



# Society Update

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## Michigan's Tribal Courts

Earlier this year, the Michigan Supreme Court's Court Community Connections Program made history in its collaboration with one of Michigan's twelve tribal courts. It was an amazing event, providing the opportunity to highlight both the Court's processes and the Tribal Court of the Pokagon Band of Potawatomi Indians.

At a dinner the evening before, Justice Megan Cavanagh gave the remarks below:

Thank you, Judge Dobrich and Chief Judge Bealor, and Chi-Miigwetch to Chief Judge Petoskey and the Pokagon Band of Potawatomi community. I am Megan Cavanagh, Justice and Supreme Court Liaison to Tribal Courts, and I must say, there's no one more excited to be here than I am.

Bringing my colleagues here has been a dream of mine for a very long time. Back in 2021, I reached out to our Public Information Office and requested they establish contact with the Pokagon Band of Potawatomi and Cass County, and after three years, we're finally here!

While there may be no one more elated in this stunning Pokagon Band of Potawatomi Community Center, I can't help but think of someone who's likely even more thrilled about this occasion, and that's my father, Chief Justice Michael Cavanagh, co-founder of the Tribal State Federal Judicial Forum. alongside Chief Judge Petoskey, and others. His name has been mentioned a few times, and I am so proud of his groundbreaking work to connect tribal courts with state and federal courts.

## Michigan's Twelve Federally Recognized Tribes:

- Bay Mills Indian Community
- Grand Traverse Band of Ottawa and Chippewa Indians
- Hannahville Indian Community
- Keweenaw Bay Indian Community
- Lac Vieux Desert Band of Lake Superior Chippewa Indians
- Little River Band of Ottawa Indians
- Little Traverse Bay Bands of Odawa Indians
- Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake)
- Nottawaseppi Huron Band of the Potawatomi
- Pokagon Band of Potawatomi
- Saginaw Chippewa Indian Tribe of Michigan
- Sault Ste. Marie Tribe of Chippewa Indians

As I toured the magnificent new Pokagon Peacemaking Center earlier today, I stopped in Chief Judge Petoskey's office and came across a photo capturing the camaraderie between my father and Chief Judge Petoskey. It struck me profoundly, as it symbolizes a partnership that has endured through the years. My father is im-



Retired Justice Michael Cavanagh and Justice Megan Cavanagh, the only father-daughter pair to serve on the Court.

mensely proud that this collaboration, ignited years ago with the goal of developing strategies for cooperation and avoiding jurisdictional conflicts, has continued to flourish.

Just as we nurture the sacred grounds of this community, we've also tended to the flame of that partnership, ensuring it remains vibrant and enduring. Together, Michigan's 12 federally recognized tribes, 12 state court judges, and federal judges and officials have worked hand in hand with our Court, fostering a flame of positive relations between our two distinct governments. This gathering is a testament to their vision and dedication.

So this one is for you, dad.

I'm honored to continue my father's work as liaison to the tribal courts, a responsibility I deeply cherish. Advocating for tribal courts to have a seat at the table in Michigan Jurisprudence is a commitment I take seriously. In 2022, I invited all tribal courts in Michigan to join the Michigan Adoption celebration, and their response was overwhelmingly supportive. Judge Angela Sherigan of the Little River Band of Ottawa Indians, in Manistee, MI, Judge Nellis of Lake County, and I presided together with Chief Justice Clement for Adoption Day.

Recognizing the pressing need for further work,

research, and advocacy at the intersection of tribal governance and child welfare, I committed to a one-thousand-mile trip last fall as co-chair of the Child Protective Legal Representation Task Force. Our listening tour traveled through Northern Michigan, Sault Saint Marie, Marquette, and Gogebic County. This tour addressed the crisis in Michigan's legal representation system for children and parents in child protective proceedings. Statewide, courts face challenges in securing and retaining court-appointed attorneys due to low funding, competition from other legal systems, and the complexity of such proceedings. This results in inconsistent and unfair representation for parents and children, particularly impacting tribal citizens, especially children. The Task Force is exploring ways to enhance the current system, aiming to deliver a report with recommendations to the Legislature, Governor, and State Court Administrator for comprehensive reform.

After our last stop in Gogebic County before returning home, I was privileged to be able to visit with my friend Judge Allie Greenleaf Maldonado and to be further inspired by her passion for justice. I was honored the year before to have witnessed her being sworn in as the first tribal woman appointed to the Michigan Court of Appeals.

Now, I stand before you all on the homelands of the Pokagon Band of Potawatomi tribe, celebrating one of the Michigan Supreme Court's most significant civic engagement outreach programs. Tonight, I am so proud that tomorrow's Court Community Connections program is the first collaboration with a tribal court and community since its inception in 2007.

I am deeply grateful for the trust and enthusiasm shown by tribal leaders across the state, and I assure you, we are only intensifying our efforts. As the Supreme Court Liaison to Tribal Courts, I am dedicated to strengthening the bonds between our courts and communities so that we may deliver justice to the people we serve.

Chi-Miigwetch

# The Fruits of Foresight and Mutual Respect: Reflections on Michigan's Tribal State Federal Judicial Forum

By Frederick Baker, Jr.

Long-time Society President (and my former Honigman partner), Carl Herstein, asked me several times to join the Society's Board. Each time I begged off, asking him to call again when I had retired or slowed down. But I did not retire and find it difficult to slow down, so I accepted his invitation last year.

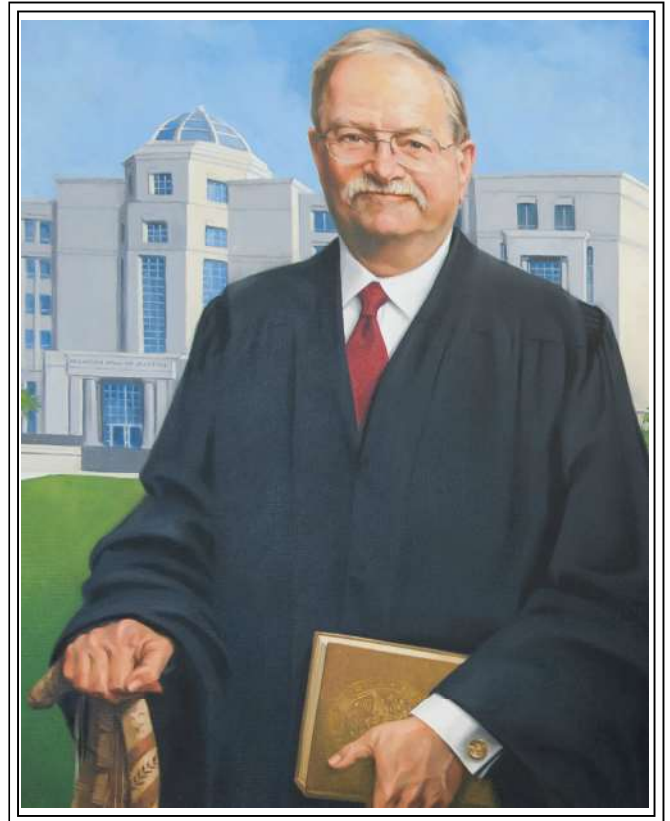
Carl knew of my involvement with matters involving Indian people,<sup>1</sup> so he asked me to assume responsibility for the Society's Tribal Court Committee and to organize a "theme issue" for the Society's Journal that would include articles addressed to issues of state, federal, and tribal court relations.

For readers unfamiliar with (what was first called) the "State/Tribal Court Forum," which, after A.O. 2014-12, became the "Michigan Tribal State Federal Judicial Forum" (the "Forum"), this article is a brief primer about

1. Chief among these is work shared with Richard Vander Veen, with whom, along with John Voelker himself, we three founded the John D. Voelker Foundation. As "a little book [he] wrote" [called "Laughing Whitefish," *sub nom de plume* Robert Traver] reflects, John had a deep sympathy and concern for Indian people and chose as the Voelker Foundation's first mission establishing a scholarship to help Native Americans pursue a legal education. In the ensuing 35 years, the Foundation has helped 35 scholars to attend law school and recently, at last, established an endowed scholarship fund with the Community Foundation of Marquette County, where John served 8 terms as prosecutor, which will ensure that this effort continues permanently.

After being appointed to the Court of Appeals in 2022, one of our Voelker Scholars, the Honorable Allie Maldonado, was recently re-elected to a full term. She also features in "Warrior Lawyers: Defenders of Sacred Justice," a documentary by Audrey Geyer, which documents the restorative justice approach to resolving criminal charges that Judge Maldonado employed as an elective alternative to the retributive model employed in most state courts. <https://www.warriorlawyers.org>. Washtenaw Circuit Judge, the Honorable Timothy P. Connors, who pioneered the elective use of this approach in his (state) court, also appears in the film.

This is precisely this kind of "cross-pollination" between state and tribal courts that Justice Cavanagh hoped to encourage by establishing the Forum.



The official portrait of Justice Michael F. Cavanagh. Note the newly built Hall of Justice in the background. In his right hand is a Native American walking stick, "given to him by the Sault Ste. Marie Chippewa Tribe in recognition of his work on behalf of the twelve federally recognized tribes" of Michigan.

the Forum's work.

Since it was established 32 years ago, the Forum has done much to promote harmonious relations and mutual respect between and among the tribal, state, and federal courts. Owing to personal acquaintance with two great men who were instrumental in founding the Forum, this introduction is written through that perspective.

The first of these, retired (former) Michigan Supreme Court Chief Justice Michael F. Cavanagh, has been a role model since our acquaintance began, in 1976. He was then a new Judge of the Court of Appeals and I (as he had once been) was a Court of Appeals prehearing attorney, soon privileged to serve on the second floor of the Court's old Washington Square Office Building just down the hall from Judge Cavanagh, as law clerk to the late Chief Judge Robert J. Danhof.

Justice Cavanagh was then at the beginning of what proved to be a long and illustrious judicial career, including 8 years on the Court of Appeals and 32 years

on the Michigan Supreme Court. These two judgeships made him the longest serving Michigan appellate jurist.

Though his long career includes many achievements, the focus here is solely on the fruits of his decision, during his term as Chief Justice (from 1991 to 1995), to establish a linkage between Michigan's One Court of Justice and Michigan's emerging tribal court system. As a result of a marked change in federal Indian policy toward "self-determination,"<sup>2</sup> Michigan's (then 8, now 12) federally recognized Michigan tribes were establishing or reinvigorating their tribal courts, and signs of both tension and confusion had begun to emerge. To address those problems, accomplish that linkage, promote communication, and promote cooperations and constructive action, Chief Justice Cavanagh established the Forum.

The Forum's creation brings me to the second great man, the Honorable Michael Petoskey. Judge Petoskey has served since 2003 as Chief Judge of the Pokagon Band, but his long judicial career not only *spans* but *involved him personally* in virtually every significant development in the evolution of both Michigan's tribal court system and the Forum.<sup>3</sup> I met him in 1992 when I

2. See, e.g., Fletcher, Matthew L. M., *Principles of Federal Indian Law*, pp 80-92 (West Academic Publishing 2017) (discussing the advent of the era of "Indian Self-Determination," and noting the enactment of such important legislation as the Indian Civil Rights Act and the Indian Child Welfare Act).

3. A citizen of the Grand Traverse Band of Ottawa & Chippewa Indians, Judge Petoskey has been a judge for various Michigan Indian tribes since 1986. He has served on the bench of the tribal courts of each of the seven federally recognized Tribes in Michigan's Lower Peninsula, a record that probably will never be replicated

Judge Petoskey began his judicial career with the planning, implementation, and development of the trial and appellate courts of his own Tribe. This began as a dream, while he was a staff attorney for Michigan Indian Legal Services, one that continued for over 7 years, until their inception. He was the chief judge of the Grand Traverse Band's tribal court for more than 16 years until retiring from that position.

Judge Petoskey also worked with four other Michigan Lower Peninsula Indian tribes to plan, implement, and develop their courts, serving as the founding chief judge of each, as well as serving as an appellate judge for two other tribes.

For the past quarter century, Judge Petoskey also has served graciously as the Chair of the Voelker Foundation's (all Native American)

interviewed Judge Petoskey for an article profiling him, part of a Bar Journal's "Citizen Lawyer" series about young members of the Bar who were accomplishing great things.<sup>4</sup>

As one of the two primary drafters of the Grand Traverse Band's Tribal Constitution, Judge Petoskey labored for years to secure the Secretary of the Interior's approval of it. Finally obtaining it was a remarkable achievement, because it contained two groundbreaking provisions: First, it eliminated the then-standard, and blatantly paternalistic, requirement that the Secretary of the Interior approve every important tribal council decision. Second, for the first time in Michigan, the Grand Traverse Band's proposed constitution provided for a completely independent tribal court judiciary:

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can) Scholarship Committee.

4. Baker, *Michael Pe-Taw-Se-Gay (Michael Petoskey): A Voice for Native Americans*, *Citizen Lawyer*, 71 Mich Bar J 898 (September 1992).

By the way, because so few Bar members seem to be aware of this, I must mention that members of the Michigan Bar can access this article – and every other *Michigan Bar Journal* article – through the State Bar's member portal, on the free search service provided by Heinonline. This access is provided under an agreement negotiated while Chair of the *Bar Journal* Board. I hope you use it often! It is a marvelous free resource.



Judge Michael Petoskey  
(Photo Credit: National American Indian Court  
Judges Association)

Other Michigan tribes had tribal courts, but they were courts created by the tribal councils—and subject to their complete defeasance by simple legislation. The Grand Traverse Band’s tribal court was the first in Michigan to be completely independent, meaning that the tribal council could not, under the constitution, control the court through legislation.<sup>5</sup>

By the time we met, Judge Petoskey, already had rendered several decisions as the first Judge of the Grand Traverse Band’s Tribal Court that established precedents that would prove crucial for the future development of Michigan tribal jurisprudence. It was also in that year that he participated in the first Forum with Justice Cavanagh, serving as vice-chair.

The Forum achieved significant results, with the first being the adoption of MCR 2.615, providing for state court enforcement of tribal court judgments. Such coordination between state and tribal courts was a new bird in the world and it signaled additional significant developments in quite rapid succession. At the direction of the Chief Justice, the State Court Administrative Office (“SCAO”) began providing tribal courts with assistance on administrative and infrastructure issues, extending to the then fledgling tribal courts the benefit of SCAO’s extensive resources, expertise, and experience. Next, the Supreme Court added to its website the locations, contact information, and links to tribal court websites, and the tribal codes for each of Michigan’s federally recognized tribes,<sup>6</sup> all of which was information crucial to accomplishing the transfer to tribal courts of cases involving custody and welfare of Indian children properly within their jurisdiction under the Indian Child Welfare Act (“ICWA”). The Supreme Court also adopted MCR 3.980, which implements the ICWA’s requirements.

Many other developments and improvements have occurred over the ensuing 32 years.<sup>7</sup> Though much re-

mains to be done, and much that has been done can be improved, thanks to the efforts of these two great men, and many other men and women like them, Michigan stands in the vanguard, among all the states, in the effort to coordinate and improve relations among state, tribal, and federal courts. With the participation of scores of other tribal, state, and now federal court representatives who have joined in this effort over the years,<sup>8</sup> the Forum has steadily pursued the goal that Chief Justice Cavanagh set out to accomplish in establishing the Forum, to work earnestly, thoughtfully, and cooperatively to address the issues that arise between the courts of the sovereign state of Michigan and the courts of the 12 sovereign nations that are to be found within our State, as well as the issues that also arise between the courts of the “great sovereign” that exercises “plenary power” in Indian affairs.<sup>9</sup>

To illustrate some recent developments in the evolving tri-partite, inter-court relationships that the Forum was created to address, Justin Gray has written for this issue of the Society’s Newsletter an account of the decision by the Hon. Donn Atanasoff, Judge of the Lac Vieux Desert Tribal Court, denying recognition on grounds of Tribal Sovereign immunity to an attested subpoena issued by the Clerk of the Massachusetts District Court. We believe this decision to be a first.

In another article, provided by authors designated by the American Indian Law Section’s Chairperson, former Voelker Scholar Stacey Rock, Jasmin Gaytan Guillen and Robin Bilagody provide an account of how the Forum has been essential in reaffirming tribal sovereignty and jurisdiction under the Violence Against Women Act in domestic violence cases involving Native victims.

From this introduction and these offerings, we hope you will see and appreciate how vital the work of the Forum the Court has fostered over the past 32 years has been and continues to be.

5. Fletcher, Matthew L. M., *The Eagle Returns: The Legal History of the Grand Traverse Band of Ottawa and Chippewa Indians*, 160 (MSU Press 2012).

6. After the Forum was established, the Bar Journal Committee I chaired likewise moved promptly to include complete Tribal Court contact information in the *Bar Journal*’s Directory issue, which is now entirely online.

7. Chief Justice Cavanagh published a law review article in 1999 that summarized the Forum’s accomplishments until then, outlining “some of the factors that have allowed one jurisdiction to

claim, modestly and carefully, a degree of success in maintaining good relations between native and non-native peoples.” Justice Michael F. Cavanagh, *Michigan’s Story: State and Tribal Courts Try to Do the Right Thing*, 76 UDML Rev 709, 711 (1999).

8. See, e.g., James A. Bransky and Judge Garfield Hood, *The State/Tribal Court Forum: Moving Tribal and State Courts from Conflict to Cooperation*, 72 Mich Bar J 420, 422, 423 (Appendix) (1993) (listing the dozens of participants in and public commenters at the first Forum).

9. *Worcester v Georgia*, 331 U.S. 515, 561 (1832); see *United States v Lara*, 541 U.S. 193, 200 (2004).

On behalf of the Society, we extend thanks to these authors for contributing their time and expertise to the Newsletter.



*Frederick M. Baker, Jr. is a solo practitioner, after of counsel relationships with Schiff Hardin (2017-2018) and Willingham & Cote, P.C., (2013-2017). Before that, he served for over eight years as a Michigan Supreme Court Commissioner; nearly two decades as a partner at Honigman Miller Schwartz and Cohn (trial and appellate litigation), six years as a shareholder at Willingham & Cote, P.C., and three years as an assistant professor at T.M. Cooley Law School. He served as law clerk to the late Robert J. Danhof, Chief Judge of the Michigan Court of Appeals, and as a Court of Appeals prehearing attorney. Baker has received several awards and honors for his legal writing, scholarship, and contributions to the profession.*

Article author, newsletter issue organizer, and Society Board Member, Fred Baker

### News From the Court:

#### New Handbook Introduces Tribal Law to Michigan Law Students

The Michigan Tribal State Federal Indian Forum continues to make history more than thirty years after its inception, as the Supreme Court Press Release from last month shows:

LANSING, MI, November 12, 2024 – In recognition of Native American Heritage Month and coinciding with its fall meeting this week, the Michigan Tribal State Federal Judicial Forum (“Forum”) is helping to launch a new handbook titled, “Anishinaabe Law: A Tribal Law Handbook for Michigan Legal Practitioners,” which is designed to bring awareness of Tribal law to first-year law school students (1L) and legal practitioners in Michigan. This new tool includes an overview of Tribal law, background on Michigan’s 12 federally-recognized Tribes, and key caselaw examples that correspond with 1L courses.

“State and federal courts often work collaboratively with Tribal courts across Michigan, so I am pleased that law students now have this comprehensive resource to help them learn more about Native American Law in our great state,” said Justice Megan K. Cavanagh, who serves on the Forum as the Michigan Supreme Court (MSC) liaison to Tribal courts. “To our Tribes and our law schools, I say, ‘*Miigwech*,’ or ‘thank you,’ for making this available.”

The Forum has shared the handbook with all five law schools in Michigan: Cooley Law School; Michigan State University College of Law; University of Detroit Mercy Law School; University of Michigan Law School; and Wayne State University School of Law.

The handbook encompasses the following topics:

- Histories of the Forum and the handbook;
- Land acknowledgements in legal education;
- Overviews of the 12 federally-recognized Tribes in Michigan;
- Caselaw examples aligning with 1L coursework (civil procedure, constitutional law, contracts, criminal law, property, torts, and writing, research, and advocacy); and,
- Additional educational resources.

The handbook was edited by Taylor Elyse Mills, an attorney specializing in Federal Indian Law, Tribal Law, Immigration Law, and Civil Rights Law. Doctor Mills also received a PhD in philosophy from Michigan State University where she specialized in “Engaged Philosophy of Law and Policy.” To the Forum, the Tribes, and her mentors throughout law and graduate school, Dr. Mills said, “*Chi miigwech* for your support. I am honored to be part of this meaningful project.”

# Tribal Court Recognition of Federal Court Subpoenas:

## A Small Success Story

By Justin Gray

The common, often routine contest to discovery subpoenas is unremarkable. However, when subpoenas issued by a federal court are challenged before a tribal court based on tribal sovereign immunity, the small but successful outcome may serve as a positive example to Indian law practitioners.

The Lac Vieux Desert Band of Lake Superior Chippewa Indians (“Tribe”) is a small, federally-recognized Indian tribe with checkerboard reservation lands in the Upper Peninsula near Watersmeet, along the Michigan-Wisconsin border. Just under 900 Tribal members reside on the reservation. The area is rural forest land and, although near the intersection of US-2 and US-45, commercial activity and economic development are modest. Tourists bring the Tribe’s casino some business, and there are small local businesses, but the local economy struggles.

The Tribe has searched for ways to maximize its limited resources, overcome its geographic shortcomings, and generate revenue for the Tribe and its members. Almost fifteen years ago, the Tribe began an experiment with online, small-dollar lending, which would allow local on-reservation lending operations to reach the national consumer borrower market. To secure experienced guidance in establishing this fledgling industry, the Tribe’s business arm hired servicing companies owned by Matt Martorello, an experienced online lending operator.

After the business operations had achieved some maturity and Tribal members had learned the necessary operational skills, the Tribe moved to capitalize on what it had learned and establish its own loan servicing company in addition to the wholly owned lending operation. Over time, the Tribe created two entities as arms of the Tribe, Big Picture Loans, LLC (“Big Picture”), which would operate the online consumer lending business, and Ascension Technologies, LLC (“Ascension”), to provide technical support services to Big Picture. Then, the Tribe bought the essential components of Martorello’s servicing company from Martorello-owned Eventide Credit Acquisitions, LLC (“Eventide”). Because the Tribe could not obtain financing for this purchase, the acquisition was through a seller-

financed transaction, under the terms of which Eventide was to be paid out of a portion of Big Picture’s profits.

All this background is necessary to understand how, in 2017, Big Picture, Ascension, Martorello, and several Tribal Councilmembers found themselves being sued in Virginia’s Eastern District Court by a class of consumer borrowers. The borrowers alleged that Big Picture’s loans were unlawful because they violated Virginia state usury laws, thereby making the collection of the loan payments the collection of an unlawful debt. In addition, the borrowers alleged that because several entities and individuals, including Martorello, were involved, the lending operation constituted a violation of Racketeer Influenced and Corrupt Organizations Act (“RICO”), §§ 1962(b), (c), and (d). Over the following two years, the Virginia suit prompted copycat lawsuits in Georgia, California, Oregon, Massachusetts, and others in Virginia.

Ultimately, however, in *Williams v. Big Picture Loans, LLC*, 929 F.3d 170 (4th Cir. 2019), the Fourth Circuit held that Big Picture and Ascension were entitled to tribal sovereign immunity from the plaintiffs’ claims, reversing the district court’s ruling to the contrary, and directed the district court to dismiss Big Picture and Ascension for lack of subject matter jurisdiction. This holding, which represents a significant development in the law of tribal sovereign immunity, enabled the Tribe to negotiate a global settlement in 2020 resolving all of the class actions that had been brought by consumer borrowers in five states, thereby resolving all litigation against the Tribe.

For reasons that still seem illogical and unreasonable to this writer, Defendant Martorello, the éminence grise behind Eventide, chose not to join in this settlement. Consequently, the class actions in Virginia, Oregon, and Massachusetts continued, primarily against the Martorello and Eventide, although there were several other nominal named defendants. The Tribe’s settlement resulted in a bitter separation between the Tribe and Martorello, after which, Martorello turned on the Tribe and sought (unsuccessfully) to bring the Tribe, its businesses, and several Tribal members back into the litigation.

Without Big Picture and Ascension in the case, Martorello and Eventide (collectively “Martorello” going forward) struggled with their defenses to the RICO allegations; by 2022 they were desperate. Martorello os-

legations; by 2022 they were desperate. Martorello ostensibly believed that Big Picture, Ascension, the Tribe, and several tribal employees and officials possessed evidence that would exonerate him. He first sought voluntary cooperation and asked the Tribe to supply evidence; for a multitude of reasons, the Tribe declined. Then, when Martorello hinted that he would serve subpoenas, the Tribe informed him that any foreign subpoena served on the Reservation would need to be recognized through the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court's ("Tribal Court's") process.

The Tribal Court Rules included Procedures for the Recognition and Enforcement of Foreign Court Subpoenas ("Subpoena Rules"). The Subpoena Rules required that any foreign court-issued subpoena be registered and approved by the Tribal Court before it could be served within the Tribe's jurisdiction.<sup>1</sup>

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1. The Tribe's objection described within to the federal subpoenas Martorello obtained was raised pursuant to Lac Vieux Desert Tribal Court Rules of 2008 10.004 and Lac Vieux Desert Tribal Court Administrative Order No. 2013-002 ("A-O 2013-002").

Under A-O 2013-002, subsection (B), "[b]efore any foreign court subpoena can be served on any Tribal member, Tribal entity, Tribal Employee or person under the jurisdiction of the Tribal Court or custodian of Tribal papers and records, the Tribal Court shall issue an order allowing recognition and enforcement of the subpoena."

Under A-O 2013-002, subsections (F) and (G), when a subpoena is properly issued by a foreign court and registered with this Court, the person or entity subject to the subpoena may, by counsel, object to the subpoena under several enumerated conditions. A-O 2013-002, Subsection G, pertinently provides:

(G) Objection. Only the person subject to the subpoena, their attorney, or the Tribal Attorney may object to the subpoena under the following conditions:

1. Any objection must be filed in writing with the Court within the [7-day] objection period as set forth in subsection (F).
2. The objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:
  - a. **The foreign court lacks jurisdiction over the person subject to the subpoena;**  
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  - c. **The subpoena is repugnant to the public policy of the Band;** ...
3. The person filing the objection shall by first-class mail notify the foreign court that issued the subpoena of the objection within seven (7) days of the receipt of the subpoena. ... (Emphasis added).

Under the Subpoena Rules, registration of a federal court subpoena for recognition required filing the foreign subpoena with the Tribal Court, after which the Tribal Court sends notice to the Tribal Attorney and to the intended subpoena recipients. Upon receipt of the Tribal Court notice, the Tribal Attorney and the intended recipients are afforded an opportunity to object to the registration of the subpoena on several grounds: the foreign court lacks jurisdiction over the person subject to the subpoena; the subpoena was obtained by fraud, duress or coercion; the subpoena is repugnant to the Tribe's public policy; or to honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury. If objections are lodged, the Subpoena Rules require a hearing, after which the Tribal Court issues an order either granting or denying registration. Any such order may be appealed.

To comply, Martorello asked the Massachusetts District Court to issue subpoenas for the production of documents to the Tribe, Big Picture, and Ascension, and subpoenas for discovery depositions of several Tribal employees and the Tribe's General Counsel. In the motion to the District Court, Martorello urged that the District Court's involvement was necessary because, under Tribal law, the Subpoena Rules govern the recognition of foreign subpoenas and recognize only subpoenas issued by foreign courts with a sealed clerk's attestation. The District Court granted the request, and the District Court Clerk issued subpoenas with sealed attestations.

In accordance with the Subpoena Rules, Martorello sought to register the (sealed and attested) foreign court subpoenas of the Massachusetts District Court with the Tribal Court. The Tribal Court Clerk received the subpoenas and issued notices to the intended recipients, to afford them an opportunity to object to their recognition. The Tribe, Tribal Entities, and Tribal employees all filed objections to the recognition of the subpoenas.

After these materials were filed with the Tribal Court, Martorello simply filed copies of them in the Massachusetts District Court, without filing any motion, so the District Court took no action on the filings.

Meanwhile, the Tribal Court held a hearing on the objections and found that tribal sovereign immunity barred the recognition of the subpoenas. The Tribal Court reasoned that the subpoenas sought information from and about the Tribe's commercial operations, which, because they



are conducted by Tribal arms, are shielded by tribal sovereign immunity. Martorello offered nothing in support of recognizing the subpoenas that suggested that any of the information sought or that any of their intended recipients were outside the protections of tribal sovereign immunity, so the Court sustained the objections. It found that the subpoenas were an attempt to circumvent tribal immunity and refused to recognize them.<sup>2</sup>

After the Tribal Court ruling, Martorello filed a status report with the District Court and explained that the Tribal Court had held that each of the intended recipients was protected by tribal sovereign immunity and had denied recognition of the District Court subpoenas. The Tribal Court's unappealed ruling denying recognition notwithstanding, he asked the District Court to determine whether he could pursue discovery against the Tribal entities and employees. At this writing, however, more than two years later, it does not appear that the Massachusetts District Court has taken any action to overturn the Tribal Court's ruling, and has in fact

## 2. The Tribal Court ruled as follows:

The issue I believe that's before the Court in the request for these numerous subpoenas involves subpoenas seeking information from those lending operations or arms or commercial operations of the LVD tribe, and the employees of those operations. Those employees all to me appear to fall within the realm of those tribal operations, which based upon my research and my previous experience in the sovereign immunity area, fall within the protections that are afforded by tribal sovereign immunity.

There is nothing that is presented to me today, whether it be in cases that previously existed and were settled, or cases that were filed or now are defended regarding those lending operations that would push me to believe that there is something, a thread to hang on, that would place any of the subpoena recipients outside of sovereign immunity or inside of some type of private lending operations or private enterprise.

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So, in a nutshell, what we have in this case is a request of subpoenas seeking discovery of matters that appear to be entirely within the reserved sovereign immunity of tribal operations, commercial enterprise, in this case being lending-related operations or participating in lending operations.

There is nothing before me that shows that the LVD tribe has waived any of its immunities in this case or in a prior case. The rights of this tribe are expressly reserved in a code, a lending code. The efforts to, you know, I read the briefs, I read the – I read the arguments. This case appears to be both an end-around attempt to seek information that is protected under a huge blanket of sovereign immunity.

made substantively similar rulings quashing Martorello's subpoenas to other non-Tribal employees.

This account of an obscure Tribal Court ruling may seem undramatic, as courtroom accounts go, but consider this: to the author's knowledge, this is the only instance in which a Tribal Court has denied recognition of an attested subpoena issued by a federal court in aid of discovery on the ground of tribal sovereign immunity. Unless immune, the federal court has jurisdiction over on-Reservation employees, Councilmembers, and activities, and there is no federal law or rule governing the interplay between federal and tribal courts. The author believes that the outcome here is most likely based on comity and the mutual respect between the courts, which, regrettably, is not commonplace.

Thus, in its small way, the Tribal Court's ruling both reflects and implements the Fourth Circuit's holding in *Williams v. Big Picture Loans*, supra, that sovereign tribal immunity shields Indian tribes, their tribal arms, and the tribal officers and employees of such tribal arms from claims asserted in foreign courts unless they have consented to such jurisdiction. As such, this outcome is (an admittedly small) milestone in the development of the law governing tribal and federal court relations.



*The author and lead counsel in the litigation described here, Justin Gray, is an attorney with Mshkawzi Law, LLP, a boutique firm specializing in all phases of Indian Law, located in Grand Rapids, and representing Indian tribes and their economic development across the United States and Canada. Your issue editor had the pleasure of working with him on this and other cases arising out of the Williams' litigation.*

# The Importance of the Violence Against Women Act (VAWA) to the Tribal Court System: A Brief History

By Jasmin Gaytan Guillen and Robin Bilagody

## Introduction

The rates of domestic and sexual violence within tribal communities are alarmingly high. According to the National Institute of Justice, 84.3 percent of Native women have experienced violence in their lifetime.<sup>1</sup> Non-Indians commit assault a significant portion of these domestic violence offenses in Indian Country.<sup>2</sup>

The Violence Against Women Act (VAWA) has been instrumental in addressing domestic violence, particularly in tribal communities. It has provided federal funding, increased tribal jurisdiction, and raised awareness about this issue.<sup>3</sup>

The Tribal State Federal Judicial Forum can be seen as a direct result of VAWA, which has been essential in reaffirming tribal sovereignty and jurisdiction over domestic violence cases involving Native victims.<sup>4</sup> Through this forum, the relationship between the State and the Tribes has flourished.<sup>5</sup>

The first part of this article explores the ongoing progress made through implementing special jurisdiction for Native American tribes in domestic violence cases. We will discuss the benefits of this jurisdiction, such as increased access to justice for Native victims and improved accountability for perpetrators. The second part will delve into the practical aspects of implementing special domestic violence criminal jurisdiction in Michigan's local tribes. Specifically, we will hear more about Pokagon Tribe's ongoing efforts to educate its members about the process and prepare for its implementation.



Photos from the Missing or Murdered Indigenous People walk held every year on May 5 in Grand Rapids.

1. Andre B. Rosay, U.S. Dep't of Justice, National Institute of Justice Research Report: Violence Against American Indian and Alaska Native Women and Men 2, 33 (2016).

2. *United States v Bryant: The Results of Upholding Women's Rights and Tribal Sovereignty*, 44 Am Indian L Rev 117, 138.

3. 25 U S C S § 1304 (LexisNexis, Lexis Advance through Public Law 118-82, accessed September 20, 2024).

4. *Id.*

5. *Id.*

## History

On June 20, 1990, then-Senator Joe Biden introduced the Violence Against Women Act (VAWA) in the United States Congress.<sup>6</sup> This legislation improved the way this country responded to crimes involving domestic violence and sexual assaults.<sup>7</sup>

In 1994, Congress recognized the severity of crimes re-

6. About Vice President Biden's Efforts to End Violence Against Women, The White House, <https://obamawhitehouse.archives.gov/1is2many/about> [<https://perma.cc/P8ZD-N5JR>].

7. *Id.*

lated to domestic violence, sexual assault, and stalking. In response, the Violence Against Women Act (VAWA) was passed by Congress in that same year. Since then, Congress has reauthorized VAWA in 2000, 2005, 2013, and 2022.<sup>8</sup>

The reauthorizations of VAWA are crucial because they include opportunities to collaborate on areas that work well and identify areas that could be improved. This collaboration focuses on the survivors who have been impacted by the ongoing violence within Indian Country.

The most recent reauthorization, the VAWA Reauthorization Act of 2022, was signed in March 2022 by President Biden. The 2022 reauthorization strengthens and expands protections and services designed for survivors and improves how communities address these crimes. Most importantly, VAWA 2022 highlights increasing protections for Indigenous communities. It includes recognizing the inherent authority of Tribes to exercise special criminal jurisdiction to prosecute non-Indian offenders not just for domestic violence and dating violence on Tribal lands but includes sexual violence, sex trafficking, child violence, and stalking. Additionally, VAWA 2022 authorized a pilot program for Indian Tribes in Alaska to exercise special tribal criminal jurisdiction within Alaska Native villages.<sup>9</sup>

In Michigan, four of the twelve federally recognized tribes exercise VAWA Special Tribal Criminal Jurisdiction. Those tribes include the following: Grand Traverse Band of Ottawa and Chippewa Indians, Little Traverse Band of Odawa Indians, Nottawaseppi Huron Band of the Potawatomi Indians, and Sault Ste. Marie Tribe of Chippewa Indians.

Each of the four tribes that currently exercise special domestic violence jurisdiction supports and assists victims. Various types of services include informing victims of their rights, transportation assistance to Court, Counseling referrals, relocation of victims to safe places, and filing protective orders.

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8. Reauthorization of the Violence Against Women Act (VAWA), The White House (March 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vaawa/>.

9. *Id.*

### **Special Tribal Criminal Jurisdiction**

VAWA has granted tribal governments increased authority to impose sentences and jurisdiction over many felonies.<sup>10</sup>

In the original reauthorization of VAWA in 2013, the “special domestic violence criminal jurisdiction” was created. The reauthorization of VAWA in 2022 changed this to “special Tribal criminal jurisdiction.”<sup>11</sup> Other changes that the 2022 reauthorization brought forth included the expansion of tribal jurisdictions.<sup>12</sup> Tribal courts will now have the option to prosecute domestic violence and dating violence cases involving both Indian and non-Indian perpetrators, but only if certain conditions are met, specifically “special ties.”<sup>13</sup> “Special Ties” also known as “covered crimes” was broadened to include an individual who is being prosecuted for “assault of Tribal justice personnel; child violence; dating violence; domestic violence; obstruction of justice; sexual violence; sex trafficking; stalking; and a violation of a protection order.”<sup>14</sup> If these conditions are not met, the cases must be handled by federal or state courts.<sup>15</sup> These courts are given “inherent power” to prosecute non-Indian offenders for specific crimes related to intimate partner violence.<sup>16</sup>

It has been argued that the complex jurisdiction landscape and inadequate funding between both entities, tribal and federal or state courts, have created a climate that encourages non-Native individuals to sexually assault Native women without repercussions.<sup>17</sup> The Department of Justice completed a study in 2016 showing that eighty-four percent of Indian women have experienced violence, fifty-six percent have experienced sexual violence, and over ninety percent have experienced violence at the hands of a nontribal member.<sup>18</sup> While

10. Tribal L. & Pol’y Inst., Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction 3 (2015), <http://www.tribal-institute.org/download/TLOA-VAWA-Guide.pdf>.

11. 25 U.S.C.S. § 1304 (LexisNexis, Lexis Advance through Public Law 118-82, approved September 20, 2024).

12. Reauthorization of the Violence Against Women Act (VAWA), The White House (March 16, 2022).

13. 25 U.S.C.S. § 1304.

14. *Id.*

15. *Id.*

16. *Id.*

17. Amy L. Casselman, *Injustice in Indian Country: Jurisdiction, American Law, and Sexual Violence Against Native Women* 56 (2015).

18. Andre B. Rosay, 2, 33 (2016).

there is more than one reason for this disproportionality, the jurisdictional loopholes contribute to the problem.

### **The *McGirt* Decision**

“On the far end of the Trail of Tears was a promise.” Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding “all their land, East of the Mississippi river,” the U.S. government agreed by treaty that “[t]he Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians.”<sup>19</sup> Both parties settled on boundary lines for a new and “permanent home to the whole Creek nation,” located in what is now the Oklahoma Treaty with the Creeks.<sup>20</sup> The government further promised that “[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.”<sup>21</sup>

Unless Congress enacts legislation explicitly disestablishing an Indian reservation, it remains Indian land subject to the Major Crimes Act (MCA).<sup>22</sup> The MCA gives federal courts exclusive jurisdiction to try Native Americans for serious crimes committed in what the MCA calls “Indian country.”<sup>23</sup> States generally cannot try those crimes.<sup>24</sup> The MCA defines “Indian country” to include all land within federal American Indian reservations, regardless of private ownership. Only Congress can establish a reservation.<sup>25</sup>

### **The Impact of *McGirt* on Tribal Criminal Jurisdiction**

The *McGirt* case has brought two significant outcomes for tribal sovereignty.<sup>26</sup> Firstly, this decision has established a precedent for other tribes with a similar history of recognizing Indian land.<sup>27</sup> Other tribes, including Michigan, will be empowered to achieve similar tribal-state negotiations. While Michigan’s tribal landscape differs from Oklahoma’s, the relationships and collabo-

ration between counterpoints are essential.<sup>28</sup>

Secondly, intergovernmental agreements show that law enforcement officers from different agencies can work together without problems when making arrests.<sup>29</sup> These agreements include cross-deputization, memoranda of understanding (MOUs) with education and health providers, and local government agreements for tribal citizens, helping bridge jurisdictional gaps, particularly in Indian Country.<sup>30</sup>

Cross-deputization agreements, in particular, have effectively addressed the jurisdictional void created by separate state and tribal jurisdictions.<sup>31</sup> As defined in *United States v. Washington*, cross-deputization authorizes one entity’s law enforcement officers to act as enforcement officers in another territory.<sup>32</sup>

However, establishing these agreements requires cooperation between local governments and tribes. In Michigan, nine of the ten tribes with police departments have successfully implemented cross-deputization agreements with state agencies.<sup>33</sup> Michigan tribes and local governments recognize the significance of these agreements in ensuring fair and equitable opportunities for their citizens.

Nevertheless, the Muscogee (Creek) Nation is navigating its relationship with the state of Oklahoma following the *McGirt* decision. The Court is confident that both parties will strive for “cooperative sovereignty,” as shall other tribes.<sup>34</sup>

### **The Role of VAWA in Protecting Native Women in Michigan**

While the *McGirt* decision has brought renewed attention to the need for justice in Indian Country, the ongoing challenges faced by Native women, particularly in the context of domestic violence, highlight the urgent need for effective implementation of VAWA. The hope

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19. Treaty with the Creeks (1832 Treaty).

20. *Id.*

21. *Id.*

22. 18 U.S.C.S. § 1153 (LexisNexis, Lexis Advance through Public Law 118-82, accessed September 20, 2024).

23. *Id.*

24. *Id.*

25. *Id.*

26. *McGirt v Oklahoma*, 591 US 894, 140 S Ct 2452 (2020).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Bridging the Jurisdictional Void: Cross-Deputization Agreements in Indian Country*, 94 N D L Rev 65, 68.

31. *Id.*

32. *United States v Washington*, 19 F Supp 3d 1126, 1151 (W D Wash 1994).

33. Fletcher et al., *Indian Country Law Enforcement and Cooperative Public Safety Agreements*, Mich B J, Feb 2010, at 42 (edited version of “Criminal Jurisdiction in Indian Country”).

34. *McGirt*, 140 S. Ct. at 2482.

is that all federally recognized tribes in Michigan will implement VAWA to exercise the Special Tribal Criminal Jurisdiction and continue improving Indian Country, making it a safe community for future generations. Yet, if the implementation proves challenging, the intergovernmental agreements between tribes and local governments can provide a valuable means of collaborating to address the injustices faced by Native women due to domestic violence.

In the Pokagon Band, the Department of Social Services provides services to women in the community “who are feeling unsafe at home and need help.”<sup>35</sup> The services provided include case management, safety planning, court appointments, etc.<sup>36</sup> This tribe is one of the eight that have not implemented the VAWA reauthorization. As the Victim Services Supervisor, Casey Kasper-Welles discussed the many programs created to ensure a holistic healing journey for DV victims and their families.<sup>37</sup> These programs work to weave community, healing, and culture.<sup>38</sup>

Since 2013, the Pokagon Tribe has been actively working to determine the most effective implementation of VAWA within their community.<sup>39</sup> To ensure a smooth transition, the tribal prosecutor has been educating tribal government members on the potential impacts of VAWA implementation, including changes to jury selection.<sup>40</sup> Casey believes that this implementation, while symbolic, holds significant power.<sup>41</sup> She argues that it strengthens tribal sovereignty and instills confidence in the tribe’s ability to exercise its authority.<sup>42</sup>

### Conclusion

Casey emphasized the crucial role of the tribal-local government partnership in her work serving Pokagon citizens.<sup>43</sup> She noted that historical mistrust and a decline in faith in governmental systems have often characterized their relationship. However, the alliance between these entities has fostered a sense of support and protection among tribal members.

35. Virtual Interview with Casey Kasper-Welles, Victim Services Supervisor, Pokagon Band (August 28, 2024).

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

These reflections echo the sentiments of leaders in both state and tribal offices and underscore the forum’s efforts to promote ongoing collaboration. By setting a positive example, these leaders inspire frontline staff to maintain a similar commitment to working together.



### **Jasmin Gaytan**

**Guillen** is a 2-L at Thomas M. Cooley Law School. While balancing her studies with a full-time career as a social worker, she remains passionate about community empowerment and advocacy. As a social worker, she works

closely with her neighbors to build a healthier, more equitable community. She is also active in Thomas M. Cooley Law School’s distinguished Moot Court program and as law student advisor of the State Bar of Michigan’s American Indian Law Section. She is a member of her neighborhood association and participates in local housing initiatives. Ms. Guillen aspires to become “a compassionate legal advocate committed to dismantling systems of oppression and promoting justice.”



**Robin Bilagody** is an enrolled member of the Gila River Indian Community, where she resided before coming to Michigan to attend law school. She completed her undergraduate degree at Arizona State University, receiving a Bachelor of Science in Public Service and Public Policy, and attended the Pre-Law Summer Institute

(PLSI) class of 2021. While in law school, Robin served as the Area Four Representative for the National Native American Law Student Association for the 2022-2023 academic year. Additionally, she worked for the Gila River Indian Community, the Native American Rights Fund, Catawba Nation Office of Tribal Government, and the California Tribal Families Coalition, and she served on the American Indian Law Section of the Michigan State Bar as a law student advisor. In the spring of 2024, she received her Juris Doctorate and completed the work required to receive her Indigenous Law Certificate and Trial Practice Institute Certificate. After taking the Arizona bar, she will be working in Indian Country with tribes, organizations, and individuals.

# Advocates Guild Progressive Dinner - October 23, 2024

On Wednesday, October 23, 2024, the Advocates Guild of the Michigan Supreme Court Historical Society held its annual dinner. Rather than a sit-down dinner in the Rotunda, the justices hosted a Progressive Dinner, complete with traveling drinks cart. After the usual group photographs in the Courtroom, attendees entered the South Wing, where Justices Richard Bernstein and David Viviano's offices hosted appetizers. Half an hour later, the gathering was moved to the North Wing where the main course was held in the offices of Chief Justice Clement and Justices Cavanaugh, Welch, and Zahra. The event ended in the Rotunda with desserts and remarks by Liisa Speaker, member of the Advocates Guild Board, and Chief Justice Clement.



Advocates Guild members Daniel Corrigan Grano and Judge Paul E. Stutesman enjoy appetizers in Justice Viviano's office...

Chief Justice Clement reiterated her enjoyment of the new format and commented on the impressive nature of the appellate bar, noting that

You have done your best to prepare briefs that reflect your clients' strongest case for a ruling in their favor.

You have answered all of our questions. Well, maybe, most of our questions. You did all of that with civility and respect for your colleagues. I know I speak for the entire Supreme Court in saying how much we appreciate your commitment to treating others as you want to be treated.

It was an excellent event, with lively conversations and laughter amongst the participants in each office.



...as do Guild Board Member James K. Benison, Retired Justice Maura D. Corrigan, and Cooley Professor Gerald A. Fisher.



Ann M. Sherman speaks with Justice Bernstein and Chief Justice Clement.



Justice Viviano listens to Liisa Speaker and Jordan Ahlers-Smith.



Barry Powers sits with retired judge William J. Giovan and Susan Sisk in Justice Bernstein's office.



Retired Justice Maura D. Corrigan (sitting with Robert Kamenec and listening to Daniel Grano) enjoys a view she surely saw many times during her service to the Court.



Society Executive Director Lynn Seaks and The Rathbun Agency's COO, Laura Stoken (also Lynn's daughter-in-law), enjoy the dinner main course under the watch of Chief Justice G. Mennen Williams.



Mark Magyar, Jeffery Stuckey, and Kendell Asbenson converse in Justice Bernstein's office.

The main course was held in the offices of Chief Justice Clement, Cavanagh, Welch, and Zahra.



By the end of the evening, Justice Zahra's office was packed with people.



Justice Cavanagh listens to Eric Restuccia and Christine Pagac.



A group in Justice Welch's office listens to a story from Society President Joseph Gavin.



Robert Kamenec listens to a story in Justice Zahra's office.



One of the highlights of the Advocates Guild Dinner is the photography session with the Justices. In these photos, the Justices share a light-hearted moment with Advocates Guild Board member, Liisa Speaker, and her law firm partner, Jordan Ahlers-Smith, who was attending her first Guild Dinner.



## **Advocates Guild Chair Mary Massaron's Remarks for the Event, Given by Liisa Speaker in Her Absence**

I am so sorry not to be with you in person for our Advocates Guild dinner – especially since it involves this new format with the chance to visit the justices' chambers. But I tested positive for COVID and my physician advises that I am still contagious – so these remarks that Liisa Speaker is kind enough to offer for me will have to do.

This is a night in which we honor the advocates who appear before the Supreme Court. As I was thinking about what to say, I looked at an essay by Justice Frankfurter about the United States Supreme Court and its functioning. Justice Frankfurter said that for those wielding ultimate judicial power, it would be easy to be either willful or wooden: willful, in the sense of enforcing individual views instead of speaking humbly as the voice of law by which society presumably consents to be ruled....; wooden, in uncritically resting on formulas, in assuming the familiar to be necessary, in not realizing that any problem can be solved if only one principle is involved but that

unfortunately all controversies of importance involve if not a conflict, at least an interplay of principles.<sup>1</sup>

The job of a justice on a court of last resort is not easy. Steering between Scylla and Charybdis – the proverbial rock and hard place – requires deep thought and effort. The role of the advocate is to help steer the justices between these two problematic poles – to help them find a path to a reasoned decision that takes into account the facts and formulas and competing principles to reach a just result under law. Through the clash of ideas set forth in the briefs, the justices are able to better see the way.

I have had the great good fortune to watch extraordinary advocates do just that before this Court for more than thirty years. And so – though I am not able to be there in person tonight – I want to commend everyone in this room for their work in maintaining the strength of our Court by their efforts.

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<sup>1</sup> Frankfurter, *The Supreme Court in the Mirror of the Justices, Of Law and Life and Other Things*, p 95 (Atheneum 1969).



## Multi-Tasking Thomas M. Cooley

by Carrie Sharlow

On the first floor of the Hall of Justice just inside the Conference Center is the composite painting of the Big Four – Justices Campbell, Christiancy, Cooley, and Graves, who served together from 1868 to 1875.

If you've viewed that painting, you may have noticed several things: (1) the clock shows 2 o'clock; (2) there are two lawyers arguing; (3) Justice Campbell is the only one without a beard; (4) Justice Graves is holding a copy of the Michigan Reports; (4) Justice Christiancy is the only one whose hands are not showing; and (5) Justice Cooley is the only one writing something down.

Regarding this last fact, the observer (and perhaps the two arguing lawyers in the painting) may assume that Justice Cooley is taking notes on the case in question, but I have a different theory.

I think he's multi-tasking, writing a letter to his son.

The Bentley Historical Library has the papers and memorabilia of Charles Horton Cooley, Justice Cooley's fourth child and third son. "Charlie" Cooley ended up teaching at the University of Michigan, but in his youth, he seems to have caused his parents some concern over his health. Apparently, in 1872, when Charlie

was seven, he was attending the Grau Pre-School and presumably writing his father about his more active classmates.<sup>1</sup> And Justice Cooley, being an active parent, replied to his son's letter with another, written on January 4, 1872.

After queries about Charlie's activities, Justice Cooley remarks on his own business:

We are full of business here. A lawyer is talking to us now, but I have no difficulty in hearing him and writing this.<sup>2</sup>

The Court may have been in the midst of hearing the arguments<sup>3</sup> in either *Harry Griswold v Union School District of Bay City*<sup>4</sup> or *John H. Wallace v James T. Finch*<sup>5</sup> or *Charles N. Smith v Jesse W. Reed*<sup>6</sup> or *T. Lawrence McVickar v Delos L. Filer*<sup>7</sup> or *Frederick W. Daniels v Sidney Johnson*.<sup>8</sup> Though, hopefully, it wasn't the *Griswold* case, since Justice Cooley wrote that opinion; it wasn't decided until January 9, by which time Charlie surely would have received his letter.

The letter goes on for less than two pages – ending with “I don't know when we will get home. We have a record to read in one case of almost a thousand pages.”<sup>9</sup> – so Justice Cooley's attention was not divided for long. But in an era when we are often on our cell phones or answering email while in a meeting or multi-tasking in a myriad of ways, it is amusing to think that the legendary, brilliant justice Thomas M. Cooley was doing something similar over one hundred and fifty years earlier.

Think of that next time you see our Portrait of the Big Four.

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1. Charles Horton Cooley Papers, 1872-1930; Correspondence With His Parents, Thomas M. and Mary Horton Cooley, 1872-1881, January 4, 1872.

2. *Id.*

3. *Supreme Court. The January Term at Lansing. The Opinions Rendered Thursday*, Detroit Free Press (January 5, 1872), p 1.

4. 25 Mich 262-265.

5. 25 Mich 255-261.

6. 25 Mich 239-240.

7. 25 Mich 241.

8. 25 Mich 429-434.

9. Charles Horton Cooley Papers, January 4, 1872.

## Society Assistant Executive Director Receives 2024 Avern Cohn Award

The Michigan Supreme Court Historical Society is pleased to share that its Assistant Executive Director, Carrie Sharlow, is the 2024 recipient of the Avern Cohn Award for Excellence in the Collection, Preservation, and Interpretation of Michigan Legal History. This award is given annually by the Court Historical Society of the Eastern District of Michigan and was presented to Sharlow on November 13, 2024. It was given to recognize Sharlow's various contributions to the preservation of Michigan's legal history, including her numerous articles on “Michigan Lawyers in History” published in the Michigan Bar Journal since 2011. These articles highlight past attorneys and judges who've made an impact on Michigan's legal and historical landscape.

Michigan Supreme Court Historical Society President Joseph Gavin observed of the award: “Judge Cohn was an important advocate for the preservation of Michigan history, and as a long-time board member of ours, we at the Society are confident that he would be proud that the award that bears his name was given to Sharlow. Carrie has been an invaluable part of the work our Society has done in preserving and disseminating the history of our Supreme Court, and we can think of no one more deserving of this award than she. Congratulations Carrie!”



In June, we published *The Late Great Soapy Williams: Memories & Reflections of a Former Michigan Supreme Court Law Clerk* by Gregory DeMars.

Later this fall, we received an email from Chief Justice Williams' granddaughter, LeeAnn Williams Stewart:

I just happened upon the summer 2024 newsletter and the article about G. Mennen Williams. I was struck repeatedly by how well Mr. DeMars described - and clearly knew - my grandfather. He was such a special man and an incredible influence in my life. Mr. DeMars described so well the combination of shyness and yet his ability to command a room.

If there is any way that you could pass on my appreciation to Mr. DeMars, I would be very grateful.

The Society is never one to let an opportunity go by and requested an article by Ms. Stewart about her illustrious grandfather from the viewpoint of his family. And so...

## **G. Mennen Williams: A Legendary Politician, A Remarkable Justice, But Most Importantly, A Beloved Grandpa**

*By LeeAnn Williams Stewart*

On May 19, 1970, my grandfather announced his candidacy for the Michigan Supreme Court. I was almost three years old. My mom and I, along with a dear family friend, attended the press conference. My mom had packed up my Fisher Price people to keep me occupied. Once in the auditorium, the three of us settled in our seats, with me between the two adults. Soon my grandfather walked out on the stage, and I knew where I wanted to be. I spilled my toys on the floor, and while my mom and Mrs. Vanselow bent over to pick them up, I slipped away. My mom said she was picking up the people, heard the crowd exclaim, and then flash bulbs went off all around her. She sat up and watched me walk across the stage to my grandfather. He stuck his hand down and I grabbed it. With me holding on tight, he delivered his news of his Supreme Court run.

As a child, I adored him. He was fun, energetic, and always ordered something chocolate for dessert.

As I matured, my love, admiration, and respect for him grew exponentially.



Former Michigan Gov. G. Mennen Williams, holds the hand of his three-year-old granddaughter, Lee Ann Williams, as he announces his candidacy for the Democratic nomination for the State Supreme Court, in Detroit, Mich., May 19, 1970. Williams is the third candidate to announce formally that he will seek one of the two Supreme Court seats to be filled in the November election. (AP Photo/Preston Stroup). Reprinted with Permission.



A less publicized photo of G. Mennen Williams with LeeAnn (and her older brother Gery).

I spent part of my summer vacations with my grandparents each year. Every day, I went to work with my grandfather.

One summer, I remember him knocking on my door as I prepared for bed. He came in, carrying a handful of letters. With a twinkle in his eye, he said, “Tunie, I thought you might enjoy reading these.” The letters were missives between my grandparents during their courtship in the mid-1930s. My grandmother was at the University of Michigan and my grandfather was at Michigan Law School. They were separated during the summers due to family obligations.

I was moved by the love and respect evidenced by each for the other. More than anything though, I was struck by their strong desire at such a young age to change the world and to address inequities and unfairness. Together, in these letters, they mapped out their future plan.

As a sixteen year old, reading about young people with

such an intense ambition to impact the world was a bit overwhelming. Knowing how successful they had been in reaching their lofty goals, I was filled with pride.

During my summers with him, my grandfather was a Justice on the Michigan Supreme Court, serving as Chief Justice for his last term. My time with him was invaluable in so many ways. I served a number of roles.

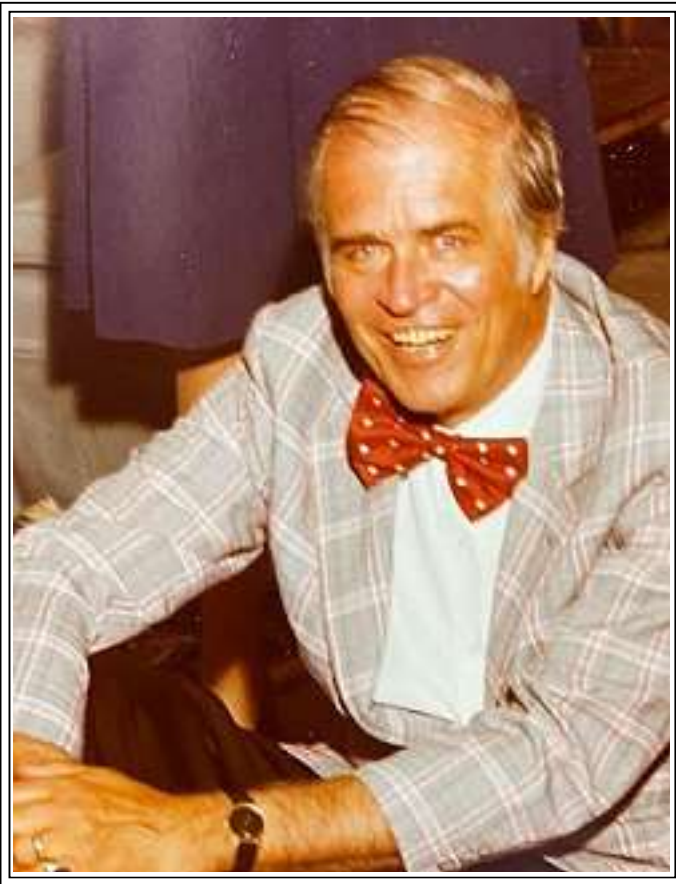
I was his driver. Often if the Court was in session and we were driving to Lansing, my grandmother would come with us. The quiet time with the two of them, away from interruptions, was heaven for me.

My first year of working with him, my grandfather designed a legal system orientation for me and another intern. We observed in courtrooms, we went to the jail and interviewed prisoners, and we met with attorneys in various fields. Between these activities, I was assigned research projects. At the age of sixteen, I became familiar with law books and shepardizing a case through the process.

I shared his office with him, working at his table while he was at his desk. The office staff – assistants, attorneys, secretaries – all ate lunch together at that table on most days. Discussion was easy, warm, and vibrant, with all participating. My grandfather loved to laugh and there was a lot of laughter during lunch. After lunch, he closed his door and took a short nap on his couch while I continued my work at his table.

During this time with my grandfather, I saw his intellect, his life experiences, and his deep desire to make the world a better place blend together in every decision he made. I witnessed his love for people. He knew everyone’s name and used it. He remembered names of people that he had not seen for years and those he had met casually on the street. He treated everyone with kindness, respect, and dignity. He felt deeply.

Soon, under his tutelage I realized my own goal of becoming an attorney. While he did not live to see me



LeeAnn provided this photo, commenting that it shows her grandfather's personality perfectly. Note the rare red bowtie.

"My fondest memories of Soapy were in the Young Turk days...and I remember them all... Blair Moody, Franklin D. Roosevelt, Jr., Hubert Humphrey and, of course, Soapy. They were the courageous ones, the true liberal voices and they made themselves heard." *Eppie Lederer (Ann Landers)*

"Our thoughts are much with you. Perhaps it helps a bit to know. And also that no one ever had more that was good and useful from life." *John Kenneth Galbraith*

One of the greatest honors of my life was when my grandmother asked me to speak on behalf of the family at the dedication of the G. Mennen Williams Law Building thirty years ago. Given that I was present at the declaration of his Michigan Supreme Court candidacy, it was a full circle moment for me.

I think about my grandfather often. Over the years, I have struggled with how best to honor his legacy. I realized that by living a life authentic to me, by treating people with kindness and respect and by bringing morality and ethics into difficult situations and decisions, I keep him alive within me.

enter into law school, he knew of my path.

My grandfather died on February 2, 1988, when I was a junior at Princeton, his alma mater. After his death, my grandmother found one of my Fisher Price people from the day of the 1970 announcement on his bureau with a few of his prized possessions.

To this day, I have a file filled with the many letters that my grandmother received at his death. It is not the celebrity of the people that wrote that impressed me, it was what they said.

"Please let me join all those who are expressing sorrow that such a distinguished, valiant, and compassionate person is no longer here on earth... America has needed him for the past forty years or so...He was a fine, fine man, - honest, reliable, open-hearted, confident, thoughtful, and generous." *Sargent Shriver*



Justice Williams' better half, Nancy, and LeeAnn.



The author and her husband at the Grand Hotel. Mr Stewart is wearing G. Mennen Williams' famous green and white bowtie.

*LeeAnn Williams Stewart received an A.B. From Princeton University in 1989 and a J.D. from Villanova University School of Law in 1992. She started her career as a commercial litigator in Philadelphia and eventually transitioned into the transactional side of commercial finance. She moved to Savannah, Georgia, where LeeAnn spent seventeen years as a partner at Savannah's largest law firm, HunterMaclean. She represented national lenders in commercial financing and sale leasebacks across the United States. LeeAnn was a Best Lawyers in America: Real Estate Law, a Super Lawyer and both a Fellow and a Regent in the American College of Mortgage Attorneys. LeeAnn's true passion was her involvement on the boards for local Savannah organizations such as the Humane Society, Union Mission (the area's largest homeless shelter) and the Landings Military Family Relief Fund, which provides assistance to local military members and their families. LeeAnn retired in 2019 and introduced her Texan husband to the beauty of Northern Michigan. In 2023, they purchased a home in Traverse City where they will spend their summers. When LeeAnn was a baby, her father called her his little Petunia, which led to her nickname of Tunie.*

## Former Justice Maura D. Corrigan Awarded State Bar of Michigan's Highest Honor

On September 19, 2024, Retired Justice Maura D. Corrigan was awarded the Roberts P. Hudson Award, the "highest award conferred by the State Bar." She is the fifty-second awardee since 1979 and the third justice (retired or otherwise) to receive the award. Named after the State Bar of Michigan's first president, Roberts P. Hudson, the award is given to a lawyer in recognition of "their unselfish rendering of outstanding and unique service to and on behalf of the State Bar of Michigan, the legal profession, and public." Past honorees have included all types of lawyers, judges (both state and federal), Bar presidents, and the Historical Society's own Wallace D. Riley.

Congratulations, Justice Corrigan!



# 2024 Society Membership

NOTE: *Italics* denotes additional membership in the Advocates Guild

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