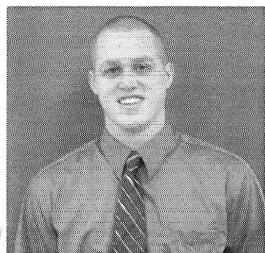


Coleman Intern Completes Research Projects

Every day for the past eight months before walking into the Hall of Justice I would pass Michigan's Vietnam Memorial. This unpretentious tribute serves as a constant reminder of a tumultuous time in our nation's history. Although I was not alive during the Vietnam War, my awareness and understanding of it is augmented by the preservation of its memory in history books, documentaries,



Lance Phillips,
2006 Coleman Intern

and monuments such as the one on the Hall of Justice grounds. Because the status quo is the product of the past, it is important to be acquainted with historical events. I see my work with the Michigan Supreme Court Historical Society as helping to familiarize the people of Michigan with the history

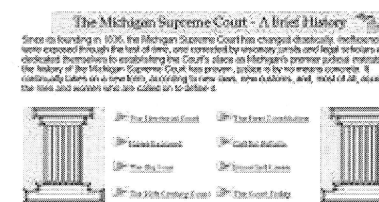
of their great court by preserving and publicizing its legacy. As is the case with the Vietnam Memorial, awareness and appreciation will increase with the presence of reminders.

Improvements to Society Website

When I joined the Michigan Supreme Court Historical Society in January as the 2006 Coleman Intern, I was charged with two paramount tasks: add two new pages to the Society's website and create an account of each justice's elevation to and departure from the high bench.

I completed the additional web pages in May, and they are both currently accessible at www.micourthis-

[tory.org](http://www.micourthis-). The first is a truncated electronic version of the 1999 Coleman Intern's manuscript, "A Brief History of the Michigan Supreme Court."



The Territorial Court
The establishment of the judicial system in the territory that became the state of Michigan differs significantly from others, particularly those on the East Coast. Shorter precedents and traditions in English in origin and their legal systems were based in English-Common Law. The first Courts settlers Michigan were French, not English, but power struggles between the French and English

of the Michigan Supreme Court." It is a precise and interactive account of the court's history, complete with pictures and links to supplementary pages.

To visit this site, go to the Society's main

page and click on the link at the top, or visit directly by typing [www.micourthis.org/resources/overviewhistory.php](http://www.micourthis-) into your browser window.

The second page, titled "The Michigan Supreme Court History Timeline," takes full advantage of the conveniences afforded by using Internet information exhibition. It is a timeline of significant events in the



Court's history in which viewers can effortlessly maneuver to and from different time periods using links and other interactive features embedded

in the site. It, too, is accessible from the Society's homepage by clicking the link to the "History Timeline" located within the "Resources" dropdown menu or by going to [www.micourthis.org/resources/timeline1805-1850.php](http://www.micourthis-).

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ON AND OFF THE COURT

Near the end of July, I finished gathering research for the second main project. "On and Off the Court" is a datasheet containing information pertaining to each justice's elevation to and departure from the Michigan Supreme Court. For each justice, the categories chronicled include:

Justice Each of the 112 justices who have sat on the Michigan Supreme Court.

Beginning Date In order to appreciate the fluidity of the changes in court personnel, it is useful to know when the different justices began their stints on the bench. In researching justices that were first appointed, I occasionally came across a source that provided a beginning date but failed to specify whether it was the date on which the justice was appointed, or whether it was the day the justice first took office (this was more common with the early justices). Both of these dates could technically qualify as beginning dates, so I feel comfortable reporting either with confidence. As for justices that were first elected, the 1963 Constitution dictates that justices victorious in elections take office at noon on the first day of January, which is when the previous term of office officially ends. For simplicity's sake, I have designated the distinction separating terms of office to be Dec. 31 (end of a term) and Jan. 1 (beginning of a term).

Ending Date As with "Beginning Date," the exact day a justice left the bench is valuable information for a variety of reasons. Research often involves specifics as opposed to approximates, and this section and the one above seek to provide them.

Amount of Time Once beginning and ending dates have been precisely determined, we can calculate the amount of time a justice sat on the bench down to the day. Obviously, the longer a justice remained on the bench, the greater opportunity s/he had to exert his or her influence on it and shape Michigan jurisprudence. It is no coincidence that some of the most well-known justices have also been the longest-sitting.

Elected or Appointed Before 1850, the only way an individual could join the Michigan Supreme Court was by appointment (by the President until 1824 and by the Governor from then on). In 1850, this system was changed to provide for the popular election of Supreme Court Justices. Under the new system, appointments would be made only to fill vacancies, and would afford a term of office extending until the next election in which the appointed justice was expected to run to win a seat. Designations of "Elected" or "Appointed" refer only to the manner in which the justice *first* joined the bench. In many cases, justices who were first appointed were subsequently elected numerous times, but their first accession to the bench was via appointment.

Appointed or Elected to Replace This category essentially answers the question, "who took whose seat", while beginning and ending dates answer "when", and the "Elected or Appointed" specification answers "how". "Appointed or Elected to Replace" (both alone and when combined with the "when" and "how") is extremely helpful when plotting the networks of succession within the Court and examining the evolution of Court personnel through time.

Justice	Party Affiliation	Beginning Date
Corrigan, Maura D.	Republican	Jan 1 1999
Young, Robert P., Jr.	Republican	Dec 30 1998
Markman, Stephen J.	Republican	Oct 1 1999
Taylor, Clifford W.	Republican	Aug 21 1997
Kelly, Marilyn J.	Democrat	Jan 1 1997
Weaver, Elizabeth A.	Republican	Jan 1 1995
Mallett, Conrad L., Jr.	Democrat	Dec 21 1990
Griffin, Robert P.	Republican	Jan 1 1987
Archer, Dennis W.	Democrat	Jan 2 1986
Boyle, Patricia J.	Democrat	April 20 1983
Cavanagh, Michael F.	Democrat	Jan 1 1983
Brickley, James H.	Republican	Dec 27 1982
Riley, Dorothy Comstock	Republican	Dec 9 1982 and Jan 1
Moody Jr., Blair	Democrat	Jan 1 1977

Previous Positions This category presents the occupational endeavors of Supreme Court Justices prior to their elevations to the bench. Supreme Court Justice is the highest state judiciary post attainable in Michigan. This category exposes popular career stops for individuals on the road to the Michigan Supreme Court. I included mainly civil service positions, because vocational advancement is clearer when working within the context of the relatively familiar hierarchy of the government. Although seldom included, many justices also engaged in private practice at one point or another. In most cases the listed positions are both exhaustive and sequential, but due to limited resources I was unable to verify these conditions for all of the justices.

Reason for Leaving The reasons justices leave the bench vary drastically. Some reasons are voluntary, others are involuntary. I tried to be as specific as possible

within the datasheet when reporting this information.

Elections / Appointments The details surrounding every instance in which a justice obtains a partial or full term appear in this set of columns (4 columns); this can only happen by election or appointment.

First, I specify whether the entry is an election or an appointment along with the date of occurrence. If the event is an appointment, I record who made the appointment along with the appointer's party affiliation. If the event is an election, I indicate the defeated parties involved in the election and include their political affiliations. Since 1824, Michigan Supreme Court Justices have been subjected to limited term lengths. If they desire to retain their seat, they can only do so by periodic reelections or reappointments.

This category essentially demonstrates how the justices managed to retain their seat between the beginning and ending dates of their tenure. If the "Amount of Time" category comes across as an intangible or overwhelming representation of career length, this section works to break it down into easily comprehensible segments.

Political Party Affiliation Before Joining the Court The judicial system is apolitical and Michigan Supreme Court Justices are elected on nonpartisan ballots. However, most of the justices were nominated to their position on the Court or the ballot by a political party. For the most part, the party listed is the party that nominated the justice for election. Some justices, over the extent of their careers, displayed affiliations with multiple or different parties. I tried to include footnotes to identify and explain these cases.

The thorough and organized system of record-keeping that characterizes contemporary archiving is a somewhat recent development. Fires and human error also pose obstacles hindering our ability to keep our ties with the past. Thankfully, the value of history is widely acknowledged and appreciated, and a great deal of effort has gone into preserving the records we do have.

Commissioned by the Michigan Supreme Court Historical Society, the "On and Off the Court" database is my contribution to the preservation and dissemination of facts related to the terms of the Justices of the Michigan Supreme Court.

No single research project I faced while a history major at Michigan State University was as demanding as the "On and Off the Court" project in terms of volume of information needed and sources consulted.

Thankfully, the research techniques I honed while a student remained applicable to this project.

Fact-finding is similar to an Easter egg hunt. Both require fruitlessly unearthing countless obstacles to locate the coveted object of the search. Unlike an Easter-egg hunt, however, my search was not limited to a definite location. It encompassed dozens of resources scattered throughout databanks from Lansing to Ann Arbor. For the first few weeks, gathering information proved to be almost as easy as looking up numbers in a phonebook. A volume published bi-annually by the state government called the Michigan Manual contained election statistics from the late 19th century to present. Appointment and resignation dates covering the same era were documented in the Michigan Reports. Various contemporarily published justices' biographies also contained a great deal of data relevant to my search. Each of these sources could be found on the shelves of common public libraries.

However, relatively easily accessible sources began to run dry of information as the focus of my search shifted to the early years of the Michigan Supreme Court. At this point, the sources I needed were collecting dust deep in the dark, "employee only" corridors of the Michigan Archives and the Bentley Historical Library. Many times, when utilizing the wealth of information contained in these document tombs, I found myself resorting to early 19th Century primary sources to uncover the most elusive of facts. These instances often involved deciphering Old-English style text handwritten on brittle antiquated paper. Justice's papers and personal collections were indispensable in providing me with "intangible" material from which I was able to deduct the cold hard facts I was seeking.

The result is a spreadsheet style display of categorical information, with the justices listed in the rows and some aspect of his or her elevation to or departure from the bench listed in the columns. It is easy to read, concise, and extremely practical. Admittedly, the "On and Off the Court" database is just a collection of facts, which, although useful, can sometimes be impersonal. They rarely tell the whole story, and many of the basic facts contained in "On and Off the Court" act as insufficient proxies for stories worth telling. For this reason, with the database I provide short summaries of interesting circumstances surrounding select pieces of data. These summaries include:

The 1986 Election

The 1983 Ouster of Dorothy Comstock Riley

The Forced Resignation of John B. Swainson
 The 1943 Election defeat of Bert D. Chandler
 The 1885 Election defeat of Thomas M. Cooley
 The Attempted Ouster of George Morrell

Shortly after the completion of the "On and Off the Court" project, Angela Bergman, Executive Director of the Historical Society, received an email from a Princeton University student doing a research project on judicial politics. After introducing himself and his objective, he continued: *I was wondering where could I obtain information (or if I could obtain it from you) regarding the date each justice began his term on the bench. I consulted your online resource which is a great compilation of biographies of justices. By far more superior,*

organized, and informative than any other state I had to research. However, it often only states the year each justice started and ended his or her term. Is it possible to find out the exact date their term started?

Mrs. Bergman was able to email him the database which contained precisely the information he was looking for. With the addition of the "On and Off the Court" database and the two new web pages, our already "superior, organized, and informative" bank of information was improved, and the Michigan Supreme Court Historical Society further actualized its commitment to promoting awareness of the history of the Michigan Supreme Court.

To download the database or to view the information on-line, go to www.micourthistory.org and click on Resources.

Did you know.....

Of the 112 justices who have served on the Michigan Supreme Court Bench, 21 served their country in the armed forces before joining the Court.

Clifford Taylor – Served as a US Navy line officer from 1967 to 1971.

Robert P. Griffin – Served in the US Army during WWII.

Blair Moody – Served in the US Air Force during the Korean War.

James L. Ryan – Was a JAG Corps Officer for the US Navy and later a Military Judge.

Lawrence B. Lindemer – Served in the US Army and US Air Force in WWII.

John W. Fitzgerald – Served in the US Army Infantry in WWII.

G. Mennen Williams – Served in the US Navy in WWII. He was stationed in the Pacific Theater and earned ten battle stars.

***John B. Swainson** – Served during WWII. He lost both his legs clearing land mines as a volunteer on the battlefields of France. Received France's Croix de Guerre (the presidential citation) and the Purple Heart.

Michael D. O'Hara – Served in the Marines in WWII. He was part of the invasion force in Okinawa and was part of the occupation forces in Japan 1943.

George C. Edwards, Jr. – Served in the US Infantry in WWII. He was stationed in the Philippines.

Eugene F. Black – Enlisted in US Naval Reserve as lieutenant in WWII. A knee injury forced him into inactive duty.

Talbot Smith – Served in the Navy for 14 years.

***Harry F. Kelley** – Served in the US Army in WWI. His entire Notre Dame Law School graduating class joined the American Expeditionary force. In the Battle of Chateau-Thierry, Kelly led an assault upon an entrenched German machine-gun position, and lost his right leg. He was awarded the highest tribute paid to a non-Frenchman, the Croix de Guerre.

Thomas F. MacAllister – Volunteered for French Foreign Legion in WWI. He organized a volunteer ambulance unit

and flew combat missions. He was awarded the Medal of Honor, the highest award that could be given to an airman in the French military forces.

Harry S. Toy – Served in the US Army in WWI. He became captain of the 144th Machine Gun Company. He was wounded in action three times and gassed once. He was awarded the Croix de Guerre.

George E. Bushnell – Served as a Lieutenant in the Motor Transport Corps in WWI.

Robert M. Montgomery – Enlisted in the Union Army in the Civil War. He was part of the 7th Michigan Cavalry but he did not see active service during the Civil War.

Claudius B. Grant – Served in the Union Army during the Civil War. In the war he participated in many notable battles, and he resigned from duty in 1864 after reaching the rank of Colonel.

Edward Cahill – Enlisted in the Union Army in 1862. However, he was discharged later that year due to illness. He studied law until he was healthy enough to rejoin the war effort. He raised the first African American Infantry Unit in Michigan and led them in battle as their captain until the end of the war.

***Charles D. Long** – Served company A of the 8th Michigan Infantry in the Civil War. On April 16, 1862 he sustained two severe war wounds at the Battle of Wilmington Island in Georgia. He lost his left arm and a bullet became lodged in his inner thigh where it remained for the rest of his life. He left the bench when his war wounds became too much to bear and he died on June 27, 1902.

***Allen B. Morse** – Served as a member of Michigan's 16th Infantry aiding the Union effort in the Civil War. He lost his left arm during the attack on Missionary Ridge.

*denotes the loss or amputation of a limb due to combat.

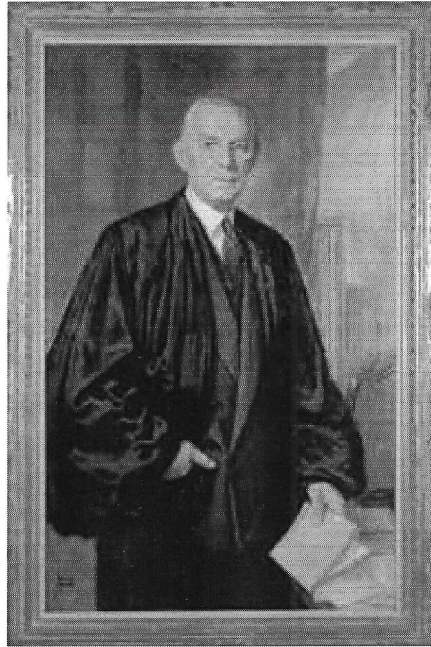
The 1943 Defeat of Bert D. Chandler

In many respects, elections bear a useful metaphorical resemblance to a footrace; in both cases, the closest finishes are always the most exciting. There were four participants competing for two places on the victory podium that was the Michigan Supreme Court in the April 1943 election, meaning that the top two vote getters would earn a seat on the Court and the bottom two finishers would go home prizeless. As in a race, the winners of elections often earn their victories before the voting begins through preparation and campaigning. This being said, on April 5, 1943, the competitors were equivalently aligned at the starting line and rearing to go. When the shotgun sounded on that day and the polls opened the closest contest in Michigan election history was officially underway.

Standings after the first leg of the race, marked by the submission of results from 1,197 out of the 3,754 total Michigan precincts, were returned on April 6, 1943. The results showed that Democratic incumbent Justice Bert D. Chandler had enjoyed an explosive start off the blocks and was leading the pack of four with 47,452 votes. Aggressively pursuing Chandler were Republican challenger Neil Reid with 45,644 votes, and Republican incumbent Emerson R. Boyles with 45,218 votes. Democrat Frank L. McAvinchey, the fourth competitor, suffered a hesitated jump off the line, and was never able to recover. At the first checkpoint, he limped along with just 15,173 votes.

With spectators on the edges of their seats, the second wave of reported precincts positioned the competitors still neck and neck. Although Justice Reid had gained enough ground to surpass Chandler, both Chandler and Boyles remained tight on his heels. On April 7, the Detroit Free Press reported the most recent standings. "The latest returns, (Reid) was leading Justice Bert D. Chandler, and Justice Emerson R. Boyles but the spread between

the first and third candidates was only 4,719 votes and the winners may not be known until the official canvass. Between Chandler and Boyles the margin was only 498..."¹ At this point, hardly a step separated the second and third place candidates, and this nose-to-nose dead heat would continue through the finish line.



As the race progressed, Reid proved himself to be a late breaker. Nearing the end of the contest, unofficial returns for all Michigan precincts determined him to have separated himself from Boyles and Chandler by approximately 8,000 votes. He comfortably blew through the finish well ahead of the others, claiming first place and one of the two available seats on the bench. In the wake of Reid's late spurt, however, a fight ensued for the final spot. An April 16 update of the vote tallies estimated that the difference between the second and third place finishers was only four votes! The

Detroit Free Press reported the indefinite results. "The grand totals subject to correction as minor discrepancies may be found in the remaining precincts are: Boyles 179,228; Chandler 179,224."² Such a photo-finish demanded a slow motion replay. A review of the counts in the Wayne County precincts, the last county to officially report its totals, was conducted. With the difference between the grand prize and no prize at all hanging in the balance, the Board of Canvassers wanted to be sure they could accurately identify the second place finisher.

The last remaining precinct tabulations were gathered on April 17, and officially confirmed two days later. The unlikely ending revealed an even slimmer margin of victory than what was previously believed: Boyles 179,228; Chandler 179,226. "Probably never in the memory of any living person has a state-wide election for high office been decided by as little as two votes," said Herman H. Dignan, Secretary of State and Chair of the Canvassing Board.³

“Normally, a difference of a few thousand votes is considered close in a state-wide contest,” noted the *Lansing State Journal*.⁴

Indeed, such a close finish literally left vote counters no room for error, and the consideration of human imperfection would hypothetically compel the losing party to seek recourse. Immediately after the announcement of the two-vote defeat, murmurs of a recount request naturally began to surface from Chandler’s Democratic allies. According to Michigan election law in 1943, only a candidate who considered himself “aggrieved” could petition for a recount. He was allowed two days after the canvass results to file a petition and post a five dollar charge for every precinct recounted.

Heeding the immediacy of the petition deadline, on April 21 Chandler promptly arranged an over-night meeting involving his closest friends and advisors to entertain the idea of requesting a recount. The purpose of the meeting was to select precincts that offered the possibility of increasing Chandler’s

total when subjected to a recount. Despite having a solid case in favor of a recount due to the nearly identical vote totals of the second and third place finishers, prior to the conference both Chandler and his comrades emitted strong indications they would not seek one. Chandler told the *Detroit Free Press* on April 18, “I had no business to run if I couldn’t be a good loser” (hardly the typical attitude of someone who considers himself “aggrieved”).⁵ In addition, his friends represented him as being personally inclined to let the election stand unchallenged in the theory that a recount would not enhance the dignity of the Court.⁶ Despite his immediate inclinations, Chandler did not want to commit to a decision either way until after the late night conference. He told the *Lansing State Journal* on April 21, “I have no comment because I just don’t know what I’ll do.”⁷

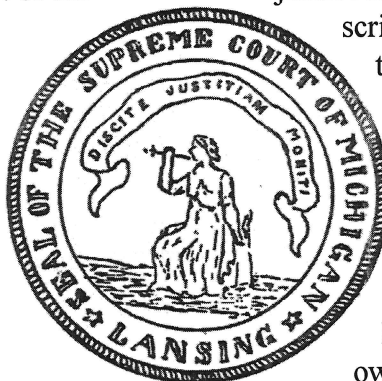
In the face of strong Democratic pressure to pursue a recount, Chandler announced his decision to abide by the results of the official canvass on April 22. He made known his refusal to ask for a recount

Did you know.....

The seal of the Michigan Supreme Court was created in 1814 for the Supreme Court of the Michigan Territory. Though we don’t know the name of the artist who rendered the seal itself, we do know that Governor Lewis Cass – the first Governor of the Territory of Michigan – devised the seal’s description. Volume 1 Michigan’s Territorial Laws, Governor Cass describes the seal of the Court as:

This seal to be an inch and three-quarters in diameter, within the seal to be common figure of Justice, being a woman, blindfolded, holding in one hand the scales and in the other the naked sword. In a scroll passing in a curve above or below the figure, as may suit the taste of the artist, to be these words, DISCITE JUSTITIAM MONITI. Around the seal to be these words, “Seal of the Supreme Court of the Territory.”

Though the original seal featured a sitting lady justice rather than a standing one, the 1814 description still applies to the seal as it exists today.



The Latin phrase, “Discite justitiam moniti,” is translated to mean “Be Advised, Learn Justice.” The phrase is a reference to book 6, line 620 of Vergil’s *The Aeneid*. In the story, King Phlegyas, angry at Apollo for becoming a lover of his daughter Coronis, takes justice into his own hands and destroys Apollo’s temple at Delphi. Apollo punishes Phlegyas by killing him and condemning his soul to act as ferryman for the souls of the dead that cross the river Styx, one of the four rivers of Hades. Phlegyas speaks the line, “discite justitiam moniti et non temnere divos [translated (you all) having been advised, learn justice, and do not disrespect the gods fate] as a warning to others not to make the same mistakes he did in meddling with the gods and with fate.

to Ernest B. Brooks, Democratic State Chairman, who explained that Chandler considered a statewide recount mechanically impossible, and that he believed anything less might not reflect the true results.⁸ Although he did not act on his obligation to initiate the recount, Chandler voiced his opinion in favor of a procedural change that would allow the State Board of Canvassers to conduct statewide recounts in extremely close elections in the future. Subsequently, a provision contained in Public Act 116 of 1954 addressed this issue, and to this day remains the working law governing the actions of the Board of Canvassers in tight election races. It states, "A recount of all precincts in the state shall be conducted at any time a statewide primary or election shall be certified by the board of state canvassers as having been determined by a vote differential of 2,000 votes or less."⁹

As for the 1943 Supreme Court election that redefined the term "extremely close" by being determined by a vote differential of 2 rather than 2,000, there was no reprisal, and Chandler graciously accepted his defeat after weighing his alternatives and deciding against a recount for mainly selfless

reasons. On December 31, 1943, Bert Chandler surrendered his seat to Emerson R. Boyles, a man who beat him by as many votes as there were open seats on the bench in an improbable and historic election.

Footnotes

- 1) *Detroit Free Press*. "GOP Leads Mount in State Vote". April 7, 1953. pg. 1A
- 2) *Detroit Free Press*. "Boyles and Chandler Nose and Nose in Court Race". April 16, 1943. pg. 1A
- 3) *Lansing State Journal*. "State Canvass Confirms Vote." April 21, 1943. pg. 1A
- 4) *Lansing State Journal*. "State Canvass Confirms Vote." April 21, 1943. pg. 1A
- 5) *Detroit Free Press*. "Boyles Wins Photo Finish by Six Votes." April 18, 1943. pg. 1A
- 6) *Lansing State Journal*. "State Canvass Confirms Vote." April 21, 1943. pg. 1A
- 7) *Lansing State Journal*. "State Canvass Confirms Vote." April 21, 1943. pg. 1A
- 8) *The Detroit News*. "Chandler Cites Need of Recounts – In Future April 22, 1943. pg. 6A
- 9) Michigan Compiled Laws. Chapter 168. Section 880a. Number 1

Article written by Lance Phillips as part of the "On and Off the Court Project".

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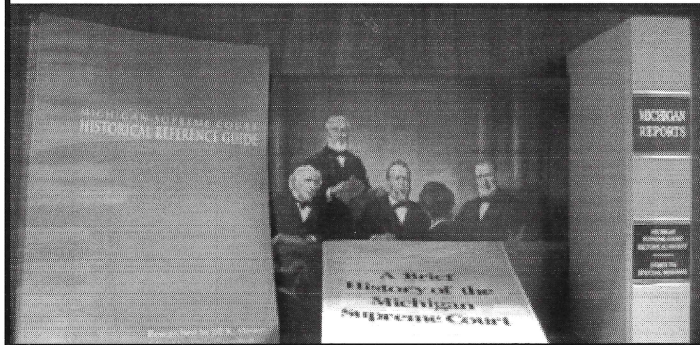
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The Michigan Supreme Court Historical Society, a non-profit 501(c)(3) corporation, collects, preserves and displays documents, records, and memorabilia relating to the Michigan Supreme Court and the other Courts of Michigan, promotes the study of the history of Michigan's courts, and seeks to increase public awareness of Michigan's legal heritage. The Society sponsors and conducts historical research, provides speakers and educational materials for students, and sponsors and provides publications, portraits and memorials, special events and projects consistent with its mission.

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