

Letters, etc.

Judge Avern Cohn: Journalism and Awards, 1976–2015

Edited by Elizabeth Zerwekh, privately published (2015), 216 pages

LETTERS, etc.

Judge Avern Cohn:
Journalism and Awards
1976–2015

Elizabeth Zerwekh

Reviewed by Stuart M. Israel

This collection does not include Judge Avern Cohn's judicial decisions. There are many of those, written over his 37-year tenure on the federal bench, in the Eastern District of Michigan and sometimes by designation at the U.S. Court of Appeals. Those decisions can be found in the federal reporters. Rather, *Letters* presents a sampler of Cohn's prolific commentary outside of the courtroom in letters to the editor, journal articles, book reviews, and other writings.

Cohn writes about topics such as civil rights and civil liberties, the role of the judiciary, sentencing conundrums, constitutional and legal history, and effective advocacy. Well represented are his indefatigable efforts to edify readers—of *The New York Times*, the *Michigan Bar Journal*, and other publications—who are in need of edification. There is no shortage of such readers.

Despite the 40-year scope of *Letters*, it provides only a glimpse of Cohn's eclectic interests and accomplished professional history. After serving in the U.S. Army from 1943 to 1946, Cohn graduated from the University of Michigan Law School in 1949. He practiced with his father, Irwin I. Cohn, and later with Honigman, Miller, Schwartz and Cohn. He put in three decades as a lawyer and a community and civic leader before becoming a U.S. district judge in 1979. The last few pages of *Letters* include an impressive list of his many awards and honors. His accomplishments, to name only a few, include chairing the Michigan Civil Rights Commission and the Detroit Board of Police Commissioners and serving as president of the Jewish Federation of Metropolitan Detroit.

Cohn's viewpoints, reflected in *Letters*, are interesting and insightful. Often, they

are of up-to-the-minute application, proving the adage *plus ça change, plus c'est le même chose*.

One example is Cohn's 1991 *Wayne Law Review* article titled "*Doe v University of Michigan*: A Somewhat Personal View." The Doe in question is *Doe v University of Michigan*, 721 F Supp 852 (ED Mich 1989). Cohn gives his personal view of the background that led to his decision.

Doe addressed the constitutionality of the university's Policy on Discrimination and Discriminatory Harassment of Students in the University Environment, a grandiloquently titled campus speech code.

The policy was a university effort to curb what it "viewed as a rising tide of racial intolerance and harassment on campus." It prohibited, and punished, "[a]ny behavior, verbal or physical, that stigmatizes or victimizes" any individual "on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status."

"Physical" is one thing; "verbal" is another. Cohn straightened out his alma mater. He wrote: "However laudable or appropriate an effort this may have been...the Policy swept within its scope a significant amount of

'verbal conduct' or 'verbal behavior' which is unquestionably protected speech under the First Amendment."

The First Amendment still needs enforcement. Friction about speech codes continues to inform ubiquitous debates about campus free speech, "hate speech," "safe spaces," "microaggressions," and the university as the marketplace of all ideas, pleasant and offensive.

If anything, the debate is more in need of principled illumination now than in 1989, when Cohn lit the way. You can look it up at the nonpartisan Foundation for Individual Rights in Education website, www.thefire.org. The road to hell is still being paved with good intentions, to the extent any Michigan roads are being paved.

Anyway, those affected by—and those promulgating and enforcing—speech codes would do well to read Cohn's opinion in *Doe* and his "personal view" in *Letters*.

Those interested in reading Judge Avern Cohn's commentary on his legal times can learn more from *Letters, etc.* editor Elizabeth Zerwekh at elizwz1@aol.com. ■

Stuart M. Israel practices with Legghio & Israel, PC, in Royal Oak.

Cohn writes about topics such as civil rights and civil liberties, the role of the judiciary, sentencing conundrums, constitutional and legal history, and effective advocacy.