courts which awaited appeal to the Supreme Court, slowed litigation and hampered territorial economic development. The two factions, however, diverged over possible reforms because they differed over the jurisdictional limits and the basis of appeals to the Supreme Court. The Junto sought to speed judicial business by providing the high court with greater autonomy. The opposition sought a diffusion of the judicial power through the lower territorial courts. The debate was a classic example of whether a centralized or decentralized system of federal justice would best serve the people.



A native of Connecticut, William Woodbridge was a leader of the Detroit Junto and later of the Whig party. A lawyer, Woodbridge served as collector of customs at Detroit, secretary of the territory, and delegate to Congress before President Adams appointed him to the territorial Supreme Court in 1828. His political activity had already generated dissent when in 1829 he announced his decision in the Sheldon case. He stirred even greater opposition by holding that Sheldon's opinions invited "anarchy." - Photo courtesy Burton Historical Collection

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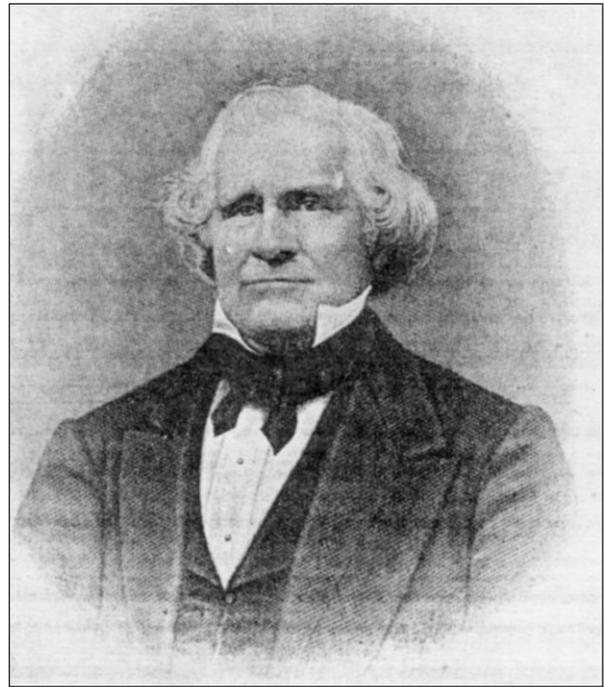
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The Michigan *Herald*, published by Henry C. Chipman from 1825-29, professed to be neutral but favored the Whigs. Chipman served in many elected offices and was appointed territorial Supreme Court justice, 1827-32. - Photo courtesy State Archives of Michigan

The *Gazette*, for example, attacked the territorial judicial system for several years. Sheldon complained in his newspaper that the public could “not trust the judicial power.” To Sheldon, circumstances in Michigan mirrored the broader problem of American judges who possess excessive power under the common law. The *Gazette* warned that jurists are not legal machines but instead men susceptible to corruption, incompetence and favoritism. Unrestrained by codified statutes, judges readily usurped the legislative prerogative. Rejecting a mechanistic interpretation of the judicial function, Sheldon and his supporters argued that the citizenry and the press had a special responsibility to oversee the courts. The *Gazette*, for example, led a successful campaign to remove Judge Augustus B. Woodward. It supported abolition of tenure for good behavior for territorial judges.

In 1828, this opposition further crystallized when President John Quincy Adams appointed Woodbridge and Chipman to the territory’s high bench. The appointments were blatantly political. Adams intended to install judges who were not only sympathetic to the administration, but also hostile to

the efforts by the opposition. This was done to bring greater popular accountability to the judiciary.

The following year the animosity engendered by Adams' appointments and the long-standing differences between the two factions over the role of the courts and law in the territory erupted. A struggle began over the power of the judiciary to proscribe constitutionally guaranteed liberties. The complicated contempt of court proceedings against John P. Sheldon began innocently enough. Late in 1825 a jury in Judge Solomon Sibley's Wayne County Court convicted John Reed of larceny and receiving stolen property. Sibley committed a significant procedural error when he denied a defense motion to excuse a juror who had indicated that he knew the facts in the case and believed Reed was guilty. Following his conviction, Reed appealed to the territorial Supreme Court, and in early January, 1829 its judges sustained Reed's appeal and ordered a new trial.

Controversy over the Reed case escalated immediately. Sheldon complained in the *Gazette* that the decision represented another instance of a legal technicality thwarting justice and the will of the community expressed through the jury. In a lengthy editorial, Sheldon stated that Reed's guilt was common knowledge and accused the judges of abandoning common sense. When Reed charged that the article prejudiced a fair rehearing, the court responded by summoning the new publisher of the *Gazette*, Henry L. Ball, and ordering a halt to publication of stories about the case. Sheldon retaliated by announcing that he, not Ball, controlled the editorial columns of the paper, stating that the judges persisted in acting with "arrogance and ignorance." He underscored his disdain by republishing in full the offending editorial. The court replied by citing him for contempt.

The crisis that Sheldon provoked polarized the issues of freedom of the press and of judicial power. Although apparently insensitive to Reed's rights, Sheldon considered any judicial effort to circumscribe his freedom to comment on the case as a threat to freedom of the press. Asserting his open involvement in attacks on the court, the editor sought a direct confrontation with the judiciary. To Judge Woodbridge, the editor's assault posed two questions: "Shall the law bend to John P. Sheldon? Or, shall

John P. Sheldon bend to the law?" The court could act with authority, Woodbridge noted, only so long as it retained the ability to "protect itself from scandalous contests."

On March 2, 1829 Sheldon's trial commenced without a jury before the three-judge territorial Supreme Court. In conducting his own defense, Sheldon argued that the preservation of republican government demanded a judiciary willing to heed the criticism of the public. He also agreed that the framers of the Constitution of the United States intended that the press be used to rally public opinion against judicial encroachment, and that any effort to undermine this obligation through contempt proceedings was a gross abuse of judicial power. According to Sheldon, contempt proceedings necessarily assumed a narrow meaning. In a republican government they applied only when an officer of the court subverted its authority, or when an actual disturbance occurred in the courtroom. Sheldon argued that the denial of a jury further removed the court from the benefit of public opinion, greatly enhancing its power to quiet offending editors. He went so far as threatening the court by warning that he had previously engineered the removal of judges and stood ready to muster public sentiment against the present bench.



Solomon Sibley studied law under William Hastings in Boston. Sibley moved to Ohio in 1795, and to Detroit in 1797. He was a member of the first territorial legislature of the Northwest Territory in 1799; auditor of Michigan Territory 1814-17; U.S. attorney, Michigan Territory, 1815-23; and justice of the territorial Supreme Court of Michigan, 1824-37. - Caricature courtesy State Archives of Michigan

The court found Sheldon's arguments unconvincing, both as matters of law and public policy. Judges Woodbridge and Chipman supported a sweeping commitment to judicial independence and power in vigorously upholding the prerogatives of the court. Solomon Sibley, the third judge, declined to state his own position. However, he subsequently expressed reservations about the court's decision.

Judge Chipman described the editor's pleas as "idle wind" intended "solely for the popular ear and for popular effect." He broadly construed the meaning of "contempt of court" by asserting that it involved public defamation of the integrity and authority of the court. Chipman concluded by stating that "liberty of the press consists in the right of publishing the truth from good motives and for a justifiable end." However, he held that Sheldon's conduct deterred an impartial retrial for Reed with "the real object (being)...to prejudice the public mind against the judges."

Woodbridge reasoned that the veracity of Sheldon's assertions formed the central issue. If the editor distorted the court's actions, the public might unnecessarily lose its sense of obligation to the judiciary, diminishing the power of the court and inviting "anarchy: and out of that...tyranny." The survival of republican government necessitated strong courts and a press possessed of sufficient virtue to seek and report only the truth. Woodbridge claimed Sheldon's "garbled" account of the reasoning behind the granting of Reed's appeal made the judges and the court appear capricious. His editorial had "lampooned" the court, cast suspicion on its integrity, and exhibited a willful determination to intentionally prejudice Reed's case. These conditions provided sufficient grounds for contempt. Woodbridge stated that by boasting of having "called the people's servants to account," Sheldon allowed his "vanity to get the better of his judgement."

The judges, at the same time, realized the thorny political nature of the controversy. Thus, they hoped to avoid further conflict by fining Sheldon \$100 and court costs. The newspaper editor, however, selected martyrdom, refused to pay his fine, and accepted the jail time.

The court's decision and Sheldon's defense transformed and crystallized the debate over the

Michigan judiciary. A newer and more universal debate over the power of the judiciary to define the limits of basic rights within the framework of representative government blended with the older antagonisms of rival factional leaders. Attentive to the imperatives of republican government, both sides offered differing views on issues relating to the legitimate role of a non-elected judiciary in a government founded on popular sovereignty, the maintenance of law, and the nature of constitutionally guaranteed liberties. Disagreements provided one basis for political division and the birth of political parties in Michigan with supporters of Reed gravitating toward the Whig party, and those of Sheldon toward the Jacksonian Democratic party.

The Jacksonians captured the White House in 1828. Andrew Jackson and his supporters stressed partisan loyalty in the distribution of public offices. Party affiliation became a legitimate criteria for selecting judges. Regarding the Michigan appointees, the Sheldon case became the touchstone for measuring the qualifications of nominees to replace the outgoing judges who had rendered the controversial decision. By 1832, President Jackson had replaced all of the judges with his own supporters, many from outside of the territory.

When viewed in a national perspective, events in Michigan suggest that the Jacksonian movement coincided with a reawakened interest in the proper relationship between judicial power and independence. Similar issues of judicial power, freedom of the press, and the impact of the popular will on the courts also found expression in the Jacksonian attack on Judge James Hawkins Peck of the Missouri Federal District Court. The accession of the Jacksonian majority in the House of Representatives allowed the long-delayed impeachment proceedings against Peck to succeed in 1830. Although Peck narrowly avoided conviction in the Senate, the Congress responded to his impeachment and the Sheldon affair in Michigan by passing legislation narrowing the contempt power of the federal lower court. Jackson also exercised his judicial appointment power in Florida, Arkansas and Indiana with the specific intention of shaping the lower federal and territorial courts to his views and party needs. However, he also exercised discrimination in administering the judicial patronage by reappointing only seven territorial judges in eight years.

The emergent Whig party adopted a different stance. In the Sheldon trial and its aftermath, these party followers asserted the need for an independent judiciary capable of settling disputes undeterred by public clamor and a judiciary which resisted the infusion of partisanship into the recruitment process. There remained the nagging fear for men similarly situated to Woodbridge that partisan appointees would base their decisions on party considerations. In the 1835 constitutional convention this position gained support, although it did not triumph altogether. The state constitution of that year provided for appointment by the governor with the advice and consent of the senate. Tenure was limited, however, to six years and judges could be removed on the vote of two-thirds of the legislature.

Thus, the reaction in the territory to the Sheldon trial and the resulting demands for new judges reminds us that a genuine ideological concern over the nature of judicial power assisted in shaping Michigan's two-party system, and ultimately its courts. These same events also alert us to the perennial nature of the debate over judicial power and independence, and the seemingly unbreakable links between politics and the law.

#### *Biographical Note*

The role of law and politics in early Michigan history is developed further in Kermit L. Hall, "Andrew Jackson and the Judiciary: The Michigan Territorial

Judiciary as a Test Case, 1828-1832" 59 *Michigan History* 131 (1975) and Hall, *The Politics of Justice: Federal Judicial Selection and the Second American Party System* (1979). On Andrew Jackson and the federal judiciary, see Richard P. Longaker, "Andrew Jackson and the Judiciary" 71 *Political Science Quarterly* 341 (1956), but also Carl B. Swisher, *The Taney Period: 1835-1864* (1974). On the lower federal and territorial courts, including those in Michigan, see William W. Blume and Elizabeth Gasper Brown, "Territorial Courts and Law: Unifying Factors in the Development of American Legal Institutions" 61, *Michigan Law Review* 39 (1962-63); Robert P. Fogarty, "An Institutional Study of the Territorial Courts of the Old Northwest, 1788-1848," (Ph.D. dissertation, University of Minnesota, 1942); and John W. Smurr, *Territorial Jurisprudence: What the Judges Said about Frontier Government in the United States of America During the Years 1787-1900* (1960). Finally, the development of party politics in Michigan is the subject of Ronald P. Formisano, *Birth of Mass Political Parties: Michigan, 1827-1861* (1971).

*Editor's Note: Kermit L. Hall is Dean of the College of Humanities and Executive Dean of the Colleges of the Arts and Science, and Professor of History and Law at The Ohio State University. He is the author of The Magic Mirror: Law in American History, and editor of The Oxford Companion to the Supreme Court of the United States.*

## Society Bulletin Board



Federal Chief Judge Anna Diggs Taylor

### Passing the Gavel

Federal Court Judge **Anna Diggs Taylor** is the 11th Chief Judge of the United States District Court for the Eastern District of Michigan. Judge Taylor was appointed to the federal bench by President Jimmy Carter in 1970. She attended the Northfield School for Girls, Bernard College and Yale Law School. She is married to attorney S. Martin Taylor and is the mother of Douglass Johnston Diggs and Carla Cecile Diggs. Society representatives attended a ceremony marking the transfer of the office of Chief Judge from Judge **Julian A. Cook, Jr.** to Judge Taylor on January 6, 1997.