INTERVIEW WITH ERWIN SIMON

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Topic 1: Justice Ryan talks about his family history, going to Catholic schools, working at WXYZ Television, attending the University of Detroit, and entering law school before graduating in order to extend his draft deferment for the Korean War. After graduation, he joined the armed forces and served as a lawyer before joining his first law firm, Waldron, Brennan, Brickley and Maher. He then talks about running for Justice of the Peace in 1963, Circuit Court Judge in 1966, and his time in those offices

Mr. Lane:
This is another in a series of historical tapes that is sponsored by the Michigan Supreme Court Historical Society. It is November 13, 1990. The focus today is on former Justice James L. Ryan. With him is Roger Lane representing the historical society, and we're sitting in the chambers of Justice Ryan who is now a judge on the Sixth Circuit Court of Appeals of the United States. Justice Ryan, I would like to start by asking you about your early family and professional background. Right from ground zero. You were born in Detroit and grew up there.

Justice Ryan:
Yes, yes.

Mr. Lane:
What kind of family setting did you grow up in? How many kids were there in your family?

Justice Ryan:
There were just two of us. I have a sister who is about five years younger whose name is Joan Fitzgerald, lives just outside of Washington, D.C. We were born and raised in the west side of Detroit, attended the parochial schools, St. Francis de Sales, and then I went off to Catholic Central High School. It was automatic in those days, at least in my family, that if one got to college at all, if you were an Irish Catholic, you went to U of D period. There were no other options unless you were rich, in which case, you went to Notre Dame, and we weren't.

Mr. Lane:
What did your dad do?

Justice Ryan:
Well, he worked in this building. We were in what used to be called the Federal Building, and now called the United States Courthouse here at Fort Street and Washington Boulevard in Detroit, and he worked in the post office. I remember stories when I was very small about my dad being the only one in his family of five brothers and sisters or six, who was working during the depression, and I have a vague memory of taking baskets of food over to my paternal grandfather's house to take care of everybody, because my dad worked for the Federal government. I have a snapshot at home which, of course, I've had for more than 50 years, which is a picture of my dad standing on the sidewalk out in front of this building when the building had been open about six months in 1933, and the snapshot is taken of him watching a fire across Fort Street. What was burning, I don't know. I must say, almost every time I come into this building...I've been here five years now, I somehow seem to be conscious of the fact that my dad was working here when I was born.

Mr. Lane:
This very pile of rocks.

Justice Ryan:
Yes, this pile of rocks downstairs on the first floor, sorting mail and servicing the public through those windows in what now is the lobby of the U.S. Courthouse. We had a "parochial" upbringing, I think. The community when I was a kid in the 30's and early 40's on the west side of Detroit was the parish in the neighborhood. There didn't seem to be very many Catholics in our neighborhood and so there was sort of a dual community, the neighborhood and parish activities. My world was fairly tightly confined.

When I said to my mother and dad that I wanted to go to Catholic Central High School, I don't know what could have gone through their heads but they couldn't understand why since we had a high school in the parish and there were good public schools nearby, Cooley High School, but I had watched Catholic Central play football. They were a high school power in those days, and I wish I could say I was mesmerized by the academic opportunity but I was mesmerized by the power of the football team. I was one of three kids who didn't remain at St. Francis de Sales Grade School for high school, but instead...the other two went elsewhere, and I took a bus and a streetcar every day for four years to Catholic Central which was probably the most significant decision every made in my life because even today, the corp of close personal friends I have,

Mary and I have, are for the most part, fellows I have known and been close to since we were in high school at Catholic Central.

Mr. Lane:
Was Catholic Central...did it draw from the entire city?

Justice Ryan:
Yes, it did. It drew heavily from the near-east side, from the Hamtramack area. I had come from what then was the far-west side, but it was...there were only three parochial or Catholic boys' high schools in town at the time, U of D High, de Sales, and Catholic Central. Now, there are I suppose nearly a dozen.

Mr. Lane:
Were you taught in grade school and then again in high school by nuns or clerics of one form or another.

Justice Ryan:
We had the nuns, the sisters, servants of the Immaculate Heart of Mary, the IHM's at St. Francis de Sales and at Catholic Central, we were taught with no exceptions by the priests or scholastics or seminarians who were studying to be priests, and who were a year or two away from an ordination. Through my four years, every teacher I had was either a priest or a seminarian, and they are the Basilian Fathers, the congregation of St. Basil, originally a French order whose priests came to Toronto in about the time of the Civil War, as I recall and considerably after that, built St. Michaels College in Toronto and after that, Assumption College in Windsor, and that's where they came from when they came to Detroit, so the influence of the high school was very heavily not only priests but Canadian priests, so hockey was a dominant influence and topic, and I'm told there are traces in my speech of usages which are thought to be Canadian. Again, I've remained very close to the Basilian Fathers because of that influence. Two of the teachers who taught me are still at Catholic Central. A couple of them taught our two sons.

Mr. Lane:
As you look back and sort of assess where you came from and how you got to where you are, was there some identifiable characteristics that were, that resulted this...for example, sometimes people say that there is a great accent on discipline in the parochial schools, particularly the grade schools, and that the nuns are kind of hard task masters as they used to be in the hospitals. Did you experience that?

Justice Ryan:
Well, I think in retrospect, I did. I didn't think that I was being treated at all shabbily then or even more strictly by comparison to my friends who went to the public schools but in retrospect, it's pretty clear that in those days, the so-called unusual discipline of the Catholic schools was real, I think. There were a lot of "don't's"; maybe too many. And at Catholic Central, the credo of the Basilian Fathers translated from the Latin is "teach me goodness, discipline and knowledge", "in

that order", they always add, and so it was a square corners environment there, and I think that did have probably a heavier influence than I really appreciate, not only in what I decided to try to do with my life in terms of work but it probably also had an influence, unintended, I'm sure, on my philosophy about living; maybe my philosophy about government. It may have been the first seeds of essentially a conservative approach to constitutional law, for example.

Mr. Lane:
Was there an emphasis on...what will I call it...classical learning in the sense that...perhaps, did you take Latin?

Justice Ryan:
Oh, yes.

Mr. Lane:
This was more common in those days. I understand that in some respectable high schools today, Latin is not offered.

Justice Ryan:
I guess it is not. I know it is not, because our children have not had Latin. There was no choice. You had to take Latin.

Mr. Lane:
That was part of the drill.

Justice Ryan:
Absolutely, and you had to take a Romance language as well, and the better students, I was not then counted among them, took Greek if they wished. That was an option. It was an education in the classics, but not heavily so in all candor. Catholic Central High School at that time, attracted a broad spectrum of boys, young men from everywhere in the city and from a broad spectrum of abilities. Not everybody was a great academic student. They divided us, I remember, into four groups. Group I was the superior students and Group II were those who the tests revealed to be something less for some reason or another, then Group III and Group IV, so it was a great mix of the real world. It wasn't too heady academically at Catholic Central in those days.

Mr. Lane:
We've kind of skipped over your mother here. You talked a little about your dad. What are the dominant things that come to mind when you recall your mother's influence.

Justice Ryan:
Frankly, it wasn't the happiest childhood, although I have no great regrets. My dad had a drinking problem, and he left home when I was about in the eighth grade and my mother was required to go out to work which was during the war, earlier than the eighth grade, maybe the sixth grade. I recall rather sadly how she would get up in the dark at 6:00 or 6:30 in the morning and no matter what the weather, wait for a bus; we had no car; we never had a car, and take the bus or maybe two of them to the old Graham Paige plant in Detroit which the Army had taken over, and she had a clerical job. She hadn't worked in years. She had been a graduate of St. Leos

High School in Detroit in about 1925. She was the eldest girl in a family of eight, and had been offered a scholarship to several colleges including Nazareth and Mt. Saint Joseph.

Mr. Lane:
These would have been academic scholarships?

Justice Ryan:
Yes.

Mr. Lane:
She was, what will we say...gifted, talented?

Justice Ryan:
Very much so. She was a Latin scholar. To the extent I had any success in Latin in high school was because it was fun for my mother. But she couldn't go to school because she had to work, and that's not a novel story for that generation. She didn't go to college, so while she had no formal education, she was extremely bright, and totally loving of the two of us, but she was terribly saddened by the fact that she had to be away most of the waking hours of the day when my sister was second grade, third grade and I was in the sixth or seventh and on up, and she really worked herself to death. She died when she was 50 years old, when I was a second year law student, I think. I've thought about that statement and whether it could be verified, and I think it can be. Things weren't very good financially in our family, and that was one of the reasons, I think, the community was the neighborhood of the parish. It wasn't any purposeful inward turning of any kind. So, she contracted cancer and knew it, and didn't get any treatment, couldn't miss work, she thought because there really was no place to turn. Near the very end, of course, I was working full time, and I had worked full time all during college. I had always worked forty hours or more a week...

Mr. Lane:
What kind of work did you do?

Justice Ryan:
Well, I was...all these things...I was working at WXYZ television.

Mr. Lane:
I thought I saw that...it's in your biography, isn't it?

Justice Ryan:
Yes.

Mr. Lane:
I wondered. That required some explanation...I was going to ask you.

Justice Ryan:
A priest at Catholic Central who is still there, still teaching, Father Norb Clemens, was a gifted artist in the sense that he was a musician. He was an orphan, and his mother died of a heart attack when he was in the seventh grade, and his father was a detective who was killed in an ambush by some criminals in Youngstown in 19...well, I forgot the year.

They sent young Norb Clemens to Assumption College, and young Norb Clemens, having no family, somehow got interested in music and ultimately organized a band and in the late 20's and early 30's, would come over from Windsor to Detroit and play jobs and dances here, got interested in the theatre, was ordained a priest about 1940 and was at Catholic Central. He was terribly gifted at singing and music and got interested in the theatre. Catholic Central, under his direction, Father Norb Clemens' direction, produced, during a span of about eight years, first run Broadway plays, here in the hands of these high school kids. When I got to Catholic Central in 1946, they were producing shows that would run eight, nine, ten nights in this high school auditorium.

Bill Rabe Sr. would review them in the Detroit Times. I have the clippings at home, and Bill Rabe Jr. remembers seeing them. When I got there, I was somehow attracted to that, and got into his plays, and apparently he thought there was some potential there, and I thought I was interested in the theatre, so when I graduated from high school, I had no dad at home and I had no job, and there was no way I was going to go to U of D because I didn't have any money plus I got a job, so I asked Father Norb if he thought he could he help, and he called one his old pals who had been an actor for him at Catholic Central who was then Assistant Program Editor at WXYZ, John Lee.

To shorten up the story, I went to see John Lee, and he said, "I'll find a job for you", and within weeks, I was hired at WXYZ Television as what was then called a Floor Manager, and worked those studios in the old Maccabees Building from 1950 until about 1956 when I was finished law school. That was the source of the income for the tuition. It was my interest in the theatre was profound after about a year of that; I was sure that what I was seeing being produced there, I could do as well or better, but life being as it is, as I saw more and more of the life of the people involved in this small cameo of show business here in Detroit...

Mr. Lane:
Was this at the radio or television?

Justice Ryan:
Television.

Mr. Lane:
Television station, and this was produced for consumption here locally.

Justice Ryan:
Yes, in those days, there was great deal more live programming locally than there is now. The vast majority of our air time was live local production including some plays. This, remember, is before the networks began.

Mr. Lane:
So in your working capacity there, you were thrown in, at least on the edge of this...I don't suppose...did you perform?

Justice Ryan:
No, not at first. I was in the production department and worked my way up through that. Thought I wanted to perform, and an occasion came along in which some auditions were scheduled for a part which came to be kind of a fad for two to three years. There were five or six characters on television in the Detroit market. One was called the Black Spider. One was called the White Camellia. This concept was later made a success by Bill Kennedy. It's simply the matter of introducing about fourth run movies, the introducer being some kind of a fictional character who would attract a certain segment of the market.

I auditioned for such a part called the City Kid. It was an individual who was intended to be modeled after Leo Gorcey and the Bowery Boys, later called the East Side Kids. For about a year or year and one-half, near the end of my time in television, I was both working production and had this program of my own.

Mr. Lane:
You were in law school at this time?

Justice Ryan:
Yes, I was a senior in college and a freshman in law school during this.

Mr. Lane:
Was this at night, then, or how did you mix it in?

Justice Ryan:
No, it depended on what the registration was at U of D. If I could get courses heavily concentrated in the daytime, I would persuade the people at WXYZ to put me on the afternoon shift. That's what I did most of the five years. Occasionally, they would agree to transfer me to the day shift if I could only get night courses. Somehow, it worked out. Of course, I went to summer school all the time so that I could accelerate the program.

Mr. Lane:
What did this do for your academic standing?

Justice Ryan:
Well, it affected it negatively. My grades show that I was an average student. I didn't have much time to study. I regret that deeply now because my education wasn't very good. It was hit and miss, and if you'll permit a digression, I'll tell you what I've undertaken to do about that. Near the

end of that period, 50 - 54, I was a senior at the University of Detroit Arts and Science College and because of this hopscotching between the University campus and WXYZ television, I was perhaps six hours short of being a full blown senior and unless I did something spectacular, I wasn't going to graduate precisely in four years.

At the end of the first semester of my senior year, I began to see...we used to say "bodies falling left and right". They were people among us who had had draft deferments; the draft was on in those days for the Korean War, were being drafted right off the U of D campus despite the fact that they thought they had deferments, so I went down to the draft board in the winter of 1954 and said to the lady, "I'm scheduled to graduate, I hope, next June, and I want to go to law school. Is there any risk that my deferment will not be extended because I've finished one academic program?", and she said, "There's a very good chance you'll be drafted", and this was perhaps December.

So I ran down to the law school and registered in the middle of the winter to get into law school despite not having my undergraduate degree and so I started law school in January, 1954, assuming that I would avoid this break in my education which may have tempted the draft board to grab me, and it worked. They continued my deferment, but when I finished law school in 1956 which I also accelerated - I only went to law school for two years because I was afraid of being drafted, because I was running out of money and energy, so I finished law school in 1956, and that is...34 years ago, I guess.

Mr. Lane:
You would have been what...24 at that time...?

Justice Ryan:
Right, so I didn't have a degree.

Mr. Lane:
Oh, an undergraduate degree, but you did have your law.

Justice Ryan:
I had a law degree, and that has been on my mind, Roger, these thirty-four years, and it's also been on my mind that I was grabbing courses in the undergraduate program sometimes because they wouldn't offer too much challenge to my working schedule which was critical to be there at all, and I have never been satisfied with the quality of my undergraduate education, especially not in the last few years when I find myself writing for a living, so a year ago, I went over the U of D and told them the story I just told you and said, "I want to get my degree, but more than that, I want to get educated. Do you have a program for a guy like me?" I had lunch with the dean, and he said, "Yes, we have. There are two tracks we can offer you to finish your undergraduate program. The modern corp program for liberal arts people or we can re-create the track you were on in 1950 when you started here."

Mr. Lane:
How much did you have to go, six or eight?

Justice Ryan:
It turned out to be about 18 hours. I think it's 18. So I started 1-1/2 years ago back at U of D, and I am going to school now one night a week, and I am finished up to get my undergraduate degree and I have the happy opportunity to pick courses which are the ones I dodged 35 years ago. Two semesters ago, I took a course in Theology of Protestantism and the Reformation which I enjoyed immensely. Last semester, I took a course in American Literature from the Civil War to the present and today, this semester now, I'm taking English History from the Roman Period through the 15th century. I'm thinking about seeing my advisor this week to pick out something for next semester.

Mr. Lane:
How much longer on the calendar do you have to go? Maybe sometime next year?

Justice Ryan:
I think I'll take something this summer, so it is going to be about three more semesters, I think.

Mr. Lane:
That's quite a story.

Justice Ryan:
Well, it isn't the one we came to talk about, and I got...

Mr. Lane:
I got you off the track. Now, your mother became very seriously ill of cancer, and she continued to work?

Justice Ryan:
Yes, she did. She continued to work. She contracted cancer about 1950, and died in 1955, worked up until about 90 days before when she couldn't move any more.

Mr. Lane:
Did she work in a clerical capacity at Graham Paige?

Justice Ryan:
That was only during the War. When the war was over and the army pulled out of Graham Paige in 1945 or 1946, she then went to work for a company called Detrex Corporation which had its office only two blocks from our house for a while but later on, moved to mid town Detroit.

That pattern persisted, and my dad...they tried mightily to put the marriage back together again, but alcohol was his problem as it was his father's problem, and he just wasn't able to handle it, and they never were able to put the marriage together, and I think he suffered from terrible guilt feelings and so...I really believe this, and so he didn't make any effort to keep in contact with my sister and me as we were growing up except on occasions when he shouldn't have called on the

phone in the circumstances, but I must say, the day that I was sworn in as a Circuit Judge in Wayne County Circuit Court, I looked up, and he had been living in a distant state, Texas, for many years, and I looked up, and he was in the audience.

Mr. Lane:
Didn't know he was going to be there?

Justice Ryan:
Didn't know he was going to be there and hadn't talked to him in years.

Mr. Lane:
I skipped over something in trying to steer the conversation around here. What was the germ of your interest in the law that resulted in your going to law school and becoming an lawyer and a judge? Can you figure it out? Was it something obvious, somebody ahead of you?

Justice Ryan:
I think so. I think it was a combination of three things probably. One of them was the only fellow in our neighborhood, to my knowledge, who had gone to college lived a couple blocks away. His name is Bill Gilbride, and he was ten years old, is ten years older than I. I'd always admired him, and he went to law school. That was kind of a model. He is a senior partner today in a Detroit firm and a dear friend of mine.

That was one factor, and the other was Father Clemens at Catholic Central who worked with me in public speaking and in writing, and that tied in nicely with my interest in amateur acting, and the third component was, when I was at WXYZ Television, through the graciousness of John Lee, the Assistant Producer who hired me, who had been one of Father Clemens' boys at Catholic Central; John kept reminding me in what I now remember as a very subtle way that the glamor that I was apparently seeing in the life of show business was perhaps very superficial and maybe even vapid, and that he had seen that when he was younger, and had started into law school at U of D and had dropped out and had given his career over to show business, but he thought I ought to think about if I enjoyed the theatre and if I enjoyed entertainment in that respect, the rewards might be much greater if I were to be involved in it in the business end of it as a lawyer, and he encouraged me to go to law school. He facilitated the scheduling of my work at WXYZ to enable me to do that, so I think those three things put it together.

Mr. Lane:
Now, prior to your graduation, had you been on a track of some sort that took you into your first practice situation, law practice situation.

Justice Ryan:
No, the armed forces...I'd had that deferment for eight years, so the minute I graduated, I went into the Navy, Officer Candidate School, and into the JAG Corp and I served about 41 months with the Marine Corp.

Mr. Lane:
Oh, you did?

Justice Ryan:
As a lawyer, yes.

Mr. Lane:
This would have been 56 or so?

Justice Ryan:
Yes.

Mr. Lane:
Better than three years, right?

Justice Ryan:
Yes.

Mr. Lane:
Take you up to 60 or so, close to 60.

Justice Ryan:
Yes, it was in 60, and my friends who were back here, the fellows I was closest to started their own law practice. I don't know whether it is because, like me...well, that isn't the reason, but they are such people as Tom Brennan who later became Chief Justice of the Supreme Court.

Mr. Lane:
Were you in the famous law firm that had Brennan, Maher, Waldron, Brickley and...who was it...was Gribbs in there?

Justice Ryan:
Well, yes. I'll tell you what that was. While I was away fighting the great war on the beaches of the blue Pacific in Southern California, my service was in peace time, Roger, and really learning something about how to try law suits because I was prosecuting and defending criminal cases in the Marine Corp., my pals were back here trying to organize a law practice, so I returned home after my 3-1/2 years in the service, and the first thing you do is look up your pals, and my pals were Tom Brennan, who was ahead of me at Catholic Central and who had been a pal at U of D. and Dick Maher who was a classmate at U of D.

Mr. Lane:
Now on the State Court of Appeals?

Justice Ryan:
Now on the State Court of Appeals, and the law firm was in the First National Building and there is was, in the door, "Waldron, Brennan, Brickley and Maher. I walked in and my pals said, "Nice to see you, but we're struggling to feed our families, and if you want to join us, we'd love to have

you, but you've got to bring in your own business". I came aboard on that basis and stayed with those fellows for about three or four years. The people in the firm were Bob Waldron...

Mr. Lane:
Who later was Speaker of the House...

Justice Ryan:
Speaker of the House, and he was never around. He was in Lansing all the time, and we thought he was the Grosse Pointe feed. He was going to send us all the business. We were too naive to recognize that because Bob lived in Grosse Pointe and represented it didn't mean he was going to have any law business, and he didn't have much to send. Then there was Tom Brennan whom I've just described, and then there was his brother, Joe Brennan, who is now deceased, Terry, as we called him. Dick Maher, who was on the Court of Appeals. None of these fellows, for some reason or another, had to go in the service, so they'd been at this for three years. They rented space in the suite in order to help make ends meet to another U of D grad who had been an Assistant Prosecutor and had gotten tired of it, and wanted to try private practice, and his name was Ray Gribbs.

Mr. Lane:
Mayor...no, Sheriff...no...What was he?

Justice Ryan:
He was first the Sheriff, then later Mayor of Detroit, and now he is the Judge of the Court of Appeals, and the next fellow in that sub-rental group was Jim Brickley whom we all knew, although he didn't go to U of D because he went up to St. Michaels in Toronto to study with the Basilian Fathers. We got to know him quickly when he came out of college. Jim Brickley, of course, went from that practice to a membership in the Detroit Common Counsel, the a United States Attorney for the Eastern District of Michigan, then Lieutenant Governor, and now in the Michigan Supreme Court.

Mr. Lane:
Do you know of any other law firm in the State that produced three Supreme Court justices?

Justice Ryan:
I can't think of any. It was a great law firm as the description...of course, you're sensitive to all these names and these roles, but everybody in the...the law firm self-destructed because everybody got elected to public office, and there was an article written in the Detroit News by a female columnist whose name I've forgotten, and she claims to have coined the expression, "The Irish Mafia", which had reference to our law firm, and added to that Jerry Cavanaugh. Jerry was a contemporary of ours, but he was not in our law firm.

Mr. Lane:
He was a little behind you, wasn't he.

Justice Ryan:
A little ahead of us. My class in the law school was 1956. Jerry's was 1954, I think. Jerry was very much active in the Young Democrats at U of D, and none of us were active in any organized political party of any kind at all, and all of us, as the record shows, became more interested in judicial office, non-partisan judicial office that Jerry was interested in.

Mr. Lane:
Here you are in 1960, and they gave you a closet in a magnificent law firm. What happened next?

Justice Ryan:
Nothing. Absolutely nothing. I sat there and watched the ships go up and down the Detroit River. Nobody knocked on the door and said that they were desperate to have Jim Ryan represent them. These dear pals of mine who were the corp of this firm had combed the neighborhoods to get all the law business they could while I was out on the west coast with the Marine Corp and my dear wife was teaching school. We had no children. After two years of sitting around, I almost...well, I made up my mind I was going to go back in the service. I loved trying cases. I loved the Navy. I loved serving with the Marine Corp, and I came within a hair's breadth of returning after about 1-1/2 years of sitting in the First National Building with no law business.

But the Holy Spirit works in strange ways, and at the last minute, I decided maybe I shouldn't do that. My roots were terribly deep here, really, in Wayne County, my family, ancestors, so I told these fellows that I loved the relationship but we were better off as pals than business associates. The firm was self-destructing anyway. Tom Brennan was running for Congress. Dick Maher was running for the Traffic Court in Detroit. Waldron was Speaker of the House. Brickley was salivating at the prospect of running for Del Smith's seat on the Detroit Common Counsel, and so I went out to Redford Township, and opened a small law office and ran for Justice of the Peace.

I figured if I could get elected Justice of the Peace in Redford Township, I could probably live on the fees of the office while the law practice was building. The Redford Justice of the Peace was the biggest Justice Court in the State of Michigan in terms of the volume of its business, and it was, if not a full time job if one were elected to it, it was darn close to it.

Mr. Lane:
This would have been what...1962?

Justice Ryan:
1963, so I did. I ran in 1963. It was a partisan office in those days. I ran on the Republican ticket. All these personalities whose names I just mentioned, and all the friends I guess I ever had came out to Redford township en masse and literally overwhelmed the local politicos with this campaign that we put together. It was the closest thing to the crusades that I can think of looking back on it. Because of a convoluted filing process I won't bore you with, I defeated an incumbent Justice of the Peace in the primary and then defeated a second incumbent Justice of the Peace in the run-off and was elected in the spring of 1963.

I can recall Jim Brickley who was then a member of the Common Counsel of the City of Detroit

wanted to help as we had helped him, and he worn sun glasses on the day that was gray and overcast in the late winter, going up and down the streets in Redford Township, knocking on doors, getting petition signatures, hoping nobody would recognize Councilman Brickley from Detroit. Dick Maher was a Traffic Court Judge, and he was tacking up signs. So it worked. It was a very busy Justice Court.

In those days, we were paid with fees in the Justice system, so I served in the Justice Court from 1963 to 1966, and in 1966, there were vacancies, three new judgeships in the Wayne Circuit Court, and I thought that after having been a lawyer for nine years, three of them as a really the equivalent of a Municipal Judge, it was such a busy Justice Court, that perhaps I was ready for what was a real intellectual challenge for the first time, of the Wayne Circuit Bench. So, I ran. The same maniac devotion that was invested in this Justice of the Peace race in Redford was mounted again in Detroit with the help of all the people I've named and dozens of other U of D friends and friends from grade school worked for eight months, and we won in the Wayne Circuit race in the fall of 1966, and that was the end of the law practice.

As a Justice of the Peace, of course, I could practice law and did, and I never liked it. I was never suited for the practice of law, I'd made up my mind, that I could never be happy....while I understand the philosophical distinction between a lawyer and his client's cause, I could never bring myself to mount a vigorous attack for a cause that I didn't think was right, so I was happy to get out of the law practice.

Mr. Lane:
How did you run in 1966?

Justice Ryan:
There were three of us elected; Cornelia Kennedy, who was then not very well known but a very, very experienced woman lawyer in the City of Detroit, finished first, enjoyed the endorsement of all our associations and everybody, deservedly, I might tell you. She is today a colleague of mine on this Court. I finished second, very close to her, and the third judge elected was Judge George Martin, who had been for 22 years, the Municipal Judge of the City of Dearborn.

Mr. Lane:
Was there a big field? Were there others that...?

Justice Ryan:
Yes, in the primary, there were 43 in the primary. It was the first opportunity in years for...in 1966 and in 1967, the size of the Wayne Bench was expanded. Four new judges were elected in 1965, and three of us elected in 1966, so it was the last chance, we thought in those days, to run for a vacancy in the Wayne Circuit Court. A new judgeship, so it attacked a huge field.

Mr. Lane:
You know, early, sometime fairly early in your career now in an electoral context, you ran for

something, you, as an identifiable Republican, managed to get labor support. How did that all come about, and was this reflected in your initial win in Wayne County for Circuit Judge, or was this something that had just gradually accrued later in your career?

Justice Ryan:
I'm not sure. I think it's just as simple as this, Roger. I didn't have any labor support in the primary when I ran for Wayne County Circuit Judge against that field of 43. Labor didn't do a lot of endorsing in judicial primaries, and the secret activity they were conducting was on behalf of two or three candidates whom I knew who were entitled to that kind of support, and I wasn't.

Once I was nominated, however, in a field of six, considerable amount of labor support did come along, and I think it was for two reasons: 1) I think they thought my chances of winning were probably fairly good since three were to be elected out of six, and 2) fellows like Dick Maher who was elected by now to the Traffic Court in Detroit with heavy labor support introduced me to the Titans of the local labor political action groups, and I made it my business to go around hat in hand and ask them to look at my candidacy, and as a result, there was some early labor support. Not universal, though.

Mr. Lane:
But that was something that was noteworthy for a fellow that had a real clear Republican identification, was it not?

Justice Ryan:
Yes, it was, but of course, without denying that I had run as a Republican Justice of the Peace, you had to be either a Democrat or Republican, I did everything I could in Redford to conceal the fact that I had been elected on the Republican ticket. As a matter of fact, in the campaign, the signs read: "Ryan, a new man for justice", and the Republican Party people had meetings, literally had meetings to decide whether to condemn me for not putting Republican on the ballot, so I didn't advertise.

I figured an Irish Catholic with a name like Ryan will be taken by, in those days, by a lot of people to be a Democrat if you needed to be a Democrat. I have to tell you in all candor, I didn't have a political mind set about being a Democrat or a Republican when I ran for Justice of the Peace. I picked out the guy in the primary who I thought was most beatable, and it happened to be the guy on the Republican side. It's really just that simple.

Mr. Lane:
Here you are now. It's 1966, fall election, I guess, so you go on the bench in late December or...

Justice Ryan:
January 1, 1967.

Mr. Lane:
At what stage...I suppose you, at that time, had a usual mixed docket of criminal and civil. That's the way it was then, was it not?

Justice Ryan:
Yes.

Mr. Lane:
And then I suppose you began to think ahead...what's the next step. You were doing your work, obviously, but a Court of Appeals had been created in 1964. Did that put any thoughts in your head?

Justice Ryan:
Yes, it did. I loved my nearly ten years on the Wayne Circuit Bench. I'm not sure I was qualified for that Court. I probably was not qualified when I was elected. I had only tried one Circuit Court case to a verdict as a lawyer when I was elected, although I had tried a lot of cases in the Justice Court as a judge, many to juries, minor civil cases, still the complexities of Civil law in the Circuit Court were such that I was really challenged, and I made up my mind, (I haven't done this in everything I've done in life, I confess), but I made up my mind that by God, I was going to be the best damned Circuit Judge in Wayne County or I was going to get out, and I wasn't sure what it would take to do that.

I don't say that I achieved that, but I did study very, very hard, and I really changed my lifestyle, socially and otherwise, and became maybe a bit too isolated in those days, but I enjoyed the work immensely, and I became very early in my career at the Wayne Circuit Court, I became involved in continuing Judicial education. The National Judicial College in Nevada had been created in 1964. It was and is a first-class national continuing judicial educational body. I attended it as a student in the summer of 1967, my first year.

I was invited back to the faculty in 1970, and I taught judges from 1970 on, and as you know, the teacher is the one who learns most, so I really developed, I thought, some measure of expertise, technically, at least, as a trial judge. After about seven or eight years of that, it got a little old instructing juries, to be perfectly candid, telling the same thing, performing what was very often a ritualistic function, and I was beginning to see a change in the cast of characters among the lawyers who were appearing on motion day and arguing motions. A younger group was beginning to come along. There were innovations in the law of torts and in the law of indemnification.

(End of side 1, tape 1)

Topic 2: Justice Ryan discusses the changes in lawyers during his time as Wayne County Circuit Court Judge, his colleagues, Thomas Brennan and John Swainson, and being appointed to the Michigan Supreme Court by Governor Milliken after Swainson resigned

Mr. Lane:
You were saying there was a change in the character of the bar.

Justice Ryan:
Well, I saw this new...not so much a new breed, because the period we're talking about is only seven or eight years, but a kind of wave of younger lawyers coming along who were doing some rather innovative new things in terms of argument and pleading, and I began to see myself as kind of a spectator to this evolution in the law, both substantive and procedural evolution, and I'm watching these young people doing interesting things, and I began to get a little fidgety and thought I would like to have a bigger piece of the action than calling ball and strike, overruled and sustained while these bright young guys are trying these cases.

I didn't feel that I had the real, whatever it takes to be an effective practitioner, so I began to think about Appellate Court work which would give me an opportunity to do some writing, do some reading and some studying, that I never had a chance to do, and most trial judges don't have a chance to do it in an urban area.

Mr. Lane:
You were serving initially with Brennan and Swainson, both of whom went on to the Supreme Court, right?

Justice Ryan:
Actually, Tom Brennan and I, as close as we are, passed as ships in the night in the Wayne Circuit Court.

Mr. Lane:
Is that right?

Justice Ryan:
He left the autumn before I arrived. John Swainson and I were serving together, and we were very close friends. Got to be friends because of serving together in the Wayne Circuit. So in 1974 - 75, in that period, something in there, perhaps a little earlier, I called Jim Brickley, my old law partner and friend who was then Lieutenant Governor and asked what the prospects might be for me to move up to the Court of Appeals although I wasn't sure I wanted to, and he did some exploring and indicated to me that I should get some paperwork in to the Governor whom I'd never met.

Mr. Lane:
In 1975, you had never met?

Justice Ryan:
No. Perhaps what I'm talking about might be earlier 1974 now. Early 1974, I think it was. So, I got the paperwork in, and I got to thinking about the Court of Appeals and made up my mind that

I really didn't want to be on the Court of Appeals. I remember Tom Brennan saying to me once that he would never be interested in serving on the Michigan Court of Appeals because to him, the work there was in the nature of correcting blue books all day long and setting them back to the trial judges, students, let's say to get that asimile, as opposed to the Supreme Court which was a common law Court of law making, in a large respect.

I thought about that, and I really thought that maybe I agreed with that, so I remember calling Brickley one day and saying, "Will you meet me at the Book Cadillac Hotel after work for a drink?" and he did. I said, "Jim, I know you've been looking about on my behalf, but I don't want to be on the Court of Appeals, and I don't know whether anybody is thinking about appointing me, but the off chance that they might be, I wouldn't want you to be embarrassed, so if I'm under consideration, could you get my name pulled, and I'm not sure I am under consideration". Well, he tried to talk me out of that a little bit. I thought, "By golly, maybe I am in the finals". Well, within a week or so, George Bashara was appointed to the Michigan Court of Appeals. He had been a Wayne Probate Judge, and nothing further was said about my change of heart.

In later years, Jim Brickley has told me that it wasn't necessary to pull my name because I wasn't at the top of the list. But I got to thinking about the Appellate Court work after that, and never did anything about it. I didn't know the Governor. I wasn't active in the Republican Party, never had been even in the short stint in Redford as a Republican JP didn't have any party involvement of any kind. I loved my work as a trial judge, wasn't sure that I wanted to leave. When my good friend John Swainson, with whom I'd served and to whom I'd gotten very close when we were Wayne Circuit Judges, was accused of a crime in the Federal Court system, and that is certainly detailed elsewhere by others in his history, the upshot of it all was that in early November, 1975, John was convicted of two or three counts of perjury, which conviction he immediately appealed to the United States Court of Appeals but under the law, his conviction of a felony required that he resign from the Michigan Supreme Court, and he did, creating a vacancy.

Mr. Lane:
That was November, 1975?

Justice Ryan:
Yes, so I communicated to my friend, Lieutenant Governor Brickley that I would be interested in being considered, recognized that if I had any chance, it was a very, very long chance because I really had no friends in the party or the administration except Jim Brickley, and Brickley and the Governor, as I understood it, were good friends, enjoyed one another's mutual respect, but saw things differently on a number of issues, and I didn't have the feeling that Jim was necessarily going to turn the Governor's head on any such thing. So the process was pursued. I sent the papers in and was interviewed by the State Bar of Michigan which had been asked by Governor Milliken as a matter of course to interview people who had expressed interest.

I made a call on the lady, Joyce Braithwaite, who now is Mrs. Brickley, who was the Governor's principle assistant for judicial appointments and never met her in my life. We had an interview,

and I really thought that the chances of it going anyplace were almost nil when a couple of signals came my way in the Thanksgiving week of November that I might be under consideration. Then a leak from WJR one day on the radio which is a surprise to me that my name was being considered, and the Governor called me when I was sitting on the bench, I think it was December 4, or 5, 1975. I was trying a case in the Wayne Circuit Court.

My secretary, who is still with me now, Fran, came into the court room which she never did. Her face was as white as this shirt I'm wearing now that the Governor is on the phone. It was a complete surprise, and in his gracious style, he asked me if I would...I'll never forget his expression..."Would I do him the honor of accepting his appointment?" I'd never been appointed to anything before, so that was a new style to me. That was the Supreme Court appointment.

Mr. Lane:
There wasn't the kind of political identification then, in your selection that would have been, say, in John Fitzgerald, who had run, for example and served in the Senate and had a strong background through his family and other activity as an office holder.

Justice Ryan:
That's right. Nobody in my family, no one I was ever associated with had any history of activity in the party. I had not...I have some suspicions why it ultimately came to me, but they're only suspicions.

Mr. Lane:
Were there others, as you remember, who seemed to be hot prospects for that appointment? I don't remember enough about it.

Topic 3: Justice Ryan then talks about Proposal B, regarding abortion, the nature of the Supreme Court and its lack of litigation knowledge, and the Shavers vs. Attorney General case concerning no-fault automobile insurance. Ryan concludes by talking about the law of comparative negligence and governmental immunity

Justice Ryan:
The hottest competition was George Bashara, my friend, George Bashara, who was then on the Michigan Court of Appeals and who had a history of being very, very active in the party before becoming a judge and was very close to the Governor, and I don't know why I was chosen instead of George, but I'll share with you my thoughts about it, and if it winds up on the cutting room floor, that's somebody else's judgement which is okay with me.

I had been very, very active in the Respect for Life movement in 1971, 1972, 1973, 1974 because I thought there was coming to our culture kind of a pernicious notion which would find its way into legislation that...having to do primarily with a lack of regard for the sanctity of

human life, all across the spectrum, not just the unborn, not just abortion, but the treatment of a newborn handicap, the treatment that are given mentally retarded people who are post-teenage years, and kind of an increasing disrespect, I thought, for the aged. That generated my interest in the Respect for Life movement that was contrary to what some people think. Not just a matter of interest in the subject of abortion, so I had done some writing, given some speeches, a lot of speeches, and somehow became identified in Michigan as somebody who was interested in this subject in 1972, 1973, 1974.

Now, there had been a ballot proposal, Proposal B on the ballot in 1972, called Proposal B which, had it been adopted, would have brought to Michigan, legislation providing abortion on demand, really, up until about 15 weeks. At that stage in history, the only states that had abortion legislation of that sort, as I remember, were Colorado, New York and California...maybe another state, and I thought that legislation was bad legislation, and I gave a lot of speeches in opposition to it, and it was, of course, roundly defeated by the public at the polls in the biggest percentage of rejection of an initiative in the history of the state. But I somehow got identified with this cause.

Roe vs. Wade was decided in 1973 in the United States Supreme Court, and I was just one voice among many who were interested in constitutional law who thought, no matter where one stood on the abortion question, whether pro-choice or pro- life, that it was an incredibly poorly reasoned constitutional law document, and I said so without trying to be strident or disrespectful to the Supreme Court.

I go into all this, and now I end it, Roger, because I was given reason to think that while Governor Milliken's view was the so-called pro-choice view, he also had been the beneficiary of the political support of the Michigan Catholic Conference for a lot of reasons. He was a good governor, in their judgement, but he also had expressed support, in principle, for the concept of some kind of parochiaid, some kind of financial support for private schools which would keep them alive to preserve a dual school system, and he was going to come up for election again, and I have reason to think from what I learned in later years, that the Governor was interested in doing whatever he could honorably to enjoy the support of what he believed would be kind of a monolithic Catholic vote. There isn't any such thing in my opinion. I'm told that his advisors suggested to him that it would be good not to alienate the Catholics. Well, there had just been a vacancy on the Michigan Supreme Court which the Governor had filled in 1975.

Mr. Lane:
That was the appointment of Larry Lindemer?

Justice Ryan:
That was the appointment of Larry Lindemer who was the Governor's close personal friend, had been a State Chairman of the Republican Party, was a most distinguished lawyer, but didn't have a very re-electable name, a lot of people thought, a more distinguished and more capable lawyer, Governor Milliken could not have found to put on the Court, in my opinion. He appointed Lindemer to the Court and in a matter of months later, the Swainson vacancy occurred in the context of this political background that I've tried to snapshot here, and this Irish Catholic judge from Wayne County who didn't seem to have too much baggage hanging around his neck, good or bad, seemed to fit some kind of a profile, I later was told, that might not do the Governor any

harm politically and hopefully would not embarrass him in terms of my competence, and I've come to believe in later years that that was kind of the atmosphere in which my appointment was made.

Mr. Lane:
Do you think that the trial experience that you had as a Circuit judge was a factor?

Justice Ryan:
Yes, I think it was.

Mr. Lane:
A lot of electoral contest for the Supreme Court, the issue comes up that people that sit there are short, generally speaking, on trial experience judicially. I just wondered what you thought about that?

Justice Ryan:
I think it was an important dimension. I don't mean in talking about this Irish Catholic and pro-life business to suggest that those were the dominant considerations. I just think they were in the mix, and I think that the fact that there was no Justice sitting on the Court who had any trial court experience to any extent was very important. Maybe as we visit here, I'll share with you how important I think that was, later on as we talk.

Mr. Lane:
Yes, I was going to bring up some things that might be pertinent to that. We might as well jump into one of them right now. I had this Westlaw printout, and these things are inexact, but by and large, what it is supposed to represent was a number of opinions that you wrote, opinions of the Court on the one hand and dissents on the other. I tried to scan through and see what I could learn from this, you know, in a relatively cursory manner, and I thought I noticed that you had an awful lot of criminal cases that you wrote. A lot of them were opinions of the Court but there were a number of dissents. Sometimes, they show up in this Westlaw printout as strings of them, and I wondered if there was some arrangement within the Court that steered a lot of these cases to you where there were question of evidence and jury instruction and that sort of thing or whether this just...how did it come about or was not my observation well-grounded?

Justice Ryan:
You know, I think it is well-grounded. I had forgotten about that pattern, but I think there was something of a pattern there. When I came to the Court, I thought of myself and spoke of myself as the luckiest guy in America, for a kid from the background I came from, with average academic performance, to have the opportunity to be here was almost overwhelming, and I tried not to forget that, but there was another circumstance of which I was equally conscious, and that is that among my peers in the trial judiciary, the Supreme Court was held in very, very low esteem.

A part of that, I guess, is professional jealousy, and part of it is politics, and I don't know what the rest of the mix is, but it was there, and it was a lack of regard which was held by trial judges and lawyers, not universally, but trial judges and lawyers who were pretty darn bright people, so I tried to figure out...I had my own opinion about that, and I didn't think the Court was anywhere near as good as it could be, and I thought the area where it was most deficient was in understanding the litigation process. The other six Justices on the Court, none of them had any extensive trial experience, either as trial lawyers or as Judges.

When I arrived, there was Justice Coleman who had been a Probate Judge, and that is a very circumscribed kind of judicial function. It isn't really litigation of any breadth at all. There was G. Mennen Williams who had had zero judicial experience when he came to the Court. He had been there about five years when I arrived.

Mr. Lane:
Very little trial experience.

Justice Ryan:
Almost none, and what little he had was many, many years ago. Then there was my friend, Thomas Giles Kavanagh, who had had a little trial experience, but he would be the first to say virtually none. He had served on the Michigan Court of Appeals, not as a trial judge. Then there was Larry Lindemer who was one of the finest legal minds and is today that I have ever encountered. He made a rich contribution to our conferences because he had been practicing lawyer for 27 years, but he wasn't a trial lawyer. He was an office lawyer, as they used to say.

Then there was John Fitzgerald, who had been on the Michigan Court of Appeals and before that, in the Senate, and never claimed to have any extensive trial experience, and didn't, and then there was Chuck Levin who didn't have much trial experience at all, almost none, he has said. The nature of his practice which was extensive and valuable was not trial practice, so that was the environment.

I had not only been a trial judge, I had been interested and active in teaching trial techniques to trial judges at the National College for years, and I began to find in our decisions, I thought, both a lack of understanding or what the process should and must be, both under the rules and under the constitution, and kind of a treatment of it which was unwarranted in the law, so I guess I prepared a relatively large number of dissents in which I addressed matters of what are now called Criminal Procedure which are very often constitutional law issues about search and seizure, about line-ups, about identification.

Mr. Lane:
That's evidence instructions, prosecutorial process or procedure?

Justice Ryan:
That's right.

Mr. Lane:
The jurisdiction question, police conduct... these seem to be your cup of tea as a result of your experience, I assume.

Justice Ryan:
I think so.

Mr. Lane:
Was there some mechanism within the Court that caused you to draw these cases or to become the person who wrote...?

Justice Ryan:
No, there never was. I don't know what went on in the Court before I got there, but I was told that there had been some personal and political tension among members of the Court in the years ahead of my coming, and as a result of that, they had adopted a hard and fast rule about the assignment of cases, that after the oral arguments, the opinion writing would be assigned to a justice by lot, out of a hat, and really a carefully policed process.

You never knew what case you were going to get until after it was argued, and they still do that today. However, once a case was assigned to an author for the majority, anybody at the table who disagreed with what the majority opinion was going to be was free to write a dissent, and if I'm to have the kind of candor, brutal candor I'm sometimes noted for, Roger, I've got to tell you, the Court was very, very liberal, and you've got to put that in quotes with respect to both civil and criminal justice at the time I got there in the sense that...I now will over-state it a bit..that if it seems fair, it must be okay, and we'll find a way to say it's okay.

I had a kind of a different perspective as to how to review criminal cases, especially, in the early days, and to the extent that there was anybody else in the Court who saw things as I did, they were less inclined to volunteer to write than I was. I was a newcomer to the Appellate Judiciary, and I was all hot to trot, so I wrote a lot of dissents in the beginning.

Mr. Lane:
Did this occur, too, that there would be some discussion after arguments, the case would be assigned. You would take a look at it, and you'd say, "Holy cow, did you get a load of this". You'd see something in it that would say, "If I'd realized this when they were arguing about it...this ought to be decisive", and maybe you'd try out the fellow that got the assignment, and he'd say, "Why don't you take care of your cases. I'll take care of mine", and perhaps ultimately, by writing, you focused the Court in a different way and did sometimes those dissents become the opinion of the Court, or wasn't there much of that?

Justice Ryan:
Well...

Mr. Lane:
You know, you go back in the reports...excuse me for the interruption, but you go back in the reports and the person doing what I'm doing happens to notice that it was the custom through Hiram Bond's tenure, I guess, and you pick up the reports and here it says, "Dissenting - so and so", and it was the style in which reporting was done, but that might be the opinion of the Court if you count up the votes. So I really had that in the back of my mind.

Justice Ryan:
Sometimes...it was the practice that the justice to whom the case was assigned would appear in the reports as having written the lead opinion but the guy to whom it was assigned in those days might turn out to be writing a dissent, as you point out. They've done away with that practice now.

I think in all candor, I didn't turn the Court around to my point of view nearly as often as I wished I could have, and I think the reason is indigenous to the Michigan Supreme Court and the way the justices get there, the nature of the institution, and the other reason is that I have, all my life, struggled with a personal style which is abrasive to some people, especially in a collegial environment.

I think now that I'm getting old that I recognize more clearly that I used to that I'm not as effective as I wish I were at persuading others to my point of view because the style of my argument is off-putting, sometimes too aggressive, so I think I lost the opportunity to persuade others to come my way because of my own personal style, the short-comings of it, sometimes, so that's why a lot of those opinions appeared as dissents instead of swinging somebody to my way.

The other reason was that the Court, when I first came to it...I hate to use the words "Liberal" and "Conservative, but they do have some meaning...it was a Court in which there was a kind of a heavy inclination, both in criminal and civil juris prudence in those early days to favor an outcome which was very compassionate, very understanding, which was generous, often without a lot of regard with what the law was on the subject.

Mr. Lane:
I'll have to bring to mind some words that you wrote in Shavers and somehow,....I didn't do...this is the only time I did it, I think...In one of your early sentences in your dissent, you say, "This Court is often wrong on policy and short on judicial restraint", and I mean, you can put this in different ways, but that comes close, doesn't it?

Justice Ryan:
I wish I'd remember that. I remember it now that you...that's right on the button.

Mr. Lane:
Well, let's talk a little bit about Shavers. Now here is a perfect example of what you've been talking about, was it now?

Justice Ryan:
I can't remember. What's Shavers?

Mr. Lane:
Shavers was the no-fault case.

Justice Ryan:
Oh, yes.

Mr. Lane:
This is where the Supreme Court rendered judgement, I think you called it "in futuro" of constitutionality. If you'll pardon me my amazement...see, here I was just starting into law school, and this stuff wasn't in the books. I didn't know where this came from and I thought, "My gosh, do I understand what's being done here?" You know, I didn't dwell as a student on this. I was busy with other things but I certainly thought this was a most remarkable judicial approach to a question of this kind. Why don't you relate a little bit of what you saw of this thing at the time?

Justice Ryan:
I wish I had read Shavers before we talked. It would jog my memory, but I remember it enough to tell you that there was a crescendo of attention in the media to this case that was coming up the ladder to the Michigan Supreme Court, the case being the challenge to the constitutionality of Michigan's new no-fault auto insurance statute. No-fault auto insurance was a hot, new, progressive, modern subject which was invented by a law professor at Harvard who is now a Federal district judge and a colleague of his, Bob Keeton.

Mr. Lane:
And O'Connell.

Justice Ryan:
Yes, and there were all kinds of versions of auto no-fault, and it was revolutionary. There was no question about that. We need not get into the details of it here. Michigan's version of it came along about five or six years after it first was adopted, I think in Massachusetts, and a couple other places. It had its own spins, its own innovations, very, very complex, revolutionary, and the promise was made to the public that if they would support through their legislators, the adoption of the no- fault auto insurance statue, the payoff would be lower premiums, dramatically lower premiums, and we'd get a lot of these disputes out of the Courts. That would cut out the lawyers which was a politically appealing pitch to make to the public in the State of Michigan. You're going to get the lawyers out of the business of auto accidents, and you're going to reduce the premiums. This might be Mecca. So it raced through...I shouldn't say "raced through", it got through the legislature.

Mr. Lane:
1972, I think.

Justice Ryan:
1972, I guess, not without opposition, and ultimately found its way to the Supreme Court in the form of the case you've described, Shavers vs. the Attorney General or somebody.

Mr. Lane:
That's correct.

Justice Ryan:
It was a very, very tough case for all of us because the statute is very comprehensive, to me, very, very complex. All seven of us worked mightily to understand it. When we got all through, the majority of us were of the opinion that the thing probably was not constitutional for some technical reasons, to be sure, but a legal technicality...I remember one day, I was talking to Tom Brennan...I digress now for a moment...and somebody in our group during the conversation referred to a legal technicality, and Tom said, "You know what a legal technicality is?", and I said, "What is it?". He says, "That's a rule of constitutional law that Martin Haydon, the editor of the Detroit News, doesn't agree with". There were some of these highly technical provisions of the Michigan constitution which we thought collided with the auto no-fault statute.

Mr. Lane:
Now, if I recall, this was a suit for a declaratory judgement, right?

Justice Ryan:
Exactly.

Mr. Lane:
In almost sort of an advisory opinion context. There was no case or controversy in the traditional sense before the Court. This was an invitation to ratify something the legislature did or to amend it or...

Justice Ryan:
It was critically important. A declaratory judgement is an appropriate judicial vehicle to do just what you've described. It was necessary for us to make an all together declaration about the constitutionality of the statute because millions and billions of dollars of potential insurance coverage had to be organized by the insurers to cover Michigan's drivers so they had to know whether the statute was any good or not.

After working very hard on it, our Court came to the conclusion, as I recall, that it was not constitutional, the way it was written, and it needed to be fixed up. So I, who had been taught throughout my life, that if a statute is not constitutional, it is invalid, it is void, it has no binding existence, so I was prepared to produce an opinion that said as much when the majority of my colleagues said "Well, that's true except this will throw the whole state of Michigan into terrific confusion about auto insurance so let's hold that it's not constitutional yet, but we'll approve it for the interim and we'll give the legislature 18 months within which to correct technical

deficiencies", one of my colleagues said, which means that they can take an unconstitutional statute and try to make it constitutional.

Mr. Lane:
And we're getting here, as I recall, into due process and that sort of thing.

Justice Ryan:
Absolutely, it was...as I say, I wish I had read it, but I do recall that during this interim period, this statute is binding on everybody. This unconstitutional statute, my colleagues said, which isn't worth the paper is written on, will be binding upon every registered motorist in the state of Michigan and on the insurance companies that are writing the insurance, and on the victims of accidents. Well, the plaintiff's Bar Association thought they had died and gone to heaven.

Here, they had lost the case on the constitutionality of the statute but nevertheless won the case because the Supreme Court put out a majority opinion holding that while it isn't any good, we're going to leave it in place and give the Legislature 18 months to fix up the deficiency. That's probably a good example of a case in which I don't know whether I had any chance of convincing my colleagues that that is judicial craziness to do that, but if I had any chance, I probably lost it because I was do heated about what I regarded as a totally inappropriate judicial performance...

Mr. Lane:
Is there any counterpart to that in Michigan constitutional history that you know of? I understand this sort of thing has been done in New Jersey or some place? What call you tell the tape about that?

Justice Ryan:
My memory is that there isn't any counterpart in Michigan judicial history at all. There hadn't been at that time, and there had been a case or two in which that devise was utilized elsewhere, and my argument to Shavers dissent, as I recall, was that doesn't make it right. It is still wrong, and even if there had been some precedent in Michigan, it wouldn't be right.

That's my memory that it wasn't done before that, and it hasn't...I thought the world was coming to an end. Here was the Michigan Supreme Court behaving in an utterly non-judicial fashion, reaching out to do the work of the legislature, really invading the separation of powers principle in a serious way in a statute which had very high profile, but I was in the minority and my colleagues who saw it differently were men and woman of good will and good faith and not dumb by any means, so I accepted that as an instance in which I simply could not see and still can't how the decision was valid under the Michigan Constitution, but that's just what happened. The legislature got the statute back and altered it in a way which ultimately satisfied all of us on the Court that the unconstitutionality of it had been corrected.

Mr. Lane:
Was there any similarity...I realize there are certainly easily observable distinctions but do you find also in the Placek case on comparative negligence some similar mind set among your colleagues on the Court where in, I think it was probably after you got there, 1975 or 1976, there

was a case. I think it's Kirby vs. somebody or another where there had been an aborted attempt at an opinion of the Court.

People on the Court sought to get four votes for switching by judicial decision from the contributory negligence to the comparative negligence system in Michigan, and then I guess I lose track a little bit about what the change was on the Court but a couple years later, in 1978, I think it was, you had this Placek vs. Sterling Heights case and there again, I think you did not write. I think you concurred.

Justice Ryan:
Yes, I did.

Mr. Lane:
Was this somewhat similar...was this also an example of where the Court functioned in a way that showed its disposition not to follow in close track to the adjudication traditions of Michigan and the United States and got off on another tack or is it not that kind of a case? Do you remember it?

Justice Ryan:
Yes, I do. I remember it in a general way.

Mr. Lane:
It was a 4:3.

Justice Ryan:
I remember the decision, and I concurred with the majority.

Mr. Lane:
Oh, you did? I thought you concurred with the...

Justice Ryan:
Do you have it there? Placek?

Mr. Lane:
It shows up here as a dissent. It's 405 Mich 538. This retrieval system is no infallible. I have discovered that, but my recollection is that you joined Justice Coleman.

Justice Ryan:
405?

Mr. Lane:
Yes, 405 Mich 538. It was 538 or 638. I have trouble reading these darn things. Could it be 638 or 538?

Justice Ryan:
I've got it. It's 638. I did concur with Justice Coleman in the dissent.

Mr. Lane:
I think part of her point was...

Justice Ryan:
I remember now.

Mr. Lane:
Okay.

Justice Ryan:
Let me just take a minute at the risk of overdoing it here.

Mr. Lane:
This is fine. I think this is what we're trying to do. I'm going to turn off the tape here for a minute while you take a look

(interruption in tape)

Mr. Lane:
You've looked at that case now.

Justice Ryan:
Well, I'm reminded in looking at the case that I did dissent, but the dissent is one of these technicalities, one of these rules of law the editor of the Detroit News doesn't agree with. Let me just say that my conception of the role of a Court of second appellate appeal which is what the Michigan Supreme Court was and is because of the intermediate Court of Appeals here, is to continue the common law tradition of being in some part, a law maker.

It comes as a shock to some people that one who has a fairly conservative perspective on the judicial function as I have should see a Court as a law maker. After all, the president who appointed me to this job campaigned widely and obviously successfully on the notion that he would appoint Federal judges who would apply the law and not make it. That was good for a national campaign but the truth of the matter is, in the common law tradition as in Michigan, the intermediate Court of Appeals is charged primarily with the business of correcting error but the Second Appellate Court is charged primarily with the business of construing the Constitution of the State of Michigan, construing new statutory enactments and developing the common law which is to create and advance that body of the law which the legislature has not addressed and apparently isn't willing to address, and so the Michigan Supreme Court granted leave in those cases often in which it thought it necessary to advance appropriate judge-made law.

This business of comparative negligence and contributory negligence in Michigan had always been in the common law area. The legislature had not created the doctrine of contributory negligence although it is universally recognized across the country and had been for decades, it was nearly everywhere judge-made law in the law of negligence, the law of torts, that a person

who contributed in any fashion whatever, no matter how minusculely to the injury he suffers, cannot recover anything, and in the literature, contributory negligence had been severely criticized for years and years and years as an unfair doctrine.

If a plaintiff was only infinitesimally at fault in causing his injury, why should he be barred totally from any recovery? Michigan was never out on the cutting edge of the development of the tort law, but it was pretty darn close. When the issue first came up before I got to the Court, the composition of the Court was such, and the nature of the case presented to it was such, that it wasn't the right vehicle.

Mr. Lane:
I see.

Justice Ryan:
And it wasn't the right time for the judges to go to comparative negligence as opposed to contributory. When Placek came along, the composition of the Court was such and in looking at the picture of us here in this Volume 405, the Court then was Chief Justice Coleman, Justice Williams, Justice T.G. Kavanagh, Justice Fitzgerald, Justice Levin, Justice Blair Moody and me.

Mr. Lane:
Moody probably was the fourth vote, right?

Justice Ryan:
Yes. And so we, not to be too technical in the matter, after considering this thing, all seven of us came to the conclusion that comparative negligence was an idea whose time had come in the development of the common law in Michigan. Where we parted and the principle which divides us 4:3 in this case report of Placek vs. Sterling Heights is that Justice Coleman, Justice Fitzgerald and I thought that since we are creating new law, the law of comparative negligence, it ought to be like all law, applicable only prospectively for instances which occurred in the future. The majority of the Court, the other four justices, didn't think so for reasons that are fairly technical but are defensible as a matter of principle of good lawyers. They thought the new rule ought to be applicable for accidents which had been occurring for many months before we even heard the case. That the only thing that divided us of any significance.

Mr. Lane:
Now, governmental immunity...is that an example of the sort of common law? I realize there is a statute, but it's...my recollection is that it is so amorphous that you can't tell what it says, or would you not put that in the category of common law development?

Justice Ryan:
I'd call it interstitial judicial law making because there was a statute as you said, and it was written broadly and vaguely and very imprecisely, and in my opinion, as you have heard and noted today, my not so humble opinion, the members of the Michigan Supreme Court had

botched up the law of governmental immunity rather badly, doing the best they could with a poorly written statute and trying to create some distinctions between the immunity of municipal government, city governments as opposed to other governments, state and county.

The result was a mess, and so it was a proper subject for judicial law making, both because there had been some what I think was some poor judicial law making on the fringes of the statute before my time. I wasn't alone on this view, so we felt we had some straightening out to do and some augmenting of the statute to do. You know, it's the tradition in the Federal system, Roger, that probably more often than not, Congress tends to write legislation very, very broadly, almost vaguely, with the sometimes explicit but usually implicit understanding that the Federal judiciary will fill in the gaps. That has not been the tradition historically in Michigan.

The legislature in Michigan has, for the most part, tended to write with greater particularity when it makes statutes. The governmental immunity statute was not one of them. It was written broadly and a little loosy-goosy, so we were making a lot of law about governmental immunity to try to straighten that out.

Mr. Lane:
Just to finish up on governmental immunity, do you remember in 1982, Ross vs. Consumer Power came along and the Court was reduced to six persons at that time, and the Court divided equally.

(End of side 2, tape 1)

Topic 4: Justice Ryan discusses the case of Ross vs. Consumers Power and the processes of the court, the process of judicial selection, and the disruptive nature of elections in terms of interrupting work flow and the high turnover rate of justices

Mr. Lane:
Let's get back to Ross vs. Consumer Power on rehearing. Now this time, the Court, I think, invested a great deal of effort in trying to do it right? Do you remember that? There were about nine cases, I think, that were combined, and I think that...well, it was sort of a melange...by and large, a large majority of the Court, five or six, swung with most of the decisions, and various circumstances...one was a drowning case at the Social Services camp on Lake Michigan, and then here was a drainage ditch fact situation with Ross, and there were all kinds of things in between. Did you recall what you thought about that case, and did it do about what a Court is able to do to straighten out that kind of a subject matter?

Justice Ryan:
Roger, I must say, I don't have any strong memory of how I felt about that process at the time. I do recall what you said, and that is I was very sensitive that the trial bar, and I knew many,

many, many trial lawyers from this area, southeastern Michigan, because of my time on the trial bench, and they would in appropriate circumstances, remind me that they didn't know what to tell their clients about this burgeoning potential business in governmental liability, and so I was very sensitive that we needed to do what all of us on the Court agreed to do and that is to try to gather together a group of representative types of torts, accident cases, so we got the nine or so you described, and of course, we had complicated our task x 9 to do it that way, because it is sometimes far easier to write a principle of law into the juris prudence when the facts are discrete and relative to one event, a drowning in a drainage ditch, but when you've got nine different events - school yard accidents and auto accidents, and the rest of it, it is more difficult to write with precision.

You have to write more broadly, so the product which we turned out in Ross vs. Consumer Power was, I think, a contribution to straightening out the juris prudence, to be sure, but we necessarily straightened it out in a way which was imperfect because we were trying to write to nine different factual scenarios. Some litigation was generated thereafter and was addressed after I left the Court, so obviously we did it imperfectly. But I thought we did about as best we could. I don't remember where I came down in those cases.

Mr. Lane:
Well, let me ask about a sort of a tangential aspect of this. I mentioned already in the first Ross vs. Consumer Power ended in a 3:3 deadlock, and this was because Justice Moody had died shortly before the time for disposing of this matter, and then the Court came back and I think a full two years later, with this blockbuster, systematic, very intense, highly organized way of trying to deal with the problem.

Was there something about the kind of deadlock situation that resulted from Justice Moody's death where the Court had a most extraordinary problem with a great engorgement of judicial work, 70 and 95% done and a lot of potential 3:3 splits? Was there some result from the Moody experience in these splits and having to adopt the opinions and all that that perhaps chastened the Court a little bit in the future in its attempt to carry on in...what will I say... a more orderly systematic way or am I just making wind here?

Justice Ryan:
You're not making wind, but my memory is that while we recognized that we had a terrific problem because of the 3:3 split cases, we did not have any real effective means to do anything about it. After all, if the Court is divided at a time when the court is short-handed, there are an even number of justices, you can strive mightily to re-examine your position to try to avoid an even split in order to get the cases decided, but there is a point beyond which one cannot go, and we had many fewer cases during that short period that were going to be 50:50 splits, 3:3 than turned out because all of us tried mightily to find out whether we could re-examine our tentative first position and shift over to help create a majority, and one can do that with honor if what assigns you tentatively to one side of the case is a minor procedural point of some kind which is not as big as the issue itself.

Still, there were a lot of cases. The result of the 3:3 split on the governmental immunity cases, of course, was that there was a big back-up in the pipe line. Trial judges didn't know how to rule

because the Supreme Court hadn't...lawyers didn't know how to advise clients in their offices. It was a bigger disaster than most of us on the Court really appreciated at the time. There was nothing we could do about it except urge the governor to make an appointment fast.

Mr. Lane:
Just for sort of an objective historical view, do you recall when the news of Justice Moody's death came? At this time...maybe we can double back, go into the procedure why this was so, but here you had a great mass of work ready to be dumped out the end of the pipe line...do you recall how it was...I notice there are many cases or several anyway in the reports that show that right at the introductory remark that two or three or maybe one judge, Justice of the Supreme Court, had adopted the Moody draft opinion which was in a very advanced stage, and then others agreed, and the case was disposed of. Do you remember what procedure, how you reacted when you all got together at conference? What was the..how was the problem perceived?

Justice Ryan:
I don't really remember the detail. Blair's death was sudden. There was no illness in advance of it which would give us to think about maybe we ought to be prepared for something. As you know, he died of a heart attack. I got a phone call from his court reporter at my home at about 5:20 a.m. one morning, and the Court got together almost immediately and began to address this problem. The first thing we had to do was find out the size of the problem - how many cases were pending and how many among those cases that were pending had we indicated a tentative vote that was going to be now evenly divided. There weren't too many, actually.

After all arguments each day, we always had a brief post-argument conference, and we would indicate our tentative direction, whether to affirm or reverse, so we had this unofficial and tentative vote on a piece of paper as to all the cases Blair had participated in. There weren't actually too many but unfortunately, one of them was a case which had a long tail, and that was the governmental immunity case for which hundreds of cases were in the system in Michigan awaiting disposition, waiting for our rule. So, no, I don't remember, Roger, that we saw that as such a big crisis.

Mr. Lane:
Well, this brings up, though, another aspect of the Court's work. Here it is...this was right around Thanksgiving Day, 1982. There had just been an electoral campaign. Moody had been re-elected. Mike Kavanagh had been elected, as I recall along side him to new eight year terms. I don't want to be a prosecutorial questioner here but obviously, there was a great engorgement of the pipeline, so to speak. Was this associated with the electoral campaign, and does this happen repetitively, the way the Court is selected and because of the requirements of a sitting Justice to get re-elected, does this distort the production aspect of the Court?

Justice Ryan:
Yes, yes, it did, and because of the fact that honesty requires that I remind myself I'm talking about my period there, that's all I'm addressing. I don't know how it operates today. I've been

gone five years, but every two years, we had two of us standing for re-election. The way it works out, once in a while, only one ran, but it didn't make much difference whether it was one or two, and that year was...the elective process is very interrupting of the work of the court, enormously interrupting. It is difficult to overstate it.

Mr. Lane:
Is it probably the strongest argument against the present judicial selection system?

Justice Ryan:
No, I don't think it's the strongest. I think it is a strong argument, but I don't think it's one the public cares about. I don't think it's one that the political policy makers care about. It's one lawyers and judges care about and the public should, but I think there is no practical way to educate the public. The work of the Court slows down. There is an understanding among the justices that if the one or two who are candidates say, "I just have to be in Adrian for a dinner this night. I can't be at the conference", well, there might be a tendency to try to work around that schedule. It is respected, the fact the candidate has to be on the highway. There are 83 counties in Michigan, 9 million people to talk to. There are no issues of a judicial campaign, so it's face-to-face personality appearance for the justices.

Mr. Lane:
The people that are interested in this subject should be reminded, should they not, that in the functioning of the Michigan Supreme Court, each of the eight or seven members is an independently state-wide elected public officer that has all the baggage, if you want to use such a phrase, that goes with that concept of how you got into a high public office and not only that, but each one is constitutionally required to participate in every decision. That's true, it is not?

Justice Ryan:
Yes, and that's the important part. The Court doesn't sit in panels, as you well know and most of our readers know. It is a unitary body of seven. All seven act or no one acts. When a justice is sick or disabled, the Court does not meet. It works around that. Near the end of my time when Chief Justice Williams was recovering from surgery that turned out to be very serious - some thought he wouldn't survive it, we went to his home in Grosse Pointe and conducted conferences of the Court there because we simply couldn't work. The Court is seven, it is not six, so during the even numbered years when two justices are trying to cover the tens of thousands of miles of Michigan that need to be covered, the Court's production is down.

There's another factor in the mix, and it doesn't occur frequently, but it occurred from time to time that there would be a highly controversial case before the Court...auto no fault might be an example, governmental immunity another, Poletown might be another. They were not examples, but they could have been examples, of cases of high public attention in which a justice made up his or her mind about the law requires to be done, and the question was should that case be slowed down on the track until after the election for fear that a justice who did what he or she thought was right, what the constitution requires, and which might be very unpopular, would suffer for it at the next election, and that was always in the back of our heads.

Mr. Lane:
Was one such case a PBB toxic case that involved the destruction of some cattle and whether they should be buried or incinerated and that sort of thing, where the environmental voltage in the public was quite high?

Justice Ryan:
My answer is not satisfactory because, to be honest, I can't remember that it was, and I'd have to get back into the books to jog my memory to find out whether there was any such case that we ever delayed. I can't think of one off the top of my head.

Mr. Lane:
Do you remember there was a time, and I'm going to guess, in 1981, maybe, when there were 1,000 cattle marshalled at Mio in Michigan or somewhere up there where a gigantic pit had been dug, and there was a great controversy about this. First of all, whether there was really the kind of hazard to the public health...it was a hysteria in the public, if you remember.

Justice Ryan:
Yes, I do. I remember it.

Mr. Lane:
And when it came time, given the premises of this hysteria, you've got a bunch of poison out there, what are you going to do with it? Are you going to bury it and ruin the water or are you going to burn up the poison and stick it in the air and do that kind of harm? Actually, in my humble judgement, this was more hysteria that reality, but the point is if you're going to have to face the electorate, you're going to have to explain your position and I think Justice Moody, as I recall, and this is all scuttlebutt kind of stuff that I'm relating now, and I would identify it as scuttlebutt stuff, but I can remember, speaking of the voltage, how charged up the public was and if some fellow voted to poison us one was or the other, that was pretty heavy stuff in the political field.

Justice Ryan:
Yes. If that was the case, I don't remember that it was. You see, none of this is as simple as it might be. The culture, the judicial culture of the Michigan Supreme Court, all the time I was there, and I'm told for a long time before I got there, and until very recently, has been one in which the productivity of the Court, pace of productivity of the Court could be severely criticized. The culture was if a judge, justice were assigned an opinion and he wrote the opinion or she did and circulated among the colleagues, any colleague could hold the circulated opinion with the view to writing a dissent as long as he wanted to.

There was no tradition of peer pressure on the Supreme Court to get the work out within any stated period of time. In the United States Supreme Court, for example, it's only tradition. It's not even a rule. The tradition in that court is no case goes undecided beyond a year. The Supreme Court convenes the first time in October, it recesses the next July...all the opinions are out by

July, no matter what it takes to do it. Such a thing is unheard of in the Michigan Supreme Court and so the bench and bar knew for years and years, decades, that opinions on our court might be up there for a year, year and one-half, two years, or longer.

There wasn't the adequate peer pressure to get it out. I understand that's been corrected by Chief Justice Riley and the members of the Court now, but the Michigan Supreme Court was not a hot court. It was not a Court whose tradition...it was what is called a cold court. It was not a court whose tradition was that the justices were thoroughly prepared in the cases before oral argument. I'm shifting now from your question about the impact of the political campaigning, but I do want to talk about this last subject of the hot court vs. cold court along the way. Political campaigning is seriously detrimental to the judicial mission on the Supreme Court. Every justice who is appointed to that court or elected to it knows that the Michigan Supreme Court is the one level in the Michigan judiciary which has the highest turnover as a result of rejection at the polls of incumbents.

Mr. Lane:
It is interesting, if I may point it out, that in the Court of Appeals, I don't think there has ever been an incumbent defeated.

Justice Ryan:
That's correct. No incumbent has ever been defeated.

Mr. Lane:
But in the Supreme Court, this can happen and does happen.

Justice Ryan:
It happens regularly. Chief Justice Dethmers was knocked off after twenty three years on the Court, largely because the other names on the ballot were G. Mennen Williams and John Swainson. Justice Mike O'Hara who had been elected to the Court was knocked off the Court because he was defeated by a man by the name of Thomas G. Kavanagh with a K, when there was another Thomas Kavanagh on the Court. You know all of this, but our readers might not. Before that...

Mr. Lane:
Adams?

Justice Ryan:
Paul Adams, the former mayor of Kalamazoo, I think...

Mr. Lane:
Sault Ste. Marie.

Justice Ryan:
Sault Ste. Marie was defeated for reasons which I've always understood were internal and political of the Democratic Party. Clark Adams, his brother, who was a distinguished trial judge in Oakland County was on the Court for a short time. He was knocked off. As I said, the best

lawyer with whom I've ever working in my life, Larry Lindemer, was defeated the first time he went to the polls to be retained because Lindemer is not an electable name. During my own time, Thomas Giles Kavanagh was ultimately defeated.

None of these men, in my opinion, were turned out of the Court by the public because of any shortcoming in their judicial philosophy, any inefficiency but always for a reason that has nothing to do with the vitally important components of service on the Supreme Court. All of us knew that, high turnover rates, so that when you campaigned to remain on the Court as I did twice, you know you've got to give it all you can possibly give it. When you're appointed to the Supreme Court, if you've had a law practice, it folds up. It goes away. Very often, you have nothing to go back to. Justice Dethmers was defeated in the Supreme Court and died within six months, partly of a broken heart and partly because he had nothing to do.

Mr. Lane:
What's the remedy for this, or is there one?

Justice Ryan:
Well, it's a remedy that has no popular appear in Michigan. They figured out the remedy in Philadelphia over 200 years ago, and it took them about two afternoons to agree that if you're going to have an independent judiciary, then you can't have a judiciary which has to be politically responsive to the electorate. You have to put the accountability in the appointing authority, so the Federal judiciary which I think generally speaking, enjoys some esteem in the public consciousness is appointed judiciary for life.

Many of the New England state Supreme Courts have justices, some of whom are appointed for life, some of whom are appointed for long, long terms, as many as fourteen years, when they're re-examined by the legislature. Many states have Supreme Court judiciaries whose vacancies are filled by appointment and after some relatively lengthy period of time, the person goes on the ballot for retention - yes or no..."Shall we keep Justice Lane - yes or no?" Michigan does it about as poorly as it could possibly be done and is frankly the laughing stock of the nation.

As I went around on the judicial education business, people would ask me "Can it really be so that..." and then they would describe our selection process in Michigan and laugh about it, that process being, as you know and as others in our Court have probably described in this history, an initial vacancy is filled by a temporary gubernatorial appointment but the appointee must, at the next election, be nominated by a political party or file an affidavit of incumbency. The affidavit of incumbency was a great idea that Gene Black had. He thought that would eliminate this nonsense of the non-partisan Supreme Court justice having to go the Democrat or Republican Party to get nominated. Well, the way it has worked out is not the way he anticipated.

Mr. Lane:
What would you say about the California system that was much in the news a few years ago

when three members of the California Supreme Court...what is the right word?...rejected. They were not retained.

Justice Ryan:
Not retained.

Mr. Lane:
Kicked off the Court by popular vote. What do you think of that?

Justice Ryan:
The idea...the business of a lengthy appointment which requires the Supreme Court justice to appear on the ballot for retention or no is a political compromise which is normally and roughly the middle ground between the lifetime appointment and this partisan electoral process that exists, for example in Ohio where the Supreme Court justices run every six or eight years on party labels.

The middle ground compromise is the California system. I don't know whether it is...it is perhaps 12 years. Politically speaking, it is a compromise, but it works. If I were writing the law or asked my opinion, it is my opinion that over the broad spectrum of experience, the lifetime appointment of the members of the judiciary is the wiser course. It isn't perfect. It doesn't always result in better judges or justices, but it is one which makes such an important contribution in such an important way, and it has apparently worked so well in the Federal system, not perfectly, but is work emulating.

I don't think it's politically practical to expect that it will be ever be adopted in the State of Michigan in my lifetime, but it is a process which imposes strict accountability in the governor for the appointments. I think it heightens the governor's consciousness of the people that he selects for the judiciary, especially for the Supreme Court, and I think it sensitizes the people to the importance of electing legislators who may have a confirmation role, and governors would have this appointive role if they do not have a crack at the judiciary.

At the end of my speech about this is Michigan's elective process, if you look at the record, works in a surprising way. The judges who are closest to the people, circuit judges - I'm going to eliminate the district courts now because I have not done a study, but I did a study of the Wayne County judiciary excluding the District Court, and I found that for a period of 50 years ending about five or six years ago, the voters of the County of Wayne never turned out one of the judges who was an incumbent except for reasons which are shameful. The first black judge ever appointed to the judiciary of Wayne County, Charles Jones in Recorders Court was defeated the first time he came up for election. One of the very first Jewish judges to be appointed here, Judge Rubiner, was rejected by the electorate in Wayne County in the late 30's, early 40's. The first high-profile Polish judge, Judge Targonski who was appointed to the Wayne Circuit Court was rejected and one or two others, but the pattern is the voters do not turn out incumbents in the trial court.

In the Michigan Court of Appeals, as you have observed, no incumbent has ever been turned out, and on the Michigan Supreme Court, there is a regular pattern of turning out incumbents but for

reason almost no one in the electorate can explain except to say the opposition name on the ballot was more familiar and more attractive. So, I don't think the electorate process works in Michigan.

Mr. Lane:
Let me veer off to a subject that in my mind is somewhat related here. One of the...a couple of the cases that you drew early in your period on the Supreme Court were discipline cases where it affected judges, and I wanted to ask you, too, about bar discipline and what your thoughts were about how that is handled, both in the Supreme Court and in the interest of the state generally. Now, you had early on, you had the Probert case. You had Hague. Do you recall those.

Justice Ryan:
I recall the cases, and I recall the judges. I don't recall the issues before the Court.

Mr. Lane:
Well, Hague is an easy one to go back to. Hague was a little...

Justice Ryan:
Traffic court judge.

Mr. Lane:
Yes, that's right, and he was sort of a hip shooter and free spirit who didn't want to be bothered by what he was told by his superiors and that sort of thing and among other things, he would not enforce the law that had to do with prostitution and I think there were a couple other conspicuous examples of that where he thumbed his nose, and just wouldn't perform, and he was, to the best of my recollection...I know he was disciplined. I think he was removed, but if he wasn't, the voters removed him and of course, those two things tend to go hand in hand sometimes, don't they?

Justice Ryan:
Yes, they do.

Mr. Lane:
Probert, I don't recall. His misbehavior was very conspicuous, too.

Justice Ryan:
It seems to me he was a probate judge in the Coldwater area. Do I have the right man?

Mr. Lane:
I think over in Wyoming, near Grand Rapids, somewhere in there. Probert.

Justice Ryan:
I might be thinking of another case.

Mr. Lane:
Well, this is all pretty far in the past. Do you think that from what you saw on the Michigan Supreme Court that the system for keeping judges reasonably responsive and on the track in their tasks works pretty well?

Justice Ryan:
Yes, I do. I think it does, and we were comforted during my time on the court that there was in place the Judicial Tenure Commission as a constitutional body to do the policing. I don't know how in the world, if there hadn't been the Tenure Commission and all of its processes, how we would ever have met our responsibilities to superintend the Michigan Judiciary. We simply could not have done it adequately through the regional administrators. I mean, when the Justice of the Peace system was abolished, and the District Court system came in, and as the explosion of litigation required new Circuit Court judges, we suddenly, in the late 70's and early 80's in Michigan found ourselves on the Supreme Court superintending, relatively speaking, a huge judiciary.

These District judges...they used to be J.P.'s, they're full time people, several hundred of them. I forgot how many Circuit judges, but the number of Circuit judges increased the Probate judges. The elective process tends to bring to the judiciary some number of people who would never otherwise be chosen by anybody to be a judge. That doesn't mean that good judges weren't elected. I'd like to think that I did a fairly adequate job as a trial Court judge, and I was elected, and I can think of dozens and dozens of others, but "x" number of judges come to the bench because they're politically popular in their locale, and they don't have, at least they don't demonstrate the first quality of the most elemental gifts of a judicial temperament, but on the Supreme Court in Lansing, we'd have no idea of what is going on in such courtrooms without the benefit of a Judicial Tenure Commission.

I thought it worked very well. The process was carefully thought out. It was modeled on work done in other states. I think it works. It is not perfect, and I think the Supreme Court has to kind of ride herd on the Commission so that it doesn't get carried away with its own authority.

Mr. Lane:
What would you say, out of the state of affairs with respect to lawyer discipline and the mechanisms? I think this is reflected like...you wrote In re Jacques. Do you remember that?

Justice Ryan:
Yes.

Mr. Lane:
And then the Supreme Court, as I understand it, of the United States had a different view reflected in an Ohio case, and it had to be heard again, and I think you pulled that one. I think of the Falk, all the stuff that Alan Falk raised to the Court. Do you recall anything about the Falk matter?

Justice Ryan:
I recall the Jacques matters better, but I do recall the Falk case. The Jacques case, of course, was the one in which this lawyer whom I knew when I was a trial judge because he had been in my courtroom, had been accused of openly soliciting business, and I was interested in the case because one of the last cases I tried as a trial judge was the tragic Port Huron tunnel explosion case. It was in a kind of perverse way, it was probably the high point of my trial judiciary career. It was a case that was tried for about 16 weeks before a jury in the Wayne Circuit Court. There were about 12 lawyers at the table, three for the plaintiffs and about nine for the various defendants, absolutely the cream of the trial bar in southeastern Michigan, the best and the brightest trial lawyers, very complex case. There were about 22 death cases joined for trial.

Deaths occurred because of a methane gas explosion in the tunnel which was being built in Lake Huron to provide water for all of southeastern Michigan. A rich experience. The case was settled after about 16 weeks for millions and millions of dollars. I then went to the Supreme Court and a couple years, what occurs but there is this charge made against a lawyer for having gone up to Port Huron through an intermediary and solicited widows to give him the case to bring against all the defendants for their husbands' death. Whether the charge was valid or not is for others to say, but the case finally came to the Supreme Court which Mr. Jacques, having been found by the administrative process to be guilty of misconduct, was entitled to have his hearing in our Court.

It was argued, and it was assigned to me in the blind draw, as I said earlier, cases always are, so I wrote the opinion to unhorse him from the practice of law which I thought the law required that we do because advertising was forbidden by the canons of professional responsibility. So I wrote the opinion for the Court, away it went, and as you said, within a couple weeks, the United States Supreme Court decided that the commercial speech laws of the first amendment or component of the first amendment made it unconstitutional for the states to forbid lawyers to advertise, so Mr. Jacques was back before us, and said to us, "So there", as it were, which he was entitled to say, so we heard the case on rehearing, and we had a rule that if a case were to be reheard, we would not use the blind draw system to assign it to a justice.

We would give the justice who wrote the opinion the first time to write again and for that reason, they said to me...I remember Soapy saying, "Well, you unhorsed him. Would you like to horse him again?", so I wrote the opinion eating crow...I think I wrote it, anyway, that said that the law has changed, and what was formerly a professional sin is no more, and away we go... The Falk case was a case brought by Alan Falk, a Commissioner of the Michigan Court of Appeals in which he challenged on Federal Constitutional grounds the expenditure of portions of dues lawyers paid for membership in the State Bar of Michigan. Membership in the State Bar of Michigan is compulsory under state statute. All of us have to belong. We all have to pay dues, and Alan Falk brought a law suit asserting that some part of the dues, at least, paid for political activity he didn't agree with.

I recall at the conference table, Charles Levin, who I'm proud to keep as a dear friend even to this moment, who is Jewish, and who has a rich sense of humor...we were discussing the case around the table, and he said that he had views about various aspects of the case, and somebody said, "Well, Chuck, what do you think about this allegation that Mr. Falk makes that his first

amendment freedom of religion privileges have been invaded?", and Chuck, with a knowing smile on his face, knew what we were talking about, and he said, "You're referring to Mr. Falk's allegation that there are social gatherings held by the Commissioners of the State Bar of Michigan at which the Justices are sometimes present", social, at which pork and shellfish, food forbidden to Orthodox Jews, as I understand it, is served, having been purchased in part by dues paid by Mr. Falk and others of the Jewish faith who would be expected to object if they wished.

Chuck said that he would prefer not to write that part of the opinion if it were all right with everybody when it was all over. He was kidding, of course, but it showed the good will around the table, but it also illustrated that Falk was making an argument that had much broader appear than at first we thought. I have forgotten who wrote the opinion. I didn't write it. I wrote a dissent.

Mr. Lane:
I think that's true, and I don't recall. You know, there were a couple bites on the apple there. I think the first time around, it was determined that the record was insufficient to determine a lot of...

Justice Ryan:
That's right.

Mr. Lane:
And Judge Lincoln was appointed as a Master of whatever...I've forgotten what he was called...Master, I guess, and he held some hearings and the thing eventually came back, and I lose track of the detail except that there was a product there. Now, for example, as a lawyer, you get these forms - "Do you agree to this and that", and law pack, and "Are you willing to have some of your dues go". It seems to me to the Bar Foundation on some...What the heck is that?

Justice Ryan:
Well, I think that we are now extended the opportunity to have our dues reduced by the percentage of the funds which would go to legislative lobbying or that percentage could be donated to the Michigan Bar Foundation.

Mr. Lane:
Yes, that was it, and then there were some other consequences. I noticed the Bar Journal prints ad nauseam the position of the Commissioners of various....

Justice Ryan:
I don't really remember the Falk case that well. It didn't turn me on. I mean, that's...

Mr. Lane:
It was more a burr under the saddle.

Justice Ryan:
Yes, it was.

Mr. Lane:
And it was meant to be, I think.

Justice Ryan:
It was meant to be, and it changed the relationship of the Bar to the practicing lawyers. You know, there was a time on the Court...one of the reason I loved my work on the Supreme Court, Roger, was because it was so varied. There was the process of selecting the cases we wished to hear by granting leave. We'd identify the cases because we thought the law needed to be clarified in that area or conflicts in the Court of Appeals needed to be reconciled or was an area of the law in which the state of the common law was unjust and needed to be corrected, we thought or other reasons.

Then there was the process of writing the opinions, the studying, the oral arguments, and there was the still additional process of rule making, writing the rules of evidence, writing the rules of practice, the civil rules, criminal rules which I enjoyed immensely. There was the administrative part of the Court which had to do with working on the budgets for the lower courts, although that was a small part of it, so it was so varied. I enjoyed that immensely. One of the areas that I enjoyed most in the Court was the opportunity to be engaged in the rule making process.

Mr. Lane:
Now, the rules were being re-written, were they not, in 1981, 1982, along in there, effective in the 1983 rules..

Justice Ryan:
Yes, that's right.

Mr. Lane:
I can remember the Court held some sessions in the courtroom sitting at the ground level, shall I say...the floor level, around a table. I think the room was available for that purpose and big enough and all, and there were some, well...I don't recall testimony thing, but people were allowed to address the Court and to explain their perception, some were, at any rate, of how the rules ought to be framed. I can remember for the first time, you got...what was it, a little separate book on evidence rules, and you must have had a big, big part in that. I don't recall.

Justice Ryan:
I did. I was interested in evidence and I still am. I taught evidence to the judges for years in the National Judicial College and I taught as an adjunct professor at the University of Detroit at the Cooley Law School, and evidence was always kind of a hobby with me. I liked it. The Federal Rules of Evidence had been adopted for the Federal Courts in 1975 and had been proposed for adoption in Michigan by a special committee appointed by our Clerk and by the Bar and that's

when we first used the technique you've just described. We had hearings after a proposed set of Michigan evidence rules had been adopted by a committee of which I was a member before I came to the Supreme Court, as a matter of fact.

We had hearings sitting in the well of the courtroom in Lansing in which we would invite, did invite spokespersons from all segments of the Bar and the bench, and the Academy to comment on these rules. I loved that work because I felt some expertise in the law of evidence, but an interesting thing happened, and I mean this not as any criticism of any Justice, but if a history is a history, it's got to be what happened. I have already alluded to the fact that there was a dearth of trial judicial experience on our Court. Until Blair Moody joined me, I was the only one who had that experience. None of the Court claimed it, and all in the Court were perfectly willing to cede to another of us who had some expertise the leadership role in suggesting the resolution of issues.

When it came time to debate among the seven of us whether we would adopt for application in all Michigan Courts the new proposed evidence rules...we held these hearings we've just described, and then we set aside a full week. I'll never forget it, in 1977. I think it was in the autumn, and it was thought by several on the Court we would just adopt these rules. If the proposed rules which had been produced by the Commission were approved by the Commission, they must be okay. The Commission represented lawyers, and judges and even us, and I didn't see it that way. I thought there were some serious deficiencies in the Federal Rules of Evidence which had been adopted in many cases verbatim for Michigan, and I had studied rather thoroughly because of this interest I've described - I'd studied the Federal Rules and thought I recognized areas where the Congress just worked out a political compromise instead of having done what was best for litigants, so I asked if we could take these proposed rules, ten articles of them, section by section.

I thought Soapy Williams was going to have apoplexy when he heard that, but we'll get to this later - he was a genius in terms of an administrator in our Court. He was a great Chief Justice, and he saw his duty primarily as moving the cases. This idea of going through the proposed rules of evidence chapter by chapter was enough to give him a stroke. He turned almost pale, and my friend Thomas Giles Kavanagh, who claimed no expertise in that technical stuff, wasn't too interested, so the upshot of it all was that there were primarily two of us on the Court who became and were deeply interested in every line of every section of the rules of evidence, and we pretty much led the discussion and that was Chuck Levin and me. There were others on the Court. Blair Moody wasn't with us yet, so we didn't have the benefit...I don't think he was...no, we didn't have the benefit of his trial experience, so while the other justices participated including...

(End of side 1, tape 2)

Topic 5: Justice Ryan continues to talk about revising the rules of evidence and the legislative power of the court in certain contexts and the State Bar of Michigan and Michael Franck

Mr. Lane:
Here we are.

Justice Ryan:

Well, all the Justices participated in some part of the discussion about the rules of evidence. Chuck Levin and I and occasionally the others went through those proposed rules, not section by section but paragraph by paragraph, sentence by sentence, word for word, so the rule which Michigan Rules of Evidence has adopted for application in March of 1978 were in every respect, the creation of the Justices of the Supreme Court because that's the way it turned out. They are, in material respects, different than the document which was proposed to us.

Mr. Lane:
And they've worn very well, have they not?

Justice Ryan:

They've worn pretty well. There is a report before the Justices in Michigan now suggesting changes, and a number of the changes being proposed will change provisions that I succeeded in having written into the rules but being gone now, I can no longer defend them and who is to say that they were right in the first place. That's an example of the rule making power of the Court being taken very seriously.

Mr. Lane:
Now, those stem, do they, from the constitutional language that gives the Michigan Supreme Court the power to govern the practice and procedure of the Courts.

Justice Ryan:

Yes.

Mr. Lane:
And so this is a legislative power within a certain context that is directly bestowed upon the Michigan Supreme Court by the Constitution.

Justice Ryan:

The legislature has historically, when it has been moved to, for whatever motivates legislation, has enacted statutes granting rules of evidence in Michigan, and they have been, for the most part, ignored by the Supreme Court in Michigan for generations. Every once in a while, a collision occurs in a case in which the rules of practice in the trial courts are at odds with some rule of evidence that the legislature has established.

The legislature has never, in Michigan, adopted a comprehensive code of evidence, but here and there in the books, you see a short one or two sentence statute on some isolated rule of evidence. Well, finally a case went to the Michigan Supreme Court before I got there, Perrin vs. Puhler is the name of the case. It was written by Gene Black, and the issue squarely before the Court was who has the authority to make the rules of evidence in Michigan, and the decision by a divided Court, written in usual strong Gene Black language was that the separation of powers doctrine of the Michigan Constitution reposes in the Michigan Supreme Court exclusively the power to determine practice and procedure, the expression you used, in the courts of the Michigan judiciary and that includes the rules of evidence, and it's on the basis of that precedent of the constitutional law case that, just as you've said, that the Michigan Supreme Court has assumed the prerogative of writing the rules of civil procedure and the rules of evidence because the Michigan Supreme Court insisted under the constitution of the state that it had that power.

Now, the legislature in Michigan has adopted rules of evidence ever since. About every year, they come up with one, and the Michigan Supreme Court either ignores it or if they think it is a wise rule, they will adopt it as a rule of the Michigan Supreme Court. The rape shield law is an example.

Mr. Lane:
Something about bail bonds comes to mind. Was there a principle that had to do with making it more easy...some of the judges, as I remember, were pretty outrageous about...

Justice Ryan:

Yes, they were.

Mr. Lane:
Wasn't this resolved by both a court rule that became the practice and some legislative attempt to...?

Justice Ryan:

Well, that's a classic example of the breadth of the work on the Supreme Court that I earlier said that I loved. Again, those of us who had been on the fringes of what used to be called the Clinton Street Bar which was the name, the slang name given to the lawyers who exclusively practiced in the Recorders Court of the City of Detroit, knew how this bail bond system worked, and there drifted up to Lansing to the Supreme Court when I was there kind of an indistinct odor that there might be something wrong, strictly speaking, in the way in which the bail bond system worked, and the suspicion - no evidence presented during my time, but the suspicion that the judges in the criminal courts all over Michigan, not just the Recorders Court, who had to raise money for re-election and who were reporting contributions from bail bondsmen might be in a situation in which they could be too easily compromised when the bond was to be set.

Without having any evidence of specific wrongdoing before us, we were convinced that an idea had come to fruition that should be adopted in Michigan and that is to re-examine this assumption that if you don't make a defendant post a high bond, he won't appear, and so we got into some academic studies that have been done in the east, the Vera Foundation in New York City in the New York City Courts, the Manhattan Project. Not the atom bomb, another in that project, and studied the non-appearance rate of persons on bond and had come to some conclusions, one of which was you don't need to force a person to mortgage his house to buy a bail bond from an insurance company or a bondsman so really after some very comprehensive studies for which I thought our Court deserved considerably credit, we adopted this rule that the Courts were no longer to require bail bondsmen to post a bond and that a person, depending on circumstances and depending on the nature of the case, could simply post 10% of the bond himself in case or some property, and we weren't sure...this put the bail bondsmen out of business effectively in the state of Michigan.

Mr. Lane:
Did it work satisfactorily?

Justice Ryan:

Absolutely. It is in place today. The legislature has codified it, I think.

Mr. Lane:
Before getting too far away from the matter of overseeing trial court judges and the bar generally, I wanted to ask you if you noticed that when the Bar dues, remember the disciplinary process, fighting this out of Bar dues; when the Bar dues went up the last time...now, I think it could have been June, that recent, that two of the members of the Court in effect dissented from the...I found this in the fine print of the Bar Journal one day; one of them being Charles Leonard Levin who said "Instead of $50.00, I'll go for $15.00 unless you go ahead and build up the budget of the disciplinary arms of the Bar". Do you remember?

Justice Ryan:

Very well. You've jogged my memory. What I started to say earlier and then lost track of my thought was that very subject. When I mentioned a few moments ago that I loved the work of the Superintendents because I had the privilege of practicing law and serving the lower courts. The Bar Association's relationship to the Supreme Court was one of some tension all the time I was there. The State Bar of Michigan was led by lawyer of a very strong personality, Michael Franck and a brilliant guy, and a professional Bar bureaucrat of the first order and I don't mean that in a denigrating way.

Mr. Lane:
I think I understand. He came from New York.

Justice Ryan:

It is a bureaucracy.

Mr. Lane:
And he was recruited for that.

Justice Ryan:

He was a full time executive director of a big state bar in Michigan, a dominant influence in the policy making and in my time, I had observed the State Bar of Michigan under Mr. Franck's leadership, grow from a fraternity of lawyers, a compulsory membership, to be sure, in Michigan, into an enormous bureaucracy, into a multi-storied office building in Lansing, a Bar to which every lawyer must belong, a Bar Association now which has an elaborate program of legislative lobbying, publications put out, educational programs and the rest, most of which are good, I think, but the Bar Association with Mr.

Franck's leadership communicated with the Court very frequently and insistently with respect to proposed rules that we were considering, rules of practice, rules of discipline, rules of judicial tenure, rules of evidence, everything. It was a very articulate body expressing the Bar's preference on how things be done, insisting that standing commissions and standing committees appointed by the Supreme Court have members automatically from the State Bar of Michigan's bureaucracy.

I came to the conclusion after serving for almost ten years on the Michigan Supreme Court and trying to meet my constitutional duty to superintend the State Bar of Michigan, my 1/7 of the action, that the State Bar of Michigan had vastly outgrown the purpose for which it was organized in the first place, and when we were engaged in one of these tense relationships with the State Bar about some proposed rule, and I've forgotten what rule it was.

I think it was the rule having to do with how the lawyer disciplinary process should be composed; whether there should be both a prosecutorial arm and a adjudicative arm. Historically, there had only been one body that investigated complaints against lawyers and having decided that there was some smoke there, would then listen to the evidence from the complainant and decide whether discipline should be imposed or not, and then the proposal was made that that should be divided into two groups, a prosecutorial group and an adjudicative group and that kind of brought to a head a much broader question of what is the State Bar and has it outgrown its intended purpose.

I came to the conclusion, forgive the personal pronoun, but I came to the comfortable conclusion that in my judgment, a vast majority of the work and of the money that was being spent by the State Bar of Michigan was not primarily for the purpose of an integrated compulsory membership bar association. Integrated - I don't mean racially.

Mr. Lane:
I understand that.

Justice Ryan:

You understand that. I'm talking about a compulsory bar, so I am the one who proposed at our conference that the State Bar of Michigan be dismantled. They had raised the dues for the third or fourth time since I was on the Court. They had just finished a brand new six story building in Lansing. I think it's six stories. Elaborate legislative process.

The fault case had focused our attention on the breadth of political lobbying the Supreme Court of Michigan was engaged in, so I proposed that we unhorse the State Bar of Michigan, and we ought to require every lawyer to continue to join the State Bar and that he pay whatever dues are necessary to fund the bar examination superintendents that it conducts, the grievance process that it conducts and whatever other functions the State Bar is required by statute to be involved in and that I thought, although we hadn't yet done a budget study, I thought maybe $15.00 instead of then, I think, it was $180.00 or $150.00 a year would cover that, and I proposed that those who are interested in the politics and the society of the Bar Association, were of course, perfectly free to found a Bar Association like the American Bar Association which is just a voluntary union, and then they could attract whatever members they could attract on the basis of the services they were offering like discounts on cars and other things.

To my utter surprise, an immediate ally for that point of view was my friend, Chuck Levin, and that's humorous to me and to you because we both know that for my time on the Court, he and I were generally the philosophical poles on the Court. He kind of the spokesperson for the generally liberal perspective and me for the opposite perspective, and we didn't agree on much, but when we agreed, on we did on most of the rules of evidence, it was a strange bedfellow arrangement, and this proposal at first was not treated seriously by a couple of our colleagues.

Mr. Lane:
Did it ever reach...what will I call it...the light of day? Was it ever...?

Justice Ryan:

Oh, it reached the light of day, all right. It came to the attention of Mr. Frank and others whose views were totally different about the role of the Bar.

Mr. Lane:
They didn't immediately put in in the Bar Journal.

Justice Ryan:

No, no. It was discussion around the table, and it probably should not have gone into the public ear because it was only a proposal, it had not been proposed by anybody on the outside. It came out of my head, I believe, although I'd heard; all my life, I had heard lawyers, an ordinary guy and a woman trying to earn a living in the suburbs and elsewhere who don't belong to the big silk

stocking firms that they don't know why they have to help fund this bureaucracy up there that doesn't seem to be of any benefit to the ordinary lawyer. That had been rattling around in my head. Well, when there was superimposed over that; when I began to learn about the tremendously powerful influence the State Bar Commissioners had on policy in Michigan, I really came to this conclusion seriously, and we came very close to doing it. We had an informal 4:3 vote, non-binding, informal, to see if there was any interest in this, and I could never get the fourth vote.

Mr. Lane:
Was this about the time of bifurcation of the disciplinary process?

Justice Ryan:

Yes.

Mr. Lane:
And was this somehow meshed in? Did this come out, was it part of the product of the dialogue that you have just described?

Justice Ryan:

Well, it was a byproduct.

Mr. Lane:
Levin would have been very powerfully in favor of this, would he not?

Justice Ryan:

He was powerfully in favor of bifurcating the State Bar disciplinary process. I was opposed to that.

Mr. Lane:
You were?

Justice Ryan:

Yes, but I didn't feel terribly strongly about it. I fell back on sort of the mundane rule, "if it ain't broke, don't fix it", and I was not satisfied that I had been shown that there was anything lacking in the effectiveness or the integrity or the justice of the unitary disciplinary process which was the practice across the United States, so I was kind of requiring those who wanted to redesign the wheel to show me why.

Mr. Lane:
Was it not...excuse me.

Justice Ryan:

Well, I was going to say, that discussion was the occasion for taking a look at the breadth and intensity of the State Bar's influence in Michigan and in the Supreme Court. It was kind of a catalyst for the broader discussion, that's all.

Mr. Lane:
Backing up a bit, was it not only in 1970, I think it was, I think when Tom Brennan was Chief Justice, that the disciplinary apparatus was given a thorough shaking up and for the first time, the...whatever the disciplinary commission was called then, was constituted in quite a careful way to include a broadly representative panel of people including two laymen. One of them I happened to know, John Murray, who is a friend of mine. Then there was a fellow from...

Justice Ryan:

Monsignor Kern.

Mr. Lane:
Was it Monsignor Kern? But at any rate...

Justice Ryan:

I think.

Mr. Lane:
That had a very salutary effect. There were other things that were built into the system at that time. I remember this because, you remember there was a messy situation that occurred down in Livingston County that was widely publicized. The Irish fellow that ran the place.

Justice Ryan:

Breakey.

Mr. Lane:
No, no, Livingston County.

Justice Ryan:

Lavan.

Mr. Lane:
Martin Lavan, and he had kind of crowned himself down there, and he jerked the judges around and stood by while the widows were raped...excuse me...you know, they were plundered, and the

old people, and that was pretty bad, and there was a reaction to it and the Bar took notice, and there were some hearings. I can remember T. John Lesinski talking in the House of Representatives one night, somehow. I don't recall the occasion, but this attracted a lot of people's attention and out of it came something that was pretty good, and that's probably what you're referring to - "if it ain't broke, don't fix it" because it had been fixed once and was working pretty well. At any rate, the Court did...was it pretty solidly in favor of dividing the process by the time that decision was reached?

Justice Ryan:

No, during that period, we did an awful lot of things 4:3. The decision to divide the process was a divided decision on the Supreme Court. Whether it was 4:3 or 5:2, I don't remember, but I remember Thomas Giles and Chuck Levin arguing vigorously for the division and Soapy, whose talents were just enormous, would...he was the best listener on the Court. He would claim no particular expertise, no knowledge based on experience about the inner workings of the Bar or the disciplinary process or how lawyers would get in trouble, and how sanctions would affect their practice. Didn't claim any knowledge of that, didn't have any particular knowledge, and he'd listen carefully, and he would do and did, with respect to that issue, what he did with respect to so many decisions, many of them having to do with deciding cases, a process which I criticized in him. He would wait until he had a firm feeling of what was fairest based on what he knew, and that was the Governor, the administrator, the executive coming through.

If you've got the power to do something here, then figure out what's probably the fairest thing to do and then do it. Often, without a lot of concern about such principles as judicial self-restraint and separation of powers. Well, I'm talking now about an administrative rule making where there is no separation of powers and no need for self-restraint particularly, but I remember that he was not a reluctant, but he was kind of a silent, late vote in support of bifurcating. It just seemed to him, I remember him saying, probably fairer than having the same body both prosecute and adjudicate, a hard position to respond to.

Mr. Lane:
Do you feel that it's worked out pretty well?

Justice Ryan:

Yes, I do.

Mr. Lane:
It costs more money.

Justice Ryan:

It costs a lot more money.

Mr. Lane:
I think that's the beef of Mike Franck among others.

Justice Ryan:

It costs a lot more money. It also diminished the power of the State Bar of Michigan which to me, is a plus. By the State Bar, I mean the bureaucracy at the top of it. On the other hand, it introduces sort of a satellite quasi criminal system into the profession. A lawyer who is charged with misconduct now is charged by a prosecutorial body. It is necessary that he or she retain counsel and prepare a defense, mount a defense, present...it's kind of administrative law of a quasi criminal sort, and on the whole, it works. My friend, Thomas Giles Kavanagh used to say, "for forms of government, let fools content. Whatever works, works".

Mr. Lane:
Very profound.

Justice Ryan:

It works, and I don't think my negative vote makes any difference.

Mr. Lane:
You know, what I read in Levin, call it a dissent on the Bar dues increase, he talked in very serious terms and I gathered that maybe Griffin at least would go along with him, that if the Bar is not going to allocate more of its resources to this important disciplinary area, it will be time for the Supreme Court to take charge of the budgets of those agencies. Did you...?

Justice Ryan:

I read that.

Mr. Lane:
That's what I understood him to be saying.

Justice Ryan:

That's a 1980...it's 1990, though, isn't it? That's a 1990 echo of the kind of discussions we had around the table in 1984, 1985.

Mr. Lane:
But these things never reached public cognisance, did they?

Justice Ryan:

No, no.

Mr. Lane:
And probably for the better, I suppose. Another thing lingers in my mind that I would like to get to before it gets away from us. One of them - we've talked about the strains in the Court and the divisions and the tensions. One of the remarkable things, I thought, in my knowledge of your period on the Court was the apportionment coming together.

Mr. Lane:
How do you explain that?

Topic 6: He also discusses the apportionment of the state legislature in 1982, the appointment of Bernie Apol to draft the map rules in a non-partisan manner, and Justice Blair Moody and the nearly unanimous decision to accept the new rules

Justice Ryan:
The apportionment story, in my opinion, is maybe the most important part of this history for the period I was there and unfortunately, it can't be handled...it probably should not be handled off the top of one's head, but it is a story that results in the real basis for the Court to be applauded, I think. The history of apportionment...we're talking now about the apportionment of the State legislature. Under the constitution, it has to be done, as you know, every ten years.

The Michigan Supreme Court used to apportion the legislature and the Democrats would come up with an apportionment plan and the Republicans with an apportionment plan. In the 60's when the Court had a crack at it, the Justices of a Democratic background had the votes so they approved the Democratic plan. It was sort of not a very prideful time in the history of the Court.

The Michigan constitution had made a change in how that should be done and created a commission which would reapportion the legislature, but the members of the constitutional convention lost their staying power or lost something and came up with a commission concept that was guaranteed to fail because it had four Democrats and four Republicans on it with the requirement that if they couldn't agree, which, of course, they would never do, that the plans would be submitted to the Michigan Supreme Court for a choice between the two of them, between the two plans, and so the 1960 maneuver, the commission couldn't agree, and the case went to the...I'm talking now about the...

Mr. Lane:
1964, that was?

Justice Ryan:
1964. The Democratic plan was adopted. It came up again in the 1970's, in 1972 or 1973, and there was tremendous struggle inside the Michigan Supreme Court. I was not yet present, but I've spoken to most of the justices who were there. There was...Thomas Giles Kavanagh, as I recall

the story, did not go along as expected with the Democratic plan and was regarded as a traitor, and his survival on the Court was threatened, and indeed, the next time he ran for re-election, the Democratic Party set out to have him defeated because he wouldn't vote for the Democratic apportionment plan.

Well, it was in that context and with that history that the 1980's version of apportionment came to the Michigan Supreme Court. Sitting around our table were three people who had been nominated by the Democratic Party sitting there, G. Mennen Williams, Thomas Giles Kavanagh, Blair Moody. Three people who had been appointed by a Republican governor and nominated by the Republican Party - Chief Justice Mary Coleman, John Fitzgerald, as I recall, and me, and then there was Justice Levin who had nominated himself by inventing his own political party at the beginning and turned out to be the biggest vote getter on the Court, but anybody who is a student of the Supreme Court knew that it wasn't a political court.

There weren't Democrats and Republicans on our Court. I'm very proud to say that. There were liberals and conservatives. There were persons of a philosophical bent who found themselves in groups, but it had nothing to do with partisan politics. I don't think for the rest of my life I'll ever convince anybody of that, but those of us who served there knew it.

Mr. Lane:
Excuse me, would you make a footnote, though, to the very issue that you've just been talking about - apportionment. When the Court was obliged in 1964 to make a decision between two plans, one of them had imprinted a label, Repu, and the other was Democratic, and the response at that time, would you make an exception to what you just said in that particular case, or would you not?

Justice Ryan:
Yes, I'd make an exception because what I just said had reference to the seven persons that I described. Sure, in the 60's and 70's, Michigan constitution compelled the Supreme Court to chose either the Republican or the Democratic plan.

Mr. Lane:
You had to make a political choice.

Justice Ryan:
You had to make a choice, and had to make a choice when it came our turn in the 80's also, but we were seven people. I've never worked with people like that before and I haven't since, who took their oath of office more seriously. It was a marvelous group of lawyers and judges with all of our warts, and partisan political loyalty just wasn't in the decisional process ever, and that includes Soapy Williams who was the head of the Democratic Party forever. I was very proud of my colleagues including those I disagreed with most of the time because they were genuinely judicial with respect to the subject of partisan politics. Now comes our duty, in 1983, I think it was.

Mr. Lane:
1982.

Justice Ryan:
1982, to obey the constitution which said you must chose either the Democratic plan or the Republican plan. We recognized that neither plan was fairest for Michigan, and they were both gerrymandered in a way to advantage the party, and that's a political decision which is okay, but the Supreme Court should not be put in the position of selecting a package handed to it by a political party, so we were benefitted, thanks be to God, by the fact that there had been much turmoil in Federal constitutional law at the close of the 70's and the beginning of the 80's about apportionment in the Federal legislature, the Congress, and there had been a series of three or four decisions the United States Supreme Court handed down under what is popularly known as the "one man-one vote" concept, and those decisions, the names of which escape me now, but I knew them, almost memorized them when we decided this case, gave us in the Michigan Supreme Court, the basis to declare that the Michigan constitutional provision requiring that we chose either the Democratic plan or the Republican plan was itself unconstitutional.

The Michigan constitutional provision providing for the apportionment commission which ultimately forced the judiciary, us, to apportion the state legislature was unconstitutional under the Federal decisions, U.S. Supreme Court decisions.

Mr. Lane:
Was there unanimity on that particular point, do you recall?

Justice Ryan:
No, there wasn't.

Mr. Lane:
Finally, I know...

Justice Ryan:
There wasn't unanimity on that particular point, and I don't remember how we divided about that, but the majority was of the view that the leadership, the man on the Court who forced us to do our own studying, forced us to the scholarship was Chuck Levin. He became interested in this subject of apportionment, that is to say, the law of apportionment in a fashion out of all proportion probably than what he should have been in view of the work load, but I'm glad he did because he forced us to become students of the subject, and we all studied it.

We agreed by substantial majority that the Michigan provision forcing the Supreme Court ultimately to apportion the legislature was unconstitutional under the Federal constitution so we threw it out. Now we don't have any plan before us except the Democratic plan which was handed to us and the Republican plan.

Mr. Lane:
Excuse me, this is within the conference of the Court? You're describing the various steps. This

was not determined in the issuance of a decision of the Court's soa sponte body or anything like that. You're talking about how you got to the place where the new rule...

Justice Ryan:
No, that's not right. We got to the place of having this discussion because a law suit was presented. A law suit was brought by some plaintiffs challenging the legality of the other guys' plan. The Democrats challenged the legality of the Republican plan and the Republicans challenged the legality of the Democratic plan.

Mr. Lane:
They had already manufactured their plans and handed them to the Court and then began the litigation.

Justice Ryan:
That's right. So we had a package to give a basis to act. To make a long story much, much shorter, if it is not too late, our Court decided that we would commission the recently retired Director of Elections of the State of Michigan, Bernie Apol, would request him to come out of retirement, and to head up a team of experts who would use computers newly available and much more finely hone the statistics about population and other relevant data in the state of Michigan to come up with an apportionment plan which would be blind to the preferences of the Democratic party and Republican party and which would, as nearly as possible, comply with the United States Supreme Court's principle of one man-one vote in the Michigan legislature, the House particularly, but would meet some other criteria.

We did not want to have townships divided. We didn't want to have counties divided if we could afford it, so we commissioned brother Apol to go about his business, call on his expertise and when he got all through, to come back with a plan that met these criteria which we laid down which we thought were utterly devoid of partisan political consideration or influence, and would give Michigan a change to have a legislative apportionment process which would create districts in which there were approximately the same number of people.

Mr. Lane:
Were these criteria, was there strife over working them out?

Justice Ryan:
No, there really wasn't. It was amazing because we were not driven, not influenced. In fact, the counter influence...let me start again. The reason it wasn't difficult to work out the criteria because the goal was simple. The goal was a plan which as most nearly as possible, provided for one man-one vote legislature in Michigan and which would not disturb existing political boundaries: cities, townships, counties. We knew that to get one man-one vote, we were probably going to have to cut some counties, but if we did that, we wanted to cut it perfectly in half, for example. But we didn't know what the computer would spew out as to the mathematics but we knew one thing.

We knew we were not the least bit concerned as to how it came out. We didn't care whether this plan would likely result in a change in the Democrat/Republican balance in the state legislature,

and we were, I remember, very conscientious that we did not want any information from Bernie Apol until his package was completed about how it was probably going to impact the legislature. I was never prouder of a group of people in my life than our Court. Ultimately, we got the package produced. It was imperfect in the sense that in order to get as close to one man-one vote as mathematically tolerated by the United States Supreme Court decisions, we were going to have to cut some political divisions, some counties; we were going to have to cut them in half.

There could have been a debate on our Court about which counties get cut because that could have an impact on whether Republicans or Democrats got elected. I remember we sent Apol back to the computer board again and told him to strive more mightily now to try to avoid dividing existing political units and to come back with a formula. I lose track now with the passage of time as to what the formula was precisely, but he came back with it, and our Court looked at it and studied it, and we discovered that it was going to change, that it was probably going to change the composition of the legislature, and we didn't know which way or whether it would at all.

As it turned out, we speculated it would probably result in an increase in Republican representation in the Michigan House. That would not have resulted in a shift of control politically, but it came as a complete surprise to the seven of us what it would do, and so we discussed the plan mathematically. We had a number of hearings in our conference room with Apol and his charts and the computer readouts. We had an assistant on his staff who did logirhythms and square roots and mathematical computations. You were in on this at the time.

Mr. Lane:
On the fringe of it. You know, I'm proud to say that I shared...this was the Court's finest hour.

Justice Ryan:
We finally produced an opinion, and I prayed, and I mean that literally, that we could find a way for the Court to be unanimous, to show the people of the state of Michigan, the Bench and the Bar that although we came from partisan sources to the Court, that this was just too important to be partisan about and we wanted to lay to rest this terrible reputation the Supreme Court had for jumping Republican or Democrat in the 60's and 70's and thanks be to God, we got a unanimous tentative vote at the conference table, 7:0 for what we called the Apol plan, and the chips would fall where they fell, and it would probably result in a small Republican benefit, but at the 11th hour, one of the members felt he could not sign the opinion. That was Blair Moody, and we didn't lobby one another in the court, really, to change position on opinions. You'd try to persuade another person to your point of view about the law, but there wasn't any intensive lobbying.

I don't know if there is in any Supreme Court, but we reconvened, and we attempted to persuade Blair that the differences he had which were based on a good faith view about what the constitution required, but not a view the other six of us shared, that the greater good would be the unanimity of the Court rather than him expressing himself, and now I'll say something I hope I

won't regret. I loved and respected Blair Moody, still do. He is a colleague in the Wayne Circuit Court. He was a man of unimpeachable personal integrity. He worried terribly about doing what was right. A man of high morality, but 1982 was his election year, and the apportionment plan was going to go because it had six votes minimum. He was about to face a tough, tough re-election. They're all tough on the Supreme Court. I've forgotten who his opponent was to be. Oh, it was Dorothy Riley, maybe.

Mr. Lane:
Dorothy Riley, Mike Kavanagh and Moody were all running, and there was somebody else.

Justice Ryan:
And I have felt to this day, and it is not a criticism of my brother. It says more about me than it does about him, I suppose, that while he felt deeply and honestly that this apportionment plan was mathematically not up to the Federal constitutional snuff, that that was a point on which he could have said, "Well, I don't have to say so in an opinion. I can sign the majority". I think had he not had the burden of facing the electorate that fall, he might have made it 7:0.

Mr. Lane:
I think, was it not 7:0 in some form in that he split off on an issue of an order or something like that?

Justice Ryan:
Yes, it was. It was an essentially a unanimous decision. The part that mattered was unanimous, and I don't denigrate his memory at all. He didn't jump ship for partisan political reasons. He was aboard on the principle, but he took criticism that was unwarranted in the election because his partial dissent, the technical issue of the process by which it would have been implemented, I think it was, attracted a lot of partisan fire as being a purely political call. It wasn't a purely political call because he felt honestly and strongly that we were mistaken on that point.

My only point was it would have been nice if it had been a time and circumstance in which, as he did on other occasions, and we all did on some occasions, said, "I don't agree totally with what is written here, but I can sign without compromising my principles". He did what he thought was right and because he thought it was right. The result was, however, that he didn't diminish in any way what you said is the Court's finest hour. We were able to produce a plan that I think has never been assailed as having any partisan political taint to it.

Mr. Lane:
Are you aware that while this was going on that there were calls, a few of them anyway, came over from members of legislature, I think in particular, Joy Conroy, the Senator out of Flint, and I took some calls from him. I had known him, and I was in the Chief Justice's office, and he wanted to remind me that the appropriation of the Supreme Court came from the legislature. You've got seven people on that court now, but you know, there could be just five if these people don't seem to know how to handle their responsibility, and that kind of stuff, and it was, I think, it was a terrible reflection on this man and some of the others. There were, I would say, probably three whose names, if I went back and worked at it, I could drudge up, but I'm sure that you must have felt some of that kind of pressure.

Justice Ryan:
We knew there was some heat, but I must say, the vast majority of the members of the legislature and political parties, I think, recognized the Court had to do what it thought was right, and it wouldn't get into that. There was some of that but to the extent that we were aware that there was some of that going on on both sides of the aisles, all that did was solidify our determination to try to turn out a product which was devoid of any political influence in its making, and that's what happened. But it proved, I think it proves, what an absurd situation it is to ask the judiciary to perform a purely political act which is to apportion the legislature.

Mr. Lane:
It sure fractured the Court. You know, I went back, because of this work that I'm doing, and I looked up some of the earlier decisions and do you know there were as many as 50 and 52 paragraphed headnotes to describe, distill the views of the seven or at one time, eight members of the Court, and there were, my God, I think in one or maybe two decisions, there were seven separate opinions written.

Justice Ryan:
Were there seven?

Mr. Lane:
This is my recollection, but maybe there were two...it was almost incredible what this did. Of course, the law was changing as this whole process came along.

Justice Ryan:
Yes, it was. We were benefitted by that.

Mr. Lane:
And ultimately, it settled down somewhat, as you pointed out, right at the start, but there was a time there when the United States Supreme Court was entertaining the fundamental questions here that would be decisive if it went a certain way and it did ultimately. Then, at the same time, the constitution of Michigan was being re- written and there were questions raised, of course, about the content of that.

Justice Ryan:
We were benefitted by that. I want to share this with you before I forget it. Our Court, the composition of the Court changed a little during my ten years there, not too much, but

(End of side 2, tape 2)

Topic 7: Justice Ryan talks about his reception to the Supreme Court in 1975 and its positive chemistry and the turmoil the court was in prior to his arrival. He also discusses

the duties of the court, the collegial decision process, and the justices' annual retreats. The interview then turns to the case of West vs. Spartan concerning the Workers Compensation law and the Poletown case involving General Motors and the city of Detroit's attempts to keep them from moving out of town but at the expense of established neighborhoods

Mr. Lane:
This is another tape in the series of the Michigan Supreme Court Historical Society, and this is tape #3 with former Justice James L. Ryan, and we're going to start out today, Justice Ryan, I hope, talking about what some people call the chemistry of the Court, and the word that I would like to focus on if you're willing is the concept of collegiality which I sense is not widely understood in this context which is an extremely important and interesting condition.

Justice Ryan:
All right.

Mr. Lane:
What was your thought about...when you came on the Court in late 1975, it was at toward the end of a period of great turmoil. Early in 1975, there had been a rather abrupt change in leadership of the Court when Thomas Matthew Kavanagh was no longer Chief Justice, and then there came the death of him, and then there came the Swainson problem and during this period, on came Justice Lindemer, off went Kavanagh, of course, because of his death.

There was rancor over the change in leadership and much distress, of course, occasioned by the allegations against Justice Swainson, and so by the time you got there, the Court had been undermanned. There had been very divisive occurrence of activity within the Court. Let's go on from there. When you walked through the door, what kind of a reception did you feel that you got and from there on, let's just trace it down for a couple of years.

Justice Ryan:
Well, turmoil is certainly the right word, Roger. There had been in the early part of 1975, a number of decisions rendered by the Court when it was a court of just five persons because of the absence of Thomas Matthew Kavanagh during his last illness and then shortly after he died and before Larry Lindemer was appointed his successor, and after Justice Swainson was formally accused in the Federal Court, he stepped down recusing himself from hearing any cases, so there were a considerable number of cases decided by a five person court, and there was a question when the court consisting of just five was decided, 3:2 on a case, for example, whether a 3 person decision could be a binding precedent in the Court, whether it was binding in lower courts as much as the majority of the properly constituted court would have been four people, so that was a concern to the bench and bar for a considerable period of time. Then, of course, the events you've described, the tension in the Court as a result of the necessity that the justices testify really against their colleague, John Swainson.

None of the testimonies, I understood it later, was personally accusing in any respect, but it was

necessary to give evidence, so there was a period of considerable upset and tension in the Court. To answer your question directly, when I arrived near Christmas time in 1975, I was received warmly and enthusiastically, I thought, by every one on the Court. I think it wasn't so much any gesture toward me personally as it was a sense of relief on the Court that the Court would then be once again up to its full strength of seven justices and there would be no need to deal with these questions about the constitutionality of the Court's decisions as to whether a majority, a real majority, was deciding cases when the Court was divided.

I had been, I hope, appropriately critical of some of the work of the Supreme Court before I got there, not in any destructive fashion, I hope, and I didn't make any public issue of it, but along with a good many other lawyers in Michigan, I had felt that for a relatively substantial period of time, maybe ten years or so, the justices seemed to be personally at one another's throats, if that can be measured by the rhetoric in the opinions. There were some colorful personalities on the Court. The rumor mill around the judiciary was that there had even been the threat of physical violence in one of the conferences some years earlier, and that was kind of the signature which was hung on the Court, whether justifiable or not, and I was determined when it turned out that I was appointed to try to be a contributor in an effort to restore to the Supreme Court the appearance of dignity and importance and solidarity and collegiality that most of us thought a Supreme Court should have.

I was welcomed, as I said, very warmly. Seated around the table on the day that I arrived, as I think we said yesterday, were Chief Justice Coleman, Justice Thomas Giles Kavanagh, Justice G. Mennen Williams, Justice Charles Levin, Justice Lawrence Lindemer and Justice John Fitzgerald. The collegiality - it takes, in my judgment, a reasonably bright and capable lawyer who comes to a body like the Supreme Court, a minimum of three and maybe five years to really understand the nature of the work. One can understand it in a technical sense that there is a necessity to entertain oral argument, to consider the argument, to read carefully, to study, to write, to confer, but the nuances of collegial decision making are very, very subtle.

Mr. Lane:
Does this have something to do with what people more frequently call the chemistry of the Court? It's been said, for example, that on a Court of this nature, a Court with six or seven or eight people on it, when there's one change, it changes the chemistry. Does that suggest anything that's pertinent to what we're...?

Justice Ryan:
That's a good metaphor, and it fits perfectly. That's right. Of the seven components of the Supreme Court, when there is an alteration of any one part of it, it does change the chemistry. It changes the attitude of all the players depending upon the style, the energy, the scholarship of the newcomer, and it is a new entity any time one component is altered. Well, the Michigan Supreme Court was suffering, if that's the verb, an alteration of one or two components at least annually for a period there, and the Court was in the condition of considerable upset, but as to this notion of collegiality, without making too much of it, I think it's important to understand that

a Court of second appellate review like the Michigan Supreme Court has a number of functions to perform besides, in addition to deciding cases and writing opinions.

It also has this constitutional duty to superintend the whole of the state judiciary and the practice of law, to oversee the disciplinary process for lawyers and for judges, the budgetary responsibility it has with respect to its own court, the Supreme Court, but the lower courts as well, and these non-decisional responsibilities, as I call them, require, if the Court is to be effective, efficient and to be respected as an administrative unit, as it were, a solidarity and a unity of action on the part of the justices. There can't be any divisive back-biting or personal or enmities of any kind that surface, at least, or that interfere with that work. And so, in respect to those non-decisional duties, rule making as well, it was critical, it seemed to me, that the Court had to speak as one voice and to have a collegial unitary understanding of the kind of judiciary we want to have in Michigan.

The education of the judges is another component. However, when that hat is removed, and the Court turns to its responsibilities of deciding cases, something different happens. As I said yesterday, the primary function of a court of second appellate review like our Supreme Court of Michigan...well, I'm not sure I want to use the word "primary", but among the primary decisional functions is the development of the common law. The others, as I said, are to construe the meaning of new statutory enactments, the meaning of constitutional provisions, both state and Federal, which have not been explored before and occasionally giving advisory opinions under the Michigan constitution, but principally, I think, it is to do this interstitial law making, this business of appropriate judicial law making. Now, to do that effectively, a member of the Court has to have a comprehensive and a coherent philosophy of the proper judicial function.

The knee jerk labels for those are...conservatives often are said to be people who are opposed to judicial law making and simply want to apply the law the legislature enacts and not make law. That's been a popular idiom politically in the last decade. It is said, on the other hand, that judicial liberals in the judiciary; it is said feel that the constitution is a living document and that it and that statutes must be construed with respect to the best interests of the people at the time given the facts, that it's all kind of elastic and the judges should do equity.

The Michigan Supreme Court is essentially a political body, despite the fact that the justices don't take any oath to uphold any political philosophy and in fact, take one to uphold the constitution and the statutes. The truth of the matter is, every member of the Supreme Court got there because of the political process, and while, during my tenure, I never detected, to my utter surprise, I never detected any party loyalty in any of the justices, there was, I think, in everybody a philosophical disposition about the judicial function which is consistent with the general liberal perspective or generally the conservative perspective.

So here we are, the seven of us, in the morning during the administrative conference, trying to speak as one voice with respect to the superintendents of the Bar and the profession and rule making and budgetary matters and disciplinary matters and then in the afternoon session, we are engaged very often in this judicial law making function, part of which requires the understanding that the Court should not then necessarily strive to speak with one voice. After all, one of the reason there are seven people on the Supreme Court is to bring to bear on these difficult

questions of often, usually, first impression, the perspective of seven different people, the scholarship of seven different people. Otherwise, we'd only need one as Tom Kavanagh has often said, and so it's altogether appropriate in the decisional process for a member of the Court to ask himself or herself whether the proper resolution of this constitutional question or this statutory interpretation is necessarily what the majority around the table think. To do that properly, you can't approach a question by saying, "I think I'll be a conservative today about this", or "I think I'll be a liberal".

I think one needs to have, to be able to bring to bear, as I said early, a coherent philosophy of judicial law making, and when people get to the Supreme Court by the happenstance of an election or the happenstance of a gubernatorial appointment, they don't necessarily come with a background of scholarship and reflection about developing that kind of a coherent philosophy, and that's why, in large measure, I think it takes two, or three or four or five years to learn the job. So, the collegial decision process has to be one in which every one recognizes that it's all together appropriate for different philosophical perspectives to be brought to bear in deciding this case, and when a majority is struck and is evident, the majority decides the case, and that's the decision, and the minority needs to express, has a constitutional duty to express its disagreement in writing through the dissents.

There's been a history on the Supreme Court of very vitriolic dissent writing, sometimes highly personalized, and sometimes even belittling of the other justices, and I never understood how that could be until I got there. When I got there, I understood how I could see that the correct answer for me to a question of first impression was so clear and so self-evident that it was almost incomprehensible to me how the others could see it differently.

As I got older in the job, there were fewer and fewer of those occasions when the other point of view was incomprehensible to me, and so I tried, during my tenure - didn't always succeed, by the say I tried during my tenure when I was writing in dissent to remember that these are seven reasonable people around the table and the fact that the majority, in my judgment, is dead wrong, doesn't mean they're dumb. It doesn't mean they're ignorant. It doesn't mean they're crazy, and it doesn't mean they are undertaking to solve the problem in less than a noble way. It means that they see it differently. So, I thought I can contribute to the esteem in which this institution is to be held by the bench and bar if I can write vigorously but not in a belittling or personally critical fashion when I dissented, and I found that the Court was comprised of six other people who nearly always did exactly that, and so the chemistry of the decisional process of the Court was respectful and it was friendly, vigorous, but it wasn't...when there was disagreement, it wasn't, as I said, vitriolic or personal or belittling in any way.

It got hot very often during the conferences, but the cooling off period worked for the most part. When you can disagree vigorously with a good lawyer - we had good lawyers around the table, and you could disagree vigorously and let it all out in a written opinion, then edit the opinion down to take some of the rancor out of it and come back the next day and take up a new menu of difficult cases with no hold-over bitterness or personal animosity, then you have a Court whose chemistry is indeed, in my judgement, collegial. Lay aside yesterday's disagreements as relating

to the issue, and we were able to do that during my time on the Court, for the most part. There were some exceptions. We all had personal failings once in a while. Because we worked hard at doing it; all of us were not proud of the reputation the Court had had for some period of time. Maybe that earlier reputation wasn't justified. I don't mean it as a personal criticism of my predecessors, but whatever the cause, it had a bad rep among the profession in this state for its mature, collegial decision making capacity so what it meant to me, to sum up this point, is that I had a personal duty to dissent, to disagree when I thought disagreement was required.

I also had a duty not to disagree for the sake of disagreement. I didn't think it was terribly important...let me start this thought over again. You read criticism in the secular press about the Supreme Court of the state of Michigan and the United States, from time to time, which criticism is directed at the apparent inability of the Court to decide cases unanimously. Why 5:4 decisions in Washington. Why 4:3 decisions in Lansing. That is an unfortunate misunderstanding of the appellate court function. A 4:3 decision is just as binding, just as substantial, just as significant in terms of its precedent authority as a 7:0 decision is, but when the 3 dissenters in that example feel that the majority is in error, they have a duty to say so, not only to express their views but in order to raise questions for consideration later by subsequent courts. As you know, that's the way the law gets changed often.

On the other hand, I felt, and I felt that my colleagues felt, that it was unwise for the good of the institution to dissent on an insignificant minor, perhaps highly personal point, just for the purpose of criticizing the majority. I didn't always succeed in harnassing myself in that respect, but I tried to, and I think the others did, too, so that there was an appreciation during my ten years there, for the most part, that when a justice chose to dissent, he did it after giving considerable thought to whether his dissent would be useful as opposed to being just personally gratifying to vote no.

Mr. Lane:
Justice Ryan, was part of this...was there a necessity to have among the seven members of the Court, individual, let's call it, personal equations, that embraced among other things, a trust that there would not be ridicule visited upon one of the members because of some aberration or perhaps a strange expression of thought that later was recanted. You know, "My, God, I didn't realize that so and so..."

Was there something about the personal relationship in a group sense beyond the you and I aspect of it that was necessary for this? I got the sense that you all had a very deep and abiding respect for one another, even when there was the kind of difference that could be reduced to a rancorous episode as in the past as you have described. What...is that part of the chemistry that we're talking about?

Justice Ryan:
It's an important part of it. We were friends. We liked one another, but that wasn't accidental. We were thrown together, the seven of us, because we were members of the Court, either by election

or appointment. We would not have been social friends or otherwise associated were it not for the Court. We came from radically different backgrounds, economically, socially, in terms of religious conviction, ethnically; nothing would have brought us together otherwise save that Court.

We all recognized that so we knew that if we were to make this outfit work and to help restore its esteem in Michigan, we needed to get to know one another better and to respect one another personally. Sometimes you can't force that. Sometimes personal styles are such that as hard as one might try, you just can't care for another person. Something like that might have happened in our Court because all of us had distinctly different styles, but during my ten years there, we served...I served with three different Chief Justices and if you had to...if I were a governor and had to appoint somebody to be a chief justice at a certain time in history, I could not have done better than I think we did at choosing the chief justices. They were, during each of their terms, the primary catalyst to introducing and preserving this bond of personal respect which was the Court's glue.

When Mary Coleman was elected Chief Justice, she brought a graciousness, a style, a reserve to our conference which required the rest of us to deal with one another and with her with the same sort of deference and respect and graciousness that she showed in her leadership. When Tom Kavanagh was the Chief Justice, he's a person utterly devoid of any guile. He has a very relaxed style. If he emphasized anything first and foremost, it is that we're in this together and we have to disagree but not disagreeably, so while he was certainly no cheerleader, he created a personal relationship with each member of the Court of a kind which reminded us that the institution is infinitely more important that our individual points of view.

Then when G. Mennen Williams was elected Chief Justice, he brought to the end of the table the style and the skill and the wisdom of an executive of very extensive experience, first as a governor, in the State Department, and as Under Secretary for the State for African Affairs. He was a diplomate par excellence. He was trained in it in his social cast as a young man and further trained throughout his life, and he was able to, and for him, easily, to bring together at the conference table totally disparate points of view on tough subjects, see to it that they were fully aired and then be the catalyst to reduce those disagreements to a decision, which as I said earlier, would be devoid of rancor and vitriolic language or personal enmity. And so we liked one another in that way. We got into some terrific arguments.

On top of all of what I said about this friendliness, one needs to understand that the Court was deeply divided philosophically during the period I was there and in several areas of the juris prudence. The principle one, of course, was the area of Worker Compensation. Those of us who approached decisional process from a more conservative perspective were in the minority. The decisions of the Michigan Supreme Court in the Worker Compensation area were many and varied.

I came to believe after I was on the Court for a while that as the legislature continually amended the Worker Compensation Act, they did it in broad and indistinct and often relatively vague language with the perfect confidence that the historically liberal Michigan Supreme Court would fill in all the gaps in a generous, liberal giving way to the advantage of the claimants, usually,

and necessarily therefore, to the disadvantage of the employer economically. I was joined in that general opinion by at least two other members of the Court, but we were a minority.

Mr. Lane:
Would you give us your thoughts on one line of those cases that seemed to be highly illustrated, at least from my observation, and that's the ones that headed the decisions that dealt with the problem or mental disability. There was DeZiel, Redfern cases. There were associated with this, in my mind, the Dressler...the fellow that concealed his back injury. You remember that case, but speak to that a little bit, would you?

Justice Ryan:
I will, but before I do, I would like to just share a thought with you on the subject we were talking about earlier, if I may, about the vague notion of the collegiality of the Court. We made it a point during my time there to get together socially with the spouses, and we did it always at the holiday Christmas time, a dinner, and at least one or two other times a year.

I remember John Fitzgerald hosting a couple of magnificent Christmas dinners at his historic home in Grand Ledge, beautifully decorated in a way that reminded all of us of what it must have been like at the time his father was governor and lived there. We had been invited to Soapy Williams wonderful home in Grosse Pointe for a number of dinners and in other places. During my last five years on the Court, it became a custom...well, it was perhaps the last eight years, it was a custom that in order to enhance this collegiality, this respect for one another on a personal basis, all of which, as I said, was for its own good, but it was an effort to put to rest this terrible reputation the Court had earlier.

We agreed that we would go someplace once a year, just the seven of us, in what we called a retreat for want of a better name, and we would have an unstructured agenda and for 2-1/2 or 3 days, we would meet in the morning and get off our chests whatever might have been on them, and in the afternoon, rest, and in the evening, have a pleasant dinner and we did that...I recall one year at the Henry and Edsel Ford Mansion. That was a special memory for me. It was January, snowing heavily, and those beautiful grounds at the Ford Mansion were just that.

Mennen Williams was able to arrange for us not only to meet at the Ford Mansion but to stay there for two nights. There were seven bedroom in the Edsel Ford home which was just right for the seven of us, and the history, of course, which was attached to the place, was impressive, and that was the beginning of a practice that lasted for the last five or six years of my time on the Court, not to return to the Ford Mansion but each summer, Nancy and Mennen Williams hosted a three day retreat which sometimes extended to four at their cottage, as they called it, on the west bluff of Mackinaw Island, the biggest cottage in the western world, as far as I was concerned, but during those days, the seven of us would be there with our spouses, relaxing, getting to know and really getting to love one another. That's the only important...that's the only...I don't mean that in an emotional way, but to respect another person on the Court, to appreciate the personal difficulties they might be having in their life without probing, and to come to appreciate one

another in a fraternal way was the product of those stays on Mackinaw Island.

Mary likes to tell the story of the first time we appeared, how G. Mennen Williams, then the Chief Justice,...I guess he wasn't Chief Justice at that time yet, but certainly the former governor of Michigan, before whom everybody on Mackinaw Island is accustomed to bow and scrape, had two domestic helpers at the cottage on Mackinaw Island. One was a woman who had been the member of the domestic staff in the Williams home when Soapy was a child. When we were on Mackinaw Island, she was in her mid-80's, and a second woman who was almost that old who assisted Nancy and Soapy at their home here in Grosse Pointe. There two ladies, as a I say, were of advanced age and so Soapy's practice was to be the servant at these dinners.

He not only helped them in the kitchen. He jumped up from his place at the dinner table and would serve all of us, and I will always remember, as my wife does, the incongruity of this man of great distinction and accomplishment by the Chief Justice saw himself as a servant of the members of the Court, and that carried over, the memory of that when we went back to the conference the next week and for the years thereafter, so those gatherings, I thought, breathed into the Court as an institution a humanness, sensitivity and a respect for one another that helped us immensely to express our disagreement on the cases in a more dignified and scholarly way than might have otherwise have been the case. These Worker Compensation cases divided the Court radically and for a long period of time.

Mr. Lane:
Were you there for the Honey West case?

Justice Ryan:
Yes. I can't remember. You'll have to jog my memory. Honey West was the lady that wasn't sure who her husband was, wasn't that it?

Mr. Lane:
She had one in Texas, but he was long gone. He was still legally her husband, but she had taken up with this other man and lived with him and took care of this breakfast and all that for a good many years.

Justice Ryan:
That's right.

Mr. Lane:
And she was determined to have been within the meaning of the Workers Comp. law, a dependent, and some of you thought, as I recall, that a dependent was like a child or a grandparent or somebody, and not the...what will I call it...the live-in companion.

Justice Ryan:
That's right.

Mr. Lane:
That was West vs. Spartan.

Justice Ryan:
I do remember Honey West. Yes, I remember that case. Well, that case is, in a way, illustrative of the deep division which occurred in the Court about state of Worker Compensation law. I described earlier what I genuinely believed then, and I do now, was what was going on...the legislature would write this thing broadly. There had been a long history since the early 60's of the Supreme Court construing it very, very broadly. There had been a huge uproar in the State of Michigan from the business community that they were being crippled in this state by the cost of worker compensation premiums.

That's kind of a political argument, economic political argument. Governors were running for office and candidates for gubernatorial office on that issue, and I suspect that I had expressed myself on the subject before I came to the Supreme Court although we didn't have Worker Compensation cases in the Wayne Circuit. When I got there, it was immediately apparent to me that there was a decisional philosophy which seemed to drive the disposition of these Worker Compensation cases that if the question is close, give the worker the money. After all, the employer has got plenty of it, especially in a state like this which has the Big Three and other huge operators. I made up my mind that I was going to try to learn this statute which I hadn't worked with very much earlier, and read the cases which had been decided in the early 60's during the period of Talbot Smith and John Voelker and others, Ted Souris and other very good lawyers.

I came to the conclusion that I just articulated a few minutes ago that these cases had been decided in a way which did not reflect what the words in the statute meant. They were being decided to the extent that you can generalize about something like this...they were being decided in a way which was philosophically very liberal. After all, as between the two people, the worker who is in need and the employer who has plenty, let's give it to the worker. That's great Christian charity, Judeo-Christian charity, if you will, but I always thought it was pretty lousy juris prudence, so I found myself dissenting over and over and over again from cases in which the Supreme Court would give what I thought was an inappropriately broad construction to these concededly vague concepts the legislature would use in amending the statute. The insurance industry was going crazy in Michigan and so were the employers, and there developed at our table, our conference table...this is really letting the ghosts of the closet...there developed at our conference table in an effort to keep from getting too heated, kind of an artificial humor when these cases would come up.

Mary Coleman and John Fitzgerald and I were regularly dissenting from the generous give-away philosophy often being written into the majority opinions by Tom Kavanagh and Blair Moody and Mennen Williams and Chuck Levin. We would go down our calendar of cases for the day, and we'd get to the first Worker Compensation case, and the Chief Justice would call for a tentative vote around the table as to whether the decision of the agency awarding benefits should be affirmed or whether we ought to take the case and look at it again, and you could almost see the tension of people's faces when one of these cases came up. Tom Kavanagh, when he was Chief Justice, would say, "Well, here we have a Workers Compensation case". He'd name it, and

then he'd say, "WAW?" which was our code around the table for "Workman always wins", and just in the spirit of friendliness, not at all frivolous because we were all prepared. Chuck Levin would say, "WAW." Soapy is not the kind of guy who went for this sort of humor very much, but occasionally he would say, "WAW" and then it would be up to Mary Coleman and Fitzgerald or me to find a fourth vote to take the case up.

Very often, we couldn't get the fourth vote, but when we got it, it usually meant that one of the four was generally in the more generous side of Workers Compensation cases would say that maybe this one went too far, and we would...the mental disability cases were in that category. The statute was very vague, as I recall, about the entitlement of a worker to benefits as a result of emotional breakdown or mental disability of one kind or another suffered in the work place. The cases we got had to be decided on the record we got, and we didn't always get a case whose record was a complete and as expertly compiled as ideally you'd like to have it. But, there was, for a period there, a line of cases in which the Worker Compensation Claimant Bar was testing the Court, I think, to find out how far our Court would go in awarding benefits as being for mental disabilities, emotional disabilities, how far we would go in stretching the concept of the disability was suffered out of and in the course of the employment. So we got the claimants who were alcoholics asking for Worker Compensation benefits because the job drove them to drink. We had those who were person whose personal lives were filled with stress and for a host of reasons, were suffering emotional burdens of various kind, but could collect benefits only from the employer.

I don't remember it distinctly the shades of that juris prudence, but I remember that those cases formed a category of those which I found generating a misapplication of the intention of the legislature and broadening the recovery rights of Worker Compensation beyond what the statute or the constitution warranted. I remember one case very well. I sticks in my head. McCloud (McClure), I think was the name of the case. A fellow was working over at the Fort Street Fisher Body Plant for General Motors and as was customary, on the lunch hour, they went across the street to a saloon on Fort Street where he and his pals could have lunch and have a beer if they wished or ate if they wished. McCloud...

Mr. Lane:
McClure, was that it?

Justice Ryan:
McClure, perhaps McClure. McClure, as I recall...all this is subject to verification in the report, but McClure, I think, had a number of drinks and came back across the street, across Fort Street to go back to work, and was struck by a car on Fort Street. I don't remember whether he was killed or badly injured. Whichever the case, it was tragic, and his wife...it seems to me it was his widow, not that I think of it, filed a claim for benefits, and the question was whether McClure was killed out of and in the course of his employment.

I had a very tough time coming to the conclusion and couldn't that coming back to work from the

saloon where, by the way, it turned out that the evidence showed that he didn't have any lunch except what he drank, was within the intention of the legislature to compensate persons in an industrial society for injuries received at work. We got the tough cases. There were thousands and thousands of cases where benefits were awarded by the agency which never got to our Court. Understandably, we should have only gotten the close ones and the tough ones, but I developed what I thought was a coherent philosophy of the disposition of Worker Compensation cases which found me on the minority side of the Court for most of the time I was there.

Mr. Lane:
Let's get on to the matter of some of your other dissents. One of them I think was probably your...I would maybe call it your masterpiece in the decisional process, the exposition of it, anyway, was the Poletown case. Why don't you relate how you came to write as you did in that case and what you thought the importance of it was.

Justice Ryan:
Well, the Poletown case, as it is called, grew out of the effort in the City of Detroit to head off, to avoid the threat General Motors was making to close its manufacturing plants here in the city, the Fisher Body plant and a second manufacturing plant, and to move out of the State of Michigan and to take those manufacturing jobs with them. There had been negotiations underway between General Motors and the mayor of the City of Detroit and his staff about finding a location in the city where GM could put up a new modern plant with its robotics capacity which would keep those manufacturing jobs in the city and the jobs which, of course, relate to a manufacturing process.

General Motors had laid down very, very particularized criteria. They needed "x" number of acres. It seemed to me that they had to have 580 acres or something like that. They had to be at a railroad siding. It had to be very near a freeway, and there wasn't any such places. A decision was made by the city that several hundred acres of property would be condemned in an area which came to be known as Poletown which was a residential area almost exclusively in a portion of the City of Hamtramack and part of it was the City of Detroit. It was an old neighborhood of essentially Polish citizens. It included some eight churches including five of the magnificent churches that were built prior to...

(End of side 1, tape 3)

Topic 8: Justice Ryan continues to discuss the Poletown Council vs. City of Detroit case in which a group of Detroit citizens challenged the city's plan to condemn private property in order to prevent General Motors from moving factories to another location. He then talks about the reorganization of the courts in Wayne County

Mr. Lane:
Let's go. This tape is working now. I think we're all set.

Justice Ryan:
Well, those churches were...I mention them because they are symbolically significant of the kind of community it was in Poletown. They were residents who, for the most part, had been there for decades, one generation after another, and as we learned in the course of the litigation, the community was one for which the word "solidarity" was probably discovered, and when that site was identified, there was great resentment in the community in Hamtramack and the surrounding areas which were affected by public demonstration and the rest of it, all of which, I must say, I largely ignored.

However, when the litigation finally bubbled up to the Supreme Court, the litigation being a law suit by a group of affected citizens who were challenging the eminent domain claim the City of Detroit was making and without putting too fine a point on it, their theory was that this was not a taking for a public use. Their argument was that the City of Detroit was just a conduit for General Motors to condemn this private property and take it for private corporate use to build a plant. The case was extremely well briefed in our Court and I'm sure very well argued. The briefing was outstanding and we had lots of briefs because of various people who were interested.

When the case was over, we retired to the conference room as we did in all cases and took kind of a straw vote, a tentative indication of where the seven of us stood which was common practice, and it was immediately evident without too much discussion that the Court was going to be 5:2 to affirm the judgment of the lower court that this was indeed a public taking and was constitutional. John Fitzgerald and I disagreed, and now it is necessary to give you just a bit of the flavor of the environment in which the law suit got there.

As General Motors began its public relations work in connection with the condemnation of this property, it did it, not surprisingly, very, very well, and the notion of condemning this vast residential area in Poletown came to be seen as some kind of united civic effort in Detroit to head off the ravages of increasing unemployment in the city. It was sold to the newspapers and to other public opinion makers as a great idea because it was a way to keep two large manufacturing plants in the City of Detroit, the Fisher Body plant and one other General Motors manufacturing facility whose name escapes me that had to be closed because they were obsolete, and they were costing the company money that was being wasted.

This new modern facility would employ all of those workers and more, and it was argued that not only would more than 6,000 factory workers keep their jobs but that this new plant would generate approximately an additional 12,000 jobs relating to satellite industries, suppliers and the rest. They even talked in the briefs about motels and restaurants which would be built up around the Poletown plant to accommodate visiting peddlers and others, so you have to understand that the newspapers, the mayor's office, New Detroit, as I recall, universities, everyone was galvanized as a single voice in support of this civic enterprise to contribute to the renaissance of the City of Detroit by saving these jobs, increasing these jobs and building this new modern plant

which would be a model for American manufacturing. To be against this kind of thing was to be uncivic, as I recall, was the implied suggestion.

Mr. Lane:
This was in 1981, right, and at this time, there was very acute distress in the auto industry. Unemployment was very high, is that correct? I think you mentioned this, did you not.

Justice Ryan:
I'm glad you reminded me. Unemployment was very high. I've forgotten the figures. I did glance at them the other day. As I recall, the evidence in the case was that the unemployment rate in the City of Detroit was about 15%, about twice the national urban figure, but the unemployment among Black males who were semi-skilled, and would have been semi-skilled and unskilled employees was as high as 30%, so with terrible figures like that, to provide this opportunity for jobs in Detroit was certainly its own justification, but as I say, it was that environment in which this concept was being cheered by everyone, by the newspapers editorially, by the television editorial commentators and the rest. The case came up in this group, kind of a rag-tag group of plaintiffs, frankly, as I recall. There were some clergymen with unfamiliar middle European names, and there were housewives, and people who were perceived by some segments of the media as being kind of kooks or zealots.

Mr. Lane:
The attorney, as I recall, was Riosti, was it not? Do you remember where he came from?

Justice Ryan:
I think that's right.

Mr. Lane:
He was not a familiar figure.

Justice Ryan:
I wasn't thinking of him in that description, but that's right. I think that was the attorney's name. You know, I don't mean to denigrate these plaintiffs, but they didn't present themselves as the sort of streamline class that you would expect General Motors to have to face in the Supreme Court most of the time or the City of Detroit. In all events, the case was very well presented, and it was in that context that we took our straw vote and as I say, it was 5:2 to move this thing forward. Chief Justice and those of my colleagues who were in the majority agreed that there was great urgency to get this thing decided and to get the opinion written and out pronto because General Motors, as I recall, had ...threatened may be too strong of a word, but had indicated that its interest in saving the City of Detroit in this way depended upon its ability to get moving on the project almost instantly.

I think the seasons changing for construction and other considerations were in the picture. In all events, the majority of our Court decided that the opinion had to go, and it had to go now. It was

gotten out in ten days. In my ten years on the Court, we'd never gotten an opinion out in ten days and certainly not one of any significance. We decided cases on an emergency basis but not supported by an opinion, at least. So my colleague John Fitzgerald undertook to write the dissent, and he told me to do a workman-like job in three or four days to get the thing circulated to our colleagues and to conference. He was going to have to write a fairly abbreviated opinion and state the obvious and that's all, which he did and did very well. I signed it, but I remember fuming during that period that I could not understand this rush to judgment by our colleagues except that they were caught up in this frenzy of civic enthusiasm on which this whole cause had been riding for a year.

During that week before the opinion was released, I dug into the law of eminent domain far deeper than I ever had before, had the assistance of a brilliant young man in my chambers who was a law clerk who laid aside everything to help me find what I needed to learn, and I told my colleagues that I was going to dissent, and I would write an opinion later, and I did. I wrote, Roger, the dissent you have referred to, Poletown Council vs. The City of Detroit dissent which I didn't file until thirty days. It took me that long to do it right. It got some notoriety, and though that isn't why I wrote it the way I wrote it, I thought a lot of things had to be said, and I said them, and they're in the opinion. It got more public notoriety when I filed it later, thirty days after the majority opinion was released, than I thought it would, which again, I suppose, that I don't understand how the media thinks.

Mr. Lane:
Well, I can help you there. Part of the genius of this was a very lucid and thorough and succinct presentation of the atmosphere in which the matter was decided, and with all the factual predicates laid down in a cogent way, and this is the kind of stuff that the lay people can understand, the newspaper people could understand it, and I think much of the time, people that write the opinion; I think too much, they're writing them for other lawyers, and they're using fairly obscure jargon sometimes, and this is not the kind of stuff that newspaper people who are not particularly hustlers all the time are accustomed to, and they don't want to penetrate, try to get through the obscure language and so on. This rang like a bell, and it was easy to digest and said what needed to be said.

Justice Ryan:
Well, it's nice to have left a footprint that even you would think that well of, and it is true. Really to my surprise, that dissent has found its way into the case books in a number of the law schools. My son called one day; he was in law school at Notre Dame, and he said, "You won't believe this. We talked about a case you wrote today, and I took a lot of heat for it", he said, and he pointed out to me as other academics have pointed out, that it is used as the teaching vehicle for eminent domain in some law schools, not always...with the professors not always agreeing with it, but it is nevertheless used as a vehicle.

I will just add an aside to that Poletown decision - some weeks later when the uproar certainly had not died down on the part of the dispossessed citizens, because after we decided the case in

the Court, it was then necessary that the lower courts in Wayne County go through two or three or four years of agonizing process through which the individual homeowners would contest the amount of money being offered to them for their little frame homes over there, so this thing remained in the paper. But I had occasion to be in the City County Building in the City of Detroit on an occasion within a year after this opinion was released, and I walked into the auditorium on the 13th floor and the Detroit City Counsel was having a regular morning session there because whatever it is they were talking about attracted a big audience, to my surprise...I was looking for some other goings on in that place at the time, and I walked into the back of the room.

The counsel members were sitting up at the Counsel, and I know a few of them; one of them was Councilman, the late Kenneth Cockrell who was a widely known liberal activist about whom is said that he was a brilliant Marxist during his days at Wayne State University. I got to know Ken rather well, and I think he would never contradict that label. As I walked into the back of the chamber, he interrupted the counsel session and said he would like to take the extraordinary step of interrupting the business to introduce a person who has come into the back of the courtroom, and he went into a short soliloquy about what a wonder judge Ryan was for having written this wonderful Poletown dissenting opinion which respected the right of ownership of private property of the little people, and I laughed, and some of the counsel members laughed. The audience didn't know what was going on.

I walked out of there and I said, "Well, my life now is complete. I have heard an avowed Marxist applaud the ownership of private property and to hang credits on me for having written and supported the ownership of private property", but that's the Poletown story, and the property is cleared. The plant has been built, and I'll share with you just a final tag on that story. A year or so ago, I was invited to the studios of J.P. McCarthy on station WJR in the crow's nest of the Fisher Building in Detroit which is just less than a mile from the Poletown plant.

I had never seen the plant because it's on the east side, and I go home and come to work on the west side, and Joe was showing me around his brand new studio with great pride, showing me how he can sit in the chair where he conducts his morning show and look out the window to the east up to Lake St. Clair, and can look out the window to the west down to the Wyandotte area. He said, "Come take a look at this wonderful view" which I did and for the first time saw, from that perch, this huge industrial complex 25 stories and a mile below which was the Poletown plant and what immediately caught my eye was the massive area of concrete which was empty which circled the plant, the parking area, and a relative handful of cars given the size of the space allocated for the parking.

I asked Joe if I had forgotten that today was some kind of a holiday or was the plant shut down for shift change or what. He said, "No, no. That's a full complement of workers for the day shift, why?". I said, "I don't understand what all that empty space is over there". He said, "No, that's the regular complement of a work force down there. It's a relative handful of cars". I reminded him that the case made for the condemnation of the property being a public use was largely that it would employ 6,000 people. After looking at that parking with relatively few number of cars, I did a little research and discovered that there are about 2,300 people employed at the Poletown plant now and the work force is declining which makes me sad and not at all proud that my suspicions were probably correct.

Mr. Lane:
Well, there was an element of prophesy. If you'll recall, in the early paragraphs of your dissent, when you told about the Japanese challenge. Now, this is ten years ago, and look at where we are today. Well, shall we get onto your role...you mentioned that one of the appeals of your service on the Supreme Court was a variety, and I think you did talk just in passing about the role that you played in helping implement the organization of the lower, trial courts or some of them anyway in Wayne County as a...what?...delegate or representative of the Supreme Court. Why don't you describe what happened in that episode?

Justice Ryan:
Well, the Court re-organization or the re-organization of the courts in Wayne County was brought about largely because legislation was introduced which had been pushed by our Court, by the Chief Justice Coleman, particularly, to shift the funding of the state courts from the shoulders of counties and to the state. After all, the courts of the State of Michigan are really state courts and for years, the local governments have had the burden of funding about 1/2 the costs or thereabouts, and so this state re-organization funding program was underway, and as a part of that, a decision was made in the legislature to abolish the Detroit Traffic Court and the old Detroit Common Pleas Court and to create in their place a District Court of the kind that had half a dozen years earlier been established in the smaller cities and townships around the state.

The Common Pleas Court and the Traffic Court in Detroit were unique, and it was time that they go. The implications of making that switch were far greater and more complex than first the legislature thought, I came to learn. There were seven labor unions involved in the representation of the staff employees of those courts. There were jurisdictional questions which had to be worked out. There were security problems. There were problems of geography, about moving prisoners. There was a question of whether the County Sheriff would have any jurisdiction in a new City Court and a host of such problems. So the legislature was addressing them as indeed it was obligated to do, but somebody, the Supreme Court thought, had to be on the scene to supervise...maybe that's not the verb...to monitor the process of shifting to the new court system, because under the constitution, the Supreme Court had the responsibility of making sure the lower courts operated efficiently, and if the legislature created a monster that wouldn't work, no matter how innocently, it was the Supreme Court who would have to answer for it, so the Court designated through the Chief Justice, delegated to me the responsibility to come to Wayne County, to be established here in an office and to serve as the eyes and ears of the Court as this transition was occurring.

The fiscal implications of the change were enormous. The City of Detroit was being asked to pick up millions of dollars of the cost of the new court, and it would receive in return some $12 million of state funds it was never entitled to receive before. The Traffic Ticket Bureau was being reorganized. A computerized outfit in the City of New York was being hired to run the traffic ticket enforcement system.

Mr. Lane:
As I recall, that was a terrible mess, wasn't it?

Justice Ryan:
It was a mess, an awful mess, and I wasn't too concerned about what they created. I was concerned about making it work after the legislature created it, and so Marilyn Hall, who is now the Constitutional State Court administrator, as of our conversation today, was then an assistant administrator, and she came with me to Wayne County, and we spent almost a year down here in an office in the Lafayette Building and of course, I carried on my responsibilities as best I could as a member of the Court, hearing and deciding cases and writing opinions, although I must say doing both jobs resulted in a bit of a back log for me for a while, but that process was interesting to me in the sense of it enabled me to see how new courts are created.

It also enabled me to see the senior side of the political log rolling that went on when opportunity presented itself like that to create jobs. The result, in my opinion, of it all, without getting into the technicalities of it, is that the legislature saw an opportunity to create at least ten judgeships which, in my judgment, were not needed. The City of Detroit at that time was shifting or probably the shift had pretty much been completed from a predominantly white community to a predominantly black community.

The black citizens of the city, certainly rightfully, were very anxious to be appropriately represented in the judiciary, and justice required that there be more black judges in the courts in the City of Detroit, but the creation of this new court system resulted in a creation of ten judgeships which many of us believed then and still believe were not needed. They were all filled at one shot at an election, and the fact that the people were elected were black judges was a positive feature of the outcome. The negative feature of the outcome is that nearly everyone agreed that the public was helpless to make any kind of informed judgment about the qualifications of the many, many candidates whose credentials they were asked to examine to fill these new judgeships. But fill them they did at the polls, and the result was, when the dust settled, the creation of a system, of course, which is now working, working very well, it seems to me, in the City of Detroit, as well as can be expected given the complexities of operating a court system in an area this big.

That experience threw me into the power politics milieu of the City of Detroit. It enabled me to work very closely with the mayor of the City in a series of meetings in his office and to express regularly what the Supreme Court's interest was which was primarily to see that a court system was constructed here which would have a reasonable opportunity to respond to the mandates of the constitution and the statutes and would work efficiently and fairly and which could be staffed with people of competence. The mayor was interested in all that stuff, but he was also interested to see where the strings of power would lie when it was all over, and I came to see firsthand at those meetings, that the mayor is a brilliant politician who understands where the power is, how to acquire it and how to keep it...to watch him utilize the authority of his office was like watching Leonard Bernstein conduct the New York Philharmonic. It was a rich experience and memorable.

Mr. Lane:
There must have been some conflict with Coley, and with the Killeen, the clerk, and that sort of thing.

Justice Ryan:
Terrible conflict. Screaming and ranting and raving at those meetings. Sam Turner was the Chairman of the Wayne County Board of Commissioners at the time, and there was...I remember one ongoing tug of war that had to do with who would pay for and run the Detroit House of Corrections under the new system, and the mayor had very strong feelings about that and expressed them most colorfully at meetings of the whole group of people. I can't say that I watched the air turn color in front of me, but it seemed like it did.

Mr. Lane:
Well, everybody had a chance to do that on this recent ABC television...

Justice Ryan:
That's right...but it was...the result, as it was, was the establishment of the court system down here that works, and it might have been done differently. It might have been done by somebody else in a more efficient way, but maybe not. The point of it is, Tom Kavanagh used to say to us at the conference when we were worrying about administrative matters, "For forms of government, let fools contend. Whatever works, works", was the way he would corrupt that literary figure. But it works here, and it was a rich experience for me to have contributed to it administratively, and the only reason I think it's useful to advert to it here, and I'm not addressing the details of it because I don't think that's of any interest to our readers, is to point out that the business of the Supreme Court having the constitutional responsibility to superintend the judiciary is not just lingo.

It is, in the event, is translated into an enormously broad spectrum of administrative activity. It means that the justices are not only hearing arguments, deciding cases and writing opinions and in that way developing the common law. It also means that they're involved in a broad range of administrative and supervisory undertakings. I've adverted earlier to the business of the rule making for all the courts and for some agencies, and the business of responding to the governor, the legislature when they wish to have advisory opinions. It also means that the Court is concerned with budgetary matters.

It means the discipline of the bench and the bar is the responsibility of the Court, and the procedural fashion in which justices administered, from the biggest urban courts of the state down to the smallest rural areas, are all responsibilities of the Supreme Court, and this was a classic example of a justice being asked to hang up the robe for most of the hours of the day for a year and to get involved in matters of municipal finance, power politics of city vs. state, the distribution of tax funds, the allocation of resources here, real estate problems, locating a court system, designing court rooms. It was a rich experience for me. I can't say that I'd do it all the same if I did it over, but I think it worked.

Topic 9: The Michigan Judicial Institute, the Longstreth case, and the Colonial Dodge vs. Miller case. Ryan discusses the People vs. Pomeroy and People vs. Fulcher cases before beginning to discuss the ousting of Justice Dorothy Riley. (This discussion continues in the next section

Mr. Lane:
Was it not also your responsibility administratively to monitor the judicial institute?

Justice Ryan:
Yes, yes.

Mr. Lane:
What am I talking about, the Michigan Judicial Institute?

Justice Ryan:
Michigan Judicial Institute, that's right. That was really a different function, as you say. It was also a responsibility. When I came to the Court in 1975, I had enjoyed, loved is the verb, immensely my work as a trial judge, and I had been doing a considerable amount of teaching, both in a couple of law schools as an adjunct professor, and I had been very active on the faculty of the National Judicial College in Nevada which is the national forum for the continuing judicial education of men and women from the state judiciary from every state in the union, world famous institute, and I was and still am a member of that faculty, teaching evidence and criminal procedure and criminal law, and I was satisfied from what I learned there that Michigan had a terrible need for a first-class continuing judicial education program.

The quality of the performance of our judges was whatever it was, but it could...it was inconsistent and uneven throughout the state, and indeed, within one Circuit, my own, it was very uneven, so to make a long story much shorted, with the enthusiastic support of the other justices, only one of them was very, very tepid in support. He didn't stand in the way of what I was trying to accomplish, he never cast a negative vote, but he never believed in continuing judicial education. The others did, however, and supported it, so we were able to create the Michigan Judicial Institute which came into existence about 1978 and very largely because of the superb leadership of its executive director who I hired. His name is Dennis Catlin who still runs the Institute. It has become a nationally recognized...it is nationally recognized as a first-class state judicial education program.

We started out with legislative funding of about $300,000.00/year. That now has grown to $1.5 million/year of legislative funding augmented by grants from the Kellogg Foundation and other major institutions who have recognized the quality of the work being done. So I ran that MJI, as we called it, almost all the ten years I was on the Court. I loved that kind of work, and at the risk of some immodesty, I think I can report that the reputation the Institute enjoys among the judges

whom it trains is very, very good as measured by their voluntary attendance...at the 103 days of programming the Institute offers each year.

Needless to say, one judge does not attend that many sessions because the sessions are offered in various areas of specialty, but we are one of the few states, Michigan is, which has a full time continuing judicial education program in which the attendance is voluntary. Most other states have found to get the judges there, you have to require it to be done. We don't here, and the attendance rate is about 76%.

Mr. Lane:
Some of the programs are designed for staff people, too, are they not?

Justice Ryan:
Yes, we broadened it in later years to staff people, so that was other work which made my time on the Court a delight.

Mr. Lane:
How about some of the...we talked about the Poletown dissent..how about some of the others that received less attention? One interesting one that I wanted to ask you about was the Longstreth case where the Court majority held that the social host, say at a wedding reception in this case, one of whose guests is a minor, got too much to drink and that person went out an had an accident, that the liability is sort of in a dram shop theory would revert back to the host at the wedding reception. Didn't you dissent on that, or what do you remember about that case?

Justice Ryan:
I remember that it is the case...it was just as you described, and the plaintiff had tried this new theory, gotten it to us...whereas, historically in Michigan, because of the statute, if a saloon keeper sold alcohol to a person who was visibly intoxicated, and the person went out and injured somebody else in his car or otherwise, the saloon keeper could be held liable. As you say, the Longstreth case attempted to extend this rationale to private homeowner.

I don't remember precisely the theory on which that was even arguably credible because the dram shop statute applied explicitly to licensed saloon keepers, but there was a theory and it was debatable. I was entirely satisfied after the case was argued that this was probably a great idea. It was probably an idea whose time had come given the carnage on the highways from drunk driving, but there wasn't any authority for it in the statute, and the statute was concerned with saloon keepers and it wasn't concerned with homeowners.

Some of the members of the Court took the position that it was just fair. It was very trendy by the way, you may remember in the 60's and 70's for people to quote the late Chief Justice Earl Warren who many people think was fine and wonderful man but not very long on legal scholarship, but Warren was often quoted as having asked a lawyer who was arguing before the Supreme Court one day, "Yes, I know what the law is, but is it fair?", and people who quote that

question quote it with great admiration, so that's some sort of valid judicial reasoning. I remember one of the members of our Court who I will not, at this point, name asking, "What difference does it make whether this statute technically reaches the homeowner? Isn't it fair that it should apply to them?" Well, it was one of the few occasions I kept my mouth shut, I think, for a while, but I had in the back of my head this tension.

We had four kids who are pretty closely aligned in age, and I remember we always had one or two of them in high school and every other year, we were graduating one. I remember very well how great it could be if I could go home and tell the boys who I think then were senior to junior in high school, "Sorry, no graduation party in June in the backyard with the keg of beer because of this new law we just made that would hold us liable if one of the kids got too much to drink and went out and injured somebody". That would have been terrific, except it wasn't available, in my judgment within the statute, and so I dissented. Again, it was a dissent...I was doing a lot of dissenting during my time on the Court, and the majority saw it differently, and so we had gotten the case signed. I thought the decision was wrong, and I still got to go home and tell my boys they couldn't have a graduation party with beer at it.

Mr. Lane:
Let's get to the spare tire case. Do you remember that one?

Justice Ryan:
Not one of my finest hours on the Supreme Court.

Mr. Lane:
That was the Colonial Dodge vs. Miller, right?

Justice Ryan:
Yes. Colonial Dodge vs. Miller. I had been going around the state giving speeches, I remember very well, about what I thought that the unique mission of the Supreme Court was, and in that speech, I said, because I felt it very seriously, that the Supreme Court had a very narrowly circumscribed mission in terms of selecting the cases it should hear, that the broad run-of-the-mill appeals should be handled in the Michigan Court of Appeals because that's why the people created them, and the Supreme Court should reserve its energy and its time and its authority for cases of genuine juris prudential significant.

They shouldn't be correcting every error made in lower courts, so having taken that high road, I was confronted one day with this Miller vs. Colonial Dodge, Colonial Dodge vs. Miller. Here was a case of which a guy went out and bought a car from Colonial Dodge down in the Detroit area, and it was at a time in the early 80's, I think it was, when the tire manufacturers were on strike around the country, and they weren't making enough tires.

The auto industry developed a policy, the Big Four then, that they would not have any spare tires in the new cars so brother Miller, the plaintiff, whoever he was, bought a station wagon, as I

recall, from Colonial Dodge, and the evidence as it developed included his testimony that the reason he bought this brand new car was although he had a reasonably good second car for his wife to go to work - I think she was a nurse and had to travel the freeways from the northern suburbs to the downtown, City of Detroit area, and I think it was the midnight shift or the afternoon shift, and he was fearful that if their old car broke down, she would be marooned on a freeway and exposed to all of the terror which was possible, particularly in light of the activity which had been reported in the press about people on the freeway being assaulted...so he bought the new car, got the new car home and discovered there wasn't any spare tire in it and he hit the roof, and went back to Colonial Dodge and said, "I just explained to you why I bought this new car.

Now if my wife breaks down on the freeway, she can't change a tire, and she is really marooned. Take the car back". Colonial Dodge said, "No, we're not taking the car back. You should have pointed that out before you took the car". The guy said, "Never in the history of the western world has anybody ever sold a new car without a spare tire", so that was the law suit that came up to us. The first thing you do in the Supreme Court, of course, in all cases is to examine them at the threshold to decide whether the Court will accept the issue for appeal, and this was a case which since it was a simple breach of contract case about a spare tire, it was obviously one that didn't fit the speech I was giving, but I thought, here is a little guy who has really gotten gypped by the dealership, so I argued forcefully that we take this little guy's case, and we did take it.

The case was argued, and it was decided, and after all that maneuvering around, it was decided, I think, in favor of the dealership, which isn't the outcome I had in mind at all when I argued forcefully for the case being taken by the Court. I wrote a dissent in which I said the little guy has gotten the short end of the stick in this deal. A parenthetical aside is that I didn't know or care who Colonial Dodge was or who Miller was, but in the campaign that I had very recently conducted to keep my seat on the Supreme Court, a fairly substantial contributor to the campaign committee was Hoot McInerny who was an automobile dealer in the northeast part of the City of Detroit, and he had generated, in turn, contributions from a lot of automobile dealers to my campaign for which I was grateful.

It is always grateful to get contributions from sources other than lawyers, a problem by itself, and he never asked me for any consideration then or at any other time. After the case was over, I discovered I wrote this fairly strongly worded dissent, coming down hard on this crooked automobile dealer, Colonial Dodge and found out a few weeks later it was one of Hoot McInerny's dealership, and while I've seen him from time to time since, I've always thought the atmosphere was a little cool.

Mr. Lane:
What about the...there's a little bit of interest, I think, generally in the Supreme Court's attack on the problem of people who are intoxicated getting into cars and whether they can be held responsible if they pass out for drunk driving. Do you remember that one?

Justice Ryan:
I'll never forget it. Pomeroy and Fulcher. In order to keep our sanity on the Court, there were a few inside, one-liner expressions that the justices would use when the tension was heavy, and you could always break the tension by reference to brothers Pomeroy and Fulcher. They were two separate cases, People vs. Pomeroy and People vs. Fulcher. These two fellows were unrelated to one another, and the incidents were unrelated, but they were both arrested for drunk driving, and they didn't think they should have been convicted for drunk driving, and they separately appealed their cases to the Supreme Court, but they got to our court about the same time, so we joined them together for hearing.

I don't remember whose case was what facts, but one of them, Pomeroy maybe, came out of a bar about 2:00 a.m. and he was plenty stiff, and got into his car, and it was ice cold, mid-winter, turned the ignition on and promptly plopped over with his forehead on the horn in the middle of the steering wheel, and the horn is sounding, and the car is on, and there is a can of beer between his legs, and he is asleep when the police officer arrived, reached in, turned the ignition off, removed the can of beer, the keys and arrested Pomeroy, if that's who it was, the drunk driver.

In the unrelated case, Fulcher, I guess it was, that fellow - similar situation - had too much to drink, left the bar and drove a short distance from the bar and as I recall, drove his car into a ditch. I think it got into the ditch nose first as he slid off an icy highway, and it was in gear, and he had fallen asleep, and the back wheels were spinning at the top of the ditch. A cop came along and arrested him, so up they come with the argument that they weren't driving, and so here we are, the seven of us, berobed geniuses, sitting in the dias of the Michigan Supreme Court listening to these arguments which had to be made by the lawyers somewhat tongue-in-cheek, this issue of great juris prudential significant, whether Fulcher, with his head depressing the horn ring and a can of beer between his legs, was driving, because the ignition was on, and whether the other guy was driving sound asleep with his car wheels spinning in a ditch.

We tried mightily to keep a straight face during those arguments, and succeeded, I hope. The issue was of some significance, but it wasn't enough that we should have been fooling with the case. It seemed to me that when it was all over, I regretted taking the cases and thought the Michigan Court of Appeals did just a fine job handling this thing.

Mr. Lane:
Didn't the decision somehow turn on the distinction between an operator and driver of a car?

Justice Ryan:
Yes, it did. We were in the conference room...I recall distinctly going around the table and the justices offering hypothetical instances to try to decide what a driver and what an operator is. Chuck Levin insisted that whenever possible, we look at the automobile no-fault statute. We looked for definitions in that statute. I thought the whole discussion got out of control. The upshot of it all was about what we deserved. There were only six people on the Court at the time for reasons I don't remember but there was a vacancy. We split 3:3 which meant that having struggled with who was a driver and who was an operator and who was in the ditch and who was in the parking lot, we didn't make any law at all.

Mr. Lane:
There's one other thing I wanted to ask you about, Justice Ryan, and that is your thoughts about the handling of the Dorothy Riley case in 1982 after she had been appointed, and her right to sit on the Court was challenged by Frank Kelley and ultimately, she was removed.

Justice Ryan:
Well, it was the darkest time, the darkest hour of my time on the Court easily. Justice Riley, now Chief Justice Riley, had been a candidate for election to the Court and had lost, and returned to her seat on the Michigan Court of Appeals. My brother, Blair Moody, in 1982, stood for re-election to his seat and was re-elected in November, 1982. Governor Milliken was the governor, but he had chosen not to run in that November, 1982, and Governor-elect Blanchard had been designated by the people to take office on January 1st. It was in that circumstance, Blair having been newly elected with a 1-1/2 months left on his old term, died of a heart attack in Thanksgiving week.

(End of side 1, tape 4)

Topic 10: Justice Ryan continues to discuss ousting of Justice Dorothy Riley, who was appointed when Justice Blair Moody died. He then talks about campaigning for his office and his decision to leave the Supreme Court in 1985

Justice Ryan:
And needless to say, we were deeply saddened by that sudden death, and the Court was left terribly concerned about what to do about opinions he was working on and cases in which he had indicated his tentative vote, so we had plenty on our menu to be concerned about, and we were concerned in the longer range with the fact that the Court was now reduced to six people. Always the threat of 3:3 divisions and no decisions in important cases.

It seems to me that we sent a formal message to the governor, either inquiring about his intention to fill the post or urging him to do it, but that doesn't matter very much. Governor Milliken, in all events, after an appropriate delay, filled Blair Moody's vacancy with the appointment of Dorothy Riley. She came to the Court immediately with superb reputation as a judicial scholar in the Court of Appeals, moved into chambers in the Lafayette Building in Detroit, came to our conference and began to go to work. She was with us a few weeks, perhaps even less, when a law suit was filed at the insistence of Governor Blanchard and Attorney General Kelley challenging Governor Milliken's appointment.

The theory of the law suit was a bit complicated, and doesn't matter for this history...suffice it to say that the theory was that because Justice Moody's vacancy, because Justice Moody's term would not have expired until the end of 1982, it was Governor Blanchard's seat to fill and not Governor Milliken's. An interesting question, both factually and constitutionally, and one which

lawyers could reasonably disagree. When the law suit was filed, it started out in the lower court and was immediately sent to the Supreme Court, and took its place on the docket awaiting briefing. Dorothy was participating with us in the decision of all the other cases when suddenly, one of the Justices one day said he would like to take up the question of the propriety of Dorothy sitting on cases in our Court when the legitimacy of her appointment was being challenged, even though we hadn't reached it.

To my immense surprise and her shock, as she was sitting at the table, this particular justice then said and tried to do it as gently as possible, said he wondered if Dorothy would mind leaving the room while we discussed her entitlement to sit on these unrelated cases. Things got a little hot around the conference table. I certainly was of the opinion that you don't disqualify a justice from discussing whether the justice has an entitlement to sit. She certainly had a right to be in the room to listen to it, even if she wasn't going to contribute to the conversation, which, by the way, she offered to do. The majority of the seven of us, including her, the majority said no, they wanted to talk about it in her absence. She left the room humiliated. I knew her well enough to read that in her face, so after a lengthy discussion that lasted more than one day, the majority of the Court, over my objection and the objection of one or two others, decided that Dorothy would be disqualified from participating in any cases thereafter until the propriety of the governor appointing her had been resolved by our Court, and we weren't going to get around to doing that for a couple months because of the briefing schedule.

Dorothy was deeply hurt and she was sure we were wrong, and I was sure we were wrong, and we, with that stroke, went a long way toward destroying the superb relations that the members of the Court had one to the other over the whole of the years I was there. The briefing was accelerated, the case was argued in the Court. It was a very high profile political case. Former Chief Justice Thomas E. Brennan became interested in it as a citizen, and he mounted sort of a quasi public relations campaign in the Lansing community and in the Cooley Law School of which he was president, in which he stood for the position that the Supreme Court had no authority to oust its members under any circumstances. The people do that or the judicial tenure commission. Former Chief Justice Brennan even filed some pleadings in our Court and argued a motion..the court ruled against him, and out he went.

Ultimately, the case was argued, and it was decided and our conference of six justices...at that time, Justice Fitzgerald was gone. Justice Brickley was on the Court, and so a Court consisting of Justice Williams, Justice Kavanagh, Justice Levin....

Mr. Lane:
Brickley, Coleman and yourself.

Justice Ryan:
...Coleman, Brickley and myself...was Coleman still there?

Mr. Lane:
No, I'm wrong. By that time, it would have been...Boyle, wouldn't it?

Justice Ryan:
Let's take a minute. No, it wasn't Boyle. It was Williams, Levin, Cavanagh, the second Kavanagh, Brickley and Ryan.

Mr. Lane:
You're right. I'm sorry about that.

Justice Ryan:
The majority of four, the two Kavanaghs, Levin and Williams agreed that the appointment was invalid and that Justice Riley should be ousted from the Court. Justice Brickley and I disagreed for what I always thought were very compelling reasons as I indicated in my dissent. I wrote the dissent for the opinion.

After the opinion was written and was circulated, the next hand that we had lost, from my point of view, Dorothy had lost and Michigan had lost, from my point of view...we were making bad constitutional law, but we were making it. The next maneuver would be to enter an order which would address this unique situation which had never been addressed in the history of the state nor, to our knowledge and the research we did, in any other circumstance in the United States.

It would be perfectly clear to me...perhaps I shouldn't say perfectly clear...it seemed clear to me that if a Federal Court was adjudicating lawfulness of a judicial appointment, that would be one thing, but for the members of our Court to adjudicate the qualifications of a colleague to sit was altogether inappropriate. In all events, the next move was an entry of an order and to find a way in which to have the order carried out and obeyed, given appropriate deference to the possibility of an Appeal to the United States Supreme Court that she might make.

Mr. Lane:
In the middle of this, did not Justice Levin suddenly waver, or there was some...

Justice Ryan:
You've jogged my memory, and you're right, and I'm mistaken. The vote was not 4:2 at the first conference after the oral argument. The vote was 3:3. We went around the table, and Justices Cavanagh, Michael, and Kavanagh, Thomas, and Chief Justice Williams were satisfied that Blanchard and Attorney General Kelley were right, Dorothy had to go. Justice Brickley and I felt just the opposite, and Justice Levin did not take a position at the conference that was very strong either way. He was unsure. It was unclear. He thought this was an extraordinary thing.

I could see that he was struggling mightily with what he thought was the right thing to do, and he said that in as much as he had not been convinced by the plaintiff which was plaintiff's burden that the appointment was unconstitutional, he was unable to say it was, which I remember him saying, "leaves me on the side of holding against the Attorney General and in effect, holding for Dorothy Riley". I thought that was just fine because the result was that the plaintiff had lost, had not proved the governor's case, and Dorothy remained on the Court which quite aside from my

personal preference, I thought squared with constitutional law. That was a Wednesday, as I remember. On Friday about noon, Levin called a press conference up in the Supreme Court chambers in Michigan, and to my utter amazement, he reversed his position. He said he had done some more work, some more research, and I'm confident he did. He is a man of unimpeachable integrity in my opinion, but whatever the driving forces were, he saw it differently after a couple days, realized that there had been great publicity for the result that the Court was going to permit her to remain on the bench. Charlie reversed about noon on Friday two days after our initial decision. That made it 4:2.

Dorothy was off the Court. You can imagine the pain that she was suffering in this convoluted process. She had been shelled from the Court's work within a few weeks after being appointed, denied the opportunity to participate in unrelated cases, had no work to do, had no role to play in the question of the determination of her own destiny and was buffeted by the winds of this strange constitutional argument that was being made both ways, but she had a decision which permitted her to retain her seat on the Court and two days later, Levin changed his mind. She had to have been devastated, so as a result of that, an order had to be entered, and the order was entered in a way which was the crowning glory of my judgment, the mishandling of a terribly delicate situation. I was teaching my class in evidence at the time at Cooley Law School late in the afternoon a day or perhaps a week after the Levin switch. Jim Brickley was in his chambers in the Supreme Court in Lansing.

I received a message from the switchboard in my classroom and told to call the Chief Justice which I did immediately about 5:50, and he said, as best I can remember, and I don't quote him...I'm paraphrasing it. He said, "Jim, we've got the four votes here for this order on Dorothy's case. We're about to enter it. We're over here in my chambers. I just thought we ought to notify you about it". Well, I was floored because during my time on the Court, there had never been a circumstance in which the Court had ever taken any action except an emergency action of some kind in which, save in the presence of the whole seven justices in conference, in the conference room, and I said, I remember saying, "What's the rush. What do you mean you've got the four votes. The Court is a court of, in this instance, six people". He said, "Well, we've got the votes. There is no use prolonging this thing, so we're going to enter the order. Do you want to be heard about it?" I said, "Certainly, I want to be heard about it."

Needless to say, I was infuriated. I recessed the class and went over to the Supreme Court which was only three blocks away, went into Mennen's Chief Justice chambers and before I got there, I ran into Jim Brickley in the hall who was coming out of his office. We compared notes. He had gotten the same phone call 15 minutes earlier, and reacted about the way I did and wondered how could anybody be talking about entering an order when the Court wasn't in session. We went into the Chief Justice's office. It was not a pleasant meeting. I was outraged at the fact, for the first time on my time on the Court, I was not convinced that these men of good will who saw things differently than I saw things, had come to their conclusion in this case utterly without the influence of any extraneous political considerations. I felt the question was so close and the precedent so non-existent to throw a colleague off the Court, and a constitutional argument so tenuous that all signals were the direction of resolving the doubt in favor of the governor's appointment.

It was perfectly clear to me...I shouldn't say perfectly clear, but I was beset with a painful suspicion that we wouldn't be proud of what was done here. Dorothy was in the Capitol that day. I can't remember why, but we never saw her, of course, even though she was a Supreme Court Justice and on the payroll, and in my judgment, perfectly entitled to participate in all the work on the Court except this case, she was out at a motel in Grand Ledge where she usually stayed...Dorothy doesn't drive, didn't then and doesn't now. Doesn't have a driver's license. Had to be driven to Lansing by her husband or her law clerk or somebody. Hal Hoag, a wonderful Court clerk, a man of great judgement and diplomacy, was standing over at the corner of the room with his hands behind his back awaiting instructions.

A form of order had been prepared, I think by Hal, at the Chief Justice's direction. As the six of us stood there in no small amount of pain, the Chief Justice signed the order, or caused the clerk to sign the order on behalf of the majority of four, and then I remember saying that I wanted time to write a dissent, both to the content of the order and to the manner in which this was being handled. Brickley and I went over in the corner and conferred, and I think he persuaded me that I was swimming upstream and not to personalize this business. I think I followed that advise. The order was then handed to a messenger. I've forgotten who it was. It may have been Hal Hoag himself.

Mr. Lane:
I think it was.

Justice Ryan:
Who was told...he was surely no messenger, but in that instance, he took on the role of a messenger which must have been very painful for him, and he took the order in an envelope and drove his automobile out to the motel in Grand Ledge, I learned later, and handed it to Associate Justice Riley who had no idea it was coming. She opened it, learned that she had been ordered off the Supreme Court by her six colleagues, and I also learned later, found herself not only in emotional isolation because of what had been done but physically isolated. She had no car and no way to leave the motel. She called to Detroit for some transportation, and she left Lansing and left the Court in what I then thought and what I think now is the most inconsiderate and ignominious and painful fashion.

Mr. Lane:
It was not a very glorious chapter in the Court's history.

Justice Ryan:
Not a very glorious chapter at all.

Mr. Lane:
That concludes the Dorothy Riley part of it.

Justice Ryan:
It does except the human dimension at the end of it is that that was a very unsympathetic decision in terms of the public perception, and the Court was criticized widely for what it did, and of course, that doesn't matter. If the Court was right, it doesn't matter whether it is criticized, but as everybody knows, in the next ensuing election, Dorothy Riley ran against our friend, Thomas Giles Kavanagh, and although Dorothy did not advert to it explicitly throughout the campaign, the theme the press used about that contest was that she was going to knock off one of the justices that threw her off the court. That was the handle on the story, and of course, that's the way it worked out.

Mr. Lane:
Well, there were opportunities for this matter to be raised when she went around, people asked her about this, the newspaper people did.

Justice Ryan:
I just wanted to share one thought. I'm not totally sure it's part of the history of the Supreme Court, but it is relevant in the sense that it is part of my history on the Court, and that is the two state-wide elections in which I was involved, 1976 and 1978 were horrendous experiences for me.

I was very, very uncomfortable in trying to conduct a state-wide campaign for an office for which there are no issues of any significance, there is no public interest of any kind. Statistically, a small minority of Michigan citizens are interested, and a relatively small minority of the registered voters even cast a ballot. Still, it is necessary to go around to Michigan's 83 counties and to campaign. I never did know how to campaign for a judicial office except all out, flank speed. One of my personal shortcomings is overdoing things a lot. That's an area I always over did it. It was necessary to raise money, and the only people interested in giving money to a Supreme Court Justice are lawyers and the candidate's friends although there are some individuals, just out of respect for the process and the institution and the candidate, will make contributions, but by and large, the money comes from lawyers or it doesn't come from anybody.

There is this feeling I had, both in 1976 and 1978 when the money was being raised, there is something beyond unsavory, really improper in a sitting justice going to lawyers frontally or even indirectly through a committee asking for financial contributions, unspoken and implicit in all of it is that all of the justices, judges in Michigan know that the lawyers feel that they have to make contributions to these candidacies. It's a kind of gentile extortion. Lawyers in great numbers are afraid not to donate $100.00 to the candidacy of a sitting judge or justice for fear that some day the justice may hold it against that lawyer if he declines.

In addition to that, my appointment came from a Republican governor, so I had the enthusiastic opposition of all of organized labor in the State of Michigan. The rules of contributing money to political campaign are different for labor unions than for corporations so it made the process of running very, very difficult. Not only was it a terrible distraction from my work because of the necessity to run around the State of Michigan for seven or eight months to conduct this campaign, making speeches to service clubs, on radio stations and political gatherings, partisan political gatherings in parks all over the state. I found myself standing next to the partisan

candidate for Republican office or for Democratic office when they would let me in the all. The candidates for governor, senator and legislator and congressman ahead of me would make promises to the audience as to what they would do if elected, and I would be called upon to speak. I wasn't able to make any promise of any kind as to what I would do, except to say I would do my best, which would sound absurd to an audience which just heard a United States Senator or Governor.

I found this terribly distasteful and a waste of the Court's resources to the extent I was a resource in 1976 and 1978. I was terribly troubled by the fundraising. It finally came crunch time in my career about my tenth year on the Court. I was facing the prospect of a third state-wide campaign in 1986 and I detested literally the idea of organizing committees, going to lawyers, begging for money to be wasted on nonsensical television ads that were designed to make me look attractive physically and to sound good, because I could have nothing to say ethically to win votes, but that was the process. The people in the State of Michigan seemed to want to go with that process. I had looked up the statistics, and the statistics had shown that in 1978, only about 40% of the voters who were inside the voting booth bothered to cast a ballot for anybody for the Supreme Court.

Mr. Lane:
Was it that low?

Justice Ryan:
60% of the people there were exhausted by the time they got down to the judges, or the number is very close to that, so it was an exercise in futility. I loved the Court, even the bad days, I loved the work on the Court. I remember it fondly. I respected by colleagues despite these tough cases we've talked about. I cherished the privilege of being involved as I was in running the continuing judicial education program for Michigan's judges. I loved the Court as an institution and wanted to stay there, but I simply could not bring myself to look forward with much enthusiasm to a third state-wide campaign.

It was perfectly clear to me that I had written enough on the Court that the labor movement and the plaintiffs, Bar Association generally in the state were laying for me. I felt I could probably win another election because of the maniac fashion of which I always approached judicial elections, but it was going to be a tax on the Court and on my family and on my own self-respect to beg money again from lawyers who very often didn't want to donate it, so despite the fact that I loved the Court, I began to think about leaving. I had been in the judiciary for about 23 years, and I did something on the spur of the moment. I didn't have any contacts in the political parties of Michigan. I think I had only met Governor Milliken once before he appointed me.

I saw the newspapers in January of 1985 that a former member of the Michigan Supreme Court by the name of George Edwards was retiring from the United States Court of Appeals in Cincinnati, and so I wrote a letter to the President of the United States. "Dear President Reagan: My name is Jim Ryan", etc., and I enclosed my resume and asked to be considered for

appointment to the United States Court of Appeal for the Sixth Circuit. I also wrote a letter to Attorney General Meese. I never felt sillier in my whole life since I had no political clout and no pull and nobody else knew I was doing this except my secretary, Fran Orzel, so I sent the two letters off. I decided the next day that that was the height of silliness, that I'd better get ready for the re-election campaign to be conducted the next year, 1986. These letters went off in late January or early February, and the rest is history.

I was having dinner one night in March when I received a telephone call from the Justice Department which our youngest daughter, then 18 years old answered, said "He is having his dinner. Could you call back?", and she hung up. She laughs about that now. I said, "Who was that?", and she said, "I don't know. Some judge or something". I said, "Kate, who was it, honey?" She said, "A guy from the Justice Department". I said, "The Justice Department. What did you tell them". She said, "I told them you were having your dinner, to call back". Well, I damned near died. It was a Friday night.

Well, the young man did call back later, and that was the beginning of the end of my career on the Michigan Supreme Court and resulted in President Reagan's appointment to this court in October of that year in 1985, and I left the Court in December, 1985, the Supreme Court, with a wonderfully warm and really a loving dinner party which was hosted by my friend and philosophical adversary, Chuck Levin at his residence in Detroit. All the members of the Court were present. It was an elegant affair, and it was an evening of warmth and affection which was really typical of the kind of Court that we had nearly always for ten years, and I left the Supreme Court the last day of December with genuinely ambivalent feelings about this turn in my career.

I knew I'd never be as happy again...thought I'd never be as happy again in the work I would do as I was for those ten years and while I do love the work I'm doing now, and I find it an enormous intellectual challenge every day, I must say that those ten years on the Michigan Supreme Court were the happiest years of my professional career.

Mr. Lane:
This is the end of the ex-Justice Ryan tapes on November 13, 14, and today, the 15th.