

# Michigan Lawyers in History

## Judge Robert S. Marx

By Robert Lawrence Levi



*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.*

**J**udge Robert S. Marx was a titan. His intellect, vitality, and competitive drive were far too great for any one state to contain his professional and personal lives. An athlete, war hero, respected jurist, skilled lawyer, innovative teacher, and philanthropist, Marx left his mark in many national arenas. Our state is fortunate that he spent many years litigating and living in Michigan.

Marx was born in Cincinnati, Ohio, on January 28, 1889, and graduated from the University of Cincinnati College of Law in 1909. His scholastic record is among the best in the law school's history. He led the law school's debate team to victories throughout the United States, and, characteristic of his physical prowess and competitive spirit, he was elected captain of the university's football team. In 1908, in the position of tackle, he started and finished every game.

Marx began his law career in 1910 after passing the Ohio bar exam.<sup>1</sup> In 1920, he became a Cincinnati Superior Court judge; at the time, he was the youngest person to hold that position. His opinions were sound and well-reasoned. He strongly believed in judicial efficiency and significantly expedited the work of the court.

Marx became a national figure during World War I. Anticipating U.S. entry into the war, he learned fighting skills even before enlisting, and rose to the rank of captain in the Army. On the last day of the

war, near Baalon, France, Marx revitalized a battered company, and under enemy fire led a thrust deep into Germany. He was severely wounded during the battle and reported dead. But he returned home, and for his courage in the war, received the Distinguished Service Cross, the Verdun Medal, and the Purple Heart. Later, Marx founded the Disabled American Veterans of America.

Marx had an innovative legal mind and was adept at problem solving. In a 1925 edition of the *Columbia Law Review*, he authored an article titled "Compulsory Compensation Insurance" in which he addressed the problem of rising automobile accidents and the accompanying increase in personal injury suits. He wrote, "Ten years as a trial lawyer and five years as a trial judge have convinced the writer of the futility of the personal injury suit as a remedy for the victims of street accidents, and of the necessity of adopting a social program which will make law keep step with modern progress."<sup>2</sup> Marx denigrated the practicality of the personal injury suit for resolving automobile accident cases and, in the course of his argument, condemned the principle of contributory negligence: "The result of this doctrine is that if the defendant was *ninety-nine* percent to blame for an accident and the plaintiff was *one* percent to blame, there can be no recovery.... It is difficult to imagine a more anti-social doctrine."<sup>3</sup>

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Instead, Marx proposed a compulsory insurance system similar to the workers' compensation system, which had just recently been adopted in the U.S. He envisioned the government requiring auto owners to pay mandatory premiums into a fund that would compensate those involved in collisions without regard to fault. Thus, in 1925, Marx foresaw no-fault automobile insurance.<sup>4</sup>

In 1926, Marx became associated in practice with Aaron Sapiro in Chicago. A year later, Sapiro sued automobile magnate Henry Ford, leading to the famous libel trial in Detroit. Marx's connection with Michigan began with his advocacy at that trial. In a trial involving another Jewish client, opposing counsel made an anti-Semitic remark to the jury. Marx countered by taking off his shirt, showing the jury his war wounds, and impressing upon them that when he was wounded, no one asked whether he was Jew or gentile. Reportedly, the entire jury was in tears.

Marx was a friend and advisor to President Franklin D. Roosevelt. He accompanied Roosevelt during his unsuccessful bid for the vice presidency in 1920 and ended the campaign with him in Detroit. In 1932, Marx represented Ohio as a delegate to the Democratic National Convention.

After the federal bank holiday in 1933, Roosevelt appointed Marx as counsel for the receiver of First National Bank of Detroit, which was then the biggest receivership in the history of American banking. Lawrence I. Levi, Marx's associate and a recent law school graduate, joined him in representing the receiver. Marx successfully pierced the veil of the corporation holding the bank's stock, resulting in all depositors' receiving their deposits plus interest.<sup>5</sup>

In 1938, Marx and Levi formed the firm Marx, Levi, Thill & Wiseman (later Marx, Levi, Thill, Wiseman & Rollins) in Detroit. Together they litigated many cases that commanded national attention, especially those regarding closed national banks. Marx argued 22 cases before the United States Supreme Court. Recognized as one of the outstanding trial attorneys of his time, he prepared for trial with the greatest of care and enthusiasm and had a natural ability to command the courtroom. In 1954, Marx became general counsel for Schenley Industries, Inc.,

a large liquor distributing company with headquarters in New York.

Marx was also a devoted teacher of the law, and his ability to fashion creative solutions served his students well. He served on the faculty of Xavier University Law School in Cincinnati, where he established a course in legal bibliography and research. In his later years, he contributed to the support of the university's national debating tournament.

Perhaps Marx's greatest contribution to the study of law was his call to establish courses on "facts" in law schools. In 1953, he wrote:

For many years practicing lawyers and progressive judges have been aware of the deficiency of our law schools in preparing students and graduates to present in the trial courts cases which involve controverted facts. For many years law has been taught from "casebooks." These casebooks are a collection of appellate court opinions applying the law to facts previously determined in the lower courts, sometimes referred to as "canned" facts.... Legal education equips [a student] to prepare a legal brief and, within limits, to argue questions of law in an appellate court.... Unfortunately, the majority of our law schools have done little to give a realistic education to the young lawyer in this all important field of getting the facts, marshalling the evidence, and trying the case to a court or jury.<sup>6</sup>

Marx proposed a class to teach techniques for getting facts, recording them, and presenting them at trial, and developed and taught such a course at the University of Cincinnati from 1952 to 1956. He taught students how to interview witnesses, search government records, obtain medical records, choose expert witnesses, and take depositions. He even taught how psychological and physiological matters influence a witness's ability to observe, record, and recall facts. He arranged for his students to appear before government tribunals and strongly advocated they practice their skills in a clinical setting. The Association of American Law Schools recognized the great value of Marx's course, devoting the entire program at its 1953 annual meeting to discussion of the course.

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Marx was a great 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, a trip he documented in his book *Round the World with Stella*.<sup>7</sup> Having no family of his own, Marx made his friends his family, inviting them to vacation with him in his homes in Charlevoix; Tryon, North Carolina; and Acapulco, Mexico.

Marx died unexpectedly in 1960. A great philanthropist in life, he left his entire fortune to a testamentary trust which funded, among other gifts, the Robert S. Marx Law Library at the University of Cincinnati Law School and its Robert S. Marx seminars and lectures, which bring preeminent scholars in law and political science to the school to discuss current legal issues. Because of his generosity, Judge Robert S. Marx's legacy of legal reform and improving the administration of justice continues more than a half century after his passing. ■

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*The general sources for the article are Barrow, Robert S. Marx, 1889–1960, 29 *University of Cincinnati Law Review*, 401 (1960) and the personal memories of the author and of his father.*

#### ENDNOTES

1. Marx later became a member of the Michigan and New York bars.
2. Marx, *Compulsory compensation insurance*, 25 *Colum L R* 166 (1925).
3. *Id.* at 178.
4. *Id.* at 180–193.
5. See *Barbour v Thomas*, 7 F Supp 271 (ED Mich, 1933); *Ullrich v Thomas*, 86 F2d 678 (CA 6, 1936).
6. Marx, *Shall law schools establish a course on "facts"?*, 22 *U Cin L R* 281–282 (1953).
7. Marx, *Round the World with Stella* (Johnson & Hardin, 1951).

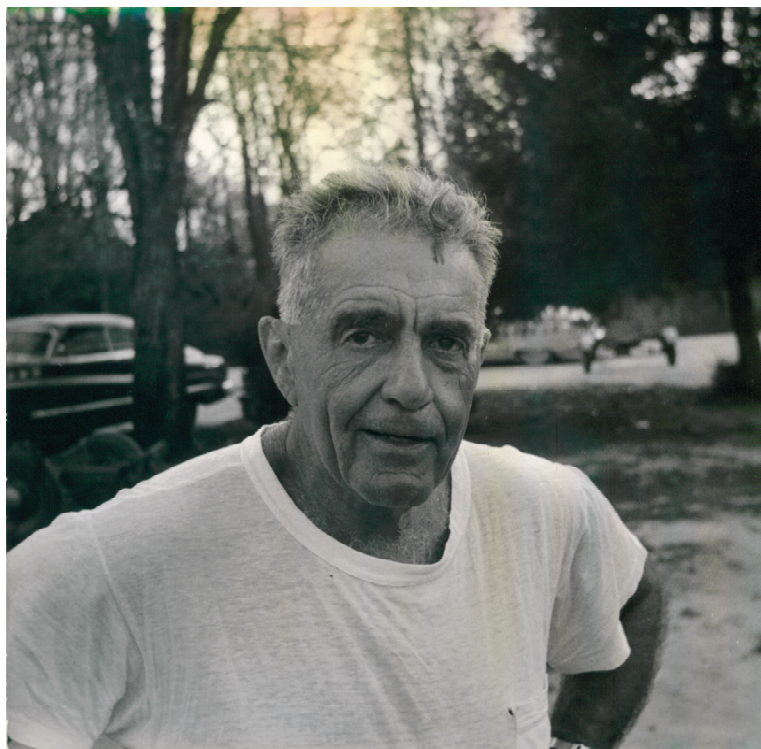


Photo by Carroll Seghers III

Judge Robert S. Marx at his home in Charlevoix