



Society Update

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Shaping Justice: How Michigan Supreme Court Justices and Bar Leaders Have Faced the Future, and What Might Come Next

From the legal vignette presented by Lori Buiteweg, SBM President at the 2016 Annual Luncheon



Thank you, Justice Larsen, for sharing with us your memories of such a remarkable jurist. And thank you for inviting me to be your speaker this afternoon. After I finished my inaugural address at the annual meeting last October, I congratulated myself on being done with the most nerve-wracking speech I would ever give. Little did I know I would be here today! I'm going to try to remember, I'm not here to be judged in oral argument before generations of jurists, but rather, to share with you an interesting, if not surprising, perspective on the Supreme Court's historical view of the future. As someone blessed enough to be President of the State Bar of Michigan, I have a front-row seat to the great changes happening before our eyes in the legal profession.

These changes are being driven by lawyers, judges, and justices who are asking this fundamental question: What Does Justice Require? a question we Americans have been asking ourselves, as it turns out, for more than two centuries.

Each of our perspectives may differ: we may ponder the question as lawyers on behalf of our individual clients, or as judges and justices on behalf of the parties in the cases before us. We all harken back to the day we took the Lawyer's Oath—some of us may not wish to admit how long ago that was—and we ask our-

selves, what does justice require not only in the here and now, but also for the generations that will come after us? Is the system for which WE are accountable providing the highest possible quality of justice in the face of our changing times?

In anticipation of this Michigan Supreme Court Historical Society annual luncheon in the year 2016, I asked Carrie Sharlow, our unofficial State Bar historian, to research what past Michigan Supreme Court justices have said about the future from their respective moments in time. She found a justice who had been a genuine “builder of tomorrow,” and another who was an unexpected visionary.

But let us begin by acknowledging that change is hard.

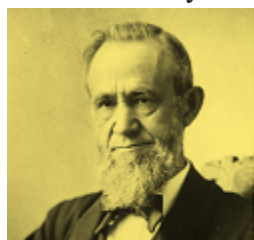
Here we have Violet Crawley, Dowager Countess of Grantham from the hit TV series *Downton Abbey*, lamenting the future.



The Dowager Countess is an old friend and I miss her dearly on Sunday nights. Her disposition toward change reminds me of my own mother. Last year, we were sitting on the porch of the Grand Hotel, silently enjoying our surroundings, when out of nowhere she shook her head from side to side and said, “Nope, I don’t like change.” I said, “You should have been a lawyer, mom.”

My quip wasn't exactly fair. Going back to our 25th justice of the Michigan Supreme Court, Thomas M. Cooley, we have had many Supreme Court justices who were major change agents of their day.

Justice Cooley, who served on the Court from 1864 to 1885, was the self-educated son of a struggling farmer. He was energetic, curious, analytical, and a wholehearted champion of the common citizen. He was also skeptical about the vulnerability of unmitigated democracy to demagogues and tyranny.



Thomas M. Cooley
Michigan

“The law is as general as it is beneficial that nothing can satisfy the mind that does not enlist the imagination.

The legal profession of the country stand at the portals of the future, charged with the duty of protecting the Constitutions, National and State, under which they exercise their functions as ministers of justice, and which constitute at once the defence of individual liberty and the guaranty of public order.

1886

Michigan Population 500,000

Lawyers 100,000

Appeals

We don't have a depiction of the now demolished building the court occupied when Justice Cooley joined the court, but here are the court's two locations in 1858, the year Thomas Cooley became the Court's reporter, and the chambers at the State Capitol that he sat in during his last 15 years on the Court.



1858

Eastern Court Building, 1858 (State Capitol Building)

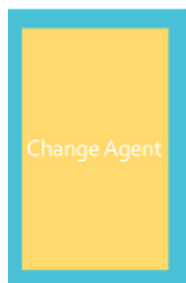


1878



Western Court Building, 1878 (State Capitol Building)

Scholarship about Justice Cooley focuses mostly on his jurisprudence, but I think he was remarkable in quite another way: as a change agent. Here are some changes Cooley accomplished in his professional lifetime.



- Compiled the Michigan Statutes
- Helped create and then led Michigan's first law school
- Reformed Legal Education
- Wrote the century's top legal treatise
- Saved the Wabash railroad system
- Imagined and spearheaded land title registration reform
- Led the new Interstate Trade Commission as its founding chairman
- Envisioned a National Arbitration Board to resolve labor disputes
- Led the ABA as President
- Never took a vacation

Top on the list is compiling Michigan's statutes. Today, we might call this "legal hacking." Hacking in the legal world doesn't mean intentionally gaining access to someone's computer material without authorization, it means gaining meaningful and convenient access to laws, opinions, regulations, codes, and other legal information by way of computer. Law students all over the country are competing in legal hackathons, where they win prizes for coming up with the best legal hack of the day.

Justice Cooley was a first in the long line of forward-looking justices and effective change agents. I want to touch on a few more before landing back in 2016. I apologize if I miss your personal favorites but time is limited.

In 1892 Justice George Durand, who served only one year on the Court, called for state regulation of the legal profession. He said, "every man who aspires to be a lawyer should be required to devote a reasonable and fixed time to the careful study of the law in its various branches, and then demonstrate to a commission appointed by the state that he has such a degree of legal learning, character and integrity as to be a perfect assurance that the interests of his clients and the state will not suffer." Although he was not forward-thinking enough to include women in his call for regulation, he did foretell the regulation of the legal profession through the creation of the unified state bar under the authority of the Michigan Supreme Court 43 years later.



Justice George H. Durand
Michigan Supreme Court
1892-1893

“Keep the administration of the law in the hands of lawyers of learning and integrity by preventing the almost indiscriminate admission of applicants to the bar now obtains. Every man who aspires to be a lawyer should be required to devote a reasonable and a fixed time to a careful study of the law in its various branches, and then to demonstrate to a commission appointed by the state that he has such a degree of legal learning, character, and integrity as to be a perfect assurance that the interests of his clients and of the state will not suffer by conferring upon him the dignity to which he aspires to attain.

1892

Michigan Population 1,000,000

Lawyers 200,000

Appeals

Next, in 1920, we had Justice Howard Wiest. He was born during the Civil War and died during WWII. Justice Wiest was famous, among other things, for walking to work at the State Capitol from his farm in Williamston. On days when he was in a hurry, he apparently rode a horse, but he resisted ever riding in a car. Although he may have been opposed to the evolution of transportation, he was a judicial visionary. He called for the creation of a court of appeals consisting

of three judges in each of 4 districts. “My proposition some years ago was this, that you create a Circuit Court of Appeals midway between the Circuit Court and the Supreme Court...and let 3 judges, circuit judges, hold a Court of Appeals...” As those of you who attended the Court of Appeals’ 50-year celebration last year know, his vision came to pass some 50 years after he called for it, in 1965 when the COA heard its first case.



Justice Howard West
Michigan Supreme Court
1921-1945

“My proposition some years ago was this, that you create a Circuit Court of Appeals midway between the Circuit Court and the Supreme Court...”

We might make four districts out of the forty circuits, and let three judges, circuit judges, designated, hold a Court of Appeals in such district.

1920

Michigan Population | Lawyers | Appeals

By 1971 things were beginning to change. Fred Smith started Federal Express. Texas Instruments released the first pocket calculator. The first internet chat rooms began to appear. Ray Tomlinson invented e-mail, choosing the @symbol from the computer keyboard to denote sending messages from one computer to another, Intel released the world’s first micro-processor, and IBM invented the floppy disk. LCDs were invented in Switzerland.

In 1971, the whole Michigan Supreme Court joined in what we now call “futures” thinking, showing that they were alert not only to the impact of technology on court administration but also public-private partnership and collaboration. They initiated a “Systems Technology and the Michigan Courts study,” through Justice G. Mennen Williams that included input from Chrysler’s Lynn Townsend, Ford’s Lee Iacocca, and GM’s Ed Cole. The study committee included former attorney general Frank Kelley, attorney William Hamton, and the Hon. Arthur Tarnow.



1971

Michigan Population | Lawyers | Appeals

Among state supreme courts, ours was precocious

in recognizing the potential of technology to provide what justice requires. But technology itself was not yet quite up to the task. In fact, it took another two years for this guy—Bill Gates—to graduate from high school...

And for this guy, Larry Page, a graduate of East Lansing High School, Stanford, and the University of Michigan, and co-founder of Google, to make his appearance in the world just a short walk from the Supreme Court building.

We couldn’t know what these youngsters were going to unleash upon the world, but in 1985, Dennis Archer, then-President of the State Bar, just months away from being appointed to the Michigan Supreme Court, told the legal profession to get ready for enormous change. In a Bar Journal article that works, word-for-word, as a clarion call for the legal futures initiatives underway at the State Bar today, President Archer foresaw the transformational power of the global economy.



Justice Dennis Archer, Jr.
Michigan Supreme Court
1986-1999

“We are in an economic revolution caused by the development of a global in place of a state or national economy. Only through a critical examination of our own role - as it exists and as we want it to exist - can we formulate a management plan which will produce the future economic viability of the legal profession.”

1984

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Chief Justice Dorothy Comstock Riley, the first woman to serve on the Michigan Court of Appeals, fully embraced the challenge of preparing the courts for the future. She initiated the Commission on the Courts in the 21st Century, launching the first real steps toward the trial court consolidation and efficiencies that continue today. As a visionary of some of the specialty courts we have today, she asked, for example, “should there be a family court?”



In reviewing article 6 to draw the blueprint for a more effective judiciary, I urge you to explore what the basic structure of the Michigan court system should be. Should there be a single trial bench with special divisions? Should there be regional courts? A family court? How many judges should there be? Which cases should they hear? Where should they be located? And ultimately, who should fund them?

1988

Michigan Population | Lawyers | Appeals

And she was the guiding light behind the drive

that realized a century-old dream: the awe-inspiring Hall of Justice, dedicated on October 8, 2002. The Supreme Court chambers are a sort of futuristic throwback – while they are wired for modern-day technology, the furnishings, design, carpet, and colors are based on those used in the original chamber from 1879 in the Michigan State Capitol. Last summer at the State Bar’s Bar Leadership Forum, we had a speaker, Jeffrey Cufaude, who talked about change. He made a point I think is exemplified by our Court’s history: when we meet resistance to change, ask what it is we like about the way things are, then figure out how to hold onto the good things while still moving forward to meet today’s needs.

I’m going to leap through more recent history now so that we can hasten our journey back to 2016 as this presentation begins to draw to a close.

In 1994, Chief Justice Michael Cavanagh recognized the power of the technology that was transforming communication. He told the legislature, “As our courts race toward the 21st century, we remain committed to a pattern of action, not reaction. As we move into the next century, an aging population may shift the focus of our caseload or require other innovative responses. And each of us needs to be ready for a “wild ride” through the coming world of information and communication technology.”

When Chief Justice Cavanagh told us to brace ourselves for a wild ride, this guy—Mark Zuckerberg—was only 10 years old. The 2010 movie, *The Social Network*, portrayed the evolution of his invention, Facebook, as an incredibly wild ride. And I would dare to say that social media continues to be a bucking bronco for many.

With so much groundwork laid by their predecessors, the 21st Century Michigan Supreme Court justices were able to hit the ground running.

Chief Justice Corrigan welcomed the new century by advancing innovations directed at improving the court system’s treatment of children and juveniles.

Chief Justice Taylor rounded out the first decade by undertaking substantial jury reforms and advancing technology.

Chief Justice Kelly launched the second decade of the 21st century by tackling the enormous emerging problem of pro se litigants.

And today, we have Chief Justice Young, driving change, well, all over the place.

How very, very far we’ve come. When the Michi-

gan Supreme Court came into existence the country was literally unsettled and the legal system had to be invented to deliver what needed to be done. Old ways weren’t being disrupted; in many respects, there were no old ways. For most of the 20th century the laws and processes our predecessors invented sturdily served their purpose. Today, however, we are facing the profound unsettling of the old ways, with a proliferation of literally new things, reflected in a whole new vocabulary—disruption, gamification, lay navigator, incubator... The State Bar is providing each of you at your table with a glossary of legal futures terms to help you speak the new language.

I am very excited to announce that in 11 days, the work of the State Bar’s 21st Century Task Force will be made public. Some of you were on the Task Force, but for those who were not, I want to give you a quick teaser of its core concepts, hoping to entice you to tune in not only on April 25, but as the work unfolds going forward.

Theme #1: practical strategies to bring the right legal help to people who now do not have the legal help they need, an estimated \$45 billion market nationally.

Theme #2: using good data and design thinking to re-engineer legal and court processes to deliver legal services more cost-effectively.

Theme #3: Collaborate. Stop thinking lawyers and judges have all the answers and start listening to and working with other stakeholders.

Theme #4: Embrace the innovative thinking that is finally beginning to proliferate within the profession. Don’t allow our ingrained respect for legal precedent to systematically crush new ideas about how to manage the justice system we are collectively responsible for. **Theme #5:** Similarly, understand that, especially given our history as a nation, all our change efforts should appreciate and incorporate the value of diversity. I invite you all to listen to this beautiful illustration of that principle.

What would Justice Cooley think about all this? Of course, the question calls for speculation, but I have to believe he would not only appreciate the scholarship and dedication of our bench, but its diversity as well. I know I do.

Our history gives us lessons that can help us now as we prepare to respond to what the State Bar of Michigan’s 21st Century Practice Task Force will tell us about the changes they think justice requires for the years ahead.

Our 2016 Board of Directors



The Society's Board of Directors pictured here, front row, left to right: Hon. Avern L. Cohn, former Justice Mary Beth Kelly, Stephen K. Valentine, Jr., Secretary Lawrence P. Nolan, President Charles R. Rutherford, Vice President Carl W. Herstein, Hon. Denise Langford Morris, and Treasurer John P. Jacobs. Back row, left to right: Mary Massaron, Ronald D. Keefe, Janet K. Welch, John G. Fedynsky, Hon. Fred L. Borchard, Hon. Michael G. Harrison, Bruce A. Courtade, Julie I. Fershtman, Hon. Alfred M. Butzbaugh, Susan E. Fairchild, and Peter H. Ellsworth. Not pictured are: Matthew C. Herstein, Frank J. Kelley, John W. Reed, Richard D. Reed, James L. Ryan, and President Emeritus Wallace D. Riley.

Justice Levin Resigns from Board

Justice Charles Levin was one of the ten longest serving justices on the Michigan Supreme Court, serving 24 years from his 1972 election to his retirement on January 1, 1997. He was succeeded on the Court by Justice Marilyn Kelly.

Justice Levin was appointed to the Board of Directors of the Michigan Supreme Court Historical Society in 2000. He opted to retire this year and was succeeded on the Board by former Justice Mary Beth Kelly.

We thank him for his service!



Justice Mary Beth Kelly Joins Board

Former Justice Mary Beth Kelly was elected to the Michigan Supreme Court Historical Society Board of Directors at the meeting that preceded the Annual Luncheon. She succeeds former Justice Charles Levin on the 24-member Board.

Justice Kelly was elected to the Michigan Supreme Court in November 2010, where she served until her retirement on October 1, 2015, to re-join the private sector as an attorney with Bodman PLC. She was appointed to the Third Circuit bench by Governor Engler in 1999 and subsequently elected three times. In 2002, the Michigan Supreme Court appointed her the chief judge of the Third Circuit Court, the first woman to hold that position. Before becoming a judge, Justice Kelly was a commercial litigation attorney with Dickinson Wright.



Photos from the 2016 Annual Luncheon



Society President Charles Rutherford with his wife Patricia and son John.



Chief Justice Robert P. Young, Jr. in his trademark bowtie with from left to right Bruce Courtade, Jeffery Stuckey, and Eric Pelton.



Justice Bridget McCormack shakes hands with Stephen K. Valentine, Jr.



Justice Stephen Markman (center) speaks with luncheon attendees.



Justice David Viviano stops to talk with federal judges Walter Shapero (left) and Avern Cohn (right).



Justice Richard Bernstein poses with John W. Allen of Kalamazoo.



Former Justices Marilyn Kelly and Conrad Mallett greet each other warmly.



From the State Bar of Michigan: Executive Director Janet Welch, VP Lawrence Nolan, and President Lori Buiteweg.



Tom Kienbaum, Dennis Pollard, and Bill Hampton share a moment.



Dawn Drobnich and George Wyatt smile for the camera.



Robert Riley and Joslyn Muller reconnect. Both clerked for Justice Marilyn Kelly.



Judge Joseph Impastato and his wife, Marian, are regular attendees of the Annual Luncheon.

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MICHIGAN SUPREME COURT  
HISTORICAL SOCIETY

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925 W. Ottawa Street, Lansing, MI 48915. *Thank you!*