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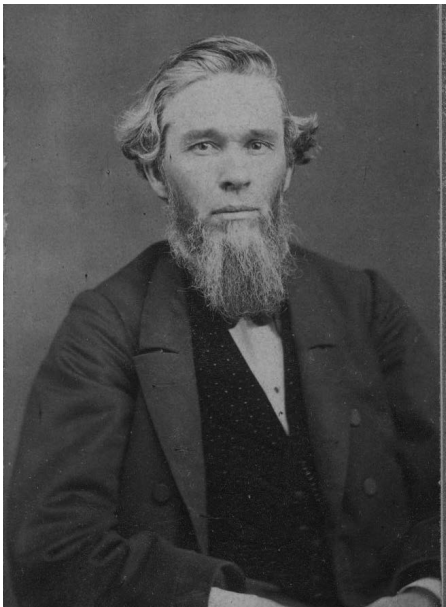
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DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN

STEREOSCOPE



Solomon Withey's March 29, 1871 Commencement Address to the University of Michigan Law School

Solomon Withey became the first District Judge for the Western District of Michigan. He was nominated by Abraham Lincoln on March 11, 1863, just after the Western District of Michigan had been created, 155 years ago. Judge Withey served for 23 years, and during his tenure was the only judge for the Western District. He died at age 66, on May 7, 1886, while seeking to recover his health in California.



Solomon Withey

Here is the commencement address that Judge Withey gave to the graduating class at the University of Michigan Law School on March 29, 1871, eight years after he became district judge. The University of Michigan Law School – then called the law department – was founded in 1859. The Law Building was constructed in 1863, the year of Withey's nomination, at a cost of \$15,000. It was located at the southeast corner of State Street and North University, today just grass and trees, north of Angell Hall. By 1870, Michigan was the largest law school in the country.

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At this commencement, there were 117 graduates. One, Sarah Killgore, was the first woman in the country to both graduate from law school and be admitted to the bar. The previous year, Gabriel Franklin Hargo graduated from Michigan as the second African American to graduate from a law school in the United States.

The Class of 1871 came of age during the Civil War, which had ended just six years before. Some of those graduates likely fought in that war. Ulysses Grant was President and the country was in reconstruction, attempting to heal the wounds of “the great rebellion.” The first major league baseball game would be played in May and, in July, Tad Lincoln – the youngest son – would die in Chicago at age 18.

The members of that class have long passed, but after graduation they would go on to legal and other careers for the rest of the 19th century. Many of the words of wisdom and advice given by Judge Withey ring true today. In his commencement address, Judge Withey touched on:

- **The importance of working hard through “patient toil” and “weary labor” to become a successful lawyer**
- **The importance of constantly learning – reading history, cases, and treatises**
- **The challenges and “discouragements” of graduates starting a law practice**
- **The importance of morals and virtues to the practice of law**
- **The danger of taking to “poor whiskey”**
- **The “art of eloquence” in effective advocacy**
- **The importance of building on “native mental powers”**
- **The limitations and development of the common law**
- **The importance of serving “any and all classes” who need an advocate to speak on their behalf**
- **The “unreasonable and unjust” laws that failed to give women equal rights.**

—David J. Gass, President
*The Historical Society for the U.S. District Court
for the Western District of Michigan*

Members of the Graduating Class of 1871:

You have thus far, mainly, been occupied with the theory of the law and now stand at the threshold of a profession into whose practical walks you propose to enter, where the existing facts and circumstances of daily life must be molded into the forms and precedents you have studied – where those principles you have been storing up must be applied in solving the practical questions evolved from business relations.

When you shall have passed the threshold and stepped into professional life, you will have an opportunity to test your brethren, and your clients will test the value of your acquisitions, whether you have accumulated knowledge and accumulated it wisely. The time you have spent at the law school has sufficed to give you little more than a glimpse of the vast realms of the law which now spread out before you and up whose steep ascent you can climb only by patient toil and weary labor. So much is yet to be gathered into the store-house of the mind, out of the accumulated knowledge of the centuries, that you will do well to survey somewhat carefully the conditions upon which you may hope for success.

I assume that you have a laudable ambition to reach distinction and even eminence in the profession; without this I advise you to turn back at once to some calling where your energies will be less taxed and where ambition is easily satisfied. In law, as in philosophy and the sciences, there is no royal road to greatness; the way must be explored by patient industry under the inspiration of a laudable ambition. “If you would get to the mountain top you must not stand still. There is no great excellence without great labor. No mere aspirations for eminence, no wishing and sighing and imaginings and dreamings of greatness will ever make you great.” But, my young friends, if you have a brave and pure spirit more than half the battle is over.

The basis of a man’s nature gives the basis of his life, and the basis of your professional life will determine whether you are worthy to become priests in the temple of law. There is no part of a building so important as the foundation. You remember the allusion the Great Master makes to the foolish man who built his house upon the sand, that it fell, and great was the fall of it. The student of the law who spends years to fit himself for the duties



Old Law Building—1863

The Law Department was founded in 1859 and graduated its first class in 1860, but not until 1863 did it have its own building. The Law Building was located southeast of the intersection of South State and North University. Source: Bentley Historical Library

of a profession in which high success is attained only by training every faculty of the soul to its highest achievements, and yet regards the foundation established so soon as he has entered the ranks of the profession, will find that he has builded upon the sand. For him there will be neither honor nor enviable distinction.

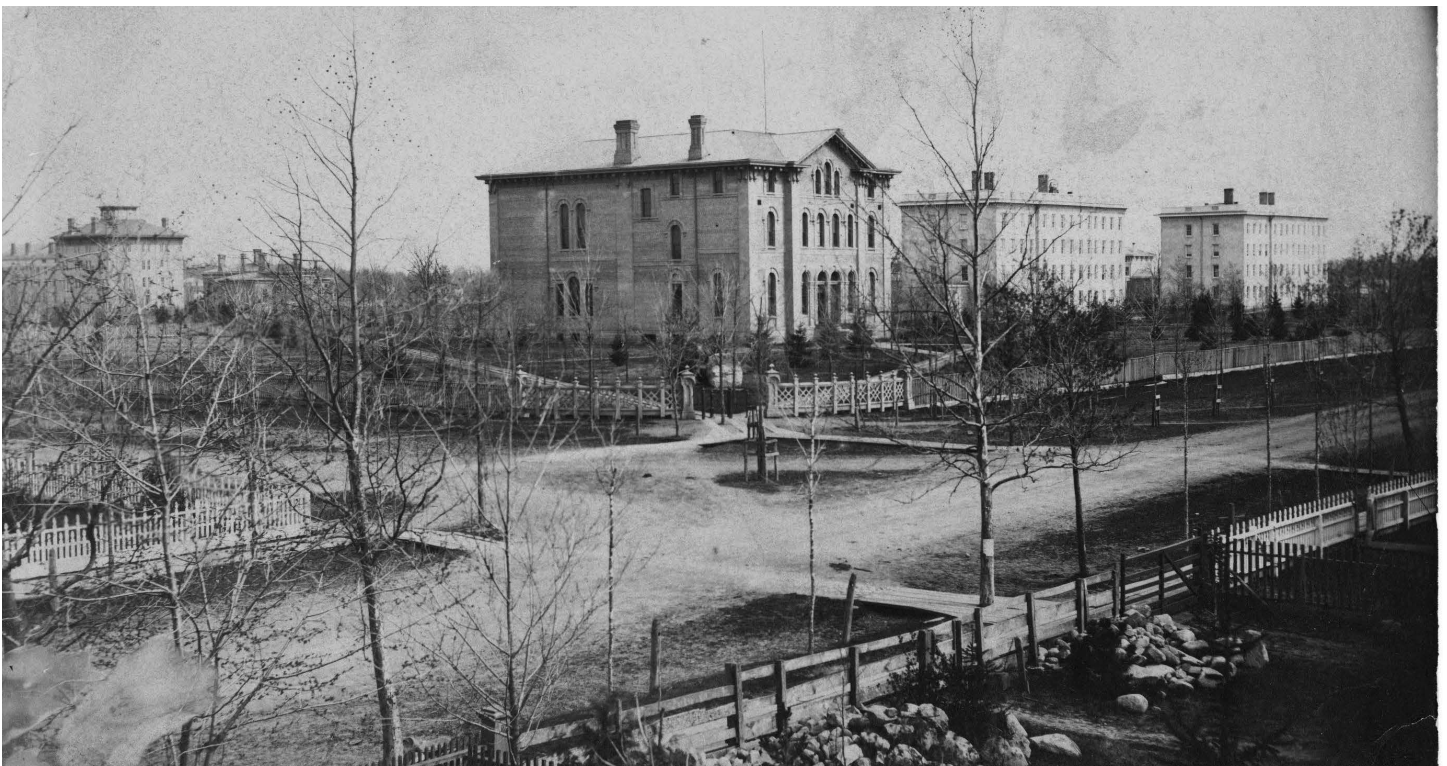
Do not understand me as assuming that every one of you has fixed the star of his ambition upon the serene height of the Chief Justiceship of the United States Supreme Court. The exigencies of human life are such, and the diversified elements of human ambition are such, that all distinguished men do not reach the same summit. If you live among the denizens of a plain, the summit of that locality may not be up among the clouds. And yet, to occupy that summit of distinction satisfies no mean ambition. It was Dr. Johnson’s remark, I believe, that every man has a lurking ambition to appear considerable in his native place; and I confess I know of nothing more enviable for a lawyer than to enjoy an honorable distinction in his own circuit or home practice. Once in possession of this, and all that is necessary to occupy broader fields of fame is the circumstance of opportunity.

It is probable that some of your number will meet with multiplied discouragements before having attained to an established and remunerative practice. None can foresee what difficulties will beset his path and what obstacles must be overcome. Some may enter at once into a pleasant and profitable practice, while others may find their way hedged about by most perplexing and discouraging circumstances, seeming to bar the way to clients and opportunity. The causes that make briefless lawyers are multitude, and the old adage, that "where there is a will there is a way," does not always solve the difficulty. What you should seek to do is to observe all the conditions of success, for then all the chances are in your favor and nothing less than a miracle, I imagine, will thwart your purpose if you can wait and endure. Genuine success depends upon stimulating the entire man in the right direction; partial development does not give the best results. Skill may be attained through mere knowledge, but power that is true and permanent comes to man, is abiding and satisfying, only when knowledge has for her handmaids those cultivated and Christian virtues which have the sanction of human and divine justice.

Your attention is accordingly challenged to the fact that the principles and precepts of the law mainly

rest their claim for respect upon right and not wrong or injustice. Indeed, so thoroughly is this inculcated throughout all the subjects of the law that he who studies its precepts thoughtfully ought to be a better man and a better citizen. If he is not, the precepts of the law are not at fault. He who does not understand that moral philosophy is an element of the science of law will lack an essential condition of professional success. It is therefore too important to be overlooked by those who are about to enter upon practice where studies are to be carried forward, and where rank and standing will be measured, not by what is known merely but as well by the just appreciation and exercise of those functions appertaining to judicial learning.

So intimately is the structure of the law interwoven with moral science that it has been said to be a system involving practical ethics by which men are to comport themselves. As a single illustration, take from the law of contracts the maxim that the proper interpretation of every instrument is that which will make it speak the intention of the parties at the time it was made, and we have a rule as true in ethics as in law; and we might draw from the whole body of the common and civil law innumerable illustrations.



State Street side of Campus, c. 1863 Source: Bentley Historical Library



Walk leading past Law Building to Main Building, c. 1873/1874 Source: Bentley Historical Library

The fact is, the law has ever been found to be a poor and uncertain representative of justice whenever administered through mediums of ignorance or corruption – both are deficient in elements essential to a proper administration of juridical science, as ignorance and science, corruption and truth have no common affinities, and therefore it is that the standards of professional education must lift us into the higher regions of mind and thought. He who seeks a knowledge of the principles and science of the law merely to acquire intellectual dexterity and skill may attain to craft and subtlety, but will not be likely to honor his profession, if he does not sooner or later bring reproach upon it and disgrace upon himself; while to him who seeks this knowledge in pursuit of rules that shall aid in settling controversies and establishing justice in the conflicts arising out of the rights of property and of man, will enjoy the serene confidence of well-doing, and shall receive the approbation, not alone of men, but of the Master.

“Do unto others as ye would that others should do unto you,” is a divine precept that forms the basis of a just life; and it is the purpose of jurisprudence, in no restricted sense, to enforce this rule among men. As you advance in professional life and experience, if you observe closely and think wisely, you will come to realize more appreciably the transcendent value of the moral aspect suggested as a first requisite of those who minister at the altar of justice. There is a celebrated saying of Plato’s, that knowledge, separated from justice and virtue, is only skill, and not truth; it is a maxim as true now as in the days when lived that great philosopher.

Experience and observation testify to the importance of a proper basis for professional life. I do not turn aside from legitimate considerations when I say that bad habits are always canker sores to professional men, eating out the very vitals of success, and alas! how deplorable a fact that so many lawyers take to poor whisky, and then its kindred vices. I say to you,



Law Library c. 1877

The books appear to be court reports with many similar volumes. A ladder is needed, far right, to reach some of the books. The well-dressed students are engaged in their studies. Source: Bentley Historical Library

and the voice of reason and experience says to you, that habits must be right and firmly maintained. A gentleman in Grand Rapids put the whole thing into few words the other day when he said, "Whisky and tobacco won't run a law office." Sad shipwrecks of many of the brightest ornaments of the profession, and of many who were not among its ornaments, in every age – and still more numerous are they in our day – testify to the sad results of intemperance among lawyers, and grievously sadden our recollection. Be not over-self-reliant, young man, of your power to resist the temptation of intemperance; but be ever on guard. "Look not thou upon the wine when it is red, when it giveth his color in the cup; at the last it biteth like a serpent, and stingeth like an adder." You may need help from Almighty power to save you at some turn in the tide of life. Seek it, that temptation may flee from you. Temptation you will meet, in one form or another, and your greatest virtue will be "the fruit of temptation suffered but overcome." That man who

is reckless of the great aims of life, schooling himself to no discipline, must be a rare specimen of human nature if he does not fail to develop the best and most valuable elements of mind and character.

But I was speaking of the conditions of professional success and achievement, and was about to say that the best time to lay the basis for successful practice and honorable distinction will be during the early years, before the demands of business shall absorb your time and thoughts. When once admitted to the bar, do not think your legal education complete, and, like Micawber, wait in idleness for something to turn up. Idleness robs men of intellectual and moral force; no man can afford to play the sluggard. You may not find it quite easy at the outset to acquire an active practice. Clients do not flock to every lawyer's office with a retainer as soon as his sign is hung out. There is generally some little waiting before clients are numerous. Most young men go among strangers, and must there form acquaintances and bide their time. Briefs and cases will accumulate slowly, with

some provokingly slow. If you are poor, all the better; only manage to get along on limited means, and it won't hurt you to get into debt, so long as you do it honestly and are a man; then it will stimulate you to exertions you would not otherwise make. But keep indebtedness down.

During the waiting years, occupy the time in building broad and well the foundations for future activities, and your ultimate success will be assured. Do this, and you will soon possess the Moses-rod of circumstance that strikes the rock and makes the waters flow. Ask yourselves the question, what proportion of those who go to the bar reach desirable distinction; are they not the exceptions? It is for this reason that I press upon your attention the elements and conditions on which you may hope for substantial achievements. Everybody will not reach the summit of expectation, but the great proportion might exceed expectation.

The professions are too often sought and entered as golden gates to wealth, and not eminence; fortune, not fame, is the ambition that rules the age. If wealth be the keynote of a man's life, and he cannot wait till he has achieved professional standing, again I advise him to abandon the calling you have chosen. Lawyers are not, as a class, wealthy; the profession brings its pecuniary rewards and often lays the foundation for riches; but the stimulating mental processes, which produce philosophers, men of science and profound thinkers, seldom work in harmony with thoughts that are turned on bargaining, buying and selling.

I am speaking for those who would make their professional life successful in all that belongs to true advancement and triumphant results. To such, I say, there is no intellectual puzzle involved in the law. On the contrary, it is an intelligent science, whose principles are capable of leading the mind to demonstration; and therefore it is that there is less occasion for failure among the profession to take high rank or failure in their cases, as there is less occasion for lawsuits than is generally supposed. For while it is true that what will be the decision in a case cannot be known certainly until the court pronounces an opinion, still, when lawyers examine questions with the same thoroughness and impartiality as does the judge who gives the decision, it is believed that they will generally reach conclusions which the judgment of the court will verify.

I would make this a prominent idea with every gentleman entering upon the practice of the law. Forget, for the time, that you are employed as a mere partisan to sustain a side between litigants, and reach conclusions as to rights. Find the true solution of questions submitted rather than make search for rules and decisions to sustain your client's side. You will then be in a position to advise your client whether to prosecute or defend, as the case may require. His interests will be advanced and your reputation will grow. You will be surprised, after a little, to learn how rapidly you have acquired a reputation as a reliable counselor.

I cannot too much impress upon you the importance of taking up a topic or subject and mastering it; of following it until you have a clear understanding and exact knowledge. When you have a case be satisfied only when you have settled in your own mind the law which governs the asserted right. This done, there will be a satisfaction no other course will give. A question once wholly mastered will never after give you trouble. Get a "Common Place Book," note down the results of your investigations, and make references to authorities. Work thus done will never have to be done over again. As often as questions arise upon which you are to form an opinion, pursue the same course, be equally thorough; in a short time you will have passed over much territory, will have definite and correct views upon a vast



Old library interior c. 1877
Source: Bentley Historical Library

variety of the subjects of the law and of those every day questions which come to a lawyer. More than this, in ten years you will come to be giants in the profession. If not then regarded as eminent, you will as surely become leading lawyers as your lives are spared.

Gentlemen, I am using no illusory words, but giving expression to convictions which will be verified by every lawyer whose experience or success is not quite exceptional. You should understand, however, that very much depends upon your being first familiar with elementary principles. Without this foundation is well laid, you will go blundering through the examination of questions, and be quite unable to determine whether you stand on firm ground or not. Occasionally you may get on through a case safely by the aid alone of reported decisions; but to rely solely on decided questions having analogy to those you have in hand will be found to give uncertain results.

Want of agreement between the facts and circumstances of different cases not unfrequently destroys the force of the authorities on which the practitioner relies. It is far better to train the mind to ascend to elementary principles readily by becoming familiar with them. Nine times out of ten I would rather consult the text-books than reports in reaching conclusions. And yet, I trust I shall not be understood as undervaluing the importance of being well posted in adjudicated cases. They embody the wisdom of the best legal minds, exhibit the best processes of reasoning, and illuminate the entire range of juridical subjects. What I would say is that the best thing is to know the principles of the science and the next best thing to know what are the decisions; but both will make you masters of the law.

Let me here say a few words which may be of service to you as to the methods of investigating questions and the manner of presenting them. A case is placed in your hands by a client, who puts you in possession of the facts and gives you to understand what is his dilemma. The case seems to present many perplexing features; the mind fails to grasp the questions. It will be found that different questions of the same case are generally neighbors, so allied that when the key is found which disposes of the principal one the others will give you little trouble. When your case is prepared, you are to take it before the court, perhaps, and there exhibit your views. If you feel embarrassed, fearing that you may not

be able to do yourself and your case justice, it is a good omen of success. It shows just this – that you have both pride and ambition, incentives which will insure the necessary effort, sooner or later if you keep on, to crown your life with repeated triumphs.

Now, underlying every case are principles by the aid of which it may be determined with almost mathematical accuracy. If you will first put the case into propositions, taking care to make a right statement of them, it will be found that often the propositions will suggest to the mind the principle underlying the questions of the case and lead to demonstration. In other words, questions will be greatly advanced by right methods of investigation and by stating them clearly, for the manner of putting a question has much influence on the mind in reaching conclusions. State the facts clearly and methodically. If you entertain doubts whether the Court comprehends your statement of them, you are not prepared to go forward with any confidence. You will feel that your arguments will not be fully appreciated if the Court is not fully possessed of the facts. Stop and inquire, if necessary, for many cases are lost by an imperfect or confused statement and want of understanding of the elements on which rights must turn, viz: the facts. You must understand them and make the Court understand them.

When you are through with the statement give your points and propositions at once, directly and forcibly. Put them in logical order. Study to do so. Order is God's first law. This done, you will have placed the case before the Court so that you will be understood and appreciated at every step, and you may regard your cause more than half argued, if not more than half won. Avoid all circumlocution – come at once to your points, if you have any; the Court will gladly excuse you if you have none. Advance to your argument in the most direct way, with the best language at your command; and whenever you are satisfied that your views are before the Court, be kind enough to the Court to stop. It is the best way to be appreciated by the Judge. Don't involve the points or your argument in so much verbiage that the Court will lose sight of them. Advance at once into the domain of proposition and argument. Intellectual blows, and not declamation or rhetoric, is what aids the conclusions of the Court.

Don't talk a long introduction, nor any at all, unless you are graced with the genius of oratory. Fifteen minutes of dull introduction will weary a judge more

than an hour devoted to sound argument; for during the fifteen minutes there is nothing for the mind to act on – it's as tedious as waiting for a pot to boil or for the arrival of a train of cars. Fine oratory is always to be coveted, but Cicero summed up the whole art of eloquence in these few words, "To speak to the purpose, to speak clearly and distinctly, to speak gracefully." I wish every lawyer understood and realized the importance of those words "To speak to the purpose."

To be able thus to speak you must understand your subject and all that belongs to it. Your reputation will be likely to depend more on your practical knowledge and ability to solve the questions arising out of business affairs than on your graces of oratory. Many lawyers become eminent who seldom or never enter the courts as advocates. Their reputation rests upon their mastery of some specialty among the subjects of legal science, or, it may be, of the general subjects of the law. Oratory, like poetry and musical talent, is mainly Heaven's gift. But the more substantial things of life are done in prose. The milestones of the law, the monuments and pyramids of juridical science, have been erected and builded up not by gifted oratory but by those thoughtful men who have dwelt among books in which are treasured the history, philosophy and elements of legal science.

Within what limitations lawyers may properly exercise the functions of their profession has not unfrequently been the subject of criticism. Clearly there are limits, but to define those limits would be difficult. Wherever there is no special reason to decline, a lawyer not only may, but should, take up for and represent any and all classes whom he believes have rights to be asserted or defended. It will not do to say that a bad man must have a dishonest or corrupt case. The man who has a doubtful case is entitled to be represented in that forum where the doubt is to be determined. So that if a party has rights, or if there are doubts if he has not, there is no professional limitation which will afford just cause for reproach in taking a retainer and advocating the case.

On the other hand, the professional man cannot expect to escape arraignment before the bar of public opinion, nor the judgment of public sentiment, who dishonors himself and his calling by scheming with a client to defeat or prevent justice by reckless advocacy

against law and right, or by resorting to mere technicality, because it will advance his client's interests, if it will at the same time perpetrate a wrong. Do not sacrifice your own self-respect, your impulse to be just, nor your conscience, to serve any client, no matter who he may be and no matter what fees you might receive for a mean or dishonorable act. No client has a right to exact such service from his attorney, and he who promptly rejects all such requisitions will gain the support and respect which right doing always brings.

The first few years which follow your advent into the profession will be the best time to become familiar with English and American history, and to become conversant with the customs, governments and constitutions out of which have been developed our system of laws; to acquire more fully a knowledge of the structure of jurisprudence, and to re-read and digest those principles and elements which Blackstone and Kent have so richly unfolded and, not least, to become familiar with those leading cases which are land-marks in the history of the law.

It is not my purpose to indicate the course of reading likely to be most advantageous so much as to speak of the importance of reading something, reading well and thoroughly, and according to some advantageous plan. All work, mental and physical, demands method and regulated habits to achieve the best results. System keeps work going and is the balance wheel of motion. Men need guidance and self-control as much as a clock or watch requires a balance to regulate the beats. Such are the compensating laws of the human mind that no uncertain rewards attend thought rightly directed and wisely employed. Inasmuch as native mental powers differ, results will differ; but to each is given whatsoever he hath and on this must he build.

If a man has ordinary powers of mind, there is no occasion for the slightest discouragement in exploring the labyrinths of the law. Genius may take to itself favoring gales and golden treasures where ordinary natures see but storm and servility. Still, if the right spirit possess a man, whether he has genius or lacks it, he may rise in the teeth of all sorts of adverse circumstances in every branch of renown. With some it may not be with lightning rapidity; yet, under the influence of master strokes, the work will be accomplished. Dull

students frequently become the soundest thinkers and acquire the greatest strength. The fact that one realizes the necessity of effort often induces mental application that insures the victory, while to trust to genius as often paralyzes effort and invites failure.

There are few persons who do not at times feel restless over latent powers which a life, rightly employed and guided, would develop. "The shadow of incompleteness ever rests upon man; his life is always partially hidden from himself; whatever is known comes by gradations; his gifts, his knowledge, and his wisdom." Did it never occur to you that there are people who think very little? There are such people; they seem quite comfortable without thinking. Every day observation exhibits such characters, those who live on spoon-meat and never get beyond it. My advice to such is to abandon all ideas of the law.

Thinking is one of the essentials of a lawyer. To him mental food is as necessary as food to the body – "he must think to live." His mind must be ever progressive, ever attaining, never satisfied, content but never con-

tented. To properly perform your professional functions it is not enough that you know simply the rules and maxims of the books. There is involved the obligation of understanding the rational grounds on which they rest: out of what features of government, modified forms of society, statutes and usages they have originated. This is necessary to give you the mastery at every step and turn of legal discussion.

It is well to remember too that much of the common law reaches back to times of extremely arbitrary and austere views, both in social life and government – to those periods in history when the image of justice was rude or but dimly seen. Its rules and maxims are supposed to rest upon reason. But in the light of enlarged common sense and juster views, exceptions have been found and many old ideas have been discarded. Statutes and decisions will continue to make changes in the future as in the past, so that it will not do to conclude that all you have learned as law is either absolute perfection or as unchangeable as the laws of the Medes and Persians. By how many things could be illustrated



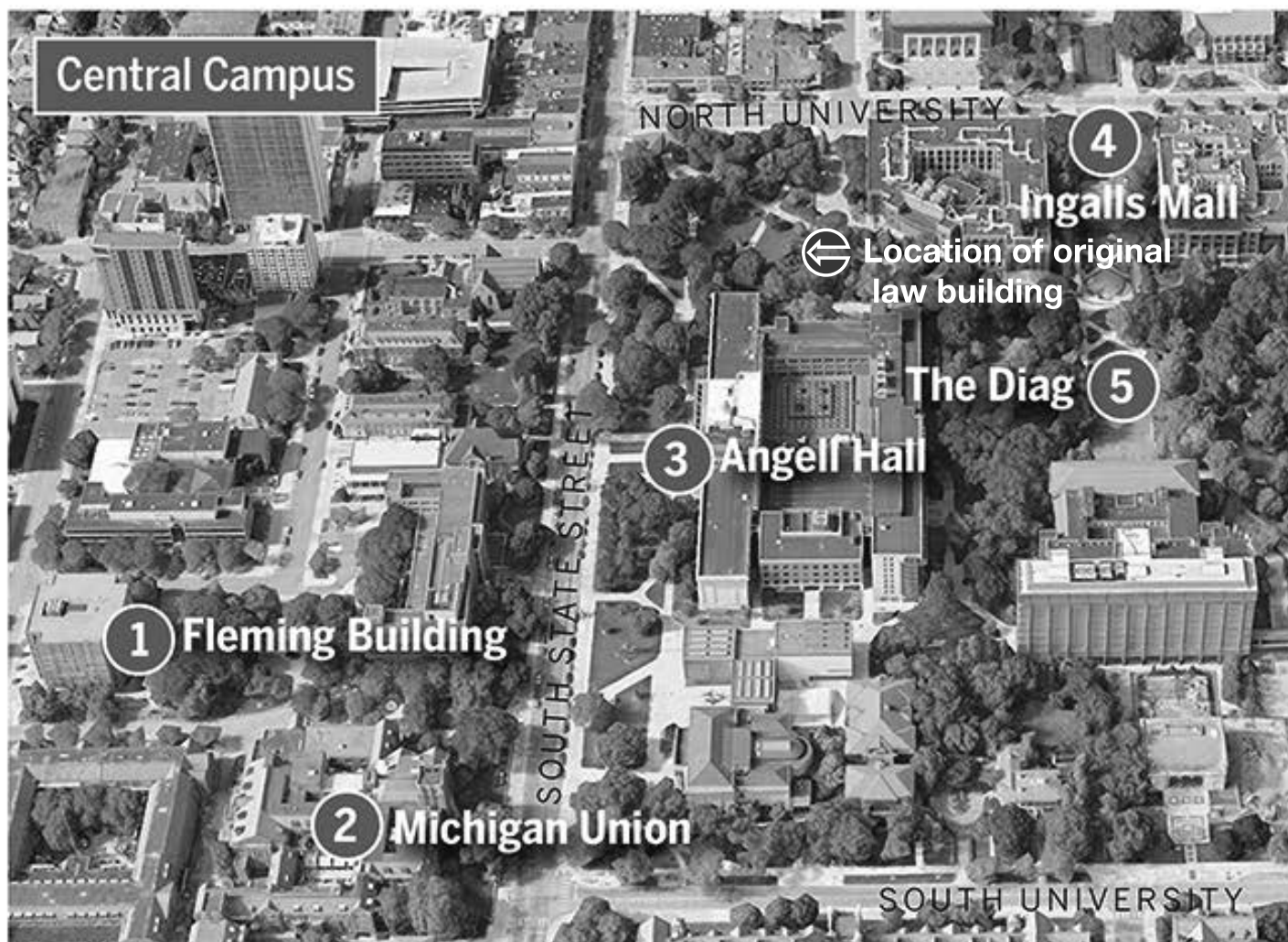
Looking south along State Street sometime between 1880 and 1893. Source: Bentley Historical Library

the inconsistencies of, and changes which have occurred in, the law.

As germane to this subject permit me, by way of illustration, to notice a statement from a recent lecture of Mayor Hall to the law students of the New York University that “half of Puffendorf is now obsolete; large portions of Petersdorf’s abridgment have become mere curiosity or illustration, and whole chapters of a ‘Starkie on Evidence’ are also obsolete. A recent edition of Blackstone’s Commentaries, edited by an English barrister, exhibits the obsolete portions of the original in brackets, and all additions and amendments to the text in quotation marks.” While we venerate the Common Law and regard it as eminently the embodiment of human wisdom and that the law should remain as it ever has, a conservative science, it is nevertheless justly

subject to such modifications as are demanded by the altered conditions of the world and of the emancipatory ideas of the age. For then, and then only, can the law be made properly to touch the rights, obligations and relations of persons in social and business affairs.

There are many of the old rules which still prevail that, to many people, never indicated the perfection of human wisdom nor a just regard for the rights of the citizen. Take by way of illustration the rule that a statutory enactment which the lawmaking power provides shall take immediate effect and operates upon everybody and upon every right touched by it from the moment of its approval, notwithstanding the absolute impossibility that one in ten thousand can know of the terms or even the existence of the law for weeks and months after its passage. I was never astute enough to



Source: Steve Culver and The University Record—Bicentennial Office: Apple Maps

appreciate the perfection of human wisdom which is supposed to have originated and perpetuated that rule.

Again, courts instruct juries in civil cases to give their verdict according to the preponderance of evidence; and yet the twelve jurors must agree – a majority cannot render a verdict. It is no assumption to say that a majority verdict would better indicate the preponderance of evidence, and at the same time be more consistent with the court's instruction. If we go into the courts, where questions of law and sometimes questions of fact are reviewed by the judges, a majority determine the finding and pronounce the judgment. The majority rule is right for judges; and it may be asked, why is not the same rule the proper one for juries in civil cases where the preponderance of evidence controls.

And, again, I notice the fact, which the Common Law still holds, that there are many legal rights belonging to men quite superior to those which appertain to women; women are held under many disabilities not imposed upon men – features of the law which are mainly unreasonable and unjust. Legislation is gradually reaching and remedying the unreasonable things of the old law. Michigan has gone so far that women in some respects have more control over and greater power in the disposition of their property than is allowed to men.

It is affirmed, in the address to which I have alluded, that “despite old adages, royal roads to learning have been found,” and that “competitive authorship, the triumphs of common sense over technicality, the repeated traversing of legal highways, the aggregated wisdom of several centuries, the attrition of statutes against the common law, the abstract authority of decision, have made the student of 1870 in advance, by almost an age, of the student of 1830.” Here is most aptly and forcibly expressed not only the march of the law and the processes of reforms, but the advantages possessed by the student of today over the student of forty years ago. But I doubt if it has been proved that there have been found “royal roads to learning” or to a sound legal education.

It is believed that the student of today must pursue substantially as laborious and painstaking courses of study as in former times. Law books have multiplied, and statutes have been enacted that have cleared away much of ancient subtlety. And the acquisition of knowledge has thereby been relieved of much obscurity. The

forms of the law have been rendered more practical, better adapted to present wants, and stronger light has been reflected upon the subjects of the law.

But it is no assumption to say that in proportion as human pursuits, new methods, deviations from the ways of our ancestors, and new books are multiplied, the mind must take wider range to grasp all the enlarged fields of thought and investigation. If the student of today studies Bracton, Coke and Bacon less, he must study Story, Bishop, Redfield, and a multitude of other treatises, more. While John Doe and Richard Roe may have disappeared from the courts with much that was fictitious, as well as much of technicality and subtlety, principles remain to be mastered.

The tonage of thought and mental work necessary to reach distinction in the profession, rendered imperative in exploring what is new and much that is old, is in the aggregate quite equal to that required at any former period. Do not understand me as saying that there is any difficulty in getting admitted to the bar. Three to six months' study, with a clever committee of examination and an indulgent judge, affords not unfrequently, if not a royal road, yet an easy one into the ranks of the profession. That is one thing, while to become learned in the law is quite another.

It is stated in the “United States Jurist” that there have been published in this country during 1870 fifty-one volumes of Reports – how many other law books is not stated. And it is a noticeable fact that one hundred and thirty-two of the decisions contained in those reports have been, by some of the courts, unfavorably criticized, and several of them wholly set aside as authoritative decisions. It is safe, then, to say that the lawyer who in these days of multiplied books keeps tolerably well posted in the decisions of the courts and attentively peruses the works upon special elementary and practical topics so rapidly accumulating, must possess unbounded industry, and can hardly be said to have an easier task than had the student of fifty years ago.

Before concluding, let me remark that you go among professional men, where sound sense and, what a Yankee calls gumption, are prime qualities, materials that you will find every-day use for. Again, as a general rule, you will find lawyers as honest as the average of mankind, notwithstanding the calumnies cast upon them.

You will also find as little jealousy and hard feeling in their ranks as among any class in the world. None are more ready to award distinction and honor to whomsoever they are due; none more heartily despise petty intrigue and chicanery; and none are more honorably ambitious for fame. Of course you will find scamps in the profession – the wheat and the tares grow together in this world – but as a class lawyers are faithful to their trusts and obligations. And whenever you hear a person railing, generally, against lawyers, doctors, ministers, or any other respectable class of men, my advice is to put that person down as a knave – he will cheat you if ever you give him an opportunity.

The most important business concerns will often be committed to your management. The most confidential and delicate affairs will be communicated to you, demanding the most abiding good faith and the highest integrity.

Into a profession imposing such conditions, demanding such foundations, involving the acquisition of such knowledge, requiring such integrity, furnishing such rewards, and exacting such quenchless energies do the members whom I address enter. When you have crossed the threshold and entered upon the broad domain of practice, it will be your duty to disarm criticism and maintain the distinction and honor that belongs to your calling. Like Lord Hardwick, aim by your abili-

ties and virtues to confer more honor on the rank and dignity of your profession than you derive from being members of it.

As you go out from the law school with diplomas that declare your qualifications to go to the bar, do not consider that they herald your standing as lawyers; this, your brethren of the profession will determine with just judgment, and beyond your power to set aside – except by the course of your lives, or by your acquirements and accomplishments, and by your energy, you shall in time give them reason to reverse that judgment.

Broader views of your work and of your fellow-workers will open before you. You will come to have juster estimates of men, more enlarged and higher conceptions of life's duties, and of your own responsibilities. Be not discouraged. Follow the star of hope, and remember that to every cloud there is a silver lining.

In conclusion, you have my sincere wish – you will carry with you from this place the sincere wish of the distinguished gentlemen comprising the Faculty of Law – that your impulses may ever respond to the dictates of integrity and impartiality, and that you may, one and all, be lifted into the fullest light of legal learning.

—March 29, 1871

Historical Display at the Courthouse

The Clerk's Office, in coordination with the Western District of Michigan Historical Society, has assembled a display area on the third floor of the Gerald R. Ford Federal Building and Courthouse dedicated to the history of the District Court family. The display, just outside of the Clerk's Office, showcases the judicial officers, prosecutors, defenders, and probation and court staff responsible for administering justice in the Western District of Michigan.



Tracking Down Important Historical Documents: Lincoln's Nomination and Appointment of Solomon L. Withey

By David J. Gass

Abraham Lincoln appointed our first district judge, Solomon L. Withey, on March 11, 1863, at the mid-point of the Civil War – a remarkable confluence of historic events and figures. Until recently, our court did not know if the documents nominating and appointing Judge Withey still existed. Chief Judge Robert Jonker wanted to find out. This prompted Michelle Benham, the district court's Chief Deputy Clerk, to try her hand at some detective work in hopes of locating them.

Michelle's quest for these documents met with a number of initial disappointments and dead ends. She knew from prior research that the Chicago Archives, the primary facility for storing records of the Western District of Michigan, did not have the documents nominating and appointing our first district judge. So she had to look elsewhere.

Michelle began her search by contacting Judge Withey's great great grandson, Lee Withey. Mr. Withey, a Florida resident, was known to the staff and has provided a wealth of information about Solomon Withey over the years. Michelle knew that Lee had an extensive collection of documents and a website about his great great grandfather. Sadly, he too was missing the nomination and appointment documents.

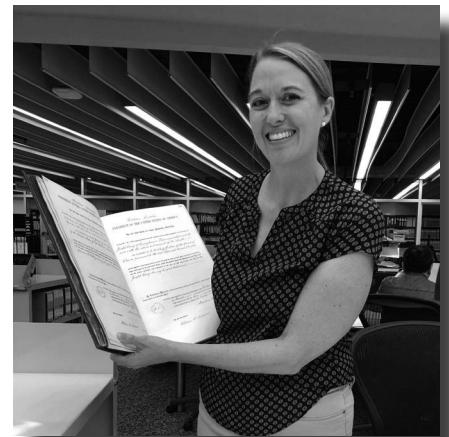
Michelle's further research disclosed that Western Michigan was one of only two new districts established during Lincoln's Presidency, the other being the District of Columbia. She learned that President Lincoln had appointed three judges to the District of Columbia on March 11, 1863, the same day that he appointed Judge Withey. This led Michelle to contact the D.C. district court to see if it had records on the appointment of its judges, thinking that if the D.C. district court had copies of their judges' documents, she might learn of another repository storing the ones regarding Withey. While the D.C. Court had its judges' documents, it was unfortunately not aware of the location of ours.

Undeterred, Michelle returned to the Chicago archives seeking new leads. An intern responded, but

could not locate the appointment document. Michelle persisted and inquired once again. This time, a seasoned staff person responded with several leads, including the Lincoln Presidential Library in Springfield, Illinois.

Michelle contacted the Lincoln Library. Within an hour of sending the email, an employee responded with an electronic copy of not only Judge Withey's appointment document issued by the President, but also copies of the two nominations of Judge Withey, each signed by Lincoln.

Michelle discovered that the original appointment document is stored at the National Archives' facility in College Park, Maryland and is available for public view. On September 18, 2018, she visited that facility and held that document. (See photo.) The original nomination documents signed by Lincoln are preserved at the National Archives in Washington D.C., but they are not available to the public.



It is interesting, and somewhat unusual, that Judge Withey received two separate nominations from President Lincoln. Why that happened has been a topic of conversation for years. Judge Withey was first nominated by Lincoln on February 26, 1863, which was at the very end of the 37th Congress (the session ended March 3, 1863). This nomination was referred to committee and reported on Feb. 27, 1863 - but the confirmation vote was never taken. With a war of unprecedented scope raging around them, our guess is that other pressing business took priority through the end of the session. Then, at the beginning of the 38th Congress (March 4, 1863), Withey had to be officially renominated. The Senate

Judiciary Committee reviewed the nomination and reported it. This time, the Senate confirmed the nomination – on March 11, 1863.

Our thanks to sleuth Michelle Benham for her persistence and hard work in tracking down these important historical documents. The documents are reprinted below.

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Abraham Lincoln,
PRESIDENT OF THE UNITED STATES OF AMERICA.

To all who shall see these Presents, Greeting:

KNOW YE, That reposing special trust and confidence in the wisdom, uprightness, and learning, of *Solomon L. Withey, of Michigan,* I have nominated, and, by and with the advice and consent of the Senate, —

DO APPOINT him to be Judge of the District Court of the United States for the Western District of Michigan;

and do authorize and empower him to execute and fulfil the duties of that office, according to the Constitution and Laws of the said United States, **AND TO HAVE AND TO HOLD** the said Office, with all the powers, privileges, and emoluments to the same of right appertaining, unto him, the said

Solomon L. Withey, during his good behaviour. —

In Testimony Whereof, I have caused these Letters to be made Patent, and the Seal of the United States to be hereunto affixed.



GIVEN under my hand, at the city of Washington, the *Eleventh* day of *March* —, in the year of our Lord one thousand eight hundred and *Sixty-three* —, and, of the Independence of the United States of America, the *Eighty-seventh*.

Abraham Lincoln

By the President:

William H. Seward,

Secretary of State.

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Executive Mansion,
 Washington, 26. February. 1863.
 To the Senate
 of the United States

I nominate Solomon
 L. Withey, of Michigan, to be
 Judge of the District Court
 of the United States for the
 Western District of Michigan.
 Abraham Lincoln

No. 246

37 Cong. Ex
 3 Sep

Nomination
 of Solomon L. Withey to be
 Judge of the Dist Court
 of the U. States for the
 Western Dist. of Michigan

1863. Feb. 26. Read & referred
 to the Com. on Mil. Affrs &c.

" Feb. 27. Reported.

106

Executive Mansion.

Washington, 10. March. 1863.

To the Senate
of the United States:

I nominate Solomon L.
Withey, of Michigan, to be
Judge of the District Court
of the United States for
the Western District of Mi-
chigan.

Abraham Lincoln

No. 106.

U. S. Senate }
Sp Session } Ex

Nomination
of Solomon L. Withey to be
Judge of the District Court
of the United States for
the Western District of
Michigan.

1863. Mar 10. Read & referred
to the Com. on the Judiciary

" Mar 11 Reported & confirmed

The Historical Society for the United States District Court for the Western District of Michigan Membership Application

2018 Annual Dues

Student (\$15)\$15 x__ = \$____
 Individual (\$25)\$25 x__ = \$____
 Contributing (\$100)\$100 x__ = \$____

2018 Founding Membership Categories

Pillar (\$300)\$300 x__ = \$____
 Sustaining (\$500)\$500 x__ = \$____
 Patron (\$1,000)\$1,000 x__ = \$____
 Grand Patron (\$2,500)\$2,500 x__ = \$____
 Benefactor (\$5,000)\$5,000 x__ = \$____

Subtotal = \$____

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The annual membership year runs from November 1 through October 31.

Membership contributions are cumulative. *E.g.*, a member who makes contributions eventually totaling \$2,500 becomes a Life Member.

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Individual Member's Name: _____

Contributing Member's Name: _____

Founding Member's Name: _____

Contact person if different from Contributing or Founding Member

Name: _____

Address: _____

Email Address: _____

Telephone: _____ Fax Number: _____ Amount Enclosed: _____

Please make checks payable to: *The Historical Society for the USDC, WD of MI*

Mail the application, check and completed questionnaire (next page) to:

The Historical Society for the USDC, WD of MI

110 Michigan Street, NW, Room 399, Grand Rapids, MI 49503-2313

Contributions are tax deductible within the limits of the law.

Please indicate if this is a gift membership or if it is a special contribution.

Amount _____

(Name of donor, intended honoree, memorial, etc.)

MEMBERSHIP QUESTIONNAIRE
(submit with check and application form)

Dear New Member:

Please let us know of your interests and skills and whether you would be willing to share those with the Historical Society. Help us by completing this short questionnaire.

Name: _____

Firm name, Employer name, or Organization represented: _____

Special interests or experience in the field of history, local history or legal history: _____

Suggestions for programs, projects, or activities for the Historical Society: _____

Please check all the following that interest you:

- ☐ Writing articles for the Historical Society newsletter
- ☐ Layout and/or production of a newsletter
- ☐ Annual Meeting (planning and production)
- ☐ Oral History Project
- ☐ Research in specific legal history areas
- ☐ Fund development
- ☐ Membership Drive
- ☐ Archival Collection and Preservation
- ☐ Legal Issues relating to archival and oral history collections (copyright, ownership, etc.)
- ☐ Exhibit Preparation
- ☐ Small Group Presentations to Adults
- ☐ Small Group Presentations in Schools
- ☐ Other (Please describe) _____

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