

Michigan Lawyers in History

Theodore Sachs

By John R. Runyan and Carrie Sharlow



The state of Michigan was built by the lumber and auto industries, agriculture, and the lawyers who lived, studied, and practiced here. The articles in this occasional series highlight some of those lawyers and judges and their continuing influence on this great state.

Did you know that before the 1960s, Michigan's state Senate districts were apportioned based on *area* rather than *population*? At one extreme, Michigan's 32nd district, representing four rural counties with a population of just over 61,000 in 1950, had one state senator.¹ At the other extreme was Detroit's 18th district with a population of nearly 700,000—more than 11 times larger than the 32nd district—but just one senator. You may remember *Baker v Carr*² and *Reynolds v Sims*,³ the United States Supreme Court decisions that established the principle of “one person, one vote,” but do you know the Michigan attorney who helped establish that principle?

Theodore Sachs was a lifelong resident of eastern Michigan. His parents, however, were not native Michiganders. Abraham Sachs and Esther Silverman emigrated separately with their families from Russia and settled in Cook County, Chicago, which is probably where Abe and Esther met. They married in 1906 and lived near or with Silverman family members for several years. Abe was a grocer and a cigar maker before the family moved to Detroit with their four children—daughter Frieda and sons Maurice, Sid, and Sol. Ted arrived shortly after the family's move; the baby of the family, he was 7 years younger than

Sol and 20 years younger than his oldest brother, Maurice.

Abe found work in Detroit in the dry cleaning/laundry industry—a job that would greatly influence his youngest son's future. The company Abe worked for was not unionized, nor was the majority of the industry. Years earlier, when the Sachs lived in Illinois, there was a huge dry cleaning employees' strike. The strike lasted several months, but was ultimately unsuccessful.

Dry cleaning was hard work. Ted's father—who worked far more than eight hours a day, six or seven days a week, with no holidays or vacations—would return home exhausted each night, probably smelling of the chemicals used in dyeing⁴ and occasionally of smoke (fires were common; workers' compensation was not). All this for around \$35 or \$40 a week for a family of seven.

Something had to change, and shortly after Ted turned seven, that change was put in motion. The National Labor Relations Act passed, and two years later, the United States Supreme Court found it constitutional. Abe's workplace probably unionized around this time, and the benefits to the family were obvious. By 1940, he was making \$3,000⁵ a year working a 42-hour week for 50 weeks. No more exhausted father; and with a living wage, there was a chance of a better future for the children.

People often hope for a better life for their children, and Abe was no different. He labored at grueling, menial jobs so his children didn't have to. He fought for unionization so his children wouldn't need to. And his sons had better futures: Maurice became a dentist, Sidney was a commercial artist, and Sol and Ted both became lawyers.⁶

Ted was incredibly suited for higher education and the opportunities it offered. He graduated from Central High School at the top of his class⁷ and enrolled at Wayne State University.

While attending WSU, Ted was a finalist for the William Lamson-John J. McElhone Scholarship. George C. Edwards, one of Detroit's most prestigious attorneys and labor lawyers, was on the interviewing committee. With oratorical skills that would become legendary, Ted made a great impression on Edwards. He won the \$200 scholarship⁸ but, in the long run, his connection with Edwards became more important. If Abe showed Ted the benefits of unions, Edwards showed him how to use the law to achieve similar gains.

Ted moved on to the University of Michigan Law School, and when Edwards—a partner at Rothe Marston Edwards & Bohn—ran for the office of Detroit mayor, Ted assisted in his unsuccessful campaign as an extracurricular activity. At the university, he



Theodore Sachs, age 32, approximately 10 months after the Michigan Supreme Court dismissed *Scholle v Hare*.

served as “Editor-in-Chief of the Law Review, and became a member of the Order of Coif, national honorary legal society.”⁹

Sachs joined Rothe Marston Edwards & Bohn immediately after graduating from law school in 1951. His rapid ascent within the firm was a product of his considerable intellect and talents as an appellate advocate, as well as the fact that Edwards left the firm in September 1951 to become a probate judge in Wayne County Juvenile Court. Sachs took over Edwards’ caseload and, reportedly, his first assignment was an argument before the Michigan Supreme Court.

One of Sachs’ earliest clients was the Michigan CIO Council¹⁰ and its president, August “Gus” Scholle. In 1951, the Michigan Committee for Representative Government, with assistance from the Michigan CIO Council, launched an effort to amend the Michigan Constitution to require periodic legislative apportionment in both houses on a strict population basis. Although they were successful in getting the signatures necessary to have the proposal placed on the November 1952 ballot, the initiative was

ultimately rejected by the voters, chiefly because of opposition from the Michigan Manufacturers Association and the success of a rival and less revolutionary apportionment proposal. Undeterred, Sachs and Scholle brought a mandamus action in the Michigan Supreme Court in December 1959, challenging the constitutionality of the apportionment plan approved by voters seven years earlier. Relying on the Due Process and Equal Protection clauses of the Fourteenth Amendment, Sachs argued that “[i]t is as much the duty of the Michigan Supreme Court to uphold the ‘law of the land’ as it is that of the United States Supreme Court.”¹¹ He pointed out that “on the basis of projected 1960 figures, plaintiff’s district has 724,000 persons, while the smallest, the 32nd, has only 49,000, a variance of 15 to 1—with such variations existing despite a hypothetical ‘average’ district size of 242,000 persons.”¹²

Despite his efforts, Sachs did not persuade a majority of the Michigan Supreme Court that the state’s apportionment plan was unconstitutional. Ironically, the majority opinion¹³ was written by Sachs’ former colleague and mentor, George Edwards, who had joined the Michigan Supreme Court in 1956. With three judges dissenting, Justice Edwards pointed out that the United States Supreme Court had repeatedly

Even today, Sachs is largely credited with drafting Michigan’s basic labor relations laws and shaping labor relations standards.

ultimately rejected by the voters, chiefly because of opposition from the Michigan Manufacturers Association and the success of a rival and less revolutionary apportionment proposal.

rejected Fourteenth Amendment challenges to malapportioned legislative districts and that a significant number of states—both those admitted to statehood before adoption of the Fourteenth Amendment in 1868 and those joining the union since then—allowed representation based on factors other than population.¹⁴

Sachs appealed the decision to the United States Supreme Court. His prediction that the Court would revisit its apportionment jurisprudence was soon vindicated. In March 1962, the Court announced its decision in *Baker v Carr*, concluding that legislative apportionment was not a “political question” but a justiciable issue.¹⁵ In April, with Justice Harlan dissenting, the Court vacated the judgment in *Scholle v Hare*¹⁶ and remanded the case to the Michigan Supreme Court “for further consideration in the light of *Baker v Carr*....”¹⁷

By 1962, George Edwards had left the Court to become Detroit’s police commissioner and was replaced by Paul L. Adams, another Democrat. However, because Adams had been attorney general during the first round of litigation, he did not participate in the Court’s 1962 decision. Writing for the majority with three judges dissenting, Justice Thomas M. Kavanagh held that “the provisions of Article 5 of the Michigan Constitution of 1908, as amended in 1952, by which plaintiff’s vote for the office of State senator is invidiously unequal to the votes cast for State senator by other citizens of the State” violated the Equal Protection



Courtesy of Andrea Sachs

Joan and Ted Sachs

Clause.¹⁸ The majority therefore enjoined the scheduled August 1962 primary election of state Senate candidates, advised the governor and state lawmakers that legislation was urgently needed to rearrange Michigan's 32 senatorial districts according to population, and created a special statewide primary election of state Senate candidates in the event that valid legislation with immediate effect was not quickly enacted.

Three state senators who supported the status quo retained renowned New York lawyer Whitney North Seymour and sought a stay from the United States Supreme Court.¹⁹ With the Court in summer recess, Seymour tracked down Circuit Justice Potter Stewart at his vacation home in Franconia, New Hampshire. Six miles away at the picturesque federal courthouse in Littleton, Sachs, at age 34, argued his first case before a Supreme Court justice. Unfortunately, he was unsuccessful and Justice Stewart granted the requested stay.

In the meantime, Michigan's Republican-dominated Constitutional Convention had revamped the legislature's apportionment system. The 1963 Michigan Constitution, ratified by a margin of only 7,000 votes in a statewide election, continued to allow consideration of area, rather than strict population, to govern state senatorial districts. Scholle again sued to overturn the mixed scheme. At the same time, the United States Supreme Court was issuing a series of decisions to clarify that both legislative chambers must be apportioned according to a "one-person, one-vote" formula.²⁰

Michigan ended up with the most mathematically equal legislature in the country—the one with the smallest "variance ratio." In 1964—a landslide year for Democrats across the country—the Democratic party won control of both houses of the Michigan legislature for the first time since the 1930s. More significantly, legislative reapportionment opened the door for the enactment of progressive legislation in Michigan like 1965's Public Employment Relations Act, MCLA 423.201 *et seq.*, largely drafted by Sachs.

Later in his career, Sachs went on to argue and brief three more cases before the United States Supreme Court, successfully defending the constitutionality of "fair share" union security arrangements in public employment and remedial workers' compensation legislation.²¹ He served as general counsel to the Michigan AFL-CIO and the Michigan Democratic Party as well as president of George Edwards' old firm.

He remained with that firm—known today as Sachs Waldman—for his entire 45-year career,²² one tragically cut short in 1996 by a stroke that robbed him of his greatest gift—his legendary oratorical skills. He died five years later at the age of 72.

Even today, Sachs is largely credited with drafting Michigan's basic labor relations laws and shaping labor relations standards.²³ His firm maintains its reputation as one of the "greatest specialty firms" in the nation.²⁴

While introducing Sachs as the recipient of the first Distinguished Service Award from the State Bar Labor and Employment Law Section in 1997, veteran labor arbitrator George Roumell said, "If we lawyers put away our egos, and we took a poll of those who have practiced for years with [Sachs], we would agree, to a person, that he is the best labor lawyer in Michigan and probably in the nation. He is truly a minister of justice." ■

John R. Runyan is managing director of Sachs Waldman in Detroit. He also serves as vice chair of the State Bar Publications and Website Advisory Committee, where he oversees publication of the Michigan Bar Journal.

Carrie Sharlow is an administrative assistant in the Executive Office of the State Bar, assisting Governmental Relations.

Special thanks to Judge Avern Cohn, who suggested the topic and helped with review and research.

Special thanks also to Ted Sachs' wife, Joan, and children, Andrea and Jeffrey, for their kind assistance with review and research.

ENDNOTES

1. Jones, *The Rise of Public Sector Unionism in Detroit, 1947–1967* (Dissertation submitted to the Graduate School of Wayne State University, Detroit, Michigan) (Ann Arbor: ProQuest, 2010), p. 118.
2. *Baker v Carr*, 369 US 186; 82 S Ct 691; 7 L Ed 2d 663 (1962).
3. *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964).
4. Alcohol, ether, and benzene were also helpful with stains.
5. About \$50,000 in today's money.
6. Frieda was the only daughter in the family and did not go to college.
7. He also met his future wife, Joan Abrams, there.
8. \$200 was a huge amount of money. It would have paid Ted's tuition for his first year of law school.
9. *State Candidates*, The Ludington Daily News (April 1, 1961), p. 4.
10. The CIO was the Congress of Industrial Organizations, which merged in 1955 with the American Federation of Labor to form the AFL-CIO.
11. *The Rise of Public Sector Unionism*, p. 162.
12. Brief of Plaintiff at 3, *Scholle v Hare*, 360 Mich 1, 9; 104 NW2d 63 (1960), vacated 369 US 429 (1962).
13. A month before this opinion was released, Abraham Sachs died.
14. *Scholle*, 360 Mich at 86–104.
15. *Baker*, 369 US 186.
16. *Scholle*, 360 Mich 1.
17. *Scholle v Hare*, 369 US 429; 82 S Ct 910; 8 L Ed 2d 1 (1962).
18. *Scholle v Hare*, 367 Mich 176, 186; 116 NW2d 350 (1962).
19. Sachs, Scholle v Hare—*The Beginnings of "One Person-One Vote,"* 67 Mich B J 228 (1988).
20. See *Wesberry v Sanders*, 376 US 1; 84 S Ct 526; 11 L Ed 2d 481 (1964); *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964); *Lucas v 44th Gen Assembly of Colorado*, 377 US 713; 84 S Ct 1459; 12 L Ed 2d 632 (1964); *Swann v Adams*, 385 US 440; 87 S Ct 569; 17 L Ed 2d 501 (1964).
21. See *Aboud v Detroit Bd of Ed*, 431 US 209; 97 S Ct 1782; 52 L Ed 2d 261 (1977); *Alessi v Raybestos-Manhattan, Inc*, 451 US 504; 101 S Ct 1895; 68 L Ed 2d 402 (1981); *Gen Motors Corp v Romein*, 503 US 181; 112 S Ct 1105; 117 L Ed 2d 328 (1992).
22. Sachs's career included much more than one brief article can contain.
23. *Theodore Sachs Labor Lawyer*, 72, The New York Times (March 13, 2001) <<http://www.nytimes.com/2001/03/13/us/theodore-sachs-labor-lawyer-72.html>> (accessed January 29, 2015).
24. Martindale-Hubbell, *Sachs Waldman Professional Corporation* <<http://www.martindale.com/Sachs-Waldman-Professional-Corporation/712187-law-firm-office.htm>> (accessed January 29, 2015).