

Dear Friends:

If you have followed my work at the Michigan Supreme Court and subsequently in my retirement you know that I am concerned with the way the people's business is being handled at our state's highest court and its offices, commissions, and boards.

What follows is an edited text of a speech I gave March 15 at the public school in Leland. I share this with you in hopes that you will give my words serious consideration, especially my proposals for reform, my "six-point plan."

Once you've read this, please contact me with any comments, suggestions, criticisms, or ideas at my email: justice.eaw@gmail.com. I will respond.

If you are convinced of the need for reform for and transparency in the Michigan Supreme Court I ask you to do two things. The first is to please forward this to every person you know who thinks seriously about the cause of justice in Michigan. The second is to either print out this speech and send it by regular mail with your signed comments, or forward it by e-mail to:

- Governor Rick Snyder
P.O. Box 30013
Lansing, Michigan 48909
Rick.Snyder@michigan.gov
- Your State Senator
- Your State Representative

Request they read the speech and recognize the problems of—and the needs for—reforms and transparency in the Michigan Supreme Court.

Request they initiate solutions as recommended in the speech through legislation and constitutional amendments to correct the problems and meet the needs.

And, request they respond in writing to you with comments, any other ideas and/or suggestions. If they disagree with any, some, or all of the proposals ask that they respond specifically in writing with their reasons. I will welcome your sharing their responses with me.

Cordially,

Justice Elizabeth A. Weaver (retired August 2010)

JUSTICE ELIZABETH A. WEAVER (retired August 2010)

Leland Educational Foundation Speech March 15, 2011 (edited 3/19/11)

NEED FOR REFORMS FOR AND TRANSPARENCY IN MICHIGAN SUPREME COURT

I want to share with you important information gained from my more than 35 years' experience as a Michigan trial judge, Court of Appeals judge, Supreme Court justice, and Chief Justice. I hope it will inspire you to join with me and others to pursue, push, and persuade our Legislators and the Governor to recognize the problems of—and the needs for—reforms and transparency in the Michigan Supreme Court. We need to seek solutions through legislation and constitutional amendments to correct the problems and meet the needs.

For the continuation of a civilized society, we need a Supreme Court of seven (7) independent justices about whom we have sufficient information to hold each justice accountable. Further, we need a transparent, accountable system of selection of the justices in order to have a Supreme Court in which we can have trust and confidence.

As a Supreme Court justice and Court of Appeals judge for 24 years, I had occasion to review thousands and thousands of cases of trial and appellate judges that had been appealed. Most often the judges' opinions were thorough, well-reasoned decisions, devoted to the rule of law and evidencing common sense. They revealed independent-thinking and acting judges.

An independent-thinking and acting judge—an “independent judge”—should be the most highly valued member of any court.

But, what is such an independent judge? What characteristics define this individual?

An independent judge is not agenda-driven and does not hold to and promote political party lines, philosophies, or ideologies. The independent judge is dedicated to the rule of law, is impartial, exercises judicial restraint and self-discipline, applies common sense, and is wise, honest, orderly, fair, just, civil, kind, professional, open, not secretive, and non-partisan.

Here in Leelanau County we have independent judges—such as Judges Rodgers and Power and—here tonight—Judge Nelson. I applaud them for their courageous service. And throughout Michigan, of the 580 trial judges and 28 Court of Appeals judges, there are many of what I describe as independent judges. We are blessed to have such judges to carry on the work serving the judicial needs of the people in the trial and appellate courts.

Regretfully, the same cannot be said for our Michigan Supreme Court with its seven justices and their administration of the people’s judicial business.

Our deeply flawed dual system of election and appointment of justices allows for political party nominations and campaigns where millions of dollars are spent on often deceitful advertisements. Further, finances are untimely reported or not reported at all.

I ask you: How can a person—even with an incumbency designation and/or an Irish name—needing millions of dollars spent on them to be elected or re-elected, be independent thinking and acting? All a truly independent justice can promise is “I may rule against you.” As you can imagine, that’s not a good fundraising technique.

Rather, the flawed system (of election and appointment of justices) produces power blocks of justices usually joining together with a majority of four (or more votes) to promote agendas of:

Political Parties and Special Interests

Personal Interests, Philosophies and Ideologies

Biases and Prejudices

Nor does the present system value the diversity and independence of thought that comes from geographic separation. As of mid-January with Governor Snyder’s appointment of a justice to fill a vacancy we continue with a Supreme Court, all of whose members live in only three (3) counties (Wayne, Ingham, and Oakland—the “Detroit/Lansing beltway”) of Michigan’s diverse 83 counties.

According to the 2009 Michigan Senate data, those three counties are home to only 34% of the state’s population. That means that 66% of us have no justice living in our immediate

geographic area or not even close. ...NONE from Northern, Central, or Western Michigan or the UP.

Beside geography, here's another important consideration: exorbitant campaign spending. So far, it's known that 9.5 million dollars was spent on the 2010 Supreme Court justices' campaigns. Of that, the candidates raised and spent 2.4 million. So, at least 7.1 million was spent by outside groups including the political parties. And, much of it is untraceable, unidentifiable and unaccountable. I call it deceitful spending.

Obviously, there is a genuine and acute need to reform how Supreme Court justices are elected and appointed in order to make more likely the selection of justices who are truly independent and not agenda-driven, not promoting agendas of political parties, special interests, their own interests, philosophies, ideologies, and biases and prejudices.

Equally important, but less obvious, there is a second genuine and acute need: to eliminate the unnecessary secrecy under which the Supreme Court operates. Unless this unnecessary secrecy is eliminated, reform of the justice selection processes will be futile, because it alone will not solve the problems at the Michigan Supreme Court.

Unnecessary secrecy allows for the misuse and abuse of the court's huge powers of interpretation and discretion in decision making and administrating (too often unjustly and unfairly), the operations of the court itself and its offices (State Court Administrative Office), its Commissions (Judicial Tenure Commission and Attorney Grievance Commission), and its Boards.

An example of this misuse and abuse of the Supreme Court power resulting in the unfair and unjust treatment of Judge Steven Servaas is described in my lead opinion in his case and on the Internet. Every citizen should go to my website—justiceweaver.com—and listen to the unexpected, ambush visit from the Judicial Tenure Commission (JTC) director and a State Trooper that Judge Servaas experienced (as recorded by the State Trooper). There you can hear the JTC director threaten “to drag (Judge Servaas’) name through the mud” unless he agreed to resign by 9 a.m. the next morning. It is an example of tyranny, tyranny condoned by five Supreme Court justices when they refused to investigate or have investigated the egregious conduct of the JTC director in the Servaas case and as requested in the Brady et al v. Attorney Grievance Commission matter.

During this most recent election I revealed some of the inner working at the court. It wasn't a pleasing sight and the response from those so revealed, was predictable. Five of the seven justices signed and issued a censure (in violation of the Michigan and U.S. constitutions), two justices refusing to participate, with one pointing out the violation of my (the censured's) due process rights.

Yes, there are certain things that must be done at the court in private (like employee issues), but in fact far fewer things than those currently in charge would like to keep concealed. The Michigan Supreme Court does not deal with treason, sedition, or national defense. Its docket covers people issues from A to Z (adoptions to zoning—matters such as crime, contracts, child, adult and family issues, environmental, property, and the like) This is, after all, the people's business—our business—and the responsibility is to all people and NOT especially to the partisan or special interests forces of political parties (Democrat, Republican, etc.), labor unions, manufacturers, insurance companies, trial and appellate lawyers, doctors, chambers of commerce, civil liberty unions, prosecutors, or any other special interests groups or assemblies who seek to influence or control the law.

The need is for transparency and openness, not a secret club of seven justices from the Detroit-Lansing beltway joining together in voting blocks of at least four votes to promote agendas of partisan or special interests, personal agendas, and bias and prejudices.

Unnecessary secrecy is the crux of the problem.

It allows to take root and grow the worst propensities in human nature—hatred, lust for power, revenge and deceit—rather than encouraging kindness, purity, charity and honesty.

Unnecessary secrecy enables and facilitates good people doing bad things. Let me repeat—unnecessary secrecy enables and facilitates good people doing bad things.

Further, Supreme Court justices, while they may be collegial, orderly and professional, should not “go along to get along” when doing the people's business.

Justices must be free to fulfill their duty to the people, to inform them of what they need to know—no more, no less—about not only what the Supreme Court decides, but how, when, and where. There should be no gag order as the majority of the Michigan justices adopted to attempt

to keep any justice from speaking to the public about the decisions, performance, and operations of the court. And, by the way, that gag order passed by the majority and flying in the face of the Code of Judicial Conduct and the state's Constitution is intended to keep matters quiet forever.

The Michigan Supreme Court should not be a secret club. It should consist of seven truly independent justices who act in a transparent, open, and accountable manner. It should be the supreme example of conducting government business publicly, openly, fairly, in an orderly manner, professionally and justly.

For we know that an uninformed and misinformed public cannot make wise decisions on the suitability and performance of justices and the Supreme Court. No accountability can exist.

Ask yourself: under our present selection process who really knows anything or enough that's true about justice candidates or a justice's performance to vote in the elections of justices or support their appointments by the governor for vacancies? Do you?

Tonight, there is no need to reveal more instances of the unjust and unfair misuses and abuses of Supreme Court power on and to citizens, witnesses, employees, and judges over the past ten years. That will be for other occasions in 2011, if necessary.

But please know that what is most important to me is not examples of the problems and misuses and abuses of the powers of interpretation, discretion, and administration at the Supreme Court, but the solutions to solving and preventing them through reform and transparency.

So...here is my proposed solution, a "six-point plan" for not *eliminating* our dual system of electing and appointing Supreme Court justices, but *reforming* it. (Note: election of Supreme Courts justices is retained. There is no reason to assume that a system that allowed only appointments would be any less flawed and political than the current elections and appointments. Then too, why should we modify the Michigan Constitution in order to give us citizens less direct say in our government? There is nothing inherently wrong with elections; with accurate information, they allow the people to hold accountable their high officials. It's our justice selection process of party nominees and unregulated, untraceable, unaccountable, unidentifiable, deceitful spending, unchecked gubernatorial power to appoint justices for vacancies, lack of rotation in high office, and unnecessary secrecy that's doing us in.)

Four of the proposals of the “six-point plan” require legislative action and only two require constitutional amendment.

Concerning elections and appointments I recommend we:

1. Provide no political party nominations for elections. Supreme Court candidates would earn a spot on the ballot by petition—the same way trial and Court of Appeals judge candidates do. [In 2010 former Senator Cropsey introduced Senate Bills 1296-1300 to accomplish this, but no action was taken.]
2. Provide election by district. The state should be divided into seven (7) Supreme Court election districts with one justice coming from each district. That will allow the geographic diversity in representation now so clearly absent.) [In 2009 former Senator McManus introduced Senate Bill 745 to accomplish this; it had one hearing in committee in 2010 but no action was taken.] (Note: three (3) counties with 34% of the state’s population have all the justices, leaving 66% of the people in the rest of the 83 counties with NO JUSTICES living in or close to their areas.)
3. Provide public funding. Use tax check-off money designated for gubernatorial campaigns for Supreme Court campaigns.
4. Require transparency and accountability in campaign finance reporting requirements. Allow no secret or unnamed contributors. This would involve real-time reporting (and within 48 hours for all elections).
5. Achieve rotation in high office by limiting to only one term of a maximum of 14 years for any justice, and a justice never would be eligible for reelection or appointment.
6. Establish for the appointments process, a Qualifications Commission composed of all stakeholders in the justice system. For example, representatives from labor, business, law enforcement, doctors, lawyers, prosecutors, defense, environmental groups, corrections, education, insurance, local government, and the like. Each organization would choose its own representative.

The Commission would be composed of 30 to 40 members. The process for appointment would require:

- The commission will meet and publicly provide in writing to the governor two nonbinding recommendations within 60 days of a vacancy. Those written recommendations are to include why those two candidates are best qualified for a position on the Michigan Supreme Court.
- The governor then can choose one of the two candidates recommended by the Qualifications Commission, or choose someone not recommended by the Qualifications Commission. If the governor chooses someone not recommended by the Qualifications Commission, the governor must give public, written reasons why her or his appointee is the best choice before or at the time of submitting an appointee's name to the Senate. The governor must submit the appointee's name to the Senate within 60 days of receipt of names from Qualifications Commission or lose the right to make an appointment. In such a case, the Senate must appoint one of the Qualifications Commission's recommended candidates.
- The state Senate must hold at least one public hearing on the governor's appointee within 60 days of the governor's appointment. The Senate has the right to confirm or reject the appointment by majority vote. If the Senate does not vote to confirm or reject the appointee within 60 days of the governor's submission of the appointee, the governor's appointment takes effect. If the Senate rejects the appointee by majority vote, the Senate must publish promptly its reasons in writing whereupon the Qualifications Commission will have 30 days to reconvene and begin the process anew. If the Qualifications Commission fails to timely reconvene, the vacancy shall be filled at the next general election for the remainder of the term.
- If both the Qualifications Commission and the governor fail to timely and properly perform, the vacancy shall be filled at the next general election for the remainder of the term.
- The appointed or elected justice only serves for the remainder of the vacant term and shall not serve an additional term or partial term.

So, there it is: a proposed solution—a “six-point plan”—growing out of my long experience as a

judge and justice...and with a dose of common sense.

For your convenience you can view, print, copy, and disseminate a three-page version of the solution from my website—justiceweaver.com. Also, there you can click on and listen to the audio recording of the tyrannical Judge Servaas interview. And, by next week, this speech will be there to view and copy, and soon thereafter a video of this speech will be there for viewing.

I hope I have convinced you of the need for reform for and transparency in the Michigan Supreme Court and that I have inspired you to take individual responsibility to want to act to fix it.

I hope you give serious attention to these proposals and then get involved and take action. You can contact me with any suggestions, criticisms or ideas at my email: justice.eaw@gmail.com. I will respond.

The time is now to stop counting on our elected and appointed officials, the press, the media, and “just anybody else” to lead in the preservation of our vital institutions, like the judiciary and its Supreme Court.

The time is now for every one of us to take individual responsibility, to take the lead—to get educated about such institutions, to educate others about them. That means you, your family, your friends, neighbors, co-workers, local-, county-, city-, and township officials, the press and the media. And it’s time to join with others who have done the same in order to pursue, push, and persuade our Legislators and the Governor to recognize the problems of—and the needs for—reforms and transparency in the Michigan Supreme Court. We must seek solutions through legislation and constitutional amendments to correct the problems and meet the needs.

For the young people here in this school tonight and for those who will be here tomorrow, each of us here must pick up the individual responsibility to work for institutions functioning well enough to provide a civilized society in which those young people have the same freedoms and opportunities we have had provided us by our Founding Fathers as guided by their faith in the One Creator and his commandments.

In the video introduction, appeared several times one of my Ten Principles for Living (and you can find all of them listed on my website): “Do Right and Fear Not.”

It may be easy to say but it's not always easy to do. But I believe it and I live by it. And I invite you to join me in that.

So, concerning our judiciary and its Michigan Supreme Court, let us now go forward—

—DOING RIGHT AND FEARING NOT.
