The "Supreme" Controversy Continues

To the Editor:

I've always looked forward to receiving the monthly *Bar Journal.* At my age, I first read In Memoriam, then Opinion and Dissent, and then the disciplinary blurbs. I was admitted to practice in Michigan in 1977. Having accurately predicted the impact that "the finest court in the nation" would have on the practice of law in Michigan, I moved my home and practice to Chicago in 1998. If only my stock market predictions would have been as accurate.

The January 2006 point/counterpoint discussion ("The Michigan Supreme Court") made interesting academic reading. I don't do much in the morning but drink coffee, look at the lake, and read my daily e-Journal. Squaring the e-Journal appellate decisions with Victor Schwartz's comments is an impossible task. I'm reminded of the blind lady who could "observe" the open and obvious on appeal.

> The facts aren't important, neither is the law, neither is the court rule admonition that the Supreme Court only becomes involved when the issues are of major jurisprudential impact to the state.

For me, academia became reality on January 20, 2006. I had a case pending in the Supreme Court, as appellee's lawyer, on appellant's application. For those of you with nothing better to do, click on your e-Journal archives and read *Michigan Tooling Association v Farmington Insurance Agency,* unpublished court of appeals decision dated December 7, 2004. Then click to January 20, 2006, and read the Supreme Court's order. The facts aren't important, neither is the law, neither is the court rule admonition that the Supreme Court only becomes involved when the issues are of major jurisprudential impact to the state. What's important here, don't you see, is the appellant's name. Farmington *Insurance* Agency, an admittedly negligent, nonagent who issued a certificate of insurance on a previously cancelled policy. Ignore the testimony, ignore the admissions, ignore the trial judge's evaluation of the witnesses, ignore a 3–0 court of appeals and focus on duty or claimed lack thereof. Legal questions are dangerous things when the scrivener is running for election. Our Supreme Court exercises raw, political, outcome-oriented power every day, in the name of strict constructionism, at the behest of those who finance the campaigns of the five.

Sour grapes? Yes. Embarrassment as a Michigan lawyer? Absolutely. The lake is peaceful this morning.

Cecil F. Boyle, Jr.
Chicago, Illinois

To the Editor:

As a now over 50-year member of the State Bar of Michigan and a loyal cover-to-cover reader of the *Michigan Bar Journal* for over five decades, I am constrained (and proud) to add my own "letter of outrage" to those of Avern Cohn, Paul Rosen, John Braden, and Del Szura. Our fair and sincere condemnation (based on our combined trial experience of over 200 years as jurist, scholar, and lawyers) of the hypocritical and unearned praise heaped on the "Engler Court" by Professor Nelson Miller and attorney Victor Schwartz should stand as an equitable balance to their obvious bias. Although Michigan's Maura Corrigan and Robert Young can be seen as near clones of the Federal Antonin Scalia and Samuel Alito, we should still give Miller and Schwartz credit where credit is due: they have both earned an A-plus for chutzpa in their attempt to defend the indefensible!

Norm Gottlieb
Los Angeles, California

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Michigan's Indigent Criminal Defense System

To the Editor:

We write in response to the excellent article by Tom Cranmer regarding the indigent criminal defense system in Michigan ("Indigent Criminal Defense Systems in the State of Michigan—A Time for Evaluation and Action," February 2006). This is the second time a president of the State Bar of Michigan has written regarding the need for the legal community to address changing the way legal services should be provided to indigent defendants accused of criminal offenses. When Nancy Diehl was president, she also wrote a similar article on the same subject.

We would hope that Mr. Cranmer's article would prompt a positive response and that something would be done quickly by the State Bar to accept the proposal by the National Legal Aid and Defender Association to conduct a study of the indigent defense systems in Michigan. Once that comprehensive study is complete, we would urge the State Bar to do everything possible to see that any recommendations are implemented.

Laurence C. Burgess and David M. Burgess
Detroit

Love of the Law

To the Editor:

I thoroughly enjoyed David Guenther's article entitled, "So, What do You do for a Living?" (March 2006). I also appreciated the top 10 lists of the best and worst attributes of being a lawyer. Even though I am a nonlawyer professional, I do appreciate the importance of remembering why we entered the legal field in the first place. For me, it was the love (and sometimes frustration) of the law and seeing how it drives people's lives. Thank you again for a humorous and uplifting article.

Linda J. Hoggarth
Detroit

Denial of Preliminary Examinations Would Impact People of Color

To the Editor:

I was disappointed with Mr. Powell's failure to raise the primary reason why Michigan should not adopt the elimination of the preliminary examination on behalf of people of color by a respected criminal defense attorney of color ("Examination of the Need for Preliminary Examinations," March 2006).

Michigan courts have the perception that people of color are discriminated against as compared to white Europeans and white European-Americans.

In November 2005, the Michigan Supreme Court adopted new jury trial rule MCR 2.511, which denies the ability of judges to increase the racial balance of juries when questions arise about the jury pool reflecting the community of the defendant per federal law, *Taylor v LA,* 419 US 522 (1975).

At a public hearing in September 2005, the Michigan Supreme Court received documentation that Kent County Courts removed people of color from its jury pool due to a computer glitch, and the Wayne County chief judge tried to remove an African-American Wayne County judge from the criminal bench that tried to increase people of color in the Wayne County felony jury pool. Despite that information, African-American Michigan Supreme Court Justice Robert Young and the majority of the Michigan Supreme Court adopted the new jury trial rule.

It seems extremely suspect that when the Michigan Supreme Court advertised to change the jury trial rule, it indicated that MCR 6.412 was to be changed. However, after the November 23, 2005 order, MCR 6.412 remains unchanged. But was MCR 2.511 changed to possibly hide evidence of racial discrimination?

People should understand that people of color were not allowed on juries until *Strauder v West Virginia,* 100 US 303 (1879).

The extreme conviction rate and the history of jury suppression that affects people of color give validity to the perception that Michigan courts do not treat people of color equally as compared to white Europeans or white European-Americans.

The denial of preliminary examinations for felonies will have a disparate impact on people of color.

Carl C. Wilson, Jr.
Detroit