



Society Update

The Official Publication of the Michigan Supreme Court Historical Society

Winter 2022

HOME OF JUSTICE

By Patrick Batterson



925 W. Ottawa \$20,000. NW-8 F5401



Inset photo shows the same location as it looks today. It is estimated that this is approximately the same vantage point as the older photo, and shows the back of the Hall of Justice from Ottawa Street, looking southward. To the right (out of the camera's view) is Martin Luther King Jr. Boulevard. The photo was taken from in front of 924 Ottawa Street.

Stebbins Real Estate Collection, Forest Parke Library and Archives, Capital Area District Libraries

When Robert T. Arvidson went to 925 Ottawa Street, Lansing, in 1940 he was not going to the Hall of Justice to argue before the Michigan Supreme Court. Instead, he was going back to his apartment in Ms. Mae Fulton's house, likely coming home from work at the law firm Hayden, Hubbard & Rathbun. He seemed to have a knack for finding places to live that would eventually become important buildings – his final home in Lansing, located at 815 W. Allegan Street, was where the Library of Michigan is now. But there is far more to Robert Arvidson than living in homes that would one day become important public places.

Born in 1892 at the Söderåkra Socken Parish in Södra Møre County, Sweden, Robert and his parents emigrated to the United States in 1897. His family settled in Proctor, Vermont. There are few records that exist of what his family did there, but his father

was most likely a stonecutter, a common occupation in Vermont at the time.¹

The only child in the Arvidson family, Robert received his high school education in Proctor, and then was accepted into Yale University. There, he studied the classics and graduated in 1915. He was one of four students to earn honors in classical languages and literature and one of twenty-one to earn a *Philosophical Oration*, along with membership into Phi Beta Kappa. To say the least, Robert Arvidson was a talented classicist and linguist.²

For a short period of time after Yale, he lived in what is now the historic Hotel Paris in New York City.³ However, he would not stay there long. When the U.S. entered into World War I, Arvidson went with it. Drafted into the U.S. Army, he served as a translation specialist.⁴ After finishing his service, he left the East Coast and found his way to Indiana, where he

worked with the Standard Oil Company. Then, he made his way to Detroit, where he enrolled in the Detroit College of Law, graduating in 1927. He worked as a secretary for the Metropolitan Trust for some years thereafter.

In the 1930s, Robert Arvidson made his way to Lansing and planted his roots. He became involved with the Knights Templar (Lansing Commandery No 25., K. T.) and became a Freemason (Lansing Lodge No. 33, F. and A. M.). Then, he joined the Hayden, Hubbard & Rathbun firm (later Hubbard, Rathbun and Arvidson), stepping into Lansing's legal scene. While a member of Hayden, Hubbard & Rathbun, Arvidson argued, or was of counsel on, several cases before the Michigan Supreme Court.

Arvidson's first appearance before the Court was as of counsel to Hayden, Hubbard & Rathbun in *Brown v Hojnacki*, 270 Mich 557; 259 NW 152 (1935).

In *Brown*, Arvidson et al., represented the plaintiffs who were attempting to enjoin the defendant from operating a masseur parlor. The restrictive covenant over the property in question did not explicitly forbid the operation of a masseur parlor, and the defendant argued that he should be allowed to continue his operation because he was not explicitly forbidden from doing so. Arvidson et al., argued that the property's restrictive covenant should be interpreted broadly and liberally (instead of literally as the defendant suggested). Agreeing with Arvidson's arguments, the Court opined that the parties should not be held only to the covenant's literal, precise interpretation. Instead, the "purpose of the restriction" should be considered when enforcing restrictions. *Id.* at 562.

After *Brown* (and two other of counsel appearances before the Court in the 1930s⁵), Arvidson would not appear before the Michigan Supreme Court again until the 1950s [his first appearance was in 1954 in *In re Del Monte's Estate*, 340 Mich 165; 65 NW2d 309 (1954), but Arvidson was only of counsel].

In *Parks v. Starks*, 342 Mich 443; 70 NW2d 805 (1955), Arvidson represented the defendant driver who had been found negligent in causing injury to a sheriff through unique circumstances. In *Parks*, the defendant driver had negligently driven his car into a garage canopy support. The next day, children were playing under the canopy, and the local sheriff stepped under the canopy to warn the children of the danger it posed. The canopy then collapsed on him, severely injuring him. The sheriff sued the driver, and judgment was rendered

in the sheriff's favor. The driver then appealed.

The defendant driver's main argument on appeal was that the injuries suffered by the sheriff were unforeseeable and that the elapsed period of time between the accident and the injury prevented a finding that the driver's negligence was proximate cause of the sheriff's injuries. Additionally, the driver contended that the sheriff was contributorily negligent when walking under the canopy to warn the children of its dangers because the sheriff knew the danger posed by the canopy, but walked under it anyway.

The Court found against the defendant driver in each of his arguments. They opined that there were no authorities that provided a mere lapse of time between a defendant's negligence and a plaintiff's injuries would remove liability. Additionally, the plaintiff sheriff was not contributorily negligent when stepping under the canopy because he was attempting to protect the children playing under the canopy from peril. *Id.* at 447–50.

In *In re Sair Estate*, 342 Mich 587; 70 NW2d 823 (1955), Arvidson represented a will contestant who was objecting to the admission of his mother's will to probate. However, the contestant had entered into a contract in which he disposed of his right to any claim against his mother's estate, and the trial court found that because of that contract the contestant was not an interested party and could not object to the admission.

The contestant argued that the contract was fraudulent and was induced by misrepresentation and undue influence. However, the contestant had been represented by an attorney at the time of signing the contract, and there were several witnesses. Because of this, the Court found that there was no fraud, and affirmed the trial court's decision. *Id.*

Finally, in *French v. Ingham County*, 342 Mich 690; 71 NW2d 244 (1955), Arvidson represented the plaintiff township resident on their appeal of a trial court order that dismissed their actions alleging a fraudulent annexation election.

The plaintiff resident alleged that petitions filed with the Ingham county clerk requesting the defendant township board to hold an election for the purpose of voting on proposed property annexations were irregular, fraudulent, and inadequate. The main issue before the trial court, and then on appeal, was not the petitions' legitimacy, but whether the trial judge could even pass judgment on the issues alleged

by the plaintiff. The trial judge claimed, under statutory authority, that the right to call elections, and the manner in which the election was called, was a vested right in the township board and not the court, and the case was dismissed. *Id.* at 692–94. The plaintiff appealed the dismissal, arguing that the trial court did have the authority.

The Court ultimately disagreed, stating that the trial court properly determined that it could not interfere to prevent the defendant board of supervisors from performing its statutory duties and affirmed the trial court's rationale.

After his flurry of appearances before the Michigan Supreme Court in 1955, Arvidson would not appear before the Court again. However, he continued to practice law in the Lansing area up until his death in 1958. While details about Arvidson's military service have been lost to time and he had no close surviving relatives, his history of advocacy before the Court is well-recorded and preserved for all to see.

End Notes

¹ This information is found in Robert Arvidson's family immigration data. *See also*, Guyette, E. A. (2014, March 13). Immigrants and Ethnic Diversity in Vermont, 1840-1930. Retrieved from <http://www.flowofhistory.org/immigrants-and-ethnic-diversity-in-vermont-1840-1930/>

² In the late 1800's and early 1900's, the highest honor a student could receive at commencement was a Philosophical Oration. To obtain such an oration, the student must have had a stand (an older term roughly equivalent to today's grade point average) of 3.30 or over on a scale to four. Those students who received a Philosophical Oration could then become members of Phi Beta Kappa. Robert Arvidson received his honors in classical languages and literature.

³ The Yale Alumni Weekly from September 1916 listed Robert Arvidson's address as 758 West End Avenue, New York City.

⁴ The only record of Robert Arvidson's military service is his draft card and a short excerpt in his obituary. His obituary indicates that he was a "translation specialist." Any additional records were likely lost in the 1973 fire at the National Personnel Records Center, along with 80 percent of the other records held for veterans who served from 1912 to 1960.

⁵ *In re Consol Freight Co*, 265 Mich 340; 251 NW 431 (1933) and *Colvin v Horning*, 277 Mich 387; 269 NW 385 (1936).



925 W. Ottawa St., Lansing, MI 48915

Arvidson was not the only attorney to reside at 925 W. Ottawa Street, the future home of the Michigan Hall of Justice.

Arvidson rented his room from Mae Fulton. She and her husband, William, a mail clerk on the Chicago and Grand Trunk Western railroad, built their house on Ottawa Street in the 1910s. Both of their sons, Radcliffe and Stanley, studied at the University of Michigan Law Department. Tragically, Radcliffe was killed in the Cleveland Clinic Disaster on May 15, 1929. He had graduated from the law department in 1927 and, per the *Lansing State Journal* at the time, had been employed by a Cleveland firm of mine appraisers until illness led him to the clinic. The Clinic Fire is believed to have started when nitro-cellulose x-ray film, exposed to heat from an unguarded 100-watt incandescent light bulb, released smoke and poisonous gases. The fire claimed 123 lives and injured 92 more; however, it led to new safety regulations for hospitals including the development of new standards for storage and labeling of hazardous materials. William died while in service to the railroad a few years later, in 1932.

Younger son, Stanley Fulton went on to a successful career as an attorney in the Detroit-Birmingham area. He was a charter member of the Board of Trustees at Oakwood Hospital in Dearborn (now Beaumont). At the time of his death in 1971 Stanley's firm, McClintock, Fulton, Donovan & Waterman was located in the Guardian Building and he was a member of the Detroit Athletic Club. The firm had included a fifth name (Souris) until that partner was appointed to the Michigan Supreme Court in 1960. An auspicious end from a modest beginning.

Thank you to Rachael Drenovsky of the Supreme Court Learning Center for the historical background information on the Fulton family. The Learning Center offers free 45-minute virtual tours on select weekdays, including one about the Hall of Justice neighborhood. Call (517) 373-7171 or visit <https://www.courts.michigan.gov/courts/supreme-court/learning-center> to learn more.



The *Spotlight on Great Advocates* series was written by Advocates Guild intern Patrick Batterson. A graduate of Western Michigan University Cooley Law School, he is now a practicing attorney.

HISTORIC HOMES OF THE COURT



At left the Hall of Justice as it looks from the Capitol side. Photo by Justin Maconochie.
Above: the closing of Court in the G. Mennen Williams Building on May 8, 2002.

As early as 1922, the need for a judicial building to anchor the west end of the capitol mall in Lansing was recognized. In his 1922 city plan, Harland Bartholomew drew in a stately court building that faced the Capitol.

Forty-five years later, in 1967, Chief Justice John R. Dethmers expressed the hope that “the long continued assurances from some quarters that one day this Court will be housed in a new court building may before long come true.” Unfortunately, it wasn’t for another 32 years that the promise of a home of its own finally came to pass.

The Michigan Hall of Justice, the first Michigan building to be entirely dedicated to the judicial branch of government was dedicated on October 8, 2002.

Then-Chief Justice Maura Corrigan said at the dedication: “As judges our goal is to convey to the people our respect for the rule of law. In this courthouse, [Albert Kahn has] met that goal. [Albert Kahn has] built us a monument to the rule of law...this

Hall of Justice that is curved...curved toward the State Capitol building. It stands independently, yet in relation to the Capitol. To me, it seems to be arms outstretched, both shielding and embracing. This building is a bulwark just as our branch of government is a bulwark, protecting through faithful adherence to our Constitution and laws the democratic process that goes on across the way at our Legislature.”

TIMELINE

Territorial Supreme Court

From 1805 to 1835

Circuit Courts

From 1835 to 1873

Michigan State Capitol

1879 to 1970

Williams Building

1970 to 2002

Hall of Justice

2002 to Present

Joe Gavin Elected Treasurer



The Society’s Board of Directors has elected Joseph J. Gavin as its next Treasurer. Joe Gavin is a practicing attorney and Member at Miller Johnson in Grand Rapids. His practice focuses on health care insurance litigation and counseling. Before joining Miller Johnson, Mr. Gavin clerked at the Michigan Court of Appeals. He is a graduate of MSU College of Law and Hope College. Mr. Gavin lives with his wife and three children in Grand Rapids.

Mr. Gavin succeeds John P. Jacobs as Treasurer. Mr. Jacobs recently retired from the Board after serving since 2009. We are grateful to him for his dedicated service.

2021 Society Law School Prize Winner

University of Michigan Law School: Kami Groom



The Michigan Supreme Court Historical Society Law Student Prize was created by the Board of Directors to recognize a law school student with an exemplary performance in legal history, judicature, or constitutional law. It was first awarded in 2009 and has since been given to 28 students at all five of the state's law schools.

Kami Groom, the 2021 Society Law Prize winner from the University of Michigan Law School, graduated from Michigan Law last spring. She is originally from Liberty, Missouri, and completed her Bachelor's degree at Washington University in St. Louis, where she majored in English Literature and Anthropology. After college, she spent two years teaching refugee students in Kansas City, Missouri, as part of Teach For America, one year teaching English in Taiwan on a Fulbright scholarship, and two years working

as an immigration paralegal at a large law firm in Boston, Massachusetts. She also obtained her Master's Degree in the Humanities from the University of Chicago, where she wrote her thesis on Tolkienian and Arthurian mythologies. Because of her humanities background, Kami brought an interdisciplinary approach to her law school studies, filling her course schedule with legal history classes such as Formation of the Common Law, Bloodfeuds, and Roman Law. Kami was recently awarded a Bates Fellowship by Michigan Law, which she will use to complete a seven-month fellowship at a human rights NGO in Taipei, Taiwan, on her quest to be an effective international human rights attorney. Outside of school and work, Kami is a competitive ultimate frisbee player, with three national championships and two world championships to her name.

2022 Member Contribution Form

Please use this form to renew your Society dues for 2022 or to make an additional contribution

Name: _____

Address: _____

City, State, ZIP: _____

Email: _____

Phone: _____

Mail checks to: Michigan Supreme Court Historical Society, 3rd Fl Hall of Justice, 925 W. Ottawa St., Lansing, MI 48915

Pay online at www.micourthistory.org

CONTRIBUTION LEVEL

Individual dues \$150.00

Advocates Guild member \$200.00

Law Firm Sponsor \$1,000.00

Other amount: _____

TOTAL

\$ _____

Pay Via Credit Card

We accept Visa, MasterCard, and American Express

Card No. _____

Exp Date: ____/____ Security Code: _____

Signature: _____

Annual Report to Court

The tradition of the Society is to report on its activities annually in conjunction with the opening session of the Michigan Supreme Court in October. Due to the ongoing COVID-19 pandemic, the 2021 report was delivered via Zoom. What follows are President Carl Herstein's remarks from October 6, 2021.

Good morning, Madame Chief Justice, Associate Justices, and others gathered together for today's Zoom call. My name is Carl Herstein and I serve as the President of the Michigan Supreme Court Historical Society. Thank you for this opportunity to share a report on our activities over the past year.

The Michigan Supreme Court Historical Society was established over 33 years ago—in April 1988. Our mission is to collect, preserve, and display documents, records, and memorabilia relating to the Michigan Supreme Court and other courts of Michigan, promote the study of the history of Michigan's courts, and seek to increase public awareness of Michigan's legal heritage.

This has been a difficult period for the Society due to the COVID-19 pandemic, but we feel very fortunate that thus far we have been able to weather the storm better than many similar organizations. The news has told us that more than 1 in 3 nonprofits are in danger of closing within the next 2 years due to the crisis. With respect to state Supreme Court Historical Societies (which exist in fewer than half the states), even before the pandemic hit, financial and other problems caused several societies to become dormant, or continue to exist as little more than websites. Because events are so critical to retaining and growing our membership, our inability to meet over the last year and a half has depleted our membership ranks and limited our ability to move forward with the ambitious agenda that we set for ourselves in 2019.

In that regard, the Society is deeply appreciative of the support that we have received, particularly the continuing allocation of a small portion of IOLTA funds. We are very aware of the many worthy candidates for funding and understand the Court's decision to cap our allocation; at the same time your recognition that preserving the history of our State's legal institutions is of great importance and worthy of a degree of ongoing support is what will continue to enable us to survive and ultimately thrive.

Credit also goes to our executive committee, which includes treasurer John Jacobs, vice president

Larry Nolan, our previous secretary Susan Fairchild and our current secretary Judge Denise Langford Morris, as well as our entire Board, for taking several steps over the last several years to ensure that the Society remains financially solvent in order to perpetuate our impact and fulfill our mission. The hard work and financial contributions of many dedicated individuals has been critical to our success. With the exception of our sole staff person, Carrie Sampson, no one connected with the Society receives any financial compensation for their work—indeed, they all pay for the privilege!

We are grateful that Carrie has served as our Executive Director and remained a steady force over the last 13 years of her employment with us and, in particular, during these uncertain times of the pandemic. Historical Societies that have not had the resources to retain talented staff have typically withered away.

In June, our Board elected two new members. Tribal Court Chief Judge Angela Sherigan made history as the first member of the Native American community to be represented in our diverse group. This appointment and her subsequent election arose in tandem with the work of our newest committee studying the remarkable relations with Tribal Courts that this Court has fostered over the last 30 years.

Recently retired Justice Stephen Markman was also elected at that meeting. We are pleased to have Justice Markman's expertise and long association with the Court added to our roster. Former justices Michael Cavanagh and Mary Beth Kelly also serve on the Board.

Additionally, we selected Judge Denise Langford Morris—the Dean of the Oakland County Circuit Court and Dean of our Board—to the position of Secretary at that meeting. Judge Langford Morris is the longest-serving member of our Board currently, having joined it in 1995. She is followed immediately by our Vice President Larry Nolan, who joined the Board in 1996.

Despite the challenges of the pandemic, we have continued our work. We have published two member newsletters as well as a special booklet gathering transcripts and materials relating to the proceedings of our 2012 annual luncheon which highlighted a significant event in the history of the court pertaining to former Governor and Justice John Swainson. In addition, we were joined once again by an undergraduate student from the University of Michigan's Public Service Intern Program, Jack Sweeting, who made a study of

several historic law clerks for our Law Clerk Directory project.

We continued to maintain the historic portrait collection of Justices that is on display in the Hall of Justice and at Cadillac Place in Detroit. We anticipate fundraising to begin soon on a new portrait as well as being able to host several portrait dedications once it is safe to do so at the Hall of Justice.

We continued to work on our oral history project and look forward to resuming our Video Oral History interviews with former justices, made possible in part thanks to a grant from the Michigan State Bar Foundation and the exemplary volunteer efforts of former Chief Commissioner Fred Baker and Cooley Law School Professor Mark Cooney.

I had the pleasure of publicizing the history of the Court in a National Public Radio interview about the famous absentee soldier vote case of *People ex rel Twitchell v Blodgett*, 13 Mich 127 (1865), and was able to follow that up with an article in the Winter/Spring 2021 issue of *Trace*, the archives of Michigan magazine, subtitled Absentee Soldier Voting and the Victory of Law Over Partisanship During the Civil War. We hope to do more projects like this to bring the history of our Court to the attention of a wider audience.

In a similar vein, other research projects have also been continuing despite the challenges of doing research during a pandemic, and we anticipate more publications about the history of the Court in 2021. We are very excited about our upcoming Annual Membership Luncheon on October 28 to be held once again at the DAC in Detroit and look forward to seeing all of you in person together with our members to celebrate an exciting future for the Society. This event is ordinarily held in the spring; however, due to the pandemic, we opted to host it at the end of October in the hopes that as many of our members as possible would feel comfortable attending. Our Historical Advisor, Professor Paul Moreno, who is the William and Berniece Grewcock Chair of Constitutional History at Hillsdale College, is our keynote speaker for the Luncheon. Professor Moreno will deliver an address on Frank Murphy and the Roosevelt Court. We look forward to gathering in person then as we gradually begin the process of returning to normal.

This concludes our annual report. Thank you for your time and your ongoing support of our mission. I am available for questions or comments.



Former Justice Kurtis T. Wilder Begins Official Portrait Commission

Recently former Michigan Supreme Court Justice Kurtis T. Wilder was joined at the Hall of Justice by portrait artist Robert Maniscalco and Society executive director Carrie Sampson for a special tour of the justices' portraits. The group gathered together in anticipation for the commissioning of Justice Wilder's own official portrait.

The Society maintains a comprehensive collection of individual portraits of the justices dating back to the nineteenth century. It is one of the most complete sets of state Supreme Court portraits in the nation. Mr. Maniscalco and his late father, Joseph, are among the most prolific of the portrait artists that have been commissioned to paint the justices' portraits since the 1980s. Together they represent the artist of record on a dozen of the portraits in the collection.

A group of former law clerks of Justice Wilder has begun the process of establishing an endowment to fund the commissioning of his official portrait. The suggested minimum donation is \$100, although donations of any amount are certainly welcome. Donations of \$150 or more entitle individual donors to a one-year membership in the Society. You can make a contribution via www.micourthistory.org and indicate in the "add a note" section that it is for Justice Wilder's portrait. Checks can be sent to the Society at MSCHS, 3rd Floor Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915, and should indicate that it is for the portrait fund. Questions should be directed to Tamara York Cook at (734) 516-1903 or tcCook@vanhewpc.com.

Calling all law clerks!

By John Fedynsky, Law Clerk Committee Chair

The Law Clerk Committee is hard at work on the life of the Court as seen through the eyes of its law clerks. Society co-founder Wallace Riley called them the invisible scribes, working behind the scenes and outside of the spotlights that would often shine on the justices. Toward that end, we are happy to announce the current roster of law clerks and their law school affiliations, upon which annual bragging rights and alumni pride can find their latest expression. Former law clerks among our readership are encouraged to complete and return the law clerk questionnaire. Take your pick between electronic link and hard copy. Other readers are encouraged to pass the questionnaire on to colleagues and friends who have clerked for the Court.

These efforts are aimed at an ongoing project to compile a comprehensive directory of Michigan Supreme Court law clerks. Additionally, we are always interested in documenting oral tradition about clerkship experiences and anecdotes about the justices themselves. In many chambers, the relationship between justice and law clerk extends well beyond mere employment and mentorship. Clerks become a part of the Court's extended family, with friendships, marriages, and other lifelong connections that extend well beyond a term or career law clerk's formal service to the Court. Fill out those questionnaires! The Society also welcomes donations of photographs, Court memorabilia, and other manageable tangible artifacts of the clerkship experience.

Special thanks go out to Executive Director Carrie Sampson for her able assistance, as well as to Law Clerk Committee Members Shenique Moss and Gregory DeMars for their fine work. We are fortunate to have the able research assistance of our intern Jack Sweeting, a graduate of Farmington High School who is matriculating now at the University of Michigan. He is working on uncovering the origins of the elbow law clerk and how the job has evolved and been formalized over the years. Stay tuned for a future report on that effort, along with perhaps an answer to this question.

Who was the first law clerk of the
Michigan Supreme Court?

The Invisible Scribes: Law Clerk Directory

Your name:

Justice served:

Term as judicial law clerk:

If you served as a law clerk to more than one Michigan Supreme Court Justice, please add them below with years served.

Other clerkships (if applicable):

Law School:

College or university:

Home address:

Current work address or employment plans:

Email address:

Phone number:

Why did you decide to apply for your clerkship?

What did you learn in the application and interview process?

What is one thing you learned from your justice that you would not have learned elsewhere?

What was the relationship like with the clerks in the other justices' offices during your term?

How do you remember your justice?

Do you recall others who clerked for the Court at the same time? Please name them.

A link to this questionnaire can be found on our website at www.micourthistory.org or you may submit your reply to MSCHS, 3rd Fl Hall of Justice, 925 W. Ottawa St, Lansing, MI 48915 or via email lawclerks@micourthistory.org.

Invisible Scribes

2022 LAW CLERK DIRECTORY

2021 LAW CLERK DIRECTORY

Chief Justice McCormack's Office

David Arnold, Sr. Clerk –
 Hofstra Univ. Maurice A. Deane School of Law
 David Fegley – University of Michigan Law School
 Annemarie Smith-Morris - Univ. of Michigan Law School
 Kate Markey - University of Michigan Law School

Justice Zahra's Office

Brian Balow, Sr. Clerk – University of Detroit Mercy
 Samantha Cook – MSU College of Law
 Nick Johnson – MSU College of Law
 Deion Kathawa – University of Notre Dame Law School
 Walter Pelton - University of Chicago Law School

Justice Viviano's Office

Alexander Gallucci, Sr. Clerk –
 University of Notre Dame Law School
 Nathan Inks – Wayne State University Law School
 Katherine Boothroyd – Univ. of Michigan Law School
 David Konarske - MSU College of Law

Justice Bernstein's Office

Vivian Chang, Sr. Clerk – Univ. of Michigan Law School
 Jessica Hoyer – Wayne State University Law School
 Philip Stadler – University of Michigan Law School
 Vonica Sallan – Wayne State University Law School
 Michelle Goyke -
 Northwestern University Pritzker School of Law

Justice Clement's Office

Adam Pavlik, Sr. Clerk – MSU College of Law
 Elizabeth Kingston – MSU College of Law
 Jesse Kirchner – University of Michigan Law School
 Alicia McCaffrey – University of Michigan Law School

Justice Cavanagh's Office

Brett DeGroff, Sr. Clerk – Univ. of Michigan Law School
 David Loudon – MSU College of Law
 Kirsten Perry – MSU College of Law
 Dana Ziegler - University of Michigan Law School

Justice Welch's Office

David Sheaffer, Sr. Clerk – MSU College of Law
 Marissa Kreutzfeld – MSU College of Law
 John Weiss – Temple University Beasley School of Law
 Adam Winn – Wayne State University Law School

Chief Justice McCormack's Office

David Arnold, Sr. Clerk –
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 David Fegley – Univ. of Michigan Law School
 Daniel Tai – Chicago-Kent College of Law
 Ashley Yuill – University of Michigan Law School

Justice Zahra's Office

Brian Balow, Sr. Clerk – Univ. of Detroit Mercy
 Samantha Cook – MSU College of Law
 Nick Johnson – MSU College of Law
 Deion Kathawa – Univ. of Notre Dame Law School

Justice Viviano's Office

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 Henry Holland – Wayne State Univ. Law School
 Nathan Inks – Wayne State University Law School
 Walter Pelton – University of Chicago Law School

Justice Bernstein's Office

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 Daniel Ellman – Univ. of Michigan Law School
 Jessica Hoyer – Wayne State Univ. Law School
 Philip Stadler – Univ. of Michigan Law School
 Luciana Viramontes – WMU-Cooley Law School

Justice Clement's Office

Adam Pavlik, Sr. Clerk – MSU College of Law
 Elizabeth Kingston – MSU College of Law
 Jesse Kirchner – Univ. of Michigan Law School
 Alicia McCaffrey – Univ. of Michigan Law School

Justice Cavanagh's Office

Brett DeGroff, Sr. Clerk –
 University of Michigan Law School
 David Loudon – MSU College of Law
 Emily Paski – MSU College of Law
 Kirsten Perry – MSU College of Law

Justice Welch's Office

David Sheaffer, Sr. Clerk – MSU College of Law
 Marissa Kathryn Kreutzfeld – MSU College Law
 John Weiss – Temple Univ. Beasley School of Law
 Adam Winn – Wayne State University Law School

Tribute to Judge Avern Cohn

By Andy Doctoroff, former law clerk to Judge Cohn

First published in the Detroit Free Press and reprinted with permission

Seniority entitled him to move his chambers to the seventh or eighth floor of the Theodore Levin United States Courthouse with its marbled hallways, mahogany paneled walls, and ceilings rich with relief. But U.S. District Judge Avern Cohn stayed put, decade after decade, opting to remain in Room 219, his tired, less grandiose chambers on the second floor. That Judge Cohn had no need for judicial opulence was easily discerned from the hundreds of books lining his office and the quirky bric-a-brac testifying to his myriad passions, like passenger trains and Jewish history.

Obituaries often read like curriculum vitae; so, I expect that notices of Judge Cohn's passing Friday evening, at the age of 97, will be chockablock with references to decisions rendered, offices held, and awards garnered. But these impressive litanies miss the essence of the man we just lost.

Judge Cohn enjoyed wealth and power, but they were not the forces that animated him.

Charles Francis Adams rebuffed protestations by his father, John Quincy Adams, that he lacked worthy ambitions by "say[ing] with the poet, 'My mind a kingdom is'."

Judge Cohn's mind was his kingdom, a vast realm he continued to explore until his final days, a blast furnace of erudition, conviction, and curiosity.

Out-of-state co-counsel with whom I tried a patent infringement case before Judge Cohn were non-plussed by the childlike wonder that compelled him to descend the bench, squint his eyes, and tinker with

the subject matter of the lawsuit, a refrigerator shelf.

I last lunched with Judge Cohn at his Birmingham home in the fall. His legs had long since failed him. He received visitors less frequently, and his physical world had grown almost infinitely small, like a star collapsing into a black hole. But, as always, he continued to plow intellectual fields.

Just before our interview ended, Judge Cohn handed me a copy of the Journal of Halacha and Contemporary Society, suggesting I read the article about Talmudic perspective on rent regulation in 16th Century Rome.

"Don't forget to return it," he admonished, handing me the volume. "I want it back."

Perhaps Judge Cohn lived as long as he did, as richly as he did notwithstanding physical infirmities, because of the intellectual fires that burned within him, the same fires that drove him to become the rare jurist who, in Richard Hofstadter's words, "relish[e]d the play of the mind for its own sake, and f[ound] in it one of the major values in life."

The two years I spent as Judge Cohn's "elbow clerk" (his term) ended in 1992. But he has been a singular presence in my life ever since, someone who has influenced me more positively than any person outside my nuclear family. I will soon enter my own seventh decade, but recent memories of his affectionately calling me "kid" cause my eyes to fill.

An easy mark for those soliciting charitable gifts, Judge Cohn was no saint. His enthusiasms could alienate colleagues, and resulted in lapses in decorum.

Federal Judge Avern Cohn served on the Society's Board of Directors from 2003 until his death on February 4, 2022. Society President Carl Herstein had the following to say upon notification of his death: "Avern was an inspirational figure to a great many of us. His love of history, zest for life, and encyclopedic knowledge of Michigan politics and law was obvious to all. It was bracing to be on the receiving end of his not too quietly tendered comments and critiques, but they were also offered in honest intellectual debate and his personal kindness and charity always lurked not far under the surface. He was a most deserving recipient of the Michigan Legal History Award of the Society a few years ago. We were fortunate to have him as a member of our Board and a friend. He will be greatly missed."



Judge Cohn was the 2020 recipient of the Dorothy Comstock Riley and Wallace D. Riley Legal History Award. Due to the COVID-19 pandemic the Society was unable to present the award to him in person at the Annual Membership Luncheon. Instead, an oral history interview was conducted by attorney and former Supreme Court Chief Commissioner Fred Baker. It is available on our YouTube channel.

He had no need for office intercoms; his vocal cords served perfectly well, thank you. He suffered neither fools nor unprepared attorneys appearing before him.

But his capacity for self-growth was unbounded and endeared him to his staff. Age and self-reflection tempered his excesses, a process facilitated by notes, written in his own hand and taped to his courtroom desk, enjoining him to be courteous: "Keep cool!!!" "Always remember the lawyers have as much rig[h]t to be in the courtroom as the judge!!!"

I myself suffered Judge Cohn's tetchiness ("You're the law clerk, I'm the judge, goddamnit!"). But such was the happy cost of a beautiful, fertile mind that has yielded rafts of scholarly, precedent-setting opinions and letters-to-the-editor, and uplifted our justice system in ways small and large but too numerous to count.

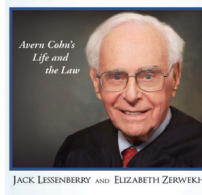
Coming so close on the heels of the death of his cousin, Sen. Carl Levin, the loss of Judge Cohn's life presages the sad end of an era populated by ambitious but menschy public servants who were born and raised in Detroit during the 1920s and 1930s and obeyed a demanding code of ethics that now too often seems to have lapsed.

A world without Judge Cohn is more than personal misfortune for his family, friends, and members of the

legal community. It raises a disconcerting question: Who among us will carry on his timeless legacy?

Andy Doctoroff, a Huntington Woods attorney, served as law clerk to the Hon. Avern Cohn from 1990 to 1992.

THINKING ABOUT 'THE OTHER FELLA'



At Judge Cohn's funeral, his friend and biographer Jack Lessenberry noted that Judge Cohn would have likely said: "Just say, 'he was a pretty good judge' and sit down." ... Lessenberry also said that Judge Cohn said there were two kinds of Jewish judges; those who just happened to be Jewish instead of Methodist or Presbyterian or whatever. But as for himself, he said his "Jewish values, the values of compassion and the need to seek justice inform the way I see the world and the law."

The biography *Thinking About 'The Other Fella'* was co-written with Elizabeth Zerwekh and published in 2021. It includes images of the notes that Judge Cohn posted on the inside of his federal court bench.

Who among us will carry on his timeless legacy?



3rd Floor, Hall of Justice
925 W. Ottawa Street
Lansing, MI 48915



Save the Date!

Annual Membership Luncheon

Thursday, May 26, 2022

Invitations & additional information to follow.

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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