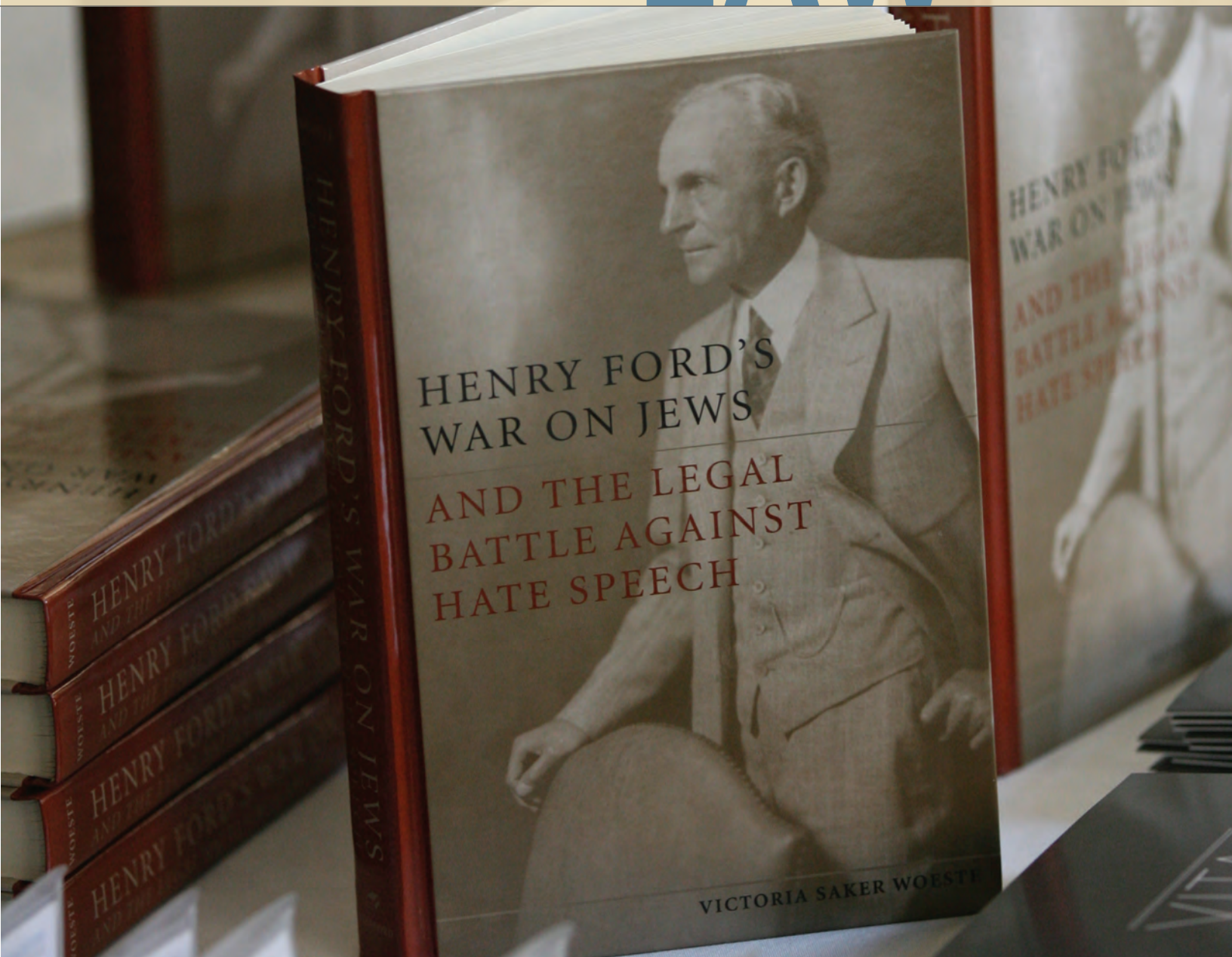


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**Henry Ford's War on Jews
and the Legal Battle Against Hate Speech**

Henry Ford's War the Legal Battle



Victoria Saker Woeste

Victoria Saker Woeste was educated at the University of Virginia (B.A., cum laude) and the University of California at Berkeley (M.A., Ph.D.), where she trained as an interdisciplinary academic in law and social science. Since joining the American Bar Foundation in 1994, she has established herself as a leading scholar in the field of U.S. legal history, focusing on twentieth-century business regulation and political economy. Her first book, *The Farmer's Benevolent Trust*, won the Law and Society Association's J. Willard Hurst Prize in 2000; in dissertation form it was awarded the 1993 Herman Krooss Prize of the Business History Conference.

In addition to the newly published *Henry Ford's War on Jews and the Legal Battle Against Hate Speech* (Stanford University Press, 2012), Woeste's projects include a biographical study of the civil rights lawyer Louis Marshall (1856–1929) and an inquiry into efforts to link school and housing desegregation with hate speech regulation in the post-World War II Midwest.

What is the relationship between the right to free speech and self-expression under the First Amendment and the government's authority to limit speech it deems to be "hateful"? What is the relationship between hate speech that is directed at an individual and speech that targets the group to which that individual belongs? How have these relationships evolved during the last century, a time of great social change and intense civil rights activism?

A new book by ABF Research Professor Victoria Saker Woeste examines these and other questions in the context of a lawsuit that made national headlines in 1927 when it was tried, but is largely forgotten today. Drawing on heretofore undiscovered archival materials, Woeste's *Henry Ford's War on Jews and the Legal Battle Against Hate Speech* (Stanford University Press, 2012) tells the story of a Jewish lawyer, Aaron Sapiro, who sued automobile magnate Henry Ford for libel over antisemitic statements published about him in Ford's newspaper, *The Dearborn Independent*. Ford's attacks against Sapiro in the 1920s were part of a larger antisemitic campaign that Ford had waged in the pages of the *Independent* for years.

Sapiro's lawsuit brought to a head an unresolved tension that

had been simmering between Ford and American Jews since World War I. Concerned about the effect vocal protests and litigation would have on their smooth assimilation into American society, the Jewish community was divided about how to deal with Ford's attacks. In particular, Louis Marshall, a prominent civic leader and a lawyer himself, was loathe to take Ford to court. But when Sapiro did so, Woeste relates, Marshall later involved himself in the matter in a way that inadvertently undermined the goal of limiting hate speech against Jews.

As Woeste explains in the book's introduction,

This book expands the story of the First Amendment's historical development by revealing divisions in the civil

on Jews and Against Hate Speech

The case of *Sapiro v. Ford* and its ambiguous resolution reveal the tension in law and culture between individual freedoms and the status of those seeking equality on the basis of group identity.

liberties community over how to respond to speech that attacked race and religion. Jewish lawyers and activists who were best positioned to react to Ford's newspaper were handicapped not only by the lack of relevant statutes but also by philosophical and political differences among themselves. As a result, when the Ford case finally presented itself, it was staged by a relative outsider —Sapiro—as a conventional individual libel suit rather than a group libel case. The national press, having covered every word Ford uttered on his obsession with Jews since 1915, elided the technical legal distinction between individual and group libel and proclaimed the case a fight between Henry Ford and 'the Jews.' That characterization amplified

the consequences of Sapiro's lawsuit for Jews generally and made Louis Marshall desperate to contain its effects on Jewish Americans' civic status.

Louis Marshall was an East Coast lawyer and activist of great prominence, whose background and interests were quite different from Sapiro's. Compared to Sapiro, Marshall was an insider, serving as President of the American Jewish Committee, on the Board of the NAACP, and arguing many cases before the Supreme Court. Prior to Sapiro's lawsuit, Marshall's strategy for dealing with Ford had been to not dignify Ford's hateful rhetoric with an organized response.

Though Henry Ford's antisemitism is well known to historians, the story behind the

Sapiro lawsuit has not received sustained attention until the publication of Woeste's book. Ford's antisemitic views first became public during World War I, the cause of which he blamed on Jewish financiers, and they continued to develop after the war ended. In 1918, he purchased *The Dearborn Independent* to use as a vehicle to spread his ideas. Between 1920 and 1922 Ford published more than 90 antisemitic articles in the *Independent*, many of which were based on the *Protocols of the Elders of Zion*, a Russian forgery lately in circulation that claimed to expose a Jewish conspiracy to achieve world-wide domination. The articles were later published as a series of pamphlets entitled *The International Jew*; by the 1930s, Henry Ford was

listed as their author. In 1924 Ford began another series of antisemitic attacks, but this time his newspaper cited Aaron Sapiro's work as an organizer of agricultural cooperatives as evidence for the *Protocol's* conspiracy theory. With such headlines as "Jewish Exploitation of Farmers' Organizations: Monopoly Traps Operate Under the Guise of 'Marketing Associations'," and "Sapiro and

hand-labor enterprise. Though he devoted his life to the development and manufacture of combustion engine-powered vehicles, which revolutionized the practice of agriculture and the social lives of all Americans, Ford remained enamored with the small American family farm and the values of late 19th-century farm and village life. Sapiro, on the other hand, had never farmed himself, a fact that led

these endeavors made him an irresistible target for Ford.

Suing Ford for defamation during the 1920s posed complicated legal issues. Several states had enacted laws criminalizing published libels against groups by the mid-1920s, but Michigan was not among them. Sapiro's decision to sue Ford in his home state, though courageous and bold, deprived him of the ability to sue for damages under the broader umbrella of group libel. As a result, though Ford's attacks had been broadly antisemitic for a prolonged period of time, Sapiro focused on the more recent personal attacks against him and sued Ford for individual libel. As Woeste points out, however, thanks in part to the tone and content of national press coverage, the trial came to be seen as a contest between Henry Ford and "the Jews." As we would say today, it raised the issue of hate speech.

As Woeste relates, the lawsuit, which was filed in federal district court in Detroit in 1925, did not go well for the defendant. For many months and at great expense his legal team criss-crossed the country taking depositions and obtaining evidence. The defense intended simultaneously to prove that Ford's accusations were true and to impoverish Sapiro through delays and ever-mounting legal fees. Despite these efforts, Ford's legal team eventually realized

In managing the case as a civil rights activist rather than pursuing a legal remedy, Marshall unwittingly ensured that his ultimate goal—withdrawing hateful speech from the marketplace of ideas—would not be attained.

the Bankers," the *Independent* declared that Sapiro was manipulating American farmers to make them beholden to Jewish speculators.

As Woeste explains, Sapiro became a target for Ford not only because he was Jewish but also because both men had deep attachments to American agriculture, albeit in dramatically different ways. Ford grew up on a farm near Detroit during the 1860s and 1870s, when most Americans lived in rural places and agriculture was still predominantly a horse- and

Ford to hold him in even deeper disdain. Born in San Francisco to Eastern European immigrants, Sapiro earned a law degree after losing his father at an early age and growing up grievously poor. Sapiro achieved great success organizing farming cooperatives, mostly in California and Western Canada but also in the American Midwest and South. A brilliant and energetic orator, Sapiro convinced farmers that engaging in cooperative marketing, would enable them to bypass middlemen and increase their profits. Sapiro's success in

that they could not prove the truth of Ford's antisemitic statements with the evidence they had obtained through discovery. They thus switched tactics before the trial began. Drawing on negative information they had obtained about Sapiro from a few witnesses, they sought to "redirect the libel suit away from antisemitism and toward the counterclaim that revealing Sapiro's personality, personal style, and professional habits constituted legitimate public criticism," Woeste explains.

Though the defendant's new approach confused matters and irritated the judge, the trial finally began in March, 1927. Sapiro proved to be an impressive witness on his own behalf; the defense made little headway over the course of the month-long trial. Ford himself had been subpoenaed by the plaintiff; he was desperate to avoid taking the stand. According to Woeste, Ford achieved this goal in two ways. First, Ford was reported by his attorneys to have suffered an automobile accident (the veracity of which can now be significantly impeached) that rendered him unavailable to testify. At the same time, Ford ordered his bodyguard Harry Bennett to orchestrate a mistrial. Using Ford company detectives, Bennett obtained affidavits claiming that Sapiro, through an intermediary, tried to bribe one of the jurors with a box of candy. The juror in question denied the claim, but

made a statement to the *Detroit Times* that the affidavits indicated that the defense was desperate "to have the case thrown out of court." Faced with the juror's biased statement, the judge insisted he was forced to declare a mistrial.

Ford had no intention of enduring a new trial, which the judge promised Sapiro would happen without delay. As Woeste recounts, Ford sent an emissary to New York to negotiate an end to the affair with Louis Marshall. Marshall had opposed the lawsuit from the beginning, making non-committal statements to the press and sending private letters to Detroit lawyers trying to end the trial before it began. The appearance of Ford's messengers in his office gave him the serendipitous opportunity to resolve the undignified conflict.

Woeste reveals how Marshall, by working discreetly behind the scenes, drafted a public apology that appeared to emanate from Ford and was directed to all Jewish Americans. Ford accepted Marshall's apology verbatim and signed it, and it was published nationwide in newspapers on July 8, 1927. As Woeste states,

The apology was a masterful work of evasion draped in apparent contrition... Marshall permitted Ford to claim that he knew nothing of the Independent's contents until the lawsuit and to

place responsibility for the offensive publication on his employees. What Marshall got in return was an important concession: Ford's promise to restrain the circulation of The International Jew in the United States and Europe. Stripping the Protocols of the power of Ford's name and wealth had been Marshall's aim since 1920...Marshall believed that he had secured

Suing Ford for defamation during the 1920s posed complicated legal issues.

a conclusive, historic victory: he had succeeded in disassociating Ford from the Protocols.

Ford also settled with Sapiro out of court, published a retraction in the July 30, 1927 issue of the *Independent*, and shut down the newspaper for good the following December.

Though seemingly a triumph for Jews and for Marshall, the apology compromised the goal of limiting hate speech against Jews, Woeste argues. Ford was permitted to disavow his deep

The apology was a masterful work of evasion draped in apparent contrition.

involvement in editorial matters at the *Independent*, a fact that Sapiro had established during the trial. More importantly, the apology did not have the force of law behind it.

Though Ford made half-hearted efforts to fulfill his promise to limit the publication of *The International Jew* (the pamphlet based on the *Independent's* antisemitic series, which, in turn, was based on the *Protocols*), the law compelled him to do nothing. Nor were publishers in Europe and South America required to refrain from reprinting the book. The pamphlet never completely dropped out of circulation; in fact, its world-wide circulation dramatically increased during the 1930s, and the text remains extensively available on the Internet today. “In managing the case as a civil rights activist,” rather than pursuing a legal remedy, Woeste argues, “Marshall unwittingly ensured that his ultimate goal— withdrawing hateful speech from the marketplace of ideas—would not be attained.”

Woeste hopes her book will “advance the debate on whether and how to limit speech under the First Amendment while preserving individual freedom

of self-expression.” She recognizes the conundrums inherent in trying to find a line between objectionable speech and government censorship of fundamental speech rights. Yet she argues for the importance of protecting the vulnerable and the marginal, particularly when they are targeted by the powerful and the wealthy. Says Woeste, “By exposing the active participation of one of America’s historic idols in the origins of a hateful publication with lasting pernicious effects and historical significance, this book connects current quandaries over speech to longstanding issues over the nature of the American community and the continuing problem of bridging differences while keeping the government out of the business of censorship.” The case of *Sapiro v. Ford* “and its ambiguous resolution,” says Woeste, “reveal the tension in law and culture between individual freedoms and the status of those seeking equality on the basis of group identity.” 📖



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If you are interested in supporting research on hate speech or other important ABF initiatives, please contact Lucinda Underwood at 312.988.6573.

ABF celebrates the publication of Victoria Saker Woeste's *Henry Ford's War on Jews and the Legal Battle Against Hate Speech* with a book launch in historic Detroit courtroom



Left to right: ABF Director Robert L. Nelson, Chief Judge of the U.S. District Court for the Eastern District of Michigan, Gerald Rosen, Victoria Saker Woeste, Judge Avern Cohn, Marc Kruman, Director of the Center for the Study of Citizenship at Wayne State University, David A. Collins, ABF Board Member and Treasurer.

A book launch event was held in Detroit, Michigan on Tuesday June 26, 2012 in the courtroom in which the 1927 trial, *Sapiro v. Ford*, took place—the so-called “Million Dollar Courtroom.” Held in the Theodore J. Levin United States Courthouse, the event was co-hosted by the American Bar Foundation; Gerald Rosen, Chief Judge of the U. S. District Court for the

Eastern District of Michigan; ABF Life Benefactor Fellow Judge Avern Cohn; and the Center for the Study of Citizenship at Wayne State University.

Judge Rosen welcomed the audience to his courtroom with a fulsome description of its architectural history. His remarks were followed by short addresses by ABF Director Robert Nelson, Professor Marc Kruman, Director

of the Center for the Study of Citizenship at Wayne State, and Judge Cohn. Victoria Saker Woeste then gave an illustrated presentation on the book and the research that went into it. The audience was composed of Michigan Fellows, including ABF Board Member David Collins, as well as members of the Detroit Jewish Historical Society, local academics, and other guests.



Chief Judge Gerald Rosen welcomes the audience and speaks about the history of the courtroom.



Judge Avern Cohn (ret.), an ABF Life Benefactor Fellow, speaks with Director Robert Nelson.



Victoria Saker Woeste speaks about her book, *Henry Ford's War on Jews and the Legal Battle Against Hate Speech*.



Victoria Saker Woeste and Judge Avern Cohn. Throughout the book project, Judge Cohn provided Woeste with valuable research regarding the Sapiro trial.

Rarely are ABF events held in such interesting historic and artistic surroundings. The courtroom was originally part of Detroit's Federal Building and Post Office, which opened in November of 1897 after seven years of construction. Designed by James H. Windrim, a prominent Philadelphia architect who specialized in public buildings, the old federal building was a massive, castle-like, Romanesque revival structure, built of rough-hewn Bedford limestone. The courtroom, originally housed on the 3rd floor of that structure, was later dubbed the "Million Dollar Courtroom," in reference to the estimated value of its decoration and fittings.

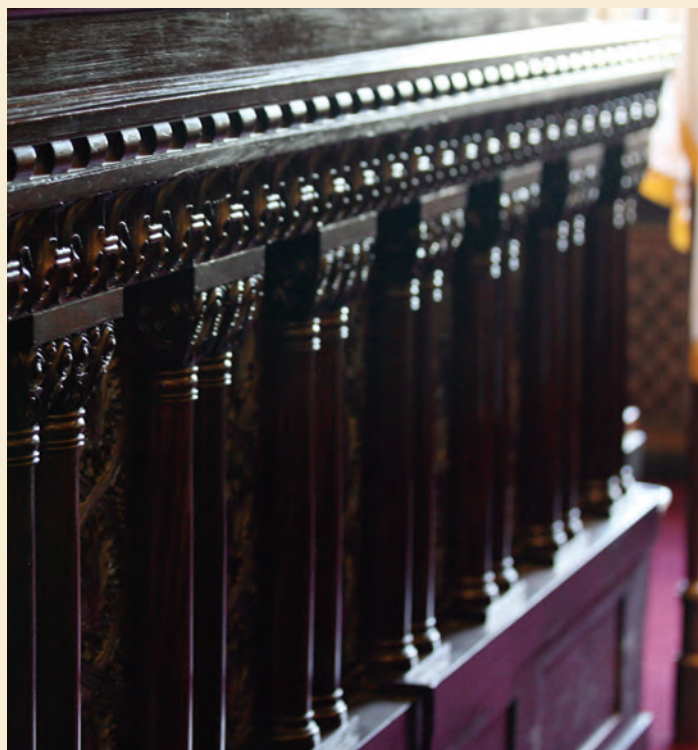
Not long after the building was occupied, however, it became overcrowded; in the decade following the ground breaking in 1890, Detroit's population soared by 39% to 285,704 people. By 1930, three years after *Sapiro v. Ford*, the population reached 1.57 million, making Detroit the fourth-largest city in the United States. That year, the federal government decided to build a newer, more spacious, and modern federal building; the old federal building was razed in 1931.

Before the wrecking ball swung, however, Chief Judge Arthur J. Tuttle persuaded the government to preserve his ornate courtroom and reconstruct it in the new building. The room was measured, plans were drawn up, photos were taken, and the stonework, wall sconces, and massive mahogany bench were disassembled, numbered and stored until they could be reassembled in the new building. The new federal courthouse opened in 1934.

As the guests at the book launch could see, almost all the original fittings were salvaged for the courtroom's new space. (Only the original desks for plaintiff and defense counsel do not survive.) During his welcoming remarks Chief Judge Rosen gave the audience a mini-tour of its features, from the lion-topped Italian-crafted columns that flank the bench, to the ornate marble friezes, to the large decorative medallions of Mexican onyx and multi-colored marble. As architectural historians have noted, many of the room's decorations contain symbols taken from Greek mythology or the Bible, sources that resonated deeply with nineteenth-century Americans.



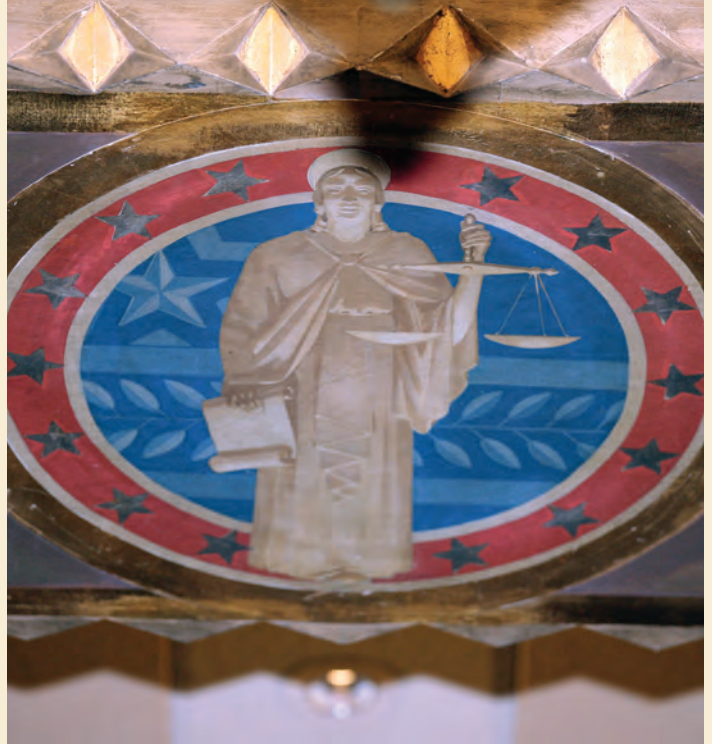
Guests gather in front of a portrait of Judge Theodore J. Levin, after whom the present-day courthouse is named.



Clerk's desk of carved mahogany



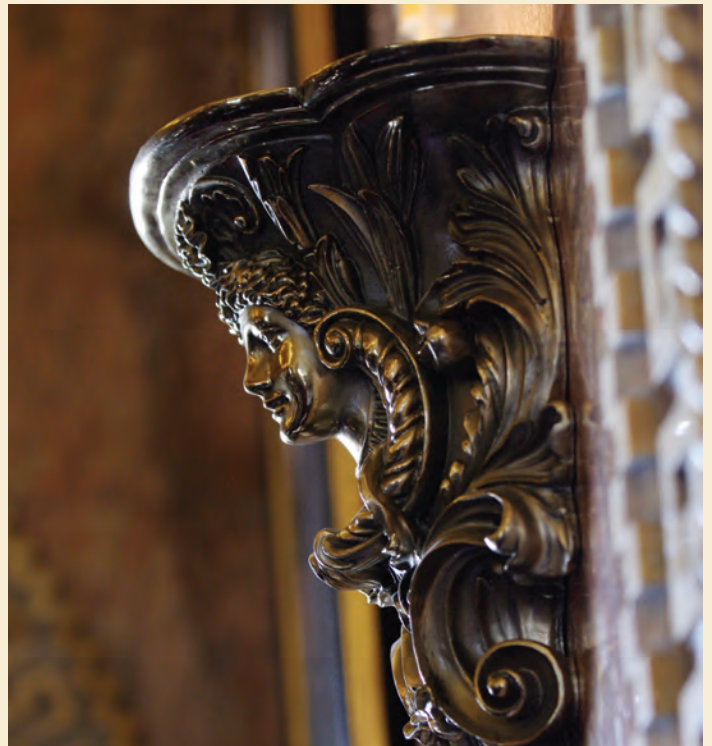
Portrait of Arthur J. Tuttle, the chief judge who saved the courtroom from demolition in 1931. Because he stood firm in the face of pressure to tear down the courtroom, the Detroit press named Tuttle the “Judge Who Wouldn’t Budge.”



The courtroom’s ceiling beams are decorated with symbolic medallions, such as this figure of Justice



Decorative marble frieze



Bronze scone

ABF's Summer Research Diversity Fellowship Program Celebrates 25th Anniversary

On July 18, 2012 ABF staff, faculty, Summer Fellows and Summer Fellows alumni gathered to celebrate the 25th year of the Montgomery Summer Research Diversity Fellowship Program. Founded in 1988, each summer the program introduces a select group of talented undergraduates from diverse backgrounds to the rewards and demands of a research-oriented career in the field of law and social science. Most of the over 100 alumni to date have graduated from law school and gone on to successful careers in law, academia, government and business.

For its financial support of the program in 2012, ABF gratefully acknowledges Seyfarth Shaw LLP and AT&T. ABF is also grateful to receive funding from the Kenneth F. and Harle G. Montgomery Foundation, the Solon E. Summerfield Foundation, and the National Science Foundation in support of the program.

THE FOUR 2012 SUMMER RESEARCH DIVERSITY FELLOWS WERE:

Larissa Davis, a rising senior at Amherst College. Larissa was mentored this summer by ABF Director and Research Professor Robert Nelson.

Nikita Koraddi, a rising senior at the University of California, Berkeley. Nikita worked with Research Professor John Hagan.

Deborah Oh, a rising senior at the University of Southern California. Debbie was mentored by Research Professor Jothie Rajah.

Merritt Steele, a rising junior at Cornell University. Merritt worked with Senior Research Social Scientist Rebecca Sandefur.



Left to right: Ryan Green (SRDF, 2000), Debbie Oh (SRDF 2012), Larissa Davis (SRDF 2012), Nikita Korradi (SRDF 2012), ABF Research Professor Stephen Daniels, Merritt Steele (SRDF 2012), Hosea Harvey (SRDF 1994), ABF Director Emeritus Bryant Garth, Erika George (SRDF 1991), ABF Director Robert Nelson

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