

SOCIETY UPDATE

FROM THE MICHIGAN SUPREME COURT HISTORICAL SOCIETY -- SPRING 2000



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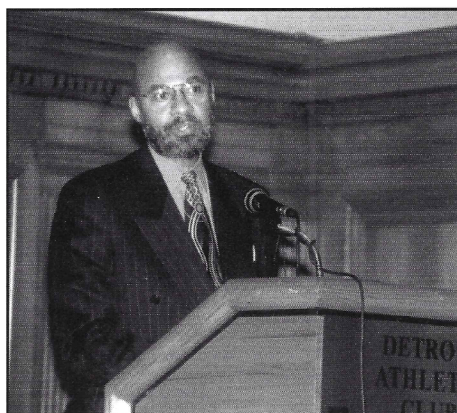
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Ninth Annual Membership Luncheon draws record-breaking crowd



Left: Detroit Mayor Dennis W. Archer, who served on the Michigan Supreme Court from 1986-90, presents the Annual Legal Vignette. See page 2 for transcript. (Photo by Greg Domagalski.)

Perhaps it was the long-awaited-for sunshine, beckoning Detroiters out of their downtown offices and into the crisp spring air. Maybe it was the lure of the newly completed Comerica baseball park, where that evening the Tigers were to play their third home game of the season. Or it may have been the draw of the featured speaker, Mayor Dennis W. Archer, presenting a legal vignette about baseball's reserve clause. Whatever their reasons, over 140 Society members and guests -- the largest attendance to date -- convened at the Detroit Athletic Club on April 13 for the Society's 9th Annual Membership Luncheon.

"It's great to see so many people supporting the efforts of the Michigan Supreme Court Historical Society," said Wallace D. Riley, Society president. "In addition to the scores of long-time supporters who attended, there were also many new faces in the crowd. This renews my confidence that the Society's mission of preserving Michigan Supreme Court history is important and generates broad appeal."

All seven current Michigan Supreme Court Justices -- Chief Justice Elizabeth Weaver, Justices Michael Cavanagh, Marilyn Kelly, Cliff Taylor, Maura Corrigan, Robert Young and Stephen Markman -- as well as retired Justices Dennis Archer, Dorothy Comstock Riley (Chief Justice from 1987-91), John Fitzgerald (Chief Justice from 1982), Charles Levin, Conrad Mallett (Chief Justice from 1997-98) and James Ryan, attended the event.

The afternoon's program began with Chief Justice Weaver, who gave an update on the Michigan Hall of Justice. Construction on the Hall of Justice began in late 1999 and is expected to be completed in early 2003. Included in the plans is a public education center that will house the Michigan Supreme Court Historical Society. Exhibits and displays by the Society, as well as other educational organizations, will be featured in the center.

As the keynote speaker, Mayor Archer spoke of the 1914 Grand Rapids case, *Weeghman, et al. v. Killefer, et al.*, which helped to preserve the reserve clause as a governing principle of professional baseball until it was successfully challenged in 1976. Archer's vignette is presented in full beginning on page 2.

Baseball's Reserve Clause

Hon. Dennis W. Archer Presents Legal Vignette at Society's 9th Annual Membership Luncheon

*Thursday, April 13, 2000
Detroit Athletic Club*

I am proud to welcome the Michigan Supreme Court Historical Society to the City of Detroit for our annual meeting luncheon. I am pleased to meet again with so many friends and former colleagues. I consider it a privilege to be asked to deliver this year's legal vignette, and I'd like to thank Wallace Riley for the invitation.

Today, we meet in the shadow of a new Detroit landmark, Comerica Park — the new home of the Detroit Tigers. The new stadium gives fans a great view of the Detroit skyline. The start of the 2000 baseball season and the welcome presence of Comerica Park makes baseball a good subject for this year's legal vignette.

Baseball's reserve clause, standard baseball contract language years ago, bound players to one team for life. The removal of that clause opened the door to free agency — the system that has made a millionaire of nearly every ballplayer, and allowed superstars like Juan Gonzalez to move to the Tigers.

Few realize that a case decided in Grand Rapids in 1914 helped to preserve the reserve clause as a governing principle of professional baseball until it was successfully challenged in 1976. I wish to review the Grand Rapids case, its impact on succeeding decades of major league baseball, and the colorful history that preceded and followed the decision.

Baseball's reserve clause had its origins in an early agreement among the owners of National League teams, who sought to keep player salaries — which were their highest expenses — to a minimum. When I speak of an early agreement, I'm referring to one that goes back to September of 1879. The owners agreed that each team should reserve five players who could not be signed by any other team. There would even be penalties against teams that played exhibitions against "reserved" players who appeared in non-league games for extra money.

Players didn't object to the policy initially, because at first, being "reserved" meant that you were a highly valued player. But eventually, the reserve concept was written into the standard contract for all players, as a clause that bound every player to the first team with which he contracted — unless he were traded, released, or his contract were sold to another team.

As early as 1887, John Montgomery Ward, president of the Brotherhood of Professional Base Ball Players, described the reserve clause this way: "Like a fugitive slave law, the reserve rule denies him a harbor or a livelihood, and carries him back, bound and shackled, to the club from which he attempted to escape."

The imagery used evokes Curt Flood's descriptions of the reserve clause — when he took his challenge of the clause to the

*Federal Judge
Kenesaw Mountain
Landis, who had
fined Standard Oil
\$29 million for
violations of
antitrust laws,
believed that
baseball would be
better served by a
settlement between
the two sides. He
later became the first
commissioner of major league baseball.*



U.S. Supreme Court in 1972. Curt Flood said, "I think it alienates my right as a human being."

The Grand Rapids case that put the reserve clause on trial came before the Western Michigan Federal District Court in June 1914. The case was Weeghman versus Killefer. (*Weeghman, et al. v. Killefer, et al.* [215 F. 168] Aff'd *Weeghman, et al. v. Killefer et al.*)

Plaintiff Charles Weeghman and his unnamed partner or partners were suing defendants William L. Killefer and the owners of the Philadelphia Phillies baseball team.

Charles Weeghman was the owner of the Chicago Whales baseball team, which belonged to the recently formed Federal League. Weeghman also owned a chain of cafeterias, and he was a confident, self-made millionaire. Bill Killefer was a major league catcher, and Weeghman had offered him a three-year contract to leave the Phillies and sign with the Whales. Killefer *did* sign with the Whales, but soon afterward he changed his mind and accepted a new contract with the Phillies.

Weeghman filed his lawsuit to enforce the contract between Killefer and the Chicago Whales, although he was well aware of the reserve clause in Killefer's original Philadelphia contract that gave the Phillies a legal claim on his services *indefinitely*. Weeghman's lawsuit was an important test of the validity of the reserve clause. But its main purpose was to strike a blow at the Phillies and the dominance of the National and American Leagues, which had cooperated with one another and played an annual World Series championship since 1903.

Weeghman and other wealthy businessmen felt there was a room for a third major league, so they started the Federal League in 1913 in six cities. Teams operated in Chicago; St. Louis; Kansas City; Brooklyn; Indianapolis and Pittsburgh.

... Detroit Tigers' Ty Cobb had produced controversy by demanding \$10,000 in 1910; he held out for \$15,000 in 1913, in a bitter struggle with management. By 1915, however, he signed with the Tigers for an unheard-of \$20,000 a year.



Ty Cobb

Apparently they didn't do much marketing research before they chose the team nicknames: most just added "Fed" to the name of the city. So in Chicago, the Whales were also known as the Chi-Feds; there were the St.Lou-Feds, the Buffalo-Feds, and so on. In Brooklyn, the team was called the Tip Tops, because the team owner also owned Tip Top Bread — apparently a major brand in New York City.

The Federal League was not much more than another minor league in 1913. But the league had an aggressive strategy for 1914. New Federal League teams were added in Baltimore and Buffalo for the 1914 season, and eight new Federal League ballparks were completed during the first three months of the year.

As a matter of fact, the ballpark Charles Weeghman built for the Chicago Whales — or Chi-Feds — eventually became Wrigley Field. So we can see that the value of a new ballpark has always been evident to team owners and the cities where they live.

Most importantly, the Federal League wanted top-notch players for the 1914 season. They intended to raid the National and American Leagues for the best talent, and thereby become a popular alternative league with baseball fans. The old USFL, the ABA and the American Football League had a lot of success with this kind of focus on premier talent.

Therefore, Charles Weeghman's battle with the Phillies over Bill Killefer was one of many contract struggles Federal League teams engaged in before, during and immediately after the 1914 season. The Chicago Whales signed Hall of Fame pitcher Walter Johnson, but lost him back to the Washington Senators.

After winning the American League championship in 1914, Philadelphia As manager Connie Mack saw two of his top pitchers — Chief Bender and Eddie Plank — move to the Federal League in 1915. The contract battles ended up raising salaries for American and National League players. For instance, the Detroit Tigers' Ty Cobb had produced controversy by demanding \$10,000 in 1910; he held out for \$15,000 in 1913, in a bitter struggle with management. By 1915, however, he signed

with the Tigers for an unheard-of \$20,000 a year.

As for Bill Killefer — he was a catcher with average statistics as a batter. He hit .238 lifetime, knocked in 240 runs, and hit 4 home runs during his 13-year career with the Philadelphia Phillies and the Chicago Cubs. But he worked often with Hall of Fame pitcher Grover Cleveland Alexander, and one observer said he was a catcher of "unique, exceptional and extraordinary skill." They called Killefer "Reindeer Bill," — maybe because he was from Paw Paw, Michigan, on the Western side of the state — an area associated with wilderness and wildlife by East Coast residents.

Killefer made \$3,000 with the Phillies in 1913. After the season, the Phillies promised him a raise, but by early winter, no agreement had been reached. The Chicago Whales offered Killefer \$5,833 and 33 cents for the next three seasons. He signed the contract, but the Phillies countered with their own three-year deal for \$6,500 a year. Twelve days after agreeing to the Whales' terms, Killefer became a Philly again.

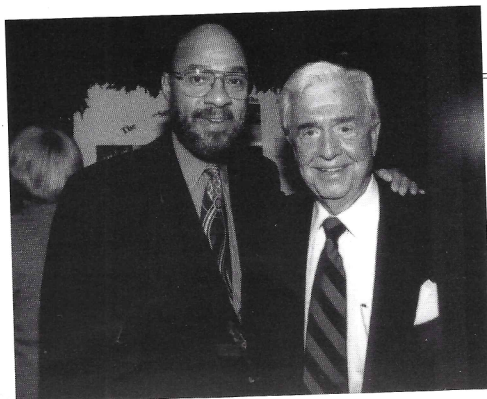
Fighting for players like Bill Killefer in court was encouraged by the Federal League's chief attorney, Edward E. Gates. Gates was willing to try anything to bring down what he considered to be an illegal trust between the American and National Leagues. The lawsuit against Killefer and the Phillies sought an injunction to prevent Killefer from playing the 1914 season with Philadelphia.

But U.S. District Judge Sessions ruled in favor of the defendants. Using Judge Sessions' own language, Clyde J. Robinson — as Deputy City Attorney of Battle Creek in 1996 — offered the following analysis of the decision in a letter to the Michigan Bar Journal:

"The case presented two questions to the Court: Was the reserve clause valid and enforceable? And were the plaintiffs barred by their own conduct from obtaining equitable relief?

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Images from 9th Annual Membership Luncheon



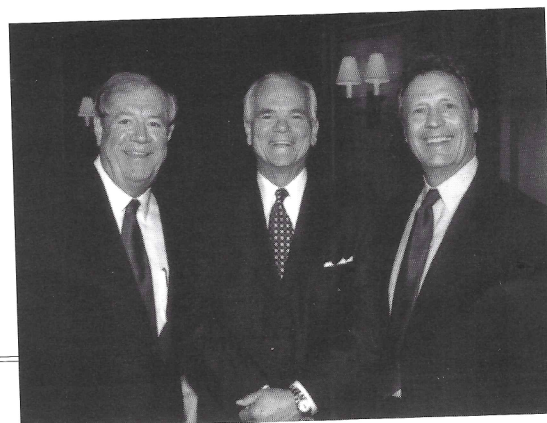
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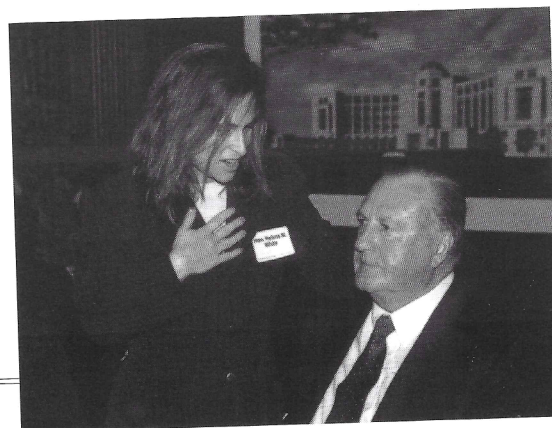
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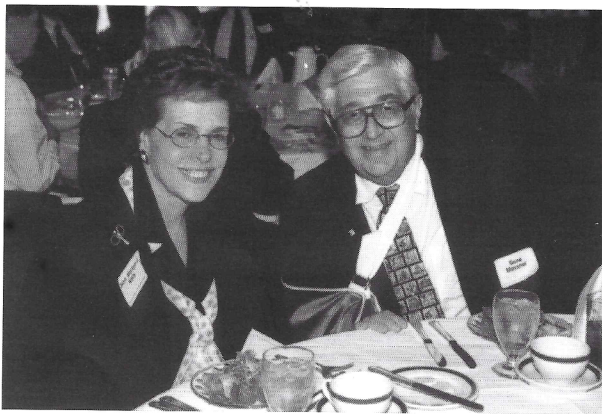


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Thursday, April 13, 2000 -- Detroit Athletic Club

PICTURED: (1) Mayor Dennis Archer, former Attorney General Frank Kelley (also Society board member); (2) Chief Justice Elizabeth Weaver, former Chief Justice Conrad Mallett (also Society board member); (3) Kathy Viviano, Morley Witus, Tom Cavalier, Justice Cliff Taylor; (4) Bill Hampton, Gil Cox, Society board member Larry Campbell; (5) Society board members John Reed and George Bushnell, Jr.; (6) Judge Helene White, Society President Wally Riley; (7) Kim Pyenta, Society executive director Jill Wright; (8) Society board member Judge Denise Langford Morris, Justice Robert Young; (9) Justice Marilyn Kelly, Society

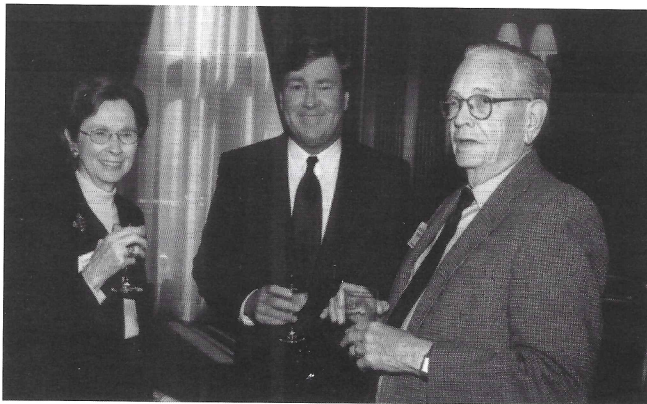
board member Gene Mossner; (10) Chief Justice Elizabeth Weaver, former Chief Justice Dorothy Comstock Riley, Society honorary chair; (11) Lorabeth Fitzgerald, Al Lynch, former Justice and Society board member John Fitzgerald; (12) Dolores Bradway, Judge David Vokes, former Attorney General Frank Kelley (also Society board member), Robert Waldron; (13) Society secretary Charles and Patricia Rutherford; (14) Justice Michael Cavanagh and Society board member Judge James Ryan. -- All photos by Greg Domagalski.



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Baseball's Reserve Clause

continued from page 3

"As to the former question, the Court, relying upon precedent from other Federal Courts construing the language, held the reserve clause to be an unenforceable executory contract, indicating it was 'nothing more than a contract to enter into a contract in the future — if the parties can then agree to contract.'

"The Court noted that while a contract existed — if broken by either party, the courts were helpless to either enforce its performance or to award damages for its breach — because it lacked the 'necessary qualities of definiteness, certainty and mutuality.'

"The second issue was resolved against Weeghman. The Court stated that the plaintiffs knew the defendant was under a 'moral, if not the legal obligation to furnish his services to the Philadelphia Club' for the 1914 season when they 'induced him to repudiate his obligation to his employer,' thereby doing a willful wrong to the Philadelphia baseball club. Being without 'clean hands,' the plaintiffs were denied equitable relief. On appeal, the District Court was affirmed."

So we see that a Michigan case that left the status quo intact, and helped to preserve the reserve clause in baseball for another 62 years, was not a ringing endorsement of the reserve clause at all.

In the aftermath of the 1914 Grand Rapids reserve clause ruling, Charles Weeghman and Federal League President James Gilmore in 1915 asked for a nine-count, federal antitrust injunction against major league baseball for allegedly denying the Federal League access to the player market. Many believed that federal Judge Kenesaw Mountain Landis, who had fined Standard Oil \$29 million for violations of antitrust law, would rule in favor of the Federal League. But he was of the opinion that baseball would be better served by a settlement between the two sides.

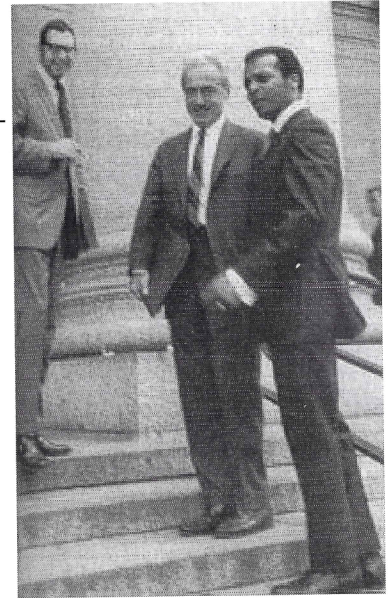
That's what happened in December 1915, when the Federal League agreed to shut down, but won generous concessions for its owners. Charles Weeghman gained control of the Chicago Cubs and another Federal League owner won control of the St. Louis Browns, the franchise that became the Baltimore Orioles.

Judge Landis later became the first commissioner of major league baseball.

A subsequent court ruling that really solidified owner-dominated economics in the big leagues came in 1922, when U.S. Supreme Court Justice Oliver Wendell Holmes ruled that baseball was not subject to antitrust laws, because it did not involve interstate commerce.

Fifty years later, when Curt Flood's challenge of the reserve clause reached the U.S. Supreme Court, the Court — by a 5 to 3 majority — essentially upheld Justice Holmes' ruling that baseball was exempt from antitrust law.

Curt Flood, far right, at the U.S. Supreme Court, early 1970s



But Flood's challenge struck a nerve that ultimately produced dramatic change. After a highly successful, 12-year career with the St. Louis Cardinals, he had refused to report to the Philadelphia Phillies after being traded following the 1969 season. Flood's antitrust lawsuit against major league baseball was supported by the Major League Players' Association. During the litigation, the owners argued that the reserve clause question should be part of collective bargaining, not an issue for the courts.

Consequently, Andy Messersmith of the Los Angeles Dodgers and Dave McNally of the Montreal Expos put the reserve clause on the collective bargaining table in 1975.

The two players played the '75 season without contracts, then declared themselves free agents. Since the owners had already declared that the reserve clause was an issue for collective bargaining, Messersmith and McNally filed labor grievances over the reserve clause that arbitrators had to decide, when all was said and done.

The arbitrators ruled that the two players could become free agents. The Basic Agreement between the players and owners signed in 1976 called for freedom from the reserve clause for players after six years in the major leagues.

The resulting era of free agency has produced what many feel are outrageous salaries. But it has also affirmed the power of a free market and the right of all individuals to professional freedom.

The 1914 showdown in Grand Rapids became an intriguing highlight of 20th Century economic and social history. Few remember the names Weeghman and Killefer, but a Michigan Legal Milestone recalling the event was placed at the Grand Rapids Art Museum in 1986 by the State Bar of Michigan and the Grand Rapids Bar Association. The Milestone was rededicated in 1995 at Old Kent Park, where the West Michigan Whitecaps play minor league ball — and most likely dream about the riches now available in the major leagues. 



*Be sure to visit us on the
world wide web --*
WWW.MICOURTHISTORY.ORG

Society Kicks Off Law Firm Membership Campaign -- Dickinson Wright Firm Becomes First to Contribute

This year the Michigan Supreme Court Historical Society is actively recruiting Michigan law firms, law schools and corporate legal departments to join the Society at the new Corporate Membership level. Organizations that join the Society as a Corporate Member — at only \$1,000 per year — will receive Certificates of Appreciation, special recognition at Society events and in Society publications and programs, plus all the regular member benefits including quantity subscriptions to this newsletter and discounts on other publications.

During the 9th Annual Membership Meeting in Detroit on April 13, Attorney Larry Campbell (also a Society board member), on behalf of the **DICKINSON WRIGHT** firm, presented the Society a check for \$1,000, making that firm the first **Corporate Member** for 2000.

For more Society membership information, please call 517-346-6419, or complete the form at right.

Get Involved! Society Committees Tackle Exciting New Projects

Tired of just reading the newsletter, visiting our web site and attending Society events? Want to get involved? The Michigan Supreme Court Historical Society committees would like to hear from you! Here is a list of Society Committees, chairpersons and "Year 2000 Missions." For contact or other information, please call the Society at 517-346-6419.

Membership and Fund Raising, Larry Nolan, Chair

Mission: Recommend strategy(ies) for increasing individual and corporate membership levels; take lead in following up on board member/law firm recruiting activities.

Portraits, R. Stuart Hoffius, Chair

Mission: Recommend strategy(ies) for portrait collection restoration and repair campaign, in preparation for exhibition in Hall of Justice, 2003; take lead in following up on campaign activities.

Education/Coleman Internship, John Reed, Chair

Mission: Select a research topic for 2000 Coleman Intern program.

Oral History, John Fitzgerald, Chair

Mission: Find and select an individual or individuals to perform oral history interviews; recommend ways in which to distribute/publicize oral history collection.

Long Range Planning, Thomas E. Brennan, Chair

Mission: Review status of goals set forth in 1998 LRP board survey; revise or recommend updated goals for 2000-2001.

Big Four Writing & Research Program, James L. Ryan, Chair

Mission: Select a research topic(s) for Big Four R&W program, as well as recommendations for selecting an award recipient and managing the program

Membership Application and Book Order Form

The Michigan Supreme Court Historical Society is a nonprofit, 501(c)(3) corporation dedicated to preserving documents, records and memorabilia relating to the Michigan Supreme Court. Membership and other contributions are 100 percent tax deductible. To join or order our book, complete and mail/fax this form to: MSCHS, 306 Townsend Street, Lansing, MI, 48933. Phone: (517) 346-6419, Fax: (517) 372-2716.

- 1 I WANT TO:** ☐ Join the Society
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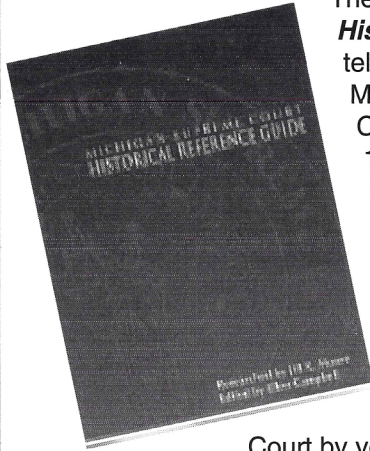
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Thank you!

Order the *Michigan Supreme Court Historical Reference Guide*



The ***Michigan Supreme Court Historical Reference Guide*** tells the stories of each of Michigan's first 100 Supreme Court Justices, from 1805 to 1998. Illustrated with photos of each Justice, this fascinating, 273-page volume also contains an index of special sessions of the Michigan Supreme Court, sorted both by honorees and speakers, as well as a factual chart of the

Court by years, which lists the Court's composition for each year since 1805.

To order, fill out and return the order form on page 7.

Mission Statement

The Michigan Supreme Court Historical Society is a nonprofit, 501(c)(3) corporation dedicated to preserving documents, records and memorabilia relating to the Michigan Supreme Court. The Society produces publications, special events and other projects to achieve its goals in education and restoration. Current officers and directors are:

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Society Update is published quarterly by the Michigan Supreme Court Historical Society. Writing submissions, article ideas, news and announcements are encouraged. Contact the Society at: 306 Townsend Street, Lansing, MI 48933; Ph. (517) 346-6419; Fax (517) 372-2716; Email MSCHS@MICOURTHISTORY.ORG; Web site: WWW.MICOURTHISTORY.ORG



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