



The Court Legacy

The Historical Society for the United States District Court
for the Eastern District of Michigan ©2012

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Special Annual Meeting Issue

In Search of Court History... A Conversation with David Gardner Chardavoyne

[Ed. Note: It is customary for the issue preceding the mid November Annual Meeting to be closely related to the subject of the Meeting. This year, the speaker at the November 16, 2012 Annual Meeting is David Gardner Chardavoyne, author of *The United States District Court for the Eastern District of Michigan, People, Law and Politics*. There follows an interview with Mr. Chardavoyne, conducted by Judith K. Christie, Executive Director of the Court Historical Society and interviewer for many years for the Court's oral history project.]

Ms. Christie (JKC): You went to the University of Michigan as an undergrad?

Mr. Chardavoyne (DGC): Yes.

JKC: What did you major in?

DGC: English.

JKC: Why?

DGC: Because I had been in engineering and I hated it. I knew I could do English with my eyes closed, so I did that.

JKC: Was there a lot of writing involved in your English studies?

DGC: Yes, there were actually a couple of classes that I took that involved quite a bit of writing. I probably wasn't a very good writer at that time.

When I began law school, you know, legal writing is one of the first classes you take. But, really, for discipline and style, I would have to thank my former partner, Theodore Souris, a former Michigan Supreme Court Justice who was at Bodman, Longley and Dahling. I was with him from 1978 until he left sometime in the 1990s, and he was the kind of person who could not read anything without editing it.

He would read the Michigan Supreme Court reports and be editing in the margins in pencil, put commas in, and say this needs to be reorganized. The reports had already been published, and we would sit and argue about words, about punctuation for a half an hour. When I see myself making revision after revision, I know I am paying for that. But he very much, by his constant discipline, turned me into a much better writer.

JKC: Have you also been a reader?

DGC: Oh, yes, I'm, a compulsive reader. I read everywhere, all the time.

JKC: Do you have a favorite kind of reading?

DGC: It varies from time to time. I do a lot of history, a lot of mysteries, but, really, anything, whether it's the back of a menu at a restaurant or really anything. I have so many books in the house, my wife complains all the time. When I went for a high school reunion, one of the people that I didn't know very well said to me, "I remember you, you always walked around with your nose in a book."

JKC: You had a clerkship here at the District Court. Who was it with and how did you get the job?

DGC: It was with Judge James Harvey, and I got it almost by default. It's hard to believe now in the 21st Century where every Judge gets hundreds of applications for clerkships but I think he had five in 1976.

Because it was Flint and Bay City and nobody wanted to go there. And I was one of the last people in my group of friends who got a job. I drove up to Bay City, first, and met with the law clerks there. They had a meeting and decided I was okay, and sent me back down to Flint where I met the Judge and was hired.



Judge Avern Cohn and author David Gardner Chardavoyne at publication ceremony for the Court history on March 15, 2012.

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So it was all done in one day, even though I wasn't starting for a couple months, three months, I think, I had a job.

JKC: How long were you with Judge Harvey?

DGC: Two years.

JKC: What do you think you learned from him?

DGC: I always tell him that the first thing I learned is I wasn't as smart as I thought I was. He was a different kind of Judge. He had been a Congressman for 14 years, and before that, he had been Mayor of Saginaw. And he looked at things differently, I think, than other Judges. He felt he wasn't as strong in knowing the law as maybe he ought to be, but that was never really a problem. But he taught me about working with people, working with someone who is a Federal Judge, being responsible, getting things done.

You know, he gave us a lot of responsibility. We would write Opinions and he would say yes or no. And if he said no, we went back and re did it until he said yes. He did not do very much writing of his own, but he knew what he wanted. He knew how he wanted the case to come out and we did that. Usually, he didn't tell us how he wanted it to come out, because we did almost everything on motions, and we had no hearings on the motions.

And so we would simply put papers in front of him, we'd write an Opinion, go to him, he would say yes or no, and that would be the story. We had a very close relationship because he was the only Judge there. So rather than having lunch with another Judge, he had lunch with the law clerks every day that he was in chambers. All the law clerks would go out with him to lunch, and we would sit around and he would tell us stories about Congress and about Jerry Ford and all these things. And so really it was a very close relationship.

JKC: At some point, you began writing non legally, so to speak. When did that start?

DGC: It was 1999, I think. The **Michigan Bar Journal** had been doing a series of articles on early Michigan lawyers, and I had been doing some research that ended up in my first book. And so I wrote an article about George Alexander O'Keefe, who was one of the first Irish lawyers in Michigan and the first Irish Judge and was a very colorful guy. He had been involved in the Simmons murder trial. And I called up the person who I was told was the editor for the Journal and he said, "Oh, usually, we have to twist people's arms to get these articles. You're giving us one. That's really different!" That was published in the Bar Journal.

And then I started working on the first book, the capital punishment book.¹ And just kept writing and writing and writing. And then it was to the point where it was no longer an article. It didn't start out being a book.

That wasn't the idea. It was to write an article, get it published someplace, and I thought there would be a lot of material already published that I could take and put together. That turned out not to be the case. It turned out there was very little ever had been written about the case, and the stuff that had been written was wrong.

So I did a lot more research, but eventually it got to be about 16,000 words and it was too long to be anything but the beginning of a book. So when I got to a point where it was a little bit bigger, I was told by Judge Cohn's secretary that he was the person to talk to, that he would be interested in reading what I had. And so I walked up to him at a function at Wayne State Law School and said, "Judge, I've been told that I should show this to you." And his very typical reply was, "Well, first, I want you to do this other research project." And I did and I gave him a memo on it, and he said, "Okay, let me see what you've got." And it was then that my writing career seriously began because he, at some point, showed it to the people at the Wayne State Press, and they thought it was worthwhile, and I went on from there.

JKC: Do you have any other books that have been published?

DGC: Not a whole book, but there was a book done by the Ohio University Press called *The History of Michigan Law*.² And it is a collection of articles by various scholars. I'm the only one who wasn't a professor, but it was about the territorial period which is the period I had covered in my first book, so they thought that was a good fit. So there's a chapter there, and then this book. But, also, I have, I don't know, eight, nine, ten articles that have been in **The Court Legacy**. And that really started with the whole question of where did the Court sit when this building [*the Theodore Levin U. S. Courthouse*] was being built. That was the first one I did.

JKC: How did you get the job to write the history of the Court?

DGC: Judge Cohn and I had been talking about this for a long time. I had had cases in front of him, but I never really had any personal dealings with him. Then we started having lunch together and talking about a history probably around 2001, 2002. But there was never really any money for it. There was never really any enthusiasm. He kept pushing and pushing and pushing, as he does. Eventually, I was on the Board of the Court Historical Society and we were talking about it. And finally, it got to the point where somebody said let's do it, found some money and I had contacts at Wayne State Press because that's where my first book was published and we started talking to them. And so it was: let's do it. And a committee was formed to investigate what to do, who should do it and so on.

And I was put on the committee very reluctantly because I knew that I wanted to write it, and so I said I'll be on it, but as soon as we talk about who will do it, I'm leaving, which is what I did.

And as I understand it, Bill Winsten was really ramrodding this. There was one other suggestion and that was by Paul Finkelman, who is a nationally known legal scholar whom I know quite well from other work I've done. The History of Michigan Law was his book along with Marty Hershock from U of M, Dearborn. And he suggested doing a book similar to The History of Michigan Law, as a series of articles by different authors. And I argued that that's not the book we wanted, but really it was up to the committee. I can do a whole book, I said, and it would be better than having eight people or ten people do different articles. You get a more complete picture.

JKC: Now that you've finished it, how was writing this book different from writing your other book?

DGC: Two things. One, when I did my first book, I had most of the research done before I started writing. There were some things that came along later, but, for the most part, I had the whole story in my head. This new book has almost twice as many words as that first book.

RRATA

Judges Avern Cohn and Paul D. Borman have brought to the attention of your editors an error in endnote 38 of the October 2012 issue of *The Court Legacy*. We apologize to the family of Judge Wade Hampton McCree, Jr., and to all those who knew him personally, and to our readership for this breach of historical accuracy. Judge McCree was, of course, the first African American Judge of the Court, nominated by President John F. Kennedy in 1961.

The archival digital copy of this issue of *The Court Legacy* will be corrected so that endnote 38 reads as follows:

38. Cook was the third African American to sit on the bench of the Eastern District of Michigan. The first was Wade Hampton McCree, Jr., nominated by President John F. Kennedy (Democrat) in 1961; the second, Damon Jerome Keith, nominated by President Lyndon B. Johnson (Democrat) in 1967. Federal Judges Biographical Database.

But the other thing about it that really struck me was that my prior work, even the chapter of the whole territorial period which is only 32 years, was very focused on specific events, or a specific person, and you get all the information you can find anywhere in the world about that person and you write the story. But this new book covers 200 years of history, much broader, much more to cover, and you couldn't spend all that time on one particular subject.

And so it's a very different approach I had to have. I had to leave things out that I would have liked to have put in, but there just wasn't space. And so it's writing at more of a distance, not getting totally immersed in one person or one event, and that was very difficult for me to figure out. I knew that this was going to be the fact, but how to do it, I didn't really know – so this book was more difficult from a structural standpoint than the first one. The first one sort of wrote itself.

I knew what I wanted to write about and putting it into chapters was easy. This one was very, very difficult for me. That was, I think, the main problem I had with this book. It was not the research. It was not the actual writing in terms of putting words together. It was figuring out how to structure it. The biggest problem was we had 60 Judges we had to cover. And to do a full biography on 60 Judges, well, there's your book, without doing anything about cases or courtrooms or anything.

And my feeling right from the very beginning was that there are really four major themes the book had to have; the Judges, of course, the courthouses and the cases, and also what was happening outside the court.

And so I had to figure out some way of incorporating this mass of material about the Judges. And the majority of those Judges became Judges after 1960. I think I counted at one point there were 18 Judges by 1960 and then there were 42 after that. And so I was afraid that the last several chapters were simply going to be Judge biographies and nothing more. Also, this book was much more difficult to put into chapters because often there was no clear turning point. My instinct always is to do things chronologically. I start out by putting events in a timeline. So I have a chronology that runs 15 pages. And once I do that, I start seeing the stories. I start seeing the patterns. Even so, there are some things that overlap that you really can't say that this period ended in 1900 or 1910.

The first period is easier because Judge Wilkins died in 1870, and so that was easy. He had been the Judge for so long. It's easy to say that's the end of that part of the beginning. In the 20th century, it's hard to say well, should you do Prohibition, should the Depression be a separate part or not – that was very, very difficult and

I went back and forth on that one over and over again. It was just hard to deal with the Judges.

JKC: Yes. So how did you decide, though, on your approach? You didn't take an academic approach. You didn't take a totally journalistic approach; you combined them.

DGC: That was just natural. That's how I write. That's what I'm interested in. You know, the subtitle of the book, "People, Law and Politics." I started out wanting to write about people, because, for me, those are the good stories. I think I am more of a story teller, although, obviously, with my legal background, the stories of the law are also important, but people were more important.

Law, in a sense in the way the laws affected the Court was important. So there's some stuff in there about jurisdiction, the changes in jurisdiction, and certain, specific laws; the Fugitive Slave Act is a good example.

And then politics, not in the sense of a Judge ruling one way or another because of politics. That's not what I meant at all. And not in the sense that some of my friends have where everything is politics. Deciding where you're going for dinner is politics. No, I do not mean that at all. What I mean is just basic power play, whether it's Republican, Democrat or just rich, poor, whatever it is, plays such a large part in everything else that goes on in the Court. Is there going to be a Court?

Where is the Court supposed to be? What cities can it sit in? Who gets to be a Judge? Where do the Judges sit? All these things are political, and they played a tremendous part in the history of the Court. So I actually spent quite a bit of time talking about things like that. How did Bay City get a Court? It's a long, tortuous story that apparently still does not have an end.

JKC: What were some of the places you visited to find material for the book?

DGC: Well, we have some very good archives here in southeastern Michigan.

- The Burton Collection at the Detroit Public Library. A great many of the pictures in the book come from there. They have a tremendous photographic archive.
- The Bentley Library in Ann Arbor. There are several Judges who have papers there, but the most prominent is Judge Arthur J. Tuttle who has 30, 40, 50 boxes full of every piece of paper he ever touched in his life, including his baptismal certificate. So I spent quite a lot of time going through the papers there. There are a couple of pictures in the book that are from there.
- The Library of Michigan in Lansing.

- The Reuther.³ There were a couple of things at the Reuther. One was dealing with Judge Levin and how he became appointed Judge, because Judge Cohn had put a lot papers in there. There are also a lot of pictures gathered from the Reuther because they were given negatives by the **Detroit News and Free Press** and so on.
- The *Midland Daily News*, all the pictures regarding Chebatoris are from their archives.
- The Ann Arbor Public Library had a lot of stuff on the Ann Arbor building.
- And, of course, the National Archives. Initially, the Great Lakes Division in Chicago – tremendous. I had spent time there doing other things, but for that project, I travelled there four, five times, days at a time, going through different things. They were always extremely helpful, always interested, but their budget cuts have been severe. The archives at College Park Maryland, which is where the State Department documents are – the State Department was in charge of court administration for a long time, so that's why a lot of papers were there. It's a huge, beautiful, new building, big windows, it's bright, it's airy, and it's modern – its security, they stop you before you get to the parking lot and they check you out. Whereas, in Chicago, you walk in off the street. And, clearly, they're getting a lot more funding in Maryland than Chicago is getting, but both places gave me very useful stuff.
- The Library of Congress. Some of the pictures dealing with the old courthouses came from the Library of Congress.
- I'm sure there are a few places that I'm not remembering right now, but a tremendous amount of my research I did online.

JKC: I was going to ask you about the Internet because that's a new resource.

DGC: Yes. When I did my first book, I didn't find very much at all on there. Maybe some basic background and so on. This time, there was just a tremendous amount of stuff. In particular, I found useful all the statistical information that the Administrative Office of the U. S. Courts has put together and various different compilations that they do, three or four different sets of statistical analysis every year. Those are mostly but not all online now. Of course, recently, they're only online.

It started back in the 1870s when Congress passed a law that each U.S. Attorney in each District had to report every year on the cases that had been filed in the Court. And so you have now annual reports from every District. The formats change from time to time, but they've been

pretty consistent. So you can tell how many diversity cases there were, how many cases dealing with this federal law or that federal law.

The only problem was that I discovered by looking at the actual docket books in Chicago that a lot of the statistics were just made up.

JKC: Really?

DGC: They'd say well, there were 125 Admiralty cases and you go through the dockets and there would be 25. They were just pumping up the numbers. Some years, clearly, they were just being lazy, they used the same numbers as the year before, and nobody seemed to notice. And I can only assume that nobody really cared.

So there were those reports going back to the 1870s, but those were harder to find because they're not all online. A great many of them are. There is a website at the University of Michigan Library online. There is a family foundation that has published tremendous amounts of obscure materials like that. But, even so, I had to go the Wayne State Law Library, the Detroit Public Library, and a couple other places just to get a complete picture, all the information.

And then, again, as I've said, the Administrative Office puts out different compilations every year that will show you things like how many jurors were used and how many days were judges actually in Court and so on. And all of this was attractive to me because it helped me sort out in my mind what the Court was really like in those days.

And in the back of my new book, there is a compilation of the number of cases filed each year in the Court since 1837. They're broken down in a couple ways. I could have put in five things like that. I figured no one would have an interest in it, but there are references to one of the tables in the book, things like how many cases filed per Judge over a long period of time. And how that differs from decade to decade. How many trials there are and the number, of course, is going down. How many jury trials? Almost none now. All those sorts of things give you an idea by raw data as to what the Court was really like. Whereas, so much of the other stuff you find is not just straightforward, it's anecdotal and turns out not to be absolutely correct.

JKC: So who was the most interesting Judge you found?

DGC: Arthur J. Tuttle, hands down. One, he left so much material that it's easy to come up with stories about him. But, two, he was always just this very vital guy. He grew up in rural Ingham County. He went to the University of Michigan, got his law degree. He was the local prosecuting attorney in Ingham County. He prosecuted people who had cheated the government during the Spanish American War.

Made a name for himself there. There's a story of him running down a railroad platform trying to get to the Governor to hand him a subpoena.

And he reminds me of Judge Cohn. Judge Cohn doesn't like me saying this because Judge Tuttle was very conservative, very reactionary, we would say today. Even in his day, they considered him to be very, very conservative. Obviously, Judge Cohn is not like that. But their personalities are very similar in that they have this tremendous energy and this tremendous curiosity about everything. And that's one thing that makes Judge Tuttle so fascinating.

Also, his sort of contradictory personality. On one hand he's known as the guy who gave out two death sentences, and one of them was carried out, and he refused to set them aside. On the other hand, he was known in World War I, in particular, as being a Judge who just handed out horrendous sentences to people who were draft resistors or socialists or whatever. And once that was done, he would go behind the scenes and start working on getting their sentences shortened.

And he also had this program whereby if you were convicted of a crime, a bank robbery or whatever, came in front of him, went to jail, when you came out, he would find you a job.

He had two daughters and his wife died when they were quite young. Actually, before he became or just after he became a Judge. And he was, as I said, very traditionalist, very conservative, but both daughters went to law school. They had the first all woman law firm in Michigan.

There is so much about him – he could be very colorful in his writing. He always complained about he didn't have enough time to get things done. Particularly, of course, during prohibition when they went from 100 cases to 1000 cases almost overnight. He was still the only Judge, yet he found time to dictate ten page letters to the Supreme Court complaining about how busy he was – just so many things about him that make good stories.

JKC: Obviously, because he served so long, he left a real imprint on the Court.

DGC: He was the Court for many, many years. Even after other Judges were appointed, it's clear that Judge Tuttle was still in charge.

The building we're in right now, the Courthouse, was his initiative. The old building, which was on this site, was too small the day it was opened, and he knew it, and it got worse and worse and worse. He was constantly on the government to try to do something about it. Finally, he got them to agree to this new building. Even then, he was not happy because he said it needed two more

stories. It was too small. It was never going to be big enough and he knew there would be trouble having enough room for the Court.

Of course, in those days, the Bankruptcy Court was here, the U.S. Attorney's Office was here. All the federal offices were here or in the Custom House which was still being used down the street. And so he wrote these great letters complaining about this building and about how he didn't think the carpets were good enough, he wasn't happy about everything. And that's the way he got things done.

JKC: He also saved the historic courtroom.

DGC: He saved the historic courtroom, which I'm still going to claim should be the Tuttle courtroom. But, yes, he insisted upon it. There were two courtrooms in the old building; one was for him as a District Judge, one was for the old Circuit Judge. And I guess towards the end, he was using the Circuit Judge room. There are very few pictures of the District Judge courtroom. It was all dark walnut. Pretty nice looking, but I've never seen any complete pictures of it. He insisted that if there's going to be a new building, the government had to take apart the historic courtroom and put it back together again which was done, and he saved all that. He was a guy who got things the way he wanted them.

When they were planning to tear down the old building and build this Courthouse, they're building on the same location on the same block, obviously, they couldn't keep holding court here until the new building is built. And so the question arose as to where should we hold Court.

They took bids. and it was during the Depression and everyone in Detroit wanted to house the Court. The building across the street, which is now a parking lot, at that time was called the Recreation Building. It was a tall building full of pool tables, essentially, it was the world's biggest pool hall. The pool hall opened and it was set up to be a nice, healthy place for young men to go and have recreation and get their haircut and buy cigars and alcohol.

And so Judge Tuttle decided the easiest thing to do would be to move the Court across the street to the Recreation Building. And the other Judges – at that time, there were three or four other Judges, they hated the idea. it's a pool hall. You can't have Court in a pool hall. All kinds of people hang around there. And Tuttle was very clear, no, that's what we're doing and that's what happened. He was still in command. In the minority on this issue, it didn't matter, it wasn't a democracy.

JKC: You also brought in Court staff, and that hasn't been true in a lot of Court histories. You covered clerks of court, marshals, U.S. Attorneys, as part of the cast of characters.

DGC: I feel bad I didn't do more. I should have put more in about the federal defender program. There could have been more about the probation department, because it seems to me that the Court is made up of people and buildings and cases, but I always intended to talk about the other people who were the staff. I put in some, but the clerks were important. They're important people and they had some great stories about them.

They are sometimes stories you may not want to have in your book. But, for me, there was one story that I didn't anticipate that I had no knowledge of until I was online. I ran across an article from a newspaper in Nebraska about how Detroit now had the first Federal woman clerk of the Court.

JKC: Carrie Davison.

DGC: And I thought, wow, I didn't know about that. I don't know if anybody knows about that, and, apparently, nobody did. And so that became one of the focuses. The problem was there was so little about her that you could find out. We never did find any personnel records on her. We wrote to the St. Louis Depository, nothing. One of the problems was that for a lot of the time that she was the clerk or assistant clerk, because she had worked in the building and worked for the Court for actually a long time, her salary was paid with court fees. And so there were no payroll records. But her father had been clerk of the District Court since 1880s, I think. And when he died, Judge Swan decided that she had been the assistant clerk and, by golly, why wouldn't you make her clerk of the District Court.

Now it also happened at that time that because of the way the laws were in terms of jurisdiction, the District Court was, in terms of fees, less lucrative than the Circuit Court. The Circuit Court brought you a lot more money. And I think he also felt that, well, it's a District Court and can I find somebody else, can I find a man that wanted to do it? Well, there was a man, actually, in the Court who wanted it and that was Elmer Voorheis. But Carrie Davison was clerk for about six or seven years. And then when the Circuit Court went out of business in 1911, Voorheis at that point had been the Circuit Court clerk and became the District clerk. Carrie Davison went back to being assistant, and she stayed in that job through the 1920s and 1930s.

JKC: She was a very interesting part of the history of the Court.

DGC: That was my biggest surprise. She was, as far as we know, the first woman to be a clerk in any Federal Court.

JKC: If you had to sum up what you've learned in writing this book, what would you say?

DGC: It depends how you mean that. If I knew how much work it was going to be, I am not going to say I wouldn't have done it, I still would have done it, but I would have approached it much more cautiously. It was a tremendous amount of work. My family can tell you, I took over our dining room table, except for Thanksgivings when I had to clear it off, for three years.

I started by writing the biographies of the Judges, because it seemed to be a good place to start. Even though I knew probably more about this Court historically than most people, and we had all the articles in *The Court Legacy* as a basis. I think when I started it, I thought I'd take those articles and do some research and that would be the book. That's not the way it turned out.

Sitting in the dining room with a calculator trying to figure out all these statistics, most of which did not appear directly in the book but were a part of the analysis that I was doing. That took months of work.

And going to the various places, looking for stuff in College Park, Maryland. I had no idea what would be there. At least in Chicago, I knew the Court files would be there, although there were some things that we found that nobody anticipated, that they assumed they had lost, actually. We found a docket book that turned out that they had listed as lost. It had been lost in their archives. It just was a lot more work. And then, as I said, the structure was very difficult, and I'm still not totally satisfied with it. We have separate chapters for the Judge bios and then comes the rest of the story, which is fine, except I still don't like it, but that's what we had to do.

What I learned about the Court is that it is a sort of organic entity that changes over the years in some ways but doesn't change overall. Different people come, different people go. There's something that we call the Court that remains, although it's hard to point out exactly what we mean by that. We don't mean the buildings because the buildings change. The Judges come and go. Clerks come and go. The cases come and go, thankfully, some 600,000 cases over the years, but there's something organic that remains, despite all these temporary changes, there is an intangible thing called the Court.

nd Notes

1. *A Hanging in Detroit: Stephen Gifford Simmons and the Last Execution Under Michigan Law*. Wayne State University Press, 2003.
2. *The History of Michigan Law*, edited by Paul Finkelman and Martin Hershock, Ohio University Press, 2006.
3. The Walter P. Reuther Library of Labor and Urban Affairs, Wayne State University, Detroit, Michigan, <https://www.reuther.wayne.edu>.

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QUESTIONNAIRE

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

Legal practice area *(if applicable)*:

Special interests in the field of legal history:

Yes, I would like to assist and/or actively participate in the following of the Society's activities *(Check as many as may apply)*:

Writing articles for the Society newsletter

Conference planning

Oral history

Research in special topics in legal history

Fund development for the Society

Membership recruitment

Archival preservation

Exhibit preparation

Educational programs

Other *(please describe)*: _____

Suggestions for programs or projects:

THIS FORM MAY BE DUPLICATED AND SUBMITTED WITH YOUR MEMBERSHIP FEE

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Theodore Levin U.S. Courthouse
Detroit, Michigan 48226*

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