



Interviews with
**Michigan Supreme
Court Justices**

INTERVIEW WITH THEODORE SOURIS

Sponsored by [Michigan Supreme Court Historical Society](#)

Conducted by Roger F. Lane

November 5, 1990

Topic 1: Justice Souris discusses his family history, living in Detroit and then Ann Arbor as a student, and joining the Air Force in 1943. He then talks about returning to the University of Michigan in 1945 to finish his degree and complete law school

Mr. Lane:

The date of this tape is November 5, 1990. ...an oral history interview sponsored by the Michigan Supreme Court Historical Society. We're in the office of former Justice Theodore Souris in the Renaissance Center, 34th floor and Mr. Souris is sitting behind his desk and with him is Roger Lane representing the Historical Society. As I mentioned, Mr. Souris, I would like to get first into...let's call it family background. Now, you were born and raised in Detroit, is that not true?

Justice Souris:

Yes.

Mr. Lane:

And your father was a business man in wholesale meats...is that?

Justice Souris:

Yes.

Mr. Lane:

Can you tell about the family a little bit...brothers and sisters and where you lived?

Justice Souris:

I had a sister who died when she was five and I was 10, therefore, I was the only child in the family, and my father died when I was 14. My mother and I lived together until I went to the University of Michigan Undergraduate in January, 1943.

Mr. Lane:

Did your father die suddenly? Did he die a traumatic death or...?

Justice Souris:

He died at a very early age. He was in his 40's when he died and otherwise in apparently good health. He had been working very hard and died of a heart attack.

Mr. Lane:

He was an immigrant, was he not?

Justice Souris:

Oh, yes, as was my mother.

Mr. Lane:

Do you feel that he instilled the immigrant values, traditional American values in you?

Justice Souris:

I don't know that he did because of his fairly early death, but I think that my knowledge of my background and our acquaintances in the community, within the Greek community particularly, certainly had a significant bearing on the values that I developed in my...

Mr. Lane:

Did he leave your mother and you in a position of physical comfort?

Justice Souris:

No, he had just begun a new business, had invested everything he owned in that business at the time of his death. Of course, everything was lost at the time of his death. The business was just about to begin operation when he died.

Mr. Lane:

Was it a solo venture?

Justice Souris:

Yes.

Mr. Lane:

You were not old enough at that time...

Justice Souris:

No, I was only 14 years old.

Mr. Lane:

That's right. You were in what...high school?

Justice Souris:

I was in high school at that time.

Mr. Lane:

Was there a very traumatic period then?

Justice Souris:

Sure, absolutely. It was a period that simply devastated my mother who was a very young widow with a teenage son to raise.

Mr. Lane:

Would she have been about in her late 30's or 40's?

Justice Souris:

My mother was in her late 30's then...that's right, late 30's...mid 30's, and it took her a couple of years really to emerge from a state of absolute devastation. The shock was such that I can remember her functioning almost in a catatonic state. It was a very difficult period.

Mr. Lane:

Was there family support?

Justice Souris:

No, we had no family.

Mr. Lane:

But you did live in the Greek community, and was there support there?

Justice Souris:

Well, her friends from the community were very helpful to her, obviously. We lived at that time in Grosse Pointe. We had moved into Grosse Pointe in the late 1930's or early 1940's. I'm not sure when..shortly before my father died. We had a doctor whose name was Alexander Blain...

Mr. Lane:

Blaindes?

Justice Souris:

Blain...he sensed my mother's need for societal support and was sensitive enough to realize that this was a very delicate matter for him to broach to her and he did it in a way I'll never forget. He suggested to her that she help him as a volunteer at his hospital which was the Blain Clinic on the east side of Detroit. It was during the war, remember, and he was short of nursing help. He

knew that my mother had always wanted to be a nurse but never was able to pursue that objective. So she volunteered.

She went to Blain Hospital and she worked for old Dr. Blain as a floating nurse in an operating room. Her role was to...she was the only person in the room who was not sterile. That is to say, she could move from the operating room to the outside and back again. And after a relatively short period of time as a volunteer for a day or so, he suggested to her that perhaps she would like to work for him full-time. She worked for there forty years before she retired. This was just a marvelous thing for her because it put her into societal settings that were totally different from her own experience, and gave her an opportunity to move out into the community, to make many friends from various aspects of life, various phases of life. It made it possible for me, quite candidly, to leave home for Ann Arbor rather than to stay in Detroit. It made it possible for me to go into the service with much less concern for my mother than I otherwise would have had, had she not been able to function as she was at Blain, and of course, the experience at Blain brought her back to reality also. It eased the terrible emotional trauma of my father's death.

Mr. Lane:

Was there great financial strain?

Justice Souris:

Sure. Absolutely.

Mr. Lane:

How were you able to take off for Ann Arbor financially?

Justice Souris:

My mother was provided for by her work. I had a couple of very modest scholarships that came to me and I worked. I worked long hours.

Mr. Lane:

The scholarships, I assume, were academic scholarships.

Justice Souris:

Sure.

Mr. Lane:

Based on good performance.

Justice Souris:

Yes.

Mr. Lane:

Were you...did you have extraordinarily good records when you were in high school?

Justice Souris:

Yes, I did.

Mr. Lane:

Can you tell us a little about it? Were you first in class and that sort of thing?

Justice Souris:

No, but it was a good record.

Mr. Lane:

Which school was it?

Justice Souris:

Grosse Pointe High School. We had...it's strange, I've been talking about this with friends recently. We were not particularly interested in girls in those days.

Mr. Lane:

This was the tail end of the depression, was it not?

Justice Souris:

Sure, it was the middle of World War II. This was in ... beginning in 1940. I graduated in January of 1943 from high school, so you had vestiges of the depression, but you also had the war years. There was an enormous press for academic achievement. There was concern about the war. There was concern about professions. We had a superior group of students, I think, at the high school, and as I say, we weren't interested in girls, and girls weren't interested in boys, at least not in the group in which I traveled, but we were interested in one another as students. What we did was we studied together, not in the way students study today. We simply worked together in the library, for example. We went out and had chocolate cakes or whatever, and we talked about our work. When I graduated from high school, there were nine of us from my class, boys and girls, who went to Ann Arbor, and we went together, and we stayed together during the three semesters I remained in Ann Arbor before I went into the service. We were all enrolled either in the Engineering School or in the Literary School. We were in classes together, and we supported one another.

Mr. Lane:

You entered University at age 16, is that correct?

Justice Souris:

No, no. I was 17. I was 17 when I started Ann Arbor.

Mr. Lane:

Did you have any idea of the law thing?

Justice Souris:

Yes, I did. I had in mind law. No one in my family had been a lawyer. The only person I knew well who was a lawyer was Tom Roumell, who much later became a Wayne Circuit Judge, and

Tom was, back in the 1930's, late 1930's, practicing law. I had written him a letter and said to him that I had an interest in the law -what could he tell me about it? He wrote me a very lovely letter. It was a long letter. He was a brand-new lawyer. He had just started his practice in Chicago with a friend of his, and together with this letter, he sent me a thesaurus, Roget's Thesaurus, which I still have. It was a very touching thing for him to do, and I'll never forget that. It was an inspiration to me, it really was, because here was a young lawyer who was expressing his absolute, pure, unadulterated joy in being a lawyer, and that certainly stimulated my desire to pursue a law career.

Mr. Lane:

Were there other factors of that type of inspiration? Did you have, for example, in high school perhaps, a teacher who had a great influence on you and who gave you a thrust toward literature?

Justice Souris:

Yes, many. We had really an outstanding faculty. I can remember a french teacher whose name was McGaw, and she taught french as if it were the most important subject in the world; made us think so. I remember a teacher of World Literature who was, at that time in my eyes, at least, ancient. She must have been in her 60's.

Mr. Lane:

How old was she, did you say?

Justice Souris:

She must have been in her 60's, but I thought of her as ancient. I had a history teacher by the name of Selmeier, Roy Selmeier who was also coach of the Debating Club, Debating Team, and I had a mathematics teacher by the name of Zimmerman. All of these people had an enormous influence on me and an enormous influence on everyone in our group that I described earlier. We weren't really competing against one another, we were competing against ourselves. I think that was the sort of attitude that these people instilled in us, these teachers instilled in us.

Mr. Lane:

Did this come right out of the classroom or what is the ancillary activities, the Debate Club?

Justice Souris:

No, not really...out of the classrooms.

Mr. Lane:

You got out of high school what people...

Justice Souris:

Absolutely superior...absolutely superior, and when we went to Ann Arbor, we were all rather surprised that others who were classmates of ours in Ann Arbor did not have that kind of experience. The kids from Cass Tech in Detroit and from Central in Detroit were our

competitors. These were the kids who achieved in Ann Arbor what we were achieving. I guess maybe that is typical of the fact that these were two really great schools in the Detroit Public School system just as ours was in Grosse Pointe.

Mr. Lane:

What did you do to keep bread and butter on the table?

Justice Souris:

I worked the entire time I was in Ann Arbor except for one semester, my last year in law school. I worked at the Railroad Station trucking freight in Ann Arbor.

Mr. Lane:

You mean you ran those carts back and forth where you put the stuff in the baggage car and that sort of thing?

Justice Souris:

Yes, like refrigerators and stoves on hand-trucks. It was a marvelous experience. It was something that I rather enjoyed doing at the time because it was a complete break from the academic work that I was doing. It was hard, physical manual labor.

Mr. Lane:

How much did you weigh at that time?

Justice Souris:

Oh, I never weighed more than 110 - 115 pounds, but you know, you had the principles of leverage working for you if you knew how to use them. From there, I went to work...I also waited tables for sorority houses for meals. I went to work for Fred Basom. He was a professor of engineering, had charge, as well as the academic responsibilities, of the blueprint room in the engineering department, in the old Engineering building. I went to work for him running blueprints, and he did not care when I worked so long as I got the work done, so I worked there for three semesters, the three semesters I was in school before being called to service. We were on a three semester a year basis around the clock at that time, so it made it possible for me to get those three semesters in before being called to service.

Mr. Lane:

Was it tough to get work in those days for a student?

Justice Souris:

No, it wasn't, not in my experience.

Mr. Lane:

The competition was reduced, I suppose, because of the war.

Justice Souris:

Sure, sure. You could have whatever job you wanted.

Mr. Lane:

Did you borrow? Did you have to borrow?

Justice Souris:

No, I never borrowed in my life, except to buy a house.

Mr. Lane:

It wasn't the fashion then, was it? And now it is the fashion.

Justice Souris:

No, it wasn't the fashion.

Mr. Lane:

Am I saying it wrong?

Justice Souris:

No, I think you're absolutely right. My children don't borrow, and I think they're unusual in that respect. They don't borrow because they've been brought up believing that cash is better than a credit card.

Mr. Lane:

Did you do well in school under those circumstances?

Justice Souris:

I didn't excel, but I did all right. I did quite well. I got into the law school without any difficulty.

Mr. Lane:

What took you away? This was later, right? You didn't get into the law school prior to your military stay?

Justice Souris:

No, no, no. I had only a year and one-half of college credits. Then I was called to active duty in the Air Force in January, 1943.

Mr. Lane:

How old were you?

Justice Souris:

I was still 17. I'm sorry. I was called to active duty in January, 1944. I was 18. I joined the Air Force in June or July of 1943 when I was still 17. I was called to active duty in January, 1944, and I had just completed...I was two weeks shy of completing the third semester, and some of my professors gave me early examinations; others refused to do so, one of whom was William

Payton who was the accounting professor, of great renown who would not give me a special examination because of the burden upon him to devise an examination. I never forgot that.

Mr. Lane:

Were you eligible, age-wise, to join the Air Force when you did, or did you have to...?

Justice Souris:

No, I was eligible to join it when I did at 17. I'm not sure, Roger, now that you ask about it. I'm almost certain that I was eligible to join. I wouldn't have lied about something like that.

Mr. Lane:

Well, you know, you can sort of anticipate...I was going to ask eventually about the case that...I can't recall the name of it, I can find it quickly, which may jump to mind instantly of the 17 year old employee in some kind of a construction job, when you wrote this case.

Justice Souris:

Yes, I remember that one.

Mr. Lane:

Remember that one? And this kid...

Justice Souris:

Lied about his age.

Mr. Lane:

He did, and then there was a question of liability and that sort of thing.

Justice Souris:

Yes, and the Legislature provided that under-age employees who were injured on the job were entitled to double compensation and I think I wrote that that was a judgment the legislature was entitled to make. It made it. Relatively simple decision to reach.

Mr. Lane:

Well, of course there was the question, I guess, of fraudulent representation. I know that, but for that, he never would have been employed in the first place.

Justice Souris:

That's right.

Mr. Lane:

But I didn't mean to get deeply into that. I just thought it might have...

Justice Souris:

No, I had completely forgotten about that case. Was that case the Halfacre case?

Mr. Lane:

I have it here. I'll tell you who...I think it was who...he called it to mind. I talked to Lloyd Fell and asked him what sort of things that he remembered that he thought might be worth playing out.

Justice Souris:

My old law clerk who became one of my partners.

Mr. Lane:

He is up in Cheboygan now. Somebody gave me his name.

Justice Souris:

He's my partner. We have an office in Cheboygan.

Mr. Lane:

I didn't know that. You have quite a record, and what I'm trying to do is to scan, at least, the cases, so I can be better informed as we go along.

Justice Souris:

I have not looked at those cases as a whole in years and years. Occasionally, I have come across one in my work, but I'd be happy to discuss whatever I can remember.

Mr. Lane:

Oh, well, we'll do that later, but let's...I just wanted to see if there is any connection between your experience...Now, you signed up and then some months later, actually went on active duty. What did you do, and where did you go?

Justice Souris:

I was assigned to the Air Cadet Program. It was a training program for pilots, navigators and bombardiers. When I was called to active duty in January, 1944, shortly thereafter, the Battle of the Bulge occurred, and we were, at that time, in mid-1944 in our primary training. I think it was called primary flight training. We had gone through basic training. We were just then beginning to fly single engine planes.

Mr. Lane:

Were you down in Texas.

Justice Souris:

No, I was in...I ultimately got to Texas, but this was all done in Pittsburgh. Our first training was at a little airport, air base called Butler near Pittsburgh, Pennsylvania. We did our work there in what I think was Piper Cubs. I'm not certain of that, but...

Mr. Lane:
(comment is unclear)

Justice Souris:

Right after that training, we were stationed at the University of Pittsburgh and took academic training plus flight training at Butler. Right after that program ended and the Battle of the Bulge suggested that things were going fairly well and that we probably would not be in a war attitude for a prolonged period in Europe, the Air Force cut back as did the Naval Air Force, its training program. Instead of transferring us to other units, it hung onto us and put us in pools, so-called pools of talent. These were young kids, many of whom were college students. They had...the Air Force itself had selected what it deemed to be the cream of the crop of available talent, and these were the kids who were stuck in pools around the country.

Mr. Lane:
You were with what pool?

Justice Souris:

Oh, I went from Pittsburgh to Georgia, and Georgia to Alabama, from Alabama to Texas, back to Alabama, ultimately up to Ohio and Mississippi and Louisiana. We moved around from Air Force base to Air Force base and for reasons I don't quite understand, the Air Force was not able to assign us to any duty which meant that we were stagnating. We had nothing to do. Nothing whatever to do except those things that we, ourselves, decided to do. At some point, I was in Mississippi, I decided to offer my services, whatever they were, to the so-called Courts and Boards Office at the Air Force base at Greenville, Mississippi. It was the legal office, the adjutant's office in the Air Force, and I functioned really as a clerk in that office for as long as I was assigned to the base. We had a number of problems, race problems on that base, that forced the legal officer to use me as an investigator, as an aide, and that was my first experience really with race problems - absolutely frightening.

Mr. Lane:
And with an investigation toward a judicial determination...

Justice Souris:

Not judicial really. We had a black airman, sergeant, who had been arrested in the town and had been kept in jail without notifying the military authorities of his presence there.

Mr. Lane:
Was he in uniform?

Justice Souris:

Yes, and it was well-known that he was from the area. He was arrested. He had \$300.00 at the time of his arrest. That was taken from him. It was a long, miserable story that I don't want to get into, very, very lengthy, and it was...a circumstance in which the sheriff and a lawyer in the

community were keeping this man as a slave, in a figurative sense, and when we found out that an airman from the base was in jail and had been for a number of months, when we found out...

Mr. Lane:

Did you say "months"?

Justice Souris:

Yes...we had to get him released, and we did. It certainly wasn't through the judicial process, but we got him released.

Mr. Lane:

How could have a person have been gone for that period of time without his immediate superiors being...?

Justice Souris:

He had been stationed...he had been transferred to Alaska, and was home on leave when he was arrested, so the Alaskan authorities simply thought that he was AWOL, the Air Force people in Alaska. We, in Mississippi, didn't know that he was in jail. When we found out, of course, then we notified our counterparts in Alaska and ultimately got him released and sent on his way. It was an eye-opener for me.

Mr. Lane:

Had you been in the south before for any period of time?

Justice Souris:

Only in the army, only in the service. In those days, our units were segregated. There were no blacks in the Air Force. There were black units, but they weren't integrated.

Mr. Lane:

Otis Smith was in one of those.

Justice Souris:

Yes, and Coleman Young.

Mr. Lane:

And there were some others.

Justice Souris:

Oh, yes.

Mr. Lane:

I think Clifton Wharton was one of them.

Justice Souris:

Kermit Bailer.

Mr. Lane:

Coleman until he got to be Secretary of Transportation?

Justice Souris:

Yes, Bill Coleman.

Mr. Lane:

Did this whet your taste for the law? Did this have any?

Justice Souris:

Sure, absolutely. The legal officer in charge of the office in Mississippi was from New Orleans. He was a young lawyer who happened to be in the Air Force assigned to legal duties. I don't know to what extent he had practiced. He had practiced a number of years before going into the service, but only a few, and he, too, was an inspiration to me in a sense that he was absolutely dedicated to the task he was assigned as a lawyer, and at risk to his life and to his wife's, and let's say to mine, too. We did what we had to do to free the black serviceman we had never before met. We didn't know anything about it, but it was an obligation that we had and with his leadership, we accomplished this. Each of us was transferred away from the base soon thereafter, and no reason...the stated reason wasn't because of what we had done

(break in tape)

Mr. Lane:

Was the resolution of this matter extra legal?

Justice Souris:

No, I would prefer to say that it was non-judicial.

Mr. Lane:

Okay.

Justice Souris:

We threatened to blow the lid on what the sheriff and the mayor of the community and the lawyer had done. We called in the Department of Justice. They were going to send an investigator out. When the sheriff and the mayor found out that that had been done, they entered into an agreement with us to release the man, and once we had him released, there wasn't any point in pursuing the matter. As a matter of fact, we weren't in a position to pursue it because we were transferred.

Mr. Lane:

Was he charged with something?

Justice Souris:

No. Well, I don't know whether he was charged with anything. He was ostensibly arrested for assault and battery and robbery from his own home, but I don't remember that there was any formal charge.

Mr. Lane:

This left a lasting impression on you?

Justice Souris:

Sure, as it would on anyone.

Mr. Lane:

Was this towards the end of your Air Force...?

Justice Souris:

No, it wasn't. It was really no more than six or seven months after I entered the service.

Mr. Lane:

How long were you in...?

Justice Souris:

Almost two years. I got out in November, 1945, right after the war ended, and I returned to Ann Arbor immediately, and resumed my course work in Ann Arbor. Maybe a couple of weeks or maybe a month after the semester had begun.

Mr. Lane:

What course were you following?

Justice Souris:

At that time, I was on what was called a "combined curriculum". At the end of three years, I was to have been admitted to the law school and at the end of another three years in law school, I would have been granted both a law degree plus a Bachelor's degree. Shortly after I got back to Ann Arbor, I made the decision not to pursue that combined curriculum because I did not have enough time to get the courses I really wanted, and that was, in my view, my only chance in life to study subjects that were of interest to me.

Mr. Lane:

What were some of the subjects that were not on track, that you were...?

Justice Souris:

Literature.

Mr. Lane:

English literature, or?

Justice Souris:

English literature, world literature, history, political science and the humanities, and that's just exactly why I took a double major in history and political science, and I had a fair amount, a fairly large amount of English, some philosophy, not much, but some.

Mr. Lane:

I picked up quite a significant allusion to Plato in one of your ... I wondered a little about it.

Justice Souris:

I don't remember that.

Mr. Lane:

Well, I think what I'm referring to is your remarks upon the presentation of George Edward's portrait. You nominated him as the worthy member of Plato's army of judges.

Justice Souris:

I recall that, vaguely.

Mr. Lane:

Well, I have it somewhere. I will show it to you. But at any rate, you did go ahead and get your undergraduate degree, right?

Justice Souris:

And then started law school.

Mr. Lane:

Immediately?

Justice Souris:

Right away, because I was running out of money.

Mr. Lane:

Didn't you have Veteran's benefits by then?

Justice Souris:

Yes, but you know, as welcome as they were, I still had to work. They weren't enough to meet my needs, and in any event, I would have run out of GI Bill benefits before the end of my last semester. I would have run out. I would not have been covered in the last semester, so I continued to work.

Mr. Lane:

During this period...

Justice Souris:

During that time, incidently, one of my history professors, Professor VanderVelde, a great man who taught me American Constitutional History, offered me a job as an assistant curator at the Michigan Historical Collection which was then located in the Rackham Building, and that got me away from the railroad yard and the blueprint department at the Engineering School, and put me in more of an academic setting, and it gave me an opportunity to work more comfortably.

Mr. Lane:

How did you live in those days? Did you share quarters in one of the residential houses there, or did you live in a ...?

Justice Souris:

No, I lived in rooming houses.

Mr. Lane:

You didn't live in a dormitory?

Justice Souris:

Only in the first two semesters I was in Ann Arbor before going into the service. I picked up ...the first and the third semester, if I recall correctly, and the dormitory was not open in the summer (I think that's correct)...in any event, those of us from the high school all lived together in that dormitory, and it was just a great opportunity for us to maintain those friendships, those relationships.

Mr. Lane:

That strikes me as distinctly unusual. I don't remember of hearing of such a thing. Was this fairly...did the Cass Tech graduates live together in this same fashion?

Justice Souris:

I don't mean to say that we all lived together because we wanted to stay together. It just so happened that we had all signed up for the dormitory, and we all were admitted to the dormitory, and we all were there during that period of time. It was fortunate circumstances.

Mr. Lane:

Did this have some kind of a reinforcing effect on your academic pursuits?

Justice Souris:

Certainly, certainly.

Mr. Lane:

The fellows that you had studied with when you were a senior in high school were natural companions in sort of an academic way, and...

Justice Souris:

You didn't want to acknowledge to them that you weren't doing very well, so you strived to excell just as we did in high school. It was that kind of relationship. It wasn't a one-on-one competition, but it was rather an effort to maintain the group's intellectual integrity, its level of achievement.

Mr. Lane:

Did you stay in some touch back in Grosse Pointe?

Justice Souris:

Back in Grosse Pointe?

Mr. Lane:

Well, I'm thinking of your high school teachers?

Justice Souris:

Some.

Mr. Lane:

...pretty good sense of attachment with some of those?

Justice Souris:

No, not at all, because you know, it wasn't long before I was in the service, and that sort of thing. That just isn't done. It wasn't done at that time.

Mr. Lane:

When you got into law school then, did you develop...what do I call it?... a mentor relationship with any particular member of the faculty that you looked to for many years?

Justice Souris:

No, no. Law school to me was a very difficult period of time. It was...I worked, I was in law school.

Mr. Lane:

Did you work in law-related activities?

Justice Souris:

Well, as a matter of fact, I worked both for the Historical Collections and also for the American Judicature Society which had its offices in Hutchins Hall in the law school. My recollection is that I stopped working for the Judicature Society before I entered law school. I think it had moved its headquarters to Chicago at that time, shortly thereafter, in any event. But I worked...that was the only law-related activity I had during the entire time I was in undergraduate school and in law school. Law school was a real challenge to me for one reason that has followed me most of my life. I was among the very youngest in the service in my group. Many of the people in my group in the service had been reassigned to the Air Force after having done a tour abroad overseas. These were gunners, for example who had served overseas, had

been returned to the states and had been assigned for pilot training or navigator training, bombardier training, and they were, by and large, older men. When I got to law school...remember, this was shortly after the war...it would have been in the summer of 1947, we had an enormous number of veterans entering law school who had returned to college, completed their college work and were on the last leg home, and so the average age of my law school class was extraordinarily high, and these were men of vastly greater experience than I, so I was very conscious of the competitive atmosphere of law school at that time, and worked extraordinarily hard.

Mr. Lane:

Did you come out with good results? Of course, they were good. I mean...

Justice Souris:

I was not a star of the law school class, but I wasn't trying to be, either. I was anxious to get through as quickly as I could and as well as I could. I managed all right. I managed quite well, as a matter of fact, but I got through in two years and three summers. We were on an accelerated program. The law school recognized as did the undergraduate school, that it had to serve the needs of returning veterans, and economically, they were in a position where they had to accelerate their educations in order to be able to earn decent livings, and so the law school provided three semesters a year just as the undergraduate school had done.

When I started...when I returned to Ann Arbor in November, 1945, I stayed in Ann Arbor from then until August, 1949 without a break except for the short vacations between semesters, and completed my undergraduate work, completed my law school work on a rapid, accelerated basis.

Mr. Lane:

You were in the class then of 1949?

Justice Souris:

Yes.

Mr. Lane:

Were there others in your class finishing school at approximately the same time that came to have an influence on your career? You hear, you know, from time to time of persons who were in the same class, and they crossed paths later. I was wondering if there were some persons, for example, who steered you towards what eventually became your Supreme Court appointment.

Justice Souris:

No, no. Not really.

Mr. Lane:

There were no...

Justice Souris:

I should say this. I met Mennen Williams when I was studying in the basement of the law library in Ann Arbor one night, late one night.

Mr. Lane:

What was he doing there?

Justice Souris:

He was looking for the men's room.

(End of side 1, tape 1)

Topic 2: Justice Souris talks about knowing G. Mennen Williams and Neil Staebler, practicing law after graduating, being involved in the election recounts of 1950 and 1952. He then discusses the effects that this involvement had on his career and his eventual unexpected appointment to the Michigan Supreme Court

Mr. Lane:

Was he then in a government position?

Justice Souris:

This was in 1947 or 1948. 1947. When was his campaign for governor.

Mr. Lane:

1948.

Justice Souris:

This was in the early months of 1948. He was with Neil Staebler whom I had known, and Neil introduced me to Mennen as the next governor, and we chatted for a while, and that was the end of my encounter with Mennen, but I worked for him.

Mr. Lane:

Excuse me. How did you know Neil Staebler at that time? He was a pretty big...

Justice Souris:

Neil had returned to Ann Arbor from his Naval service at about the same time that I returned to Ann Arbor from the Air Force, and we were both active in an organization called the American Veterans Committee.

Mr. Lane:

Oh, I remember that...AVC.

Justice Souris:

AVC, and from there, Neil moved into the Democratic Party, and I had become active in the Young Democrats on campus, and when Mennen was running for governor, of course I did what I could to give him support, and that continued throughout my professional career until I was appointed to the bench. He was an inspiration. He really was. He was young, he was articulate, conveyed the sense of a social commitment. He brought young people into the political process that only a John Kennedy thereafter was able...John Kennedy and Adlai Stevenson, and in bringing those two names into this conversation, I want to reveal to you as clearly as I can my own political predilections. They obviously followed the liberal Democratic view of right and wrong.

Mr. Lane:

When did this charismatic appraisal, feeling about him, about Williams begin to crystalize? It certainly wasn't your chance meeting.

Justice Souris:

No, no...certainly not. It had begun even before that chance meeting. We had encountered enormous resistance to Mennen's candidacy by the Democratic Party in those days.

Mr. Lane:

He was a renegade, was he not?

Justice Souris:

He was a renegade, and the Democratic Party in the late 1940's was run by the Teamsters Union and by a man named John Franco, who was then, if I recall correctly, Democratic State chairman. George Fitzgerald, his lawyer in Detroit who represented the Teamsters Union, was a very important political figure in those days and George and I subsequently became good friends though we were political enemies in those days. I had been organizing Young Democratic organizations around the state on college campuses, and...

Mr. Lane:

How did you get into that kind of activity? Was it something that came just from within or did somebody spur you to do it?

Justice Souris:

No, I think it was a deeply felt need to participate in the business of government. Remember, we had just gone through a terrible war. We had returned to campus with idealistic views of our own role in society. The opportunities were there, and there was a feeling of participation in a group activity, a very important thing at that time, and it was very exciting. It was very exciting particularly because we won.

Mr. Lane:

Did you go to Eastern and Central and places like that?

Justice Souris:

Yes.

Mr. Lane:

Now, this would have been while you were still in school?

Justice Souris:

That's right.

Mr. Lane:

When you got out of school, you graduated in August, then what?

Justice Souris:

I continued my activities, political activities in what was then the 14th Congressional District.

Mr. Lane:

Had you joined a law firm?

Justice Souris:

Yes, in Detroit. Fulton and Donovan.

Mr. Lane:

Is that the Donovan who is the father of...?

Justice Souris:

Julie...

Mr. Lane:

Julie Darlow?

Justice Souris:

Julie Darlow, yes.

Mr. Lane:

How did you happen to make that connection?

Justice Souris:

One of my law professors asked me what I intended to do when I graduated law school, and I told him I thought I'd go to Midland, Michigan. I had looked at the state's distribution of lawyers and the per capita income of citizens and concluded that Midland, Michigan was the prime place for a young lawyer to be. It had the highest per capita income of any county in the state. It had the fewest number of lawyers per capita practicing privately than any other community in the state. It had a symphony orchestra. It had a decent library. It was a lovely architecturally attractive community. It had a number of other things that just appealed to me, and so I had made plans to practice law with a classmate of mine, Floyd Wetmore. Floyd went to Midland, and has practiced there all this life. I didn't. I was dissuaded from doing so by the law professor who

thought that I was, to use his terms, "throwing away assets" I didn't recognize by leaving my home town. He kept telling me that I had friendships that would be of value to me in my practice that I didn't realize at the time; people from my high school class, people from my community, my family friends who would come to me as a lawyer. Well, they never did. They never did.

Most of my high school friends moved away from Detroit. They didn't stay, and family friends weren't in the sorts of business activities that required my services. In any event, he sent me to two lawyers. One was Frank Donovan, and the other was James I. McClintock, both friends of his. He said to tell them that in his view, they were both working too hard and needed more help, and I was the person to give it to them. I think he also wrote them. In any event, I made arrangements to meet with each of them. I met with each of them. They were practicing in separate law firms. To make a very long story short, each of them offered me a job. I accepted the first offer, Frank's offer, and later that day when Jim offered me a job, I had to tell him I had already accepted another position. He expressed regret, and in August, I started working for Frank. In November, I discovered that the two friends were merging their law firm, and so I ended up working for the only two people I ever asked for a job.

Mr. Lane:

Was Donovan and was McClintock...were they both sympathetic to your political activity?

Justice Souris:

Heavens, no. They were very, very rabid Republicans, and they did nothing to dissuade me except in kidding me about my political views, but they certainly didn't attempt to force me in any way.

Mr. Lane:

Now, this gets us very close to 1950, right?

Justice Souris:

Yes.

Mr. Lane:

1950 was a critical election, right?

Justice Souris:

Yes.

Mr. Lane:

Was that the big recall....I don't mean "recall", recount year, or was it two years later?

Justice Souris:

Both, 1950 and 1952, we had two consecutive elections in which we were involved in recounts.

Mr. Lane:

I want you to think back now. Was there something about this that was, and I have in mind that a lot of other references that I come across, people, lawyers (almost always).... "I helped in the recounts", and you know, I could renumerate some of these people...a lot of whom later showed up somewhere in William's administration, on the bench...

Justice Souris:

Yes, George Edwards, Horace Gilmore, any number of others, were active in the recounts, as was I.

Mr. Lane:

Was this a kind of crusading atmosphere?

Justice Souris:

Oh, indeed.

Mr. Lane:

There was a great emotional charge to this...

Justice Souris:

They were trying to steal the election from us, Roger.

Mr. Lane:

Okay, all right. And you rallied in like a hard pressed football team in the fourth quarter who was going to save its reputation.

Justice Souris:

There was a crusade.

Mr. Lane:

Okay.

Justice Souris:

It was indeed.

Mr. Lane:

That's what I was...I only began to sense this belatedly. I was aware, naturally, as one would be. The second one was a double recount, wasn't it, in 1952? Was there not a...over the individual...was there one of them that was sort of halted and then there was a second phase to it?

Justice Souris:

I don't remember that.

Mr. Lane:

Okay, there were just the two in 1950 and 1952. Was 1952 the real squeaker?

Justice Souris:

The 1,400 vote margin. That was...I say "1,400", it may have been 1,100...1,132. Harry Kelly was the opponent, and I can remember many years later serving with Harry on the Supreme Court. One day, I described to him what my role was in the recount, and he was surprised. He didn't know it, of course. I said, "Harry, I have among my mementos, a telegram that you sent to Mennen conceding defeat during the tail end of the recount". Oh, he just had to have a copy of that, so I made a copy of that for him.

Mr. Lane:

What was your role precisely? I have in mind that three years later, you were appointed to Chairman of the State Board of Canvassers.

Justice Souris:

I can't tell you that I had any particular title or anything like that, but I was very active in the recount. I devoted an enormous amount of time to it.

Mr. Lane:

Where did you function?

Justice Souris:

Right here in Detroit, and we had to be prepared to go into court, to challenge the process, that they were not going the way we wanted to go. We had to devise a tactic, an approach, a fundamental approach to the process, the recount. We had to...

Mr. Lane:

You had paper ballots in those days, didn't you.

Justice Souris:

They were all paper, virtually all paper ballots. There were only a few machine precincts. The machine precincts were almost inviolate. That is to say, once sealed, they couldn't effectively be challenged, and I always had the feeling that there were large shenanigans going on in the machine precincts.

Mr. Lane:

But now, grew out of this, among other things, grew quite a camaraderie of those young lawyers like yourself who participated and then you were to rub shoulders later in your career.

Justice Souris:

Horace Gilmore became Deputy Attorney General, and I think that Horace...remember Sid Woolner?

Mr. Lane:

Oh, yes.

Justice Souris:

Sid was very active in the recount, and Sid became Mennen's Executive Director, Executive Secretary, I think we called him at that time.

Mr. Lane:

He had been a Deputy Secretary of State for a while.

Justice Souris:

He had been, yes. At the time of my appointment to the bench, Sid and Horace were very instrumental...I think that it was they who brought my name to Mennen's attention, and...

Mr. Lane:

Let's review that. Now part of...

Justice Souris:

Let me go back. Let me go back, because after the recount...

Mr. Lane:

This was quite a dramatic appointment.

Justice Souris:

Yes.

Mr. Lane:

And did cause a lot of comment and speculation.

Justice Souris:

Let me go back, because after the recount in which, incidently, Phil Hart was active also. Phil was appointed district director of the Office of Price Stabilization. Horace Gilmore became his Chief Enforcement Officer. Sid Woolner was Deputy Director of the Office of Price Stabilization, and Phil's General Counsel was Sam Ostrow. Sam had been in the Office of Price Administration early in World War II, and so was knowledgeable about regulating prices, but Sam was, at that time, an elderly lawyer, and Phil, whom I had known politically, asked me if I would come over as Assistant General Counsel to help Sam who had agreed to take the job for only a short period of time and, upon Sam's departure, I would become General Counsel. Well, my partners thought that it was a pretty good idea to do that early in my career, to see that aspect of life, and I went. I told Phil that I would be able to stay only 18 months, 1-1/2 years...I couldn't justify staying much longer than that.

Mr. Lane:

And at what time on the calendar was this?

Justice Souris:

1951 or 1952. I had been in practice for only two years, and...

Mr. Lane:

You were about 27 or something?

Justice Souris:

Oh, no. I was...yes, 26 or 27. We had DiSalle, Mike DiSalle, Price Administrator. He was very close to Phil. He had pretty much assigned the responsibility for the automotive industry to our office in Detroit, wisely so. So much of my activity was focused upon the automobile industry, and the parts manufacturing industry, and shortly after I went on board, Sam Ostrow phased out and the question then became how to appoint me as the General Counsel with as little experience as I had. The government regulations required "x" number of years before you could be entitled to "x" dollars in salary. Well, Phil didn't think that was very fair since I was doing the work, and doing it without any criticism...not only the title but also the salary. He had great difficulty accomplishing that. It ultimately was done...for a long period of time, I functioned as Acting General Counsel, and my salary was less than the General Counsel would have been entitled to get. Ultimately, that was taken care of. It was a long struggle. In any event, I became quite close to Horace, Sid and Phil in those years, and we maintained our friendships throughout the 1950's.

Mr. Lane:

These appointments in Federal agencies flowed from the Truman administration. Was there somebody often walking in the, was instrumental in steering the...?

Justice Souris:

No, it was strictly Phil's request. He had the power to appoint...I didn't know anyone in Washington. Harold Leventhal was General Counsel at the Office of Price Stabilization and he ultimately became a member of the Court of Appeals for the District of Columbia Circuit. In any event, in 1952 or 1953, I returned to my practice, and I served Mennen in two ways. First, I was a member of the Board of Canvassers, but secondly, on a very informal basis, I reviewed potential judicial appointees.

Mr. Lane:

How did that work? Did he have just you, or was there a little committee?

Justice Souris:

There was a little committee. There were three of us at one time.

Mr. Lane:

Who were the others?

Justice Souris:

Vic Baum, Ted Sachs and I, and our function was a rather interesting one. It was simply to provide Mennen with information about professional competence. We looked at pleadings, we talking to lawyers who had contacts with the prospects, always in a very low-key basis so as not to reveal our purpose. I don't think more than a handful of people in the state knew that Mennen

was getting this sort of information from us. Ours was not a political function to perform. We could not say to him, "this is a dumb move politically. You shouldn't even be considering it". Our function was simply to give him the information that he needed to determine whether the applicant had the professional qualifications for the appointment, and for young lawyers to have that responsibility, it was quite an obligation.

Mr. Lane:

And Governor Williams took a very personal interest in these things, too, did he not?

Justice Souris:

Yes, he did.

Mr. Lane:

Vic Baum told me one time that he called his Rabbi and spoke to him for 45 minutes.

Justice Souris:

Mennen had suggested to me on more than one occasion that he wanted to appoint me to the bench, Circuit Court, and I said, "No, I wasn't ready for that". I had not very much practice. I had been a lawyer only since 1949, and I just didn't think that it was appropriate for a young person to go on the bench that early. I had a growing practice. I was enjoying my work. I didn't want to leave for bench work. I never really wanted to be a judge. Finally, in 1959, in January, 1959, I got a call from Sid who asked if I would be willing to help Mennen, that old Judge Moynihan had died in December, I believe, of 1958, and he was scheduled for retirement, and so a whole flock of candidates had filed for that spring election, among them being Judge Moynihan's son, young Joe. There were maybe a dozen candidates, and there were other judges retiring at that time, so the judicial field was a huge field of self-starters, some of whom were colleagues of Mennen, who were proteges of Mennen, and he had a choice to make. He could either appoint one of them to give that appointee a leg up on the election, or he could appoint an old-timer for whom appointment would be a capstone to a career, or he could appoint somebody like me who could not succeed himself but who would look upon this year as a year of opportunity to help the bench work off the enormous back-log that had developed on that bench. When I talked with Sid, he explained all that to me. Mennen's objective was to avoid the political morass, picking someone and forsaking all the others. He wanted to avoid having to select an old-timer, and he felt that this was a marvelous opportunity to put a young man on the bench who would help reduce the back-log. I talked to my partners, and they thought it was a great idea because I would then have an opportunity to see what it was like on the other side of the bench, and I had a whole career ahead of me as a practicing lawyer.

Mr. Lane:

Was the docket jam in Wayne County at that time critical?

Justice Souris:

Yes, yes.

Mr. Lane:

Very, very messy, bad situation.

Justice Souris:

Yes, because the average age on the bench was very high. Mennen had been appointing new members to that bench for the preceding four or five years but the average age was still high. As a matter of fact, in 1958 and 1959, there was a fair number scheduled for retirement. Bob Toms was one of them. Joe Moynihan was another. Ferguson was another. In any event, and there were only eighteen on the bench then, you see. It wasn't until some years later when the bench started being enlarged and ultimately grew to the size it is today. But, I went on that bench asking the assignment clerk to give me as many trials, as many jury trials as he could assign to me. I didn't want to take equity cases over which I would have a continuing responsibility because I knew I wasn't going to be there more than that one year, but jury trials, I could try until, you know, I dropped from exhaustion. On occasion, I was actually trying two jury cases at one time. I would be drawing a jury while a preceding jury was deliberating on a trial. I thoroughly enjoyed that year, but it was perfectly clear to me at the end of the year that I would never want to be a Circuit Judge. It was exciting, stimulating, but at the end of the year, I began seeing the same questions I had at the beginning of the year, and there was so much repetition in the work that the Circuit bench was doing. It never really appealed to me.

Mr. Lane:

You apparently invested great energy and zeal in this assigned role. Was this shared by some of your colleagues, or were a lot of...?

Justice Souris:

I'd say half of them were drones. The William's judges were all young, bright-eyed, bushy-tailed. They were still very much interested in their work. They were good judges. It was like a breath of fresh air, and I shared...my appointment was on the 19th floor, and on...

Mr. Lane:

City County Building.

Justice Souris:

City County Building on the 19th floor with George Bowles. He and I shared a bathroom together, and we spent quite a bit of time together. George was a superb judge, absolutely superb judge. Horace was on the bench, Circuit bench at that time. Wade McCree was on the bench. Ted Bohn was on the bench.

Mr. Lane:

Baum, I think...

Justice Souris:

Yes, Vic had gone on to...yes, Vic was on the bench. Joe Rashid was on the bench. These were all people for whom I had a high regard and they were all very helpful to a young judge, a new judge and all of that.

Mr. Lane:

During this period, did you have any intimation that come the end of the year, you would be asked to serve on the Supreme Court bench?

Justice Souris:

No, no. Not at all. As a matter of fact...

Mr. Lane:

It was known, was it not, that Voelker was bailing out?

Justice Souris:

No, it wasn't known at all. John ran in the spring of 1959 for election to the bench, and he won, and everybody assumed that he was going to continue, that he was going to begin that term.

Mr. Lane:

Really?

Justice Souris:

Absolutely. As a matter of fact, I had...my partners and I had agreed that I would return to the firm and that I would invite to join me Bob Toms, the Circuit Judge Bob Toms for whom I had enormous respect. He was retiring at the age of 70, but he had to. He was physically and intellectually just as vigorous as he was when he was 40, and I loved that man. I invited him to join us. He said yes, he would. He was surprised that anyone would want him, but we planned on going back to the bench, to the firm, rather, together, on January 1, 1960.

Mr. Lane:

And you had you...as I understand it, the firm changed its name and there were announcements printed up and that sort of thing.

Justice Souris:

Yes.

Mr. Lane:

When...do you remember precisely when you got the first word?

Justice Souris:

No, I don't remember the date, but it was on a Wednesday, and I found that on Wednesday, just before the end of the year, the firm's announcements went out for delivery after the first of the year. The call I got...the first call I got was again from Sid Woolner, supported by a call from Horace Gilmore, who was on the Wayne Circuit at that time.

Mr. Lane:

He knew what was up?

Justice Souris:

Yes, and they wanted me to consider becoming Attorney General, as the governor was considering appointing Paul Adams, who was Attorney General, to the Supreme Court upon John's resignation. John resigned or announced his resignation in December, 1959. Now, once again, my partners thought going on the Administrative Board as Attorney General was a great idea because it would give me enormous exposure, wonderful opportunity to meet people, marvelous experience and clearly, I would never be elected to it, and therefore, I would be back in practice within the year. I had served as a Circuit Judge for a year and would serve as Attorney General for a year, so I said yes, I would be delighted. I viewed the Attorney Generalship as the most important office for a lawyer to have in this state, a marvelous opportunity.

Mr. Lane:

Let me make sure I am hearing you correctly. Was this what the word was that came Wednesday from Sid Woolner?

Justice Souris:

Yes.

Mr. Lane:

Attorney General?

Justice Souris:

Yes.

Mr. Lane:

Okay. This would have been two or three days before the end of the year, right?

Justice Souris:

I think we would have been maybe two days before the end of the year. I say "Wednesday". I am almost certain it was a Wednesday. In any event, on Thursday, the next day, I had a call from someone, I think it was Sid, who asked if I could meet with Mennen that evening around 6:00, that he would send a car for me, and we would meet at the country club.

Mr. Lane:

This was in Grosse Pointe or somewhere?

Justice Souris:

Yes, and I said "sure". I had a call...

Mr. Lane:

Were you in your office at the City County Building?

Justice Souris:

No, I was in my office, and when I got home just before 6:00, I got a call from Al Kaufman from the Detroit Times and Al, who was an old friend of mine, said that he wanted to confirm a rumor that Vic Baum was going to be appointed to the Supreme Court, and I said, "Al, please don't

print that. It will be a source of great embarrassment to you and to Vic because that isn't the way it is going to happen. I can't tell you what is going to happen, but that isn't what is going to happen". Well, Al, to this day, I'm sure, thinks that I knew I was going to be appointed. All I knew was that Paul Adams was going to go on the Supreme Court. When I got to the country club and met with Mennen, he told me that he had decided, instead, to appoint me to the Supreme Court. I said, "You can't do that. I'm too young". We chatted for two or three hours, and he kept telling me that I wasn't too young, that I had more experience as a lawyer than most of the incumbent justices and of course, knowing most of them, I knew he was right. He said that he had no concern about my electability. One of the things he said to me was that my name was short, it was unusual and people would remember it. They might not be able to remember it specifically, but they would remember that it was an odd name, and he thought that my chances of election were pretty good. He said to me that he was appointing me because of my age, because I was then, I think...30.

Mr. Lane:

33.

Justice Souris:

33, that I would have a lifetime to devote to the Supreme Court. I said I wasn't really prepared to make that kind of commitment. He said, "Well, you will be". And we talked about judicial philosophy in a very obtuse way. It was a philosophical discussion, and I was absolutely astonished at the breadth of this man's knowledge of legal principles and of the judicial process, and of the respective roles of the three branches of government. I must say, as an aside, I think he found it much more difficult as a member of the court ultimately to acknowledge the separate roles the three branches are to perform that he was able to articulate in our meeting. I say that without any disrespect for him, but that was a very enlightening discussion with him, and the intrigue for me was not so much sitting as a member of the Supreme Court but, rather, working with colleagues like Talbot Smith and George Edwards for both of whom I had an enormous respect, both of whom were my friends. Working with Gene Black whom I knew and admired, but not as a friend. John Voelker I had campaigned for. I had helped elect, so I knew him, but again, not as a friend. George and Talbot I regarded as giants, assumed it would be a great experience, great fun to work with them, so I said yes. Again, I didn't expect to be elected.

Mr. Lane:

What were the mechanics of having (unclear) when you're at the country club at 9:00 or 10:00 at night? What then was done? Did the Governor call up Paul or...do you remember how the word was disseminated?

Justice Souris:

I don't. He obviously worked through Paul Weber to get the word out, and I frankly...remember the surprise of the legal community and political community. You know, I was nobody. I had no following. I had no recognition in the state, excepting only among lawyers, a fairly large number of lawyers in Michigan with whom I had worked as a lawyer.

Mr. Lane:

Putting it in the reverse (unclear), did he call for any explanation of why, having once sided in favor of Adams that he...?

Justice Souris:

Never discussed the issue with him. He never told me. I never asked.

Mr. Lane:

He was called upon to explain publicly.

Justice Souris:

When?

Mr. Lane:

He did offer some little bit of explanation.

Justice Souris:

When was that?

Mr. Lane:

Right after.

Justice Souris:

At the time of my appointment?

Mr. Lane:

Yes, I could show you some clips I have here if you're interested.

Justice Souris:

No, what did he say?

Mr. Lane:

Well, what he said was kind of odd. He said when he was pressed, conceding apparently he had sorted out somewhat that this was likely to happen, that Adams was likely to be appointed. He was a logical choice, prominent in the upper peninsula, Attorney General and all the rest...

Justice Souris:

Succeeding an upper peninsula Justice.

Mr. Lane:

Right. All this made political sense to a lot of people, and he had other predictions. (Unclear), and so Williams was asked how come?

var item = 'sour020.mp3'; document.write ('[Listen to this segment \[20\]](#)')

Justice Souris:

This young fellow, why were you appointing him, an unknown?

Mr. Lane:

"How did you happen to pick this guy over this other fella that we all knew was in line for the job?" Now, this is the reporter's way of putting it, and he said, "Ordinarily, as a matter of policy, I don't discuss how I make these choices, but in this case, there seems to be a justification for saying something, and I will have a brief explanation and it is that Paul Adams is needed where he is as Attorney General, and there is a lot of thinking...I guess he said in the party. I guess he said that he should be kept where he is, and he did not then, though,...I think the issue was raised about his opposition as Attorney General to Scholle, and Gus was asked about this.

Justice Souris:

That hadn't yet...that hadn't...

Mr. Lane:

This was in the legislative reapportionment suit...

Justice Souris:

Yes, I guess it had. It must have started by that time.

Mr. Lane:

Gus said that he had never discussed the matter with the Governor. He knew that Adams respected (unclear). Being on the other side, he...

Justice Souris:

He represented the Secretary of State.

Mr. Lane:

Well, I guess he must have...this part of it wasn't explained, but I guess the inference was that he didn't find it hard to take that position, but at any rate, I'm just supplying that from my own mind. It was not talked about in these news clippings that I am referring to. At any rate, it was a shocker, wasn't it?

Justice Souris:

It was, indeed.

Mr. Lane:

Your colleagues must have thought so?

Justice Souris:

I suppose. I remember the Detroit Times published the firm's announcement, an engraved announcement...published it, the whole thing and told the story of the surprise ending of my being appointed to the bench quite unexpectedly and about Toms' taking over the office that had been prepared for me.

Mr. Lane:

Well, this was quite a dramatic...see, one of the reasons that I wanted to hear about this was it was quite a ...whatever significance is put on the event, it certainly was striking.

Justice Souris:

One of the most striking from my perspective was that I was the first Greek appointed to a state Supreme Court in the history of this country.

Mr. Lane:

Is that right?

Justice Souris:

And to my knowledge, none other has been since then, but to the Greek community...I shouldn't say it that way, to the...is there an ethnic community?

Mr. Lane:

Well, sure.

Justice Souris:

It was a great appointment.

Mr. Lane:

The Democratic Party in those times, very assiduously cultivated that. You remember this, I'm sure.

Justice Souris:

Indeed I do, because everywhere I went thereafter, I was embraced by members of all sorts of ethnic communities who viewed my appointment as a clear signal that what happened to me could happen to their people, to their boys, you know, and there was just a marvelous, marvelous base from which I could campaign, and did.

Mr. Lane:

So here was December 30th or whatever the date might have been and then three or four days later, you were in Lansing, taking your oath. Is that correct?

Justice Souris:

That's right, and the first case argued was the case of Stolicke versus Board of Canvassers.

Mr. Lane:

Did you have to disqualify yourself?

Justice Souris:

Oh, yes.

Mr. Lane:

What was that case? I don't...

Justice Souris:

That case...it had to do with the election process. It had to do with apportionment, and it was brought out of Port Huron by Peter Bradt who was Gene Black's law partner before Gene went on the bench. The complaint was pure Gene Black's. Now, before I was sworn in, Gene and I were assigned the same office in Lansing. You know what I mean, in the Capital Building.

Mr. Lane:

You mean adjoining offices?

Justice Souris:

No, we had a single office. We had two desks in the office, and we worked together.

Mr. Lane:

Well...holy Moses.

Justice Souris:

Well, remember, we didn't work regularly in Lansing. We used that office only when we were in Lansing hearing cases. But, before I was sworn in, Gene gave me a 56 page opinion, or maybe it was 65 pages. It was on the Stolicker case. They were scheduled for arguments the following day, and he said he would appreciate my reviewing the opinion that night and letting him know the following morning whether I could join him. I said, "Gene, you must be out of your mind. I was a member of the Board of State Canvassers. How can I participate as a Justice". Well, he says, "That doesn't matter".

Mr. Lane:

Do you remember Joe Mihelich?

Justice Souris:

Yes, very well.

(end of side 2, tape 1)

Topic 3: Justice Souris talks briefly about being on the Canvassing Board in 1956 and its relation to his first Supreme Court case and then discusses his first weeks on the Court and changes he instituted in regards to acquiring copies of briefs and creating "Window Reports." He also discusses statistical analyses of the Court's work and then returns to the discussion about his first case, Stolicker vs. Board of Canvassers

Mr. Lane:

Returning for a minute.

Justice Souris:

Where did you come from?

Mr. Lane:

I had come from Minneapolis, but my long experience had been in Illinois. I had been in Minneapolis only a short time, but Illinois was where I cut my political teeth, if you would say such a thing about a reporter, where I got all my questions. In fact, Dick Daley was a senator in Illinois when I first, a state senator, and then later, he was Revenue Director, but when it came to this five vote controversy.

Justice Souris:

You mean Mihelich and O'Hara in the Democratic Party, right?

Mr. Lane:

In the spring...that would be what, August, somewhere in there, of 1956.

Justice Souris:

Was it in 1956?

Mr. Lane:

Yes, and the matter came to the Canvassing Board.

Justice Souris:

I think I was chairman.

Mr. Lane:

You were chairman, and you served with Zoe Burkholz.

Justice Souris:

That's right, Zoe Shaefer Burkholz.

Mr. Lane:

Esther Waite.

Justice Souris:

Esther Waite.

Mr. Lane:

And there was a fella by the name of Schneider.

Justice Souris:

Schneider, Paul Schneider from the upper peninsula.

Mr. Lane:

And what you four people did in that three days or so, as I remember, in Lansing. You had Ted Sachs and you had a fella by the name of Foley representing O'Hara.

Justice Souris:

Yes, Pat Foley.

Mr. Lane:

Pat Foley, and he did an able piece of work and so did Ted Sachs, and here were the four people there with a search light on you. The AFL-CIO had a very key interest in this.

Justice Souris:

In Mihelich.

Mr. Lane:

You bettcha, and here was Ted Sachs carrying the water for him legally, and you finished up late one...I think it was the third day of this thing and it was, let's say, 11:30 p.m. or 12:00 a.m. at night, over in one of the rooms of the capitol and everybody decided that the thing was washed up and as a result, the count stands. There were just five votes, and you had gone through these paper ballots meticulously, and decided whether if the line crossed the box when you pulled it out on the other side, and that sort of knew whether this was something that was defective, you know. And you made the innumerable decisions, on the spot. You see, I, at the time, wasn't as much aware as I am now of what role you had played in the recounts. Maybe Esther Waite had (unclear), but this made a very...

Justice Souris:

I think Zoe Schaefer had (unclear) on the other side.

Mr. Lane:

This made a very profound impression to me which isn't much of a point here, but it showed me as an outsider, how things were. I didn't know whether this was typical or not. I can remember arguing with Albie Kaufman about the road contractors and the liquor licenses and Albie said, "You've got it wrong". But, let's see. We're getting back to...this is 1956. Let's get back to...

Justice Souris:

1960, in January. January 4, 1960.

Mr. Lane:

Gene Black and you in one barren room on the third floor of the capitol. I suppose you probably had a common secretary, did you not?

Justice Souris:

No, as a matter of fact, we didn't. His secretary was Eleanor, and my secretary was Delores.

Mr. Lane:
Eleanor Cowan?

Justice Souris:
Eleanor Cowan. Eleanor worked for Gene as a private lawyer. I guessed she worked for him when he was in the Attorney General's office, and she worked for him while he was on the Supreme Court. She ultimately retired. She was an absolutely superb secretary. I had also an absolutely superb secretary by the name of Delores Sienkiewicz who worked for me in my law firm and in the court with me when I was appointed to the Supreme Court. When I left the court, she stayed on and ultimately went to work for Jerry Bronson on the Court of Appeals.

Mr. Lane:
Spell her name, if you can.

Justice Souris:
Sienkiewicz.

Mr. Lane:
See somebody might sometime transcribe this, and that would be a tough one.

Justice Souris:
I believe that is the spelling, and Delores, after Bronson, became secretary for Phil Jourdan in the Wayne Circuit when he was appointed by Governor Blanchard.

Mr. Lane:
Let's go back, if I may interrupt, to your entry on the seat. Here, you were appointed to the Supreme Court. You must have checked in on January 2, 3, or 4th, whatever it was and it was probably on the second floor?

Justice Souris:
No, I think that what happened was that when I was told I'd be appointed, I guess the announcement was made, and I called the Chief Justice who was at that time John Dethmers. I called Dethmers...maybe he called me, but in any event, I asked him if he would be good enough to send me a set of the briefs and records, and he said, "Oh, you mean those that are going to be assigned to you?", and I said, "No, I want the briefs and records of all of the cases." "Oh", he said, "We don't do that." And I said, "Well, if I'm going to be participating, I think I have an obligation to read what the lawyers..." Well, the short of it was, he had a stack of briefs and records sent to me of the cases that were being argued that first week in January. We were hearing cases two weeks at a time then, but he sent me just the first week. I went through those records over the New Year holiday which was a relatively short period of time. As a consequence of my asking for all of the records and briefs in all of the cases, it became apparent to other members of the court that I was doing this and getting them, and they began asking for the same thing, and before long, all of the members of the court were getting all of the briefs and all of the records. I was appalled to learn that they weren't available to everybody before then.

Mr. Lane:

Do you know if prior to that time, another court, and the members of the court, new members, came in, picked their places...was there, in fact, just one set of records of the case to be considered, and was there just one or two or three copies of the briefs? What was the...this was before the days of mass, automatic copying, of course.

Justice Souris:

No...

Mr. Lane:

You had the "window matter" tradition. The motions, for example, but was there some physical limitation that this had always been there and they just said, "Well, one set is enough" or would there be enough of the briefs for each one of the members of the court?

Justice Souris:

There were enough briefs for all members of the court. All members of the court didn't get the briefs excepting only in those cases which they were expected to write.

Mr. Lane:

Was this a matter of routine?

Justice Souris:

Oh yes, absolutely, and the extra copies of the briefs would simply languish in the clerk's office, and ultimately would be thrown away.

Mr. Lane:

The rules then required that there would be eight copies or?

Justice Souris:

I think the rules then required nine copies, or whatever the total copies, but "window matters" were handled the same way. "Window matters", we as lawyers had to furnish extra copies for distribution to the justices, but they never saw them.

Mr. Lane:

Where did they come to rest?

Justice Souris:

In the clerk's office. The clerk would assign the "window matters" on a rotating basis for the justices, and only the original would be assigned out, and the justice to whom it was assigned would make an oral report to the bench, an oral report. I got into a rather tense confrontation with Justice Carr who was then the dean of the bench one day when he made an oral report on a "window matter", an application for leave to appeal, and I had reviewed that application on my own. I had been asking for copies of the applications, and had been getting them, and I made the

mistake of saying in the conference, "Justice Carr, I think you might have overlooked the fact that..., as revealed by the record". He withered me, his stare, silent for a moment, and then advised me that he never overlooked any material, and proceeded with his report. Well, I dissented from the recommendation. Subsequently, I shared the information with other members of the court with whom I was communicating effectively. We decided that we would ask for copies of the "window matters", all of them, and that we would divide the "window matters" among us. At that time, Gene...Gene Black, Tom Kavanagh, George Edwards and Talbot Smith and I, the five of us, did just that. We would prepare written reports on those "window matters" even if they weren't assigned to us, so all five of us, at least, had the benefit of a report on the "window matters". We all had underlying documents. We were in a much better position to make intelligent decisions on those applications than we ever had been before.

Mr. Lane:

This had not been done prior to January, 1960?

Justice Souris:

No, that's right.

Mr. Lane:

What did you call the reports? Did you call them "reports".

Justice Souris:

"Window matters".

Mr. Lane:

Did somebody...say Carr had walked in and said, "I understand that you are discussing this matter with other people. Can I see a copy of the report?"

Justice Souris:

We had no difficulty sharing the reports with others if they wanted.

Mr. Lane:

Did, at this time, become instituted a process, if you know what I'm trying to get at...

Justice Souris:

Ultimately.

Mr. Lane:

...that, where there was a defined title for something that was not in the process, and I'm just wondering if, at that time, you called it "Commissioner's Report", or "Justice's Report".

Justice Souris:

No, no. We called them "Window Reports". We did that, Roger, for maybe three or four years. It

wasn't until 1964 or 1965 when we appointed our first commissioner. We did it ourselves. We extended the practice to cases as well. I would...

Mr. Lane:

Was this quite early on in your career?

Justice Souris:

Right away, and I couldn't function without preparing for the hearings in a organized fashion. I couldn't simply read as if I were reading a trashy novel. I had to systematize the process of judgment. What I did for myself, I shared with others. They, in turn, began sharing with me. We ultimately were able to persuade all members of the court with the exception of Leland Carr...I don't think Leland Carr ever prepared a written report on the "window matters", but the rest of us did, and we circulated them. So you had an opportunity in advance of the hearing to know what the recommendation was going to be and why, and you had an opportunity to send a counter-report, and that's what we called them - "a counter-report", to the other justices saying, "I disagree with Justice Lane's recommendation in 'window matter' so-and-so, and these are my reasons".

Mr. Lane:

Was this systemized in a sense that it was provided that the clerk would make the distribution, it would be so many days in advance of the conference?

Justice Souris:

Sure, absolutely.

Mr. Lane:

But this all began...

Justice Souris:

After I got to the court. Now, the other thing that happened was that when we appointed our first Commissioner, who was Joe Planck, a marvelous choice, because he was a skilled trial lawyer, an experienced man of mature years who had super judgment, and who was losing his hearing, and it was for that reason he felt he could not justify appearing in court any longer on behalf of his clients because he couldn't hear everything. This was a marvelous opportunity for him to finish his career in a position of high respect and responsibility. He helped the court.

Mr. Lane:

In those days, a loss of hearing was...

Justice Souris:

Devastating...

Mr. Lane:

...for a practicing lawyer.

Justice Souris:
Absolutely.

Mr. Lane:
There were none of the modern devices that you could function with.

Justice Souris:
In any event, when he came aboard, he simply took over the responsibilities that we were performing ourselves, each of us as justices, and he prepared the written reports for circulation to everybody, and then we responded to Commissioner Planck's reports, either agreeing or disagreeing.

Mr. Lane:
He originated this...

Justice Souris:
Yes.

Mr. Lane:
...the analytical work.

Justice Souris:
Yes, but we all had the underlying documents, and we were all able to test the validity of his recommendations by reference to the underlying documents. If we disagreed with him, we had a factual basis for disagreement.

Mr. Lane:
Of course, the entire record would not be distributed, would it, at that stage?

Justice Souris:
No, only the documents that would accompany the application for leave to appeal, or the other emergency applications that the court was hearing. Then Howard Ellis came along as our second Commissioner. He, too, was a lawyer of mature years who had practiced in Detroit, who had an extensive trial experience, and he knew what he was talking about when he made a recommendation.

Mr. Lane:
When did these men get into the process? Do you remember which year, and do you remember how they were chosen? Who it was, for example, who said, "I think we ought to get Planck"?

Justice Souris:
I think that it was Gene Black and John Dethmers who brought Planck to the court's attention. Gene knew Joe Planck as a trial lawyer. John Dethmers was a good friend of Joe Planck's. Gene

would normally have been antagonistic to a Joe Planck because Joe had been president of the State Bar of Michigan, and Gene had very little respect for the organized bar as an organization, but he respected Joe's wisdom, his experience. I didn't know Joe, other than the fact that I had run into him as a president of the State Bar, but I came to rely on Joe very much. I came to like him very much. He was a man of impeccable integrity, a man who worried about his work, who felt obliged to give everything he had to the task of helping the court, and then Howard Ellis came along. Howard was recommended to the court by Harry Kelly, and...

Mr. Lane:

Do you recall years for this?

Justice Souris:

No, I don't. It was after 1965.

Mr. Lane:

After 1965.

Justice Souris:

Yes. It was either in 1965 or thereafter.

Mr. Lane:

I see, four or five years that you were functioning in the process that you had described having originated...

Justice Souris:

Oh, yes. All alone with one law clerk.

Mr. Lane:

Wasn't there (unclear).

Justice Souris:

It was absolutely incredible. When I look back on the statistical record of the court in those days, I am very much amused by the current statistics, and references to the work load of the court as being overwhelming. In those days, Roger, looking only at the cases that ultimately ended in full-blown opinions and decisions, over 300 a year. We didn't have a Court of Appeals, remember. The first four years in my...the first five years, really, in my service on the Court, we had no Court of Appeals, no intermediate Court of Appeals. We did it all, and it was not a unique year, if I wrote as many as 60 opinions in a year. Gene Black and I, I think, wrote more opinions than any of the others on the court consistently.

Mr. Lane:

Do you know if your product, let's call it...I'm thinking now of written opinions...do you have any reason to know whether (unclear) the greatest, the biggest of any of the persons that served on the court?

Justice Souris:

During the time I served, yes, it was.

Mr. Lane:

Did you ever take the trouble to analyze this out?

Justice Souris:

Well, I did. I had Frank Knox, my law clerk, do an analysis of my cases.

Mr. Lane:

Frank Knox?

Justice Souris:

Oh, yes. (unclear)

Mr. Lane:

Oh, did he? I was going to ask if you did this, and you weren't...I would like to ask you if it is not too voluminous for the historical purpose that brings me here, to...

Justice Souris:

Let me just say a word on that. I have turned over all of Talbot Smith's papers to the Historical Collection in Ann Arbor. Before he died, Talbot had asked me to review his papers and to put them in the hands of the Historical Collection. I plan to do the same thing with my papers and with them will go this analysis that I am referring to.

Mr. Lane:

I see.

Justice Souris:

It simply shows how many cases each of us wrote, how many we dissented in, how many we wrote for the court, what the decisions were. I have an analysis of cases by subject matter as well. (unclear) I had hoped we would be able to use it as a (unclear), a reference, a quick way of getting into my work for the time I was there. I never found much occasion to do it, but it's interesting to me, and I thought that my children would be interested some day.

Mr. Lane:

Well, I get the sense that in other places...now, let's say, California had a lot of turmoil out there. In, I think it was the June issue of the California Bar, the Bar Association publication, was a very analytical, systematically handled article about the performance of the Supreme Court in the preceding year that went into the output of the various justices by name, the numbers of dissents, and how they swung together on certain issues.

Justice Souris:

We used to do that here in Michigan. The Wayne University Law School Law Review published every year a statistical analysis of the distribution of votes in the Michigan Supreme Court, and it began doing that for the Court of Appeals, for the first couple of years of the Court of Appeals, and then it suddenly stopped doing it.

Mr. Lane:

Did it also stop for the Supreme Court?

Justice Souris:

Yes. I don't know why, but I haven't seen it in years. Jerry Kelman's brother, Maurice, who was then and may still be a faculty member of Wayne's Law School, has done some work on the statistical analysis of the Court's work, and he is a very sensitive, very able observer of the Supreme Court. Now, someone else has done extensive work along those lines. He is a political scientist from Michigan State. His name escapes me at the moment, but he is well-known and highly regarded. I don't regard him too highly.

Mr. Lane:

You don't mean the Supreme Court of the United States?

Justice Souris:

Yea.

Mr. Lane:

Oh, I know him.

Justice Souris:

He has analyzed not only the U.S. Supreme Court, but many years ago, he undertook to explain the decisions of the Michigan Supreme Court for a period just prior to my going there in a way which I thought, frankly, was intellectually dishonest. He characterized the Court's decisions as purely political, showing a division between Democrats and Republicans on the Court, and in order to accomplish that, he had to classify some Democrats as old line Democrats and some Democrats as liberals in order to justify the conclusion he reached, and I just felt that it was a perversion of the use of statistics.

Mr. Lane:

(unclear) I asked Otis Smith for somewhat the same as to his product on the court, and he said, "Well, when I ran in 1966, he was together, and yet he didn't give me much hope that I was ever going to see it", because, I think, he just didn't know where...you know, he moved a couple of times. Then I called his law clerk, his former law clerk, Mike Stafford, and I asked him if he could help me. Well, he was very obliging over the phone, but I don't even know whether to expect...would he have had reason to keep that sort of thing. That's part of the tragedy of this whole business.

Justice Souris:

I do have the material. I have it right here.

Mr. Lane:

You know...oh, do you? I had occasion to write Mary Coleman, trying to set up a date, and she reacted in sort of quasi-alarm. She said, "I have given all my stuff away, to the Law Library and so on", and so now, I'm trying to get together a few limited things to jog our memories.

Justice Souris:

I have all sorts of materials that...you know, I have speech materials, and research stuff that I've collected. The Talbot Smith papers...incidentally, the Historical Collection is now part of the Bentley Historical Library.

Mr. Lane:

Is there a Bentley and Burton, two different ones?

Justice Souris:

I don't think so. His papers will be closed until the death of the last surviving member of the court on which he served, that is to say, George Edwards and John Voelker, Gene now having died. I didn't think that it would be...prudent to let those papers see the light of day until then.

Mr. Lane:

Let me say this. I would like to ask you if you would consider, when you had more time, to rifle through some of these things that you have, and give me, if you feel that you're able to do it, some of the kinds of statistical material that wouldn't compromise anybody or that you feel free to associate with the...

(break in tape)

Mr. Lane:

I turned it off thinking that you were going to need a while looking at this.

Justice Souris:

I asked Hal Hoag to bring together for me a chronology of the court's membership showing who replaced whom, when, and for how long they served, and he prepared a list showing succession of justices to the Michigan Supreme Court. For example, I succeeded John Voelker. John Voelker replaced Emerson Boyles, Boyles replaced William Potter and Potter replaced John Bird.

Mr. Lane:

It goes way back.

Justice Souris:

Yes.

Mr. Lane:

How far back does it go?

Justice Souris:

1910, and...

Mr. Lane:

That was when the court went to eight members, was it, in 1918?

Justice Souris:

Yes. Here is some material that I think Maurice Kelman prepared. I am almost certain of it, showing the statistical analysis of the court's work.

Mr. Lane:

Anything that you feel that you give to me, I would be pleased to copy them...

Justice Souris:

Here is...Gene Black wrote more opinions than any of us. He had 370 opinions during the years 1960 through 1967. I didn't complete 1968's calculation. He had 370. I had 337 opinions. The next highest was John Dethmers with 238. That surprises me. Harry Kelly with 234. That surprises me, but this is an analysis that might be of some interest to you.

Mr. Lane:

Well, I think that...I'm just trying to project what might be analytical materials to somebody...some day, there is going to be, I assume, a good history of the Michigan Supreme Court.

Justice Souris:

Well, I...yes, here is some material from Maurice Kelman. Why don't I do this? This is the statistical material.

Mr. Lane:

This is from Maurice Kelman?

Justice Souris:

Yes. I'll give you a copy of his letter which accompanied it, and it explains the methodology.

Mr. Lane:

When would this have been?

Justice Souris:

1963. June 19, 1963. Here is some material from Otis Smith. This was the material he was talking about.

(break in tape)

Mr. Lane:

Here we are back again to Stolicker.

Justice Souris:

Stolicker. Gene was disappointed when I told him I could not join in the opinion. All I knew was that I had been a member of the Board of State Canvassers. He didn't quite see it that way. I didn't know at the time his role in preparing the pleadings for that case, but I'm absolutely convinced that he had a heavy hand in doing so, because when I ultimately looked at the pleadings, they were typical Gene Black material. He used words like weapons, and he had a tremendous capacity for expressing himself very forcefully in measured tones. Nobody could mistake, however, the force behind the words he used. I had a great admiration for his skill as a writer. I had a great admiration for the man, but there was a measure of instability, emotional instability that prevented him from achieving the kind of control of the court that should have been his to command. He had the broadest practice of any member of the court. He had the longest experience as a trial lawyer of any member of the court including Harry Kelly, and he had the broadest...I was about to say the broadest vision, but he really didn't. I think that Talbot Smith certainly had a broader vision of the role of the court in modern society, but I once said to Gene, "If you didn't live to hate, this would be called the 'Black Court'". His response was something of a smile that signified that I had come pretty close to the truth. He was known to hate. There was never any relationship that I know of, in his experience that I know about that didn't involve hatred for someone or something. It was a very great talent the man had.

Mr. Lane:

Did you remember hearing anything that supplied an explanation, a personal explanation for this?

Justice Souris:

I once asked him why he found it so necessary to vent his spleen, and the only thing he said to me was "If, throughout your life, your friends thwarted you, you'd understand me a little better. When I played guard or tackle on a semi-pro team, the only time I ever got the ball and was able to run for a touchdown, one of my teammates tackled me." It's a strange thing for a man like him to say to me. But I think, as I look back on his experience as Attorney General, as a Circuit Judge, as a Justice of the Supreme Court, and through the various changes on the court, he would establish a relationship, and then it would terminate. He would establish another relationship, and then it would terminate. There was never a prolonged and lasting relationship except with John Voelker, but John served only two years, and I would have expected that relationship to deteriorate too.

In any event, when I told him that I would not join him in the opinion, and I reiterated that advice to him the following day before taking my oath, as soon as I had taken my seat, the first case announced was the Stolicker case. I recused myself, went into chambers. When I returned to the bench after that case had been argued, George Edwards who was sitting next to me, if I recall correctly, leaned over and said, "Have you heard what happened", and I said, "No, what happened?" Well, by that time, the next case was being called, and I could not find out. All I knew was that something had happened, and I could sense it in the courtroom.

At the first recess, I was told that after the arguments, the courtroom was filled with reporters. Members of the Court felt that was unusual, not that there were reporters present, but that there were so many present. After the case was argued, he (Black) announced from the bench that he had his opinion in the case which he had filed with the clerk with sufficient copies for distribution to the press. Well, mind you, this was an announcement of an opinion being filed in a case, obviously prepared before oral arguments and long before the members of the court had an opportunity to consider, to deliberate and to decide the ultimate outcome of the case.

At the conference at the finish of that day, I waited for someone to make a motion to strike the opinion from the files of the court, and no one did, and none the second day and then the third day. On Thursday of that week, obviously nobody was going to make a move. I was new to the court. I didn't particularly...I wasn't afraid of antagonizing anyone. I wasn't looking for a fight, but it seemed to me to be quite outrageous that that sort of thing could happen.

Mr. Lane:
Who had signed the opinion?

Justice Souris:
No one, only he. Only he. It was just his opinion.

Mr. Lane:
What...filed with the clerk?

Justice Souris:
Filed with the clerk.

Mr. Lane:
What was it supposed to represent?

Justice Souris:
His opinion.

Mr. Lane:
The decision of the court?

Justice Souris:
No, just his opinion, and as I recall it, he had sent the opinion around to the justices with a memo saying, "This is what I plan to write and file. I'm giving it to you in advance of the arguments so that you will all have the opportunity to take your best hold and write against me". Something inflammatory like that.

In any event, I made the motion to strike the opinion from the files, the records of the court,

based solely upon the fact that it was precipitous. It was filed before the court had an opportunity to consider it, and obviously written before the...I thought it was an affront to the court, and the motion carried. As I recall it, Tom M. Kavanagh and Harry Kelly were the only ones who voted with Gene against the motion. Dethmers and Carr joined the rest of us. An opinion was written for the court. Talbot undertook to write, and my recollection is that Talbot wrote an opinion that became the opinion of the court. Gene did not re-file his opinion, so that lengthy opinion that I'm talking about never was published. I've got a copy of it and others have copies of it, I'm sure, but it was just a scandalous thing.

That was my introduction to the court. My introduction to Gene Black and the genesis of the antagonism that was evident during the entire time I was on the court. There were periods of time when he and I got along just fine. As a matter of fact, in our personal relationship, we were quite friendly. I had decided very early in my relationship with Gene that the only way to deal with him was to stand up to him. To slug it out with him toe to toe. He was a bully, and that he would bully me unless I established that capacity early on, and so while I wasn't spoiling for a fight, I wasn't going to run away from one either. We got along just fine. He would...we would be engaged in intellectual combat, and he would stop talking. He would pack his bags and leave for Port Huron predictably. Within 48 hours or 72 hours, there would be a diatribe in the mail in the form of an opinion or a supplement to his opinion or an addendum, or at times, a complete revision, but it was fascinating to watch this. I could predict it, tell exactly when it was going to happen. What a pity. What a waste of talent.

Mr. Lane:

How do you explain the background...he had to have known that you were a member of the Board of Canvassers, Chairman, a party to the case? Was it not de rigueur in procedure at that time to withdraw oneself when you were...?

(end of side 1, tape 2)

Topic 4: Justice Souris discusses his beginnings on the Michigan Supreme Court and the relationships among the members of the court. He also talks about court process, writing court opinions, a case involving the UAW, and running for election. He begins discussing court reform, the case of Parker vs. Port Huron, and the Colacasides case concerning the one-man grand jury law

Mr. Lane:

When you were in that position, I thought that it was absolutely a rigid practice on an Appellate Bench, particularly...

Justice Souris:

Anybody.

Mr. Lane:

Well, the canons called for this, my goodness. Do you think that he was trying to overpower you? He must have known. If this were...

Justice Souris:

I'm not sure he did initially, Roger, but he persisted in his insistence that I could sit and nobody would raise the question.

Mr. Lane:

Oh, I see.

Justice Souris:

See, the suit was in the name of the Board of State Canvassers. As I recall it, we weren't named individually, but it was a suit against the Board, and it's entirely conceivable that he wasn't aware that I was a member of the Board or it had slipped his mind, but ultimately, he knew it because I told him, and even in the face of that knowledge, he insisted that I could sit which was manifest nonsense.

Mr. Lane:

Well now, in your early period on the court, the two of you shared this office. Was your relationship such that you could tactfully prepare and converse on the telephone...

Justice Souris:

Surely. There were no secrets, but.

Mr. Lane:

What was Talbot Smith's opinions...

Justice Souris:

Obviously, in those circumstances...as a matter of fact, that rarely happened, because when we were in Lansing sharing offices, we were generally either on the bench or in the conference room with the other justices. We used the office only as a convenience. His secretary and my secretary worked there during the day and occasionally, I would work during the evening. Occasionally, he would work during the evening, but I generally stayed with Talbot. Talbot and I would go out to the Kellogg Center where we would spend the night. We didn't want to go to the hotels because of legislators and lobbyists and unsavory types like newspaper men, and people like that, would be there, and it would be an embarrassment to have to say, "I'm sorry. I can't talk with you about this", so we stayed out at Kellogg Center, he and I did.

Mr. Lane:

Where did you do the substance of your work?

Justice Souris:

In Detroit.

Mr. Lane:

Where in Detroit?

Justice Souris:

At the Detroit College of Law. I had offices...I had two offices in the college, in the Law School there, inside of the doorway. My secretary had one, my law clerk shared that office with her, and I had the other. We had access to the law library and it was a very convenient place for me to work. Charley King who was dean of the law school at that time called me upon the announcement of my appointment, and he offered me space at the college. He reminded me that George Edwards had worked at the Wayne Law School Library when he was first appointed to the court and before he went up to Lansing, before he moved his family to Lansing. Charley said, in a very gracious way, that it would be a benefit to the law school, it would grace the law school if I would agree to have my offices there. It was like an answer to a prayer, because I had planned on either establishing an office in my private home or somehow or another finding an office that would be inexpensive in Detroit. This was free space with a complete law library at my disposal, and it was in an academic setting apart from the legal profession. I wouldn't run into any lawyers, practicing lawyers who had cases before us. I wouldn't run into legislators or lobbyists. I was in my own little world.

(break in tape)

Mr. Lane:

How about Black and his relationship with other members of the court? Was it all pretty much the same? I heard that you were his particular target in sarcasms, derisions, criticisms.

Justice Souris:

Maybe so in print. Maybe so in his opinions, because he and I frequently squared off. I took it silently for many years until finally...I can't remember the year...the Trbovich case...whatever the year. I decided that there wasn't any point in letting him walk all over me, that there was a time to respond, and I responded, but

(break in tape)

Justice Souris:

Gene was cruelly derisive of Carr and Dethmers in the conferences. He made no effort to disguise his utter contempt for them. He was tenderly, sensitively solicitous of Harry Kelly, and my amateur psychiatrist's analysis was that Gene really was a very shy person, very tender, sensitive individual who responded to those he regarded as crippled, physically and intellectually crippled, and so if he thought you weren't quite all there, he could be very tender. If he thought you were suffering pain, he could be very tender, and he was to Harry who lived with pain ever since World War I. The man's endurance was absolutely astonishing to us all, and you know, we all covered for Harry. We did things, we wrote opinions for him, not many, but occasionally when he was obviously in distress. We all tried to help him, and Gene particularly. Gene was privately contemptuous of Tom Kavanagh but openly aligned with Tom. He needed Tom's votes

and therefore never to his face would say the things that he would say to the rest of us about Tom. He was not a fan of Otis Smith's.

Mr. Lane:

Did he provoke Otis Smith in the glass breaking...

Justice Souris:

Sure. I can't remember what the controversy was about, but it was an insulting comment to Otis. It was a provocative statement, and Otis was leaning back in his chair when it was made, and he came smashing down like this, moving forward to the table, and his hand came down on the table, and it shattered this 1/4" plate glass, or maybe it was 1/2"... I don't know. It was a thick plate glass, and poor Otis was mortified, devastated. Otis is not a man of violence, but he has enormous strength.

Mr. Lane:

Do you know what I recall his telling me many years ago? I didn't even bring it up because I'm so uncertain in a fact kind of way of what I remember him saying. There was a lot of buzz about this, and there was speculation in the newspapers. I talked to Otis one time, and he told me what happened in brief. My recollection of what he said as he brought his fist down, "Black, I wouldn't say that to a nigger." This is Otis Smith talking to me as best I can recall what he said at the time.

Justice Souris:

I don't remember that at all, and it is not language that Otis would have used.

Mr. Lane:

No, not unless he was in total fury.

Justice Souris:

No, even in a total fury, Otis would not...There was another incident of violence on the court while I was there. Gene was sitting on one side of the conference table, and George and I were sitting on the other side of the conference table, and the other justices were arrayed around the table. Gene and George were having it out about a case that was...I don't remember the case, but they were obviously in total disagreement with one another, and Gene said something very provocative to George, insulting to George. I can remember George taking his glasses off, throwing them across the table, and starting...he got out of his chair, walked behind me...walked is not an appropriate word...he lunged behind me, came around the head of the table where John Dethmers was sitting. Gene, in the meantime, came the other way to meet George at the head of the table. Dethmers was caught in the middle, and to his credit, managed to keep them apart long enough for the rest of us to grab both Gene and George. They were like enraged bulls, and when a few seconds, moments passed, they each realized what they were doing and immediately calmed down and returned to the session, got back to normal. No blows were struck, but they came perilously close. Those were the only two incidents of physical violence that I experienced while I was on the court. That was almost nine years.

Mr. Lane:

Were the members of the court other than Gene Black knowledgeable about his habit of writing stuff to newspaper people. I don't know what, because I did not receive this stuff. I was a late-comer, but I worked out of the same place where the other reporters for the capitol, and I saw those special delivery fat envelopes stuffed into the pigeon holes for certain people, primarily from the Detroit papers and sometimes the Booth papers...once in a while, I would think I'd see his reflection in the newspapers. It could have been speech, but I also suspected, because of the way he treated the Michigan courts, that he probably send memorandums...

Justice Souris:

Opinions. I got, when I was on the Circuit Court, I got an opinion from him in a case...it might have been a case in which I was involved as a Circuit judge, but I doubt it. This was a case which he thought I'd have some professional competence about, and he asked for my comments. I know he did that with a lot of lawyers in the state. I know that he did that with trial judges whose opinions he was reviewing. He saw nothing wrong with that.

Mr. Lane:

How did the other members of the court receive his practice of the type of filing of memorandum for publication in reports...?

Justice Souris:

Addendums, as he called them. He was entitled to do that. He could revise his opinion before publication. There wasn't anything wrong with revising it by simply adding an addendum. What difference did it make? As far as I was concerned, it didn't make any difference at all. I thought that it manifested...it was a reflection upon him, not to the court. Nobody else did it. I guess Paul Adams did it once. I don't think I ever did it.

Mr. Lane:

...The gentlemanly professional judicial proper thing to do, if somebody questioned an aspect of your opinion before it was published, you would then be in contact with that person and say, "Listen, I can't change this", or "Come to think of it, I don't know that I really need that paragraph in there", and you'd take it out.

Justice Souris:

Or, you might revise your opinion to meet the challenge. Very frequently, judges will write a concurring opinion to one by Mr. Justice Lane, to suggest that this is a case of enormous jurisprudential importance because it involves the separation of powers doctrine. "I don't view it at all as a separation of powers case, and these are my reasons." It's perfectly legitimate. Well, if it's legitimate to do that in the body of an opinion, why can't they do it as an addendum that doesn't involve revising the basic thing. I didn't find that to be troublesome.

One of the things that did trouble me about the court was the concurrence in result. During the entire time I was on the court, I don't think I ever...I'm sure...I never concurred in the result only.

One of the reasons...the reason was that I felt we all had an obligation to explain the reasons for our decision. That was the function opinions served. If I can't sign your opinion because it doesn't reflect my reason for voting the way you explained in your opinion, then I'm obliged to write a separate opinion, succinctly, hopefully, that explains the difference between my views and your views. Concurring in result, seems to me always to disguise the basis of the court's decision, made it difficult for lawyers and judges to understand the Court's development of the law, the common law, primarily, rather than statutory law. It was always a practice that I not only disdained but also criticized among my colleagues, even those with whom I was most closely aligned. I just didn't think it was right to do it. Gene, of course, concurred in the result for...it was a lazy man's way of voting without having to explain the reason for the vote that you took. Now, in Gene's case, it wasn't a question of indolence; no one could, with a straight face, claim that Gene wasn't an enormously energetic member of the court. But for his own purposes, he sometimes would save his views. He wouldn't reveal them. You see, this was a conspiratorial approach to the business of judging on a collegial court that no one else in my service on that court manifested. We had a view. We expressed it. He husbanded his views. He saved them up, and he would take great delight in demonstrating the wisdom of his having abstained from the precipitous expression of opinion.

Mr. Lane:

Let me back up a little bit. I'm referring now to remarks..it seemed to me that you kind of (unclear) of the modern day history in the court, and..

Justice Souris:

I really don't remember that.

Mr. Lane:

It starts out significantly with a comment by Roscoe Pound who referred to the Michigan Supreme Court as having a bad eminence. What did you make out of that? Was it clear to you what was he really saying?

Justice Souris:

He was criticizing the process the Supreme Court of Michigan followed in those days. I think his remarks were in the early 1950's, maybe earlier than that, but I think they in the early 1950's when the common complaint was then, in the profession in Michigan, was Michigan Supreme Court decisions were one-man decisions just as I mentioned, and what was meant by that was the work load of the court was divided eight ways, and indeed, as I explained earlier, each justice received only 1/8 of the cases, 1/8 of the briefs and records, namely only those briefs and records in the cases assigned to him to write, in advance of oral argument.

Mr. Lane:

And this was the established procedure for a long time prior to your coming...

Justice Souris:

Yes, for many, many years before the 1950's, and it started to change when Talbot Smith was appointed to the court in 1955, and George came shortly thereafter, and the two of them began dissenting but, Roger, if you go back and look at the opinions of the Michigan Supreme Court during all of the 1940's and the first five years of the 1950's, you'll see very, very, very few dissents, very few and even fewer concurrences which meant that almost all of the decisions of the court were unanimous decisions. Well, that is manifest nonsense. What happened was that everybody signed one another's opinions without bothering to review the records in those cases. Unless there was something in the opinion that was personally offensive, that raised a flag, a warning, he signed it and let it go. If it was internally consistent with his notion of law, whether it accurately reflected the trial or the facts elicited at the trial was never really tested. I can remember another case involving Justice Carr. It was the Wingaert case out of Ann Arbor.

It was a case involving the rape of a blind woman, blind student, and Justice Carr wrote the opinion in the case, I called him up and I said, "I'm afraid you overlooked a fact that I find in the record, find it to be of primary importance in assessing the crime", and he didn't bother even listening to what I had to say. As a matter of fact, I wrote him. I didn't call him. I wrote him, and he wrote back, and he said that he had reviewed the entire record when he wrote his opinion, and he didn't find it necessary to do it again, and if I disagreed with anything he had said in his opinion, then I had better be prepared to write my own, which I proceeded to do. Never again, thereafter, did I engage in any discussion with Justice Carr about cases.

Mr. Lane:

Now, that was the dissent on the insanity defense.

Justice Souris:

Yes, that's right.

Mr. Lane:

I read (unclear) that I can handle and with a little bit of guidance, and I thought that was a extraordinary episode of difficult but extremely thorough microscopic kind of analysis.

Justice Souris:

That was our function.

Mr. Lane:

Well, that's right. You took each of the psychiatrists, each of their testimony, and there was a question of the timing, as there would be in an insanity defense...what about when the event occurred, and then how about at trial and that sort of thing. Is that the definitive word still in Michigan on the insanity defense?

Justice Souris:

I really don't know. I don't get involved in such cases, and I really have not followed the issue.

Mr. Lane:

Let me ask you about another case just because it comes to mind and it's one of a kind, as far as

I'm aware in recent Michigan law, and that's the Cross case where you wrote on UAW appeal, I think it was, of contempt. The holding was, if I remember, that the judge, that the injunction was properly issued.

Justice Souris:
Improperly issued.

Mr. Lane:
Was it not "properly"? I thought...that's what I was going to...why don't you say what was going on, because I thought what happened there was that the UAW had been decertified and that sort of thing, and the thing was all sort of washed out, but then you started out with not the usual way you start out an opinion. You said this is a case of Civil War over ten years or something like that, and then I thought that while you devoted...no, I shouldn't be doing all this.

Justice Souris:
Roger, I don't remember the facts of the case, but what I do remember is that it involved the issuance of an ex parte restraining order in circumstances which I thought the law precluded. For example, there was no evidence that the regularly constituted law enforcement agencies of the state were incapable of maintaining law and order, and in those circumstances, I don't think the law of Michigan permits a judge to intrude. I think that the injunction, the restraining order that was requested on an ex parte basis never should have been issued excepting under the most extraordinary circumstances and the strongest possible proofs, not assertions or allegations but proofs that the local police, the state police, the governor of the state, cannot maintain order. That is the only justification for permitting a court to intrude itself in controversies of that kind, particularly labor controversies, where you have the might of the state on one side or another; on one side or the other, either for management or against management, on the strength of an ex parte showing without absolute proof. What I wrote in that case, I hoped would survive forever, because I think it is sound law, and the only way to justify the court's role in such a controversy. There was no reason in the world why the lawyers for the other side...I think the lawyers for the UAW, could not have been notified that an application was going to be made for injunctive relief, and if there had been a contested hearing, then that would have been an entirely different matter. The showing would still have to be the same, the showing would still have to establish...the proof would still have to establish that the regularly constituted law enforcement agencies were incapable of functioning without the assistance of a judicial decree, injunctive relief.

Mr. Lane:
In this case, do you think or do you recall whether you thought at the time that the executive authorities, meaning the police, had kind of abdicated their responsibilities?

Justice Souris:
Yes.

Mr. Lane:

And cast it upon the courts.

Justice Souris:

Absolutely. Absolutely. "Why should we risk the political damage to our candidacy for re-election" as sheriff, for example. "If you induce the management to get an injunction from the court...now we're cast in the role of enforcing the court's order, not our vision of law and order."

Mr. Lane:

Was this not a recurring issue?

Justice Souris:

It had been.

Mr. Lane:

This was definitive.

Justice Souris:

At that time.

Mr. Lane:

Well, it is to this day. I happened to look at the Holland school case, and it is cited there.

Justice Souris:

I would hope so. I would think so, but again, I don't get involved in those controversies any longer, and I really don't know.

Mr. Lane:

Something possibly not apropos to this, but you know when you ran for re-election, or...

Justice Souris:

For election.

Mr. Lane:

For election, one of the news stories mentioned that John Feikens took a table, and this was part of evidence of Republican support for your candidacy. Do you remember that? What is your relationship, or what was it then?

Justice Souris:

John and I were friends, professional friends. I can't remember whether we ever had a case together or not, but we knew one another. When I was appointed, he expressed his pleasure. He was one of a fair number of prominent Republican trial lawyers who supported my candidacy. John was one, Max Badgley from Jackson was the leader of the pack. He and Bill McNally, his former partner who was a Democrat, organized what they called the Society for the Preservation of Stare Decisis, the function of which was to raise money for my candidacy, and he got John involved - Max did. Max got prominent lawyers from all over the state to support my candidacy

on the strength of their knowledge of me as a trial lawyer, and as someone who was honest and didn't have horns growing out of his forehead and all that sort of thing.

Mr. Lane:

It was a bit unusual in those times.

Justice Souris:

Sure it was.

Mr. Lane:

That must have made you feel pretty good.

Justice Souris:

Well, it did, indeed. Max and his group really were the genesis of the organizations that I established throughout the state with a Republican and a Democrat co-chairman, and my expectation was that I would be able to campaign, as in truth, a non- partisan. I didn't want to run as a Democrat or as a Republican or as anything other than a lawyer seeking to establish his position on the court. John came to me, as a matter of fact, before the summer of 1960, and he wanted to know if I would accept the nomination of the Republican Party as well as the Democratic Party. There was a condition attached to it. The condition was that I would persuade the Democratic Party through Neil Staebler to agree in advance to endorse the candidacies of the next two incumbents who happened to be John Dethmers and Harry Kelly, and I said to him that I wouldn't even carry that message to Neil Staebler. I thought that it would...as much as I liked John, I sensed that it would be a fraud on the people of this state if you think that the two political parties ought to be endorsing the same candidate. What you're saying is that you don't believe the selection process, the nomination process should be partisan. If you really believe that, then let's try to change the process, let's not try to disguise it, and that was the last I heard of that. John and I have been friends ever since the early 1950's.

Mr. Lane:

You must have gotten some pleasure from his appointment to (unclear)

Justice Souris:

That's right. I remember his calling me and asking what I thought he should do. Should he take it or should he not? I said, "You need to take it even if you can serve only for the balance of this year. The fact that you will have been a district judge will be an enormous benefit to you as a practicing lawyer". I wrote to Phil Hart who was then Junior Senator.

Justice Souris:

I wrote to and talked at great length with Pat McNamara who had an implacable dislike for John. There was something that John said about Pat during the first campaign Pat ran for Senate. John said something about a plumber running for the United States Senate, and it offended Pat. He never forgot it, and he would not forget. He simply would not forget, and as much as many of us

tried to persuade him that John wasn't an evil man and was a good lawyer and would make a fine judge, Pat never would agree to that.

Mr. Lane:

That was during the period of the extraordinary circumstances, was it not, when Blair Moody died?

Justice Souris:

Yes.

Mr. Lane:

After having filed for re-election, and McNamara was left alone to get the nomination.

Justice Souris:

That's right, and obviously was elected, and then had to run again eight years later, six years later.

Mr. Lane:

I think there were a lot of standard Democrats that were not too moved with that...

Justice Souris:

We were not too happy with Pat McNamara because he was running against our favorite, Blair Moody, and I must say, once Pat took his seat and we got to know him, I campaigned with Pat and traveled around the state with him. I came to admire him mightily. I think that Pat was a man who was absolutely...served the people of this state very well during the time he was in the Senate. He was no intellect, but he didn't pretend to be, either, which was to his credit.

Mr. Lane:

Justice Souris, let's address another aspect of the reform movement, let's call it, that was gathering steam when you came on the court, and you mentioned in this tribute to George Edwards the idea...the court, for a long time, I think as you put it, had clung to the infallibility of its own decisions by simply rigidly adhering to its past decisions, right or wrong, and when you got on the court, or sometime in this period, there were a lot of things that changed. I think Parker vs. Port Huron was part of this.

Justice Souris:

Actually, the change began before I got to the court, Roger, and it was really winding down when I got there. The major changes had occurred. I came onto the court at the tail end of the cyclical movement of the court from right to left, and I'm...grateful for the opportunity to have participated in it in any role at all, but by the time I got there, there had been enormous changes that had been accomplished primarily, and I think I'm right in putting it that way, by Talbot Smith, who is not fully appreciated yet by the people of Michigan. He will be some day.

Mr. Lane:

Well, it took five votes, did it not, to carry the...

Justice Souris:

Yes, but you see, you had five votes with Justice Kavanagh's appointment to the court, and you had Talbot, Gene Black, George Edwards, John Voelker and Tom Kavanagh, and so my ascension to the Supreme Court simply replaced the fifth vote with my vote, John's vote with mine, and so I didn't change the balance. I simply continued the dominance of the liberal, so-called liberal, wing of the court.

Mr. Lane:

You wrote with some vigor on this subject, I seem to recall.

Justice Souris:

Yes, I thought with absolute conviction that if the court concluded that its prior judgments were wrong in the development of the common law; you know, I emphasize the importance of the common law to a State Supreme Court because that's the one area of the law in which the court legitimately can be creative. It is the writer of law, it is the origin of law. It has the obligation to declare the law, and to modify those declarations of law when it is persuaded that it has been wrong in the past.

Mr. Lane:

In the sense, is this not true, say the Port Huron case where the societal premises on which earlier cases had been decided no longer applied?

Justice Souris:

That's right. That's right. The facts change.

Mr. Lane:

The underlying...

Justice Souris:

...social facts, yes.

Mr. Lane:

Do you remember the Super-X judgment?

Justice Souris:

Oh, yes.

Mr. Lane:

What does that really stand for?

Justice Souris:

Nothing. Absolutely nothing, because it was a decision that...it was a decision that was reached on an even division of the bench, and if I recall correctly, there were only six of us who

participated in the final decision, 3 and 3. We dumped that dilemma on Clerk Don Winter's shoulders because he had to decide whether or not to issue a writ of mandamus, and on a split vote like that, he didn't know which way to go, and I think he simply didn't issue it, which is precisely what we had hoped he would do.

Mr. Lane:

Was it not Super-X license...it was related to a pharmacy license, in Battle Creek...

Justice Souris:

Yes.

Mr. Lane:

And this outfit had one for 30-odd years, and (unclear).

Justice Souris:

I don't remember the facts. What I remember about that case, Roger, is a very unpleasant memory. One of the members of the court participated in the initial decision notwithstanding his son was a member of the law firm representing one of the parties. When I discovered that, I was absolutely outraged, and I wrote a memo first to him and then to the court when he refused to recuse himself, in which I said that I was prepared to write publicly on the failure of that Justice to recuse himself. I don't recall with certainty, but I think I circulated to the members of the court what I proposed to write, and he ultimately recused himself on the re-hearing. I can't remember the details of it, but it was a very unpleasant experience from that standpoint.

Mr. Lane:

Well, the...

Justice Souris:

And I think it was Paul Adams who also recused himself because he was Attorney General and had advised the Board, so we ended up with only six participating justices.

Mr. Lane:

What do you recall, if there is any particular significance to it, of the Colacasides case where you upheld the one man grand jury law? Do you remember that?

Justice Souris:

I wrote that case with Mike O'Hara. I authored the opinion, made some changes at Mike's suggestion, and then persuaded him to join me in the opinion. It was the first and only Supreme Court opinion that shows two authors at the masthead that I know about. Maybe it has happened before or since, but I am not aware of it. Mike and I had a good personal relationship. We disagreed vigorously in our opinions, but we spent a lot of time together.

Mr. Lane:

Well, the one-man grand jury was a pretty unusual animal, widely criticized at that time, correct?

Justice Souris:

Yes, it was, and with good reason. The question was, did the legislature have the ability to provide for a one-man grand jury, and the answer is yes. You know, I personally found it to be abhorrent practice...

(end of side 2, tape 2)

Topic 5: Justice Souris continues talking about the one-man grand jury case and his view on the role of the court. He then talks about other cases concerning government immunity and the relation that such cases and court decision have with the creation and revision of law. He further discusses such issues as presumption of undue influence, summary judgment, the right of discovery, and the type of law he practices

Justice Souris:

While I found the one-man grand jury process abhorrent, it was within the legislature's ken, and we had to recognize that. That seems to me to be a popular misconception of my attitudes as a justice of the court. I find people even today saying to me that I was a radical member of the court. I wasn't a radical member of the court. I was one of the most conservative members of the court in the sense that I insisted that the court go back to first principles whenever we had a controversy, for example, involving statutory interpretation. What was our function? Our function was to determine what the legislature intended by the language it used. When we started substituting our own notions of what the legislature intended, then we were over- stepping our bounds, and I was frequently critical of the court for doing that.

When we dealt with the common law, on the other hand, I felt that our role was much less restricted than it was when we were simply interpreting statutory law. When we were applying the common law, we were in the arena of judge-made law, and we had the obligation, in other words, the power to change that law when we were convinced that injustice was being done by perpetuation of the rule that the court itself had announced earlier in time. I don't think that that view can correctly be characterized as radical. I think that is a very conservative approach to the business of a collegial state court's function in the judicial process.

Mr. Lane:

Do you remember how you came down on those issues that appeared before the court a couple of times, at least, where there was a matter of statutory clauses...appeal of governmental immunity. Some of the statutes way back...they had to be sure...like if you were...they had a claim against the Highways Department, what they call it...a culvert was sticking out, and ruined my car. There was a case where a person in a slip and fall, freak slip and fall event, had been disabled very severely. Do you remember that case?

Justice Souris:

Was that the sidewalk case?

Mr. Lane:

I think so.

Justice Souris:

I didn't write it. It was handed down, I think, before I got to the court, and I think Talbot Smith worked on it.

Mr. Lane:

But there was like a 60 day, very brief time during when...

Justice Souris:

Yes, I remember that.

Mr. Lane:

And there was a two year period, I think. At any rate, that isn't in discord with what you were just saying.

Justice Souris:

No, not at all.

Mr. Lane:

How about the law of Worker's Comp. law.

Justice Souris:

Carter?

Mr. Lane:

Well, okay. Carter, let's take that one. That was the psychotic breakdown case.

Justice Souris:

General Motors, yes.

Mr. Lane:

Wasn't that a first of a kind?

Justice Souris:

Yes, and yet it wasn't. Roger, that was a decision that, again, I thought and still do, was rooted in precedent. I took great pains with that opinion to trace the history of Michigan's law of compensation for emotional injury, and what I did was to show in that opinion that Michigan had recognized, our court had recognized, the compensability of emotional injuries since the early years of the century. The only thing to distinguish the Carter case from earlier cases was that there was no single traumatic event which caused the emotional damage. For example, there

were earlier cases that involved a worker who was struck in the back by a falling wrench. The wrench was dropped by a workman working on a scaffold.

Mr. Lane:

That wasn't the Redfern case, was it?

Justice Souris:

It might have been the Redfern case. The injury to the back was of little significance. The back was cured, but there was a psychological effect that followed that trauma, that physical trauma, and the court had no difficulty in finding compensability. There was another case in which workers, female workers in a factory were overcome, and there was an hysterical amnesia, an hysterical something or other, that resulted from their smelling fumes from a damaged piece of equipment. The fumes themselves didn't cause the collapse, the fainting. It was simply a response, a hysterical response to the fumes which they believed were harmful, and the court didn't find it difficult to provide compensation.

There were any number of similar cases and I referred to them and explained them, and built upon those cases and finally reached the Carter case in which there wasn't a single event. There was, instead, a whole series of events, day after day after day, constant repetitive experiences of a production line worker which ultimately had an emotional effect.

In the center case, and this was very significant, the only psychological testimony in the case came from the plaintiff. There was absolutely no effort made to counter that testimony by General Motors. General Motors offered no expert at all, attempted only to undermine the credibility of the plaintiff's expert by cross-examination and failed.

Our task, as an Appellate Court, was to determine whether the Board, the Appeal Board had sufficient evidence in the record to support its ruling, and it did. No question about it, and I reached that conclusion quickly, no problem at all. I spent most of my time in the opinion trying to explain why this wasn't such a dramatic change from the past, that it was a logical extension of the law of compensability of emotional injuries.

The case elicited enormous outrage from defense lawyers and from the medical profession and from the manufacturing industries. I had a telephone call. I had a letter first from a very close friend of mine who was a doctor who wanted to know why, as close as we were, I hadn't consulted with him about the medical significance of the decision, and my response to him was, "My friend, if I had been willing to consult with you, I would have been willing to consult with others about other cases as well as this one, and that isn't what judges of the court are supposed to do". He ultimately came around. He understood what I said.

Mr. Lane:

As I recall, and I again don't want to make claim to expertise here, but it was a very poignant, as you say...developed the issue in a succession of what...

Justice Souris:

Well, almost precedents.

Mr. Lane:

Precedents..whatever you call them.

Justice Souris:

My objective was to develop the background of my ruling, my holding, in such a way that it would demonstrate that the common law, and we're really talking about common law even though we're applying the Workers Compensation statute, works in incremental fashion. Sometimes, you can move the law one full step at a time. Here, you are at this point, and the next decision will carry you to this point, but more often than not, what happens is that you take 1/2 step instead of a full step in developing a legal concept, and that's what happened in this case, in the Carter case. We were really taking only a 1/2 step, not the giant step that our critics portrayed us as taking. It was just a half-step removed from those cases in which there was a single traumatic event; in this case, there were a series of traumatic events.

Mr. Lane:

How would you describe your writings on several governmental immunity issues? I think Lloyd Fell said this was the first of a succession, and finally the largest of...the idea of governmental immunity just sort of broke ground across the country.

Justice Souris:

My memory of this, Roger, was that in 1968 when I left the court, we had...the court had begun to articulate a relatively simple principle that would be universally applicable to governmental and charitable immunity cases, and it related really to the notion of charitable immunity, judge-made immunity at least for any such institution, that if there were to be immunity, it ought to be granted by the legislature that has the capacity to consider policy issues that courts rarely are equipped to consider and even more rarely, to decide. That is a legislative policy in most cases.

In 1968, as I recall it, the issue was one of retroactivity. To what extent should our current rulings abrogating the immunity of the sovereign apply retroactively in cases that were pending at the time of this decision. I gather, though I haven't gotten involved in it since I left the court, that the issue became far more complex in the few years that followed my departure and ultimately, the legislature got involved. I don't know where governmental immunity is today.

Mr. Lane:

I think...legislature developed sort of a feeble formulation at one time that was hard to read, and you couldn't tell what it was supposed to say, and the court had many more innings on this subject matter and finally in *Ross vs. Consumers Power* in 1982, the court split and then came back and in 1984, gathered together eight or nine cases and established a fairly coherent rule and applied it. I wanted to ask you about the *Thom* case. Do you remember that?

Justice Souris:

That was the case in which one of the witnesses said "some damned fool built a home in a hole".

Mr. Lane:

I didn't know about that.

Justice Souris:

Wasn't that the case that involved the highway being built in front of a private dwelling?

Mr. Lane:

There were two allegations that were the principle case in this...view and access.

Justice Souris:

Access is what I remember. That was funny. I don't remember anything about that case other than that one trenchant comment, I think it was an expert witness who said, "Looking at the house reminded me that some damned fool built his home in a hole".

Mr. Lane:

I think that was a significant case because...

Justice Souris:

It was a reverse condemnation case, as I recall.

Mr. Lane:

Here is this fellow who has a farm...you probably had lots of cases like this, and along comes a highway builder, and they rip up not only his front lawn but let's say, they throw up a big embankment, 40 feet high, so he can't see out of his living room, and...

Justice Souris:

And now he had to cross the highway to get to his field on the other side of the road.

Mr. Lane:

That's right, and you said very explicitly that this is a compensable taking of...

Justice Souris:

Right.

Mr. Lane:

And I think the courts have been reluctant to factor in...and remember, this followed a period of intense activity of this sort. We brought these fellows from Washington and everywhere to condemn highway right of way... Interspousal tort immunity. Do you remember that case? Mosier vs. Carney and there were a couple of other cases that were tied in. There were three factual circumstances, as I recall, that you treated alike as to...I think four or five members of the court were a little split off here.

Justice Souris:

Yes. I haven't thought of that in a long time. There too, the question involves one of the court's earlier notions, that family members suing one another inevitably would involve fraud.

Mr. Lane:

Collusion.

Justice Souris:

Collusion, sure.

Mr. Lane:

And the gossamer strain of marital tie or something... you wrote that in, too. Do you remember that?

Justice Souris:

No, I don't. I was offended by the notion that anyone could be injured and denied compensation because someone else in similar circumstances might engage in collusion with a defendant in order to defraud an insurance company. It would seem to me that we were painting with too broad a brush; we denied any recovery to anyone in those relationships.

Mr. Lane:

These cases...at least, I think two of the three were fatalities in automobile accidents where there was a question of fault with respect to one of the spouses who was deceased, and could the children, in the one case, or could the surviving spouse...

Justice Souris:

Yes, and in those cases, the court's articulated reason...that is to say, we must discourage such law suits because they would have an undermining effect on the marital relationship, no longer existed. See, those were circumstances in which the court articulated a reason which wasn't the real reason for its opinion, its decisions. The real reason for its decisions in the old days was that the court did not want to encourage fraud on insurance companies. Two couples or a married couple getting together, saying one was negligent against the other, knowing that the source of funds for compensation did not bleed the spouse but, rather, the insurance company. The Court couldn't say that, but the rationale for the decision...we articulated the rationale as being for the purpose of preserving the sanctity of marriage.

Mr. Lane:

There is another case, that I understand it, a definitive case procedurally in Michigan - In Re Woods. Do you remember that, where you wrote on the evidentiary effect of presumption?

Justice Souris:

Yes. Presumption of undue influence. The first case I argued in the Michigan Supreme Court

after I left the bench was a case in which *In Re Woods* was controlling. I represented the estate of Matilda Wilson, and there were a lot of dollars riding on the case in the trial court.

Mr. Lane:

Was it an undue influence case?

Justice Souris:

Yes. There was also another case at the same time in which I represented the estate of someone by the name of Thoma, and that case got to the Supreme Court involving the same issue that was involved in the Matilda Wilson case. I remembering arguing the Thoma case and John Dethmers who wrote against me in *In Re Woods* saying to me from the bench, "Mr. Justice Souris, do I understand you to be saying to this court that if you were still a member of the court today, you would be much less inclined to sign the opinion you signed in *In Re Woods* and much more amenable to the reasoning of the opinion in dissent". I took the opportunity to say, "Mr. Justice Dethmers, you and I continue to disagree upon the meaning of *In Re Woods*," and I explained to him again that my purpose, the majority's meaning in that case, the holding in that case, was that once there is any evidence of benefit to a fiduciary, then there is a presumption of undue influence that can be rebutted. In the case of Thoma, and as it turned out, in the case of Matilda Wilson, there was no evidence of benefit to the fiduciary. There was simply the fact that the fiduciary wrote the instrument.

Mr. Lane:

Didn't put himself...

Justice Souris:

That's right. And that's the way he wrote the opinion in Thoma, and that opinion got me off the hook in the trial court in Wilson because the objecting daughter, having seen the Thoma decision, decided not to appeal.

Mr. Lane:

Is this not still the law of Michigan?

Justice Souris:

You bet it is.

Mr. Lane:

Is this a common principle of jurisprudence across the country?

Justice Souris:

No, it really isn't, and I'll tell you why, Roger. *In Re Woods* at that time, was the only or one of the very few opinions on this subject of undue influence and presumptions, linking the two, that analyzed carefully the procedural way in which presumptions are handled by courts. Most decisions involving presumptions simply refer to the concept of presumptions and reach the conclusion without analysis. Here, you had facts that required careful analysis in order to demonstrate that the scrivener *In Re Woods*, if I recall correctly, had, in fact, benefitted from his handiwork, and it was that which gave rise to the presumption, but that's only the beginning of

the analysis. Then we have to explain that the presumption was a rebuttable one, not an irrebuttable one, and why is that so. Well, then why it's so, and then you have to analyze the facts to determine in this case, the presumption was not rebutted.

Mr. Lane:

The courts backing, prior to this claim, were just choked with undue influence cases.

Justice Souris:

Yes. They were analyzing what was meant, so I tried to bring some order to the disorder that existed. You know, that case was an interesting one for another reason. I wrote that case with a feeling that this is cut to a pattern. You introduce the case, identify the legal issues, discuss the legal issues, identify the facts of the legal issues, and then reach a conclusion, and we were doing that opinion after opinion after opinion. That got boring. After the third or fourth year, you were writing the same sort of stuff, and I started experimenting with opinions. I remember one of the most gratifying approaches was to start with the discussion of the law before you identified the parties. "This is a case that involves an issue of presumption of undue influence", for example. "Presumption includes statutory presumption, common law presumption, rebuttable presumptions. These are the differences". You develop the general law that ultimately governs this case, and then you begin discussing the facts of the case and the application of those facts to the law that you've already described. That was a far more gratifying way to me to write an opinion. I used it on occasion. I couldn't do it in all cases, of course, but it was a change of pace. That helped.

Mr. Lane:

I wanted to get you to express yourself some on the attitude towards...I would say the excessive use by trial judges of the summary judgment rule, directed verdict, that sort of thing.

Justice Souris:

I wrote an opinion in a case involving Dick Durant.

Mr. Lane:

Is that the libel suit?

Justice Souris:

It was a case involving Larry Lindemer, George Bashara, Dick VanDusen.

Mr. Lane:

Stahlin.

Justice Souris:

Stahlin. Durant vs. Stahlin, and there was another companion case called Miller. It's in these materials that I gave you. In any event, what I tried to do there was to establish the ground rules for applying a 1963 court rule dealing with summary judgments. We had two types of summary

judgments, only one of which really permitted examination of facts, facts demonstrated by affidavits, by deposition transcript, by documentary evidence, things of that nature. And the only question was, were the facts material, and were they in dispute, and if the answer to each of those questions was yes, then we could not grant summary judgment. It was a very simple concept, but the trial judges had a great deal of difficulty applying it, and lawyers had a great deal of difficulty understanding it.

Mr. Lane:

Was your Wingaert case one such case?

Justice Souris:

No, that was a criminal case. I don't think that involved summary judgment. But in any event, we were, I think, successful for a while anyway in laying out the correct way to apply those two court rules in the different circumstances in which they applied. My concern about summary judgment was that in the earlier days back in the 1940's and early 1950's, summary judgment was used to deny people of the right of trial by jury. It was used to take back disputes away from juries and to favor, in the process, defendants. In the years that immediately preceded the Durant case, it seemed to me that trial judges had swung too far to the other side, that they were afraid of granting summary judgment when summary judgment legitimately should have been granted because there was an absence of disputed fact, and so what I tried to do in those decisions was to describe the process in such a way that it could be used legitimately, whether it meant taking a case away from a jury or whether it meant the dispute could be submitted to a jury.

The jury trial issue is always a very troublesome one for me because I had an abiding regard for trial by jury as one of the keystones of our system of government. It troubled me that our court in the earlier years had undermined that right, as it did again, incidently when, in my view, it unjustifiably authorized the reduction of the number of jurors from 12 to 6, and permitted non-unanimous jury verdicts. I can't imagine anything more destructive than that to the jury's role in determining community values. That was what the jury was designed to provide the judicial system, and when you say that 6 jurors can provide that as reliably as 12, I don't think you know what you're talking about. It's as simple as that.

Mr. Lane:

You, in speaking to the court in the Edwards Court presentation, said this sentence: "While I regret, sometimes deeply, the role George and I both played in extending the right of discovery, nonetheless, those rules without any doubt substantially enhanced the opportunities of the people", and so on. What is your feeling as to discovery in practice stands now?

Justice Souris:

It is used much broader than it should be. It has become a weapon rather than a shield. It has encouraged pleading cases that are non-existent until discovery reveals facts to support hunches. It encourages litigation with the sometimes forlorn hope that facts will emerge to justify the allegations. It is enormously expensive as an exercise. I've got a case I've been handling that will cost litigants, all of them, hundreds and hundreds of thousands of dollars to try because the discovery process is so pervasive in this country today and because it is so readily available to litigants. They want to know all that there is to know about every aspect of the controversy, even

the obviously immaterial, on the off chance that they might discover something that is relevant, and it is just prohibitively expensive. It has changed the face of the practice of law. It has changed the face of the profession.

Mr. Lane:

What is the remedy?

Justice Souris:

The remedy is to restore discovery to the control of judges.

Mr. Lane:

Can this be done by court rule or how to you...

Justice Souris:

Yes, by court rule. You simply prohibit discovery beyond a very limited amount, without a court order authorizing it. You want a deposition, let the court decide whether you have sound reason for seeking, cross-examining by deposition. If you want documents, why in the name of heavens do you permit document discovery to be conducted seriatim. The first request for production of documents, 11th request for production of documents. Interrogatory is the same way. Why in the name of heavens don't we stop this? Why do we permit lawyers to continue asking questions round after round after round? Why don't we say...

Mr. Lane:

You could starve the enemy into submission if you've got enough money.

Justice Souris:

And even if that isn't your objective, the burden that is upon the litigants is enormous.

Mr. Lane:

Do you recall exactly what the change was and how it came about that you're referring to here?

Justice Souris:

Yes. Back in 1960 when I joined the Court, the Court was considering new rules, the 1963 Court rules, the rules that were adopted in 1963. Charlie Joiner and Jason Honigman had prepared some amendments to the rules, and they had followed the practice in Iowa and in the Federal system. Both instances called for wide-open discovery. It was a dramatic change from the practice in which I had grown up. It was a dramatic change in the history of such matters in Michigan.

As it turned out, Gene and I were the only two members of the court who really were negative about the change, and who resisted and insisted upon modifying some of the proposals that Jason and Charlie Joiner had made and supported. I got to the Court with a golden opportunity to stall the whole process. I viewed it as imperative that it be stalled in order to give me time to get up to

speed. I wasn't going to be voting on something as important as this without mastering the changes that were being proposed. When I started in on the process, there were many things that were being proposed I disagreed with. On some, I prevailed; on others, I did not. We finally adopted the rules. My recollection is that Gene persisted in dissenting. I finally acceded on the basis that many of my proposals, many of my objections had been met by change and in good conscience, I couldn't lead them down that path and then vote against them. I regretted it in retrospect. I should have stuck with Gene on that issue and insisted that Michigan keep its tradition of judge- controlled discovery.

The argument was that judges didn't have time any longer to maintain that kind of control over discovery. My response today would be if they had retained those obligations to monitor discovery, the explosion of litigation might not have been as severe in Michigan as it was and has been. People are starting law suits just in the fond hope that they will discover a basis. Now, without the equivalent of Federal Rule 11 which imposes sanctions for pleading without factual support, we're trying to close the barn door. I'm not sure that's the way to do it. It would be more effective if we required the factual proof of a claim in hand before the complaint is filed.

Mr. Lane:

Would that have to originate, in practical terms, with Supreme Court itself? No law...

Justice Souris:

Well, a law committee charged with the obligation of proposing changes in the court rules could do it, but...and I suppose a law committee could advocate that the court re- consider the discovery rules, but ultimately, the court would have to do it.

Mr. Lane:

Is there much writing of people who are listened to professionally, along the lines that you have just spoken?

Justice Souris:

I don't think so. I see some by judges, but nobody listens to judges except when they write opinions, you know. They have obvious axes to grind, and people discount what judges say, particularly trial judges.

Mr. Lane:

What would you say about the state of the child custody law, and as you experienced it then, and as it is now?

Justice Souris:

I don't know what it is now. I really don't.

Mr. Lane:

In the best interest of the child, still.

Justice Souris:
Well, I hope so.

Mr. Lane:
But what is that? In re Mathers...I don't think you wrote that one, did you? That was Otis Smith, was it?

Justice Souris:
Yes, but I had a hand in it, a heavy hand in it.

Mr. Lane:
You apparently suffered over that.

Justice Souris:
Months and months and months. I wrote In re Ernst, if I recall correctly, and In re Ernst was a case in which Vic Baum was the trial judge, as I recall. In any event, I wrote that the best interest of the child obviously has to govern, and at that time, there was a presumption that favored the father for male children over a certain age and the mother for all children under a certain age and for daughters up to a certain age, and that never made much sense to me unless there were an overriding standard that required consideration of the best interest of the child. Shouldn't you permit the presumption to be overridden if the inquiry established that the interests of the child would be better served?

Mr. Lane:
Is that a statutory presumption that you described a moment ago?

Justice Souris:
Yes, I'm sure it was.

Mr. Lane:
Is it still in the law?

Justice Souris:
I don't know, Roger. I really don't know. I hate to keep saying that. Sooner or later, you're going to ask me, "What kind of law do you practice?"

Mr. Lane:
I'm going to ask you pretty soon, and I'll do it right now. You left the court in your vigorous prime. You were in your middle or young 40's, and you practiced law for 22 years, 23 years almost since then. Is there a role for former justices of the Supreme Court, either formally or informally, in something like an advisory council to the court, meet once a year, bring up things like, "My gosh, isn't it time something was done about discovery. It is going wild". Is there a role? Now, look...I'm thinking of you. I'm thinking of Otis Smith. There are others.

Justice Souris:
You need to be very careful about that because so long as we are practicing before the court...

Roger, I feel so strongly about it that early on, I was asked to take an assignment by the court, and I said, "No, I wouldn't" because I'm still practicing. How does it look for me to practice law as your adversary this morning, and this afternoon, you appeared before me as an assigned judge on the Court of Appeals or as a trial judge somewhere? How does that look?

That actually happened with Mike O'Hara. I had people complaining bitterly to me about being on the opposite side of controversies when he worked for Honigman, and sitting as an assigned judge on the Court of Appeals after his defeat on the Supreme Court. They were incensed by that. I wouldn't have any part of that. That's one of the reason, that is the reason, I wouldn't have a portrait presented to the court. As long as I am practicing, I just find it offensive to think of any lawyer against whom I am practicing law looking at my photograph, my picture, my painting on the walls of the Supreme Court.

Mr. Lane:

Does it personally strike you that when you go to the court, how that must seem...?

Justice Souris:

If I had never been on the court and here I stand arguing a case before the Supreme Court...Tom Brennan, my opponent, and there he is on the walls of the court. That would be very offensive.

Mr. Lane:

Well, Brennan...he really isn't practicing.

Justice Souris:

I understand that. I'm just using him as an example.

Mr. Lane:

But there are others...Otis is practicing, in a sense.

Justice Souris:

Carrying it further in response to your question, I think that while I always have enjoyed the social contacts with the court since I left, I think that any more formalized relationship would be perceived as wrong. Why should I have the ear of the court just because I had been on the court 22 years ago? What could I add? I could be a spokesman for the interests I represent as a lawyer, in the chambers - that is wrong, and it shouldn't be countermanded.

Mr. Lane:

There is one important subject that I think of right now that I somehow omitted to bring up to this point. Would you trace your contact and your convictions, your assessment of the court's handling of the reapportionment issue at the time that you first encountered it, 1960? You ultimately knew that you early espoused, and it's almost cut off from the other comments. Your rationale has ultimately come to prevail...state of law as to the constitutional matter is at rest because of the words that you wrote back in 1963 or 1964.

Justice Souris:

I didn't know that any other human being on earth recognized that, Roger.

Mr. Lane:

I'm not going to stop and tell you what happened on my first New Year's in Michigan which was in...I came back, and here were these people sitting in a conference room in the Capitol. New Year's was about to strike. There was a ridiculous...and I was sitting at the end with two little kids, two or three years old at the time...I just knew when all this was over, I would go out and write something for the paper...2:00 a.m. on January 1, and that's what happened. I would see the about this...anyway, I paid attention to apportionment. What would be your observation about the whole sweep of this issue, and it may not be over yet?

Justice Souris:

I think the apportionment cases that I participated and wrote were the most...

(end of side 1, tape 3)

Topic 6: Justice Souris continues to discuss the issue of apportionment and the case of Scholle vs. Secretary of State. He discusses Justices Talbot Smith and George Edwards in regards to some of the decisions they wrote. He concludes his interview with a discussion of the judicial selection process

Justice Souris:

...were really the most important cases that were before the court during the entire 8-1/2 or 9 years of my service on the court. They changed the way in which we govern ourselves. For that reason, they had much more direct and lasting impact upon the citizens of this state and, indeed, the citizens of this country than any of the other cases in the court during the time I served. I don't take credit for that. The credit belongs to Talbot Smith because it was Talbot whose opinion I signed, that he wrote, the dissenting opinion in Scholle vs. Secretary of State. That was the seminal judicial work on reapportionment in modern times that emerged in language strikingly similar when the Supreme Court made its decision in Baker vs. Carr. The Scholle case and the Baker case were pending in the Supreme Court at the same time. It was just a matter of chance that Baker was selected by the court for decision rather than Scholle.

Mr. Lane:

But in 1960, you and Smith split with Edwards, did you not, on the laws of...?

Justice Souris:

Yes.

Mr. Lane:

Did this...was this enormously complicated by the flux that was occurring with the writing of a new Michigan constitution?

Justice Souris:

No, it wasn't. It hadn't been written, you see.

Mr. Lane:

But then the next chapter in 1962, it was being written. And then there was 1964, and it was written, but the Supreme Court of the United States...you realized that some of those cases had 50 and 52 cases of headnotes. Go ahead. I didn't mean to interrupt you.

Justice Souris:

The Scholle case forced the court to consider the philosophical basis for a representative government, and Talbot wrote in support of the concept of one-man, one-vote, and he did it in a way that tracked the historical development about our beliefs about the republican form of government, representative form of government, and he did it by, again, by reliance upon precedent. Tracing the development of the thought of representation in the republican form of government to the constitutional language which required apportionment every ten years, to reflect changes, and when you reached that point, what can that mean other than the parameters of the constitution intended every ten years that there would be an adjustment of districts to equalize them in their population, numbers, people represented.

I find, once again, Talbot Smith is underrated by his own people, but not by thoughtful, legal scholars around the country. I think he's recognized by others as the giant he was in terms of what he wrote in that case. Subsequent cases involving the new constitution's imposition of responsibility upon the Supreme Court for making decisions involving reapportionment by the commission seemed to me to have violated the concepts of separation of powers. We were asked in those subsequent cases following the 1963 decision...1963 constitution, to perform functions that were non-judicial in nature, and that's when I wrote that I thought that our role...it is an inappropriate role for a court to perform.

We were asked...we were not asked to exercise a judicial function. We were asked simply to act as referees to determine which of competing plans most nearly met the constitutional standards. Well, what if we concluded that neither really meets the constitutional standards? What was the power we had? We had no power to modify any of the plans. We had to pick between A, B, C, or D, or however many plans are submitted to us, and we could gag over picking A over B, but we had to pick A because it most nearly satisfied the constitutional standard. That's what happened with the Kleiner plan. The Kleiner plan certainly was no work of art. It had its flaws as well as the other plan did. The plan's name escapes me...

Mr. Lane:

Hannah...something?

Justice Souris:

The Hannah plan.

Mr. Lane:
Hannah-Brucker plan.

Justice Souris:
Yes, but it most closely complied with the constitutional mandate.

Mr. Lane:
Did you not, in 1964, say that the court should exercise its powers of equity to do this even though it was a repugnant role, or do I not follow this?

Justice Souris:
I think what I said was that we should refuse to perform in a non-judicial way. We should exercise our own inherent power as a court of equity to require, as I recall it, re-districting on a district-wide, state-wide basis. I felt that that was within our power to do, but no one else did until Tom Giles Kavanagh came along. Tom took his lumps on that.

Mr. Lane:
He sure did.

Justice Souris:
That's what we get paid for.

Mr. Lane:
Going back to the first expression, which I believe was 1960.

Justice Souris:
1960.

Mr. Lane:
Was that the minority opinion of Smith's?

Justice Souris:
Yes.

Mr. Lane:
George Edwards wrote the majority.

Justice Souris:
George wrote a separate opinion in support of the majority view and caught holy unshirted hell from his former colleagues on the UAW for it. As a matter of fact, I remember vividly George had been invited, as I had been, to attend the UAW convention in Grand Rapids the day of our decision in the Scholle case. I talked George into going anyway, because he knew he would be vilified, and my argument was "better now than three months from now when it will be even

more difficult for you to face these people. Face them. You have nothing to apologize for. You called it the way you saw it, and you performed as your oath required you to. If they don't understand that, then there is nothing you can do to alter their attitudes".

Well, he was mistreated terribly. When we walked into the lobby of the hotel, people shunned him, openly scorned him and greeted me effusively. That was very embarrassing and very troublesome to me. It was that night that I had a conversation with Gus Scholle, and Gus was very upset, not because of George's vote against the position he was advocating in that case but rather because George, who had been like a brother to Gus Scholle, had not told him in advance what he was going to do. So I said to Gus, and it was very important to me to have the opportunity to do so, "Gus, you know, you're about to consider an endorsement of me, and I want you to know up front, you can't expect that from me any more than you could expect it from George". It was coincidence that the sequence of events occurred as they did, but there was a very important need to make sure that he understood what my role as a justice would be, totally independent of the people who were supporting my candidacy. I couldn't live with myself if I hadn't confidence in my own independence, and I needed to be able to express that to him before the fact, not after.

Mr. Lane:

Really, in essence, the nub of George and his role as I remember was "Look, this may be 14th amendment question, but we don't know yet, and it's being resolving..."

Justice Souris:

It will be resolved in Washington.

Mr. Lane:

Wasn't that about what he said?

Justice Souris:

Yes. That's precisely what he said. He relied on Frankfurter's "political thicket" warning, and that was a legitimate position to take, but I thought misguided. In view of the fact that we were dealing with Michigan's constitution as well as the Federal constitution, concepts were the same, we were still obliged to apply Michigan law and federal law. The fact that the Federal Supreme Court hadn't yet spoken didn't mean that we didn't have the obligation to speak. We did.

Mr. Lane:

You know, there's one thing that I guess I can't help but bring up...one event in the court while you were there. This goes back to Gene Black. Do you remember the county apportionment cases in Kent and Muskegon Counties?

Justice Souris:

Yes.

Mr. Lane:

Do you remember play by play what happened in them? Well, the court on, let's say it was Wednesday...Tuesday of the week, filed its opinions deciding them. One of them was 4:4, and

one of them was 4:3 that Gene Black hanging off. The result was, and he apparently somewhere in the disposition, a footnote or somewhere said, "If I didn't do this, it would be the most ludicrous thing on the face of the earth that you could imagine, that a judicial body on the same day found adjoining counties, contradictory answer to the same question", and then the next day, he came into the Clerk's office and added his name to the record copy of the second opinion.

Justice Souris:

I don't remember any of that.

Mr. Lane:

Okay.

Justice Souris:

I don't remember any of that.

Mr. Lane:

Don't you?

Justice Souris:

No.

Mr. Lane:

This was one of the most extraordinary events that is imaginable for a review court.

Justice Souris:

I haven't any recollection of it.

Mr. Lane:

Have your secretary make a copy. This is a very crude...you need to refresh your memory on this because this was an event that when you write your own history...ask her to make a copy of this. I think you will find it so difficult to read in the form it's in that it will come out better off the copy. I should explain this thing that there is for a while, when I was with the Free Press, they had a little spot in the Sunday paper that I was supposed to fill, and this was one of those. Sometimes they call them "thumb-suckers", human nature topic and then you talk about it. Anyway, I mentioned what the facts were, and then I point out right in the middle, two Democratic justices called the court situation anarchy and the damnest thing I ever saw. I can't identify who said that. A Republican justice found it ludicrous and ridiculous. Chief Justice Kavanagh told reporters, "I couldn't see how it could be more preposterous and you can quote me", and he was not accustomed to talking that way to newspaper people. Listen, I just didn't know how the hell this was ever going to be resolved, and I don't to this day, but somehow it was. That was a matter to remember where the constitution of Michigan talked about County supervisors being accorded the right, the absolute right to a place on the County Board. Is the Supervisor of Grand Rapids Township if you can conceive of such a thing and then Wheatfield

Township would be accorded to the membership on account of the (unclear). You keep that and take a look at it. I don't know really how far to...would you like to say anything about the judicial selection process, either as it applies to the Supreme Court or to the Michigan Court?

Justice Souris:

Sure, I advocated for many, many years, going back to 1963 a proposal that would satisfy just about any rational need and it goes back to my experiences with Mennen Williams, the role I filled as a member of a small, select committee that was limited in its function to providing only an analysis of judicial competence. My proposal has been that the constitution provide for the selection of a committee consisting of eight people, two to be selected every two years or one every year, to serve for eight year terms. Their function would be to provide a governor with evaluations of professional competence of those the governor is proposing to appoint to the judiciary. Not as appointees, but those he is proposing to appoint.

Mr. Lane:

It gives the commissioner less...(unclear).

Justice Souris:

One or two or three or 1/2 dozen. However many he wants, and the commission's evaluation of those prospective appointees is narrowly confined to professional competence, and will be kept confidential, absolutely confidential, excepting only for the evaluation of the prospect ultimately appointed. So, when the governor makes his choice, having been given that information about professional competence, and having obtained from other sources that are readily available to a governor, the political considerations, the social considerations, the ethnic considerations, all of the other factors that go into, quite properly, the selection of judges, he knows when he makes his appointment that the commission's evaluation of that appointee will be made public with the appointment. If it is a negative evaluation, he'd better be prepared to take the political flack of appointing someone the commission determines is not qualified, or he had better be anxious to accept the political gain by appointing someone the commission believes is highly qualified. Now, the commission's stature is obviously the key to all of this.

Mr. Lane:

How do you keep it?

Justice Souris:

It doesn't really matter. You can appoint...you can have the governor appoint members to the commission subject to Senate confirmation. You can require that they be bi- partisan, that is to say, half Republican, half Democrats. You can require all sorts of other conditions and it really doesn't matter so long as you make sure that the commission is staffed by people who have the capacity to make those judgments, the professional qualification judgments. I mean, I suppose you could have professors from law schools. I don't care.

Mr. Lane:

Did you propose this?

Justice Souris:

Oh, yes. Many times. I've spoken on the subject, have written on the subject.

Mr. Lane:

Have you?

Justice Souris:

Oh, yes, and people think it's an intriguing notion. See, what I've done really is to try to recognize the impact of politics on the selection process. You can't get rid of it, and the only way you can diminish the adverse consequences it to try to channel the political forces so that the governor is forced to take into account his political risks by appointing someone who is not qualified and to enhance those risks by publishing the commission's report while protecting the governor's frustrated prospects by keeping their evaluations private.

Mr. Lane:

Of course, it's the least effective the day before election, isn't it or the day before...a lame duck...before you went out of office. You wouldn't much care then.

Justice Souris:

Yes, but I think the appointee would. If I were rated unqualified by a blue-ribbon commission, would I say to the governor, "Forget it, governor, I don't need that" or would I say, "Go ahead and appoint me anyway, and I'll take the embarrassment". You know, it's somewhat different, Roger, than having the Detroit Bar Association rate you as unqualified.

Mr. Lane:

How about the practice...slightly different, justices working in isolation. Is there any reason that that should not be discouraged, to encourage them to be together for at least periods of some fairly frequent times or periods of significant length to interact, or is that an illusion?

Justice Souris:

I think that's an illusion, particularly so long as you have elected judges, Roger. You're not going to have the quality of intellect that can relate with other intellects in a constructive way. When I was on the court, there were three or four justices who worked in Lansing. When I first got there, there were Dethmers, Carr, Kavanagh and Edwards, so from the very beginning, those four were in Lansing and I can assure you that there was very little exchange, very little communication between those four, any two of the four, even Dethmers and Carr did not communicate in a judicial way. They didn't talk about their cases any more than Tom and George did. Some of us talked with one another on the telephone, frequently, regularly, almost every day, and I thought that was as effective a way of communicating as could be imagined. Today, you have modern equipment. You can communicate by computer, you can communicate by fax machine. These are marvelous devices that permit you to work anywhere in the world without having to live with one another. It goes back to the concept Fitz explored with you. He mentioned once or twice during his interview with you the statement that someone made, "We are selected to serve on the

court as strangers for eight-year terms". I used to tell my esteemed colleagues that I wouldn't select any one of them as my law partner, but I was compelled to serve with them.

Mr. Lane:

Tell me what went on in the decision to leave the court.

Justice Souris:

I wasn't sure.

Mr. Lane:

You need for the tape, I think, to say what you said.

Justice Souris:

I had gone on the court when I was 33. I was 42 in 1968, and I had to make a decision whether to run for another full term. I had served on the court for 8-1/2 years and the other 1/2 year came as a result of the change in the constitution which added one year to the term of all incumbent justices. I had wanted to get off the court as early as 1963. I had reached the point of...there was a certain element of frustration involved, it was a sense of futility. I had reached a point where we were repeating the cases that we had decided years ago. The cast of characters had changed, but the cases were the same, not to the same extent, but the challenge was no longer there. I think Talbot's departure was a terrible blow to me, and then George's departure was the final blow. I no longer was serving with anyone who attracted me to the court in the first place, and I always had a notion that I left the practice too early. Remember I told you that I didn't expect to be elected to the court, but I was, and there I was.

I had maybe a quaint notion, when you're elected to an eight year term, you are to serve eight years, and I deviated from that very briefly when in 1963, I toyed with the idea of getting off the court, and then I was brought to my senses. I couldn't simply quit. If I had quit in 1963, Romney would have had a replacement to pick, and I was almost positive, knowing him as I did, and liking him, but knowing his political views, that he would appoint someone whose views would be anathema to mine, to me. In any event, when 1968 came, I had fulfilled my contract with the people of Michigan. I had served the full eight years and anything after January, 1968 was the result of changes in the constitution I didn't have anything to do with, so I felt free to leave.

There was one provision in the new constitution that gave me great satisfaction, and that was the provision that said that upon the first death, retirement or resignation from the bench, the number of justices would be reduced from eight to seven. I prayed every morning that Harry would stay in good health, and that Justice Carr, the others would stay in good health, so that I would at least have the option...I did everything I had to do in December of 1967, November and December, 1967 to prepare for a race if something happened that I had to run. I couldn't conceive it, but I wanted to keep my options open. In March of 1968, my wife finished her bar examination, and I felt, at that point, free to make my decision, which I did, that I would leave the court in July, fourth of July, symbolically. Well, it actually turned out to be the first of July, but my objective

was to declare my independence. I knew from the preparation I had done since fall, winter, that I would be able to raise as much money as I needed to, and that I had lots of support throughout the state. I wasn't concerned about election.

Mr. Lane:
(unclear).

Justice Souris:
Everybody thought that Ned Piggins would be my opponent. I didn't think that at all. I didn't think that Piggins stood a chance of nomination. I thought John Gillis would be nominated hands down, and I thought I could take John Gillis. When I announced my resignation, John called me and said that he felt like the guy standing on top of the long ladder, hanging onto the gutter while someone took the ladder away from him.

Mr. Lane:
This is Gillis?

Justice Souris:
Yes - John. In any event...

Mr. Lane:
The Piggins thing played no significant thing in all of this?

Justice Souris:
Not to me.

Mr. Lane:
Who was it, Black or somebody kept promoting Piggins as the Republican candidate.

Justice Souris:
I don't think that Black did, but I think Piggins did.

Mr. Lane:
Maybe that's what I'm thinking of.

Justice Souris:
Piggins was very much interested in running, and so was John. Piggins was too far removed from the political battle field to realize that John had done his homework, had prepared well for a convention, much more than Piggins, and I'm absolutely certain that John would have had it.

Mr. Lane:
So the result was, when you stepped down, there was no nomination.

Justice Souris:

That's right, and that meant, which was a part of it, too, that Mike O'Hara was running all alone. So, instead of being one of four candidates, he was one of two. Tom Kavanagh, Tom Giles Kavanagh, was then in a position to go head to head with Michael O'Hara, and Tom won. Mike was devastated when he lost. He was outraged that a name candidate, Tom Kavanagh had beaten Mike O'Hara who, in turn, had beaten Paul Adams. The next election pitted John Dethmers and Harry Kelly against John Swainson and G. Mennen Williams. I could have written that scenario in 1968.

Mr. Lane:

It was Dethmers and who else?

Justice Souris:

Kelly.

Mr. Lane:

Wasn't Kelly disqualified...did Kelly run?

Justice Souris:

Well, I take that back. You're absolutely right. Kelly did not run. It was McGregor who ran, wasn't it. In any event, that's right. We knew that Kelly was not going to run, and so it was only John Dethmers.

Mr. Lane:

And with Swainson and Williams, I think (unclear)...

Justice Souris:

Oh, yes it was. As a matter of fact, that the fall-off of votes cast for judicial candidates compared to the votes cast for Governor was one of my concerns, and I spent a lot of time during the campaign trying to encourage a higher percentage of votes. I don't think I succeeded. My recollection was that it wasn't very much higher than...

Mr. Lane:

Well, I think we ought to call it quits for this.

Justice Souris:

Thank you.

Mr. Lane:

You know, just consider...

(end of side 2, tape 3)