

# Governor Engler's Judicial Philosophy

*The following remarks were given by Governor John Engler at the Annual Membership Luncheon at the Detroit Athletic Club after he accepted the first-ever Legal History Award for his support of the building of the new Hall of Justice.*

Thank you, Wally, for these two beautiful books on the U.S. Supreme Court and Michigan Supreme Court. I assure you that they won't end up at John King's bookstore. I will treasure them, and leave instructions for my daughters for the future. Also, at 1,032 pages, they will be perfect to take to the Tiger's game, judging by the way they have been playing recently.

Regarding the Michigan Supreme Court, we of course cannot be sure that the last chapter has been written for 2002.

There may have to be an addendum to this volume before the year is out.

Recall that Governor Milliken made two appointments to the High Court during his last month in office, in December 1982.

When I look at the people in this room, and the principles and achievements and leadership you represent throughout the Michigan judiciary, I am honored beyond words to receive this Society's first Legal History Award.

An ancient philosopher, I think, captured my own sentiments exactly when he said:

"Most people are content with the applause of the rich and powerful, the beautiful and famous. I am satisfied to have earned the esteem of the virtuous and wise."

So, all you virtuous and wise ones here, thank you for this very great honor.

I'm going to keep my remarks brief so that Tigers' fans can get to the game on time.

The Tiger's are playing for three in a row across the street. Looks like we finally have a winning streak in the making and I don't want anyone to miss that.

Also, speaking of the virtuous and wise, I heard Frank Kelley say that technically this is *not* the first Legal History Award ever given.

In fact, Frank informs me that *he* was the recipient of the *first* Legal History Award when the Old Supreme Court Chambers in the Capitol were dedicated.

We have a picture of that event on the program and I thought back and remembered the ceremony that took place back in April of 1988.

Frank said, "Oh, no, not that ceremony. I'm talking about the original dedication back in 1879."

We're looking forward to the opening of the Hall of Justice with great anticipation. Most of my days start by dropping the girls off at the Montessori School on St. Joseph Street in Lansing and then heading to



*Governor Engler accepts The Oxford Companion to the Supreme Court of the United States as a symbol of the Legal History Award.*

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the Capitol. I usually come down the street where I can see the progression of the construction on the Hall of Justice. Right now they are adding a bit of landscaping and it is really looking terrific. When it does open, you are going to be able

to see the Michigan Vietnam Veteran's Memorial in addition to the Hall of Justice.

I generally try to stay away from the

courthouse. However, I will certainly be there on October 8<sup>th</sup> for the dedication and also on October 12<sup>th</sup>. I understand that they are throwing me a birthday party. It is going to be special.

Now we find ourselves looking forward to the next dedication – on October 8, 2002 – when the Hall of Justice opens its doors in Lansing, and the Historical Society will have a permanent home on the first floor, at the end of the Learning Center.

It is so appropriate that Dorothy Comstock Riley was Chief Justice at the re-dedication in 1988. She talked a lot about the Hall of Justice. She was an early, passionate advocate. She gave me some of the history of how many others have been in pursuit of having this accomplished and I think it is great that it is finally coming to fruition.

What Dorothy and Wally and the members of this Society have been doing these past 14 years is truly an act of civic virtue.

You are building up a patrimony of sound historic principles and right judicial thinking.

There is no doubt in my mind that this Society complements the work of our current Michigan Supreme Court, which is simply stellar.

It's one of the greatest things to be proud of ... in a state full of great things to be proud of.

Just last Friday Gene Meyer, president of the Federalist Society in Washington, DC, told one of my assistants that the Michigan Supreme Court is, bar none, the best State court in America.

In decision after decision after decision, our High Court adheres to legal principles consistent with the Founders' understanding of the role of the judiciary in our constitutional republic.

Wally was kind enough to recall the large number of judicial appointments I've made over the last 11 plus years – 183 in all.

But even more important than the number of judges are their quality and independence and competence to sit on the bench.

When it comes to judicial appointments, I can be a little bit controversial but as in much else, my critics miss the point.

They charge that I want a "Republican court."

Or a "*politically* conservative court."

Or most heinous of all, a "John Engler court."

That's sophistry.

I've said it so many times when

**"The Michigan Supreme Court, bar none,  
is the best State court in America"**

I've had the privilege of speaking at judicial investiture ceremonies and it is appropriate to mention it again today:

I want jurists on the Michigan bench:

- ☐ who understand that it is legislators, not judges, who make the law;
- ☐ who believe that the people should govern through their elected representatives;
- ☐ who comprehend that the burden of policy-making is on the legislative not the judicial branch;
- ☐ who render decisions based on the *text* of the Constitution or statute rather than on somebody's social agenda.

In short: I'm looking for a few intelligent, hard-working men and women with fidelity to the Constitution!

In Michigan, we are blessed to have more than a few who are making their mark, and I am very proud of their achievements.

As for the members of the Supreme Court, Gene Meyer is absolutely right – you are the very best.

In historical perspective, it is certainly fair to compare our current Supreme Court with the greatest court in Michigan history, when the "Big Four" – Justices Cooley, Campbell, Graves, and Christiancy – served on the bench.

The two courts are similar because of the integrity of their judicial method, which is textual and restrained.

Again, the aim is to seek out the original meaning of a statute or the Constitution, and to be guided by the words that are in the law, not by some "penumbra" or social agenda; not by what legislators hope for but by what they say.

Historically, that is consistent with the thinking of Hamilton, Madison, and the Framers of our U.S. Constitution.

Recall that at the Constitutional Convention of 1787, the Framers rejected proposals to set up an activist judiciary three separate times.

Later, in *Marbury v. Madison*, Chief Justice Marshall opined that the act of judicial review would be – and by implication should be – rare.

He was correct: judicial review would be rare in America for a long time.

Justices Holmes and Brandeis and others carried the banner of judicial restraint forward for later generations.

Unfortunately, we saw that start to change by a creeping activism that moved into the judiciary at the federal and the state level, and it was reinforced at times by professors in the law schools.

By the late 1960s, the judiciary was usurping legislatures' authority on a regular basis, dictating public policy on issues ranging from bussing to abortion.

One of the key achievements of the Reagan Revolution was to bring the idea of judicial restraint back into public discourse. We certainly had controversy in those days with the appointment of Chief Justice Rehnquist.

Even the contentious Bork hearings in the fall of 1987 gave our nation a much-needed tutorial in competing judicial philosophies.

I go through this all-too-brief historical recap to make the point that we cannot take the ideal of judicial restraint for granted.

It is absolutely vital to the health of our constitutional republic.

It transcends partisan politics, but needs protection by and within our political process.

Furthermore, it needs explaining, which is one of the reasons why the Michigan Supreme Court Historical Society is so important.

Just preserving the memory of the "Big Four" and other great jurists is a worthy mission.

Recently I had the privilege of visiting the White House. On the first level there is this library that has quite a collection of books. You cannot help but notice that on the first shelf, there is this great book — Justice Cooley's treatise of the Constitution. There is an entire volume set. I don't know how many times they have been used or by whom, but by golly, there they are. They're in the White House, they are on a prominent shelf, and they are available.

For the record, the current Michigan Supreme Court has rendered decisions that in some cases run counter to my policies or social philosophy. However, I have to concede that upon closer examination of most of the cases, it is hard to argue with their results. In a few instances, the Legislature, to its credit, has gone back and rewritten the statute to

clarify what they actually intended. That's as it should be.

Why?

Precisely because they stick to interpreting the law *as written*.

They are fulfilling the duty our Founders envisioned for the judiciary.

The Legislature has to do its job well in order to allow the judiciary to do its job well. When everyone is robust in the exercise of their Constitutional authority, the system works rather well. In my life I've had the opportunity to serve in two of the branches and I've always argued that the branch that I'm in ought to be robust in the exercise of their authority. I did so as a lawmaker, and I've had to do so as Chief Executive.

Now, if that is the definition of a "judicial conservative," then I seek judicial conservatives for the High Court.

It is important to understand that a judicial conservative is not the same thing as a political conservative.

Political conservatives are advocates for certain public policy or social outcomes.

Not the judicial conservative.

Judicial conservatives liken their role to that of an umpire.

Others play the game; the judge calls the balls and strikes.

In the seventh inning the rules are not going to change, the strike zone will not suddenly shrink or expand, and it won't be good enough if you almost touch home plate. The umpire cannot change those rules. That is the same logic that I would like to see on the bench.

Which reminds me . . .

There's a game about to start, and I promised not to go long.

So let me just say "thank you" very much for inviting me to come here. I promised Wally that I would not delay anyone from making the game.

This Society has rendered a great service by raising the awareness of the judiciary in our state and by continuing to talk of the history of the legacy of the Court. I am grateful to you.

The people of Michigan will forever be in your debt.

We are a better state because of your work.

God bless you – and enjoy the game.



*Governor Engler was honored for, among other things, his ongoing support of the Michigan Supreme Court Historical Society, as seen in this picture taken at the Rededication of the Old Supreme Court Chambers in April 1988.*

# Images from the 11th Annual Membership Luncheon

The 11th Annual Membership Luncheon was attended by nearly 150 Society members and guests, including five current Michgian Supreme Court justices and six former justices. Society President Wallace D. Riley welcomed attendees and honored the living former justices in attendance, as well as those who were unable to attend. Mr. Riley also honored the Society's Board of Directors, welcoming two new directors and presenting resolutions to two former directors. Chief Justice Corrigan spoke to the attendees, introducing her colleagues and addressing the Governor and his leadership role in the building of the Hall of Justice. Mr. Riley presented the Legal History award to the Governor and Governor Engler gave brief remarks thanking the Society and the Court for a job well done.



# Thursday, April 18, 2002 — Detroit Athletic Club



**Pictured:** (1) Governor John Engler, Chief Justice Maura D. Corrigan, and Society President Wallace D. Riley each spoke at the Luncheon. (2) Society board members Frederick G. Buesser, III and Hon. Denise Langford Morris, former State Bar President J. Thomas Lenga, Society board members Hon. Wendy L. Potts and Lawrence G. Campbell (3) Felicia Courtright, Governor John Engler, and Hon. John T. Courtright (4) Society board member Eugene Mossner, former Justice Lawrence B. Lindemer, Society Executive Director Angela Bergman, Justice Michael F. Cavanagh, Lawrence Lindemer, Jr., and Society board member Alfred M. Butzbaugh (5) Phillip

Holman, Joseph O'Brien, Bruce Nichols, and Stephen Dart (6) Bob Martin, Rita Foley and another Luncheon attendee (7) Justice Elizabeth A. Weaver poses with two Society members. (8) Justice Markman poses with Terri Land and another Society member. (9) Guests at the Clark Hill table wait for the program to begin. (10) Members pose for the camera (11) William Hampton, Hon. Denise Langford Morris and Governor Engler (12) Society board members Wendy L. Potts, Christine D. Oldani, Frederick G. Buesser, III and David L. Porteous pose with Justices Cavanagh and Taylor and two Society members.

# Chief Justice Corrigan Addresses the Crowd

*The following is an excerpt of the remarks given by Chief Justice Corrigan at the Annual Membership Luncheon at the Detroit Athletic Club. To view a full copy of her remarks, please go to [www.micourthistory.com](http://www.micourthistory.com) and click on Recent News.*

Let me, on behalf of the Court, join the Society in congratulating Governor Engler in receiving this first award. This has been a week of awards. It began last Sunday for me with a posthumous award that my father received in Cleveland, Ohio for his contributions as a leader in medicine. I thought that what was said then about leadership was so appropriate to my dad as a leader, and it is also particularly apt to describe John Engler.

I've had the privilege over the last two years as Chief Justice to work with this Governor on a number of projects of interest to both of our branches. I can tell you that he brings high energy to the task. You may not always agree with John Engler, and you may find him very controversial, but he is a man who is courageous and of high energy. I think this story describes who I think he is:

## A Leader

*I went on a search to become a leader. I searched high and low. I spoke with authority. People listened, but alas, there was one who was wiser than I and they followed that individual. I sought to inspire confidence and the crowd responded, "Why should I trust you?" I postured, and I assumed the look of leadership with a countenance that flowed with confidence and pride. But many passed me by and never noticed my air of elegance. I ran ahead of the others and pointed the way to new heights. I demonstrated that I knew the route to greatness. And then I looked back, and I was alone. "What shall I do?" I queried. "I've tried hard and used all that I know." And I sat down and I pondered long. And then I listened to the voices around me. And I heard what the group was trying to accomplish. I rolled up my sleeves and joined in the work. As we worked, I asked, "Are we all together in what we want to do and how to get the job done?" And we thought together, and we fought together, and we struggled towards our goal. I found myself encouraging the fainthearted. I sought the ideas of those too shy to speak out. I praised those who worked hard. When our task was completed, one of the group turned to me and said, "This would not have been done without your leadership." At first I said, "I didn't lead, I just worked with the rest." And then I understood, leadership is not a goal. It is a way of reaching a goal. I lead best when I help others to go where they've decided to go. I lead best when I help others to use themselves creatively. I lead best when I forget about myself as a leader and focus on my group—their needs and their goals. To lead is to serve, to give, to achieve together.*

I think this is a beautiful description of leadership. I commend you, John Engler, for the way that you've led Michigan. And I particularly thank you, Governor, for what you've done with regard to the Hall of Justice. Many Chief Justices who preceded me worked very hard to obtain a Hall of Justice.

They experienced dashed hopes. We are about to have a courthouse and that's thanks to you. We are most grateful for that.

I want to just share with you the record of efforts during the past

forty years, to give you some historical perspective. In 1967, then Chief Justice John Dethmers presided at the presentation of a portrait of Justice George E. Bushnell. At that time, the Supreme Court presided in the same room where it had been for almost ninety years, in the Capitol building. In accepting the portrait, Justice Dethmers expressed the hope, and I quote, "that the long-continued assurances from some quarters that one day this court will be housed in a new court building may before long come true."

Three years later, the Supreme Court was still in the Capitol building and the Court had a new Chief Justice, the young Thomas Brennan. On that day, he presided at the closing of the courtroom. The Supreme Court was about to move to the G. Mennen Williams building. One of the speakers was Senator Thomas E. Schweigert. He brought with him the good wishes of the Legislature and also the hope that the Williams building would only be a temporary headquarters for the Court. Three decades later, the Court is about to depart from those "temporary headquarters." The next moment in this journey is going to be the dedication of the new Hall of Justice, which faces the Capitol on Martin Luther King Boulevard. If you go to Lansing, I hope you take a chance to look at the Hall of Justice. It's been a long, arduous trip to get there.

Let me say a word about buildings, because, after September 11, I understand better the impetus of people to have a permanent institution. Before September 11, I would say to various audiences that the Court was a permanent institution; after September 11, I've learned my lesson. The Court is not a permanent institution; what is permanent is courage and the hearts and minds of men and women who let these generations continue and proceed into the future.

But a courthouse is a testament; it is the spirit of justice; it is a testament to ordered liberty in our state. We're very proud of this new building. It represents courage and the spirit of justice. So I welcome all of you to our dedication on October 8<sup>th</sup> and to our dinner on October 12<sup>th</sup>. I hope you'll join us in celebrating the symbol that is the Hall of Justice. I thank you all and welcome you all again on behalf of the Court.

## **MARK YOUR CALEDARS TODAY!**

### **HALL OF JUSTICE BUILDING DEDICATION**

**TUESDAY, OCTOBER 8, 2002**

**10:00 A.M. TO 1:00 P.M.**

### **CELEBRATING FOUNDATIONS OF JUSTICE**

### **A FUND RAISING DINNER FOR THE LEARNING CENTER**

**SATURDAY EVENING**

**OCTOBER 12, 2002**

**MICHIGAN HALL OF JUSTICE**

## In Recent News.....

### Society Welcomes Two New Boardmembers, Honors Others

At the April 18, 2002 Annual Meeting of the Michigan Supreme Court Historical Society's Board of Directors, Alfred M. Butzbaugh and Eugene Driker were welcomed as new Society board members.

Mr. Butzbaugh, a former State Bar President and a partner at Butzbaugh and Dewane in St. Joseph, will serve a three year term expiring in 2005.

Mr. Driker, a senior member of Barris Sott Denn & Driker PLLC in Detroit, filled the vacancy left by the death of Thomas McNish. He will finish out the term to expire in 2004.

In addition to welcoming the two new directors, the Board of Directors honored former directors Roger F. Lane and Thomas A. McNish by presenting resolutions thanking them for their years of service and their hard work on behalf of the Society.

To read more about the Society's new directors or to see the full text of the resolutions presented to Mr. Lane and Mr. McNish, please go to our website, [www.micourthistory.org](http://www.micourthistory.org), and click on Recent News.



*Roger Lane accepts his resolution from President Riley.*



*Phil Bickel and Don Forsblom, representatives of CMS Energy and co-workers of Thomas McNish, accept the resolution of the Board on his behalf.*

### Society Unveils New Logo

When the Society was formed in 1988, we needed letterhead, and Mr. Riley contacted Florida, Illinois, Missouri, and others for copies of their correspondence in order to see what type of logos they had created. All of the correspondence came back with replicas of the state's Supreme Court Building as their letterhead logos. Since we did not have a state Supreme Court building at the time, we asked the Center, now the College, for Creative Studies to conduct a competition to design a logo for us with the secret hope that someday it could be replaced.

At the Annual Membership Luncheon, a proposed version of new logo, featuring the Hall of Justice was unveiled.

If you have any input on the logo, which will first begin to appear on our letterhead and newsletters after the dedication of the building, please feel free to contact me at 517-346-6419 or at [abergman@micourthistory.org](mailto:abergman@micourthistory.org).



### New Coleman Intern Takes Over

Henry Lau, the Coleman Intern for the spring 2002 semester, has finished his portion of the Oral History Project and Michelle Martin is taking over.

Michelle is a senior at Michigan State University double majoring in history and political science. She is originally from Climax, a small village ten minutes from Battle Creek. After graduating from MSU, she plans to attend law school and hopes to practice international human rights law. She chose this position because it will allow her to gain a closer look at the people who helped shape the fabric of the society in which we live.



## Order the Reference Guide

Call (517) 346-6419 to make payment by phone, or complete and mail/fax this form to: MSCHS, 306 Townsend Street, Lansing, MI, 48933. Fax: (517) 372-2716.

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## Mission Statement

The Michigan Supreme Court Historical Society is a nonprofit, 501(c)(3) corporation dedicated to preserving documents, records and memorabilia relating to the Michigan Supreme Court. The Society produces publications, special events and other projects to achieve its goals in education and restoration. Current officers and directors are:

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**MICHAEL FRANCK BUILDING**  
**306 TOWNSEND STREET**  
**LANSING, MI 48933**