Society Update
FROM THE MICHIGAN SUPREME COURT HISTORICAL SOCIETY
FALL 2007

The 1986 Michigan Supreme Court Election

Stable laws and procedures are often created in response to the exploitation of weaknesses that bring attention to areas in need of amending. Throughout the history of the Michigan Supreme Court, and especially during the early to mid 19th century, the Michigan Legislature has often made amendments to the laws governing the Court in response to public criticism of the Court's organization and complaints by the justices themselves.

Exposure of deficiencies in procedure, however, is not limited to the early years of the Court. A modern example came to the forefront of public awareness during the 1986 Supreme Court election. Due to a problem with the laws governing candidacy requirements, specifically an absence of ballot access procedures for independent candidates, 24 hopeful individuals managed to get their names on the general election ballot to fill two spots on the Michigan Supreme Court: an absurd number of candidates by any standard.

A series of federal court rulings against the state of Michigan, beginning in 1976, unanimously held that strict restraints on "independent" candidates, those without political party affiliation, were unconstitutional and an undue burden on candidates not affiliated with mainstream parties. In a decision involving the 1982 election, the 6th Circuit U.S. Court of Appeals decreed that although it did not intend to "burden Michigan ballots with frivolous candidates," it was obligated to rule against existing election laws because Michigan had not established a uniform method for independents to gain access to the ballot by a showing of *some* public support for their candidacies.[1]

Aggravated by a decade of legal battles and the failure of the Legislature to cater to the unfavorable verdicts and amend the laws, Michigan Secretary of State Richard H. Austin announced that the 1986 election would be open to anyone who was a member of the State Bar of Michigan, was under 70 years of age, and could produce a sworn affidavit from at least one person supporting his or her candidacy.

Referring to the candidate requirement liberalization, House Elections Committee Chair Maxine Berman stated, "I'm very unhappy about the situation. We knew what was coming and it did come." House-passed legislation to set up an independent candidacy procedure died in the Senate and "there's no way to repair the damage" before the November election.[2]

With the floodgates open, the candidates signed up in droves. They covered the gamut of reputations, motivations, qualifications, and personalities: from those backed by major parties to those backed only by their immediate families; from first-time candidates to those seeking re-election; from small town private practitioners to veteran judges; from those racking up six-figure campaign expenses to those spending less than $1,000 on self-promotion.

One candidate, Willard Mikesell, was a former circuit judge who was suspended from the bench for "an emerging pattern of hostile conduct" toward lawyers and litigants.[3] Another, David Raaflaub, chose to run because of his belief that everyone living in a democracy ought to be able to get on an election ballot.[4] James Carras chose to

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run because of his dissatisfaction with the judicial system and his self-reported status as an "angry old man".[5] Jerry Kaufman chose to run mainly to contest the re-election of incumbent candidate Robert Griffin, whom he believed to be an anti-Semite.[6] E. Leonard Howarth approached the endeavor from a lighthearted perspective saying, "... it's tragic if you run a serious campaign, it's no fun. I'm going to challenge the entire field to a game of three wall handball..." When asked about debating public issues with other candidates, he added, "Nobody wants to hear a debate."[7]

Whether or not some of these candidacies were, in the 6th Circuit Court of Appeals' conception of the phrase, "frivolous burdens to Michigan ballots", they were nonetheless legal under the loose 1986 candidate prerequisites. When all was said and done, Michigan voters were asked to choose two out of two dozen candidates, only five of whom were backed by established political parties.

JUSTICES OF THE SUPREME COURT 8 YEAR TERM (2)

CANDIDATE NAME
Archer, Dennis W.
Carras, James J.
Clay, Henry
Collison, Jeffrey C.
Ferency, Zolton
Ferrara, Andrea J.
Fitzgerald, E. Thomas
Griffin, Robert P.
Howarth, E. Leonard
Kallman, James T.
Kaufman, Jerry J.
Kelley, James J.
Korn, Stephen P.
MacKenzie, Barbara B.
Marutiak, Michael Joseph
McDonough, John J.
Mikesell, Willard L.
O'Hara, Jr., John P.
Paunovich, Melvin L.
Raaflaub, David H.
Robb, Dean
Simon, Caleb M.
Simon, Michael F.
Stelt, James R.
Weiss, Robert E.

Candidate Statistics from the Secretary of State's Office on the 1986 election. (http://www.michigan.gov/documents/sos/1986_CFR_Supreme_Court_Stats_195080_7.pdf)

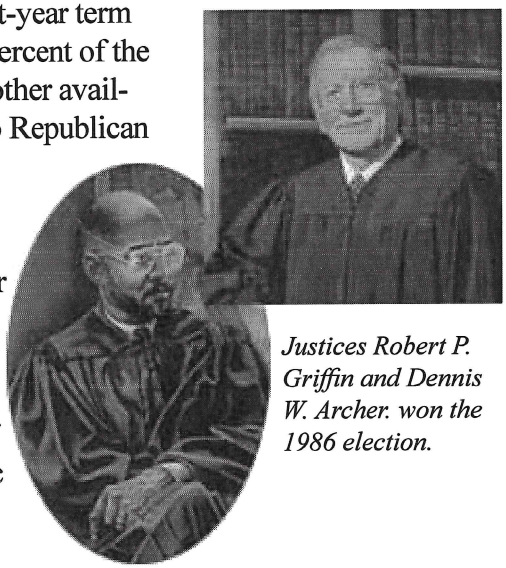
The implications that the saturated ballot would have on the upcoming election were unclear. Republican candidate Robert P. Griffin was critical of the unusual situation. "I'm afraid it's going to be a jungle of confusion for the voters, which is unfortunate," he said.[8] Spencer Abraham, chairman of the Michigan Republican Party, predicted that many people would look at the length of the ballot and walk out of the voting booth.

Not everyone expressed disapproval of the situation. Others celebrated the widespread participation as being indicative of a healthy democracy. One candidate, Caleb Simon, dismissed the possibility that an under-qualified individual could ascend to the state's highest court. "Democracy does work," he said. "I believe that people are going to make good and intelligent decisions. If you have that basic faith, you should have candidates with access to the ballot."[9]

With so much competition, how optimistic were the candidates that they would actually be elected? In past Michigan Supreme Court elections, candidates backed by major parties have won an overwhelming majority of the time. In fact, since the reorganization of the Court in 1857, only two candidates not endorsed by a major party had proved victorious: Charles Levin in 1972 and Thomas G. Kavanagh in 1976.

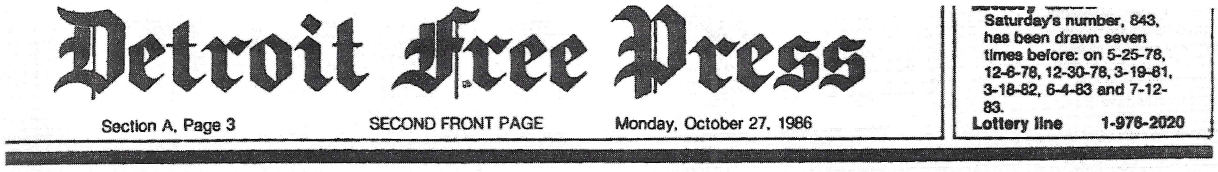
Could another "independent" pull off an upset in 1986? One of the nineteen, E. Thomas Fitzgerald, contended that their chances varied. According to him, *some* of the independents were "at least viable. Others are a joke."[10] Political observers agreed that the Democratic candidates Dennis Archer and Dean Robb and the Republican candidates Robert Griffin and James Kallman, stood the best chances. They also agreed, however, that in such a large field, all of the candidates had a chance. If the votes were evenly divided among the 24 candidates, a plurality of just over four percent would be enough to win.

Unfortunately for the many underdogs, however, the election results proved to be far from an equal distribution of the votes. Democratic and Republican powerhouses once again stole the show. On November 4, 1986 Democratic incumbent Dennis Archer was elected to his first full eight-year term by winning 19 percent of the total vote. The other available seat went to Republican Robert Griffin, who received 22 percent. For most of the other candidates, the election was little more than a few months of fame on a public platform and a part in one of the most bizarre elections in Michigan's history.



Justices Robert P. Griffin and Dennis W. Archer. won the 1986 election.

Until after the 1986 election, there was, in effect, a complete absence of ballot access requirements for "inde-


Detroit Free Press

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Saturday's number, 843, has been drawn seven times before: on 5-25-78, 12-6-78, 12-30-78, 3-19-81, 3-18-82, 6-4-83 and 7-12-83.
Lottery line 1-976-2020

24 candidates clog race for Supreme Court

pendent" candidates. In 1988, Michigan election law was amended with ballot access procedures for "independent" candidates without political party affiliation (1988 PA 116, effective May 2,1988).[11] Today, Michigan Supreme Court candidates must be qualified electors, have been licensed to practice law in Michigan for at least five years, and at the time of election must be under 70 years of age. Independent candidates must provide 30,000 to 60,000 signatures from individuals supporting the candidacy, a far cry from the one signature that was necessary in 1986.

Despite the critiques of constraints on ballot access, the 1986 election demonstrated that some qualifications must be established in order to guarantee every candidate's legitimacy, because every person who appears on the ballot could potentially become a member of our state's highest court.

Endnotes

1 Freedman, Eric. *The Detroit News* "Ballot crammed with court candidates". September 30, 1986.
2 Ibid.
3 Ibid.
4 Goldberg, Susan. *Detroit Free Press* "24 candidates clog race for Supreme Court". October 27, 1986 pg. A3.
5 Ibid.
6 Ibid.
7 Freedman, Eric. *The Detroit News* "Ballot crammed with court candidates". September 30, 1986.
8 Ibid.
9 Goldberg, Susan. *Detroit Free Press* "24 candidates clog race for Supreme Court". October 27, 1986 pg. A3.
10 Freedman, Eric. *The Detroit News* "Ballot crammed with court candidates". September 30, 1986.
11 Bradley S. Wittman, Director of the Elections Liaison Division, Michigan Department of State Bureau of Elections.

The preceding article was written by 2006 Coleman Intern Lance Phillips as part of the "On and Off the Court" Project. For more about the project, go to http://www.micourthistory.org/resources/electapptmain.php

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Historical Society Receives $9,400 Grant from the Michigan Humanities Council

On October 2, The Michigan Humanities Council (MHC) presented a $9,400 grant to the Historical Society for the project, *The Verdict of History: The History of Michigan Jurisprudence Through Its Significant Supreme Court Cases*. The grant is part of the Humanity Council's *Michigan People Michigan Places, Our Stories Our Lives* program, which supports community collaboration for public humanities programs. The grant was presented at the State Bar of Michigan in Lansing. The program included remarks by Jan Fedewa, Executive Director of the Michigan Humanities Council; Chong-Anna Canfora from U.S. Senator Debbie Stabenow's office; Jim Turner from U.S. Senator Carl Levin's office; Tony Baltimore from U.S. Representative Mike Rogers' office; Angela Bergman, Historical Society Executive Director; and Wallace D. Riley, Historical Society President.

Speaking about the project, Jan Fedewa stated, "This unique project creates important opportunities for high school students to learn about jurisprudence by exposing them to some of Michigan's significant Supreme Court cases. The Michigan Humanities Council is pleased to support the development of this educational program."

Jan Fedewa addresses the press.

Following the example of the U.S. Supreme Court Historical Society, the Michigan Supreme Court Historical Society has undertaken The Verdict of History Project: a project that examines the History of Michigan Jurisprudence Through Its Significant Supreme Court Cases. The Michigan Supreme Court Learning Center and the Michigan Center for Civic Education Through Law are collaborating on this project.

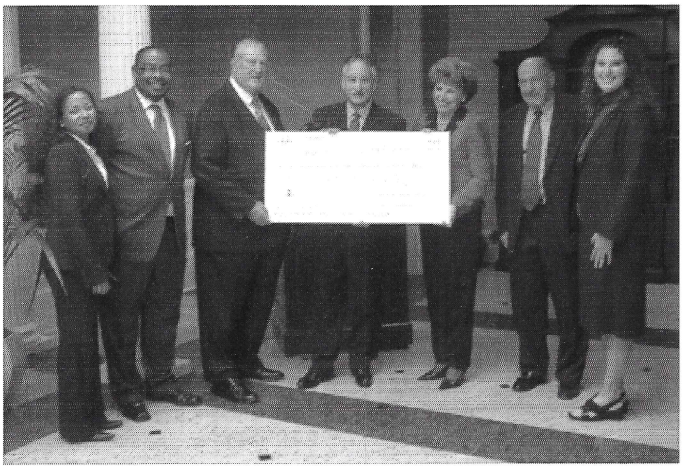
Ms. Bergman stated: "The Verdict of History Project will help citizens, teachers, and students better understand the judicial process and the ways in which the state judicial system can have a direct affect on their everyday lives. Through the study of individual cases and their political, historical, and practical repercussions, people will better be able to understand the importance of participation in the justice system and will be provided with a platform for discussion of serious social issues."

The *Verdict of History* features two main outcomes:

1) High school lesson plans about seven cases. Two Michigan educators, Brian Stevens and Cassie Heos, have created plans that feature an overview of the Michigan court system, descriptions of the facts of the each case, "How Would You Decide" activities, and instructions for creating mini-moot court and brief writing activities. The lesson plans will be available online later this year. With the help of the Michigan Center for Civic Education Through Law and the Michigan Supreme Court Learning Center, we will present the plans to teachers at workshops and notify interested teachers about their availability.

2) A website that features a list of significant Michigan Supreme Court cases. Each case will have a link to an article about the case and its ramifications, the cases' opinions, and to supplemental materials when they are available.

Angela Bergman, project director, explains, "We have worked with two outstanding Michigan educators to complete the "Verdict of History" teaching units. Each case selected will encourage discussion and debate



Jan Fedewa of the Michigan Humanities Council presents check to Society President Wallace D. Riley and Treasurer Lawrence P. Nolan.
(Left to Right: Chong-Anna Canfora, Tony Baltimore, Wallace D. Riley, Lawrence P. Nolan, Jan Fedewa, Jim Turner, and Angela Bergman.)

among students. The teaching units, which will be unveiled at the Center for Civic Education's Law and Civic Education Workshop in December, offer several options for teachers ranging from a single day "How Would You Decide" format to an in-depth look at the case and mini-moot court and brief writing activities."

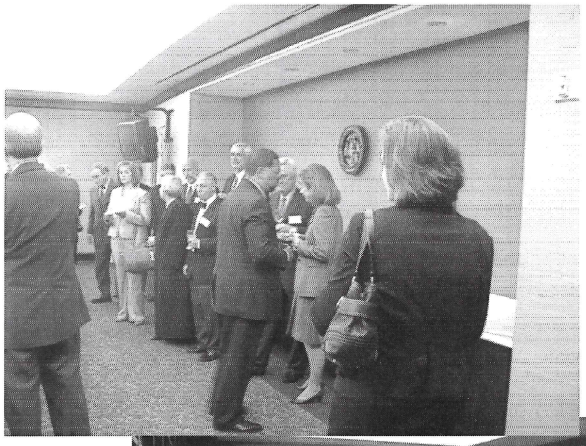
"Knowledge of history is the framework for building our future," said U.S. Representative Mike Rogers. "As a former FBI Special Agent, I know how important it is for our young people to understand the work of our judicial system and the role of the Michigan Supreme Court has in ensuring the protection of our freedoms and our citizen-based government."

"Knowledge of the law and jurisprudence is an important component of good citizenship," said U.S. Senator Carl Levin. "With the *Verdict of History* project, the Michigan Supreme Court Historical Society is providing our schools with the tools to assure that we graduate fully prepared citizens."

The press conference was attended by two television stations and reporters from four publications.

Supreme Court Advocates Guild Hosts Inaugural Dinner

The Michigan Supreme Court Historical Society Advocates Guild hosted its first annual Advocates Guild dinner at the Hall of Justice on October 1, 2007. Advocates Guild members, joined by all seven Michigan Supreme Court justices and Court Clerk Corbin Davis, enjoyed hors d'oeuvres in the justices' conference room, a tour of some of the justices' chambers, a photo opportunity with the Court in the Michigan Supreme Court courtroom, and dinner on the 6th floor rotunda.



Want to join? For information about the Advocates Guild, contact Angela Bergman at abergman@micourthistory.org or 517-373-7589 or go to www.micourthistory.org

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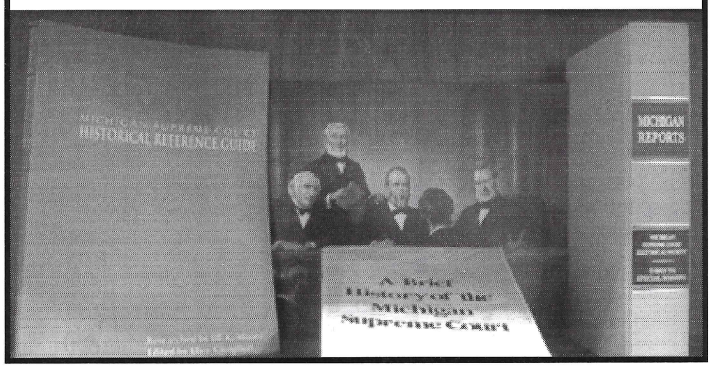

Mission Statement

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.

Society Update is published quarterly by the Michigan Supreme Court Historical Society. Writing submissions, article ideas, news and announcements are encouraged. Contact the Society at: 1st Floor Hall of Justice, 925 W. Ottawa Street, Lansing, MI 48915 Phone: 517-373-7589 Fax: 517-373-7592
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