

## Reflections of a Former Chief Justice

*The following remarks were given by former Chief Justice Thomas E. Brennan at the Society's 10th Annual Luncheon. In the interest of space, portions of the original speech have been cut. To see the speech in its entirety, please log on to our website at [www.micourthistory.org](http://www.micourthistory.org) and click on "Recent History."*

In August of 1973, I called a news conference to announce my resignation from the Michigan Supreme Court, effective at the end of that year. Someone asked me that morning if I had any reflections on my years on the Court, particularly on my two years as the youngest chief justice in the Court's history. I was in a pretty jocular mood that day, so I went for the laugh line – I told them that I planned to write a book that would reveal all of the inner secrets of the Michigan Supreme Court. I said that the working title of the book would be I Was a Teenage Chief Justice. I don't know, maybe that was the genesis of my novel, The Bench. If so, it took me 25 years to get around to it.

Somebody wanted to know why it took so long, and I thought of the old joke about the elderly couple who hated each other and went to their lawyer to get a divorce after 67 years of marriage. When the lawyer asked why it took them so long to come in and see him, they said they were waiting until all of their children were dead. Certainly it is a comfort to any chronicler of events to know that there is no one still living who can contradict what you say.

In truth, of course, The Bench is pure fiction – if anything written by a sentient human being can be described as pure. I think everyone who writes fiction brings to the task a

lifetime of experiences, feelings, mental pictures, and uncatalogued memories that reveal themselves between the lines. When I was at the keyboard, I didn't say to myself, "This fellow is Mike O'Hara, or that one is Gene Black." Still, when you write fiction, you're sort of putting down on paper a description of a movie you're seeing in your imagination. And sometimes in my mental movie, Bob O'Leary looked like Mike O'Hara; sometimes he looked like John Swainson; sometimes he looked like Gene Hackman.

To be sure, some of the events I described in the book are echoes of things that I experienced or heard about when I was on the Court. For example, Jim Malloy was elected chief justice on his first day as a member of the Court. My own election as chief justice did not happen that fast, although the conspiracy between Malloy and Alton Henry was indeed similar to my own relationship with Gene Black during the two months between my election and the start of my term.

Black was very much opposed to Thomas Matthew Kavanagh at the time and wanted him ousted from the chief justiceship. I knew next to nothing about the history of the Court's in-fighting over the office of chief justice, but over the next few years, I managed to piece much of the story together, bit by intriguing bit. There are still many parts of it that lie unreported in the memories of the very few players who are still around.

Really to appreciate the events I want to share with you today, we have to go back a ways in history. This being a



*Chief Justice Brennan with a copy of his novel, The Bench.*

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historical society, I suppose that's not inappropriate.

The Supreme Court of Michigan began, as I am sure all of you know, as the concurrent sitting of the several circuit courts of the state. The Constitution of 1850 confirmed that practice, but included some language that looked toward the creation of a separate appellate tribunal. First, it gave the Legislature the authority to create a Supreme Court, but not for six years. Second, it spelled out several features of whatever Supreme Court was to be created; it was to consist of a chief justice and three associate justices; they were to have eight-year terms; no two justice's terms were to expire in the same year. The third provision was more than a little confusing, if not contradictory: the Constitution provided that once the Legislature created a Supreme Court it couldn't be changed or discontinued for eight years.

In 1851, the Legislature provided that the circuit judges should elect one of their number every two years to be the presiding judge of the Supreme Court, but there was no such office as chief justice. When the six years were up, the Legislature created the first full-time Supreme Court by Act 146 of 1857. It followed the language of the 1850 constitution and provided for a chief justice and three associate justices and eight-year terms with one term expiring every two years.

The Republicans nominated George Martin to be chief justice, and he was elected to that office in 1858. As it turned out, Martin was the first and only elected chief justice of Michigan. He served until his death in December of 1867. I don't know whether it hastened his demise, but previously that year the Legislature had adopted Act 40 of 1867 providing that the chief justice was to be the justice of the Court whose term was next to expire. I don't know how Chief Justice Martin felt about that statute. Certainly a strict constructionist would argue that when the Constitution says "a Chief Justice...to be chosen by the electors" it means a chief justice chosen by the electors and not in some other way.

Apparently the Legislature took the words banning any change before eight years to be *carte blanche* authority to make all sorts of changes after eight years. In any case, after Martin's death on December 15, 1867, there was a hiatus of some 16 days and then Thomas M. Cooley was selected as the second chief justice of the Court. In obedience to the legislative mandate, the job of chief justice was then passed along to the next person up for re-election every two years until the Court was expanded in 1905.

After 1905, there were eight justices, with two terms of office expiring every other year. So we entered what, for want of a better description, may be called the "dual chief justice era," in which both of the justices whose terms next expired were designated chief justice, but they were required to divide the duties between them, with the senior justice serving during the first year and the junior justice

serving during the second year.

For those of you who may not grasp the political significance of this arrangement, let me explain. In those days, the justices were elected in spring elections in the odd-numbered years. Their names were on the ballot in April. The chief justice, being the spokesman for the Court, was in a position to be more publicly visible than his colleagues. Thus, the benefit of publicity was given to the justices scheduled to go before the voters. Now, as between being chief justice for 12 months in the year before the election and being chief justice for the three months immediately preceding the election, it was apparently thought that the former was the more advantageous, and so the senior justice got that assignment.

The dual chief justice system, perhaps better named the annual turnover system, continued in effect from 1905-1956. The story of how and why that system ended really begins in August of 1946 when a 42-year-old Attorney General from Holland by the name of John R. Dethmers was appointed to the Supreme Court. Dethmers was by far the youngest member of the Court, and thought by some to be the youngest ever appointed up until that time. He went before the voters in April of 1947 to fill a vacant term to expire in 1953, but he didn't get to be chief justice in either 1946 or 1947, since Justices Butzel and Carr, whose terms expired in 1947, were in line for the job. So it was not until

| SUPREME COURT.                                      |               |
|-----------------------------------------------------|---------------|
| CHIEF JUSTICES.                                     |               |
| WALTER H. NORTH, BAYTLE CREEK. <sup>1</sup>         | TERM EXPIRES  |
| CLARK J. ADAMS, PONTIAC. <sup>2</sup>               | Dec. 31, 1953 |
| ASSOCIATE JUSTICES.                                 |               |
| JOHN R. DETHMERS, HOLLAND, . . . . .                | Dec. 31, 1953 |
| HENRY M. BUTZEL, DETROIT, . . . . .                 | Dec. 31, 1955 |
| LELAND W. CARR, LANSING, . . . . .                  | Dec. 31, 1955 |
| GEORGE E. BUSHNELL, DETROIT, . . . . .              | Dec. 31, 1957 |
| EDWARD M. SHARPE, BAY CITY, . . . . .               | Dec. 31, 1957 |
| EMERSON R. BOYLES, CHARLOTTE, . . . . .             | Dec. 31, 1959 |
| NEIL E. REID, MOUNT CLEMENS, . . . . .              | Dec. 31, 1959 |
| CLERKS—                                             |               |
| { JAY MERTZ, LANSING. <sup>3</sup>                  |               |
| { HUGH H. CARPENTER, LANSING. <sup>4</sup>          |               |
| CRIME—                                              |               |
| DON M. CHILDS, LANSING.                             |               |
| ATTORNEY GENERAL—FRANK G. MILLARD, FLINT.           |               |
| SOLICITOR GENERAL—EDMUND E. SHEPHERD, EAST LANSING. |               |
| <sup>1</sup> Died July 23, 1952.                    |               |
| <sup>2</sup> Appointed August 14, 1952.             |               |
| <sup>3</sup> Designated October 1, 1952.            |               |
| <sup>4</sup> Appointed October 1, 1952.             |               |

Judicial roster of the Michigan Reports, Volume 334.



1952 that John Dethmers got to share the dual chief justice-ship. He and Justice Walter North were up for re-election in the spring of 1953. North was the senior man, so he became chief on January 1, 1952. Dethmers, as the junior of the two, was to be chief in 1953.

Justice North died on July 23, 1952, leaving a vacancy not only in his term as justice, but also in the office of chief justice. It doesn't take a rocket scientist to figure out what must have been going through John Dethmers' mind at that point. He was facing re-election in seven months, the plum of the chief justice's chair was available, he was now the senior man of those whose terms were next to expire. He surely must have been salivating over the prospect of being selected...but he wasn't. The center chair was left empty for nearly a month. Then, on August 14, 1952, just two days before the democratic state convention, Governor G. Mennen Williams named his legal advisor, Clark Adams, to the Michigan Supreme Court to succeed Justice North.

The judicial roster at the beginning of Volume 334 of the *Michigan Reports* discloses that Clark Adams of Pontiac became chief justice on that very same day, August 14, 1952. As a matter of fact, the records of the Court show that John Dethmers did actually begin to function as the Court's chief justice after the death of North. He signed orders of the Court as acting chief justice as late as August 21, 1952, a week after the Adams appointment. It was yet another week, on August 27, when the Court's orders began to bear the signature of Clark Adams as chief justice. Still later, Dethmers presided at a special memorial session of the Court on October 14, 1952, honoring Justice North. A week after that, Adams presided at the special session marking the retirement of the Court's long-time clerk Jay Mertz.

I have searched the state library and the state archives, but I can find no clue as to why that happened. One can only speculate that, since Adams had to run to fill the one-year balance of North's term, and since that special election was in November of 1952, he was given the benefit of exposure during the autumn campaign. Adams won that race, defeating Detroit College of Law Dean Charlie King.

But who made Clark Adams the chief justice? There was

no authority for the Court to vote for a chief, and anyway, it's unlikely that the Court would have met and acted on the very day Adams was appointed, yet the record shows he was chief justice on August 14, 1952. I thought, perhaps, that Soapy had designated him as chief justice in the appointment, but the newspaper doesn't say he did and I can find no record to that effect. In any event, Dethmers took over on January 1, 1953, and the following spring, both Adams and Dethmers were on the ballot, along with former Governor Harry F. Kelly. Kelly led the ticket by a wide margin, leaving the two incumbents to duke it out for the remaining seat. Dethmers won in a squeaker.

While Justices Butzel and Carr were sharing the chief justice's duties in 1954 and 1955, the Legislature was once again tinkering with the office. Act 142 of 1954 came to be known as the "Permanent Chief Justice Law." It provided that, beginning in 1956, the members of the Court would elect one of their number to be the chief justice, and that

person was to serve as the chief for the balance of his or her term as justice of the Court.

When crunch time came in January of 1956, we have another of those curious, inexplicable episodes. Volume 344 of the *Michigan Reports* tells us that Edward M. Sharpe of Bay City was chief justice of the Court for five days, from January 1, 1956 to January 6, 1956, when John Dethmers was chosen by his colleagues as the first permanent chief justice of the Michigan Supreme Court.

It was while contemplating the mystery of the five-day tenure of Edward Sharpe that I came to realize why both he and Clark Adams held the office. First, you have to bear in mind that we were functioning under the dual chief justice, or automatic annual turnover, system. There was no vote of the Court involved. The question of who was chief justice at any given time was supposed-

edly settled by statute. Now add to the scenario the fact that in August of 1952, when Clark Adams was appointed, Jay Mertz was still the clerk of the Michigan Supreme Court. Mr. Mertz was appointed to that office in 1916; for all practical purposes he ran the Court. He was an extremely bright, experienced, gruff, dominating personality,

(Continued on page 6)

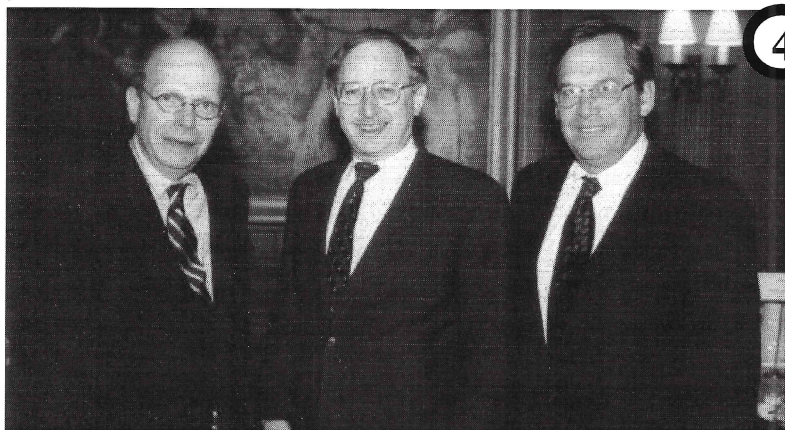
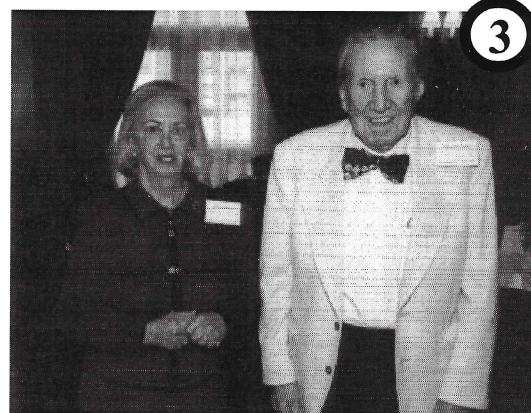
| SUPREME COURT.                                      |               |
|-----------------------------------------------------|---------------|
| CHIEF JUSTICES.                                     |               |
|                                                     | TERM EXPIRES  |
| LELAND W. CARR, LANSING, <sup>1</sup>               | Dec. 31, 1955 |
| EDWARD M. SHARPE, BAY CITY, <sup>2</sup>            | Dec. 31, 1957 |
| JOHN R. DETHMERS, HOLLAND, <sup>3</sup>             | Dec. 31, 1961 |
| ASSOCIATE JUSTICES.                                 |               |
| HENRY M. BUTZEL, DETROIT,                           | Dec. 31, 1955 |
| TALBOT SMITH, ANN ARBOR,                            |               |
| EDWARD M. SHARPE, BAY CITY,                         | Dec. 31, 1957 |
| EMERSON R. BOYLES, CHARLOTTE,                       | Dec. 31, 1959 |
| NEIL E. REID, MOUNT CLEMENS,                        | Dec. 31, 1959 |
| JOHN R. DETHMERS, HOLLAND,                          | Dec. 31, 1961 |
| HARRY F. KELLY, DETROIT,                            | Dec. 31, 1961 |
| LELAND W. CARR, LANSING, <sup>4</sup>               | Dec. 31, 1963 |
| EUGENE F. BLACK, PORT HURON, <sup>4</sup>           | Dec. 31, 1963 |
| CLERK—HUGH H. CARPENTER, LANSING.                   |               |
| CHIEF—CLYDE E. SPRAGUE, LANSING.                    |               |
| ATTORNEY GENERAL—THOMAS M. KAVANAGH, CARSON CITY.   |               |
| SOLICITOR GENERAL—EDMUND E. SHEPHERD, EAST LANSING. |               |
| <sup>1</sup> To December 31, 1955.                  |               |
| <sup>2</sup> From January 1 to January 6, 1956.     |               |
| <sup>3</sup> From January 6, 1956.                  |               |
| <sup>4</sup> From January 1, 1956.                  |               |

Judicial roster of the *Michigan Reports*, Volume 344.



## Images from the 10th Annual Membership Luncheon

The 10th Annual Membership Luncheon was attended by over 120 Society members and guests, including four current Michigan Supreme Court justices and four former justices. Society President Wallace D. Riley welcomed attendees and honored the living former justices in attendance, as well as those who were unable to attend. Mr. Riley also honored the Society's law firm members. Chief Justice Corrigan addressed the attendees, highlighting the progress of the new Hall of Justice. The legal vignette, presented by former Chief Justice Thomas E. Brennan, highlighted his experience as chief justice and the interesting history of the chief justiceship.





# Thursday, April 26, 2001 — Detroit Athletic Club



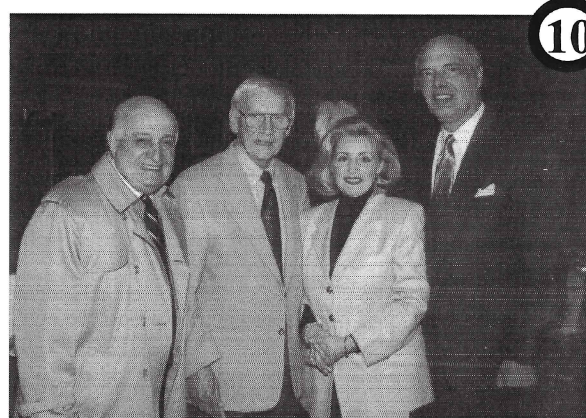
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**Pictured:** (1) Society Secretary Charles R. Rutherford, Justice Clifford W. Taylor, former Chief Justice Thomas E. Brennan, and Society President Wallace D. Riley (2) Hon. Paul Gadola, Society boardmember Hon. Denise Langford Morris, Hon. Bernard Friedman, Chief Justice Maura D. Corrigan, State Bar President Thomas J. Ryan, and former State Bar President J. Thomas Lenga (3) Dolores M. Bradway and Hon. David C. Vokes (4) Hon. Bernard Friedman, Justice Stephen J. Markman, and Alan Ackerman (5) Kim Pyenta, Charles R. Rutherford, Patricia Rutherford, Society Executive Director Angela Bergman, and Terri Land (6) Justice Elizabeth A. Weaver and Terri Land (7) Society Treasurer Lawrence P. Nolan, Sally Foley, Marge Griffin, Former US Senator and

Michigan Supreme Court Justice Robert P. Griffin, Wallace D. Riley, Charles R. Rutherford Front: Former Chief Justices Elizabeth A. Weaver and Dorothy Comstock Riley (8) Clerk of the Michigan Supreme Court Corbin Davis and former Chief Justice Thomas E. Brennan (9) Hon. Roman S. Gribbs, Hon. Roland Olzark, Hon. Frederick L. Harris, Marion Impastato, Hon. William J. Giovan, Chief Justice Maura D. Corrigan, and Hon. Joseph Impastato (10) Hon. Joseph Impastato, Joseph Maniscalco, Marion Impastato, Hon. William Giovan (11) William Listman, Justice Clifford W. Taylor, Martin L. Critchell (12) Mary Kedzior, John Stempfle, Gilbert C. Cox, Terri Land, Society boardmember Roger F. Lane



one of the most colorful characters in the kaleidoscope of the Court's history.

One of his duties was to prepare and issue the formal orders of the Court. He had to have them signed by the chief justice, so he would have had to decide who was the person to sign the orders. In short, I am convinced that Clark Adams was designated chief justice of the Michigan Supreme Court by no less a final and incontestable authority than the clerk of the Court, Mr. Jay Mertz himself. And if that is so, it follows that Edward Sharpe was similarly elevated to the highest judicial office in Michigan by Mertz's successor, the indefatigable Hugh Carpenter, who had prepared himself for the awesome power of the clerk's office by apprenticing under Mr. Mertz for no less than 30 years.

When you think about John Dethmers being thwarted in his career aspirations by an officious court clerk with a thumb-worn copy of the compiled laws in hand, you are immediately put to wondering how much Justice Dethmers may have had to do with the enactment of the permanent chief justice law. I did a little exploring to see if I might find some evidence of John Dethmers' DNA on Act 142. All I could find was that the bill was introduced by Louis Crampton, an old-line Republican legislator, former circuit court judge, and delegate to the GOP National Convention in 1940, two years before John Dethmers became chairman of the state Republican party. Whatever Dethmers' role in the legislation, it would be naïve to suppose that he was unaware or indifferent to it.

So John Dethmers, as the legislatively designated permanent chief justice, served in that office for the next six years. He was in the prime of his career, not yet 60 years of age. In some ways, Dethmers was the father of our modern Supreme Court. On his watch, the office of the Supreme Court Administrator was created. The Judicial Conference of Michigan, the annual gathering of the state's judges for in-service training and exchange of information, was established as well.

Dethmers himself rose to national prominence. In 1957, he was chosen chairman of the National Conference of Chief Justices, and by the middle of the next year, he was on the short list for appointment by President Dwight D. Eisenhower to the United States Supreme Court. He went to bed on October 13, 1958, having been assured by a major Republican source in Cleveland that the President would announce his nomination to the United States Supreme Court the next morning. The heads-up was only half right – Eisenhower did, in fact, announce a Supreme Court nominee on October 14<sup>th</sup>, but it wasn't John Dethmers. It was Potter Stewart.

Dethmer's term of office on the Michigan Supreme Court was to expire on December 31, 1961. Under the permanent chief justice law, the Court would choose a leader in

January of 1962 for the first time in six years, and the person selected would serve until the end of his term. The stage was set for some high-powered politics. The Court then boasted five Democrats and three Republicans. On the day of decision, there was a change in the lineup. George Edwards resigned from the Court to take incoming Mayor Jerry Cavanagh's offer to become the City Police Commissioner, and attorney Paul L. Adams was appointed to the Michigan Supreme Court by Governor Swainson.

In light of the Democratic majority on the Court at that time, one might suppose that Thomas M. Kavanagh, the senior member of his caucus, would get the nod to replace Dethmers. Not so. One of the justices who had been nominated by the Democratic party was Eugene Francis Black of Port Huron. Always a maverick in politics as in everything else, Black had been a Republican Attorney General, but had been appointed to the circuit court by Governor Williams. Somehow, Gene Black developed a great friendship with Gus Scholle, Michigan's legendary labor and political rainmaker, and in due course was nominated by the Dems for the high court. While Black was no great fan of Dethmers, he didn't like Kavanagh either, or perhaps I should say he liked Kavanagh less. So when the votes were counted that January morning it was Dethmers four and Kavanagh four.

Thus began a standoff that lasted for three months. No majority could be garnered for either of the two candidates, so Dethmers continued to hold over in the office. The deadlock was finally broken by the newest member of the Court, Paul Adams. He switched his vote to Leland Carr, then the senior justice on the Court whose term was to expire in 1963, and a majority supported the nomination.

This development didn't sit well with Thomas M. Kavanagh. Respectfully and affectionately known as Thomas the Mighty, and sometimes as Carson City Fats, Tom Kavanagh was a man who played the game of politics for keeps. When the defecting Adams came up for election to the unexpired term of George Edwards in the fall of 1962, he was opposed by Mike O'Hara from Menominee. As I understood the story, TMK weighed in, behind the scenes of course, in favor of O'Hara, marshalling the considerable clout of the Knights of Columbus, of which Kavanagh was a state officer, and Adams was put out to pasture.

The following April, a duly chastened Paul Adams was returned to the Court by the voters. He never again opposed Tom Kavanagh for chief justice. Neither did anyone else in January of 1964. In fact, the record shows that it was John Dethmers who moved for Kavanagh's selection as the first chief justice under the new Constitution of 1963, and the vote was unanimous.

One of the primary themes of my campaign for the Court was the need for leadership on the Supreme Court. I took



the chief justice to task for failing to control the ad hominem rhetoric that showed up in so many of the high court's opinions. My chutzpah apparently appealed to Gene Black, and he called me a number of times between November 1966 and January 1967. He kept trying to persuade me to let him nominate me for chief justice. I kept insisting it wasn't my time, that I didn't even know where the bathroom was.

In any case, Black didn't want Dethmers. Kelly wouldn't take the chief justice job. Whether Gene Black harbored some ambition to be chief himself we'll never know. The fact was that none of the others would have supported him, and he knew it. So Gene and I agreed on Mike O'Hara, and both of us went to work to persuade him to take the job. I worked on Mike to no avail. I flattered him, appealed to his sense of duty, his pride, his ego. He wouldn't budge, but in the process we became great friends.

I recall well the night of January 3, 1967, the eve of my first conference as a member of the Court. I was still doggedly trying to get O'Hara to agree to be the chief justice. We ended the evening in the corner of the Jack Tar Hotel, downing stingers and discussing politics and philosophy. I seem to recall we closed the place. The best I could do was to get Mike to agree that he would think about it one more time before making a final decision.

Now you have to understand that I had already lined up the votes for O'Hara. Dethmers was up for re-election in 1970. Kelly would be retiring then. Governor Romney was in favor of replacing TMK with a Republican. Dethmers and Kelly both came to the meeting on January 4<sup>th</sup> expecting that Black would nominate O'Hara, and that O'Hara would be elected by a vote of 5 to 3. But at about 4:00 a.m. that morning the phone rang in my hotel room. It was Mike O'Hara.

"I can't take it," he said. "If you and Black want to oust Kavanagh, I'll vote with you, but you'll have to get someone else to take the job."

The atmosphere in the conference room the next morning was not exactly jovial. Everyone knew that there was mischief afoot, though what exactly was about to happen none of us could have predicted. As soon as the meeting got underway, TMK announced that the floor was open for nominations for chief justice. Paul Adams made a short speech in favor of Tom Kavanagh, then moved that he be re-elected. Ted Souris supported the motion and the chief promptly called for the ayes and nays. He got three votes. For the longest time he sat there, in silence, his face reddening, looking around the table. Finally, he growled, "Alright, what are you fellows going to do?"

I'm not sure what everyone else was doing, or with whom they may have made eye contact. I was too busy doodling. When I looked up, I saw Gene Black glaring at Mike O'Hara and O'Hara simply shaking his head and shrugging

his shoulders. Finally, Black slammed the table with the palm of his hand, punctuating a curse, and he began to address John Dethmers, who was sitting directly across the table.

"John," he said, "I didn't like the way you did things last time you were the chief justice. I voted to kick you out because you never stood up to the Legislature or the Governor, never really ran things around here, but by God we can't take another two years of Tom's bullheadedness, and since nobody else wants the job it will have to be you."

Kavanagh called for the vote and five hands went up. Suddenly, John Dethmers was on his feet, tears running down his cheeks.

"I just want to thank you all," he began. Then he went into a long monologue about how hard he had worked on behalf of the Court from 1956 to 1962 and how he felt that the criticism of his administration had been unjustified. Whatever his faults, John Dethmers looked like a chief justice. His mane of pure white hair, his deliberate, solemn demeanor, and his deep resonant voice made him the picture of judicial stature and eminence. But I didn't then know how his personal humility and directness influenced his official conduct.

When the State Officers Compensation Commission met in the fall of 1968, the Court directed its chief justice to make a presentation on behalf of the justices. We were then making \$35,000 per year and had not had a raise for several years. I later learned that his presentation before the commission consisted essentially of a self-deprecating, unrehearsed statement that sounded something like this: "Now, I want you folks to understand that I'm quite satisfied with my own situation. Mrs. Dethmers and I get along quite nicely on my salary. But the other fellows on the Court voted to have me come down here and ask you for more money, so here I am." Suffice it to say that the State Officers Compensation Commission voted no increase in judicial salaries.

I think the day I heard that story was the day I decided I was ready to run for chief justice.

Two things happened in 1968 to change the complexion of the Court. Ted Souris decided not to seek re-election, thus triggering the 1963 Constitution's provision that the Court would be reduced from 8 to 7 members whenever the first vacancy occurred. That was one. The second thing was that Mike O'Hara was defeated by Thomas G. Kavanagh.

I have no doubt that TMK was a major factor in the election of TGK. Bearing the same name, Thomas the Good must have seemed to Thomas the Mighty as an apt surrogate to deliver the vengeance properly visited on those who failed to support him for chief justice. Paul Adams had paid the price for crossing Tom Kavanagh, so did Mike O'Hara.

In the weeks leading up to the January 1969 meeting of



the Court, Gene Black and I burned up the wires plotting to get me elected chief justice. Gene was close to Harry Kelly, who by then was lame ducking through his last years on the bench, spending most of his winters on Singer Island in Florida. Gene got Harry to commit his support to us. I was to line up Dethmers. It wasn't easy. He played a running game of cat and mouse with me, never quite saying no, but never quite saying yes either. I often wonder if he had hopes of another stalemate, which might have left him in the chair for another term.

Without his vote, the Court would have been deadlocked three to three.

The Court didn't meet in January. I can't tell you just why. I believe someone was ill. For whatever reason, the matter of the chief justiceship was deferred to February. When the day came, I still didn't know for sure what Dethmers would do. The Governor had sent messages down on my behalf and John was facing re-election in 1970. I hoped that he had gotten the word.

The meeting began with only six of us in the room. Harry Kelly was in Florida. He had told Gene Black that he would only participate in the vote if he was needed. In that case, he would send his vote to us through his secretary. Dethmers opened the topic of the chief justice election. Paul Adams nominated Thomas Matthew Kavanagh. Black nominated me. The chief went around the table polling the Court. Adams and the two Kavanaghs voted for Kavanagh. Black voted for me, and I voted for myself.

Three to two.

Dethmers summoned Kelly's secretary. In a few minutes she entered the room and stood nervously at the opposite end of the conference table from the chief justice. He asked her if Justice Kelly had instructed her as to his vote for chief justice. Yes, he had.

And how does Justice Kelly vote?

He votes for Justice Brennan.

Three to three.

Now it was John's turn. He stands up dramatically and

begins to recount his service as chief justice. Finally, he gets around to the business at hand.

"Well now, we have three Thomas's on the Court. Two of them have been nominated for chief justice. There's Thomas Kavanagh who has three votes and Thomas Brennan who has three votes. So it's up to me to decide which of the Thomas's is going to be chief justice. Well, now, let me see. Should I vote for this Thomas (he looked at Kavanagh) or this Thomas (he looked at me).

There was a long pause while he stands there smiling, looking back and forth from Tom Kavanagh to me and obviously enjoying the moment. Finally, he says, "Well, now, I vote for (he pauses and looks around the room again) I vote for Thomas (he looks at Kavanagh), I vote for Thomas (he looks at me) Brennan.

And so I became chief justice on a very busy day when the Court had a mountain of administrative matters to attend to. I took the chair at the head of the table and began moving the Court through its agenda. Lunch time came. I sent out for sandwiches. We kept on working.

Shortly, Don Winters, the court clerk, came in to tell me that the press were clamoring for a statement

from me. The first they had learned that there was a change at the helm of the Michigan Supreme Court was when routine court orders began to be released which were signed by Thomas E. Brennan as chief justice. I told Don to tell the media that I would hold a news conference the following morning.

The Court stayed in conference until after 5:00 that evening. When we broke, the room emptied, justices scurrying back to their offices or out to their cars. Thomas Giles Kavanagh hung back and congratulated me. He said he would support me and pledged his cooperation. He went on to say that he knew Thomas Matthew was miffed, but he was sure that Tom would come around if only I extended the olive branch. I agreed and asked Thomas Giles if he would go with me. We walked around the rotunda and down to Thomas Matthew's office, where we found him

## Brennan, 39, may be state's youngest chief justice yet

"The youth-in-government movement reached the Supreme Court today with the election of Thomas E. Brennan as chief justice."

"BRENNAN is the youngest member of the Court and is believed to be—at 39—the youngest chief justice in Michigan history."

"The Court, often criticized for a complete lack of communication with the press and public, has yet to announce Brennan's election.

The only notification was

the designation 'CJ' rubber-stamped after Brennan's name on some of the 10 opinions handed down by the court yesterday.

"We were terribly busy,"

Brennan said late yesterday.

"We had lunch sent in and worked right up to 6 p.m."

"I like to get my name in the paper, and I would have been happy to step out and talk to everyone who wanted to listen, but I didn't think it would have looked right for me to leave the conference," he added."

*Headline and excerpts from a Detroit News, Tuesday, February 4, 1969, article written by Al Sandner and Allen Phillips.*



sitting behind his desk. He didn't get up when we entered the room, and sat in silence while Giles and I stood in front of his desk like a couple of school boys in the principal's office.

Thomas Giles made a nice speech about collegiality and how we all had to pull together and that for better or for worse, young Tom Brennan here is our chief and we're going to have to help him.

Thomas Matthew just looked up at him and growled, "He'll get no help from me."

That was the end of our meeting.

About 1/2 an hour later, Thomas Giles and I were entering the lobby of the Jack Tar when I was stopped by Al Sandner, then a reporter for the *Detroit News*, later a member of Governor Milliken's staff. He wanted to know why I had refused to meet with the fourth estate after I was elected chief justice. I tried to explain to him that we had a very long agenda, that I was elected by the narrowest of margins, that being young I didn't want it to appear to my older colleagues that my head was being turned by publicity.

"Heck, Al," I said, "I like to get my name in the paper as much as anyone, I just didn't think it was the right time." I guess I don't have to tell you what the paper said the next day. It was something like, "NEW CHIEF JUSTICE SEEKS PUBLICITY." And thus did the teenage chief justice learn the difference between truth and news.

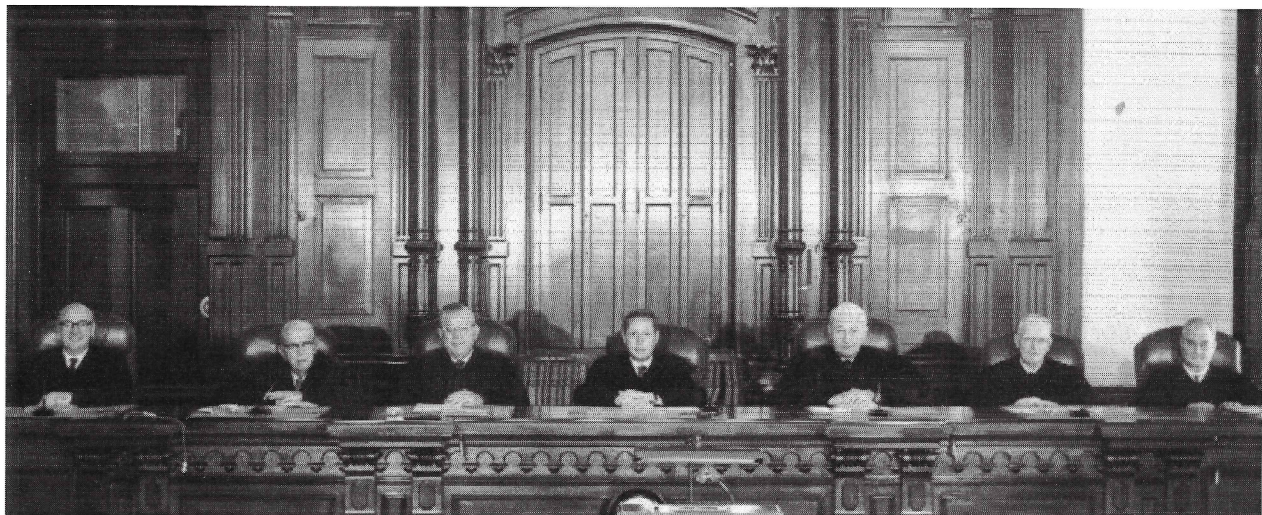
This vignette has gone on too long. I finished writing it about 5:45 last Sunday evening in my office on the 10<sup>th</sup> floor of the new Cooley Center in downtown Lansing. Looking east I could see the Spartan football stadium; to the north, the spire of the State Capitol loomed above the

Accident Fund Building. Looking west I saw the law building where the Michigan Supreme Court has sat since it moved from the State Capitol during my term as chief justice, and further west, the bare steel superstructure of the magnificent new Hall of Justice rises to anchor the far end of the capitol mall.

And I think of what an inspiring edifice it will be for future generations of men and women in Michigan. And I think of the vision and spunk and the perseverance that Chief Justices Dorothy Comstock Riley, Mike Cavanagh, Jim Brickley, Conrad Mallet, and Betty Weaver invested in fulfilling a dream that began in the days of John Dethmers and Tom Kavanagh. Not to mention the ongoing headaches that Chief Justice Maura Corrigan will have as she monitors construction and plans for the relocation of the Court.

Then I looked south. There are no windows on the south wall of my office. Just a huge black and white photograph of seven men sitting behind a bench in the old Michigan Supreme Court Chambers. Six of them look like real jurists, gray-headed, dignified, the wrinkles of hard-earned wisdom verifying their authority and prestige. The fellow in the middle looks too young. But he does look familiar to me. He looks quite a bit like someone who will, the day after tomorrow, be celebrating the 50<sup>th</sup> anniversary of his marriage to a University of Detroit classmate named Pauline Weinberger.

These are the times when a man is moved to count his blessings. Mine are numerous and treasured. Not the least of these is the warm comradery of this grand Society, and I thank Wally Riley and all of you for this chance to stroll down memory lane, and I thank you for your kind attention.



*Justices Thomas G. Kavanagh, Harry F. Kelly, Thomas M. Kavanagh, Chief Justice Thomas E. Brennan, John R. Dethmers, Paul L. Adams, and Eugene F. Black*



## In Recent News...

### Society Elects New Treasurer

At the April 26, 2001 Annual Meeting of the Michigan Supreme Court Historical Society's Board of Directors, Lawrence P. Nolan was elected by the Board to serve as the Society's treasurer. Mr. Nolan, who was elected unanimously, was nominated for the position by former treasurer Thomas E. Brennan.

Mr. Nolan has been on the Society Board of Directors since 1991 and has been actively involved in the planning



*New Society Treasurer Lawrence P. Nolan*

of Society programs and activities. In addition to his work with the Society, Mr. Nolan sits on several other boards, including the Board of Directors of Thomas M. Cooley Law School, on which he currently serves as vice-chairman, and the

Board of Directors of the Ingham County Bar Association, on which he currently serves as vice-president. In the past, he has also served on the Boards of such organizations as the Island City Academy, a Michigan charter school; the Cooley Lawyers Credit Union; the State Bar Board of Commissioners; and the State of Michigan YMCA Youth in Government program.

In addition to his service work, Mr. Nolan maintains a successful Eaton Rapids law practice and is the founder and president of Nolan, Thomsen & Villas, PC. Mr. Nolan focuses his practice in the areas of personal injury, catastrophic loss, wrongful death, real estate, corporate, domestic relations, estate planning, probate, and criminal law. Mr. Nolan has also taught Agriculture and Farm Law at Michigan State University for the past 24 years.

Raised in Farmington, Mr. Nolan graduated from Our Lady of Sorrows High School and went on to earn his B.A. from Western Michigan University in 1971, where he served as senior class president, and his J.D. from Thomas M. Cooley Law School in 1976. Mr. Nolan and his wife, who currently reside in Eaton Rapids, have two children.

### 2001 Education Project Teachers Selected

The Society's 2001 Education Project is off and running. The project, which will result in the creation of lesson plans to be made available to interested teachers on the history, role, and organization of the Michigan Supreme Court, began in early June and will continue through the summer and into the 2001-2002 school year.

Tony Greenburg was selected to create high school level lesson plans. Mr. Greenburg graduated from the University of Michigan in 1994 with a B.A. in cultural anthropology. He is currently pursuing his masters in education from Aquinas College and will receive his certification to teach English and History this summer. Mr. Greenburg completed his student teaching at Catholic Central High School in Kalamazoo, instructing U.S. History and American Literature. Mr. Greenburg brings a great deal of enthusiasm and creativity to the project.

Linda Hoxie-Green was selected to create junior high school level lesson plans. Ms. Hoxie-Green has 20 years of experience teaching 6th grade social studies and 4 years teaching 8th grade history and language arts. She received her B.S. in education and social science from Central and is currently pursuing her masters in curriculum and education administration. Ms. Hoxie-Green brings her experience and knowledge to the program and the idea that learning has to be fun and relevant to be effective.

### Society Produces "A Brief History of the Michigan Supreme Court" Booklet

The results of the work of the Society's 1999 Coleman Intern have finally been published. The booklet, which was included in the mailing of the newsletter, will be made available to interested Court visitors, to interested teachers, and to all who are curious about the history of the Michigan Supreme Court.

Many thanks go out to all the board members who read and critiqued the manuscript. Special thanks go to Chief Justice Brennan for writing the epilogue, to Wallace D. Riley and Chief Justice Dorothy Comstock Riley for their willingness to read and critique versions of the manuscript over and over again, and to former Executive Director Jill H. Wright for her initial edits, her supervision of the project, and her ongoing involvement in the publication of this booklet.

The Society is proud to have sponsored such a project and hopes that you find it both useful and interesting.



## In the Spotlight:

### Justice Thomas M. Kavanagh

Thomas M. Kavanagh was born on August 4, 1909, near Carson City, Michigan. He graduated from the University of Detroit with a law degree. In addition to his work with the law, his family was tremendously important to him. Kavanagh married Agnes Miller in 1930 and had four daughters.

After finishing his law degree, he practiced in Detroit for three years before returning to Carson City. There he served as both City Attorney and City Clerk, as well as engaging in private practice. Kavanagh was twice elected Attorney General, in 1954 and 1956. While serving in that position, he established a modern, hard-hitting office and insisted on excellence in the opinions of the Attorney General. As a member of the State Administrative Board, as well as Attorney General, he was a close personal advisor to the governor.

In 1957, Kavanagh was elected to the Michigan Supreme Court and began his service in 1958. He was re-elected in 1966. Kavanagh was three times selected by his colleagues to be chief justice and served from 1964 to 1966 and from

1971 to 1975. He was a hard-driving chief executive seeking to maintain the independent dignity of the judicial branch and to make the Michigan Supreme Court the best in the country. Kavanagh was an excellent lawyer of the old school. He had a close working familiarity with the *Michigan Reports* and always had a pertinent case ready at hand.

Besides his professional life, Kavanagh's private life was notable. His faith was a beauty to behold. He was constant and rigorous in worship and he loved and supported his church.

In addition, his driving personality spilled over into sports. As Attorney General, he played on the office bowling team and actually did so even while on the Supreme Court until shortly before his death.

Thomas M. Kavanagh died while still employed by the Court in 1975.



### Justice Eugene F. Black

Eugene F. Black was born in Marine City, Michigan, on January 27, 1903. He graduated from Port Huron High School in 1921 and then studied law for a year at the Detroit College of Law. Black then became a statutory law student in the office of former Circuit Judge Shirley Stewart. Following one special term of study at the University of Michigan Law Department in 1925, he was admitted to practice law.

In 1942, in the middle of World War II, Black enlisted in the U.S. Naval Reserves as a lieutenant. He was trained in Princeton, New Jersey and was a submarine chaser in Miami until an old knee injury forced him into inactive duty. He subsequently returned to the practice of law.

Black was involved in many different educational organizations. He served two terms as president of the St. Clair County Council of Parent-Teacher Associations. Later, he became chairman of the State P.T.A. Committee on Public School Education.

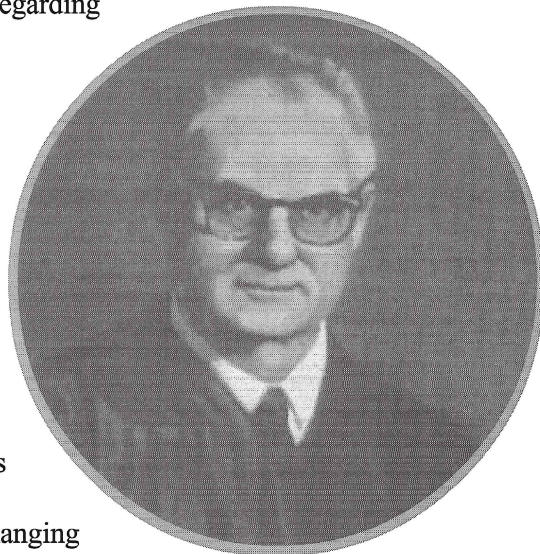
In 1945, Black was elected Attorney General for the state of Michigan on the Republican ticket, yet he did not seek renomination for that office. He was appointed judge of the 31st Circuit Court by Governor G. Mennen Williams and served until he was elected to the Michigan Supreme Court as a Democrat in 1955.

Throughout his career, Black was very opinionated and outspoken regarding

his feelings about the Court. He was very critical of the Court and his colleagues on the bench and even planned the timing of his retirement based on changing court policy. Black retired from the Court in 1973, yet his presence in politics was still felt.

He married Elizabeth Lenore Young in 1932 and had three children. Eugene F. Black died on August 4, 1990.

*(For more information on any of the justices, refer to the Michigan Supreme Court Historical Reference Guide.)*





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