

Wounded Warrior: The Rise and Fall of Michigan Governor John Swainson

In the preface to his award-winning book Wounded Warrior: The Rise and Fall of Michigan Governor John Swainson, Lawrence Glazer writes:

In 1984, nine years after he was forced to leave the public career he loved, the justices of the Michigan Supreme Court invited John Swainson back to the Capitol for the formal presentation of his portrait, a tradition for all retired justices. They saw no reason he should be an exception.

Today the Supreme Court Historical Society feels

likewise about Glazer's book, and has invited him to be the presenter of this year's historical vignette at our Annual Luncheon, to be held on April 19, at the Detroit Athletic Club.

Wounded Warrior: The Rise and Fall of Michigan Governor John Swainson was published in 2010 by the Michigan State University Press. The book was named a 2011 Michigan Notable Book by the Library of Michigan and it received an IPPY (Independent Publisher Book

Award) in the biography category.

Before writing *Wounded Warrior*, Lawrence Glazer worked as an Assistant Attorney General and later as Chief Legal Adviser to Governor James Blanchard, before being named a Circuit Court Judge. He spent four years researching the life of John Swainson, traveling around the state and conducting scores of interviews.

Part one of Glazer's biography of John Swainson begins with his formative years in Port Huron before enlisting in the Army in 1943. A year later the young

> soldier was conducting a supply mission in World War II France when a landmine exploded. He lost both legs as a result, and received France's Croix de Guerre, the Presidential citation with two battle stars, and a Purple Heart.

> As Frank Kelley said at Justice Swainson's portrait dedication in 1984, "Lesser men would have died of their wounds, but John Swainson's spirit never gave up. This eighteen-year-old recovered from the loss of both his legs. ... Many



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would have retired to a wheelchair a hero, and devoted themselves to war veteran activities for the rest of their lives, with great respect, and nothing further expected of them."

But that is not at all what John Swainson did. Instead, he worked with therapists to learn to walk upright and unassisted. He attended Olivet College, married, and moved South where he finished his undergraduate degree and law school studies at the University of North Carolina. His young family moved back to Michigan where he began a law practice in Detroit.

Ransom, like Swainson and Williams, served both in the executive and judicial branch of government. He was appointed Chief Justice of the Michigan Supreme Court in 1843 and elected Governor in 1847. He experienced a reversal of fortune in his final years, having to sell his Kalamazoo homestead and dying at the age of 63. Swainson also talked about the accomplishments of the first Chief Justice William Fletcher, and his later downfall and resignation from the Court.

Swainson connected the stories to his own life in order "to emphasize that all of the portraits collected here

I will let history, of which I have become quite fond, be the judge of my public career...

bring with them much human experience that lies behind the robes."

Swainson's life in public service soon followed. He was elected to the Michigan Senate in 1954 and again in 1956. In 1958 he was elected to serve as G. Mennen Williams' Lieutenant Governor during his last term. Swainson ran for and won the governorship in 1960, the second-youngest governor at the age of 35. One of his notable acts as Governor was the appointment of Otis Smith, the first African American to the Michigan Supreme Court.

Swainson was defeated by George Romney in the race for Governor in 1962. He returned to his law practice, and in 1965 was elected to the Circuit Court. Five years later, he won statewide election to the Michigan Supreme Court on a ticket that included his former boss, G. Mennen Williams. In fact, as Williams noted at Swainson's portrait dedication in 1984, they were both running on an open ticket and Swainson managed to get ahead of Williams, who became the junior member of the Court after having been Governor to Swainson's Lieutenant Governor.

After his portrait was unveiled, Swainson said, "The presentation of portraits to the Court is important, because they portray specific persons of particular times in the history of the State of Michigan." He went on to talk about the life of Epaphroditus Ransom, whose portrait had hung in his office while he was on the Court.

He concluded by saying, "I will let history, of which I have become quite fond, be the judge of my public career, and I'm honored to have my portrait placed with the Michigan Supreme Court. Thank you."

The Special Session of the Michigan Supreme Court in which John Swainson's portrait was dedicated can be read in its entirety on our website at www.mi-courthistory.org.

John Swainson's portrait dedication was published in Volume 419 of the *Michigan Reports* and is situated between the reports of the portrait dedications of Harry Kelly and Mary Stallings Coleman.

The portrait of Justice John Swainson was painted by artist Dorthea Stockbridge. It hangs on the fourth floor of the Hall of Justice. His gubernatorial portrait is notable for appearing unfinished. It can be viewed at the State Capitol.

To attend the Annual Luncheon on April 19, and hear Lawrence Glazer's vignette, please complete the RSVP card that was recently mailed to you, or contact the Society at (517) 373-7589.

If By Rudyard Kipling

IF YOU can keep your head when all about you
Are losing theirs and blaming it on you,
If you can trust yourself when all men doubt you,
But make allowance for their doubting too;
If you can wait and not be tired by waiting,
Or being lied about, don't deal in lies,
Or being hated don't give way to hating,
And yet don't look too good, nor talk too wise:

If you can dream— and not make dreams your master;
If you can think— and not make thoughts your aim,
If you can meet with Triumph and Disaster
And treat those two impostors just the same;
If you can bear to hear the truth you've spoken
Twisted by knaves to make a trap for fools,
Or watch the things you gave your life to, broken,
And stoop and build 'em up with worn-out tools:

If you can make one heap of all your winnings
And risk it on one turn of pitch-and-toss,
And lose, and start again at your beginnings
And never breathe a word about your loss;
If you can force your heart and nerve and sinew
To serve your turn long after they are gone,
And so hold on when there is nothing in you
Except the Will which says to them: "Hold on!"

If you can talk with crowds and keep your virtue,
Or walk with Kings— nor lose the common touch,
If neither foes nor loving friends can hurt you,
If all men count with you, but none too much;
If you can fill the unforgiving minute
With sixty seconds' worth of distance run,
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son!"

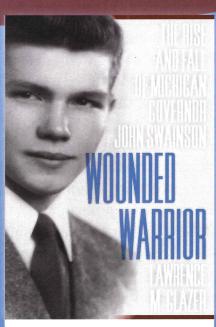
This poem was read by former Justice Dennis Archer at John Swainson's portrait presentation. Unbeknownst to Archer, Swainson's daughter had framed and given the poem to her father ten years previously.

MICHIGAN HISTORY from MSU PRESS

THE THE PERSON NAMED IN TH New people today remember John was elected as Michigan's youngest

public officials to have served in the branches of state government. Then, in 1975, he was indicted on federal charges of bribery and perjury, and

ERISE AND FALL OF MICHIGAN VERNOR JOHN SWAVINSON



Gov. William G. Milliken

\$39.95 | 978-0-87013-971-0 CLOTH, 316 PAGES, B&W PHOTOS

convicted of lying to a federal grand jury. Forced to leave the state Supreme Court and disbarred from practicing into depression and alcoholism. He virtually disappeared from public

Lawrence Glazer re-examines and delves into his 1975 trial in detail. and, in a poignant coda, relates the rehabilitation and return to public life as a historian.

served as an assistant Michigan adviser to Michigan governor James Blanchard, and as a State Circuit Judge.

Mar, politics, the courtroom and mystery... Larry Glazer's book recounts it all in fascinating detail. This is better than fiction.

-JAMES J. BLANCHARD former Governor of Michigan 1983-1991, former Ambassador to Canada in the Clinton Administration, and author of the memoir Behind The Embassy Door

monumental contribution to Michigan **A**history, this book tells the story of one of the most interesting people to become Governor of Michigan. John Swainson's life contained heroism and a fatal flaw, the elements of Greek tragedy. Larry Glazer captures it in vivid language and with astute analysis. At times the book reads like a suspense novel. It tells the story not only of a remarkable man, but of a remarkable time. —Dave Dempsey, biographer of former

 $A^{\it n}$ excellent, full-fledged biographical, historical and political reminder that Swainson... was one of the most fascinating and troubled figures in 20th Century Michigan politics. Swainson . . . was indeed a memorable man. And thanks to Glazer's excellent and fair book, he is far less likely to be forgotten.

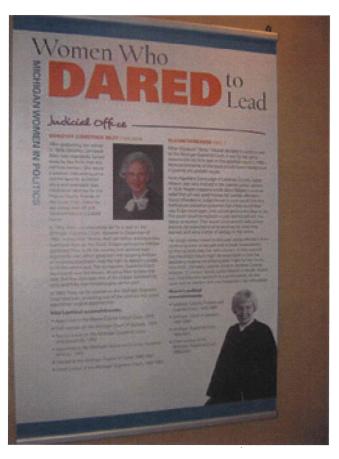
-Hugh McDiarmid, retired Free Press politics writer and columnist

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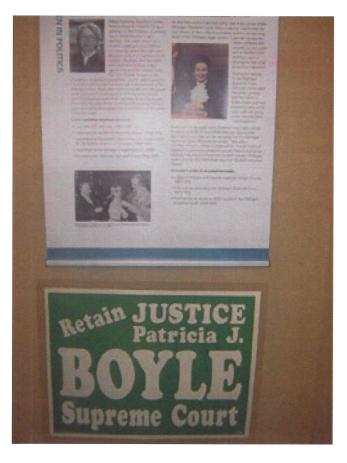
Women Who Dared to Lead: New Exhibit Opens at the Michigan Women's Historical Center



The Michigan Women's Historical Center and Hall of Fame opened a new exhibit on March 8 in celebration of Women's History Month. Entitled "Women Who Dared to Lead: Michigan Women in Politics", it features profiles and artifacts of 36 Michigan women who blazed trails in the political sphere.

The exhibit, which is available to view during visiting hours at the Center, will run through February 2013. Visiting hours are Wednesday through Saturday from noon to 4 p.m. and on the first Sunday of each month from 2 to 4 p.m. Admission is \$2.50 for adults, \$2 for seniors, \$1 for students (ages 6-18), and free for children under 5.

The exhibit highlights four women from the Michigan Supreme Court. These include Mary Stallings Coleman (1973-1982), the first woman justice; Dorothy Comstock Riley (1982-1983, 1985-1997), who established the Michigan Supreme Court Historical Society



in 1988; Patricia J. Boyle (1983-1998); and Elizabeth A. Weaver (1995-2009).

The exhibit is unique in that it encourages visitors to "Please touch". Some artifacts are attached to the wall with velcro and be removed for closer scrutiny. There are campaign signs and pins on display, including one urging a vote for "Betty's husband" (Gerald Ford).

The Michigan Women's Historical Center and Hall of Fame is located at 213 W. Malcolm X. Street in Lansing (formerly Main Street).

They are online at www.michiganwomenshalloffame. org.

The Michigan Supreme Court Historical Society was a silver sponsor of the recent exhibit.

The Big Four: Imported from Michigan

By Barbara Bean and George T. Roumell, Jr.



Before this article was finalized, the authors conducted an unscientific survey of 24 members of the faculty, students, and staff of a Michigan law school. Of the 24 respondents, eight have lived in Michigan their entire lives. The rest have lived in Michigan for periods ranging from two years to 40. Not a single respondent could identify the judges pictured on the April 2011 issue of the Michigan Bar Journal. Clearly, it is a good time to revisit the illustrious careers of Michigan Supreme Court Justices James V. Campbell, Isaac P. Christiancy, Thomas M. Cooley and Benjamin F. Graves.

There is little question that between 1865 and 1885, legally speaking, the most outstanding state Supreme Court in the United States, and arguably trumping the U.S. Supreme Court, was the Michigan Supreme Court. As former law school dean Edward Wise has written, "there was a time when decisions of the Michigan Supreme Court commanded in any jurisdiction nearly the same respect as a decision of the United States Supreme Court....the bench composed of Campbell, Cooley, Christiancy and Graves came to be remembered as the 'great court'."

Their years of service on the Court totaled 85; they served together for only seven, from the election of

Justice Graves in 1868, to early 1875, when Justice Christiancy resigned to take a seat in the United States Senate. Cooley, Campbell, and Graves would serve together for fifteen years. Cooley, Christiancy, and Graves came to Michigan as young men from Western New York where they had been educated in the public schools. Of the four, only Campbell, who had moved to Michigan as a young child, received a college education.

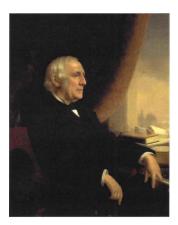
A member of the first group of justices elected to the Supreme Court when it became an independent appellate tribunal, Isaac Christiancy read the law in New York and Michigan, where he moved in 1836. His life

¹ Edward M. Wise, "The Ablest Supreme Court: The Michigan Supreme Court Before 1885", 33 WAYNE L. REV. 1509, 1557 (1987).



is described as illustrating that the possession of wealth and the opportunity to attend the higher institutions of learning are not essential to the attainment of great influence and eminence.² He was one of a pioneering group of men who sought to establish the city of Monroe as a metropolis of the new

commonwealth of Michigan.³ Before his election to the Court in 1858, ten years of experience as a clerk in the Federal land office in Monroe and as a prosecuting attorney in the county provided him with expertise in the areas of real estate and criminal law.



Another original member of the newly constituted Supreme Court, James Campbell, came from a different background from the other three. The son of a wealthy businessman who had moved to Michigan when he was a child, Campbell was educated at a boarding school in New York where he completed

the collegiate course. He then returned to Michigan where he read the law, and was admitted to the bar in 1844. He moved in higher educational and social circles in Detroit. With Cooley, he was appointed to the Law Department at the University of Michigan in 1859. Although the particulars of his early practice are not known, by the time he was elected to the Supreme Court, he was regarded as one of the leading lawyers of the state. On the court, the close ties of friendship

that bound the other three did not extend to Campbell, and a look at the close to 1000 decisions they issued reveals that Campbell was more likely to disagree with his colleagues than any of the other three.⁴



Thomas Cooley moved to Michigan in 1843 at the age of 19, having studied the law in New York, and completed his studies in Michigan, where he was admitted to the bar in 1846. The next decade saw him join a number of law partnerships, and dabble in politics and journalism. In 1859, he was appointed to the

newly opened law department at the University of Michigan. For the six year period before his appointment to the Supreme Court in 1864, Cooley served as court reporter, and published 14 volumes of opinions. This does not seem remarkable today, but the work of Cooley and his immediate predecessor, George C. Gibbs, marked great progress from the early, chaotic days of court reporting in Michigan. The first court reporter, who served for five years, was unable to deliver a single volume. Judicial opinions were written by hand, and often consisted of little more than notes. The family of one recently deceased Supreme Court justice accused another of stealing the dead man's opinions.⁵ It is likely that a number of early opinions of the Michigan Supreme Court were lost altogether. "It was only with Gibbs and Cooley that the court's opinions began to be published on a regular basis; only after 1858, with Cooley, did they begin to appear with sufficient frequency for the court to acquire a definite reputation outside the state." In 1864, Cooley was elected to the Supreme Court, where he joined

² Joseph B. Moore, Isaac Peckham Christiancy, 5 MICH. L. REV. 231, 231 (1907).

³ BENCH AND BAR OF MICHIGAN: A VOLUME OF HISTORY AND BIOGRAPHY (George Irving Reed ed., Chicago 1897).

⁴ Wise, supra note 1, at 1558.

⁵ Clark F. Norton, Historical Introduction to UNREPORTED OPINIONS OF THE SUPREME COURT OF MICHIGAN 1836 – 1843 xi, xxiv (William Wirt Blume, ed. 1945).

⁶ Wise, supra note 1, at 1529.

⁷ Hoyt Post, Benjamin Franklin Graves, 5 MICH. L. REV. 409, 413 (1907).

Justices Campbell and Christiancy.



The last of the Big Four to join the Supreme Court in 1868 (although he had previously held a temporary appointment to the previously constituted Supreme Court), Benjamin Graves came from a background similar to that of Christiancy and Cooley. He was first admitted to the bar in New York State,

and moved to Michigan in 1843. He brought to the Supreme Court twelve years of experience as a trial judge in the circuit courts, and specialized in procedure and evidence, issuing highly regarded opinions on those subjects. The years they lived in the same boarding house during the court session created a close relationship between Graves and Cooley.⁷

When Justice Graves joined the Court in 1868, the Supreme Court had existed as an independent appellate court for ten years, and Michigan had been a state for just over thirty. During this period many important legal questions came before the Court for settlement. All four justices were conscientious and hard working. Each took his turn as chief justice. Although Campbell was the most likely to disagree with his colleagues, the four worked with unusual unanimity and speed.

When the Court was in session, the justices regularly put in fifteen hour days, hearing arguments, reviewing records, and handwriting opinions. The research tools taken for granted by lawyers and judges today were not available; however, the courts were not so glutted with business as now, and the judges had time to acquaint themselves fully with the facts of the cases, and to think over carefully and from all points of view, the principles of law applicable to them.⁸

Both Cooley and Campbell were known for the speed with which they produced opinions, to the point that a prominent lawyer complained, "Your Honors have got a high reputation for the celerity of your conveyances and now it is time for you to consider the safety of your passengers" Justice Graves, on the other hand, worked and re-worked his opinions, "making no pretense to brilliancy or genius, he made up in patient and persistent labor and thought..." 10

Writing about the Michigan Supreme Court at the time of Cooley's death, the *American Law Review* said of Cooley, Christiancy, Campbell, and Graves, "[t]hese four men raised the fame of the Supreme Court of Michigan throughout the Union.... They made the reports of its decisions everywhere sought after." Writing in the *American Commonwealth* in 1889 about the finest state courts in the United States, of which Michigan's was considered the best example among the "western" states, James Bryce observed that, "the quality of justice administered by the courts in those states...was equal to that administered by the superior courts of England.¹²

Let's test this theory. Early in the course in property law in law school, students will be reminded that the foundation of property law in at least 49 of the states (Louisiana excluded, being a civil law jurisdiction) originated from England as part of the "common law." After studying the rule against perpetuities, first year students become exposed to the rule against restraint on alienation, an old theory from the Mother Country. Well, Mr. Justice Christiancy, in 1874, on behalf of a majority of a unanimous court, Cooley and Graves (Justice Campbell did not sit), wrote the decision in *Mandlebaum v. McDonell*, 13 invalidating a restriction on alienation as violating the rule against restraint on alienation. In doing so, Justice Christiancy concluded:

... We are entirely satisfied there has never been a time since the statute *quia emptores* when a restriction in a conveyance of a vested estate in

⁸ Joseph B. Moore, Isaac Peckham Christiancy, 5 MICH. L. REV. 231 (1907).

⁹ C.A. Kent, James Valentine Campbell, 5 MICH. L. REV. 161 (1907)

¹⁰ Post, supra note 7, at 413.

¹¹ Wise, supra note 1, at 1523.

¹² Id. at 1534.

^{13 29} Mich. 78 (1874).

fee simple, in possession or remainder, against selling for a particular period of time, was valid by the common law. And we think it would be unwise and injurious to admit into the law the principle contended for by the defendants' counsel, that such restrictions should be held valid, if imposed only for a reasonable time. It is safe to say that every estate depending upon such a question would, by the very fact of such a question existing, lose a large share of its market value. Who can say whether the time is reasonable, until the question has been settled in the court of last resort; and upon what standard of certainty can the court decide it? Or, depending as it must upon all the peculiar facts and circumstances of each particular case, is the question to be submitted to a jury? The only safe rule of decision is to hold, as I understand the common law for ages to have been, that a condition or restriction which would suspend all power of alienation for a single day, is inconsistent with the estate granted, unreasonable and void. Certainty in the law of real estate, as to the incidents and nature of the several species of estates and the effect of the recognized instruments and modes of transfer, is of too much importance to be sacrificed to the unskillfulness, the whims or caprices of a few peculiar individuals in isolated cases.¹⁴

In reaching this conclusion, Justice Christiancy distinguished a previous English case, *Large's Case*. Back to England–six years later–in *Rosher v. Rosher* (1884)¹⁵ Justice Pearson, for the Chancery Division, on the facts presented according to the headnote held that: "A condition in absolute restraint of alienation annexed to a device in fee, even though its operation is limited to a particular time, *e.g.*, to the life of another living person, is void in law as being repugnant to the nature of an estate in fee."¹⁶

Bingo! In reaching this conclusion, the Chancery Division reached back to the golden era of the Michigan

Supreme Court and Justice Christiancy's analysis of *Large's Case* where Justice Pearson wrote:

It still remains for me to consider whether there is any decision that a condition absolutely restraining alienation is good if there is a limitation as to time, because, although I have dealt with these cases in order to clear the way with regard to the foundation upon which all the exceptions rest, still, as I hold that the exceptions stand on a principle absolutely removed from that of repugnancy, there may yet exist an exception which can be made to the condition, and which will be good by reason of a limitation of time. The authority cited to shew that this is so is Large's Case (1). I am going to cite it from the American case, Mandlebaum v. McDonell (2), which contains a very elaborate and able judgment upon this part of the case. The very same point which arises now arose then before the American Court. The judgment of the American Court refers to Large's Case thus: "As reported (3) the same devise is stated as follows:- 'A., seised of lands in fee, devised the same to his wife till William, his younger son, should come to the age of twenty-two years, the remainder when the said William should come to such age, of his lands in D. to his two sons, Alexander and John, the remainder of his lands in C. to two other of his sons, upon condition, quod si aliquis dictorum filiorum suorum circumibit vendere terram suam, before his said son William should attain his said age of twenty-two years, in perpetuum perderet eam." It seems to have been held by the textwriters that this therefore was a condition attached to a devise, not to sell within a limited time, and that that condition was good, because it was held that one of the sons, who had gone about to grant leases for terms of sixty years in succession, had broken the condition, and that the breach of the condition might be taken advantage of. But Mr. Justice Christiancy points

¹⁴ Id. at 106-07.

^{15 [1884] 26} Ch.D. 801.

¹⁶ Id.

¹⁷ Id. at 820-21 (final emphasis added) (citations omitted).

out, I think with perfect accuracy, that when you come to look at the case there was no devise of the fee simple of that kind. There was only a contingent remainder limited to the son, upon condition that before he came into possession, that is to say, before he attained twenty-two, he should not sell.¹⁷

The Mother Country gives Michigan the common law of property as to restraint on alienation. The Michigan Supreme Court by Justice Christiancy and his colleagues, confirmed the common law of property and gives it back to the Mother Country whose Chancery Division agrees is done with "perfect accuracy."

We are inspired to paraphrase a current popular advertising slogan, "Imported from Michigan". In addition to the Court of Chancery, *Mandlebaum* has been cited in close to 100 American court decisions, including the United States Supreme Court, and was most recently cited by the Rhode Island Supreme Court in 2011, more than 125 years after it was decided. The Chancery Division in *Rosher* saw fit not to rely on any other American case. The Michigan Supreme Court consisting of Cooley, Christiancy, Campbell, and Graves—the three C's and the G with Justice Graves as Chief Justice, represented the golden era of the Court and became known as "The Big Four."

Now the reader knows what happens when the legal researchers at Michigan State University College of Law and a Labor Arbitrator get together. You never know what they will find about the glories of the rich legal tradition of Michigan jurisprudence.

As they say, "Imported from Michigan".

Barbara H. Bean is a reference librarian and adjunct professor at the Michigan State University College of Law. A graduate of Georgetown University Law Center, she practiced corporate law in New York City and Los Angeles and served as of counsel to a Netherlands law firm.

George T. Roumell, Jr., 51st President of the State Bar of Michigan, is a graduate of Harvard Law School and a longtime adjunct professor of law at the Detroit College of Law, now Michigan State University College of Law. He is a labor arbitrator and mediator practicing throughout the Midwest. He is a former law clerk to the Honorable Edward Sharpe of the Michigan Supreme Court.

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The Society is pleased to offer 8x10 inch reproductions of the Big Four painting for sale. They cost \$10.00 each. Checks should be made payable and mailed to MSCHS at 1st Floor Hall of Justice, 925 W. Ottawa St., Lansing, MI 48915.

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Learning Center Offers "Moot Court" Programs for Students, Teachers

This summer, teachers and students can experience what it's like to argue a case before the Michigan Supreme Court, thanks to programs being offered by the Court's Learning Center.

Rachael Drenovsky, the Learning Center's coordinator, explained that both programs feature participation in a "moot court," in which participants prepare and argue a case. "We not only learn about the legal system, but also sharpen the skills a good lawyer needs: reasoning, writing, and oral presentation. The teachers' program will focus on how educators can use moot courts as a teaching tool."

The high school program, "Exploring Careers in the Law," is open to students entering grades 10 through 12 in fall 2012. Participants meet June 25-29 from 9 a.m. to 12:30 p.m. each day. The application deadline is May 11, 2012. The registration fee is a \$75 donation to the Michigan Supreme Court Historical Society Learning Center Fund.

Both programs will be based on a real-life case that the Supreme Court heard earlier this year. Participants will meet and work with attorneys and other legal professionals; presenters will include justices of the Michigan Supreme Court. The programs will be held at the Michigan Hall of Justice in Lansing.

The teachers' workshop, "Moot Court in Your Classroom," will be held August 1-2. Teachers will receive materials appropriate for a high school audience. The application deadline is June 15, 2012. The registration fee is a \$50 donation to the Michigan Supreme Court Historical Society Learning Center Fund.

Registration for each program is limited to 22 participants, selected on a first-come, first-served basis. Contact Rachael L. Drenovsky at drenovskyr@courts. mi.gov or (517) 373-5027. Applications and additional information are available at http://www.courts.mi.gov/plc/.



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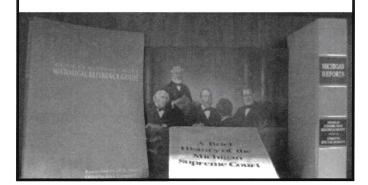
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The Michigan Supreme Court Historical Society, a non-profit 501(c)(3) corporation, collects, preserves, and displays documents, records, and memorabilia relating to the Michigan Supreme Court and the other Courts of Michigan, promotes the study of 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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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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