

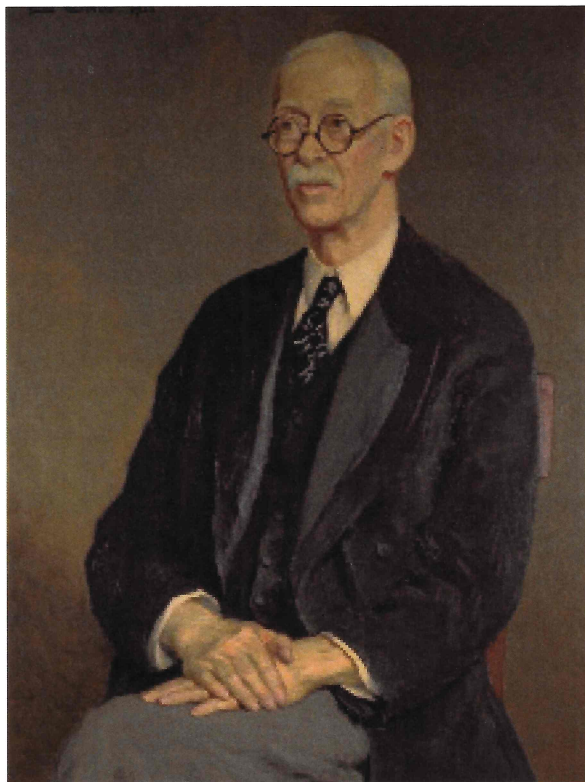


# *Society Update*

The Official Publication of the Michigan Supreme Court Historical Society

Winter 2020

## **Historic Advocate Spotlight** **Dynamic Figures in Michigan's Legal History**



**William L. Carpenter, 25th Justice**

Official portrait: painted by Gari Melchers

Born: November 9, 1854, in Lake Orion, MI

Joined MSC: July 1, 1902

Appointed by: Governor Aaron T. Bliss

Chief Justice: 1906

Predecessor: Charles Long

Successor: Flavius L. Brooke

Died: January 17, 1936, in Detroit

**A**s cases grow older there is a greater chance that its attorneys of record may fade into history. In an effort to highlight Michigan's rich legal history, the Advocates Guild will be spotlighting attorneys who were active between 1910 to 1950. In the following newsletters, we will feature short biographies for a variety of advocates active before the Michigan Supreme Court during the above time period, focusing on their most influential cases, career highlights, or other interesting historical information. Many of the cases discussed have countless citations, are still cited in caselaw or secondary sources today, or have other far-reaching implications.

This first article will highlight William L. Carpenter and William W. Potter, who were both justices on the Michigan Supreme Court during their careers. The second article features Alex Groesbeck, William A. Lucking, and Thomas G. Long. The third article features Parm C. Gilbert, J.L. Boyd, and Ernest Smith – three Northern Michigan attorneys. The final article features Ernest Goodman, Oliver M. Green, and Anne Davidow. Guild members are in a prime position to appreciate a glimpse into some of the advocates that helped shape and define Michigan jurisprudence in their time and ours, and we hope you enjoy this view into some of the dynamic figures in Michigan's legal history.

### **Status of Annual Membership Luncheon**

The Annual Membership Luncheon this year is about a month later than in previous years—May 14, 2020. The Executive Committee is considering what might need to be done in response to the Coronavirus/Covid-19 pandemic. We are hopeful that the social distancing that epidemiologists are recommending will work, circumstances will improve, and the luncheon will not be canceled or postponed. A final decision will be made in mid to late April, which will be posted on [www.micourthistory.org](http://www.micourthistory.org). Plan to visit our web site for the most current information.



## **Hon. William L. Carpenter**

Few advocates can claim to be an attorney of record, or of counsel, on cases with over one thousand citations – William L. Carpenter is one of those few.<sup>1</sup> Born in Lake Orion, Michigan, on November 9, 1854, Carpenter was admitted to the Michigan State Bar in 1872. During his career in public service, he was elected to the Michigan Supreme Court in 1902 and served there until 1904. After his judicial tenure ended, Carpenter continued to appear before the court and his repeated recorded appearances, as well as his other involvements with the court, solidifies his place as one of Michigan's dynamic advocates in the early 20th century.

Undoubtedly, Carpenter's landmark case is *Dodge v Ford Motor Co*, 204 Mich 459 (1919). In *Dodge*, two shareholders sued the Ford Motor Company over a dispute in dividend payouts and gave the *Dodge* court an opportunity to pave the way for a modern take on the purpose of corporations. The Court's opinion, which Chief Justice Russell Ostrander authored in the shareholders' favor, dictated that "[a] business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end."<sup>2</sup> This opinion was groundbreaking and had both nationwide and lasting influence. The case has been cited in caselaw as recent as 2015 and as far as the state of Texas<sup>3</sup> and has found its way into a myriad of secondary sources.

Four years before his appearance in *Dodge*, Carpenter was active before the Michigan Supreme Court. As the counsel of record for the relators in *Detroit Museum of Art v Engel*, 187 Mich 432 (1915), his advocacy helped guide jurisprudence on the lending of public credit to private entities. In this case, the City of Detroit tried to grant the Detroit Museum of Art, a private corporation, public funds to help maintain the museum for the public's benefit. The Court ultimately determined that the Museum's operations were being conducted for the public benefit, but it could not receive public funds because it was not managed by the public.<sup>4</sup> While limitations or prohibitions on the lending of public funds to private entities may be nothing new to a modern reader, the concept was relatively novel in 1915 when William Carpenter made his arguments on laws that had been ratified as part of the 1908 Michigan Constitution.<sup>5</sup> Carpenter appeared and argued on a case that has stood the test of time while being cited in secondary sources as recent as 2019 and

in caselaw as recent as 2014.<sup>6</sup>

Appearing again before the Court in 1920, Carpenter advocated for Dow Chemical in *Dow Chem Co v Am Bromine Co*, 210 Mich 262 (1920). Dow Chemical and American Bromine were locked in a battle over the definition of trade secrets. Even though American Bromine had used Dow Chemical's patents to copy Dow's manufacturing processes, the Court found that Dow Chemical had not established that the processes were trade secret – mainly because the improperly filed patents made the processes public. Although a loss for Carpenter, this decision was a victory for the development of Michigan law and was relied on by courts outside Michigan to resolve trade-secret disputes.<sup>7</sup>

Finally, in *Attorney Gen v Natl Cash Register Co*, 182 Mich 99 (1914), Carpenter once again was involved in nuanced corporate disputes. He advocated for the National Cash Register Company, which had allegedly been violating Michigan antitrust laws by maintaining a monopoly on cash registers. While the Court ruled against Carpenter's client and found that they were indeed violating Michigan antitrust laws, the impact of Carpenter's advocacy still remains as this case was cited as recently as 2016 by the Michigan Supreme Court.<sup>8</sup>

The above cases are in no respect a complete look at Carpenter's storied history before the Michigan Supreme Court. After his judicial tenure had completed, he appeared before the Court 37 times, with his last recorded appearance being in 1932 just two years before his death.<sup>9</sup> More information on his judicial history can be found at <http://www.micourthistory.org/justices/william-carpenter/>.

## **Hon. William W. Potter**

The Honorable William Potter is a familiar name to scholars of Michigan legal history. He served as the President of the Michigan Bar Association in the early 1920s, as the Michigan Attorney General from 1926 to 1928, and was appointed to the Michigan Supreme Court in 1928 and served on it until his death in 1940. During his extensive legal career, but before his appointment to the Court, he was the counsel of record before the Court 45 times in either a private capacity, as the Attorney General, or (in his first appearance before the Court) pro per.<sup>10</sup> William Potter's legal career more than qualifies him as a significant individual in Michigan legal history.

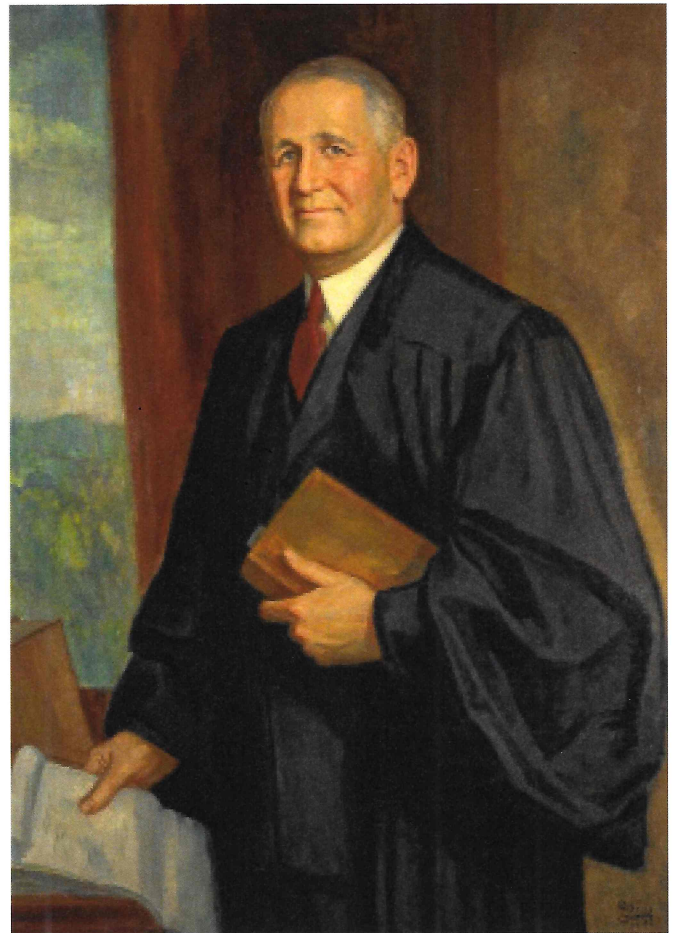
It is unsurprising that the majority of Potter's



cases before the Court were in his capacity as Michigan's Attorney General. In an interesting twist, two of the most cited legal cases where Potter appeared as counsel – *Nowack v Fuller*, 243 Mich 200 (1928) and *People ex rel Potter v Michigan Bell Tel Co*, 246 Mich 198 (1929) – saw him unable to argue or appear before the court, because he had recently been appointed to the bench. The jurisprudence established in those two cases – as well as *In re Dodge Bros*, 241 Mich 665 (1928) (the last case of Potter's tenure as the Attorney General) – continues to influence Michigan into recent years.

However, Potter did not just appear before the Court in his capacity as the Attorney General. In *People v Lay*, 193 Mich 476 (1916), he appeared on defendant George Lay's behalf. Lay, along with his brother and another individual, had been convicted of embezzling a significant sum of money from a company of which they served as officers and directors. Potter argued faults in jury instructions, the wrongful nature of Lay's plea, the competency of grand jurors, and more. The Court found enough reason to set aside Lay's conviction and ordered a new trial on the matter. Potter's arguments in *Lay* continued to influence Michigan jurisprudence on embezzlement and statements of co-conspirator parties well into the latter part of the twentieth century.

William Potter's dedication to public service and his collection of cases argued before the Court prior to his time as the Attorney General certainly solidify him as an influential figure in Michigan legal history. Additional information on Justice Potter's career can be found at <http://www.micourthistory.org/justices/william-potter/>.



**William W. Potter**, 43rd Justice

Official portrait: painted by Roy C. Gamble

Born: August 1, 1869, in Maple Grove Twp, MI

Joined MSC: February 14, 1928

Appointed by: Governor Fred Green

Chief Justice: 1935

Predecessor: John E. Bird

Successor: Emerson R. Boyles

Died: July 21, 1940, en route to the Court

## Endnotes

<sup>1</sup> According to Westlaw's "Citing References," *Dodge v Ford Motor Co* has 1,424 citations.

<sup>2</sup> *Dodge v Ford Motor Co*, 204 Mich 459 (1919).

<sup>3</sup> *In re Think3, Inc*, 529 BR 147, 169 (2015) a bankruptcy case from the US Bankruptcy Court, WD of Texas.

<sup>4</sup> *Detroit Museum of Art v Engel*, 187 Mich 432, 442 (1915).

<sup>5</sup> Const 1908, art 10, § 12.

<sup>6</sup> *Diez v. Davey*, 307 Mich App 366 (2014) *Dodge* was cited in reference to corporate earnings.

<sup>7</sup> *Christianson v Colt Indus Operating Corp*, 609 F Supp 1174 (CD Ill, 1985) this 1985 case is the most recent that cites to *Dow Chemical*.

<sup>8</sup> *Altobelli v Hartmann*, 499 Mich 284 (2016).

<sup>9</sup> *Sloman v Rogers*, 259 Mich 302 (1932).

<sup>10</sup> In *Potter v. Barry Circuit Judge*, 156 Mich. 183 (1909), Potter, then the Barry County Prosecuting Attorney, filed a writ of Mandamus to compel Judge Clement Smith to vacate an order quashing a complaint and warrant. The Supreme Court found that the Judge had made a clear error in quashing the warrant and authored an opinion in Potter's favor.

The Historic Advocate Spotlight is written by Patrick Batterson, a recent graduate of WMU Cooley Law School. Mr. Batterson is the 2019–2020 Advocates Guild intern.



# 2020 Vision

## Society President Carl Herstein's Report on plans for the coming year

**T**his year we have several exciting programs to share with you in addition to this quarterly newsletter and our outstanding website.

Our Annual Membership Luncheon will be held at the Detroit Athletic Club on Thursday, May 14. We expect all seven Justices of the Michigan Supreme Court will attend. The featured speaker will be Professor Paul Moreno, our historical advisor and author of our project, the *Verdict of History*, which you can find in permanent form as part of our *Michigan Supreme Court Historical Reference Guide, 2nd Ed.* which you will want to own if you don't already—information about how to buy it on the backpage of this newsletter. Professor Moreno will speak about Michigan's own U.S. Supreme Court Justice Frank Murphy. We will also have greetings from State Bar of Michigan President Dennis Barnes and Chief Justice Bridget McCormack. In addition, we will be presenting the *Dorothy Comstock Riley and Wallace D. Riley Legal History Award* to Judge Avern Cohn at the Luncheon for his lifetime contributions to the study of Michigan's legal history.

We are introducing an exciting new event in 2020—a portrait gala—to be held on Friday, September 11 at the Hall of Justice. This event will put the focus on our historic portrait collection with tours of the portraits by historians, artists, and even some of the Justices! There will be food, drink, and entertainment, and we think this is an evening that couples will want to attend together. Society members will be able to attend at a special price. We hope you will put Friday, September 11 on your calendar because it will be a very special evening!



Our Advocates Guild is planning a special event at Wayne Law School to be held the evening before our Annual Membership Luncheon. It will focus on arguments before the Court. More information about that event can be found on page six of this issue of the newsletter.

Several other plans are being made for this year including a continuation of our recently revamped Oral History program, now on video thanks to a generous grant from the Michigan State Bar Foundation.

The Society is continuing its work with student prizes at the law schools in the state, student internships with the Society, and sponsorship of research into matters relating to the history of the Court, including the leading article about great advocates from intern Patrick Batterson and University of Michigan Law School prize winner Hillary John on the next page.

We continue to expand our efforts to bring the Society to our members throughout the state with events like our Breakfast with the Court, held in Grand Rapids in 2018 and Traverse City last year. Our goal is to be as accessible as possible to our membership and to get to know you all personally wherever you may be located.

It is our hope that you will be inspired to continue your support of the Society in the coming year—either financially with a contribution, by attending one of our events, and/or by sharing our work with your friends and colleagues. Thank you for all you do to preserve the history of the Michigan Supreme Court and the proud legal tradition of our state!

*Carl E. Herstein*



# Supreme Court Learning Center

a hands-on gallery in the Michigan Hall of Justice, educating over 150,000 visitors from across the state and around the world about the judicial branch of government since 2002

*The Society serves as the fiduciary for the Michigan Supreme Court's innovative Learning Center, located on the first floor of the Hall of Justice. Because the Society is a 501(c)(3) nonprofit organization, donations to the Learning Center are tax-deductible to the fullest extent of the law. If you made a contribution of \$100 or more to the Learning Center Fund via your State Bar dues, you automatically became a member of the Society. We hope you enjoy this update from the Learning Center's Justitia newsletter for educators, reprinted here with permission...*



## Law Day, May 1

Celebrate the right to vote and mark the centennial of the 19th Amendment, which guarantees women cannot be denied this right. Themed tours will include mock voting on actual ballots, guest speakers, and free curriculum materials.

## High School Moot Court, July 20–24

Do you know students eager to sharpen their research, writing, and public speaking skills? Encourage them to apply for the Learning Center's summer moot court program. Students entering grades 10–12 in Fall 2020 and 2020 graduates are eligible. Participants argue a case as if they are justices and attorneys at the Supreme Court. To prepare, they meet with a variety of legal professionals both formally and informally.

The case involves the warrantless search of a home by police. Were the defendant's Fourth Amendment rights violated? Participants will argue and decide. Application deadline: May 22, 2020.

Call (517) 373-7171 for more information or visit <https://courts.michigan.gov/education/learning-center>



## Society Law Prize Winner Hillary John from the University of Michigan Law School

Hillary John's exemplary efforts earned her the Society's Law Student Prize for the University of Michigan Law School. The prize includes a \$500 award from the Society.

Ms. John was born and raised in Metro Boston, attended college in Utah, and moved to Michigan to teach high school physics in Detroit. She and her husband, Ben, loved the area and decided to stay. Ms. John attended the University of Michigan Law School and graduated in 2019. The couple also brought home a son, Lucas, in 2019. Ms. John now clerks on the Sixth Circuit Court of Appeals for Judge David McKeague.

The Society has offered the prize at all of the state's law schools since 2008. If you are a law school professor or administrator interested in offering this prize to your students, get in touch with Society Executive Director Carrie Sampson at (517) 373-7589 or by email at [carriesampson@micourthistory.org](mailto:carriesampson@micourthistory.org)



# Anatomy of a Michigan Supreme Court Case: A Night with Advocates and Justices

The Michigan Supreme Court Historical Society Advocates Guild will be hosting a symposium on Wednesday, May 13, 2020, at the Wayne State Law School, from 4:30 p.m. to 7 p.m. The event will begin with a short reception from 4:30 p.m. to 5 p.m., followed by presentations on two seminal cases, one criminal and one civil, from past terms of the Michigan Supreme Court.

The presentations will include advocates who briefed and argued the cases. They will be discussing their strategy and thinking in the Supreme Court. We will also hear from some of the justices themselves, including Justice Stephen Markman and former Chief Justice Robert Young.

More information to come! Invitations will be mailed to all current Advocates Guild members in April.

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## Scenes from the Advocates Guild Dinner

The Advocates Guild Dinner was held on Wednesday, November 13, 2019, at the Hall of Justice in Lansing.











1st Floor, Hall of Justice  
925 W. Ottawa Street  
Lansing, MI 48915

### ***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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Dorothy Comstock Riley

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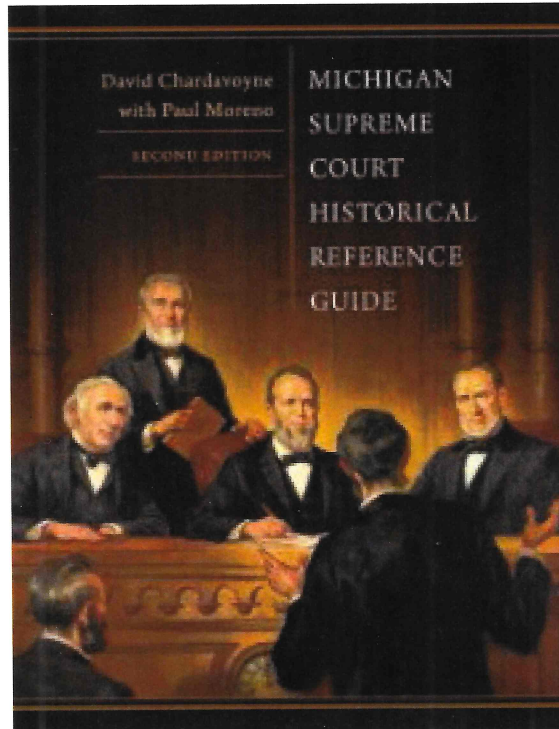
Jill M. Wheaton

#### ***Executive Director:***

Carrie Sampson

*Society Update* is published quarterly by the Michigan Supreme Court Historical Society. Writing submissions, article ideas, news, and announcements are encouraged. Contact the Society at Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915  
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**Learn more** about the historic justices of the Michigan Supreme Court and their most important cases in the *Michigan Supreme Court Historical Reference Guide, Second Edition*. Found wherever books are sold.