

SOCIETY UPDATE

FROM THE MICHIGAN SUPREME COURT HISTORICAL SOCIETY -- SUMMER 2000

Michigan's "Big Four" Justices loom large over Lansing

A 60-foot by 90-foot mural of four of the most famous jurists in Michigan Supreme Court history now adorns the south side of the Thomas M. Cooley Law School at 217 S. Capitol, Lansing.

The mural, a faithful reproduction of an oil painting donated to the State Bar of Michigan some years ago, was painted by Tony Hendrick of Adams Outdoor Advertising in Lansing.

The art work portrays Michigan Supreme Court jurists James V. Campbell, Benjamin F. Graves, Thomas M. Cooley, and Isaac P.

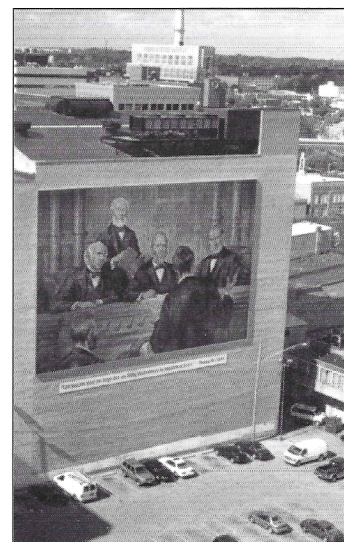
Christiancy, who served on the court together 1868-1875. The group was known as the "Big Four." The jurists were known in legal circles throughout the country for their insightful decisions, and the Michigan Supreme Court was known at the time as a court of great intellectual leadership.

Judge Thomas E. Brennan, founder and president of Cooley, said the idea for the mural came from a staff member who e-mailed him about putting something on the side of the building. As former Chief Justice of the Michigan Supreme Court (1969-70), Brennan quickly thought of having the "Big Four" painting reproduced.

To keep the art work moveable, in case it ever needed to be relocated, Adams came up with a plan to put the portrait onto vinyl and affix it to the building. The frame for the portrait will be connected directly into the school building's I-beams to prevent wind damage. The portrait was stretched onto the frame and hung for all to view Saturday, April 29, 2000.

Hendrick, the artist, said it took about four months to complete the painting. The vinyl, with the reproduction drawn on by Hendrick, was suspended on a roll.

Hendrick would unravel as much of the material as the ceilings at Adams would allow, and paint that portion of the work. When the oil paint dried, the finished part would be rolled up at the other end, and Hendrick would unravel the next part of the painting to work on.



View of the "Big Four" mural from the tenth floor of Cooley Law School's new administration building at Capitol and Washtenaw, Lansing.

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Hendrick, 30, is a resident of Mulliken, Michigan, and a graduate of the Kansas City Artist Institute. He said the mural was a great deal of fun to work on. It is the largest piece he has ever done, and he thinks it will make quite an impact. "This is exciting for Lansing," he noted enthusiastically.

The enormous art work is sure to be a conversation piece. Brennan said one of the goals is for the painting to serve as a reminder of "the continuum of the law." What the students study at Cooley, he said "is a body of law that has been accumulating over the years ... The wisdom of the past should be kept and built on."

The foregoing article appears on the Thomas M. Cooley Law School web site: www.cooley.edu. It is reprinted here with permission.

Cooley Law School toasts the Big Four at June reception

The Thomas M. Cooley Law School hosted a short reception June 29, 2000 to toast the Big Four — and the recently hung 60-foot by 90-foot mural portraying them. The mural now hangs on the south side of the Thomas M. Cooley Law School at 217 S. Capitol, Lansing (see page 1 for full story).

Here are Cooley founder, president, and former Michigan Supreme Court Chief Justice Thomas E. Brennan's remarks from that event.



Hon. Thomas E. Brennan invites artist Tony Hendrick to the podium to share his mural-making story.

Mural Dedication

**Remarks by Thomas E. Brennan
Thomas M. Cooley Law School
June 29, 2000**

Before we raise our glasses in a toast, I want to say just a few words about the painting and how this whole thing got started.

The idea originally came from Ed Blackman, our weekend building superintendent. He sent me a memo suggesting that we paint a mural on the side of the school building. . . .

. . . I thought about the "Big Four" painting that hung over the fireplace in the State Bar building. I understood that it was executed by an artist named John S. Coppin back around 1890, and eventually was donated to the State Bar by the family of Frank Mixer, a well known Detroit lawyer.

The Bar agreed — the Mixer family had no objection — and we contacted Adams Outdoor Advertising to see if it could be done.

The first thought, of course, was to put it right on the wall. But a phone call to Ken Ellis, who owns the parking lot [next to the TMCLS building], convinced me that we would have no assurance that our mural would not be covered up by an office building some day.

I was ready to abandon the project when Bill Luckhurst from Adams suggested that we could put the picture on a sheet of vinyl and hang it on a frame. That made it removable in case we ever had to take it down. . . . But while preparing to make my remarks today, I discovered the real truth. The famous portrait of the "Big Four" is not 100 years old; it is barely half that old.

It was indeed painted by a man named John Coppin who was, for many years, the illustrator of *Motor News*, a magazine published by the Automobile Club of Michigan. Coppin was a well-known portrait artist who had painted Michigan governors

from Murray Vanwagner to G. Mennen Williams.

This work, the Big Four painting, was done in the mid-1950s at the behest of Detroit lawyers Buc Buchanan and Frank Mixer. It was presented to the State Bar of Michigan at about the time the Bar first occupied its present quarters, in a ceremony at which my predecessor on the Supreme Court, Otis Smith, was the principal speaker.

How did Mr. Coppin get those long-departed icons of Michigan jurisprudence to pose for him?

Of course he didn't.

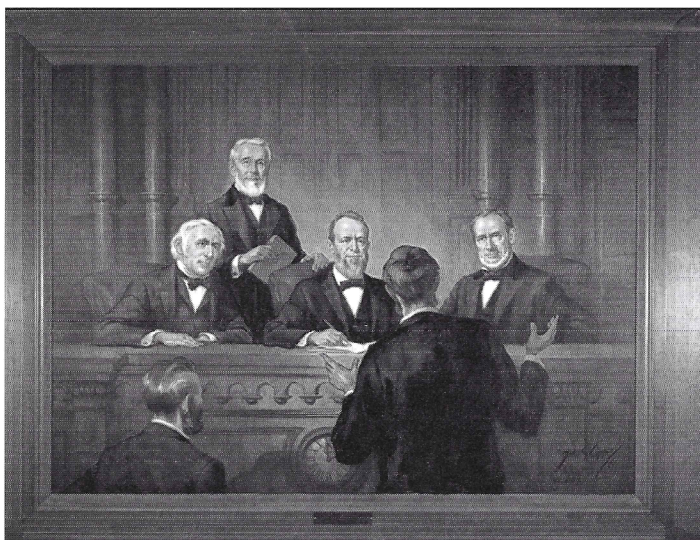
But if you look closely at the faces of the four justices depicted on the mural, you will find something familiar about each of them. They are, in fact, copies of individual portraits of the justices painted by the famous nineteenth century artist L.T. Ives. Mr. Coppin simply put them together in the courtroom.

So the plain truth is that our mural is essentially a copy of a copy.

Still, it is an important work of art because it preserves for all of us the image of the Michigan Supreme Court at a time when it was universally acknowledged to be among the foremost appellate tribunals in the world.

Edward Wise, in his excellent essay in Volume 33 of the *Wayne Law Review*, traces the history of the early Michigan Supreme Court and cites a number of laudatory publications, including comments in the *American Law Review*, calling the *Michigan Reports* "among the very best;" "first among those . . . from the western states;" and "... In the first rank of American state courts."

In July of 1869, Oliver Wendell Holmes, Jr., editor of the *Review*, wrote: "We have spoken of the excellence of the *Michigan Reports* in former numbers of this review. It will do no harm, however, to repeat that this court sets an example of judicial gravity and decorum which one would wish were more



The Big Four painting: (from left to right) Justices Campbell, Graves, Cooley and Christiancy, painted by Michigan artist John S. Coppin in the 1950s. The original painting was donated to the State Bar of Michigan by Mr. and Mrs. Frank G. Mixter.

widely followed.”

Professor Wise also quotes Irving Browne, editor of the *Albany Law Review*, who wrote at the time of Cooley’s death that Michigan’s Big Four court “was, as many think, the ablest state court that ever existed.”

And I am indebted to my friend George Roumell of Detroit for this final bit of evidence of the international renown of Michigan’s Big Four.

In Volume 18 of the *Michigan Reports*, there appears the case of *Mandlebaum v. McDenell*, in which the court declares that an attempt to suspend the power of alienation of real estate, even for a single day, is invalid.

That case was decided in the remote, young state of Michigan in 1874.

Ten years later, in the case of *Rosher v. Rosher*, in the Chancery Division of the English House of Lords, the *Mandlebaum* case was cited with approval and described as “a very elaborate and able judgment,” — Mr. Justice Pearson of England saying that Mr. Justice Christiancy of Michigan had pointed out the rule of law “with perfect accuracy.”

Much can be said about the four men who made up the famous court from 1869, when Benjamin Graves was appointed, to 1875, when Isaac Christiancy left to take his seat in the United States Senate.

This is not the occasion to wallow in biography, and I won’t.

Suffice it to say, that these were interesting men, each of whom brought great and special skills to the bench.

Both Cooley and Campbell were law teachers. It was Campbell, not Cooley, who was the first dean of the University of Michigan law faculty.

Campbell is the clean shaven fellow. He was the only one with a college degree.

All four were born in New York. Cooley, Graves, and Christiancy were sons of farmers.

Campbell’s father was a prominent Detroit businessman, a justice of the county court, president of a bank, and a senior warden of St. Paul’s Episcopal Church.

There seems to have been somewhat of a rivalry between Cooley and Campbell.

Campbell was the highly educated, French-speaking aristocrat. Cooley was the self-made work-a-holic.

Graves was the least flamboyant of the four; a yeoman jurist who worked hard despite periodic illness. He is the one standing between Cooley and Campbell. He seems to be looking off to the back of the courtroom, ignoring the lawyers who are addressing the court.

Christiancy, who is seated on Cooley’s left, was a tragic figure. A popular political personality and anti-slavery Democrat, he became one of the prime movers in the formation of the Republican party in 1854. Recently widowed when he went to Washington, Christiancy met a young woman in the boarding house where he lived. She claimed that he promised to marry her, and when she threatened to sue him for breach of promise, he did, in fact, marry her. She promptly left him the day after the wedding, and he found the public embarrassment so intolerable, he resigned from the Senate and took an appointment as ambassador to Peru. Two years later he divorced her and retired from public life.

In his last appearance before the Supreme Court, Christiancy was overcome with emotion as he looked around the courtroom which held, as he said, “the dearest recollections of my life.”

Cooley’s diary notes the occasion with tender sympathy, and I have no doubt that those four men were, indeed, very close friends and colleagues.

They convened the court at 7:30 in the morning, heard cases until noon, then reconvened in the afternoon until 5:00 p.m. They regularly stayed at their desks until 10 o’clock at night.

In fact, the Big Four, and Cooley and Campbell particularly, were sometimes criticized for rendering their opinions too quickly — though no one ever denigrated their thoroughness and scholarship. Of course, Cooley and Campbell were both law professors, so you can see why they were able to decide their cases and write their opinions with such remarkable dispatch. . . .

In any case, we are here to toast the Big Four, and in doing so, I suggest that we pay homage, indirectly at least, to all those men and women, well remembered or benignly forgotten, who have for more than 150 years given their lives and their talents to shape the common law of Michigan.

May their legacy be cherished, their contributions respected, and their memories revered as long as new generations of men and women come to this place to study the law and fit themselves to be ministers of justice. ■

The Investiture Ceremony of Hon. Stephen J. Markman

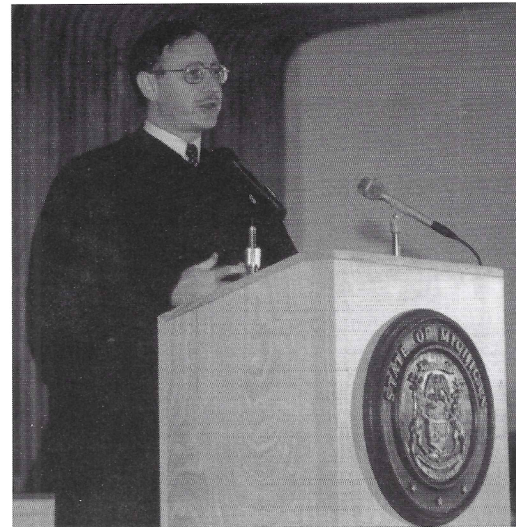
*Thursday, November 12, 1999
Michigan Supreme Court, Lansing*

[Editor's note: Many Society members have requested transcripts of Justice Markman's Investiture Ceremony remarks. We are pleased to present them here.]

Governor Engler, General Kelly, Justices and Judges, and friends, thank you all for taking the time to be here this afternoon. I am honored by your presence, although I know that it is the integrity of our justice system, and of our constitutional processes, that we principally honor today. I am, of course, also deeply honored by the Governor conferring upon me this position.

As have most of my 102 predecessors, I would very briefly like to share with you what I hope I can contribute to the people of Michigan in my new position as Supreme Court Justice. This is a statement of judicial philosophy, but not a judicial philosophy that has been the subject of debate and discussion in our law schools, our editorial pages and our political campaigns. I am, of course, aware of this debate and expect to participate in it in a variety of ways, on and off the court. I do come to the bench with some perspectives about the great judicial questions of our time—the meaning of “separation of powers”; approaches to the interpretation of statutes and constitutional provisions; and how properly the “judicial power” ought to be exercised. Obviously, the bench and bar in Michigan, as well as the public, have increasingly become participants in this debate. But there is another realm of judicial philosophy that we must not allow to be obscured by this ongoing jurisprudential and constitutional debate. It is a more neutral realm of judicial philosophy—what are the standards by which an appellate judge must comport himself in carrying out his professional responsibilities? And let me briefly outline some of the elements of this judicial philosophy that I hope to bring to my new responsibilities. I emphasize, however, that these are ideals; I have tried to live up to these ideals in my five years on the Court of Appeals but recognize that I may not have sometimes satisfied them as best as I could. But these ideals nevertheless offer, to me, a brief synthesis of my own personal philosophy as to how an appellate judge should approach his responsibilities.

First, I have always tried to recognize that for the parties involved in litigation, such litigation may well be the most important thing in their lives at the time. Individuals involved in litigation may lose sleep, they may be preoccupied with their



*Justice
Stephen
Markman
shares his
judicial
philosophy.*

cases during their waking hours, their relationships with their friends and families may be affected, and their performance in their jobs and in their other daily obligations may be altered. Their fortunes, their ambitions, the integrity of their families and, in the case of criminal defendants, even their liberties may be at stake. I have tried never to lose sight of this reality. I have tried to avoid compartmentalizing or categorizing cases in a way that obscured the individuality of their controversies. My judicial philosophy will be one of preparation, to familiarize myself as much as possible with the individual facts and circumstances and details of each case before me in order to accord respect to the personal investment that the parties themselves—and counsel—have given to their own cases. In this same regard, I will also do whatever is reasonably possible to expedite the often overly-lengthy appellate processes in Michigan.

Second, despite any Justice's best efforts, approximately fifty percent of all parties are going to be disappointed by the results of the appellate process. These parties will have gone to trial; they will have taken their appeals; and they will have pursued additional appeals. They will have done so at considerable expense, considerable time and resources, and, as I have already noted, considerable psychological toll to themselves. And they will have lost. This leads to a second element of the judicial philosophy that I have tried to follow on the Court of Appeals and will commit myself on the Supreme Court. Our opinions should be written as much as reasonably possible for the losers. More often than not, the winners will skip to the “affirmed” or “reversed” language at the end of appellate opinions and take their satisfaction from this. However, the losers need to know that we understood the complexities of their arguments and recognized the nuances of their factual situations. Most importantly, they need to know that we on the Court reasoned from the law. They lost because, at least in our judgment, such was the result compelled by the law, not because of our own likes and dislikes, preferences or prejudices. I hold no

illusion that such opinions will persuade, or even assuage, most losing parties. Nevertheless, my own judicial philosophy tells me that these explanations must be given because they are essential to the integrity of the judicial process.

Third, my judicial philosophy is to be engaged and active in participating in oral argument because I believe that, as a general rule, parties and counsel are entitled to have the opportunity to respond to what I view as the strongest and most compelling arguments of the opposing side. They deserve not to be blindsided in our opinions by issues that have unexpectedly appeared. I do not view litigation as a "sporting contest". Rather, the premise of our legal system is to establish as perfectly as we can the truth of what has occurred so that our constitutional and statutory and common laws can be justly and equitably applied.

Finally, let me say that, as part of my judicial philosophy, I am committed never to losing sight of those who are sometimes invisible to the judicial process but who are nevertheless utterly dependent upon the responsible and steady judgments of those in the judiciary. While carrying out the requirements of the law and the Constitution, for example, I promise never ever to lose sight of the victims of crime. The first responsibility of government—one in which all three branches have responsibilities—is the protection of "we the people" from violent criminal predators. This is our first civil right, the one upon which all of our others is dependent. A community, a neighborhood, a family which is not protected in this right is one that is disserved by its public officials, including its judges.

Also, in this regard, I think about our "parental termination"

"... I promise you my commitment to the rule of law ... nothing more ... nothing less. Although there will be differences of opinion, I am extraordinarily proud to serve on a Court on which, in my judgment, all six of my new colleagues have demonstrated exactly this same sense of commitment."

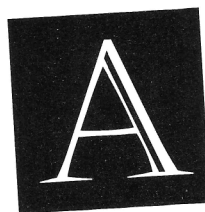
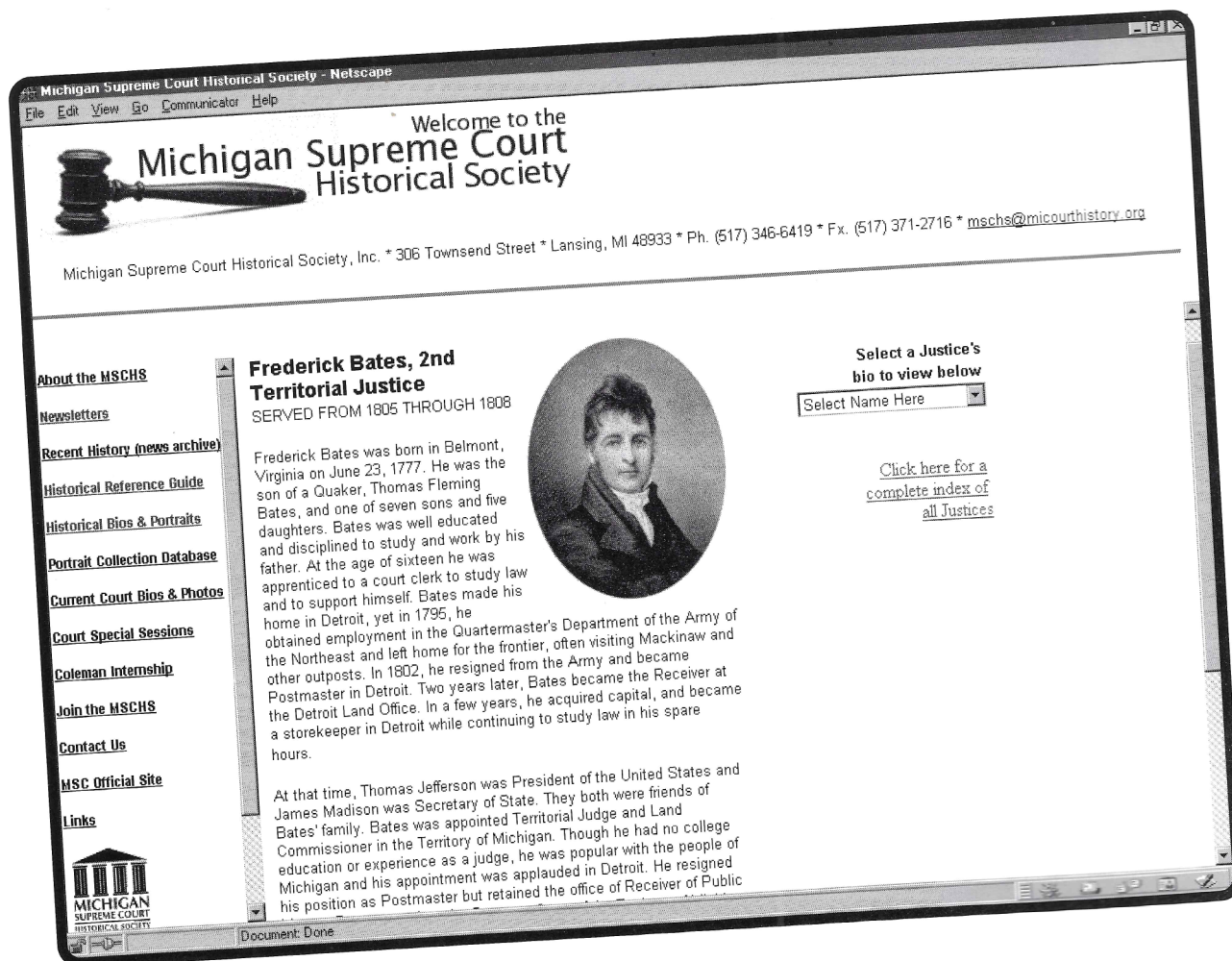
Fourth, my judicial philosophy is that the actions that I and my colleagues take on the Court are emphatically not "politics by another name". When I worked on Capitol Hill with Judge Rader, I recall one senior Senator who would periodically remark that he "didn't have no dogs" in particular fights between his colleagues over some matter or another. Perhaps, this is not very elegantly stated, but this describes the judicial role reasonably well. Judges should not have sides in the disputes before them. And for this reason, I say to those who think well of my appointment, that when your causes or interests come before the court, I promise you my commitment to the rule of law, but nothing more. And to those who think less well of my appointment—and I have detected a few of you—I also promise you this same commitment, and nothing less. Although there will be differences of opinion, I am extraordinarily proud to serve on a Court on which, in my judgment, all six of my new colleagues have demonstrated exactly this same sense of commitment. I am also extraordinarily proud of having served on the Michigan Court of Appeals with judges who, notwithstanding their differences, were of the same mettle. Of the thirty or so cases that we considered each month, there would typically be agreement on 28 or 29 of these cases, no matter how "liberal" or "conservative" the judges on a panel might be. This is because there is such a thing as the "rule of law"; each of my colleagues regularly subordinated their own personal preferences in complying with the requirements of the law.

cases. These are cases in which the State actually removes children, permanently, from their parents. It is an extraordinary power of the State to do this. When I first became a member of the Court of Appeals, I felt that it would be extremely difficult for me ever to approve this type of action even if the parents involved were less than ideal ones. But as I have studied these cases and viewed the circumstances in which children have been placed by a very small minority of parents, I have found it almost impossible not to do whatever was within my authority to provide these children with at least some opportunity to reach their potential. These children are also victims, and I will never ever lose sight of them as I apply the law in cases of parental termination.

Ladies and Gentlemen, again I am very grateful to each of you for being here this afternoon. I am excited and enthusiastic about the opportunity to contribute to our State as a Justice on the Supreme Court. And I promise that I will do everything within my power to help strengthen our rule of law through clear opinions, to enhance the integrity and even-handedness of our legal and judicial processes, and to always decide cases consistent with the requirements of justice under law. I am grateful to all of you for your friendship and counsel. Thank you all very much for taking the time to join me here this afternoon. ■



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The Michigan Supreme Court Historical Society's web site has changed its look and added more information. On it you'll find a newly created historical portrait statistical database, more transcripts of Court special sessions, current and archived newsletters, and more! And within the next few months, we'll be adding a text and audio database of oral histories -- recorded interviews with some of the Society's most distinguished twentieth century Justices. Here is an overview of the many features that www.MICOURTHISTORY.ORG currently offers:

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- ▶ **Historical Reference Guide** -- Read about -- then order -- the *Michigan Supreme Court Historical Reference Guide*, the Society's most ambitious publication to date. (See page 8 for details.)
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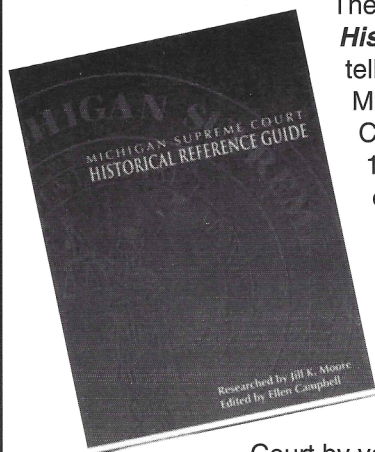
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To order, fill out and return the order form on page 7.

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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