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[Lawyer Of The Year 2004](#)



Alan J. Ackerman - Detroit

By Denise Callahan

This lawyer saw a high court ruling affecting condemnation cases across the country as the chance of a lifetime to make positive social change.

Born: 1947

Education: University of Michigan Law School (1972); Michigan State University (1968)

Admitted to Bar: 1972

Experience: Managing partner, Ackerman & Ackerman, P.C.

Legal Affiliations: Editor, ABA Book (Current Condemnation Issues, Vol I.; Volume II to be published in 2005); adjunct professor, University of Detroit Law School (starting Jan. 2005; adjunct professor in mid- 1980s); speaker and chair, Continuing Legal Education Condemnation Program, Michigan (2002, 2004) and Ohio (2003); trustee, Northern Michigan University; member, Michigan State Bar Association Judicial Qualifications Committee; past chair, ABA Real Property Condemnation Committee; vice chair, ABA Litigation Committee and Condemnation Committee; past chair, Michigan State Bar Association Condemnation Committee; board member, Michigan Supreme Court Historical Society

Ironically, Alan Ackerman's huge win in the Wayne County v. Hathcock condemnation case will slash his personal bottom line. He said what's key, however, is the constitutional crusade he won.

"Every lawyer has that dream that you'll make some positive change for the betterment of society at some time in your career," Ackerman told Lawyers Weekly. "It took 32 years, but I think I did it."

Ackerman lead the legal team in Hathcock, which overturned the Michigan Supreme Court's 1981 Poletown decision, a long-standing precedent that jurisdictions around the country have turned to as Gospel in condemnation cases — until now.

Wayne County wanted to condemn Ackerman's client's land to clear the way for the Pinnacle Aeropark high-tech industrial park. The residents balked and their lawyers convinced the Michigan Supreme Court that the government was trampling on their constitutional rights.

Ackerman is renowned for his expertise in real estate law, especially eminent domain issues and he has won millions of dollars for his clients. A review of his firm's website shows he is an aficionado at negotiating and or winning verdicts that far exceed what municipalities have been willing to offer folks for their land.

In the 12 cases showcased on Ackerman's website, local governments offered his clients a total of \$5 million for their properties. But Ackerman won a total of \$49.5 million for his clients, either through negotiating or convincing a jury to up the ante.

While the money is nice, Ackerman explained the Hathcock case he orchestrated this year was a chance of a lifetime.

"How many times do you have an opportunity to make positive social change in your life and to fulfill something you believe is right?" he asked. "There's not many guys who get to say that. It's going to clearly affect my business and I just don't care. I feel we're here to represent people who have rights as citizens and we're not just here to make a living."

* * *

Q. How would you characterize Hathcock in terms of its importance?

A. It was probably the biggest case in this state and, believe it or not, it probably was the biggest in the nation for the year. I think it moves the U.S. Supreme Court to revisit the issue itself. The U.S. Supreme Court took leave on a similar issue in Connecticut and I think it was basically because Michigan said we're going the wrong way. This isn't what's contemplated by the Constitution, at least in our state. Now I think the Supreme Court may well do the same thing.

Q. How did condemnation for economic development evolve?

A. It has evolved over many years. It originally started with a case in 1948 when the U.S. Supreme Court stated blight clearance is a basic police power; this is something the government needs to do as part of its activity as the government. We're allowing slum clearance or blight removal to be a public use.

It expanded from there to economic development, especially in Michigan. It was said that in order to keep large companies in our area we needed to buy the land for them, give them the land, and give them tax benefits. In 1980, we had an act which allowed the government to take all properties by making an offer and filing a condemnation complaint, but they had to have a reason — they had to say it is a public use. A few years before that, the Legislature had declared economic development alone per se was a public use. It wasn't challenged until General Motors came to Detroit and said if you give us a square mile of Detroit we'll build a big assembly plant. The city then filed a lawsuit and the Michigan Supreme Court said the basic economic development of the community is a cause for the taking of property. Don't forget the Constitution says you cannot take private property — you can only take private property for a public use. They declared the incidental benefit of a private user does not destroy the public use concept. At this point you have every mayor's cousin saying, "You buy me that piece of property over there owned by Mr. X and I'll redevelop it and make a lot of money for you." Arguably, it's an economic benefit to the community and the numbers you can play with.

That's what was happening at the time Wayne County started this project. If they would have come in and said, "We're putting up one more runway or we're expanding another couple runways; it's too noisy and we're blighting the area so we should just buy it and develop it as non-residential," I think they might have been able to do that. In *Poletown*, you had a city with 17 percent unemployment, and the inner city itself was in the 30s. It was at 15 percent inflation. We hadn't opened any new jobs for 10-12 years before 1980. It was mandatory that the city do something. Since the 1967 riots nothing new had come to the city, so we had a different environment at that time.

I think this airport was a prime example of not allowing the market to determine value. People shouldn't have to sell their property if they don't want to. What we have is a dislocation of the economy itself when supply and demand factors aren't natural supply and natural demand, but rather demand premised upon the government taking care of the demand for you. It changes the whole curve on what property is worth. When you have the government doing the condemnation for everybody, people get hurt because they don't have the right to sell their property in the marketplace.

Q. But your case was about more than just Wayne County not offering people enough money, wasn't it?

A. It's not even a money issue — it's what is in the Constitution. The money aspect is one side, but the more important side is, "What does the Constitution contemplate?"

The Constitution says private property shall be taken for public benefit upon payment of just compensation. We had a situation where governments felt they were paying just compensation, arguably fair market value, and they didn't have to worry about public use anymore. This ruling was a shock to these governments. Everyone in the country relied on *Poletown*, and I think there were 15 states that cited it in their economic development acts. Michigan is the first state to reverse it and everybody is paying attention to it.

I could not believe the amount of response I've received and I'm very proud. Every lawyer has a dream that he'll make some positive change for the betterment of society at some point in his career. It took 32 years, but I think I did it.

Q. What is happening on the case right now?

A. Wayne County said they could not move forward with the project unless they acquired our properties. Immediately after losing they said they were going to build around us. I think they'll have a tough time building around us — emotionally, legally and ethically. If they try to start building there, they'll probably have a lawsuit if they don't include us.

But for their improper acquisition of the other properties we would have been selling in the marketplace and they are going to bar us from the marketplace. They told the Michigan Supreme Court they can't do anything without our properties, and now all of a sudden they can build without our properties? When I saw the article in the paper that said they were going to build around these guys, I said, "My God, what did they just tell the court?" Their best argument in the whole case was that

they had to have our properties because they spent \$40 million already and if they didn't have our properties they couldn't finish the project without us. It's an interesting turnaround.

Q. Do these eminent domain cases make you feel a little bit like David up against Goliath?

A. We felt like we were Don Quixote tilting into windmills. We knew we were right, but we didn't know how we were going to stop the wind from blowing us away. When you get a responsible Supreme Court — like Michigan's which is a very bright group of people and very serious — in one of these jurisdictions, one that really looks at issues, the Constitution and the law, you get good results.

Q. If Poletown was so wrong how did it stand as precedent for so long?

A. No one wanted to rely on *Poletown*, but if *Poletown* was going to get changed it has to get changed in Michigan. It was a very different court with very different justices in the 1980s. There are areas in every city that are blighted enough that economic development can be done on those pieces of property. I don't think courts foresaw that in the 1980s, nor was the issue really raised that *Poletown* probably wasn't argued properly at the time. Every star lined up in the sky just right for *Poletown*. It was such a bad economy — multiply that by three for the City of Detroit — plus the inflation factors and a Democrat in the White House who was willing to fund the whole project. It just was a wholly different environment.

Will that ever happen again? Politically, things happen that have unintentional unconstitutional results. *Poletown* really reversed 130 years of law in this state. Public use was public use; *Poletown* took it away and said public use is a pure legislative decision.

Q. What's happening with the U.S. Supreme Court on this issue?

A. All of a sudden, I'm getting calls from everyone because they realize their case is like mine. I don't think the U.S. Supreme Court will punt, but it may say that the federal standard of what is a public use in these state condemnations is within the state police power. I think it's going to let the states make the decision and won't use the federal clause as a limitation. That's just my guess on what the justices are going to say. I think the federal government perceives all rights not delegated to the federal government are reserved to the states, and I think the courts have a sense that maybe this constitutional provision should really apply and these decisions should be state decisions. If economic development is considered to be general welfare reserved to the state as a police power, then each state should look to its own constitutional provision.

Q. You estimate you'll lose 40 percent of your business because of Hathcock. What will you do now?

A. I'm going to practice law and have fun. I'm a creative guy. I think there'll still be work left; it just doesn't matter. I fulfilled a goal of fulfilling a constitutional parameter. When you're a lawyer you've got to uphold the Constitution of the United States and the State of Michigan and I did it.

What's really good is the Michigan Supreme Court let me do it. That's the bonanza. In a lot of states, the court would have said, "No leave granted. Say good-bye." These people have got some guts. This court is a pretty classy group of people.

Q. Now that you'll have less work, what are municipalities going to have to do now?

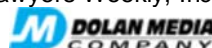
A. Municipalities are going to have to condemn for real police powers needs, such as cleaning up contaminated areas, for urban renewal, or for blight clearance projects. That is what condemnation should be all about. I think it's going to work out great for everyone.

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