

The Cassopolis courthouse (now demolished) where the raiders from Kentucky and their captives appeared before the authorities in August 1847. (Photo from the collection of the Cass District Library, Historical Branch)



A Stop on the Long Road to Freedom

30th Michigan Legal Milestone Highlights Kentucky Raid

By Naseem Stecker

THE FREEDOM ROAD DEDICATION CEREMONY

Freedom Road, about the Kentucky Raid, will be the State Bar's 30th legal milestone. A dedication ceremony will be held at 11 a.m. on Tuesday, August 16, at Southwestern Michigan College, 58900 Cherry Grove Road in Dowagiac. A bronze plaque detailing the events related to the Kentucky Raid will be unveiled. This marker will be permanently installed on the south side of the 1899 courthouse in Cassopolis. This building is located close to the original courthouse (now demolished) where the Kentucky raiders and their captives surrendered to court authorities in 1847. Speakers at the ceremony, which will take place at the auditorium in Southwestern Michigan College's Lyons Building, will be:

- Honorable Dennis W. Archer, Chairman, Dickinson Wright; former Mayor of the City of Detroit; and Immediate Past President of the American Bar Association. Mr. Archer grew up in Cass County and is from Cassopolis.
- Nancy J. Diehl, the president of the State Bar of Michigan, will serve as the master of ceremonies.
- Senator Ron Jelinek, a lifelong resident of Berrien County.
- Roosevelt Thomas, a prominent Dowagiac attorney.
- Cordell Jones, a Marcellus attorney and descendant of William Jones, a Quaker who took an active role in the Underground Railroad and the Kentucky Raid.
- Dr. Michelle Johnson of the Freedom Trail Commission.
- Debian Marty, Associate Professor, California State University Monterey Bay and a descendant of Quakers Ishmael and Mariam (Marmon) Lee.

Lunch will be served after the dedication. Attendees will also have an opportunity to tour an exhibit at an adjoining museum that will focus on the Underground Railroad and the Kentucky Raid.

In the 1830s, southwest Michigan was a haven for blacks, both free and escaped slaves, and Quakers opposed to slavery. Southern slave owners who rode in seeking to recapture runaway blacks met resistance from peace-loving people who were willing to take up arms to confront them, and to risk their own lives and fortunes. These communities also turned to the legal system to secure freedom for the runaways. While some of these episodes of popular resistance are sharply etched in historical records and markers, others are all but forgotten today.

One such incident, the Kentucky Raid on rural Cass County, occurred in August 1847 in the vicinity of Cassopolis and nearby Vandalia, where two important lines of the Underground Railroad merged. According to Barbara and Grafton Cook, local historians and lifelong southwest Michigan residents, slaves fleeing through Indiana and Illinois came through Cass County. Those seeking refuge in Canada, where slavery was illegal, were directed east by the Underground Railroad—a network that provided food, shelter, employment, and help to people looking for

the road to freedom. “Can you furnish entertainment for myself and one other person?” was said to be the query used by Underground Railroad “conductors” seeking shelter for their “passengers.”

The events that transpired that August 158 years ago are the subject of the State Bar of Michigan’s 30th legal milestone—a program that highlights important cases, events, and personalities in our state’s legal heritage. David Chardavoyne, an adjunct professor at Wayne State University Law School, who has researched and written about the legal aspects of the Kentucky raids, says that what’s significant about the history of the Cassopolis area as it relates to the anti-slavery movement is the fact that, “It is an example of a courageous solution to a dilemma faced by ordinary citizens in the North who opposed slavery but also revered the Constitution. Should they obey their consciences or the law? Should they put their lives and fortunes on the line to save and protect their neighbors who were former slaves? The people in Cassopolis, like those in Marshall, South Bend, and a few other places, were willing to risk everything for their consciences and their neighbors.”

Historical accounts of the raid generally paint the following picture: About 20 to 30 heavily armed men from Kentucky seeking to recapture escaped slaves attacked Quaker farms in Cass County and detained nine fugitives. Residents of the area—Free Blacks and Quakers—surrounded the raiders, and angry threats were exchanged. In an attempt to avert violence, the Quakers in the crowd convinced the raiders to go to Cassopolis, the county seat, for a legal decision. Once in Cassopolis, the Kentuckians were indicted for kidnapping and assault and battery, based on the testimony of the black fugitives.

The right to testify in court against white offenders was not accorded to blacks elsewhere in the nation until after the passage of the 14th and 15th amendments in 1868 and 1870 respectively. In Cass County, they were also allowed among other things, the right to bail, the right to make use of the writ of habeas corpus, the right to sue and be sued, and the right to trial by jury. While the southerners had bills of sale, they did not have a certified copy of the Kentucky statutes



The 24th Michigan Legal Milestone dedicated in Harbor Beach, August 1996, involved the placement of the marker outside the home of U.S. Supreme Court Justice Frank Murphy and commemorated his dissent in the Korematsu case during the World War II internment of Japanese Americans. Left to right: David Harrington, Dr. William Anderson, Dorothy Kunisada, Thomas Kienbaum (former SBM president) and special guest Fred Korematsu, Brigid Murphy (sister in law of Frank Murphy); Hon. James Lincoln and David Hunter. Mr. Korematsu passed away earlier this year.

ABOUT THE MICHIGAN LEGAL MILESTONES

The State Bar inaugurated the Michigan Legal Milestones program in 1986, based on an idea from a former SBM president, George Roumell. The aim is to educate the public about the law and the legal process, and to remind people of the unique role that lawyers play. It also gives the Bar an opportunity to join forces with affiliated local bars, and to reach out to other community groups and organizations to involve them in the process. This is done through the placement of plaques to commemorate important cases and events in Michigan’s rich legal history.

Currently, the State Bar’s Public Outreach Committee, under the chairmanship of Miles Postema, is responsible for overseeing this program, which won an unsolicited Award of Merit from the Historical Society of Michigan in 1989. In April 1992, The Public Relations Society of America presented the State Bar with a first place Crystal Award for outstanding community service for the Michigan Legal Milestones program.

Jeffrey Paulsen, a Bloomfield Hills attorney from Dykema Gossett PLLC has been involved with the planning of almost 20 milestones. He is coordinating Freedom Road and says that over the years, milestone candidates have been suggested by many groups, including local bar associations, State Bar Sections, individual lawyers and judges, and even by those outside the profession. Members of the Public Outreach Committee review these suggestions, considering if the subject matter, person, place, or event would make an appropriate milestone topic. [See sidebar list of milestones to date.]

Paulsen notes that the strength of the program lies not only in the enthusiasm and volunteer commitment of the attorneys participating, but also with the strong involvement of Michigan communities and organizations. “While the subject matter and events being recognized by Michigan Legal Milestones often involve tumultuous events in Michigan’s legal history, and sometimes involve continuing debate as to the facts and outcome of the events, the Milestone program has been a win-win cooperative program and continues to generate an enormous amount of goodwill towards the State Bar and lawyers across the State of Michigan.”

showing slavery was legal. The Berrien Court Commissioner Ebenezer McIlvain, who heard the case, ruled against them on that technicality and ordered the release of the fugitives. A group of 45, including the nine fugitives, then escaped to Canada. The Berrien Commissioner McIlvain, who secretly belonged to the Underground Railroad, was later found not to have jurisdiction.

“The Cassopolis Outrage,” as newspapers in Kentucky labeled it, infuriated southern slave owners. Seven Quakers were sued in U.S. District Court in Detroit for the value of the escapees. The trial ended in a hung jury, but facing retrial, two of the defendants, according to original court documents, paid about \$1,300 for damages and court costs in

the final settlement. Interestingly, the defendants’ counsel included Detroit attorney Jacob Merritt Howard, who in 1854 would help found the Republican Party, and as a U.S. Senator during the Civil War, drafted the Thirteenth Amendment abolishing slavery.

Debian Marty, an associate professor and chair of the Philosophy Department at California State University Monterey Bay, is a direct descendant of Ishmael Lee—one of the Quakers who were sued. “The economic impact was devastating for the defendants,” she said. “For some, the legal debt took years to pay off; others lost their farms and moved away to Iowa and Illinois. Nevertheless, all of the defendants eventually recovered financially.”

Professor Marty also observes that the Quakers simultaneously used the law and then subverted it. “They utilized the law in order to have the Kentuckians charged with attempting kidnapping and assault and battery. They also took advantage of the more liberal laws of Cass County that enabled black people to testify against whites. Via this law, the local authorities were able to remove the captives from the Kentuckians’ custody, since the captives were witnesses in the kidnapping and assault/battery cases! The Quakers also encouraged one of the captives, William Merriman, to file charges against the Kentuckians and for one of the local black Underground Railroad participants, Henry Shepard, to do so as well. Finally, the Quakers

M I C H I G A N LEGAL MILESTONES

1. Ossian Sweet Trial—In 1925, Dr. Sweet was arrested and charged with murder after a member of a white mob attacked his home and was shot and killed. Clarence Darrow defended Dr. Sweet, who was acquitted. Dedicated and placed inside the Frank Murphy Hall of Justice in Detroit, MI on May 2, 1986.

2. Baseball’s Reserve Clause—A 1914 decision in a Grand Rapids courtroom “bound a player to his team for as long as the team chose to keep him.” Dedicated and placed at the Grand Rapids Art Museum in 1986. Rededicated and placed outside on June 20, 1996 at Old Kent Park (West Michigan Whitecaps Minor League Baseball stadium) in Grand Rapids, MI.

3. Cooley Law Office—The career of Thomas M. Cooley is recalled in this milestone. Dedicated and placed outside at Thomas M. Cooley’s first law office on Maumee Street in Adrian, MI, 1986.

4. Roosevelt-Newett Libel Trial—A much-celebrated 1913 trial involving former President Theodore Roosevelt (he prevailed as plaintiff, but was awarded 10 cents in damages). Dedicated and placed at the Marquette County Courthouse in Marquette, MI in May of 1986.

5. Justice William Fletcher—The first chief justice of the Michigan Supreme Court. Dedicated and placed outside on the University of Michigan campus. Placed in Felch Park (intersection of Fletcher and Washington streets) in front of the Power Center for the Performing Arts in Ann Arbor, MI on September 9, 1987.

6. Sojourner Truth—Her life as a crusader for justice is recalled in the city she called home. Dedicated and placed at the Battle Creek Hall of Justice in 1987. Rededicated inside at the First United Methodist Church in Battle Creek, MI. Placed at the Calhoun County Justice Center in Battle Creek, MI on May 29, 1997.

7. Augustus Woodward—Brilliant but eccentric, the first chief justice of the Michigan territorial court is recalled at the site of his law office. Dedicated and placed inside in the Millender Center Atrium of the Omni Hotel (by the “up” escalator), corner of Randolph and Jefferson streets in Detroit, MI on May 3, 1988.

8. Public Access to Public Water—Legal affirmation of the public’s right to the recreational use of rivers and streams began with a trout fishing trip on the Pine River in 1925. Dedicated and placed outside on June 7,

The Michigan Legal Milestone Program recognizes significant legal cases in Michigan’s history, and places bronze plaques at featured sites to document the historical significance.

1988 at the Peterson Bridge Landing’s canoe access (at the intersection of M-37 and M-55) along the Pine River, west of Cadillac, MI.

9. Ten Hours or No Sawdust—Michigan’s largest labor strike of the 19th century, although unsuccessful, paved the way for later workers’ rights legislation. Dedicated and placed outside in Morley Plaza in Saginaw, MI on August 31, 1988.

10. 1961–62 Constitutional Convention—The Michigan Constitution we live under today was written at the Lansing Civic Arena. Dedicated and placed inside the Lansing Civic Arena (corner of Walnut and Washtenaw streets) on May 1, 1989 in Lansing, MI.

11. Eva Belles’ Vote—An early but important victory for women’s suffrage was won in Flint. Dedicated and placed inside the lobby at the Genesee County Courthouse in Flint, MI on July 11, 1990.

12. One Person, One Vote—In one of the famous U.S. Supreme Court redistricting cases of the early 1960s, labor leader Gus Scholle assured that rapidly growing Oakland County would have proportional representation. Dedicated and placed outside the Oakland County Courthouse’s South Plaza in Pontiac, MI on August 29, 1990.

13. Improving Justice—The idea for the American Judicature Society was born in Manistee during a boat ride on Lake Michigan, shared by founder Herbert Harley and benefactor Charles Ruggles on a hot summer day. Dedicated and placed on a boulder in a corner of the Manistee City Marina on River Street in downtown Manistee, MI on May 30, 1991.

14. The King’s Grant—One of the most celebrated cases of the 19th century involving a dispute over land granted by French King Louis XV in 1750. Dedicated and placed at Brady Park (along Water St.) at the site of Fort Brady and Fort Repentigny in Sault Ste. Marie, MI on July 16, 1991.

15. The Uninvited Ear—Judge Damon Keith’s decision in a 1971 case upheld the right of Americans to be free from unreasonable government intrusion. Dedicated and placed inside the Penobscot Building on December 18, 1991 in Detroit, MI.

16. Laughing Whitefish—The Michigan Supreme Court in 1889 recognized the legal validity of Native American tribal laws and customs. Dedicated and placed at Michigan Iron Industry Museum in Negaunee, MI on August 25, 1992.

were instrumental in helping the captives and their families/friends escape from the raid. This subversion of the law was complemented by Commissioner McIlvaine's refusal to accept any evidence from the Kentuckians as sufficient to prove their claims of ownership."

An earlier raid in Marshall, Michigan has been extensively written about. In that incident, members of the Crosswhite family were seized. They managed to escape to Canada, but prominent Marshall residents were sued for the value of the slaves. A third incident that year also originated in Cass County. These events served to add more fuel to the fire, and southerners were able to influence Congress to adopt the Fugitive Slave Act of 1850, making it easier for owners to recover

runaways. Stricter penalties were imposed for interference in recapture. Michigan passed a Personal Liberty Act in 1855 to neutralize the federal law, and the 13th Amendment to the U.S. Constitution, ratified soon after the Civil War, made slavery illegal in the United States in 1865.

In terms of national importance, it may be difficult to distinguish the events that happened in Cassopolis from those in Marshall, but Chardavoyne, points out that "while the Marshall incident is well known and recognized by memorials, the Cassopolis incidents are nearly forgotten. I think, that is the importance of choosing Cassopolis for the milestone—not to claim any precedence over Marshall, but to place Cassopolis on equal

footing. The other point is that, although some escaped slaves lived in Marshall, Cassopolis was, in 1847, a community of white and black people, free born and escaped slaves, that was as integrated as the times allowed, and somewhat more, and still retains much of that character."

Professor Marty believes that the Kentucky Raid is significant because "it draws our attention back in time to this remarkable community. In the midst of great suffering and injustice, the residents of Cass County, Michigan formed an interracial alliance and established an antislavery refuge. Their experiences have much to teach us in the 21st century about the balance of trust and justice in race relations."

17. Protecting the Impaired—An act of the Michigan legislature providing for forced sterilization of the mentally impaired was held unconstitutional by the Michigan Supreme Court. Dedicated and placed outside at the Old Lapeer County Courthouse on April 29, 1993.

18. Rose of Aberlone—The classic contracts case involving Hiram Walker & Sons, Rose the cow, and the principle of rescission based on mutual mistake. Dedicated and placed outside in Kellogg Park in Plymouth, MI in September of 1993.

19. Emelia Schaub—Michigan's first woman elected prosecutor. The first woman in the United States to successfully defend a murder trial, and the woman responsible to a great degree for protecting the rights and tribal existence of Native Americans in northwest Michigan. Dedicated and placed outside at the Leelanau County Courthouse in Leland, MI on May 26, 1994.

20. Mount Clemens Pottery—Michigan's Justice Frank Murphy in 1946 authored an important labor law decision of the United States Supreme Court interpreting the Fair Labor Standards Act, arising out of a case involving employee working time. Dedicated on September 1, 1994 at the Riverfront Gazebo by the Municipal Building in Mt. Clemens, MI. Placed at the Macomb County courthouse in Mt. Clemens, MI (along the wall by the statue of General Clemens).

21. Pond's Defense—Michigan Supreme Court Justice James Campbell authored an important decision about self-defense and defense of others in 1860 in *Pond v People*, and overturned a lower court decision finding Augustus Pond, an Upper Peninsula fisherman, guilty of manslaughter. Dedicated and placed outside City Hall in Mackinac Island, MI on June 10, 1995.

22. Ending Jim Crow—Keith's Theatre in Grand Rapids discriminated against patrons on the basis of race (Jim Crow), but that practice was found to violate Michigan's Constitution by the Michigan Supreme Court in a major civil rights decision. Dedicated outside on September 8, 1995 in the Old Kent Bank Plaza in downtown Grand Rapids, MI. Placed in the wall along the street beneath the Old Kent Bank clock tower in Grand Rapids.

23. Conveying Michigan—Much of the land in southwest Michigan was conveyed out of the White Pigeon Land Office, built in 1831 and still standing. Dedicated on April 30, 1996 and placed inside the land office (on the south side of US-12) in downtown White Pigeon, MI. The building is now a museum operated by the St. Joseph County Historical Society.

24. Murphy's Dissent—Michigan's U.S. Supreme Court Justice Frank Murphy wrote an impassioned dissent in *Korematsu*, protesting the decision

to uphold exclusion orders imposed upon persons of Japanese descent during World War II. Dedicated and placed in front of the Frank Murphy home in Harbor Beach, MI on August 16, 1996.

25. Striking Racial Covenants—The United States Supreme Court rejected racial restrictive covenants that would have prevented Orsel and Minnie McGhee and their family from living where they chose to in Detroit. Dedicated inside on August 12, 1997 and placed outside the Museum of African American History in Detroit, MI.

26. Milo Radulovich and the Fall of McCarthyism—In 1953, two Michigan attorneys, the Hon. Kenneth N. Sanborn and Charles C. Lockwood, assisted Milo Radulovich, a resident of Dexter Michigan at the time, in his fight against the United States Air Force. The Air Force attempted to strip Mr. Radulovich of his treasured commission for associating with his allegedly subversive father and sister. Taking the case pro bono, his attorneys prevailed and the Air Force reinstated Mr. Radulovich's commission. Dedicated and placed outside at the Detroit College of Law at the Michigan State University Building in East Lansing, MI on September 2, 1998.

27. Judge Henry Hart's No Passing Zone Pennants "Committee of One"—Retired 75th District Court Judge Hart of Midland set a personal goal to improve highway safety in Michigan and led a "one-man campaign" for the uniform placement of yellow "No Passing Zone" signs on the left side of Michigan roads. The signs, shaped in the form of a pennant, have decreased the number of traffic accidents in no passing zones and is credited with saving thousands of lives in Michigan. Dedicated on May 24, 1999 at the Midland County Courthouse in Midland, MI. The permanent plaque will be displayed in the lobby of the courthouse.

28. Mary Coleman: Pioneer, Advocate, Woman—Mary Coleman, the first female Michigan Supreme Court Justice and Chief Justice, made a lasting impact on Michigan's judicial system. Her success in the profession, her devotion to juvenile justice issues, and her work on the advancement of court reorganization are just a few examples of this remarkable woman's accomplishments. Dedicated on October 20, 2000 at the McCamy Plaza Hotel in Battle Creek, MI. The permanent plaque will be displayed at the Battle Creek courthouse.

29. Gerald R. Ford: The 38th President of the United States—Before becoming the country's 38th President, Gerald R. Ford, Jr. was a Michigan lawyer practicing in Grand Rapids. Throughout his years in the U.S. House of Representatives, Ford was a member of the Grand Rapids Bar Association and maintained close ties to the Grand Rapids legal community. He took the oath of office as the 38th President on August 9, 1974, shortly after President Nixon resigned. Dedicated on September 20, 2004 at the Gerald R. Ford Museum in Grand Rapids.