M E M O R A N D U M

TO: **Corbin Davis**
cc: The Justices, Mike Schmedlen, Anne Boomer and Danilo Anselmo

FROM: **Justice Elizabeth A. Weaver**

SUBJECT: **Dissent to Election of Chief Justice Clifford Taylor as Chief Justice**

DATE: **Friday afternoon, January 5, 2007**

WEAVER, J. (*dissenting*)

It is necessary that I dissent from the election of Chief Justice Clifford Taylor as Chief Justice of the Michigan Supreme Court. Chief Justice Taylor has proven that he cannot properly lead the Michigan Supreme Court at this time. The people of Michigan deserve to have a Chief Justice who will conduct the people's business in an orderly, professional, and fair manner.

Let it be clear, my dissent is not motivated by ill will or resentment—I have none for any of my colleagues. Nor do I have any desire to serve again as Chief Justice myself.[1] I strive to base in fact and truth my

---

[1] **It is repeatedly and falsely asserted that my reasons for revealing to the public the misuses and abuse of power and the disorderly, unprofessional and unfair conduct of the people's judicial business by the majority of four, Chief Justice Taylor, and Justices Corrigan, Young, and Markman, is somehow related to my**
Footnotes continued on following page.

opinions—dissents and concurrences—and to state only what I believe is

---

Footnotes continued from previous page.

publicly subjecting myself six (6) years ago in January 2001 to not being re-elected to serve as Chief Justice for a second term, in the "tradition of the court."

There was no such tradition. My immediate two predecessors as Chief Justice, Justices Brickley and Mallett, each served only one (1) two-year term as Chief Justice.

I knew entering the 2001 conference of the seven (7) justices to elect the Chief Justice, that I did not have the votes to be elected Chief Justice again. But against that knowledge, I believed for the good of the Supreme Court and the whole judiciary, and for the many whom I had promised I would be willing to serve a second time as Chief Justice, and against my friends', family's, and supporters' advice (including my trusted former colleague, Justice Riley), I believed I must put forward my willingness to serve a second term, even if it meant being publicly defeated. Here are two more of my reasons for doing so then:

1. <u>To Continue Fair Treatment of Court Employees.</u>

In my written remarks on departing as Chief Justice on January 4, 2001, I stated:

> **I have been blessed to work with staff members who are caring, competent, and valuable to the institution of the judiciary. As I said in my September State of the Judiciary address, *"Progress in the advancement of justice is the result of many individual efforts."* <u>I trust that my colleagues recognize the contributions of Court staff, both here at the Supreme Court and in the State Court Administrator's Office, and that they will not unjustly discipline or unfairly terminate these loyal employees.</u> (Emphasis added.)**

Within an hour of Justice Corrigan's election as Chief Justice, at least two employees, loyal to the Supreme Court as an institution, were terminated, told to "get their stuff" and were escorted out of the building by Security. (A copy of my remarks on the privilege of having served as Chief Justice of the Michigan Supreme Court can be found on my personally funded website at http://www.justiceweaver.com/chiefjustice.php).

2. <u>To Continue to Prevent Then Governor Engler From Running and Politicizing the Supreme Court.</u>

> **For example: During my term as Chief Justice in 1999-2000, Governor Engler, his legal counsel, Lucille Taylor (Chief Justice Taylor's wife), and Chief Justice Taylor repeatedly pressured me to do political campaign advertisement for Justices Taylor, Markman and Young in the very contentious election of 2000. I refused and never did, believing it to be inappropriate.**

necessary that the public know. Facts and truth, and dissents and concurrences based on them, are not always pleasant information.

I dissent because the majority of four of this Court has misused and abused the judicial power by suppressing, or attempting to suppress, dissent and has engaged in repeated disorderly, unprofessional and unfair conduct in the performance of the judicial business of the Court.

Not one member of the majority of four has demonstrated an ability to lead this Court at this time. Thus, it is in the best interest of the State of Michigan and the Michigan Supreme Court for either Justice Michael Cavanagh or Justice Marilyn Kelly to serve as this Court's Chief Justice. [2]

---

[2] **At the January 4, 2007 conference to elect the Chief Justice, all 7 justices were present. The Clerk of the Court was excluded from the conference discussion but was called in and present for the vote. Justice Markman moved and it was seconded by Justices Corrigan and Young, to elect Chief Justice Taylor as Chief Justice of the Michigan Supreme Court. Chief Justice Taylor was elected by a vote of 4 to 3, Justices Cavanagh, Weaver and Kelly dissented. Justice Weaver said she would file a written dissent as soon as practically possible.**

Later the same day (January 4, 2007), the Court Public Information Officer released a full page, but incomplete, press release announcing Chief Justice Taylor's re-election as Chief Justice. The press release failed to provide important information, specifically that the vote to re-elect Chief Justice Taylor was a 4 to 3 vote, and that I planned to file a dissenting statement to the majority's decision.

Further, information apparently supplied by Chief Justice Taylor to the Associated Press as to what actually occurred at the January 4, 2007 conference is incorrect. The fact is I did not nominate anyone for Chief Justice at the conference. What I did do is urge Chief Justice Taylor, and Justices Corrigan, Young and Markman to cast their majority votes for either Justice Cavanagh or Justice Kelly, and that I would be willing to vote for either one of them as Chief Justice. Additionally, I said to them that the election of either Justice Cavanagh, or Justice Kelly, as Chief Justice, would be a beginning step toward putting this Supreme Court on the path of earning back the public's trust and confidence—trust and confidence that this Court presently does not deserve.

Footnotes continued on following page.

There are many reasons for my position that not one member of the majority of four should serve as Chief Justice or lead this Court at this time. The following is an enumeration of reasons, some previously published[3] and some revealed here for the first time, for my position regarding the selection of this Court's Chief Justice.

I. SUPPRESSION OF DISSENT BY THE MAJORITY OF FOUR

Chief Justice Taylor, and Justices Corrigan, Young and Markman, are unworthy to be Chief Justice of the Michigan Supreme Court because they have demonstrated their willingness and desire to suppress and/or censor divergent opinions by fellow justices.[4] It is wrong for any majority of the Michigan Supreme Court to decide what they deem worthy or unworthy of publication, and to use their majority votes to silence, or attempt to silence, opinions with which they do not approve, as authorized by the majority of

---

Footnotes continued from previous page.

[3] Sufficient reasons supporting my position regarding who should, and who should not, be the next Chief Justice are found within my dissent to the December 6, 2006 adoption by the majority of four of Administrative Order 2006-08 (AO 2006-08), the "gag order," and within my dissent to the order denying the motion for stay requested in *Grievance Administrator v Fieger*, motion for stay, docket no. 127547.

My dissent to AO 2006-08 is published at: http://courts.michigan.gov/supremecourt/Resources/Administrative/2006-08-Dissent.pdf

My dissent to the order denying the motion for stay in *Grievance Administrator v Fieger* is published at: http://courtofappeals.mijud.net/documents/sct/public/orders/20061221_s127547_28_127547.122106order.pdf

[4] *See supra* note 2.

four's hastily adopted Administrative Order 2006-08 (AO 2006-08).[5] The majority of four used AO 2006-08 to order the suppression of my dissent in

---

[5] ***See supra*** **note 2. As recently as December 20, 2006, the majority of four asserted that by adopting Administrative Order 2006-08, the "gag order," to restrict dissent they were "preserving the integrity and confidentiality of the Court's deliberative process." Yet the majority of four has failed to produce any Michigan case law, statute, court rule, or constitutional provision to support its position.**

Further, the majority of four has failed to respond to either Justice Cavanagh's or my position that nothing in my dissent to the order denying the motion for stay in *Grievance Administrator v Fieger* violates any so-called "judicial deliberative privilege." The majority of four, without substantiation, asserts that they understand other appellate courts and the U.S. Supreme Court have the same unwritten gag rules. Even if other state appellate courts and the U.S. Supreme Court have such unwritten "gag rules" or traditions, they are not binding upon the Michigan Supreme Court.

The closest thing to a "judicial deliberative privilege" in Michigan is contained within the Canons of the Code of Judicial Conduct. It is this so-called "judicial deliberative privilege" that I have understood for my entire 32-year judicial career, and by which I strive to abide. There are no constitutional provisions, case law or court rules creating a so-called "judicial deliberative privilege" in Michigan. The secrecy sought and claimed by the majority of four impermissibly expands upon the written rules that exist for judges and justices in Michigan and such secrecy and suppression of dissents and concurrences ill-serves the people of Michigan. Movement toward more secrecy within the Court threatens the already too limited checks and balances that exist on the Michigan Supreme Court's performance of its duties.

My dissents to AO 2006-08 and *Grievance Administrator v Fieger* reveal that for over two (2) weeks, the majority of four ordered the suppression of my dissent to the order denying the motion for stay in *Grievance Administrator v Fieger* by employing their new "gag order," AO 2006-08. The majority of four adopted AO 2006-08 for the purpose of suppressing dissents and/or concurrences of mine, or of any justice in the future. Yet the majority does not have any authority to suppress a dissenting or concurring justice's opinion.

The majority's lack of any such authority is evidenced by the Michigan Constitution. In the Michigan Constitution, Const 1963, art 6, sec 6, the people provided that:

> **<u>Decisions of the supreme court</u>, including all decisions on prerogative writs, <u>shall be in writing</u> and shall contain a concise statement of the facts and <u>reasons for each decision</u> and reasons for each denial of leave to appeal. <u>When a judge dissents in whole or in part he shall give in writing the reasons for his dissent.</u> (Emphasis added.)**

Footnotes continued on following page.

***Grievance Administrator v Fieger*, motion for stay. Such censorship is undemocratic and interferes with the censored justice's constitutional duties. For the majority of four to adopt and use a "gag order," over the dissenting voices of the remaining three justices on the Court, is wrong. The majority of four's willingness to suppress or attempt to suppress dissension shows that no member of the majority of four is fit to lead as Chief Justice of the Michigan Supreme Court.**

The majority of four's last-minute reversal of the suppression order to the Clerk of the Court[6], and the decision to let my dissent to the order on the

---

Footnotes continued from previous page.

This provision of the Michigan Constitution makes clear that the people are entitled to know why a justice finds it necessary to dissent or concur from a majority opinion. Thus, it is wrong for the majority of four to assume that the majority has some other "authority" or unwritten power to suppress dissents or concurrences.

[6] On December 15, 2006, Chief Justice Taylor submitted a concurrence in *Grievance Administrator v Fieger,* in which he stated, "with the concurrence of the majority of the Court, I have directed the Clerk of Court not to include Justice Weaver's dissenting statement in the Court's publications in this file."

On December 21, 2006, Chief Justice Taylor submitted yet another concurrence, withdrawing his December 15, 2006, concurrence, and announced by memorandum to the Court that he, as well as Justices Corrigan, Young and Markman, after characterizing their December 6, 2006 formal vote ordering the suppression of my dissent as a "preliminary directive," had now decided to permit the publication of my dissent. The vote by the majority of four, ordering the suppression of my dissent was not a "preliminary directive." It was a formal vote taken by the majority of four during a scheduled judicial conference, to which Justices Cavanagh, Kelly and I formally dissented.

I note that Chief Justice Taylor in his concurrence continues to assert that the majority of four have the power to suppress a dissenting justice's opinions. He further states that he wishes to explore "what means of enforcement or sanction, if
Footnotes continued on following page.

motion for stay in *Grievance Administrator v Fieger* be published in the order on December 21, 2006 was the wise and correct decision. However, this action was conducted in an unprofessional and haphazard manner, unworthy of the Michigan Supreme Court. On Thursday, December 21, 2006, Chief Justice Taylor sent a memorandum to the justices and relevant Court staff claiming that the majority of four no longer supported the "preliminary directive" to suppress my dissent.

Ordering the suppression of my dissent by using AO 2006-08, the "gag order," cannot truthfully be characterized as a "preliminary directive." The truth is that fifteen (15) days earlier, on December 6, 2006, the majority had implemented the hastily adopted "gag order," and directed the Clerk of the Court in the presence of the entire court to refrain from publishing my dissent. Thereafter, Justices Cavanagh, Kelly, and I formally voted against the majority's decision to use the "gag order" to suppress my dissent. Given the formality of the votes on the question of whether to use AO 2006-08 to suppress my dissent, rescinding prior votes should also have been done within the formal setting of the Court's conference.

Failing to properly rescind their formal votes and attempting to recharacterize the nature of their prior formal votes as a "preliminary

---

Footnotes continued from previous page.
any, are properly adopted in response if a Justice violates it [AO 2006-08, the "gag order"]."

directive" attempts to change the history of what actually occurred regarding the majority's use of AO 2006-08. This manner of conduct is at a minimum, disorderly, unprofessional, and unfair, and is not an acceptable manner by which to conduct the people's judicial business.

Regardless of the majority of four's reversal of the suppression order it appears that the majority has no intention of abandoning its reliance on bully tactics[7] and suppression when faced with dissent or concurrence. One need look no further for proof of this than the majority of four's December 20, 2006 order placing on the January 17, 2007 public hearing agenda the majority's hastily adopted "gag order." The majority of four's "gag order," AO 2006-48, states that the majority is "particularly interested" in witness testimony regarding the following question:

> **Where a Justice violates or threatens to violate Administrative Order 2006-8, what means of enforcement and/or sanctions, if any, are properly adopted by the Court?[8]**

---

[7] The majority of four has used open and veiled threats to suppress, and/or attempts to suppress, dissenting voices with personal character attacks, and abuses of power. These include threats to exclude a justice from conference discussions (and actually did so), to ban a justice from the Hall of Justice, to threaten a justice with possible future lawsuits, to refer a justice to the Judicial Tenure Commission (JTC), or to hold a dissenting justice in contempt. Such bullying tactics cannot be permitted to silence dissent within the Michigan Supreme Court.

[8] For the text of the order and the separate statements regarding placing AO 2006-08 on the public hearing agenda, http://courts.michigan.gov/supremecourt/Resources/Administrative/2006-48.pdf.

The majority is looking for punishments for justices who violate, now and in the future, the "gag order," and is apparently uninterested in first considering the constitutionality of AO 2006-08, regardless of the fact that no Michigan case law, statute, court rule, or constitutional provision supports its position, as explained in my dissent to AO 2006-08[9].

Other examples of suppression by the majority of four, in addition to AO 2006-08, the "gag order," are:

1) The majority of four continues to effectively suppress my dissent to the majority's March 1, 2006 vote to adopt an Internal Operating Procedure (IOP). The majority intended for the still unpublished, secret IOP to govern justice disqualification decisions. Because the majority's March 1, 2006 vote was a final vote, and not a straw vote, my dissent to the adoption of the IOP by the majority of four should have been made publicly available attached to the minutes for the March 1, 2006 administrative conference. However, the March 1, 2006 minutes have never been approved, now over ten (10) months later. Thus, what occurred on March 1, 2006 during the Court's conduct of the people's business remains a secret from the public as it has yet, as of this writing, to be made available to the public in the Clerk of the Court's office.

2) The majority of four has effectively suppressed my dissent filed September 28, 2006 to the action taken at the September 7, 2006 conference

---

[9] ***See supra*** **note 2.**

by the majority of four's closing of the Justice Disqualification administrative file, ADM 2003-26. There have never been any proposed minutes for recording of the action taken on September 7, 2006, now nearly four (4) months later. (See Weaver dissent to denial to motion for stay in *Grievance Administrator v Fieger* for discussion and history (over three (3) years) of the Justice Disqualification administrative file, ADM 2003-26.)

II. DISORDERLY, UNPROFESSIONAL AND UNFAIR CONDUCT IN THE PERFORMANCE OF THE COURT'S JUDICIAL BUSINESS BY THE MAJORITY OF FOUR

Chief Justice Taylor, with the support of Justices Corrigan, Young, and Markman, illustrated his capacity to act unprofessionally during this Court's consideration of the administrative docket concerning the appointment of the Chief Judge of Probate for Kent County in July 2006.[10] I articulated substantial grounds for my disagreement with the appointment made by the majority. In response to my dissent, which was my duty to provide, I became the target of personal attack. Chief Justice Taylor prepared and circulated to the justices and court staff a draft concurrence to the appointment, which stated:

> **This Court, by a vote of 4 to 3, has appointed Judge Paul J. Sullivan as Chief Judge of the Kent County Probate Court.**

---

[10] The administrative order appointing the Kent County Probate Chief Judge, and my dissent to the appointment can be found at: http://courts.michigan.gov/supremecourt/Resources/Administrative/2006-01-Sullivan.pdf

> **Justice Weaver, having unsuccessfully urged we appoint Judge Patricia Gardner, has filed a dissenting statement.**
>
> **Behaving like a petulant "only child" Justice Weaver is, more or less, "holding her breath" until she gets her way: Judge Gardner as Chief Judge of the Kent County Probate Court. She hopes, as a child engaging in a tantrum, that one of the adults will given [sic] in and allow her to dictate their chief judge vote to save Judge Gardner's reputation. While I would like to spare Judge Gardner from this (in fact, ever the conciliator, I even suggested Justice Weaver use a hunger strike as a vehicle as it seemed to have the potential for everyone to be a winner) we cannot give Justice Weaver this power to bludgeon her colleagues by threat of outrageous statements needlessly embarrassing to third parties.**
>
> **It is a sad situation Justice Weaver has made here, but with apologies to Judge Gardner, our decision to approve Judge Sullivan will go forward.**

Chief Justice Taylor's response to my difference of opinion in my dissent regarding the appointment in Kent County is unworthy of a Chief Justice. Such discourse in the conduct of the people's judicial business is unprofessional and unfair and illustrates bias and prejudice.[11]

---

[11] **Led by Chief Justice Taylor, the majority of four unprofessionally and unfairly objected to my dissent, which revealed that the referrals of Judge Gardner to the Judicial Tenure Commission (JTC) concerning the *In re JK* case and another case, were both dismissed, clearing Judge Gardner. The majority of four, in various memos, feigned concern for Judge Gardner's reputation as a result of the inclusion in my dissent of the information about the JTC dismissal. I repeatedly assured the four that Judge Gardner would not object to the JTC reference. I repeatedly urged them to call Judge Gardner themselves, which none of the four ever did. The four effectively achieved suppression of the information when I ultimately deleted my reference to the JTC dismissal of the referral against Judge Gardner. I hoped that at least one of the four would decide to join Justices Cavanagh, Kelly and me in voting for the appointment of Judge Gardner as Chief Judge. Letters and phone calls from Kent County judges, including the Circuit Judge who was appointed**
Footnotes continued on following page.

Other examples of disorderly, unprofessional, and unfair conduct that make it impossible for me to support either Chief Justice Taylor or any other member of the majority of four (Justices Corrigan, Young and Markman) for Chief Justice include:

1) Only after I informed Chief Justice Taylor, all other justices, and appropriate staff by memo on December 14, 2006 that Administrative Order 1997-11 required that the "gag order," AO 2006-08, be placed on the January 17, 2006, public hearing agenda by no later than December 20, 2006, was the matter so placed. The justices and relevant court staff received a memorandum from the court administrative counsel on December 15, 2006, advising that Chief Justice Taylor did not believe that AO 1997-11 required that AO 2006-08 be placed on the January 17, 2007 public hearing agenda, but that he was willing to add it to the agenda if a majority of the Court believed it was necessary. On December 20, 2006 all justices voted to place AO 2006-08 on the public hearing agenda and it was added as administrative file, ADM 2006-48.[12]

Footnotes continued from previous page.
Chief Probate Judge, community leaders and citizens supported the appointment of Judge Gardner.

[12] **The administrative order placing AO 2006-08 on the January 17, 2007 public hearing agenda can be found at: http://courts.michigan.gov/supremecourt/Resources/Administrative/2006-48.pdf**
Footnotes continued on following page.

On December 20, 2006, after placing AO 2006-08 on the January 17, 2007 public hearing agenda, Chief Justice Taylor, at the conclusion of the Court's conference, suddenly announced that *Grievance Administrator v Fieger* would be discussed by telephone conference the next day, December 21, 2006.[13]

On December 21, 2006, speaking for the majority of four, Chief Justice Taylor announced that the majority would not suppress my dissent, but would instead publish *Grievance Administrator v Fieger* that same day. This was an abrupt and disorderly departure from the usual Court procedure regarding the disposition and publication of cases.

***Grievance Administrator v Fieger* was not on the December 20, 2006, Court conference agenda for discussion. The next day, on December 21, 2006, Justices Cavanagh, Kelly, and Weaver were given just a few hours, until 4:00 p.m., December 21, 2006, to prepare their dissenting statements for**

Footnotes continued from previous page.

The January 17, 2007 public hearing agenda can be found at:

http://courts.michigan.gov/supremecourt/Resources/Administrative/PH.htm

Note: ADM 2006-48 (item #14 on the agenda), the file number associated with the adoption of AO 2006-08, is the only item that does not have a synopsis of the issues to be discussed.

[13] **Chief Justice Taylor's explanation for the abrupt placement of *Grievance Administrator v Fieger* on the Court's conference without advance notice was that there was a pressing need for action. However, *Grievance Administrator v Fieger* was not on the regular conference agenda for Wednesday, December 20, 2006. The last time *Grievance Administrator v Fieger* was on the Court's agenda was on December 6, 2006.**

publication. *Grievance Administrator v Fieger,* motion for stay, had been in this court for months.[14] To suddenly announce that all justices had less than a day to prepare the case for publication was disorderly, unprofessional, and unfair.

2) On October 23, 2006, Chief Justice Taylor directly proposed an improper trade for votes. He stated that he might change his vote and grant the stay in *Grievance Administrator v Fieger* if I would not release my dissenting statement and "never again" attempt such a dissent. While legislators are known to trade positions for votes, justices are supposed to judge each case on its merits and not "deal."

3) During the September 7, 2006 conference, Justice Young resorted to a personal attack on my character to support the closing of an administrative file, and with the concurrence of the other members of the majority of four, said that he would "never publish the proposals" on justice disqualification and would "not give [me] any more power." The majority of four then voted 4 to 3 to close the file on justice disqualification. Further, the fact that the file was closed and that I dissented has not been recorded in the Court's publicly available minutes. I filed my dissent on September 28, 2006, over three (3) months ago.

---

[14] ***Grievance Administrator v Fieger,* motion for stay, was filed in this Court on August 21, 2006, over four (4) months ago.**

4) Chief Justice Taylor led and held, with the support of Justices Corrigan, Young and Markman, two (2) conferences on the Court's business while excluding three (3) justices who would not agree to the majority's "gag rule."[15] The two (2) conferences excluding Justices Cavanagh, Kelly and Weaver, who would not agree to the "gag rule," were held on November 13 and November 29, 2006.

On the first occasion (November 13, 2006), Chief Justice Taylor said the conference was moving to his office, and the majority of four left the room. On the second occasion, again, Chief Justice Taylor, and Justices Young and Markman left the conference room, and Justice Corrigan, who was conferencing by telephone, hung up. Justices Cavanagh, Kelly and Weaver remained in the conference room and continued to meet with the Clerk of the Court and cast their votes on cases. Apparently, after Justices Cavanagh, Kelly and Weaver had left the room, three of the majority of four (Chief Justice Taylor, and Justices Young, and Markman) met later that day in the conference room (Justice Corrigan perhaps joined by telephone or later sent in her votes). Court staff had the extra work of two different sets of justices meeting at two separate times on the same business. The Clerk of the Court sent out later that day his collation of the votes for the minutes to

---

[15] **At that time, the "gag rule" had been adopted by the majority of four on November 13, 2006 as a secret IOP (Internal Operating Procedure), a "gag procedure."** ***See supra*** **note 2.**

which I sent my additions and corrections by memo dated November 30, 2006.

III. CONCLUSION

I cannot support Chief Justice Taylor or any member of the majority of four to serve as Chief Justice at this time. I would support either Justice Michael Cavanagh or Justice Marilyn Kelly.

This dissent to the election of Chief Justice Taylor as Chief Justice reveals only the "tip of the iceberg" of the misuse and abuse of power and the repeated disorderly, unprofessional and unfair performance and conduct of the people's judicial business by the majority of four, Chief Justice Taylor, and Justices Corrigan, Young, and Markman.

I believe it is my duty and right to inform the public of repeated abuses and/or misconduct.[16] The majority of four's suppression of dissent, and

---

[16] **In determining when one must speak out, or abstain from speaking out, I am guided by the fact that, as a justice, I am accountable first and foremost to the public. The public expects to be informed by a justice if something is seriously wrong with the operations of the Supreme Court and the justice system. How else would the public know and be able to correct the problem through the democratic and constitutional processes? The public rightly expects the justices of this Court to act with courtesy, dignity, and professionalism toward one another. In matters of principle and legitimate public concern, however, the public does not expect a justice to "go along to get along." The public trusts, or should be able to trust, that the justices of this Court will not transform the Court into a "secret society" by making rules to protect themselves from public scrutiny and accountability.**

Yet the public also expects that justices will exercise wise and temperate discretion when disclosing information regarding the operations of the Court and the justices' performance of their duties. The public does not expect, and likely would not tolerate, being informed every time a justice changes positions on a matter before the Court, or every time a justice loses his temper with a colleague.
Footnotes continued on following page.

attempts to suppress dissent, mishandling of administrative duties, and repeated disorderly, unprofessional, and unfair conduct are matters of legitimate public concern.

Over the past year and longer, the majority of four has advanced a policy toward greater secrecy and less accountability. I strongly believe that it is past time to let sunlight into the Michigan Supreme Court. An efficient and impartial judiciary is "ill served by casting a cloak of secrecy around the operations of the courts."[17]

I urge the majority of four, Chief Justice Taylor, and Justices Corrigan, Young, and Markman, to reconsider the election of Chief Justice Taylor as Chief Justice and cast their majority votes for either Justice Michael Cavanagh or Justice Marilyn Kelly. The election of either Justice Cavanagh or Justice Kelly to the Chief Justice position would be a beginning

---

Footnotes continued from previous page.

The public expects justices to debate frankly, to be willing to change positions when persuaded by better argument, and to be willing to admit that they have changed their positions. Moreover, momentary, human imperfections do not affect the work of the Court. The public would lose patience with and not support a justice who recklessly and needlessly divulged such information for intemperate or political reasons. It is an elected or appointed justice's compact with the people that, whenever possible, a justice will make all reasonable efforts to correct problems on the Court from within.

But the public needs and expects to be informed by a justice when repeated abuses of power and/or repeated unprofessional conduct influence the decisions and affect the work of their Supreme Court and the justice system. I believe it is my duty and right to inform the public of such repeated abuses and/or misconduct.

[17] ***Scott v Flowers,*** **910 F2d 201 (5th Cir 1990).**

step toward putting the Michigan Supreme Court on a path of earning back the public's trust and confidence that this Court presently does not deserve.