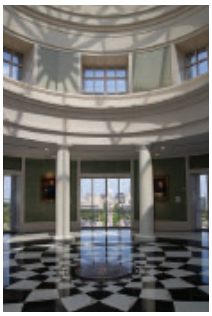

Society Update

The Official Publication of the Michigan Supreme Court Historical Society

Fall 2025

A Historical Court Several Times Over, Part II:
Justice Noah P. Hood Joins the Court

Around thirty years ago, Bates Academy fourth grader and avid reader Noah Hood was the *Detroit Free Press*' Yak! "Star of the Week."[1] Not only did this random selection entitle him to a free Hungry Howie's Pizza, but it also provides a delightful glimpse into the childhood of the Court's newest justice. After his favorite class (math), favorite food (tacos), and favorite book (Matt Christopher's *The Kid Who Can Only Hit Homers*), Noah offered his future professional plans of being a scientist, and his desire to have the school library open all day. He also had a collection of POGs.

Less than ten years after that initial "interview," Cass Technical High School graduating senior and co-valedictorian (apparently, a lot of time was spent in that school library), Noah Hood had other plans. Presumably, he still liked tacos, and probably still played basketball with his friends after school, but now he would

1. Detroit Free Press Yak! Issue 51 (October 17, 1995).

Star of the Week[1]

Name: Noah Hood, 9, a fourth-grader at Bates Academy in Detroit.

Family: One brother, Nathan, 13.

Favorite class: Math.

Favorite food: Tacos.

Favorite after-school activities: Playing basketball with friends outside, or Monopoly inside.

Favorite music: Boyz II Men.

Collection: POGs.

Favorite TV show: The "X-Men" cartoon.

Favorite book: "The Kid Who Can Only Hit Homers" by Matt Christopher.

If I was in charge of school for a day: "I would make the library open all day."

When I grow up: "I would like to be a scientist."

1. Detroit Free Press Yak! Issue 51 (October 17, 1995).

NOAH PAGE HOOD[1]
Cass Technical High School
Hometown: Detroit
Parents: Denise Page Hood and Nicholas Hood III
Extracurricular activities: National Honor Society; CTXpressions Magazine, columnist
Community activities: AKA Teens; Jack & Jill; Harper Hospital volunteer; Plymouth Church Youth Ministry
College: Yale University in Connecticut
Major: Near-eastern languages
Plans: To attend the National Security Agency undergraduate training program and work as a language expert.
Quote: "The world extends beyond the East and West coasts, and I intend on seeing and understanding the extent of that world. I have an obligation to understand things as basic as a language other than my own. …The fact of the matter is that I was sent here to explore. …Adventure is all around us, and I plan to take advantage of it."

1. *'04 Class Acts / Detroit*, Detroit Free Press (June 9, 2004), p 3G.

study near-eastern languages, with the intention of serving as a language expert at the National Security Agency; in fact, he was offered a position in the Agency's undergraduate training program. He ultimately did not participate.

At Yale, Noah studied Chinese and Persian, becoming fluent in both, fulfilling his graduation quote of having "an obligation to understand things as basic as a language other than my own." But rather than exploring the adventure of life as a language expert, he focused on linguistic anthropology, "the relationship of language to social structures" and the "understanding of human history, culture and biology."[2] He was on his way to achieving his childhood dream of becoming a scientist, just in a different field from that considered by nine-year-old Noah.

However, in a remarkable coincidence with his future colleague Chief Justice Cavanagh's own journey to the law, Hood became focused on the legal aspects of a non-legal field and then switched to law altogether. He moved from linguistic anthropology to legal anthropology, seeking to understand a culture and community through its legal system. It was only a short step from there to law school.

This led to Harvard Law School, which led to Hood's associate work with Miller Canfield, which led to his service as an Assistant United States Attorney in Northern Ohio, and his later service in the Eastern District of Michigan. And all that was followed by a judicial term on the 3rd Circuit Court Criminal Division, which led to an appointment to the Michigan Court of Appeals, which led to the appointment to the Michigan Supreme Court, which took effect on May 27, 2025. So that "scientist thing" didn't exactly pan out, but the "law thing" certainly has.

As Michigan's newest justice, Hood carries with him not only a remarkable education (not one but two Ivy League degrees) and a stunning intellect, but also a legacy of integrity, hard work, and endurance as well as the benefit of a number of excellent mentors.

That list and legacy begin with his family, starting with the founder of the Hood family, Nicholas I, who escaped enslavement in Kentucky likely during the Civil War

The future justice, Noah P. Hood, at a 2012 Harvard Law School alumini event with Miller Canfield colleague, Matthew F. Leitman.

2. https://anthro.ufl.edu/about-us/department-subfields/linguistic-anthropology/ (accessed July 2, 2025).

and settled in the North, working for a brick company.[3] This led to his son, Orestes I, being able to graduate from Purdue University's Electricity Program and later work as a teacher.[4] Which led to his son, Nicholas II, not only obtaining an undergraduate degree but also a Master's Degree, with the latter being from Yale Divinity School. And all of this – with so many more stories in between – led to one of Nicholas the First's great-great grandsons sitting on the state supreme court.

Hard work and endurance and a number of excellent mentors. When Justice Hood began his career at Miller Canfield, several attorneys showed him the ropes, but W. Mack Faison, Joseph G. Vernon, and Gerald Gleeson had the most direct impact. When his career led him to the Office of the United States Attorney in Toledo, Ohio, Justice Hood served with Gene Crawford, with whom he tried critical cases; Gene was "the best lawyer he'd ever seen in practice in person." When he joined the 3rd Judicial Circuit Court in Wayne County, Justice Hood shared an office with retired Judges Dalton Roberson and Michael Hathaway, both of whom provided guidance in his new profession. When he arrived at the Michigan Court of Appeals, Judge Douglas Shapiro and Chief Judge Elizabeth Gleicher passed on a wealth of knowledge.

Now, as a justice, Noah Hood will do his part to "ensure even-handed justice in each case that comes before" the Court. He will continue that legacy of integrity and hard work he has followed his entire life to this point. He will help the next generation live free with full access to the American dream.

It is a long way from the *Detroit Free Press*' Yak! "Star of the Week."

He still likes tacos, though.

3. *Nicholas Hood Dead: Submitted to a Surgical Operation in Indianapolis Sunday Evening and Died There Early This Morning*, The Daily Reporter (January 24, 1916), p 2.
4. Millender, *Images of America: Gary's Central Business Community* (Arcadia, 2003), p 40.and *Mrs. Daisy Hood, Nat'l Leader, Dies in Indiana*, The Buffalo Criterion (February 12, 1966), p 1.

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NOTE:

Articles and letters by individually named authors that appear in the Society Update do not necessarily reflect the official position of the Michigan Supreme Court Historical Society and their publication does not constitute an endorsement of views which may be expressed.

A Historical Court Several Times Over, Part II: Looking Back: The Justice Who Joined the Court During the Pandemic

by Carrie Sharlow

As I worked on the Summer 2025 Newsletter Isuse, I watched the recording of Justice Kimberly A. Thomas' investiture several times on the Court's YouTube channel. In doing so, I came across an earlier investiture that also made history in a different way.

On the morning of December 29, 2020, Chief Justice Bridget McCormack and Justices Megan Cavanagh, Elizabeth Clement, Stephen Markman, and Brian Zahra were at the Hall of Justice during the height of a global pandemic to celebrate the swearing in of their newest colleague.

Everyone was masked, if not necessarily social distancing (the four associate justices stood behind the seated chief justice), as they welcomed their newest member, making Justice Elizabeth Welch's investiture one of the most unique in the Court's history. It was, as Justice Welch later noted, a year when the celebration of milestone events had to be adjusted.

At a usual investiture, the courtroom is filled with family, friends, and colleagues, along with applause and laughter at various points. And while some of Justice Welch's family was able to attend – her children (also masked) later assisted her with her robe and one can see camera flashes on the recording – Chief Justice McCormack's voice echoes across what is surely a mostly empty courtroom. She notes that Justices Cavanagh and Zahra had made a special trip from their residences on the eastern side of the state, while Justices Clement and Markman were local; unseen was another local retired justice, Michael Cavanagh.

A typical investiture would have a master of ceremonies and a number of speakers important to the new justice's life and career, but Chief Justice McCormack ran the show from start to finish, including a bit of hilarity when a phone rang off-screen and the Chief Justice remarked that if it was for her, she was busy and would call back later.

It is a lovely ceremony, though brief. McCormack references Justice Welch's thoughtful listening skills, her willingness to have her mind changed, and her readiness to "go do more work to figure out the right answer" – "We know that you will bring your independent judgment to every issue we collectively decide and when you disagree with us, we know you'll do it agreeably." – and mentions Welch's long-standing work in her community – "You've spent three decades working for causes to improve your communities and your state without ever

seeking credit; countless people describe your dogged and collaborative work for better schools, clean air and water, improved access to voting, but always as the force behind those issues and never seeking recognition for your efforts."

And then the Chief Justice administers the oath of office. There is applause from her colleagues, after which Justice Welch gives her own remarks, thanking her family and "the many, many people who helped her get to this point." She speaks of the constant service of the justices – "a group of seven who are incredibly devoted to the state" – and the court staff, as well as the expected oral arguments in the following month, requiring her to "hit the ground running." She was still getting settled in her new office, having received a guided tour of her new chambers and the key from the soon-to-be-retired Justice Markman in an equally meaningful, if informal, ritual.

It concludes in less than ten minutes and is surely one of the shortest recordings on the Court's YouTube channel. But it may also be one of the most important, too, a reminder of the constant work done in the Hall of Justice and the continuance of Michigan's justice system, even in (or especially in) the midst of a crisis.

Why Seven Justices?

By the Michigan Supreme Court Learning Center (reprinted with permission)

In Short

The Constitution of Michigan states that the Supreme Court "shall consist of seven justices[.]"[1] Decisions are made by majority vote, and an odd number of seats prevents ties. In the event of a tie there is no new decision, so the opinion of the lower court stands.

At the Constitutional Convention of 1961-62

Over time, the size of the Michigan Supreme Court has fluctuated from as few as three seats early in statehood to as many as eight in 1852-57 and in 1905-68. (See Court Composition Chart on our website.)[2]

During the Constitutional Convention of 1961-62 when the state's current constitution was written, delegates considered whether to change the number of seats on the high court. Most proposals called for an odd number: seven, nine, or thirteen, and for a time it appeared that the Supreme Court would be expanded from eight to nine. The Committee on the Judicial Branch generally favored this proposal and a poll of the members of the State Bar of Michigan overwhelmingly supported nine. However, after months of discussion an amendment presented to the Committee of the Whole reduced the Supreme Court to seven.

Why? According to the official record,[3] delegates made three main arguments for reducing the size of the Court:

- The new state constitution created an intermediate appellate court that would assume some of the Supreme Court's workload. (Previously, there was no Court of Appeals, and cases had been rising steadily, resulting in a backlog.
- In addition, the Court would be reduced to seven by attrition. The next vacancy would not be filled; thus, no current member would lose a seat.
- Finally, it was considered "economical."

The amendment passed with an 85-45 vote of the delegates. It was written into Article 6 of the Constitution of Michigan, which was adopted at election on April 1, 1963, and became effective January 1, 1964.

1. Const 1963, art 6, § 2.
2. Michigan Supreme Court Historical Society, "Court Composition," < https://www.micourthistory.org/court_composition/> (access March 20, 2024).
3. *Constitutional Convention Record: Volume 2* (1964), p 2724.

Discite Justitiam Moniti
The Seal of the Michigan Supreme Court

Justice Kimberly A. Thomas's Remarks at her March 19, 2025 Investiture

On March 19, 2025, at her ceremonial investiture, after she thanked the justices, judges, family, and friends in attendance, Justice Kimberly Ann Thomas offered a treatise on the seal of the Michigan Supreme Court.

As this is a historical society, we're reprinting her remarks here, so that readers will never forget – even if you knew it before – what "discite justitiam moniti" means.

> …I'd like to you please take a look at your program. There you'll see there the seal of the Michigan Supreme Court.
>
> On becoming a member of this Court, I kept seeing this seal – on our website, on the floor of the rotunda, on the pin that I received as a welcome gift. There is even a state law that requires the seal and says that its presence is "conclusive evidence" that the process was issued by the Michigan Supreme Court.[1]
>
> It is different that the seal of the state of Michigan, with the elk and moose surrounding the "I will defend" Tuebor shield and speaking about our beautiful peninsula. And it is different than the seal, of for example, the U.S. Supreme Court, which is the familiar Great Seal of the United States, with the eagle clutching an olive branch and thirteen arrows, the crest and "e pluribus unum" in its beak. What is unique and special about the seal of our state supreme court?

I noticed that it had justice and her scales, and her blindfold and sword. That was, perhaps, expected. It also had some words in Latin. And, wanting to know what kind of group I was joining, I was curious about what those words said.

Discite Justitiam Moniti.

So, I googled it. And I'm going to, loosely base, the rest of my response around this phrase.

The phrase is first found in writings of the Roman poet Virgil. Specifically, it is in his epic Latin poem, *The Aeneid*, written over 2,000 years ago. In that story, the protagonist has many adventures, building to the founding of Rome. The point in the story when this phrase is said, Aeneas is in the Underworld; Phlegyas, who committed crimes in life, says: "Discite justitiam moniti et non temnere divos."[2]

"Discite justitiam moniti."

What does it mean? There are many translations. One translation, from Penguin Classics version reads: "Learn to be just. You have been warned."

The basic one, that I'll use today, is: ***be warned and learn justice.***

I have three short reflections on our Court's seal.

First, the warning.

1. 600.227 Writ or process; style; seal; evidence; court order prohibiting disclosure of party's address or contacting another party; service on protected party. Sec. 227. (1) All writs and process issuing out of the supreme court shall be styled: "In the Name of the People of the State of Michigan," and may be executed in any county of this state. **The seal of the supreme court affixed to, or impressed on, any writ or process in an action or proceeding is conclusive evidence that the writ or process was issued by the supreme court in all cases in which the writ or process may be lawfully issued.**

2. Aeneas grows in compassion when observes the situation of the unburied dead. Takes lessons, including compassion, into the war that follows. Surrounded by those who committed crimes in life: "hated their brothers, in life…. Contrived to defraud a client, or who crouched alone over the riches they'd made….. "this one made law and remade it for a price…." Book 6:620 Charon ferries souls of the dead across the River Styx

In original poem, speaker was there in the underworld with people who "hated their brothers, in life…. Contrived to defraud a client, ….. and who "made law and remade it for a price…." Good warnings.

And there are many things that you in the audience might be thinking of in these contentious times, but one that weighs heavily to a state supreme court is a worry about the confidence of the people in our courts.

In the National Gallup poll from 2024, Americans who responded that they have confidence in the judicial system and courts dropped to a record low 35%. In 2006, that number was 59%.

This lack of confidence in our courts nationally diverges from the other democracies in the OECD. Judiciary has fared worse than some other key democratic institutions.

The concerns raised about our courts being open to all, impartial to all, and independent of the other branches of government are reminder to me, as I take this oath of fidelity to our constitution. The oath is a commitment to the constitution of the United States and to the constitution of the state of Michigan. Engrained within that oath to our constitutions is an understanding of our Court's role in our constitutional democracy, a commitment to the rule of law, and to the fair application of the law to every party who comes before the Court.

I, of course, was also a teacher at the University of Michigan Law School for 20 years before joining this Court. In that time, I learned from many of my excellent colleagues...to consider every issue fairly, to treat every person in our courts with dignity, and to research and exchange ideas to seek answers to the complex questions within the law.

Justice Kimberly A. Thomas

It is possible that our state courts heard this warning sooner and have worked to respond. The National Center for State Courts report in 2024 shows that public trust in state courts is showing small positive gains for the second year in a row.

Here in Michigan, I am also proud of and looking forward to continuing the ongoing work of this Court to ensure access to our courts, transparency, and respect for all Michiganders in our courts across the state. For example, our state supreme court is engaging in this work through the Michigan Judicial Council, chaired by Chief Justice Clement, with the participation of Chief Justice-Elect Megan Cavanagh, as well as through Justice for All Commission, led by Justice Zahra.

Now, in the face of the warnings, what are we told to do? Learn justice.

Notice that our seal tells us to "learn" justice. Not "be in fear of" justice. Or even "do" justice.

For those of us who are parents, it has what might be called a "growth mindset." It suggests that we may not be, individually or collectively, at a place of justice, but that we can, through work and perseverance, "learn justice."

As you know, prior to joining this Court, I spent a lot of time in youth justice, both working with individual teens and working on systemic improvements to our court system for young people. I am honored on this Court, to serve as the court's liaison for juvenile justice and child welfare. One thing that I appreciated about the work with young people, and for that matter, much of the other work that I did, is that it suggests a capacity for reform, transformation and growth.

Our seal's commitment to "learning justice" calls to that faith in our ability to do better.

And now that I'm on the Court, the seal's motto suggests that the work of our Court is ongoing. That I, as a member of this Court, must continually work to embody the fairness, transparency,

and application of the law without fear or favor that justice requires.

Be warned and learn justice. A second comment on "learning" justice.

I, of course, was also a teacher at the University of Michigan Law School for 20 years before joining this Court. In that time, I learned from many of my excellent colleagues, including Professor Sankaran and Professor Thompson, and many of others who are here today, to consider every issue fairly, to treat every person in our courts with dignity, and to research and exchange ideas to seek answers to the complex questions within the law. And the seal's exhortation to "learn justice" makes me feel prepared for the important work on this Court.

For at least 150 years, teachers of the law have been respected members of this Court. Recently, two of my former colleagues at the University of Michigan served honorably on this Court, Justice Joan Larsen, and Chief Justice Bridget Mary McCormack. And, probably Michigan's most famous supreme court justice, Thomas Cooley, was, before joining the Court in 1864, one of the first faculty members at the University of Michigan law department, which he joined in 1859. I am buoyed that, the qualities that make good teachers and learners of the law – diligence, care, integrity, and a commitment to fairness – will serve me on this Court.

Finally, in closing, the urging to "learn" justice reminds me of the importance of my colleagues on this Court. That the state supreme court is not a court of one person, but a court of seven, embodies the ideal that there can be robust, collegial, transparent and thoughtful resolution of the most important constitutional and statutory questions. Our constitution vests judicial power in "one court of justice." That members of the Court may have different experiences and perspectives that we each bring, but we have a shared commitment to listening and considering each litigant, and each other. A shared obligation to make our courts available to all. And we have a shared commitment to justice for the people of the state of Michigan.

Some of the Michigan Supreme Court Justices who served as faculty at the University of Michigan Law School

James V. Campbell
Served on the Court from 1858 to 1890
Marshall Professor of Law from 1859 to1890

Thomas M. Cooley
Served on the Court from 1864 to 1885
Jay Professor of Law from 1859 to 1883
Dean from 1871 to 1883

John Champlin
Served on the Court from 1884 to 1891
Lecturer from 1891 to 1896

Aaron McAlvay
Served on the Court from 1905 to 1915
Professor from 1897 to 1903

Bridget M. McCormack
Served on the Court from 2013 to 2022
Professor from 1998 to 2012
Asociate Dean of Clinical Affairs

Joan Larsen
Served on the Court from 2015 to 2017
Faculty from 1998 to 2015

Kimberly A. Thomas
Currently on the Court
Professor from 2003 to 2024

This does not consider the numerous justices who served as regents of University of Michigan and include (among others) **Ross Wilkins** (Territorial Court Member 1832 - 1836), **William Fletcher** (1836 - 1842), **Epaphroditus Ransom** (1836 - 1848), **Alpheus Felch** (1842 - 1845), **Edward Mundy** (1848 - 1851), **Benjamin F. H. Witherell** (1857), **Randolph Manning** (1858 - 1864), **Claudius Grant** (1898 - 1899, 1908), **Paul Adams** (1964 - 1972), and **Lawrence Lindemer** (1975 - 1976).

Why Your Support of the Supreme Court Historical Society Matters

By Lynn Seaks

Do you ever wonder how your membership dues are being spent? Many of our members may be unaware of all the Society accomplishes and why fundraising is so critical to reaching our goals. We thought the following might provide some insight on what the Society has been able to accomplish because of your generous donations and support.

2024 Accomplishments

- Four Society Updates
  - Two Special Issues
  - Two Corporate Sponsor Articles
- Annual Luncheon
- Progressive Dinner
- Poletown Event With Justice Zahra/Justice Young/Justice Ryan
- Women on the Court Event With Justice Welch/Justice Corrigan
- Digital Archiving Project Completed
- Increased Corporate Sponsorships to 17

2025 Goals and Accomplishments

- Four Society Updates
  - Two Special Issues
  - One Corporate Sponsor Article
  - One Memorial Issue
- Annual Luncheon
- Progressive Dinner (10/22/25)
- Access to Justice Special Event (10/23/25)
- Created and distributed Law Clerk Directory
- Created Advocates Guild Member Directory (not distributed yet)

All of the above being said, renewal season is just around the corner, and I'll once again be reaching out. The Society has exciting plans for 2026, and we trust your support will help us achieve them.

2025 Contribution Form

Please use this form to join the Society or renew your dues for 2025, or to make an additional contribution

Name: _____

Address: _____

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Pay Via Credit Card
We accept Visa, MasterCard, and American Express

Card No. _____

Exp Date: _____/_____ Security Code: _____

Signature: _____

Advice for New Advocates from Those Who Have Been There

This fall, the Society began work on an Advocates Guild Member Directory. One of the questions asked was "advice to new advocates." And so, as we begin a new Supreme Court term, here's some advice from attorneys who've argued anywhere from one to 75 or so cases before the Court.

If you haven't already, find yourself a good mentor. Not just someone who will push you, but someone who believes in your capabilities (sometimes even more than you do).

Always be open to new ideas and learning from others.

Do the work. Know the law, both the text of the law and the caselaw, and know the facts of your case.

Prepare. Prepare. Prepare. Go to oral arguments of the Supreme Court to observe actual cases being argued. Listen to the question being posed by the Justices and how the advocates responded to the same. Research the makeup of the various Justices of the Court and look for how each Justice may have ruled on a related legal issue previously. Practice making your arguments, have a colleague interrupt you from time to time with questions so you can get use to responding to questions and then returning to the arguments you wish to make to the Court.

Arguments are on YouTube now, so watch them and see how justices ask questions. Always focus on being able to answer questions, which means knowing the other side's case as well as you know your own.

Hyperbole is rarely useful; avoid over-the-top arguments as it will hurt your credibility.

Obviously prepare but know the record cold. Re-read the transcripts, all of them, if you can, prior to the argument.

Find a current advocate as mentor; watch, listen, read and learn

Developing and honing writing skills to write clear, lucid, and truthful briefs is the basis for successful advocacy.

Study the briefs and oral arguments of experienced Supreme Court advocates and learn from them.

Take the time to prepare, do the moots, breathe, and believe in yourself.

Prepare more than you think you need to. And approach the argument as an opportunity to have a conversation, not to give a speech.

Persistence with a bit of compassion goes a long ways. Always keep the fight.

Read cases decided in the Michigan Court of Appeals and Supreme Court.

Don't be nervous, be excited.

A reputation for credibility is the greatest professional asset you can offer – to your clients and to the justice system. Cultivate it carefully, and guard it fiercely.

Presenting a good oral argument is largely a matter of confidence. Write a great brief and while you are doing so, ask yourself the most difficult questions you could possibly get during oral argument. If you do that during the brief-writing process, the confidence you must have to present a good oral argument should come easily.

If you don't have a mentor, find one.

Prepared vigorously for oral argument and then relax at the argument. Have a conversation with the Justices, rather than arguing at them.

Prepare, prepare, prepare. You never know what point you'll be asked about, so you have to be ready to address them all.

There is no substitute for preparation.

Know your case, do not read your argument, and answer truthfully.

Before you submit the brief or deliver the argument, give yourself enough time to step away from the case and let your mind rest. It's amazing what a little distance will do for improving an argument or finding a better way to articulate a concept.

Be mindful to yourself and your client. Winning and losing is less important than being present and prepared.

Prepare, prepare, prepare. Be humble. And remember, integrity is everything. Don't destroy your reputation to win a case.

Be thoroughly prepared and directly answer any questions of the justices.

At oral argument, answer each question asked by a Justice in a direct and non-evasive way.

The Justices' questions are more important than your prepared remarks.

Be prepared, be respectful, and be yourself. And have fun--it's not often you get to argue before the highest court in the state.

Be prepared, not only to provide a concise statement of your position and what ruling you are seeking from the Court but also to answer the justices' questions in a way that supports your position as they will direct you to the issues of significance to the Court.

Be yourself. Know your material so that you can discuss the full range of issues involved and not just the piece that your case brings to the Court.

Most of the arguments are on YouTube for a period of time. Take advantage particularly of watching seasoned advocates argue before the Court.

Due Process and Equal Protection in Michigan Anishinaabe Courts

by Matthew L. M. Fletcher

"Originally published on Jan. 22, 2023 Mich. St. L. Rev.: MSLR Forum."

Professor Matthew L.M. Fletcher gave the John W. Reed Lecture at the April 16, 2025 Annual Luncheon. He spoke on "The Common Ground of Michigan's Tribal & State Courts: A Historical Perspective." The Society neglected to record the event. However, Professor Fletcher kindly provided reprint permission for the below article that, he noted, contains much of what he referenced in April.

Introduction

In 1968, largely because the United States Constitution does not apply to tribal government activity,[1] Congress enacted the Indian Civil Rights Act–a federal law that requires tribal governments to guarantee due process and equal protection to persons under tribal jurisdiction.[2] In 1978, the Supreme Court held that persons seeking to enforce those federal rights may do so in tribal forums only; federal and state courts are unavailable.[3] Moreover, the Court held that tribes may choose to interpret the meanings of "due process" and "equal protection" in line with tribal laws, including customary laws.[4] Since the advent of the self-determination era of federal Indian law in the 1970s, Michigan Anishinaabe tribal governments have adopted constitutions that also guarantee individual rights, usually using the same or substantively similar language as federal law does.[5] Despite the opportunity to interpret the Due Process and Equal Protection Clauses in accordance with tribal customs, tribal courts have usually applied (or modified) federal precedents to such claims. Given the practical nonexistence of court precedents and legal scholarship on Anishinaabe legal customs and traditions until recently, the reliance on the precedents of the colonizers was inevitable.

In recent years, Michigan Anishinaabe tribal nations have begun to point to traditions, customs, and culturally relevant sources to interpret positive tribal laws such as constitutions, statutes, and regulations. For example, the juvenile justice and domestic violence codes of the Nottawaseppi Huron Band of the Potawatomi incorporate the Noeg Meshomsenanek Kenomagewenen, the Seven Grandfather Teachings.[6] The Nottawaseppi election code does as well. There, the Seven Grandfathers Teachings are defined to include "Wisdom, Love, Respect, Bravery, Honesty, Humility, and Truth."[7] Additionally, scholarship on Anishinaabe legal philosophy and customary law is growing.[8]

This essay opens with a short description of why tribal governments have the duty and opportunity to interpret the obligations to provide "due process" and guarantee "equal protection" to persons under tribal jurisdiction. The next part delves into federal and state interpretations of those principles. The third part introduces and summarizes some Anishinaabe legal philosophies. The final part offers suggestions on how those legal philosophies can be used by tribal governments to interpret "due process" and "equal protection" in light of Anishinaabe culture.

I. The Power of Tribal Governments to Interpret "Due Process" and "Equal Protection"

In 1968, Congress chose to exercise its plenary power

in Indian affairs to mandate that tribal governments guarantee minimum individual rights modeled on the federal Bill of Rights to persons under tribal jurisdiction.[9] Included within that federal mandate was the following provision: "No Indian tribe in exercising powers of self-government shall . . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law[.]"[10] As with much federal Indian affairs legislation, the goals of Congress in enacting this provision and the rest of the Indian Bill of Rights are uncertain. Congress could have intended to curb individual rights abuses by tribal governments that it learned were occurring before 1968; Congress could have intended to force tribal governments to conform to federal constitutional rights protections as a matter of good public policy; or Congress could have intended to continue an ugly process of assimilating tribal governments and undermining tribal cultures.

At the April 16, 2025 Annual Luncheon, Professor Fletcher brought copies of A Short History of the Michigan Tribal-State-Federal Judicial Forum comic. It included some fantastic images, including the above. The full PDF is available at https://turtletalk.blog/wp-content/uploads/2022/09/judicial-forum-history-comic.pdf.

Ten years later, the Supreme Court held in one of the most important Indian affairs decisions of the 20th century that federal and state courts have no jurisdiction to enforce the federal rights provided for in the Indian Bill of Rights.[11] Instead, relying on statements of congressional intent specific to the 1968 Act and on statutory interpretation principles applicable to all federal Indian affairs statutes, the Court held that only tribal forums possess jurisdiction to enforce the individual rights guarantees. Not only that, but the Court also held that tribal courts could interpret those federal rights in line with tribal culture.

In retrospect, the decision seems obvious. The claim in that case involved a challenge to a tribal law barring enrollment with the tribe unless the father was a citizen of a tribe. This was a clear case of sex discrimination that would violate the Equal Protection Clause of the Indian Bill of Rights, as that clause is understood under federal law. But the tribe defended by arguing that tribal custom and tradition supported such a rule. The plaintiff disagreed. The federal district court judge took testimony from both sides, identifying one side's position as the correct one.[12] No doubt the judge acted in good faith, but the very fact that a federal judge utterly ignorant of the tribe's customs and traditions was called upon to interpret a tribe's customs and traditions is simply absurd.

In the four and a half decades since that decision, tribal courts around the nation have issued thousands of opinions interpreting the "Due Process" and "Equal Protection" Clauses of the Indian Bill of Rights, as well as tribal constitutions and codes that have adopted those terms. In a study I conducted with the help of a Michigan State University law student many years ago, we showed that the vast majority of tribal courts used federal and state precedents to interpret these provisions.[13] Rarely, if ever did tribal courts invoke tribal customs and traditions in interpreting those terms. As we will see, that is beginning to change.

II. Federal Understandings of "Due Process" and "Equal Protection"

Due process and equal protection are fundamental constitutional rights guaranteed to individuals in their relations to federal and state governments. In short, government cannot strip individuals of liberty and property without due process.[14] Neither can government treat

similarly situated persons differently.[15] These are core principles of American government.

The Due Process Clause is embedded in the Fifth Amendment to the Constitution. The language is tied to the prohibition on the government's arbitrary taking of a vested property interest without compensation for the loss of that property interest. American Indian people can justly feel that the Due Process Clause has almost no teeth, given that Congress confiscated hundreds of millions of acres of tribal lands, most notably during the allotment era, without consent or meaningful compensation.[16] The Supreme Court enabled the confiscation of tribal property by denying that Indian people possessed a vested property right in their aboriginal lands.[17] It is difficult to enforce the due process requirement when the judiciary rejects the premise that an individual possesses a legally protected interest.

The Supreme Court later extended the protections of the Due Process Clause to other federal actions, most notably, criminal procedure[18] and government entitlements.[19] The Supreme Court concluded that the government can take an adverse action against an individual so long as the individual receives notice and a meaningful opportunity to be heard.[20]

The Equal Protection Clause originated in the Fourteenth Amendment and was one of the Reconstruction Amendments designed to eradicate the legal basis of slavery and to remedy the badges and incidents of racial discrimination. The Supreme Court has ensured that the Equal Protection Clause does little or nothing to remedy past discrimination.[21] Instead, the Court held that it really only bars intentional discrimination.[22] More recently, the Court has imposed a color-blindness standard on the Equal Protection Clause, eradicating any governmental effort to promote the goals and purposes of the Reconstruction Amendments.[23]

These principles derive from an understanding and expectation – a philosophy – of relentless contradiction and even cynicism. The notion of federal and state sovereignty, borrowed from European nations, emphasizes a hierarchy of elite individuals (some elected, some not) that exercise enormous power over individuals and entities within the jurisdiction of government. The underlying philosophy (one doesn't have to dig hard or deep) is that a sovereign entity is necessary for peace and security. This philosophy understands humanity to be violent, competitive, selfish, and superior to all other creatures and things on earth (and some humans superior to others). Without a sovereign employing a monopoly on violence, human life would be nasty, brutal, and short, in the words of Hobbes. But naturally, such power consolidated by the Constitution in the sovereign potentially leads to abuses, which necessitates constitutional protections for individuals facing the might of the sovereign. These protections include due process and equal protection.

It is far from clear that the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments do much to protect individual rights of underprivileged persons in the United States. Poverty, inequality, incar-

5th Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment / Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ceration, and other social ills remain intractable in the United States.

III. Fundamental Anishinaabe Legal Principles

The fundamental philosophies of the Anishinaabe tribal nations differ radically from those of the state and federal governments in the United States. My understanding of the fundamental law of the Anishinaabeg starts with the principles of Mino-Bimaadiziwin[24] and Inaawendewin.[25] Mino-Bimaadiziwin translated loosely means the act of living a good life. Inaawendewin means something like relating and invokes relational accountability. Both principles demand that Anishinaabe people acknowledge their obligations to each other and the greater world, which includes all things and places, animate and inanimate.

From these principles, which some Anishinaabe elders have described as the unwritten constitution of Anishinaabe people, we can derive the Nizhwaaswi Mishomis/Nokomis Kinomaagewinowaan, or Seven Grandfather/Grandmother Teachings.[26] These teachings include Nibwaakaawin (Wisdom), Zaagidwin (Love), Manaadjitiwaawin (Respect), Aakodewin (Bravery), Gwekowaadiziwin (Honesty), Dibaadendizowin (Humility), and Debwewin (Truth). It would easy to compare these teachings to the American Bill of Rights, but they are much more inclusive and expansive than a mere listing of rights. In fact, these teachings are in many respects obligations imposed on Anishinaabe people and, by extension, Anishinaabe tribal nations.

Fundamental Anishinaabe legal principles derive from philosophies and ways of being and knowing that originate from a much different understanding than American laws. The original difference is that Anishinaabe people do not understand humans to have the power and obligation to exercise dominion over the earth and its creatures. Instead, humans are lesser creatures whose obligation is to ensure harmony in Anishinaabewaki, the world of the Anishinaabe. The great gifts of the lesser creatures known as humans are imagination and creativity, important skills helpful toward fulfilling our obligation to promote harmony. Our philosophies do not presume the need for a sovereign entity. In fact, if the theories undergirding American legal structures were empirically true, there might never have been organized groups of humans anywhere in history.[27]

IV. Possible Anishinaabe Understandings of "Due Process" and "Equal Protection"

Understanding the philosophical difference between American and Anishinaabe law is helpful to theorizing how Anishinaabe lawmakers interpret law, even the laws of the colonizer. In my view, this is the great work tribal lawyers and judges must strive for in all instances.

Consider "due process." The notion of due process originated with the concerns of the American founding generation, exclusively represented by landed, wealthy, white men — many of whom were slavers or slavery-enablers. Those concerns primarily involved worries that government would act to confiscate their private property or strip them of their freedom. These men believed that government should be able to do either of those things, but only for good reason and by following a fair process. In these proceedings, which were and are adversarial, winners and losers emerged.

In tribal nations where individual Anishinaabe people and families possessed robust property rights, there was little or no worry about a sovereign government. Anishinaabe nations governed according to a clan system where seven dodemaag, or clans, would meet periodically to address issues of governance. Every voice was heard. Debate was free and respectful. Ceremonies were sacred and ceremonies provided the process. If an Anishinaabe family disputed a hunting territory with another, for example, the entire tribal nation would meet to discuss how to ensure harmony, peace, and justice.

Michigan Anishinaabe tribal courts are beginning to assess what the due process requirement means in the contemporary context. For example, the Sault Ste. Marie Tribe of Chippewa Indians Court of Appeals expressly incorporated Mino-Bimaadiziwin into its analysis: "[T]he notion of due process emanates from the concept of achieving harmony in life, to live in balance with all of creation, otherwise known to the Anishinaabe as mino-bimaadiziwin."[28] The court invoked several additional principles as well, analogous to the Kinomaagewinowaan, teachings: "Our Anishinaabe teachings of nibwaakaawin (wisdom-use of good sense), zaagi'idiwin (practice absolute kindness), minadendmowin, (respect – act without harm) as well as ayaangwaamizi (careful and cautious consideration) must guide this Court's decision-making."[29] The court added that Anishinaabe people "are no stranger to listening to the position of all interested persons on any important issue. To be sure, one only need to look to the Seven Grandfather Teachings of the Anishinaabe to understand that Indian nations did not learn 'due process' and 'fairness' from Anglo–American cultures."[30] The court analogized the talking circle, the process and structure by which Anishinaabe people participate in governance, to due process:

> [T]his Court is called upon to consider the last time its members participated in a talking circle – we think of the order of the circle as it exists in our traditional ways, the importance of the talking stick or eagle feather as the object that enables respectful discussion as well as demands respectful listening. We also think of expected outcomes and finality of the decisions made that result from the open, honest and respectful discussion. It could be said that the application of the Ojibway talking circle principles speak to the essence of due process - a governmental respect for all individuals subject to its authority. Like other Indian communities, this respect can be pragmatically translated in legal proceedings to mean notice and the opportunity to be heard when the deprivation of property or liberty is at stake.[31]

Compare a talking circle to the adversarial procedures that dominate judicial and administrative process. American due process is no more than the bare minimum. Anishinaabe people can do better.

Now consider "equal protection." Equal protection as a legal concept originated in the aftermath of the American Civil War when the American people amended the Constitution to require governments to treat persons equally. Those persons are not identified in the text of the Fourteenth Amendment, but we know them to include formerly enslaved persons. The Fourteenth Amendment also introduced birthright citizenship to all persons born within the United States, but Indian people were excluded from that protection. It is now understood that the equal protection doctrine protects people based on their race, gender, religion, sexual orientation, and other immutable characteristics. Genera-

tions of Anishinaabe people know all too well that state and federal courts offered virtually no enforcement of the requirement that government ensure equal protection of the laws.

There is no tradition of imposing punitive or otherwise unfair obligations on our people based on race or gender. There were certainly gender roles, but they were fluid; many of the most powerful Anishinaabe ogemaag, or leaders, were women. Many Anishinaabe ogichidaawaag, or warriors, were also women. Many tribal nation citizens were also non-Anishinaabe. Anishinaabe people freely adopted non-Anishinaabe people, who then became equal members of the Anishinaabe polity.

Michigan Anishinaabe tribal courts are confronted with far fewer equal protection cases than due process cases. However, tribal citizenship decisions are uniquely fraught with questions of equal treatment under the law. These issues appear more and more. Recently, I wrote the opinion for the Nottawaseppi Huron Band of the Potawatomi Supreme Court interpreting the Equal Protection Clause of the tribal Constitution in a membership case.[32] Like the Sault Tribe appellate court, we began our analysis with mino-bimaadiziwin: "Bodéwadmi people, in contrast, hope to achieve harmony by living life correctly, which is the essence of Mno Bmadzewen."[33] We identified the teaching of Love and its healing elements as the most relevant principle associated with equal protection: "Debanawen 'transcends time and space; it links us inexplicably to our ancestors and future generations' . . . . In times of great difficulty and even violence, Bodéwadmi people reacted with Debanawen, a great healing tool. [The tribal constitution]'s guarantee of equal protection must be interpreted in light of the corrective and reparative principle of Debanawen."[34] Compare the notion that equal protection demands action to correct and repair, to heal, in other words, with the state and federal equal protection doctrine, which does no such thing.

* * *

Not so long ago, Justice Souter of the United States Supreme Court lamented that the ability of tribal courts to "have leeway" to interpret the "Due Process" and "Equal Protection" Clauses of the Indian Civil Rights Act and "need not follow U.S. Supreme Court precedents 'jot-for-jot.'"[35] He reasoned that since tribal laws, as he understood them, are "frequently unwritten, being based instead 'on the values, mores, and norms of a tribe and expressed in its customs, traditions, and practices,' and is often 'handed down orally or by example from one generation to another.'"[36]

Then and now, I find this lament baffling. After reading the Sault Tribe's appellate court opinion on "due process" or the Nottawaseppi appellate court's opinion on "equal protection," it is plain that there is nothing about tribal laws that are so mystifying or terrifying. There really is nothing particularly comforting about United States Supreme Court precedent either.

Michigan Anishinaabe tribal nations and judiciaries are going to continue to interpret "due process" and "equal protection" in the way best suited to the needs and philosophies of Anishinaabe people. This is just the beginning.

ENDNOTES

1. *Talton v. Mayes*, 163 U.S. 376 (1896).

2. 25 U.S.C. § 1302(a)(8).

3. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

4. *Id.* at 71–72.

5. *See e.g.*, Grand Traverse Band of Ottawa and Chippewa Indians, Const., art. X, § 1(h) ("equal protection" and "due process"); Pokagon Band of Potawatomi Indians, Const., art. XVI(h) (same); Sault Ste. Marie Tribe of Chippewa Indians, Const. and Bylaws, art. VIII ("equal protection" and "rights or guarantees enjoyed by citizens under the Constitution of the United States").

6. Nottawaseppi Huron Band of the Potawatomi, Juvenile Justice Code, § 7.3-6; Nottawaseppi Huron Band of the Potawatomi, Domestic Violence Code, § 7.4-6.

7. Nottawaseppi Huron Band of the Potawatomi, Election Code, § 3.1-4.

8. *See e.g.*, Aimée Craft & Lucas King, *Building the Treaty #3 Nibi Declaration Using an Anishinaabe Methodology of Ceremony, Language and Engagement*, 13 Water 532 (2021); Kekek Jason Stark, *Anishinaabe Inakonigewin: Principles for the Intergenerational Preservation of Mino-Bimaadiziwin*, 82 Mont. L. Rev. 293 (2021).

9. 25 U.S.C. § 1302.

10. 25 U.S.C. § 1302(a)(8).

11. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

12. *Martinez v. Santa Clara Pueblo*, 402 F. Supp. 5, 12–16 (D. N.M. 1975).

13. Matthew L.M. Fletcher & Alicia Ivory, *Tribal Courts, the Indian Civil Rights Act, and Customary Law: Preliminary Data* (Mar. 6, 2008), available at https://ssrn.com/abstract=4321885.

14. U.S. Const. amend V; U.S. Const. amend. XIV, § 1.

15. U.S. Const. amend. XIV, § 1.

16. *Lone Wolf v. Hitchcock*, 187 U.S. 556 (1903), enabled Congress and the Department of the Interior to abrogate treaty-protected tribal lands without compensation or meaningful judicial review.

17. *Tee-Hit-Ton Indians v. United States*, 348 U.S. 272 (1955).

18. Jerold H. Israel, *Free-Standing Due Process and Criminal Procedure: The Supreme Court's Search for Interpretive Guidelines*, 45 St. Louis U. L.J. (2001).

19. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

20. *Hoopa Valley Housing Authority v. Gerstner*, 3 NICS App. 250, 259 (Hoopa Valley Tribal S. Ct. 1993) (interpreting and applying Goldberg).

21. *Gratz v. Bollinger*, 539 U.S. 244 (2003).

22. *Washington v. Davis*, 426 U.S. 2299 (1976).

23. Theodore K. Johnson, *How Conservatives Turned the "Color-Blind Constitution" against Racial Progress*, The Atlantic (Nov. 19, 2019), https://www.theatlantic.com/ideas/archive/2019/11/colorblind-constitution/602221/.

24. Stark, *supra* note 8, at 303–06.

25. Nicholas J. Reo, *Inawendiwin and Relational Accountability in Anishnaabeg Studies: The Crux of the Biscuit*, 39:1 J. of Ethnobiology 65, 68 (2019).

26. Amy Klemm Verbos & Maria Humphries, *A Native American Relational Ethic: An Indigenous Perspective on Teaching Human Responsibility*, 123 J. Bus. Ethics 1, 2–3 (2014).

27. See generally David Graeber & David Wengrow, *The Dawn of Everything: A New History of Humanity* (2021) (reassessing world history that led to the philosophies undergirding western political thought).

28. *Payment v. Election Committee*, No. APP-2022-02, at 4 (Sault Ste. Marie Tribe of Chippewa Indians Ct. App., Dec. 6, 2022), https://turtletalk.files.wordpress.com/2022/12/app-22-02-opinion-and-order.apvelec.pdf.

29. *Id.*

30. Id. at 4–5.

31. *Id.* at 5.

32. *Wright v. Nottawaseppi Huron Band of the Potawatomi*, No. 21-154-APP (Nottawaseppi Huron Band of the Potawatomi S. Ct., June 3, 2022), https://nhbp-nsn.gov/wp-content/uploads/2022/06/2022-6-3-Filed-NHBP-Supreme-Court-Opinion-Order-in-Wright-et-al-v-NHBP-et-al-21-154-APP.pdf.

33. *Id.* at 28.

34. *Id.* (citations omitted).

35. *Nevada v. Hicks*, 533 U.S. 353, 384 (2001) (Souter, J., concurring) (quoting Nell Jessup Newton, *Tribal Court Praxis: One Year in the Life of Twenty Tribal Courts*, 22 Am. Indian L. Rev. 285, 344 n. 238 (1998)).

36. *Id.* (quoting Ada Pecos Melton, *Indigenous Justice Systems and Tribal Society*, 79 Judicature 126, 130–31 (1995)).

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From the Office of the President

By Joseph Gavin

On Wednesday, October 8, 2025, I had the privilege to present the Society's annual report to the Michigan Supreme Court. While that can be viewed in full on the Court's YouTube page[1], I would like to offer a few highlights here:

> *I want to begin my remarks slightly differently than usual and just share a little bit of history because I know the Court has just come from opening the Court at the Old Courtroom in the Capitol Building. But, if we go back a little bit farther, we find that the opening of the Court was a little bit different in its earliest stages:*
>
> > *On its first session, in 1805, the Supreme Court met at the old Cass House, then occupied by Judge May....An article in the Gazette of October 25, 1825, says that the court sat "sometimes at midday and sometimes at midnight; sometimes in the council house and sometimes at the clerk's office; sometimes at a tavern and sometimes on a woodpile." Realize this, imagine it, if you can. Yet there is no doubt of the facts as stated; they were matters of public notoriety.*
> >
> > *A memorial of the citizens of January 3, 1823, presented to Congress, and printed in The Detroit Gazette, says:*
> >
> > > *In September, 1820, the court frequently held its sessions from 2 p.m. till 12, 1, and 3 o'clock in the morning of the next day; and cases were disposed of in the absence of both clients and counsel. During these night sittings, suppers of meat and bottles of whiskey were brought into court, and a noisy and merry banquet was partaken at the bar by some, while others were addressing the court in solemn argument, and others presenting to the judges on the bench, meat, bread, and whiskey, and inviting them to partake.*[2]
>
> *Despite these inauspicious beginnings, here we are today, with slightly more decorum, though perhaps slightly less entertaining. So I commend the Court for its progress in the intervening 220 years.*

After this introduction – which prompted raised eyebrows and wry grins – it was my privilege to offer the Court a report of highlights from the Society's past year. This included the publication of several newsletters, the progressive dinner with the Court members, our Society's annual luncheon and the presentation by Professor Matthew Fletcher, the publication of a clerk directory, and various presentations on the Court's history given at other organizations interested in that history, to name a few.

We look forward to a successful remainder of 2025 and to continue that success in 2026. I hope to see you, our members, at upcoming events!

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1. https://www.youtube.com/watch?v=HdFK3Bwa1gA

2. Silas, *History of Detroit and Wayne County and Early Michigan: A Chronological Cyclopedia of the City of Detroit Past and Present* (Detroit: Silas Farmer & Co, 1890), p 179.

Save the Date

Opening Day of 2025-2026 Term
Wednesday, October 8, 2025 - Lansing

Historical Society Progressive Dinner
Wednesday, October 22, 2025 - Hall of Justice, Lansing

Justice For All: A Dialogue on the State of Access to Justice Efforts in Michigan
Featuring Justice Brian K. Zahra and Michigan State Bar Foundation Executive Director Jennifer S. Bentley
Thursday, October 23, 2025 - Thomas M. Cooley Law School, Lansing

Historical Society Annual Luncheon
Wednesday, April 15, 2026 - Detroit Athletic Club, Detroit

For Questions and Contact

If you've any questions about the Society in general, membership or events, please contact
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The Society is interested to know what you, our membership, would like to read about in this quarterly newsletter.

If you have an idea or subject of interest that would fall under the purview of the Society, please email carriesharlow@micourthistory.com.

Future articles topics include the Court's first advocates, the naming of the temporary court building, Justice Charles Levin and the Levin Family, and Ashley Pond.

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