



Society Update

The Official Publication of the Michigan Supreme Court Historical Society

Fall 2012



Stephen J. Markman



Bridget M. McCormack



Brian K. Zahra

Three Elected to Michigan Supreme Court

More than six million Michigan voters cast their ballots on Tuesday, November 6, 2012, to select among other candidates and proposals, three for the Michigan Supreme Court. Incumbent justices Stephen Markman and Brian Zahra were re-elected, and Bridget Mary McCormack was elected to the Court for the first time. Both Justice Markman and Bridget Mary McCormack were elected to eight-year terms and Justice Zahra was elected to a partial term that expires on January 1, 2015.

Justice Stephen Markman first joined the Michigan Supreme Court on October 1, 1999, when he was appointed by Governor John Engler to fill the position vacated by James Brickley (MSC 1982–1999). He won election the following year, and again in 2004. Among the candidates in the second race in 2004 was his current colleague on the Court, Brian Zahra.

Justice Markman served as Chief Counsel of the U.S. Senate Subcommittee on the Constitution and

Deputy Chief Counsel of the U.S. Senate Judiciary Committee from 1978–1985. He served as Assistant Attorney General of the United States from 1985–1989, heading the Department of Justice's Office of Legal Policy, which coordinated the federal judicial selection process. President George H.W. Bush nominated him to serve as U.S. Attorney in Michigan, a position in which he served from 1989–1993. He then practiced law with Miller, Canfield, Paddock & Stone in Detroit until he joined the Michigan Court of Appeals in 1995.

Since 1993 he has also taught constitutional law at Hillsdale College. He and his wife Mary Kathleen have two college-age sons, James and Charles. The family resides in Mason, the county seat of Michigan's capital city, where Justice Markman has coached basketball and Little League baseball.

Bridget Mary McCormack, the newest elected member of the Court, fills the vacancy created by Justice Marilyn Kelly's departure from the Court.

Justice Kelly (MSC 1997–present) was prevented from running for re-election due to age restrictions. Judges and justices are constitutionally barred from seeking re-election after the age of 70. {For more information about Justice Kelly, please see the article on the next page.} Justice Kelly introduced McCormack at the Democratic Convention by saying, “My term is expiring now and I cannot run again because of the age limit in the state constitution. So I am here today to introduce the person who I believe you should nominate and elect to replace me on the Michigan Supreme Court.”

Bridget McCormack is a professor of criminal law and legal ethics at the University of Michigan Law School, where she is also the Dean for Clinical Affairs. Among the many clinics she has been involved in starting there, she founded the Michigan Innocence Clinic in 2008, which has resulted in the exoneration of six people who had been wrongfully convicted.

She began her legal career trying cases in New York City’s trial courts with The Legal Aid Society, as well as arguing in appellate courts with the Office of the Appellate Defender, and handling over 1,000 cases for individual clients in both the trial and appellate courts. She is married to Steven Croley, a lawyer and University of Michigan Law School professor. They have four children. Both of McCormack’s younger siblings are actors, and one of the notable facets of her campaign was a video that brought together the cast of the West Wing, of which her sister was a cast member, to discuss the critical importance of voting in judicial elections. To see the video, visit our website at www.micourthistory.org.

Brian Zahra was appointed to the Michigan Supreme Court on January 14, 2011, by Governor Rick Snyder, and won election this month to fill out the remainder of Justice Maura Corrigan’s term. She left the Court when she was appointed Director of the Department of Human Services. According to Article VI, Section 23 of the Michigan Constitution, “The person appointed by the governor shall hold office until 12 noon of the first day of January next succeeding the first general election held after the vacancy occurs, at which election a successor shall be elected for the remainder of the unexpired term.”

Justice Zahra spent twelve years on the Michigan Court of Appeals before his appointment to the Michigan Supreme Court. Prior to that he served as a

judge on the Wayne County Circuit Court for four years, practiced with the law firm of Dickinson, Wright, Moon, Van Dusen & Freeman, and clerked for Judge Lawrence P. Zatkoff of the U.S. District Court for the Eastern District of Michigan.

Additionally, Zahra financed his undergraduate education by owning and operating first a small health and personal care retail store in downtown Detroit, and later a grocery outlet with two partners. He has taught evidence as an adjunct professor at the University of Detroit-Mercy Law School and served on the Michigan Board of Law Examiners, which drafts and grades the examination that law school graduates must pass in order to become licensed attorneys.

He and his wife Suzanne live in Northville Township with their son and daughter. He is involved in Kiwanis Club International and the Novi Youth Hockey Association.

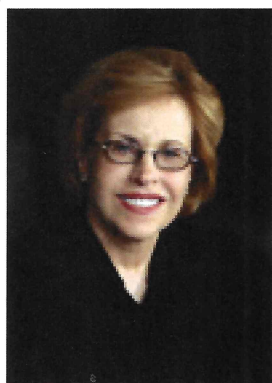
Other candidates who ran for the Court this year included veteran judges Colleen O’Brien, Connie Kelley, and Shelia Johnson. Third-party candidates included Kerry Morgan, Doug Dern, and Bob Roddis for the eight-year term, and Mindy Barry, who was running for the partial term.

According to Justice at Stake and the Brennan Center for Justice, Michigan’s Supreme Court race was the priciest in the country, with \$10 million spent on television ads alone.

The investiture of Justice-Elect Bridget McCormack will be held in the afternoon on Wednesday, January 23, 2013, as a special session of the Michigan Supreme Court.

Invitations will be mailed to all Society members.

Justice Marilyn Kelly Prepares for Life Off the Court



Marilyn J. Kelly was born April 15, 1938, the youngest of three children to parents Ralph and Evelyn. She grew up in Detroit, graduated from Eastern Michigan University, and studied for a year at the Sorbonne in Paris. Upon her return to the U.S., she earned a master's degree at Middlebury College in Vermont.

Justice Kelly has dedicated her life to education and public service.

Her professional career began as a teacher of French language and literature in the Grosse Pointe public schools, and at Albion College and Eastern Michigan University.

In 1964, at the tender age of 26, she was elected to the state Board of Education. Some thought she was too young for the position, however, she served on the Board of Education for twelve years, including the last two as the board's president, and worked hard to improve K–12 education.

It was during her time there that she realized her fascination with the law. The future Justice Kelly studied at Wayne State University Law School, graduating in 1971. She went into private practice for seventeen years.

In 1992, she ran for a seat on the Michigan Supreme Court. Kelly was defeated by incumbent Justice Dorothy Comstock Riley (MSC 1982–83; 1984–1997). Kelly ran again in 1996 and won the seat she has now, filling a vacancy created by the retirement of Charles Levin (MSC 1972–1996), who had not sought re-election.

Justice Kelly became part of the Court's first female majority (*seen below*) along with Justice Dorothy Comstock Riley, Justice Patricia Boyle, and Justice Elizabeth Weaver.



Clockwise from left: Patricia Boyle, Elizabeth Weaver, Marilyn Kelly, and Dorothy Comstock Riley.

It was during that second, successful campaign, however, that Justice Kelly's husband of 28 years, dairy farmer Richard Stout, passed away unexpectedly. Although she was devastated, she continued with her campaign in honor of her late husband. "He had always been so supportive, and I knew he would want me to continue, so I did."

Later Justice Kelly met Dr. Donald Newman, a family practitioner from Southfield. They have been married twelve years.

In 2009, Justice Kelly was elected Chief Justice, and was part of the Court's second female majority along with Justice Weaver again, Justice Corrigan, and the newly-elected Justice Hathaway.

This year Justice Kelly was honored as "Woman of the Year" by *Michigan Lawyers Weekly*. Among the many achievements the paper cited from her 48 years of public service, was her "loud and unwavering voice in the call for more comprehensive and fair indigent representation." Her role in the Michigan Judicial Selection Task Force, which she co-chaired with former Justice James L. Ryan (MSC 1975–1986), was also noted. The report of the Task Force was released in spring 2011.

Justice Kelly's life has centered on her career, but her life outside the Court is full. She and her husband have a West Highland Terrier, McDuff, who has won numerous show and obedience titles. Justice Kelly also recently indulged a longtime interest in the opera when she won a role in "The Barber of Seville" this fall.

Once Justice Kelly leaves the Court, she plans to travel. She will also be setting up a committee to raise funds for her official portrait, which will be dedicated at a date yet to be determined.



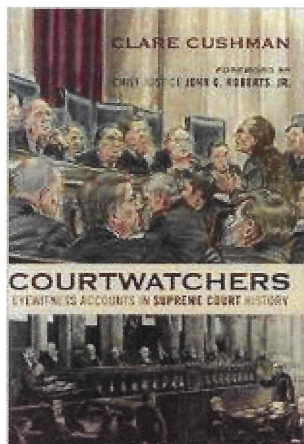
Photo credit: John Grigaitis/MOT

Sources for this article:

Lessenberry, Jack. "Profile: Michigan Supreme Court Chief Justice Marilyn Kelly". *Hour Detroit*. August 2010.
 "Justice Marilyn Kelly Named 'Woman of the Year'". *Ingham County Legal News*. October 4, 2012.
 "Michigan Judge Moonlights in Famous Comic Opera". *Click on Detroit*. October 19, 2012.

BOOK REVIEW:

Courtwatchers: Eyewitness Accounts in Supreme Court History



Clare Cushman, director of publications for the U.S. Supreme Court Historical Society, has recently written a behind-the-scenes history of the Court, entitled *Courtwatchers: Eyewitness Accounts in Supreme Court History*. Chief Justice John G. Roberts wrote the foreword.

The narrative is woven from memoirs, letters, diaries, and newspaper accounts by the Justices, their spouses and children, court staff, journalists, and other eyewitnesses, including an entire chapter devoted to clerk's stories. Each of the rest of the thirteen chapters covers one general thematic topic such as circuit riding, appointment & confirmation, oral argument, consensus building, and stepping down.

Courtwatchers was published by Rowman & Littlefield Publishers, and is available from Amazon and other booksellers. It is 249 pages long.

A "Switch" In Time Saves Nine

A play on the colloquialism a "stitch in time saves nine," an act from the past still affects the arrangement of the U.S. Supreme Court today. *Written by Jamie Crist, 2012 Coleman Intern*

During the administration of President Franklin Delano Roosevelt, the U.S. Supreme Court was divided. The conservative "Four Horsemen" were on one side, the liberal "Three Musketeers" on the other, with swing votes from Chief Justice Charles Evan Hughes and Associate Justice Owen Josephus Roberts.

President Roosevelt repeatedly faced adversity from the conservative side of the Court, as they rejected his New Deal legislation, and Justice Roberts frequently swung the vote their way. FDR's efforts to relieve some of the economic downturns of the Great Depression were seen as unconstitutional attempts to increase government regulation and curtail entrepreneurship.

So the President took matters into his own hands.

FDR's court-reform bill, also known as the "court packing plan", would have expanded the Court to 15 members, and would have allowed FDR to appoint an extra justice, with a maximum of six, should one of the standing members be older than 70 years and six months in age. His intent was to appoint more liberal-minded justices in order to garner support for his New Deal legislation.

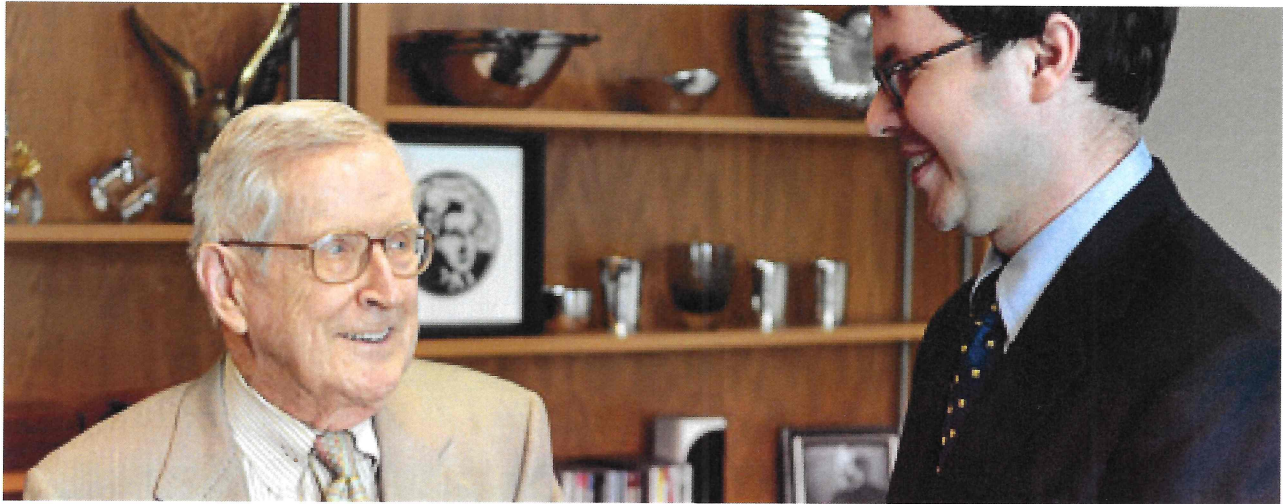
However, in 1937 a case came before the U.S. Supreme Court that changed everything. *West Coast Hotel Co. v. Parrish* was to determine the constitutionality of a minimum wage law in Washington state. The precedent was set: *Adkins v. Children's Hospital* (1923) ruled that a minimum wage law in the District of Columbia was in fact unconstitutional. But in a "switch," Justice Roberts ruled with the liberal "Musketeers," effectively ending the period of the Supreme Court striking down any attempt to regulate business.

Some believe this was a preemptive strike on behalf of the Court to preserve the number of justices at nine. But other accounts say that the *Parrish* decision was already decided before FDR announced his plans, and it was just the timing that made it look as if the Court was playing catch-up. Regardless, Roberts' decision ushered in a period of business regulation that helped boost the economy in its time of need.

Another Roberts made an important switch much more recently in the constitutionality case of the Affordable Health Care Plan. Chief Justice John Roberts joined the majority in upholding the constitutionality of the individual mandate, another important switch that likely has changed the face of the country for many years to come, just like Justice Owen Roberts 85 years prior.

Law Student Prize

University of Michigan Law School



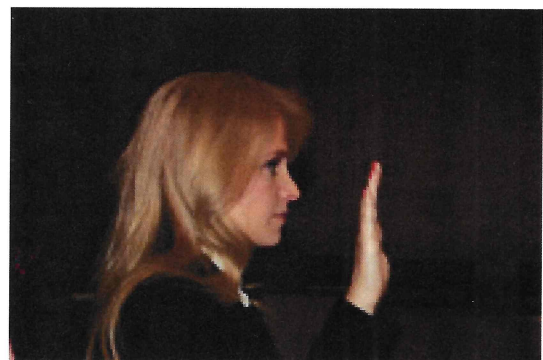
University of Michigan Law School Professor Emeritus John W. Reed recently presented the Society's Law Student Prize to Edward "Ted" Lawrence, a third-year student at the University of Michigan Law School. Mr. Lawrence received the highest grade in the Early American Legal History class taught by Professor Bill Novak. Mr. Lawrence is a lifelong resident of Ann Arbor, who graduated from Kenyon College in Ohio with a degree in history. He worked in Washington, D.C. for foreign policy magazine, *The National Interest*, before returning to Michigan in 2010 to begin his legal studies. Professor Novak said that every year his students are genuinely excited about the prospect of the award, and it has allowed them to identify and reward some deserving, historically-minded law students. Mr. Lawrence received a \$500 cash prize as well as a student membership in the Society for the duration of his law school career.

Law Student Prize

Thomas M. Cooley Law School

Nichelle Dorroh, a third-year law student at Thomas M. Cooley Law School has been selected as the 2012 winner of the Society's Law Student Prize. She was presented the prize during the Society's Board of Directors meeting in October, which coincided with the opening of the Court's new term. Also on hand was Cooley Law School President Don LeDuc and some of Ms. Dorroh's family and friends. Society President Wallace D. Riley presented the \$500 check to Ms. Dorroh and congratulated her on her excellent scholarship. Ms. Dorroh acknowledged that her role as a juror in a federal death penalty case inspired her to go to law school. She will begin externing with the 19th Judicial District Public Defender's Office, in Clarksville, Tennessee, in January 2013.

From Coleman Intern to Lawyer



Stephanie Schnelz, the Society's 2009 Coleman intern, graduated from Michigan State College of Law in May and was sworn in as an attorney earlier this month. Congratulations!

Domestic Violence Exhibit Debuts in Learning Center



A new exhibit at the Michigan Supreme Court Learning Center aims to educate young visitors about domestic violence--and how to look for the warning signs of an abusive partner.

"Domestic violence doesn't affect adults alone; many abusive relationships begin when the people involved are still in their teens, and children suffer from domestic violence in their families," said Learning Center Coordinator Rachael Drenovsky. "Through this age-appropriate exhibit, we hope to teach young people about domestic violence--how to spot an abusive relationship, how to help victims of dating violence, what role the courts play, and what help is available for domestic violence victims."

The interactive exhibit allows visitors to follow a fictional domestic violence case from arraignment through trial and sentencing. Another feature offers ideas for speaking with someone who acknowledges being in an abusive relationship. The content is drawn from the Domestic Violence Prevention and Treatment Board's youth education campaign, "Dating Violence: It Is a Big Deal." Other features depict abusive behaviors and invite visitors to select desirable traits in a partner--such as "kind," "friendly," and "patient." Business cards are available with the phone number of the National Domestic Violence Hotline for visitors to take away.

Speaking at the exhibit's opening ceremony on October 23, 2012, Justice Michael F. Cavanagh, the Supervising Justice of the Learning Center, told an audience of eighth grade students from Dearborn Heights' St. Anselm School, "I hope that you will take with you not only important lessons about how the courts work, but also about making important decisions in your life."



A group of students checks out some domestic violence-related websites on the exhibit's iPads. The iPads have been specially programmed to only go to certain, age-appropriate websites.

For more information or to schedule a tour, contact Learning Center Coordinator Rachael Drenovsky at (517) 373-7171 or by email at drenovskyr@courts.mi.gov.

Advocates Guild Dinner 2012

Each year the Advocates Guild of the Michigan Supreme Court Historical Society invites the Justices of the Michigan Supreme Court to dine with them on the opening of the Court's new term. This year's event was held on Tuesday, October 9, 2012, in the sixth floor rotunda of the Hall of Justice.



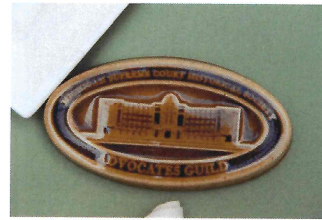
Chief Justice Robert P. Young, Jr. greets Advocates Guild members. From left Valerie Newman, Jill Wheaton, and Professor Gerald Fisher.



Justice Markman poses with Advocates Guild members during the reception.



Justice Mary Beth Kelly and Judge Bill Hampton.



Each attendee at the Advocates Guild Dinner received a commemorative tile from Pewabic Pottery. The color for this year's tile is golden yellow. Past tiles have been blue and green.

Tiles are available for purchase by Advocates Guild members who did not attend the dinner. Contact Carrie Pickett at (517) 373-7589 or by email at cpickett@micourthistory.org for more information.



Justice and Mrs. Cavanagh speaking to Stephen K. Valentine, Jr. of the Society's Board of Directors.



Justice Zahra dines with Advocates Guild members. Each justice had their own table of guests.



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