



Society Update

The Official Publication of the Michigan Supreme Court Historical Society

Fall 2019

Justices From the North: Michigan Supreme Court Justices with Ties to Northern Lower Michigan and the Upper Peninsula



Here are President Herstein's remarks:

“Given that this is a special event for us in Northern Michigan, I thought I would share a few comments about each of the Justices who had a significant relationship with Northern Michigan. I define Northern Michigan as West Branch and above for personal reasons—whenever our family head's Up North and we reach West Branch, we believe that we are finally in the Northern part of the State! This also allows me to include Justice Nelson Sharpe who practiced in West Branch. Most of the information in this talk is taken from the Society's *Michigan*

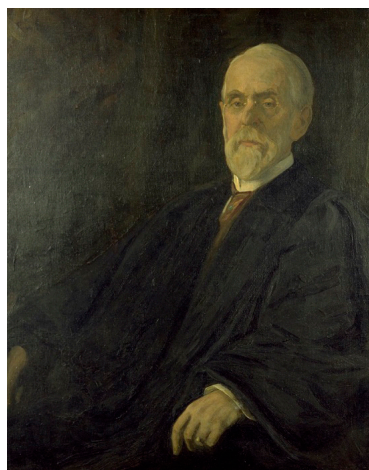
Supreme Court Historical Reference Guide, Second Edition, by David G. Chardavoyne with Paul Moreno, supplemented with a bit of internet research.

We start with one of my favorite Justices, **Claudius Buchanan Grant**, who had a fascinating career. He was born in Maine in 1835, attended the University of Michigan from 1855 to 1859 and taught and also served as principal at Ann Arbor High School for three years.

He served in the Union Army during the Civil War, in the 20th Michigan Infantry Regiment, which he helped form in 1862, becoming colonel in 1864 and serving until March 1865. This was a highly distinguished unit, but it suffered terrible casualties. A typical regiment started with about 1,000 men. Between 1862 and 1865, the 20th Michigan Volunteer Infantry Regiment lost 16 officers and 286 enlisted men killed, mortally wounded, or dead from disease

At the Society's October 15th Breakfast with the Michigan Supreme Court event in Traverse City, in honor of the location, President Herstein gave a talk on Michigan Supreme Court Justices who had meaningful ties of one kind or another to either Northern Lower Michigan (which he defined as West Branch and above) or Michigan's Upper Peninsula. He identified ten Justices whose career spanned almost the entire history of the court, starting with Justice Claudius Grant who began serving on the Court in 1890, and Justice Alton Davis who served in 2010.

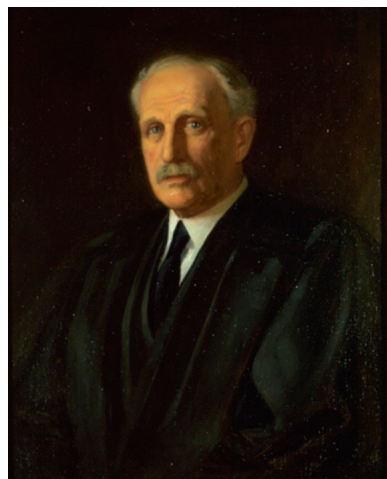
By the end of his talk, the attendees had identified two additional Justices with important ties to the Northern parts of the State. Printed below is an edited text of the talk with the addition of the two additional Justices. If you know of additional Justices who should be included in this group, let us know who and why, and we will share the information in our next Newsletter!



The official portrait of Claudius Grant, painted by Percy Ives.

A year later he became postmaster of Ann Arbor, served in the Michigan House of Representatives from 1871 to 1875, and was elected to the Board of Regents of the University of Michigan from 1872 until 1880. As regent, he led the effort to construct Alumni Memorial Hall at the University, which many of you know better as the home of the U of M Art Museum.

In the midst of all this activity, Grant moved to Houghton, Michigan, in 1873, still practicing law. Houghton was only incorporated as a village in 1861 and besides the Native American population, it was said to contain “only thieves, crooks [and] murderers”, but the year Grant moved there the Keweenaw Waterway opened, and by the 1880’s it had become a growing city. After serving as prosecuting attorney, in 1881 Grant became a judge for the 25th Circuit Court (Marquette and Menominee Counties), and from 1890 to 1909, Grant was twice elected to the Michigan Supreme Court, the first resident of the UP to serve on the Court.



The official portrait of Aaron McAlvay, painted by Edwin Murray McKay.

Our next justice is **Aaron V. McAlvay**. Born in Ann Arbor, he studied in both the Literature School and then the Law Department, receiving his bachelor of laws degree in 1869. After practicing for two years in Ann Arbor, he moved his family

– 302 total. In 1863, during the middle of the war, he married Caroline Felch, daughter of the former governor of Michigan, Alpheus Felch, was admitted to the Bar in 1866, and practiced law with his father-in-law.

A year later he became postmaster of Ann Arbor, served in

to Manistee, serving in a variety of positions including prosecuting attorney and supervisor. He served as a judge of the 19th Circuit Court (Lake, Manistee, and Osceloa Counties) in two different periods, and also taught at the UM law department from 1897–1903. He was elected to the Supreme Court and served from 1905 until his death in 1915. He is the author of the opinion in *People v. Beardsley* which is one of the cases that the Society has included among the 20 most significant decisions of our Court through 2000 (we plan to update that list soon). It is one of those cases that has all the ingredients of a modern television drama: illicit sex, drugs, and a difficult legal problem. In brief, Beardsley spent a weekend drinking with his paramour, Blanche Burns. At the end of their get-together, Blanche took an overdose of morphine, probably intending to commit suicide.

Although the intoxicated Beardsley attempted to prevent her from taking too much of the drug, he failed to get medical help until Blanche was already dead. Beardsley was convicted of manslaughter. The Michigan Supreme Court overturned the decision, holding that Beardsley had no legal duty that would support a finding of criminal negligence. The conduct of both parties was disreputable, said the Court, but it was voluntary and they both had ample experience in this type of behavior and the risks they were running.

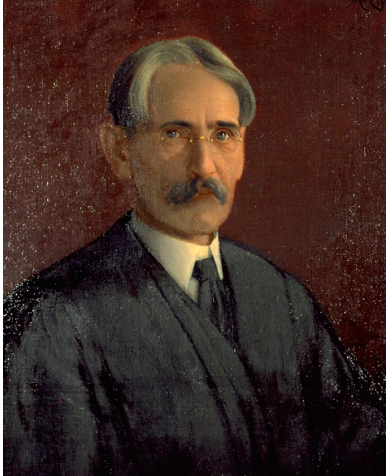


The official portrait of Nelson Sharpe, painted by Leopold Seyffret.

Our next Justice, **Nelson Sharpe**, was born in Canada in 1858, and educated there, but moved to West Branch at age 24. He published a newspaper and practiced law with his brother, became an American citizen, and was named the first judge of the Thirty-Fourth Circuit Court (Arenac, Crawford, Gladwin, Ogemaw, Otsego, and Roscommon Counties) from 1893 to 1919.

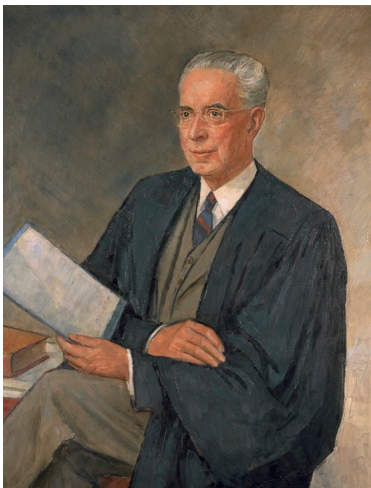
He was considered such an outstanding trial judge that he was appointed by the Governor when a vacancy on the Supreme Court arose, and was subsequently twice reelected to the Court. Sharpe wrote the opinion in *Bolden v Grand Rapids Operating Company*, another

of our 20 significant cases. The case revolved around a movie company's refusal to allow a black man to purchase a main floor ticket, insisting that a balcony seat be accepted instead. In that decision, the Court returned to the broad view of Michigan civil rights legislation that it had adopted in *Ferguson v Gies*, which contrary to the United States Supreme Court's *Plessey v Ferguson* doctrine of "separate but equal", had taken the view that equal meant equal.



The official portrait of Richard Flannigan, painted by John McClymont.

Justice **Richard C. Flannigan** was the first justice to be born in the UP, in Ontonagon. He grew up in Marquette, read law for four years, and spent a year at the UM Law Department, but left after one year due to lack of funds. After another year of reading law, he was admitted to the Bar, practicing in Marquette and then in Norway, near Iron Mountain. He was appointed in 1909 to the Twenty-Fifth Circuit Court, and presided over the celebrated case of *Theodore Roosevelt v George Newett*, a libel action brought by the former president in 1913 against the editor of an Ishpeming newspaper, the Iron Ore, who had reported that Roosevelt was "not infrequently" drunk. In the end, the editor published a retraction to resolve the case. Judge Flannigan was subsequently appointed to



The official portrait of Raymond Starr, painted by Roy Gamble.

the Michigan Supreme Court but died within six weeks of assuming the bench.

Raymond Starr was born in 1888 in Emmett County near the Straits of Mackinac. He received his law degree from the University of Michigan and went to Grand Rapids to practice, where he founded the Legal Aid Society. He was elected Attor-

ney General of the State in 1936, and was appointed to the Michigan Supreme Court in 1941 and was reelected, but accepted an appointment as a United States District Court judge in 1946.

John D. Voelker may be one of the best known of

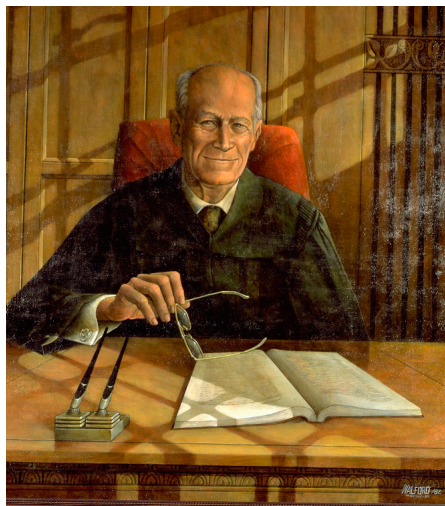


The official portrait of John Voelker, painted by Rod Cross.

Michigan's Supreme Court Justices, but under his pen name Robert Traver, which he used for his best-selling book *Anatomy of a Murder*. Born in 1903 in Ishpeming, he graduated from U of M law school, practiced for a time in Chicago, but ultimately became a county prosecutor in Marquette for seven terms. He ran for Congress in 1954 and lost, but Governor G. Mennen

("Soapy") Williams appointed Voelker to the Court. In his short term on the bench he authored, among other opinions, *People v. Hildabridle*, another one of our 20 significant cases. Although the case revolved around a nudist colony, it is essentially a decision about the undue use of police power. Given the subject matter, that Voelker was the author seemed entirely appropriate. In any event, the success of first the book and then the movie *Anatomy of a Murder* allowed Voelker to leave the Court to turn his attention back to living in the UP, fishing, and writing. In connection with that last interest, he wrote *Laughing Whitefish*, which demonstrated his interest in fair treatment of the Native American inhabitants of the State. The scholarship fund he created helped, among others, Chief Judge Allie Maldonado of the Little Traverse Bay Bands of Odawa Indians, who is with us this morning!

The third Justice born in the UP is **Paul L. Adams**. Another Michigan law graduate, Adams was mayor of Sault St. Marie from 1938 to 1942. After election to the U of M Board of Regents, Adams we appointed Attorney General by his law school friend Governor Williams. First appointed to the Court by Governor Swainson in 1962, he lost the vacancy election in 1962, but then successfully ran for a full term and rejoined the court in 1964. Adams participated in



The official portrait of Paul Adams, painted by Ron Walford.

tive. Born in 1910 in Menominee, he was the last justice not to attend law school. He read law under future



The official portrait of Michael O'Hara, artist unknown.

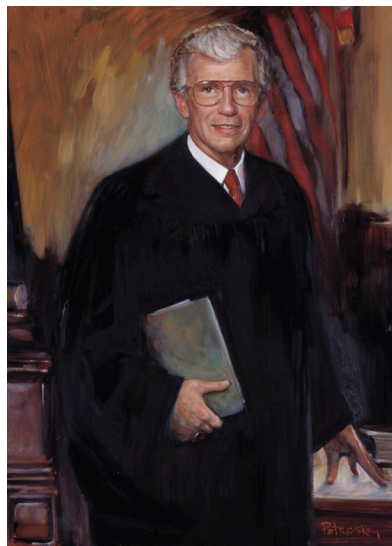
Commission. He lost two elections to the Supreme Court but was successful on his third attempt in 1962. He lost his reelection bid in 1968, but was appointed to the Michigan Court of Appeals where he served until his death.

James H. Brickley was born in Flint, Michigan, in 1928, and received his LLB from University of Detroit Mercy. He had a varied career, beginning with the FBI in New York, where in his spare time he earned an LLM from New York University. He returned to Michigan, practiced a bit in Detroit, was elected to City Council, served as chief assistant prosecuting attorney in Wayne County, was appointed U.S. Attorney for Eastern Michigan and then twice served as Lieutenant Governor, because in between he served for three

another of our significant cases (he was in the majority, but did not write the opinion) *O'Neill v Morse*, which held that an unborn person was a child for purposes of the wrongful death action.

Michael D. O'Hara is our fourth U.P. Na-

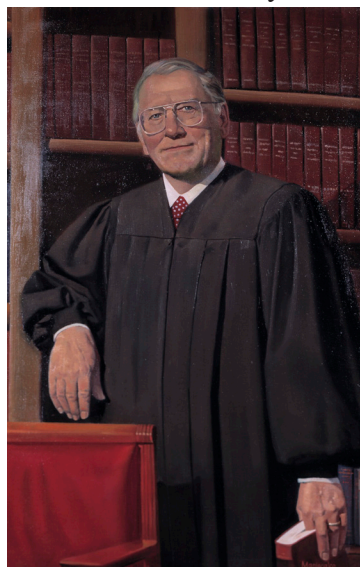
Michigan Supreme Court Justice Leland Carr. He went into private practice in Menominee and then served in the Marines during World War II. After the war he became an administrative law judge for the Michigan Unemployment Compensation



The official portrait of James Brickley, painted by Frederick Petroskey.

Traverse City. He was twice reelected to the Court before retiring in 1999.

Robert P. Griffin was another justice with connections to Traverse City. Born in 1923 in Detroit, he



The official portrait of Robert Griffin, painted by Joseph Maniscalco

ed to the U.S. Senate by Governor Romney in 1966. He was twice elected to serve in the Senate, ending in 1979. In 1986 he successfully ran for the Michigan Supreme Court and served until he lost a reelection bid in 1994.

With **Elizabeth ("Betty") Weaver**, we come to a Justice that many of you will remember well, as she served from 1995 until 2010. A Louisiana-native, she began her legal career in that state, but she moved to Michigan and was elected Leelenau County Probate Judge, where she served from 1974 to 1987, She was elected to the Michigan Court of Appeals in 1987, and

years as President of Eastern Michigan University in Ypsilanti. In December 1982 he was appointed to the Michigan Supreme Court by Governor Milliken shortly before the end of their terms in office. In 1984, Brickley married Joyce Braithwaite, who also worked for Governor Milliken, and he moved with her to



The official portrait of Betty Weaver, Our final Justice with painted by Frederick Petroskey.

Northern Michigan connections is **Alton Davis** of Grayling who, we are delighted to say is here with us today! I am sure that



to the Michigan Supreme Court in 1994. Her long career on the Court saw considerable controversy during her last several years; after she resigned from the Court, she told her side of the story in a lengthy book that she co-authored, published in 2013.

many of you are familiar with his distinguished career. A Detroit College of Law graduate, he was in private practice in Grayling, was a prosecuting attorney, and subsequently served as chief judge of the Forty-Sixth Judicial Circuit Court (Otsego, Crawford, and

Kalkaska Counties). After service on the Court of Appeals, Governor Granholm appointed him to the seat vacated by the resignation of Justice Weaver.

Following his time on the court, he returned to practice in Grayling.

I think you will all agree with me that this is a remarkable group, full of interesting people who have led fascinating lives, filled not only with judicial experience, but accomplishments in many fields of endeavor.

Thank you for your attention. I hope this gives you a taste for the heritage that the Michigan Supreme Court Historical Society is committed to commemorating. For those of you who are long-time members, thank you for your support. And for those of you who are new members, we warmly welcome your participation and enthusiasm for the history of our great state.

Society Annual Report to the Court



The Society's Annual Report to the Michigan Supreme Court on the state of our activities over the past year was delivered before the opening of the Court's 2019–2020 session on Wednesday, October 2. Society Vice President Lawrence P. Nolan (above right) delivered the report on behalf of the Society. He was accompanied at the session by the Board's newest directors Joseph Gavin (left) and former justice Michael F. Cavanagh (center). The report is a long-standing tradition of the Society, and an opportunity to share the details of our work with the current Court.



On October 24th, WMU Cooley Law School Professor Mark Cooney (right), on behalf of the Society, interviewed 100th Michigan Supreme Court Justice Clifford W. Taylor. The new oral histories are being filmed and will be added to our YouTube channel.

A Man Who Loved His Job: Michigan's First District Court Judge Ross Wilkins

By Susan Fairchild,
Society Board of Directors

Ross Wilkins loved his job as Michigan's First District Court Judge. He loved his job so much that he never missed a court session in 32 years of service. While that alone is impressive, it is merely one fact that characterizes both the man he was and his service to the Territory which became known as the State of Michigan.

Ross Wilkins was born in Pittsburgh, Pennsylvania, on February 18, 1799. He was born into an influential family. His father served in the Revolutionary War. His uncle was a U.S. Senator from Pennsylvania. Wilkins was a veteran of the War of 1812. Following his military service, he attended school and graduated from Dickinson College in 1816. He studied law and was admitted to the Allegheny County Bar. In 1820, at the age of 21, he was elected Prosecuting Attorney of Pittsburgh. He practiced law in the Pittsburgh area until 1832, when, with the help of a close family friendship with President Andrew Jackson, he was appointed to the three-member Michigan Territorial Supreme Court. Wilkins also served as a Pennsylvania State Representative and as a delegate to the convention that drafted the Michigan Constitution of 1835, and the two conventions held to accept the terms imposed on Michigan statehood by Congress.

Wilkins served as a Territorial Judge of Michigan for six years. On July 2, 1835, President Andrew Jackson nominated Wilkins to the newly-created

United States District Court for the District of Michigan. He received his commission on January 26, 1837, just hours after Michigan became the 23rd State in the Union. Wilkins was 38-years-old at the time of his appointment. Wilkins presided over the

Michigan District until February 1863, when the state was divided into two districts; the Eastern District of Michigan and the Western District of Michigan. Wilkins was assigned to the Eastern District of Michigan, where he presided until February 1870.¹

Ross Wilkins has been described as a colorful and charismatic judge. Handsome in appearance and graceful in demeanor. He established an excellent reputation among his colleagues in the legal profession. He was a respected orator and was described as "quick in perception, instant in judgment, clear and lucid in reasoning, concise and precise in statement of facts." It was well known among attorneys that when a case was finished, his decision was ready. He enjoyed, most of

all, his criminal docket. A contemporary once noted that "no mail robber, timber thief, embezzler of post offices, or government defaulter could hope to escape indictment, trial and certain conviction" in his court. An observer remarked that Wilkins was "careful and cautious in giving the prisoner at the Bar every possible protection and insuring a fair trial."

One of Judge Wilkins' most famous and highly publicized cases involved the trial of James Jesse Strang. Strang was an American religious leader, politician, and self-proclaimed monarch.² In 1844



The official portrait of Ross Wilkins, painted by Alvah Bradish. Courtesy of the U.S. District Court for the Eastern District of Michigan.

he claimed to have been appointed the successor of Joseph Smith as leader of the Church of Jesus Christ of Latter Day Saints. Strang proclaimed himself “King” as “God’s Viceroy on Earth.” After a dispute with other church leaders, Strang led a group of followers of the Mormon Church who had split from Brigham Young to Beaver Island in northern Lake Michigan. Strang and his followers established the city of St. James on the island’s northern coast. During his residency Strang made improvements to the island, including improvements in cultivation, roads, and housing – transforming a large area of the island from wilderness to a civilized outpost. However, certain of his actions, which included engaging in polygamy, caused conflict with the Catholic Irish fisherman on the mainland. Some of the confrontations were violent and the continuing problems between the gentiles and Strang’s followers on the island, along with Strang’s unconventional religious practices, came to the attention of President Millard Fillmore. President Fillmore ordered that Strang and his followers be charged by the U.S. Attorney in Detroit with counterfeiting, trespassing on public lands, stealing timber, and robbing the United States mail. The trial which began in 1851, became a matter of public attention. Newspaper reporters came from other cities to cover the trial. Over 100 witnesses were called to testify against the Mormons, citing their strong opposition to Mormon religious beliefs and practices. James Strang, an attorney himself, defended his actions alleging a campaign of persecution against his followers and the Mormon religion. Judge Wilkins was credited for his handling of the trial and for influencing the jury’s decision of acquittal, warning them against conviction based solely upon sectarian prejudice.

Wilkins was also recognized for his community activities. He was a devoted husband and the father of seven children. He was a lay Methodist preacher, who often gave sermons at local churches. He served as a member of the University of Michigan Board of Regents from 1837 to 1842. Wilkins was also a temperance leader and active in the Washingtonian Movement of the 1840s.³

Judge Wilkins resigned from the bench in late 1869 and served until February 1870. He was 70-years-old. For 32 years he had served as the single U.S. District Court judge in Michigan, without miss-

ing a single court session. During his time on the bench he witnessed the transformation of Michigan from a “sleepy frontier village to a major mercantile and industrial center.”⁴ He authored significant and precedent-setting decisions which today are found reported in the *Federal Register*. Judge Wilkins died in 1872, at the age of 72.

ENDNOTES

¹ Solomon L. Withey of Grand Rapids, was appointed on March 11, 1863, as the First U.S. District Court Judge, Western District of Michigan.

² Don Faber, *James Jesse Strang: The Rise and Fall of Michigan’s Mormon King*, University of Michigan Press (2016).

³ The Washingtonian Temperance Society was started in May 1840 by six Baltimore drinking buddies who decided to write and sign a pledge on April 5, 1840, stating that they would no longer consume alcohol. This six-person pledge began to turn into one of the largest movements in America. They called it the Washingtonian Society in honor of George Washington.

⁴ Historical information adapted from Philip Mason, *Ross Wilkins, Michigan’s First U.S. District Judge*, The Court Legacy, Newsletter of the Historical Society for the United States District Court for the Eastern District of Michigan (April 1993).

ABOUT THE AUTHOR ... Susan E. Fairchild is an Assistant U.S. Attorney in Detroit. She formerly served as the President of the Federal Bar Association and is currently the Secretary of the Society’s Board of Directors. She has served on the Society’s Board of Directors since 2015.

PORTRAITS OF JUSTICES is a series begun by Society President Emeritus Charles R. Rutherford in 2015 and written by members of the Society’s Board of Directors about the historic Michigan Supreme Court Justices.



MICHIGAN SUPREME COURT
HISTORICAL SOCIETY

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Mission Statement

The Michigan Supreme Court Historical Society, a non-profit 501(c)(3) corporation, collects, preserves, and displays documents, records, and memorabilia relating to the Michigan Supreme Court and the other Courts of Michigan, promotes the study of the history of Michigan's courts, and seeks to increase public awareness of Michigan's legal heritage. The Society sponsors and conducts historical research, provides speakers and educational materials for students, and sponsors and provides publications, portraits and memorials, special events, and projects consistent with its mission.

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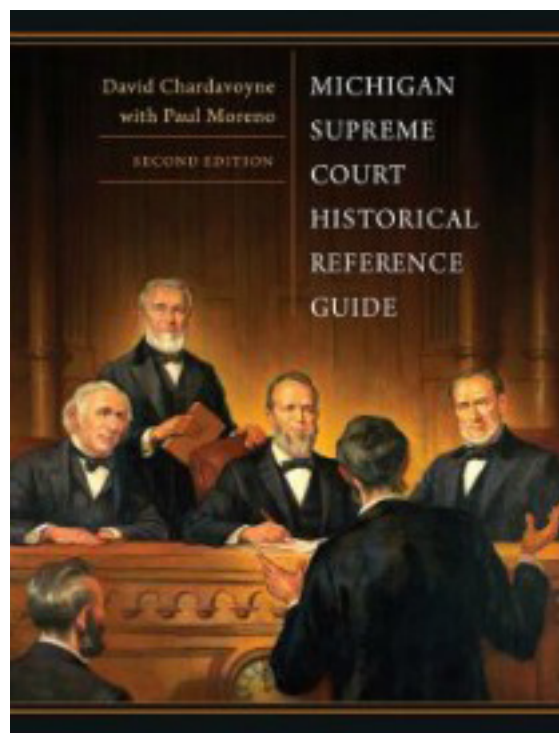
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Learn more about the historic justices of the Michigan Supreme Court and their most important cases in the *Michigan Supreme Court Historical Reference Guide, Second Edition*. Found wherever books are sold.