

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 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 8th for the dedication and also on Octo-



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

ber 12th. 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 I've had the privilege of speaking at judicial investiture ceremonies and it is appropriate

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

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



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.

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.