

Michigan Lawyers in History

Theodore W. Swift: The One-Eyed Javelin Thrower

By William K. Fahey

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.

Theodore “Ted” W. Swift, born June 8, 1928, was named for his paternal grandfather, “T.W.” Swift, a quiet, businesslike, and somewhat unlucky Battle Creek grain dealer who died three years before Ted was born.¹ But the younger Swift was attracted to and destined for other things. He sought the “full college experience” at DePauw University, followed by swashbuckling service as a Marine Corps officer in Vieques, Puerto Rico, and finally arrived at the University of Michigan Law School in 1952.²

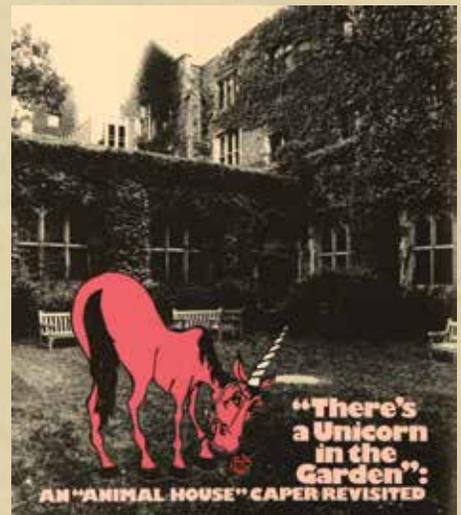
Ted was not an exceptional law student by conventional standards. A bit older and a lot wilder than most students, he was delighted that his service in the Marines entitled him to membership (and drinking privileges) at the Ann Arbor VFW. Apart from meeting and marrying Anne—the love of his life with whom he raised three children—Ted’s proudest achievement in law school was his selection to the Barristers Society, a select group of students responsible for writing the annual *Michigan Raw Review* (that’s not a typo).³

Peeved at the exclusion of students from the law school dean’s courtyard, Ted engineered and executed the infamous “Unicorn in the Garden” caper, ushering a decrepit

nag from rural Chelsea through the halls of the law school and into the dean’s garden, where it feasted on the roses. Ted waited 25 years to confess this prank in a wonderful story published in the *Law Quadrangle Notes* in 1981.⁴

Predictably, it was at a 1955 cocktail party when Ted first met Dick Foster, a successful Lansing attorney who was looking for new lawyers for his firm, Foster, Foster & Campbell. Ted talked his way into a job; all he needed to do was pass the bar exam to keep it.

At that time, the press was the first to hear when bar exam results were released. When Ted learned others were calling local newspapers for results, he called the *State Journal* to see how he had fared. The desk man asked where Ted was from; he answered, “Lansing.” After a long wait, the man told Ted that, no, he didn’t see his name on the passing list. Thoroughly dejected, Ted hung up and told Anne he flunked the bar exam. She sternly sent him down to the basement to start studying so he could pass next time. Hours later, Ted received a call from the newspaper man, who apologetically but excitedly told him that, yes, he was on the passing list but his name was listed under Okemos, not Lansing. “When I told



Swift’s mythical law school prank

you the news,” the man said, “you seemed a little disappointed, so I thought maybe I should look more closely.”

Ted loved the practice of law, but tended to bore quickly with any one subject matter. He would become engrossed with a new client, practice area, or legal challenge only to tire of it after a short time. In succession, he became enthralled with representing local governments;⁵ trumpeting the rights of public school teachers and their

Photo courtesy of Sarah (Swift) Morgan



The Swift family, left to right: Tim, Sarah, Ted, Anne, and baby Tom

Apart from meeting and marrying Anne—the love of his life with whom he raised three children—Ted’s proudest achievement in law school was his selection to the Barristers Society.

nascent organization, the Michigan Education Association;⁶ protecting the interests of sport fishermen from damage by Native American gill-netters;⁷ and advancing the interests of “unpopular” clients, including Michigan’s largest health insurer⁸ and its largest gas and electric utilities.⁹

Time after time, Ted blazed the way into new areas of practice, then turned over the reins to dozens of other lawyers as he went on to master something new. As a result, he became the top “originator” of the firm that still bears his name: Foster, Swift, Collins & Smith, PC. The lesson he taught anyone who would listen was that sharing clients was not only good for the firm and the growth of the younger lawyers, but extremely rewarding for its senior lawyers as well.

Ted was a master storyteller and speaker. He often disarmed his audiences with a humble disclaimer: “I’m like the one-eyed javelin thrower. I may not know or do much, but I keep the crowd awake.” He was unconventional and not afraid to use comedy, props, and even song to keep an audience riveted to his message. There was a huge demand for his services as an auctioneer and master of ceremonies. He delighted in his perennial role as “Uncle Ted” in the

Lansing Rotary Christmas program for disabled children. Crowds loved him.

Ted also proved that the success of his Gilbert and Sullivan antics was not limited to charitable events, and could even be applied to the legal profession. In one Michigan Supreme Court case, he submitted a 10-page reply brief, including the statement of facts, five arguments, and relief sections, written entirely in iambic pentameter—not only in verse and in rhyme, but with meaningful content.¹⁰

In another notable performance before the Supreme Court, Ted had to present a dry accounting argument on behalf of a client in a high stakes public utility rate case. Sensing he was losing the Court’s attention during the droning arguments of the attorney general and the Michigan Public Service Commission, he stood to give his rebuttal and addressed the Court:

“Your Honors, I can aptly summarize the arguments of my opponents with a little song from *The Music Man*, and it goes like this (*singing*):

“*Pick a little, talk a little, pick a little, talk a little, Cheep cheep cheep, talk a lot, pick a little more.*”¹¹

Some justices beamed. Others scrunched their faces as if smelling something unpleasant. Ted’s client slowly beat his head against the counsel table. But nobody missed Ted’s point.

A few years later during a jury trial, he sang during his closing argument. The plaintiff was a terminated salesman who claimed discrimination. Ted painted him as a dilettante who promised the world but never delivered. To underscore the point, he sang that the plaintiff kept promising:

*“The sun’ll come out tomorrow,
so you got to hang on till tomorrow,
come what may!
Tomorrow, tomorrow, I love ya,
tomorrow. You’re always a day away!”*

No cause? You bet.

For many lawyers, this might come off as false and forced, an affectation sure to draw scorn. But Ted saw fun and humor in almost everything, and it was infectious. It wasn’t that he found it easy to play the fool; to the contrary, he saw the difficulty of using humor to make his points. It made him nervous, but that’s who Ted was and how he connected effectively with others.

With Ted, even ordinary life experiences became things of wonder. Once, on



Photo courtesy of Sarah (Swift) Morgan

Anne and Ted casting their ballots on election day when Ted ran for the state senate in 1962

opening a mail-order purchase from the Treadwell Shirt Company, he discovered one of the sleeves on his new shirt was six inches longer than the other. This spawned his opus, "Me and My Treadwell," a letter to the company on firm stationery complete with ridiculous photos of Ted in various poses with the shirt accompanied by hilarious captions.¹² It's impossible to read without laughing.

Ted yearned to handle unusual cases, especially in his later years of practice. One case involving a squirrel hunter who discovered genuine buried treasure in the forest¹³ eventually made its way into many first-year property law casebooks and Michigan bar exam questions. Another strange case involved the breeding of championship dogs, with an agreement that the sire's owner would receive the first-born pup, which was unfortunately stillborn. A long line of "sure losers" found their way to Ted's doorstep, and he welcomed every one as a challenge and a joy.

It was never just about winning for Ted. Even the "losers" deserved good represen-

tation, and he delighted in giving it. Demonstrating his humility and class, he often spoke effusively on one of his favorite topics, which he called "Cases I Have Lost." Win or lose, lawyers working opposite Ted invariably respected him. Borrowing a late '60s counterculture expression, he signed all his letters "Peace," and his headstone in Lansing's Evergreen Cemetery bears that same inscription.¹⁴ For many years, the Ingham County Bar Association has honored Ted's memory with its Theodore W. Swift Civility Award.

In one formal letter to his young adult children, Ted wrote to them about the importance of character, which he signed, "Your Dad, a character."¹⁵

Like many great lawyers, Ted served the bar and his community with distinction. He reinvigorated the Ingham County

Bar Association as its president, chaired the State Bar's Committee on Professional and Judicial Ethics, chaired the Michigan State Board of Ethics, and served as a visiting professor of law at the Thomas M. Cooley Law School.

Ted was also a passionate, if frustrated, Republican. He ran unsuccessfully for the state senate in 1962 but was active in politics his whole life, including several forays into reapportionment efforts every decade that helped determine the balance of power between the political parties.¹⁶ On February 25, 2000, Ted died while doing what he loved: raising hell in John McCain's presidential campaign. ■



William K. Fahey is a founding member of Fabey Schultz Burzych Rhodes PLC in Okemos.

ENDNOTES

1. Taylor, *History of the Chicago Board of Trade of the City of Chicago* [Chicago: Robert O. Law Co., 1917], available at <http://books.google.com/books?id=LE02AQAAMAAJ&pg=PA315&lpg=PA315&dq=Theodore+w+swift&source=bl&ots=zM_IOrhfZr&sig=4qadaN3B3CqRCDFO2SalFcTvjDY&hl=en&sa=X&ei=p8lpVlumKJadygTdYGoBQ&ved=OCCkQ6AEwAzgK#v=onepage&q=Theodore%20w%20swift&f=false>; Gardner, *History of Calhoun County Michigan*, reprinted at <<http://books.google.com/books?id=miTYDIgnOUwC&pg=PA1052&dq=Theodore+w+swift&hl=en&sa=X&ei=2sQpVMblBs2TyATkmLYCw&ved=OCB8Q6AEwAA#v=onepage&q=Theodore%20w%20swift&f=false>>; Obituary of Theodore Wells Swift, *Battle Creek Enquirer*, October 25, 1925, reprinted at <http://www.dunelady.com/laporte/bios/Swift_Theodore.htm>. All websites cited in this article were accessed October 28, 2014.
2. Swift, *There's a Unicorn in the Garden*, *Law Quadrangle Notes* (Fall 1981), p 19.
3. *Id.*, p 19.
4. *Id.*, pp 19-24.
5. See *Keithman v Oceola Twp*, 88 Mich App 94; 276 NW2d 529 (1979).
6. See *School Dist for City of Holland, Ottawa & Allegan Cos v Holland Ed Ass'n*, 380 Mich 314; 157 NW2d 206 (1968); *Munro v Elk Rapids School*, 385 Mich 618; 189 NW2d 224 (1971); *Alan v Wayne Co*, 388 Mich 210; 200 NW2d 628 (1972); *Milliken v Green*, 390 Mich 389; 212 NW2d 711 (1973); *Bradley v Milliken*, 484 F2d 215 (CA 6, 1973) rev'd sub nom *Milliken v Bradley*, 418 US 717; 94 S Ct 3112; 41 L Ed 2d 1069 (1974); *Michigan State AFL-CIO v Employment Relations Comm*, 453 Mich 362; 551 NW2d 165 (1996).
7. See *United States v State of Mich*, 623 F2d 448 (CA 6, 1980) mod 653 F2d 277 (1981); *United States v Mich*, 712 F2d 242 (CA 6, 1983).
8. See *Blue Cross & Blue Shield of Mich v Demlow*, 403 Mich 399; 270 NW2d 845 (1978).
9. See *Detroit Edison Co v Mich Pub Serv Comm*, 416 Mich 510; 331 NW2d 159 (1982); *Kelley v Mich Pub Serv Comm*, 412 Mich 385; 316 NW2d 187 (1982).
10. See Brief of Appellant in Opposition to Motion for Rehearing, *Eyde Bros Dev Co v Eaton Co Drain Comm'r*, Michigan Supreme Court File Nos. 77250 and 77377 (February 3, 1987); see *Eyde Bros Dev Co v Eaton Co Drain Comm'r*, 427 Mich 271; 398 NW2d 297 (1986).
11. See generally *Detroit Edison Co*, n 9 *supra*.
12. Swift, *Selected Works* (copy on file with author).
13. *Willsmore v Oceola Twp*, 106 Mich App 671; 308 NW2d 796 (1981).
14. Find a Grave <<http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=92843613>>.
15. Swift, n 12 *supra*.
16. See generally *In re Apportionment of Mich Legislature*, 387 Mich 442; 197 NW2d 249 (1972); *Anderson v Oakland Co Clerk*, 419 Mich 142; 350 NW2d 232 (1984).