

Examining the Common Law

To the Editor:

Professor Vincent Wellman does an excellent job explaining the relationship between judges enunciating rules of law in their decision making and the role of the legislature doing so in his article “A Common Mistake About the Common Law” (January 2013 *Michigan Bar Journal*). To emphasize his point, he might well have noted that Justice Oliver Wendell Holmes, in discussing the background of our criminal laws, tort laws, contract laws, etc., in his seminal work *The Common Law*, doesn’t so much as mention a single statute.

Also, he might have noted that the United States Supreme Court in *Meister v Moore*, 96 US 76 (1877), held that in Michigan a common-law marriage, sometimes referred to as a marriage by habit and repute, stood on equal footing with a ceremonial marriage authorized by statute.

Avern Cohn
Detroit

Musings on William Henry Gallagher

To the Editor:

I read with great interest Carrie Sharlow’s article on William Henry Gallagher in January’s *Michigan Bar Journal* (“Michigan Lawyers in History”). As a young lawyer in the late 1950s, I was involved in a tri-party litigation in the Wayne County Circuit Court where Gallagher represented a party with concerns similar to my client’s, and Joe

Louisell represented the other side. We were making oral arguments on a dispositive motion. The proceeding started with Gallagher making his opening argument. He stood ramrod straight, with thick white hair, and for at least 10 minutes, without referring to notes, made—at least in my opinion—a spellbinding presentation. I then put in my argument and Joe Louisell made his. There were the usual follow-up arguments.

At the end of the proceeding, our side carried the day and this rookie lawyer ended up with two things: I had learned how to make and present a convincing argument from William Henry Gallagher and was able for years to say I was 1–0 against Joe Louisell—without having to acknowledge that I did so on the coattails of William Henry Gallagher!

James H. LoPrete
Bloomfield Hills

To the Editor:

I was a young attorney practicing in Detroit when a more experienced attorney asked me to handle an upcoming evidentiary hearing in recorder’s court. The issue was one of court jurisdiction and the defendant was a prominent businessman in Oakland County.

My referring attorney was confident that if I could get the case dismissed, he could make an advantageous deal in Oakland County. I had never even been in the recorder’s court building, but consented anyway.

We were in the second day of hearing and I had the arresting officer on the stand.

His testimony was crucial on the question of jurisdiction. I noticed an older man sitting in the first row of the gallery. He looked rumpled but clean—almost as if he had slept in the suit he was wearing. I didn’t pay any attention to him until he approached me during the lunch break and congratulated me on the job I was doing. I didn’t put much weight behind his commendation since I didn’t think he was in a position to judge my performance. I thanked him, and after he left the room, the bailiff came up to me and asked if I knew who that was. I told him I had no idea. “That was William Henry Gallagher,” he said.

Robert H. Golden
Lathrup Village

To the Editor:

I enjoyed Carrie Sharlow’s article about William Henry Gallagher, who represented Aaron Sapiro in his defamation suit against Henry Ford. Through my father, Lawrence I. Levi, that trial has become legend in my family. My father’s law partner, Robert S. Marx, was co-counsel with Gallagher, and my father used to tell anecdotes about Marx’s outspokenness as an advocate in the trial.

A U.S. Army captain in World War I, Marx was awarded the Distinguished Service Cross in 1918 (<http://www.militarytimes.com/citations-medals-awards/recipient.php?recipientid=13380>). After the war, he was one of the originators of the Disabled American Veterans of America and served as its first national commander. He is also honored as an inductee of the Ohio Veterans

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Hall of Fame (http://dvs.ohio.gov/veterans_hall_of_fame/inductees/class_of_1993.aspx).

He began his law career in 1910 in Cincinnati, and early on demonstrated the strong advocacy, studiousness, and indefatigability that characterized his professional life. At age 30, Marx became a judge of the Superior Court of Cincinnati; at that time, he was the youngest person to ever hold that position. He became a nationally known trial attorney—dramatic in trials and advocacy—and his scholarly briefs made great impact.

Marx was a friend and advisor to President Franklin D. Roosevelt, often accompanying Roosevelt on his campaign trips. After the bank holiday, President Roosevelt appointed Marx as counsel for the receiver of First National Bank of Detroit. As a young associate of Marx, my father opened the law office in Detroit, which became Marx, Levi, Thill and Wiseman. Later, as partners, Marx and my father faithfully represented the receiver of the bank, which became the National Bank of Detroit. They engaged in much litigation involving closed banks, and in these cases made important law.

Marx was an exceptional sportsman. He spent summers at his cabin in Charlevoix, and he and his crew raced his sailboat in the Chicago–Mackinaw and Port Huron–Mackinaw races. Incredibly, he sailed his 70-foot sailboat around the world and memorialized the journey in his book *Round the World with Stella*.

He was a notable philanthropist in life and left a testamentary trust that funded, among other gifts, the Robert S. Marx Law Library at the University of Cincinnati Law School. In August 2011, law school librarians discovered a time capsule from the library's dedication in 1963. Upon opening the capsule, they found many documents commemorating Marx's life and accomplishments (see <http://www.libraries.uc.edu/liblog/2011/08/05/a-matter-of-time/#more-9521>).

My father greatly respected Robert S. Marx as a colleague, mentor, and friend. The memory of my father and his relationship with Marx holds a very cherished and honored place in my family. My parents named me after the judge.

Robert L. Levi, West Bloomfield