

# Michigan Lawyers in History

Stephen J. Roth

By 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.*

**O**n September 16, 2011, the State Bar of Michigan held a ceremony for the dedication of the 36th Legal Milestone, which highlighted *Milliken v Bradley*.<sup>1</sup>

Almost 40 years earlier, the State Bar's Board of Commissioners adopted a resolution condemning "the vicious and scurrilous personal attacks which have been directed against the Honorable Stephen J. Roth,"<sup>2</sup> the federal district judge who issued his initial ruling in the case in 1971. By the summer of 1972, Judge Roth was "the most hated man in Michigan."<sup>3</sup> With its resolution, the Bar reminded the legal community of the need for a judge to do "the duty imposed by his oath," and paid "tribute to [Roth's] conscientious and courageous performance of his duty."<sup>4</sup>

You know of *Milliken v Bradley*, but what do you know of the man who ruled that the state had "acted to control and maintain the pattern of segregation in the Detroit Schools"?<sup>5</sup>

Stephen John Roth was born on April 21, 1908, in Sajoszged, Hungary, the youngest of three children of Charles J. Roth and Johanna Zillai Roth.<sup>6</sup> In search of a better life, the Roths decided to leave the Old Country for the New World. Charles left around 1911—possibly bringing his oldest son with him—and first moved to Pennsylvania before settling in Flint, where the former estate caretaker found work in the Buick plant.<sup>7</sup>

Johanna arrived approximately two years later, bringing Stephen and his older sister with her. Roth later noted that the family traveled in steerage,<sup>8</sup> and an old passenger list from the ship *Kronprinzessin Cecilie* includes a 40-year-old Johanna Roth (nee

Zillai) traveling from Sajoszged, Hungary with her two children, Erzebet (Elizabeth) and Istvan (Stephen).<sup>9</sup> The trio arrived in the U.S. on May 7, 1913, and presumably journeyed to Flint.

Flint's north end, where Stephen grew up, was "a melting pot"<sup>10</sup> where "immigrants, blacks, and southern whites lived side by side...."<sup>11</sup> Roth would later say he "had to grow up to find out what the word 'segregation' meant."<sup>12</sup> Initially, his background and experiences made him skeptical about the NAACP's claims in the Detroit case.

Despite not knowing English, Stephen attended public schools and picked up the new language quickly. By high school, he was occasionally moonlighting as a substitute teacher and had finished his coursework 18 months ahead of schedule.

With college on the horizon and the need to earn money to pay for it, Roth worked as a "jack of all trades" at the First National Bank & Trust Company, a teller at Peninsular State Bank, and a welder/finisher at the automobile plants. Near the start of the Great Depression he had earned enough funds to continue his education and traveled southwest to the University of Notre Dame, graduating in 1931.

Whatever the reason, Roth was drawn to the law and studied at the University of Michigan Law School. In between studying, working as a cook, and playing baseball, he became a naturalized U.S. citizen. Twenty years later, while seated on the circuit court bench, he conducted the citizenship ceremonies for his 80-year-old mother.

Roth returned to Flint after graduation and began his ascent into the legal world with periodic appointments and elections

peppered with maintaining a private practice. Not long after becoming Genesee County assistant prosecuting attorney, he married Francese Jane Bowerman on November 20, 1937. The couple had two daughters in the 1940s and later divorced. When the United States entered World War II, Roth joined the army and served in "the Criminal Investigation Division of the Provost Marshal's office," stationed in Africa and Italy.

After the war, Roth reestablished his private practice and partnered for a time with Ralph Freeman, who would also go on to become a federal district judge. In 1948, Roth ran successfully for the position of Michigan's attorney general when Soapy Williams was first elected governor. It was noted that his life up to that point enabled him "to exhibit maturity of judgment and understanding far beyond his years."<sup>13</sup> Throughout his life, he was known for his "integrity, devotion to duty,"<sup>14</sup> his professionalism, and his sense of humor.

Following a short stint as attorney general and with rumors of bigger things to come, the 44-year-old Roth was appointed as a circuit court judge in Genesee County by Governor Williams. His family dynamics changed, too; he married Evelyn L. Gunner, who would later survive him, and three more children joined the family.

After 10 years on the 7th Circuit bench, Roth's integrity and character caught the eye of federal officials, and President John F. Kennedy nominated him to the United States District Court for the Eastern District of Michigan. He received his commission on May 7, 1962, 49 years to the day when he made port in New York with his mother and sister.



Photo courtesy of the United States Library of Congress



Photo by Jim West Photography, Detroit, Michigan

### The "Detroit Wall"

*Far left:* Detroit children standing in front of the eight-foot-high, half-mile long concrete wall. The wall was built in August 1941 to separate a black neighborhood from a white housing development. *Right:* This April 2005 photo depicts a portion of the wall utilized for a community mural project.

In 1970, *Bradley v Milliken*<sup>15</sup> was filed and assigned on a blind draw to Judge Roth. If his 1971 decision finding de jure segregation in the Detroit public schools was not controversial enough, his 1972 decision that such segregation could not be effectively remedied within the corporate geographic limits of the city ignited a firestorm.<sup>16</sup> Significantly, Roth found that the state of Michigan and its agencies, because of their general responsibility for and supervision of public education, controlled and contained the segregation.<sup>17</sup> He therefore concluded that the state could not escape its constitutional duty to desegregate the Detroit public schools by pleading local authority. Two days after the decision, a protest was held outside the federal building.<sup>18</sup> Bumper stickers proclaimed "Judge Roth is a Child Molester" and "Roth is a Four-Letter Word." On July 30, a mock trial of Judge Roth was held in Wyandotte, after which the judge's effigy was hanged. Shortly thereafter, the State Bar's Board of Commissioners adopted its resolution supporting Judge Roth, as did the American Bar Association.

While Roth was receiving around-the-clock police protection for death threats, an appeal was filed and the case moved into the United States Sixth Circuit Court of Appeals, which twice agreed with his ruling—the second time en banc. Another appeal brought the case before the United States Supreme Court.

By this time, Roth was ill. Despite never publicly commenting on the harsh criticism from the case, he "was deeply bothered by it."<sup>19</sup> Over the course of the case and its publicity, he had two heart attacks and two bypass surgeries. He died of a third heart attack 14 days before the United States Su-

preme Court handed down its opinion in *Milliken v Bradley*.

Newspapers around the country noted the passing of the judge "who authored the controversial cross-district school desegregation plan for metropolitan Detroit."<sup>20</sup> Two days before his funeral, 12 Michigan representatives offered a resolution honoring the judge whose life "epitomized the ideals and opportunities of the American Dream."<sup>21</sup> Officers from the NAACP wired Mrs. Roth, expressing their sadness at the loss of "an outstanding and dedicated jurist whose judicial decisions reflected his true commitment to the concept of justice for all."<sup>22</sup>

The plaque commemorating the 36th Legal Milestone is installed in the Theodore Levin United States Courthouse in Detroit. Next time you're there, remember the Hungarian immigrant who rose to the position of United States district judge and his fulfillment of "the duty of a judge to do what the law requires, without concern for how unpopular his or her action may be."<sup>23</sup> ■



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### FOOTNOTES

1. *Milliken v Bradley*, 418 US 717; 94 S Ct 3112; 41 L Ed 2d 1069 (1974).
2. *Attacks on Judge Roth Condemned*, 51 Mich St B J 716 (1972).
3. Serrin, *The Most Hated Man in Michigan*, Saturday Review, August 26, 1972, p 13.
4. *Attacks on Judge Roth*, n 2 *supra*.
5. *Bradley v Milliken*, 338 F Supp 582, 589 (ED Mich, 1971).
6. Chardavoyne, *The United States District Court for the Eastern District of Michigan* (Detroit: Wayne State University Press, 2012), p 281.
7. Serrin, n 3 *supra* at 14.
8. *Judge Roth Had to Grow Up to Find Out What the Word Segregation Meant*, Sheboygan Press, June 26, 1972, p 31.
9. National Archives Microfilm Publication T715\_2071 (1913), line 20, p 184.
10. Dimond, *Beyond Busing: Reflections on Urban Segregation, the Courts, and Equal Opportunity* (Ann Arbor: University of Michigan Press, 2005), p 31.
11. Serrin, n 3 *supra* at 14.
12. *Judge Roth*, n 8 *supra*.
13. Krapohl, *Stephen J. Roth*, 28 Mich St B J 23 (1949).
14. 1974 Journal of the House 2634.
15. *Bradley*, n 5 *supra*.
16. This is not an article about *Milliken v Bradley*. For more information on the case, read Paul R. Dimond's *Beyond Busing*, or, better yet, check out the State Bar of Michigan's Legal Milestone at <[http://www.michbar.org/programs/milestone/milestones\\_Milliken-v-Bradley.cfm](http://www.michbar.org/programs/milestone/milestones_Milliken-v-Bradley.cfm)> (accessed September 21, 2012).
17. *Bradley*, n 5 *supra*.
18. Geise, *Bradley v Milliken: The Failure of Idealism*, Department of History Thesis for Bachelor of Arts with Honors, University of Michigan, March 30, 2008, p 79, available at <[http://deepblue.lib.umich.edu/bitstream/2027.42/63940/1/geise\\_john\\_2009.pdf](http://deepblue.lib.umich.edu/bitstream/2027.42/63940/1/geise_john_2009.pdf)> (accessed September 21, 2012).
19. *Judge Stephen Roth Dies at 66, Ordered Cross-District Busing*, Ironwood Daily Globe, July 12, 1974, p 7.
20. *Judge Stephen J. Roth*, The Gettysburg Times, July 13, 1974, p 8.
21. House Journal, n 14 *supra*.
22. NAACP Mourns Death of Stephen J. Roth, The Crisis, October 1974, p 286.
23. Farhat, *The President's Page*, 58 Mich B J 152 (1979).