



Interviews with
**Michigan Supreme
Court Justices**

INTERVIEW WITH DENNIS W. ARCHER

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

Conducted by Roger F. Lane

June 5-August 29, 1991

Topic 1: Judge Archer reminisces about his growing up in Detroit and Cassopolis, MI

Mr. Lane:

This thing is a microphone. Have you seen that kind before?

Justice Archer:

No, but I assume it works because we're using it.

Mr. Lane:

Okay. This is Roger Lane. I am in the office of former Justice Dennis Archer of the Michigan Supreme Court, and we're here in the eighth floor of the First National Building in Detroit. We're here to talk, to make another tape for the Michigan Supreme Court Historical Society series with former justices of the Michigan Supreme Court. The date is June 5, 1991. Justice Archer, I would like to start this by inviting you to talk about your very earliest personal history, where you were born, who your parents were, what the circumstances were; did you have brothers and sisters and all that sort of thing.

Justice Archer:

I was born in the City of Detroit, left when I was five years old to move to Cassopolis, Michigan. My father had a third grade education; my mother had a high school education. My dad, before I was born, was involved in an automobile accident and lost his left arm just above his elbow, so his physical handicap coupled with his lack of a formal education limited his job opportunity and

advancement to the extent that he worked all of his life. He was a caretaker for Fern Wescott. Fern, F-e-r-n, Wescott, W-e-s-c-o-t-t, he and his wife had a summer home on Diamond Lake in Cassopolis, Michigan that my dad was the caretaker for. He worked for them all of my life. He made \$75.00 every two weeks from April 15th through December 1st, and \$37.50 every two weeks from December 15th through April 1st. I was an only child.

Mr. Lane:

What was your mother, what was her maiden name?

Justice Archer:

Frances Marie Carroll, C-a-r-r-o-l-l. She was born in Tazewell, Virginia. I am able to, through my mother's side of the family, trace our lineage back to a Carroll who signed the Declaration of Independence. On my dad's side...

Mr. Lane:

What was the full name of that Carroll sir?

Justice Archer:

I think John Carroll, if I am not mistaken. On my dad's side, the Archers came from North Carolina in 1950 to Logan County, Ohio and from Logan County, Ohio to Cassopolis, Michigan. My mother was born in Tazewell, Virginia and my dad was born in Cassopolis, Michigan.

Mr. Lane:

Justice Archer, you mentioned your father suffered this grievous injury. Was this immediately before your birth, a couple months or...?

Justice Archer:

Oh, no. It was well before I was born.

Mr. Lane:

Did he get any recompense?

Justice Archer:

Yes, he did but obviously...I don't know...I think it was a nominal amount by today's standards but back then, it might have been something substantial.

Mr. Lane:

It was not the feeling in the home that while this was a tragic accident, that he had been deprived of his just recovery?

Justice Archer:

No, no. There wasn't any of that. My dad never talked about it as anything that was bearing on our home. It never occurred to me that he had a handicap that precluded him from working because he worked all of his life. He never talked about it. He never let the handicap preclude him from doing anything that he wanted to do.

Mr. Lane:

Was he a physically agile man?

Justice Archer:

Absolutely.

Mr. Lane:

He participated in some kind of throwing the ball back and forth in the yard; he was part of your growing up...?

Justice Archer:

Oh, yes. He taught me how to raise a garden, plant it, raise it, harvest it; taught me how to work with electricity; taught me how to deal with people, how to appreciate and respect people without regard for what they had or their station in life. My mom was the same way.

Mr. Lane:

How did he happen to make the connection with Wescott to be...?

Justice Archer:

I have no idea. That was before I was born, so I don't know.

Mr. Lane:

I see. I beg your pardon. I thought that it was at the age of five that you went there, or had he been...

Justice Archer:

He had already been there and been employed.

Mr. Lane:

I see.

Justice Archer:

I have been working ever since I have been eight years old. I started caddying on the golf course, Parkshire Golf Course, when I was eight. After that, we had a bowling alley. I used to set pins in a bowling alley. Then in between and at the same time that I was setting pins and at the same time that I would be caddying on the golf course, I would sell what we didn't eat from the garden, whether it would be red raspberries or green beans or whatever the case may be. It was another hustle that I had.

Mr. Lane:

The garden was a source of food for the family primarily, was it?

Justice Archer:

Well, it wasn't a primary source, but it certainly supplemented, and it was something - we had a space behind the barn in which to have a garden. We lived in a rural area. Cassopolis' population is 1,500 people.

Mr. Lane:

You didn't live right on that...what do they call it...vacation home site?

Justice Archer:

No, my dad used to walk to work which was about a mile away...

Mr. Lane:

I see.

Justice Archer:

Where he would take care of the house. We had our own individual home. We had no running water, therefore, we had an outhouse. We had a well that we would pump water to drink and when that was defunct, went next door to a factory that was built after I was growing up and they had water that we would stand outside, and we would go over there, get water and bring it back. We would have water to drink from a bucket. I would take a bath every Saturday night in a tub. We had a coal stove and a kerosene stove. My mother cooked on the kerosene stove, and we would bake in the oven. So would my dad. Let's see...from the setting pins in a bowling alley, I worked in a...used to get up at about 4:00 a.m. and walk to our one block long main street and there was a bakery, used to sweep the floor, mop it, then come back home, then get up after I had taken a short nap and then go to school and then come back home. Then a friend of mine's father whom I graduated was doing some work for an interior decorator in Chicago. He was working with metal. He felt sorry for me having to get up and going down to the bakery, so I worked in his basement soldering...I wouldn't do any welding, I do some spot welding, and would work with metal that he would finish himself and take to Chicago to sell. I was working in his basement. When I graduated from high school, there was a furniture factory. I lied about my age to try to make some money to start college. They found out that I was too young, and I wound up coming back to Detroit to live with my grandmother to start Wayne State University. I left Wayne State University, went to Detroit Institute of Technology. I found that...

Topic 2: Judge Archer discusses his school years at college and his influences for education, and first career in teaching

Mr. Lane:

What year would this be or what age?

Justice Archer:

In 1959, I started Wayne State University. In 1963, I started Detroit Institute of Technology...no, I take that back. In 1961, I started Detroit Institute of Technology. In 1963, I transferred up to Western Michigan University because I found that I was getting ready...I was on the verge of being close to graduating from Detroit Institute of Technology. I was going to have a degree in Arts and Sciences, but it occurred to me that I would not have something that I could actually get a job, and I was job-oriented at that time.

I decided to transfer to Western Michigan University, and I got into the College of Education. I worked while I was on campus. I stayed in the only dorm that did not serve food which is called Vandercook Hall which we affectionately called "Hungry Hall". I would wash pots and pans at another dorm during the evening meals. I would earn I think about \$1.35/hour, and I could eat the meal that I worked, so I would typically work the dinner meal. I graduated from Western Michigan University with a degree in Special Education, and I taught mentally retarded students for the Detroit Public Schools from 1965 to 1970. I went to Detroit College of Law starting in January, 1966. I graduated in 1970 from Detroit College of Law.

Mr. Lane:

What was your earliest schooling? What kind of a place did you go when you were in Cassopolis, and at what age did you start? Was it a rural school with ten kids in it or...?

Justice Archer:

Oh, no. Well, I say "oh, no" - it was a classy school which means that there were not a lot of students, but it was not a rural, one-room schoolhouse by any stretch of the imagination. It was a school that fed the entire population of Cass County which was larger than the 1,500. I guess the best way to describe it was we had a graduation class, when I graduated from high school in 1969, we had the largest graduating class. We had 79 students who graduated.

Mr. Lane:

At a very young age, were you encouraged to read? Do you remember how old you were when you learned to read?

Justice Archer:

No.

Mr. Lane:

Would it be like kindergarten, first grade, something like that?

Justice Archer:

Yes.

Mr. Lane:

This would have been the normal standard way of going to school, five or six years old?

Justice Archer:

Absolutely.

Mr. Lane:

There was no such thing as preschool in those days, was there?

Justice Archer:

No. There wasn't anything called "Head Start" either.

Mr. Lane:

What about your mother - was she a strong influence in your early education? Did she encourage you to read?

Justice Archer:

Both my parents did, and my uncles and my grandmother.

Mr. Lane:

Did you have a library card at an early age, and were you encouraged...?

Justice Archer:

I don't think we had a library in Cassopolis, not that I can recall. If we had a library, it was in our school.

Mr. Lane:

Were you encouraged in reading at home, though?

Justice Archer:

Yes, and at the time that I was going to school, we were still listening to the radio to the "Shadow" and the "Green Hornet" and the like. I don't believe we had television until I was either in middle school or high school. Our entertainment was either the movies, and that closed down before I got into the eighth grade - we had one show in town; or we had the radio.

Mr. Lane:

What about religious influence?

Justice Archer:

Absolutely.

Mr. Lane:

I mean, but, do you remember - was your mother a very religious woman and were you put into Sunday school or were you taken to church at a very early age? Which church was it?

Justice Archer:

Yes. Started out in the AME Church and then switched over to Baptist, but I recall going to church, Sunday school, very early in my life.

Mr. Lane:

With your parents, right?

Justice Archer:

With my mother more than my dad.

Mr. Lane:

Do you consider that you were...that this was a strong religious influence in your early years? I am trying to grope, you see, for what all of this very early formative periods might have been an influence later in your life.

Justice Archer:

Well, religion in Cassopolis was something that...I mean, we all went to church. As you might imagine, there were all types of churches, save for there were no synagogues in Cassopolis, but there was Catholic, Baptist, AME, Pentecostal, so we all went to church.

Mr. Lane:

Was there any sense in your early schooling of church preference and that sort of thing? Did kids argue about whether or not you were...?

Justice Archer:

No, none of that. We were all very proud of our respective involvement. We would be involved in one form or another of church activities, whether it happened to be church plays or church socials or...we used to have cake walks and different kinds of socials that, as children, we would participate in.

Mr. Lane:

How old were you when you took the caddying job? That was the first one, I think?

Justice Archer:

Eight.

Mr. Lane:

Eight years old?

Justice Archer:

Yes.

Mr. Lane:

What did you get for a round in those days as a caddie? Do you remember?

Justice Archer:

No. But it put spending money in my pocket that I wouldn't have to ask for any money, and once in a while, I could even contribute, you know.

Mr. Lane:

Did you get a chance on "caddie day" to learn golf?

Justice Archer:

We didn't have any "caddie day". This was a public golf course. This was not a country club. We had no country club in Cassopolis, but there were days that they would let us go out if it was slow and I started playing golf with a mashie, a 5-iron that my uncle gave me, and then later, he gave me a set of clubs and I was on the varsity high school golf team. I played varsity basketball, junior high football but didn't follow it in high school.

Mr. Lane:

Did your uncle live there?

Justice Archer:

No, he lived in Detroit.

Mr. Lane:

Was he pretty well-to-do, to give you a set of golf clubs, or...?

Justice Archer:

It was a used set of golf clubs. I mean, he wasn't poor by any means, but he wasn't wealthy either.

Mr. Lane:

You didn't get a \$400.00 set of irons?

Justice Archer:

No, nothing like that. It was a used set of golf clubs but it was enough that I could make the varsity team with them.

Mr. Lane:

So that started you, and you kept going, right?

Justice Archer:

Sure.

Mr. Lane:

How about bowling - do you bowl today?

Justice Archer:

No, and it is only because I have really no interest in bowling.

Mr. Lane:

Did you have automatic pin setters in those days or did you dodge the pins when they came hurling back off the...?

Justice Archer:

Oh, we dodged the pins, but we had the machines that you would...they'd bowl and we'd stick them into the machine, and then pull the lever...you pull and lever and they come down.

Mr. Lane:

Yes, that is something familiar in my past, you can tell.

Justice Archer:

Absolutely.

Mr. Lane:

Only I did it in college. Now, as you look back, did you get a fair advantage in high school to do all those things that are on the fringe of classroom work? Did they have a band, and did you play music?

Justice Archer:

Yes, and I was in the band. I played...started out with snare drum, symbols and wound up placing the base drum. I also played base drum for the Wayne State University marching band. We went down...our band went down for President Kennedy's inauguration.

Mr. Lane:

Is that right?

Justice Archer:

Yes.

Mr. Lane:

What about other...were you exposed to, for instance, Spanish and Latin and all that sort of thing?

Justice Archer:

No, no foreign language - basics, just the basics, basic rudimentary. It was, quite frankly, not sufficient, in my view, to compete with kids who had gone to Cass and Mumford and other high schools around the state when I got down to Wayne State University.

Mr. Lane:

I was going to ask that. You found that you hadn't really gotten the preparation that would have helped you had you got more, let's say.

Justice Archer:

That's right. Great values, learned terrific values in terms of respect for people, peers, people who were older than I, but was not given the same kind of educational benefit. I think in our chemistry class, the only thing we made was oxygen. Beyond that, we'd read about other kinds of things. We had a - our chemistry lab was antiquated, and our academics, I know by comparison by talking to others, were not as rigorous. It was a small community.

Mr. Lane:

At the grade or high school level, did you encounter any teachers that had a lasting impression on you, that you stayed in touch with or who inspired you in some way to drive forward and push in a...?

Justice Archer:

All the teachers there were very fair, very concerned and very caring. One teacher that stood out for obvious reasons was because he was the first Black teacher that we had in my entire school.

Mr. Lane:

Is that right?

Justice Archer:

His name was Clarence Lusby. He came when I was in the 11th grade.

Mr. Lane:

How do you spell it?

Justice Archer:

L-u-s-b-y, Clarence.

Mr. Lane:

Did he come - he was hired in while you were there?

Justice Archer:

Yes, and he taught math.

Mr. Lane:

Was he a good teacher?

Justice Archer:

Yes.

Mr. Lane:

Now, when you went to Wayne, what was the purpose of coming to Wayne from Cassopolis.

Justice Archer:

To start...I wanted to get into something that I figured would be something to do that would have potential for being contributing, profitable, and socially acceptable. Without any inclination, any reason other than just for the fact that they wore white coats and because I had an appreciation that my education was not sufficient to go to medical school, I chose pharmacy. It didn't take long for me to find out that pharmacy and I did not agree.

Mr. Lane:

Would you have gone to medical school had you been able to blast through a path to medical school?

Justice Archer:

That was something that was in the back of my mind, although there was no one in Cassopolis. Cassopolis was a stop on the Underground Railroad. There is an historical marker there, and while we have a large Black population in Calvin Center which is in Cass County, there were no Black professionals. There were no lawyers, no doctors.

On our one block long Main Street, while we had Kroger's on one side and A & P on the other, one kind of a bank on one side and one on another, different clothing stores, Rexall Drugs, a drugstore called Gohns drugstore, G-o-h-n-s, there was no one of color who worked even as a bag checker or a cashier or a bank teller or anything. We had no one of color for which to have as a role model. Subsequently, there was a gentleman by the name of Charles Smith who came and bought some land from my dad and put up a factory right next to us.

He manufactured hoists. Hoists are still just as usable today as they were when he manufactured them. Hoists are what they used to lift up tar or things on the ground up to the highest part of the building where they need to get to contractors or whoever is building, electrical people who are on tall buildings, to use it to transport something from the ground or from a lower floor up to a top floor while they're working on it.

Mr. Lane:

Did you say he bought the land from your dad?

Justice Archer:

Yes.

Mr. Lane:

Your dad owned the land?

Justice Archer:

He owned the land.

Mr. Lane:

Did your dad own the land?

Justice Archer:

My dad owned the land.

Mr. Lane:

Did your dad come to some degree of financial comfort as the years went by?

Justice Archer:

No, not at all.

Mr. Lane:

Was it inherited land or did he...?

Justice Archer:

I have no idea.

Mr. Lane:

I see.

Justice Archer:

I mean, he had it before I was born, so I can't tell you.

Mr. Lane:

He had lived there before he came to Detroit?

Justice Archer:

Yes.

Mr. Lane:

I see. Now, after a couple years at Wayne, then Detroit Institute of Technology, what happened there? That was for a more ready kind of employable form of education, that is, if you got out of Detroit Institute of Technology...

Justice Archer:

I could have gone to work probably as some kind of management trainee somewhere or could have done whatever people do with Liberal Arts degrees, but that was not what I wanted. I wanted something more specific. They did not have a College of Education at the Detroit Institute of Technology so I transferred to Western Michigan University.

Mr. Lane:

And that was for the purpose of training to be a teacher, was it?

Justice Archer:

Yes.

Mr. Lane:

And then when you got out, you actually did start work as a teacher with, was it the mentally retarded?

Justice Archer:

Yes.

Mr. Lane:
In Detroit?

Justice Archer:
Yes.

Mr. Lane:
Now, that is where you met your wife?

Justice Archer:
Yes, I started student teaching in the fall semester of 1964, and my wife was starting as a teacher in the fall of 1964 at Bunche Elementary. We met and started dating sometime after the spring of the year of 1965 or sometime around that time. We got married in June, 1967. By that time, I had been in law school since January of 1966.

I started to go back...the student teaching and my first semester of teaching was so good and positive that the principal encouraged me to go to get a Master's degree so that I might be in a position to become a principal; first an assistant principal and then a principal. I went back to take some classes, and I enrolled at the University of Michigan, the Rackham Building and found that the classes that I was taking were the exact same classes that I had taken at Western Michigan University. I was very frustrated by that.

I started talking to my wife about my frustrations, and she said, "Why don't you consider going to law school?" I said, "I know absolutely nothing about the law". She said, "You run your mouth very well. You probably could talk yourself out of Hell when you got there". I started to think about law school, looked into it, and applied and was accepted at Detroit College of Law. I went to law school starting at night.

Mr. Lane:
Did you have any difficulty in gaining admittance, or had your education speed reached a level there where there was no trouble?

Justice Archer:
There was no trouble getting into law school, none. I went to law school at night and taught during the day. I graduated in four years, passed the Bar and started practicing. It was there when I graduated from law school...at the time, the large law firms weren't hiring anyone from Detroit College of Law.

Mr. Lane:
Is that right?

Justice Archer:
They were looking at students from other schools but not from Detroit College of Law, so I

started looking around. I had clerked one summer in the law firm of Keith, Conyers, Brown, Walz, and Anderson. That was the summer of 1967. It was in the fall of 1967 that Damon Keith was then nominated by the United States Senator Phil Hart to go on the Eastern District of Michigan Federal Court. The choice was between he and Otis Smith.

Otis Smith, as you recall, in 1966 lost the election for a full term to the Michigan Supreme Court. Otis Smith, not having been chosen, ultimately became an assistant...not ultimately, but started out as an Assistant General Counsel, then Associate General Counsel, then the Vice President and General Counsel of General Motors. Damon Keith, of course, when he was on the trial bench, became Chief Judge of the Eastern District and then was elevated to the Sixth Circuit Court of Appeals by President Carter.

Mr. Lane:

One thing I wanted to ask you about - I saw in a newspaper clipping in the files - it told of your early desire to enter politics, and it said that you have offered your volunteered services, as I understood it, to Millender and was rejected. Is that...do I say that right? Is that what happened?

Justice Archer:

No, what happened was that I got involved in politics at the time that Richard Austin was running for mayor of the City of Detroit in 1969. That was in the summer and in the fall of 1969. I was going to graduate in 1970. At the time, I did not have a job. I had clerked for Damon Keith's law firm in 1967. In 1968 or 1969...I think it was 1969, I clerked at Ford Motor Company. It was in 1969, the summer. I clerked at Ford Motor Company. I did not get an offer, so I was looking for a job opportunity, and Robert Millender was a partner in an integrated law firm. Since he was running Dick Austin's campaign, it was my thought that if I got involved in Dick Austin's campaign, Bob Millender would get a chance to meet me and see me willing to lick stamps and to stuff envelopes and to do the mundane things that one needs to have done...though they're really not mundane, they're important...but here I'm thinking that as a teacher and as a law student, if I'm willing to do those kinds of things, then maybe he would equate that with a willingness to work hard if I were hired by his law firm. So, I got involved in Austin's campaign. Bob Millender and I got to be very good friends as a result of it, but I did not get a job with Millender's law firm.

Mr. Lane:

So it wasn't that you were turned down as a volunteer helper.

Justice Archer:

No, no, no. I did not get the job that I tried to get at Millender's law firm. I went to work for the law firm of Gragg and Gardner, Sam Gardner and Robert Gragg, both of whom went on...

Mr. Lane:

Excuse me, sir...this will help in the transcript. How to do you spell...?

Justice Archer:

G-r-a-g-g-, J. Robert Gragg. He ultimately became a Wayne County Probate Judge and had to resign because of medical reasons. Samuel C. Gardner who...I ran his campaign in I think it was

about 1971, 1972 when he was seeking to become a judge in Recorder's Court, got elected to I think was an eight year term. We came in second. He then went on to become Chief Judge in Recorder's Court and has retired and joined Ed Bell who subsequently died of cancer. Ed and Sam were still practicing law.

Topic 3: Judge Archer talks about his interest in politics and his nomination and subsequent appointment to the Supreme Court

Mr. Lane:

How far back can you trace that zest for politics? Was it the Austin campaign that first fired your imagination in this area, or...?

Justice Archer:

I got involved in it with the thought of trying to impress Bob Millender to get a job in his law office. This comes, if you will recall, some eight years after having marched in the Inauguration Parade for President Kennedy. Following President Kennedy's assassination -I was washing pots and pans at Western Michigan at the time of his assassination. They came running into the Student Union where I was washing pots and pans, and we all ran out to watch the television to find out what had occurred.

In any event, I had never gotten inspired necessarily by having marched in the parade or having lived through the assassination of President Kennedy. As long as I have been able to vote, I have always voted in every election. I felt that as a right and really as an obligation based upon those who sacrificed so much to fight for my right to vote, that I've always voted in every election.

Mr. Lane:

Have you any military connections?

Justice Archer:

No. But the desire to work in Millender's law firm was the principle reason why I got involved, but once I got involved, I found I just really loved politics. I enjoyed it. It was a lot of fun. I went from Austin for mayor to Austin for Secretary of State in 1970. Bob Millender was in the hospital at the time, sent me up to Lansing to help Dick Austin get the nomination from the party. He got the party's nomination, and then I got involved in working in his campaign. He won that election. The next election was...I think we took a year off because we have three years of elections and then there is a year off. It was the year after this election in 1971 or 1972, I ran Sam Garner's campaign for Recorder's Court judge. In 1973, I ran Ed Bell's campaign for mayor. In 1977, I ran Mayor Young's first re-election campaign against a challenger, Ernie Browne.

Mr. Lane:

By this time, Justice...

Justice Archer:

In 1978, I ran the "get out to vote" campaign or effort for the Michigan Democratic Party for the City of Detroit. In 1980 or 1981, I ran Shirley Robinson Hall's campaign for City Clerk. I ran George Crockett's campaign for United States Congress with Charlie Digg resigned and George Crockett ran for that seat and won it.

Then I ran...I didn't run anymore. I got involved in elections of G. Mennen Williams for Supreme Court, tried to help Robert Evans get the nomination out of the Democratic Party for the Michigan Supreme Court. I got involved in both of Blair Moody's campaigns for the Supreme Court. I should say three of them. The first time he ran against Fitzgerald and lost. The second time, he ran against Lindemer and won, and then he won his own campaign for a full term, but died raking leaves before he could get involved, before he could begin serving.

I was on the Finance Committee of Bill Lucas when he ran for County Executive the first time as a Democrat, on Reigle's campaign for Senate, Carl Levin's campaign for Senate, Jim Blanchard's campaign for Governor, and then I was appointed in 1985 and ran in 1986 for a full term on the Michigan Supreme Court. That's my political...

Mr. Lane:

When did the vision of becoming a Supreme Court justice first occur to you? Do you remember?

Justice Archer:

I had no vision. I had no aspirations.

Mr. Lane:

Didn't you? You didn't want to be a judge, or not a judge in that kind...?

Justice Archer:

I had not even given any thought. I fantasized about being a judge only because I had been involved in so many political campaigns, and people just assumed that I was a lawyer and that every lawyer wanted to be a judge from their perspective and therefore, I must want to be a judge of some sort. People were always trying to either encourage me to run or suggested that I go after appointment. I never did. I was out in California in May, 1985 taking a deposition in a medical malpractice case and as is my custom, I called back to my office, and my secretary said that there was someone that said they must speak to me urgently. I called the person, and they asked if I would consider allowing that person to give my name to the Governor for consideration as to a vacancy on the Michigan Supreme Court. I laughed. I thought it was a joke. But, I'm listening to the conversation after I laughed. I'm hearing them call my plane.

I've been...I've enjoyed being President of the State Bar which is what I was at that time. I was winding down towards the end of my term, having thought of coming out of the office of president in September, 1985. So I said "yes". I figured that it would not hurt my clients, or potential clients, to know that if they ever found out somehow that I might have been considered

for the Supreme Court. I was making quite a bit of money, and I had two boys in private school. My wife was employed, but you know, I was making a lot of money and had no thought or desire about being on the Court or anything of that nature. Then two weeks later, my name appeared in the paper as being considered for the office of Supreme Court.

Somebody, in my view, from the Governor's office leaked my name. They leaked my name along with Wade McCree and Damon Keith. I knew neither one of them had an interest in being on the Supreme Court. Wade McCree, at that time, had left Solicitor General spot after Carter lost and was a professor, a distinguished professor, having been chosen at University of Michigan to teach in some person's name...I forget the chair, the seat that he was occupying, but he was a full tenure professor, and I doubted that he had any interest. I received a call from Wade McCree saying that I should know that he had no interest, and he was very supportive of me taking the position. I said, "Gee, I appreciate it, but I want you to know that I'm really making quite a bit of money. I am enjoying my practice, and I don't think I could take that kind of a pay cut". I didn't think any more about it, and then my name was leaked again, this time with some other people, and I assumed what was going on was that this was a way of the Governor's people putting my name out there such that if anybody knew anything negative about me, they would certainly rush to tell the Governor about it and therefore, they wouldn't have any embarrassment of, say, appointing me or nominating me and having something embarrassing coming out or whatever the case may be. That's the only thing I can think of, or maybe they were just floating it out there to see how it would fit.

In any event, I got called on November 7th by the Governor. He was in Washington, D.C. It was an election day. He was in Washington, D.C. and called and asked if I would take the position. By that time, I had been encouraged by a lot of people to take it. We had not had a person of color on the bench for over 20 years, or about 20 years, since 1966 when Wade McCree had lost...I'm sorry...when Otis Smith lost the election, and it was important that we have diversity on the Court. So my wife and I had gone over about 14 - 15 different creative budgets to see whether or not we could stand the pay cut for me, and had decided that if I were asked, I would say "yes". I had talked to both of my boys, and they understood that they would no longer have the option of going to a college of their choice, meaning outside the state of Michigan. Rather, it would require that if I go on the bench, it would mean that they would have to go to a state college. They were very supportive and said, "go for it" if I get the call. I got the call, and I said, "yes".

Mr. Lane:

Justice Archer, you mentioned May of 1985. Was at that time of the vacancy and prospect, was Ryan...?

Justice Archer:

Ryan was already...his name had already gone up.

Mr. Lane:

But he hung fire for a long time, is that...?

Justice Archer:

Well, his name was submitted but as you might recall, there were a lot of the ways...a lot of Reagan appointees, and they were delayed in doing background checks and the like. They had completed their work by November or so, but I think Justice Ryan, and rightfully so, wanted to have the benefit of any increase, and there was going to be an increase from \$77,000 to \$84,700, so there was going to be an increase of which, because of his longevity of service both on the Wayne Circuit bench and then on the Michigan Supreme Court, it would increase his pension benefits, so he stayed until January 2nd which was when he had his public swearing in to go on the Sixth Circuit Court of Appeals.

Mr. Lane:

Do you remember your first visit to the Court as an appointee or maybe even as a...perhaps it was when you were sworn in, but as I understand it, courtesy usually is extended to an appointee.

Justice Archer:

As I found out, it was, but I was never invited.

Mr. Lane:

You were not?

Justice Archer:

No, because I found out it was a matter of courtesy that had been extended in the past, that a person would come in, sit in the room and watch how the Court works so that it would not be unfamiliar when one was actually appointed. That courtesy was not extended to me. I don't think it was any obvious reason or any reason to do with...I think they just didn't think about it.

Mr. Lane:

Williams was Chief Justice then?

Justice Archer:

Yes.

Mr. Lane:

He has always been friendly to you, hasn't he?

Justice Archer:

He has been exceedingly friendly to me. Indeed, he was one of my strongest mentors on the bench. We were very close as evidenced by his will that he had made prior to his untimely death where he even set out the ceremonies and who he wanted to speak, and I was one of the people that he had wanted to speak at the time of his death.

Topic 4: Justice Archer speaks about his involvement with the Michigan Bar Association

Mr. Lane:

Justice Archer, going back to your Bar career which must have started back in the early 80's.

Justice Archer:

It started as soon as I graduated from law school.

Mr. Lane:

Okay. Did you have your sights set on the presidency of the Bar?

Justice Archer:

I didn't get my sights set on the presidency of the Bar until about a year or two as I positioned myself to run for the office of Commissioner of the State Bar of Michigan. Before I ran as a commissioner, the only way a minority had been able to serve as a State Bar Commissioner was through a Supreme Court appointment.

Mr. Lane:

Is that right?

Justice Archer:

Damon Keith served by way of a Supreme Court appointment.

Mr. Lane:

You were the first elected Commissioner?

Justice Archer:

Otis Smith served as a Supreme Court appointee, and Myzell Sowell had served as a Supreme Court appointee. I was elected.

Mr. Lane:

The first one?

Justice Archer:

The first one.

Mr. Lane:

What year was that, do you remember?

Justice Archer:

I don't. I had been on nine years when I left in 1985, so you can subtract 9 from '85, 1974, I figure, 1974?

Mr. Lane:
1976.

Justice Archer:

1976, whatever it was, yes, 1976. I had been involved...I had some excellent advice given to me by a law professor in the law school who pulled me aside and suggested that if I were to consider...let me back up. He said that he knew that I was probably going to get involved in the Wolverine Bar Association, and that was a given because we had started a Wolverine Bar Association Law School Division at Detroit College of Law. He suggested, however, that in addition to being involved in the Black Bar, that I ought to be involved in a majority Bar as well. I took his advice and got involved with the Detroit Bar Association's Young Lawyers Section. It is now called the Barristers. I got involved, ran chairs and was president, and as a result of demonstrating what I hoped to have been good work ethic and all that, I ran for and was elected to the Detroit Bar Association Board of Directors and served for several years. Then, at the same time...

(End of side 1, tape 1)

Topic 5: Joining the Supreme Court, and function of the Court

Mr. Lane:

What were your feelings, your impressions of the Court? There must have been some surprise when you got inside the conference room and saw the mechanics start to turn, was there not?

Justice Archer:

Well, I had been a trial lawyer for about 15 and a half years. I was not surprised by anything.

Mr. Lane:

Weren't you?

Justice Archer:

It was a learning process. A surprise is when you're not expecting something and something occurs, either very good or very bad. I had no appreciation for what the Supreme Court did, and what I mean by that is I had an appreciation for what trial court judges would do, had some appreciation for what the Court of Appeals judges would do but because members of the Michigan Supreme Court had never gone around the state or never had gone to Bar Associations and shared with lawyers what it is that they do and their responsibility, I had no appreciation for what they did.

I was very glad, as a matter of fact, that they never shared it because as soon as I got on the Court, I had to gear up and meet people around the state, all over the state, because I had never

held public office before. There was a benefit of having been the immediate past president of the State Bar of Michigan, because I went all over the state speaking to all the Bar Associations that wanted their president to be there for whatever reason, and we had, at the time, 108 affiliates. I traveled about 25,000, was up in the upper peninsula and all over the place, speaking to various Bar Associations. I knew a lot of people which was of help.

I'd like to think that I made a very good contribution to the bench and the Bar, in terms of pulling both of us, the bench and the Bar, together for the good of the public and for the good of our profession. A lot of the judges were very helpful to me in introducing me to their Kiwanis clubs or their Rotary clubs or setting up meetings for me. I was all over the state. What that meant was, as you might appreciate, judges can't promise anything. All we can do is promise that we will be fair and impartial. We can't promise that if a certain type of case comes before us, we are going to rule a certain way. We can't do that. So the fact that the members of the Michigan Supreme Court had not shared with the public what they did and how they did their work, it gave me just the greatest opportunity to say something knew that everybody wanted to learn about but nobody had ever talked about it before. Now everybody on the Court talks about what we do. They've found it to be of benefit, so if there's a contribution that I think I've made, it is to tell the public, the press and the Bar Association how the Court works, and it was no secret.

It was just going through the mechanics in terms of how a case comes in to the Clerk of the Court, from the Clerk of the Court to commissioners, describe the work of the commissioners and the Chief Commissioner, Al Lynch; describe the process of how they develop commissioners' reports and how the commissioners' reports would come to each of the justices and we all had the same applications for leave to appeal reduced to commissioner reports by our various commissioners.

Then we would either hold the case for discussion, or we didn't hold it, order would enter, and we would discuss the cases and how important oral argument was and that oral argument could change a person's mind. Even after you have signed a case and you think you're going to be writing from the majority, you never know until you get four signatures and how a majority opinion can really be a dissenting opinion, and how a dissent can turn into a majority. How we dealt with Court rules, how we dealt with the Michigan Rules of Evidence, and all of those kinds of things. Nothing secretive, but nobody ever talked about them, so I shared the view, shared what went on.

Mr. Lane:

Would a Kiwanis club in Manistique be interested in this? Did you find that out?

Justice Archer:

Yes, yes. Because the Michigan Supreme Court, by authoring an opinion, settles the state of the law in 99% of all the cases that come before our Court. The United States Supreme Court each year might take one case. In some instances, they might take two, but there would be every reason to suspect they may not take any so for all practical purposes, the law written by the

Michigan Supreme Court would be the final law for most anybody who would come before our Court. Everybody was fascinated by what we did and how we did it.

Mr. Lane:

Justice Archer, when you went on, you were faced with an immediate campaign. That November, you had to run and win to hold your seat. Did you feel a tension between the work of the Court, the studying of records and all that kind of stuff and the fact that you...really what I'm asking you about, I suppose, ultimately, it your feeling about the selection process.

Justice Archer:

First, let me just say this. I felt no tension. I knew going in that I was going to be facing a state-wide campaign. I have a very strong work ethic. I am very disciplined and I knew that in order to continue the work of the Court and so that the Court would not slow down its work and that the public, the bench and the Bar would be best served, that it was my responsibility to devote all my first effort to the work of the Court, which is what I did. But at the same time, I knew that I had to campaign, but the work of the Court came first.

There was nothing that was ever delayed, no work was ever delayed because of my tenure on the Court and my having to run, and so I found myself doing a lot of work in the back seat of a car. I had a number of people volunteer; I leased a car. The state provides a car, but I leased a car that I would campaign in. I would sit in the back seat and volunteers would drive me, and we...on occasions, we had driven up to Traverse City. I would speak and turn around and come back the same night, sitting in the back seat with both back lights on so I could read and write if that was the case, or read commissioner reports or do whatever I had to do, dictate with a hand-held dictaphone, etc.

Mr. Lane:

As you view the...this was your experience in 1986. You were then on the Court for a good number of years after that. Was it your observation that there was the same kind of diligence exercised by those people who had to run subsequent to you, or do you think that there is, maybe not for you, but in the system, a tension between the Court doing its...?

Justice Archer:

I think tension is not the appropriate word. I think to run a campaign and having to discharge your responsibility on the Court is a distraction. It can...it depends upon the work ethic and how you feel about campaigns. I love campaigns. I love politics. I love meeting people and the like, so it was doing two loves, the love of the Court and the love of meeting people and trying to encourage them to consider me as a candidate when they would cast their vote. I was doing things that I really enjoyed.

Some who have been on the Court feel that it is distracting. Some feel who have been on the Court that it is either unnecessary or...I won't say distasteful because we've all been through it and we know going in when we seek either to be elected or the appointment that that's a

necessary process...I guess I was more comfortable with others, so it didn't bother me. You asked me an earlier question, and I went off on another answer. You did not come back to it. We may be approaching it a different way - I still prefer the elective system over the appointive system. I prefer it because, if nothing else, every eight years on the Michigan Supreme Court and every six years for judges on the Court of Appeals, Circuit, Probate and District Courts, judges must get out in the community to seek to be re-elected and by so doing, they interact with the people with whom they will cast their vote, hopefully in their favor, and at least during that time, one learns of the communities concerns, likes and dislikes and opinions of the Court or their feelings about the Court or the system rather than just reading it from newspapers.

You need to hear it from the people. Newspapers have their own point of view, and it comes from the writers talking with one or several people or any number of people, as the case may be, if they're doing a copywrited story or a series or on a particular issue, but it is not like meeting the individual mom or dad or senior citizen or whatever, who have different concerns about life or whatever the issue may be. It may not have anything to do with the Court, just about people and how they feel. You meet with people who run businesses, people who are officers in businesses, the entrepreneurs who have twelve people working for them, and their concern about unemployment compensation or Worker's Compensation or whatever their concerns might be, plus or minus, likes or just glad to be in whatever there might be. You meet these people. They're wonderful people who live in the State of Michigan. You cannot help but learn from that, so I think that's important.

It also, for many who, like myself, enjoy working within the community and have a sense of a desire of wanting to give back, many of us are serving on different charitable boards and organizations and interact. We are active in Girl Scouts, Boy Scouts, or different groups working with children, adults, seniors, or whatever the case may be. I find that many judges who are on the Federal Court because they don't have to run, it's a lifetime appointment save for anything that they may do that is really inappropriate that would cause them to be removed from the Bench, are less either inclined or motivated or find the need or really are active inside their community. I prefer the elective system over the appointive system, as did Chief Justice Williams and as do several of my colleagues who are on the Courts.

Mr. Lane:

At one time, there was a serious...back in the 70's, I think it was, the Clark Commission, and there was serious talk about separating out the Appellate bench from the Trial bench.

Justice Archer:

Well, first there was...that occurred while I was active in the Bar Association - there was a strong movement to see whether or not there could be appointment of all judges. They couldn't get sufficient signatures to put it on the ballot. Then there was an effort made through the Bar Association again in the 70's - well, let's see about just the Appellate Court judges. Again, they could not get the signatures.

Then when Lieutenant Governor Brickley was running for Governor, he tried to get enough signatures to put on the ballot to allow the Governor to appoint the Appellate judges and the boards or the Board of Governors of Wayne State, the Board of Trustees of Michigan State and the Regents of University of Michigan, you know, the colleges, that the Governor appoint, and he couldn't get signatures for that. It has virtually died away. Every now and then, it surfaces as an issue, but I think that the people of the State of Michigan have made it very clear in the past, and I see nothing that has occurred since then that would suggest to me that the people would want to change from an elective to an appointive system or a Missouri plan.

As a practical matter, however, a lot of judges already are appointed by the Governor. It is when they must stand to retain their seat at the next available election that the election process comes in. More people come to the judiciary that way, through Governor appointment, than through actually running for a vacant seat or to challenge an existing incumbent.

Mr. Lane:

What is your view of the matter that is sometimes a subject of comment, that a Court of Appeals judge has never lost for re-election. We have lost a lot of good Supreme Court judges - or let me put it this way, good ones. I mean people who had served honorably and who were knocked off without, you know, having sinned in a grievous way.

Justice Archer:

In the Court of Appeals, the way the system has worked is that there has not been, that I can recall, any challenge to any incumbent on the Court of Appeals. I think the same thing would be true on the Michigan Supreme Court, however, we have on the Michigan Supreme Court, the political parties involved. The way that it set up, it is abundantly clear at every election, a new justice or in the case of Conrad Mallett who is now on the Michigan Supreme Court, who took my place - when I left, I had four years remaining on my term.

He must run in 1992 in an effort to serve my unexpired term. Then he has to run again in 1994 for a full term, so he will have to run twice in a row. The same thing happened to Justice Ryan. Justice Ryan had to run for a short term, then had to turn around two years later and run for a full term, and it was after the full term that he got the appointment to go up to the Sixth Circuit...

Mr. Lane:

That he sought...

Justice Archer:

Yes, he sought the appointment to a lifetime appointment. We find that in an election, whether it is for a full term or an unexpired term, if, as in the case of Conrad Mallett who is a Democrat, the Democratic Party will then nominate one person for that position. As an incumbent, he can file a self-designation form...it's not self-designation, rather an Affidavit of Incumbency that automatically will put him on the ballot.

However, because there is such a drop-off in all of the precincts, irrespective of ethnicity, irrespective of the economic wherewithal of any precinct anywhere in the state; there is a drop-off between the top of the ticket and the judiciary, all in non-partisan. It is absolutely imperative,

I think, that one gets nominated by their respective party because it helps in terms of getting your name out, and it helps with one's retention or election. So, Justice Dorothy Riley is up in 1992. She is a Republican, so she will go to her party to seek the nomination, though she will also file an Affidavit of Incumbency.

Mr. Lane:

Has she announced that she is going to run again?

Justice Archer:

Oh, yes.

Mr. Lane:

She has?

Justice Archer:

Yes, and typically what will occur is that both parties will nominate someone against the other, so you always have an automatic race. They may not send somebody with a heavy name against someone, especially when you've got two people running. What will happen is that typically someone will say, "Wait a minute. I want to make sure I keep my seat", or the party will say, "We want to make sure we keep Justice Riley on the seat, so we will put up somebody who is not real strong against Conrad Mallett" in a sort of like unspoken Democratic Party will put somebody up that is not really that strong against Dorothy Comstock Riley.

All things being equal, Dorothy Comstock Riley and Conrad Mallett should both win. Now, if they both play hard-ball, you know, then everybody gets their best hold...all I'm saying is that is how the Supreme Court elections...you always are guaranteed, always are guaranteed a contested election, but you're not guaranteed a contested election in the Court of Appeals.

Mr. Lane:

Would it be a wise thing to devise a mechanism to do away with the contested aspect of it? T. John Lesinski, you know, at one time, proposed that somewhat seriously, both parties ought to get their heads together and nominate the same two people.

Justice Archer:

Well, that was talked about at one time, but I've not seen it worked out. To the extent that it could be tried, I think it would be fascinating. I think it would be good, but to the extent that if it is not done, I don't think the world will come to an end, and it certainly keeps everybody honest. What I mean by "honest", not honest in terms of anything other than to suggest it keeps everybody having to stay in touch with the people, and that becomes important.

I don't think anybody should be so isolated that they don't understand the concerns of the people who ultimately cast votes, and that becomes very important. Otherwise, you can become isolated because the problems that the Court faces and the issues that the Court is called upon to resolve,

and the sheer weight of the work that the justices have to read, digest and pass on is so enormous that it would be easy to be considerably confined to one's chambers or take work home and not go out to the public. You could become very sheltered, but if you have to go out, at some point, and be re-elected, despite all of the work and the weight of the work of which the Court must involve itself and must discharge its responsibility in handling and reporting back to the bench and the Bar, it still is important that they come into contact with people.

Topic 6: The writing of court decisions

Mr. Lane:

Let's turn back, Justice Archer, to your work on the Court, specific cases. Is there one case, for example, that you wrote or a dissent, perhaps, that you wrote that stands out in your mind, or two or three, as your most significant contributions to the jurisprudence of the State.

Justice Archer:

I'd like to think that each case that came before our Court was exceedingly important. Assuming the Court was the final arbiter of the State, and therefore, as a result, each case was important to me. Whether I happened to contribute by way of a majority opinion or dissenting opinion, or whether I signed someone else's dissenting opinion or majority opinion, each case was important.

The first case that you asked - the case that stands out in my mind was principally because it was the first one that was expedited. We have had others that have been expedited, but I can't tell you what they are. I recall one in which I took a dissent and made it into a majority on, I think, Walker vs. the Department of Social Services. The Chief Justice, Chief Justice Riley wrote the proposed majority which turned out to be a dissent, and I wrote the dissenting opinion which turned out to be a majority opinion.

Mr. Lane:

What was that case about, Justice Archer, do you remember? Was that towards the end of your term?

Justice Archer:

No, it was sort of towards the beginning, I guess. It had to do with a lady who was working for someone who was not able to take care of herself fully. The Department of Social Services had her come in and work with this person. She got injured while working for this person and sued the Department of Social Services, as I recall, asking for compensation. At issue was whether or not she was entitled to it, I forget which...I think that was about it. I held that she was and the majority agreed. What do you have before you?

Mr. Lane:

This is...when I found that I was going to come and speak to us, I asked Bill Haggerty to get me

up a list of cases where you had either written a majority or dissented or written concurring opinions, and this is what he gave me.

Justice Archer:

You know, I have never had a list of what I've done. Would you mind if I had my secretary xerox this?

Mr. Lane:

No, I've got a lot of notes on there.

Justice Archer:

I mean, I'm not concerned about that because I would.

Mr. Lane:

Go ahead, you're very welcome.

Justice Archer:

Thank you.

Mr. Lane:

Do you want to take a little time off here?

Justice Archer:

No, we can keep talking. I will just have her do that. Thank you.

Mr. Lane:

Would you have her bring it back soon. I would like to refer to it.

Justice Archer:

Yes.

Mr. Lane:

You know, talking to other former members of the court, I had gone to the State Law Library, the Lexis System. I got them to try to retrieve cases in the same fashion, all majority opinions, concurrences and dissents, and the results were very spotty, and whether it was because of the way the system worked or not, I don't know. It seemed because of your recent departure, you know, the fact that the wheels haven't turned, I didn't know how up-to-date the database would be in that sort of a system, so I just asked Bill if he could do it, and he did. That's what he came up with.

Justice Archer:

I don't know whether he purports to have every case there, but it was...

Justice Archer:

I looked at a lot of them. I've forgotten all about some of them.

Mr. Lane:

Okay, let me ask you about a specific case that I wondered as to your thoughts about whether this was a significant thing or not. Do you remember there was a rape shield case where there was...it involved some rules of evidence, the testimony of certain psychologist.

Justice Archer:

LaLone?

Mr. Lane:

That's it. You've got it. What was your...do you consider...was this a significant recitation of where the law stands now in Michigan with the Rule of Evidence, the rape shield law and the right of confrontation, you know, the constitutional principle. Is this in good array as a result of that opinion or didn't this do much to it?

Justice Archer:

Well, the law...I'm trying to remember...I think I may have been in the minority. I don't know if I was in the minority or if I was in the majority.

Mr. Lane:

Well, it was a funny split, too. There were about four opinions, I think, and you were the one who...you were kind of a swing vote. I think there were three signed...we'll call them lead opinions, and yours was then a supporting opinion except for the proposition of whether or not the Rule of Evidence in 403 or something, I think it is, superceded or took precedence over the rape shield law in this context. I think your opinion, your holding was that the rule of the Court in these circumstances should take precedence. The others coped out on the thing and said with respect to that issue that leave was improvidently granted. It looked like a real, you know, wrestle inside the Court as to what to do with this.

Justice Archer:

All of them, all cases, are. We wrestle with them, and all cases are such that...

Mr. Lane:

Let me see if I can...

Justice Archer:

I'm looking at the bottom of page 4..."defendant's inability to cross-examine the complainant concerning her alleged sexual behavior with third party did not violate the Sixth Amendment right of the cross-examination. Rape shield statute is suppressed, superceded by MRE 404(a)(3).

Mr. Lane:

You don't have any real strong vibes - I don't want to press matters. I am groping, I'm searching for what you want to talk about.

Justice Archer:
I understand.

Mr. Lane:
The next one - would you take a look at the next one on that list? That was a puzzler to me, and I wanted to ask you if you had anything that you would care to say other than ...

Justice Archer:
Palenkas.

Mr. Lane:
Here is a case...you notice I have made a couple of little notes to myself. I think I called it a "backwards case" or something like that. This case starts out with an opinion written by Chief Justice Dorothy Riley, then Chief Justice Dorothy Riley. The whole thing boils around the remittitur. She starts out in the second sentence and says, "We agree with part of what Justice Archer has written...".

Justice Archer:
Let me tell you what happens on cases. I mean, it's the easiest way to find out who had the initial assignment for the majority opinion; is when the majority opinion says, "We agree with the facts as set out in the dissenting opinion authored by Mr. or Madam Justice so-and-so...".

Mr. Lane:
Is that the right way for the Court to issue an opinion on an important...?

Justice Archer:
Sure.

Mr. Lane:
Is it?

Justice Archer:
Why should the majority opinion have to go over and recite the same facts because they agree with my facts?

Mr. Lane:
Well, the majority...I won't be argumentative, but it seems to me that the majority opinion ought to be written by the majority, shouldn't it?

Justice Archer:
But it is written by the majority. The recitation of the facts, the fact that someone who is of a dissenting opinion who wrote the proposed majority opinion wrote then; they're not in disagreement with the facts. It's the law and the analysis that the majority opinion deals with and

therefore, that's what is relevant. It's when you disagree with the resolution of the facts that you write a different factual set.

Sometimes you do that to demonstrate in a dissenting opinion why the factual information upon which you rely as to why you dissent. That was just a...in the Palenkas case, I can tell you as I sit here that I don't disagree with my colleagues who decided that a remittitur was important. I respect their opinion in that regard. That's the great thing about our Court. Our Court was a very collegial court wherein we understood the rationale of the others who were either in majority or dissenting opinions, and there was no acrimony and nothing harsh in our language, whether majority or dissenting opinion, towards the others who disagreed.

I just happened to believe that there was no evidence on the record to support what the trial court judge did in terms of a remittitur. All the evidence was there in favor of the plaintiff. There was nothing on the record whatsoever. It just happens to be the majority's opinion that they felt that the trial court judge was right because she sat through the trial, she saw the witnesses, she heard the tonation of the voice and all of that, and it was on that basis that she granted a remittitur, but there was nothing in evidence, however, to support...there was nothing in the evidence offered by the defendant to demonstrate, either through their own expert testimony, through a person who deals with...what am I looking for...an economist to support that less dollars are required to take care of the plaintiff. If there was no testimony whatsoever on the record to suggest that the representations regarding the dollar amount that was black-boarded and argued and granted by the jury should be remitted.

Mr. Lane:

Do I remember...if I am out of bounds here, just tell me...that the judge, the trial judge in this case somehow got to be a lightning rod because her husband was a doctor or something like that.

Justice Archer:

No, that's a different case. The Palenkas case was tried by Judge Hilda Gage of the Oakland County Circuit Court. The case that you're talking about never came to our Court.

Mr. Lane:

Did it not?

Justice Archer:

It was settled. It came to our Court on a different reason, however. That case that you're referring to was a remittitur, as well, and that was by Judge Alice Gilbert whose husband is a physician. That wound up to be in a lot of acrimony. It was subject of a Judicial Tenure Commission hearing and a number of other kinds of things that went on, but this was not that case.

Mr. Lane:

Okay, I'm sorry.

Justice Archer:

No problem.

Mr. Lane:

Take a glance at these things. See if there are one or two or three there that jump out, that you think exemplifies, for example, maybe how you were able by persuasion...you know, you have a reputation in that area, that demonstrates that you can change minds and change votes.

Justice Archer:

I think in all of these cases, you would probably find my footprints, not in any kind of...you won't see it in terms of anything written, but we all are able to have impact on each other. I am a consensus builder. That's my...I guess if you were to try to quantify a person's leadership style, you know, as a dictator, as an autocrat, or authoritarian dictator or consensus builder, I am more consensus. You approach consensus by listening to other views and then trying to, through facts or law and persuasion, without brutal argument, to bring another or others to appreciate one's suggested, either analysis, approach or in this case, how the case should come out.

The ones that clearly...even in the ones where there might have been a 6:0 or 6:1 decision where I might have been the only one dissenting, there have been language changes in the majority opinion that was much softer than would have been without either my dissent or without my suggestions. Do you follow what I'm saying?

Topic 7: Collegiality and decisions on the Cassidy and DiFranco cases

Mr. Lane:

Oh, yes. This is the process of collegiality.

Justice Archer:

Absolutely right. So I cannot say to you as I look at any one of these cases that...

Mr. Lane:

Excuse me...Perhaps pertinent...it's my observation and I meant to ask you about this...you seem to consciously follow what I'll call a conservative or a spare writing style. My observation, and I am asking you for whether it is correct or not, is that you seem not to be deposed to use many adjectives, to introduce quips or to put in little asides or little bits of philosophy and that sort of thing.

Justice Archer:

I think that's a fair statement, and that's because I've been involved so much in the Bar Association on the lawyers' side that I am convinced that the way Appellate Courts help the bench and the Bar is to speak in as much plain English as you can without all of the legalese and without the necessity of a "jillion" footnotes to accomplish something and to be as clear as one can without being pejorative to the extent that you have someone assume that they're reading it in a third grade reader, if you follow what I'm saying.

Mr. Lane:

Yes. Do you consciously...did you on the Court very consciously attempt to avoid acrimony, even when you felt strongly?

Justice Archer:

Absolutely.

Mr. Lane:

Do you feel that your colleagues reciprocated?

Justice Archer:

Yes, I do.

Mr. Lane:

There are a lot of 4:3, 5:2...you know, I've made notations and some of them stick right out. I notice even one of them...I put a little mark down here to try to remember a couple of the cases that were thought by some to be quite significant...the DiFranco case and the Beauchamp vs. Dow Chemical. They occurred during your first year on the Court, I think, and you did not write, as I recall. You cast your vote on these cases, and you were a participant.

Justice Archer:

Yes.

Mr. Lane:

I took a look the other day on DiFranco. There has been a lot of conversation there for many reasons. Williams, Justice Williams, while he...you know, he said one thing. I think he voted one way and sort of talked another, but he pointed out four or five years prior in the...

Justice Archer:

Cassidy decision.

Mr. Lane:

Cassidy, that the Court went 5:1 or 6:1 the other way and in effect, he said on this occasion, adopted in effect the lone, the minority decision in Cassidy.

Justice Archer:

Yes.

Mr. Lane:

He thought, as I recall, that this was giving pretty short shrift stare decisis and he said there are some other things....is the Court sufficiently, during your time of service, attentive to the principals of continuity in the law?

Justice Archer:

Absolutely. As it relates to Cassidy, however, it was a clear example of, in my view, those who were on the Court at the time having thought that the bench and the Bar would interpret Cassidy

in one way. It turned out they didn't. From my own point of view, having been in the bench, having been a recent trial lawyer and having observed Cassidy,...I mean, our firm that I came from didn't do that much work in auto-neg work. Ours was more in heavy duty kind of personal injury work, and we didn't have any kind of problems with Cassidy because we didn't do that kind of work. I knew that Cassidy didn't work because the judges were just throwing cases out of court right and left when it was really a question of fact as to whether or not a person experienced bodily injury. So that's what DiFranco did. It corrected and made plain what Cassidy was intended, in effect. I had no problem voting with the majority in DiFranco.

Mr. Lane:

Was it poor or ambiguous language in Cassidy?

Justice Archer:

I don't know what it was. It was just the way it was interpreted.

Mr. Lane:

I see.

Justice Archer:

There is no question that it overruled Cassidy because Cassidy was intended to give the court the power to make, made it a legal issue as opposed to a factual issue, but the judges in determining the legal issue, in so many cases where it should have been factual, just clearly decided on law, and nobody got a shot at trying to prove their case. I had no problem with it. There was no acrimony.

Mr. Lane:

You know, this has not always been true on the Michigan Supreme Court.

Justice Archer:

I remember back between when I was in law school, reading the opinions between Justice Black and Justice Souris and how...I mean, those stories were just legend in terms of what went on, because you could read what was going on. Justice Black, as I recall, said, "Well, you should have seen what was in the first draft before it was finally what you're reading now". I mean, you didn't see any of that on our Court. We'd go through a number of drafts before we finally settled in on what it is that is in the best interest of the bench and the Bar. It was consciously done to give the best work product that we could find.

Mr. Lane:

So there was a feeling that, on your part, that there was a collegiality that is talked about so much in this kind of work, was well-realized.

Justice Archer:

Absolutely, and I don't see how you can exist without it.

Mr. Lane:

What about...another thing I wanted to ask you about that might be pertinent to your service on the Court...you were one of very few former presidents of the Bar to serve on the Court, and in the history of the Court, the recent history, there has been a lot of...I'll use the word tension again, although maybe there's a better word that you would use to describe it...as between the Bar and some of its activities and objectives and the Court in its role as the effective superintendent, authority...

Justice Archer:

The tension was not between the Court and the Bar. The tension or the issues or the problems existed...

(End of side 2, tape 1)

Topic 8: Justice Archer discusses the relations between the State Bar of Michigan and the Michigan Supreme Court and the IOLTA situation

Mr. Lane:

Will you describe again what you were just now starting to outline about the kinds of things that had the leaders of the Bar at odds with either the Court or certain members of the Court, and there were...I can remember one time back in the late 70's or 80's, there were some persons on the Court who favored, in effect, bifurcating the Bar and using its, overseeing its disciplinary functions and that sort of thing, and then creating all the rest of the activity of the Bar into sort of a separate voluntary...is that where the origin or what is your feeling? You were kind of in the middle of this thing, were you not?

Justice Archer:

No, I wasn't in the middle. I was on the Court, but I had knowledge about it because I was, as all of us are on the Michigan Supreme Court, members of the Bar, but I had also been president of the State Bar, so I understand how the Bar works. What was at issue was the methodology of...well, there were a couple of things, and I'm not sure which one that you're trying to get to.

Mr. Lane:

Well, I am just thinking of...you started out with the Allen Falk case. There was one, a lot of division on that one.

Justice Archer:

On the Allen Falk case, that was before I got on the Court, and I was active on the Bar, and I served as an appointee of the Michigan Supreme Court to a committee, and I'm not sure if I served as a Michigan Supreme Court appointee or a State Bar appointee. In any event, former Chief Justice Otis Smith chaired the committee. I served on his committee. We proposed a

resolution to the Supreme Court, and they adopted it. I think that was the committee that I was on. I have been on so many in my life. It started out, I remember, with the Allan Falk case which gave rise to Judge Lincoln being appointed as a Master. I remember giving testimony before Judge Lincoln regarding some of the things that the Bar Association did. It seems to me that Justice Otis Smith was appointed chair of a committee, and I worked with him. We made some proposals to the Supreme Court, and they adopted them. The Falk case was resolved before I got on.

Mr. Lane:

I was just trying to point to what I thought might have been the origin of a trend.

Justice Archer:

No, that was not a trend. The next thing that came up was an issue dealing with the Grievance Commission which was the next piece that started in the Detroit News regarding an allegation of destruction of files, an allegation of preferential treatment of two lawyers and because they were prominent and one was an officer of the Bar, that somehow, special treatment was afforded, and onto that was a subsequent death of the second person in charge, a letter that he left Gene LaBelle that surfaced, and onto that was a death, a suicide of Judge Bronson of the Court of Appeals. At issue was the funding of the grievance mechanism, was it adequately funded.

At issue was the handling of the files. At issue was did the Supreme Court handle it in a proper manner; the appointment of Ted Souris as a person to look into the matter and report back to the Court his recommendations as to what should be done; the recommendations that the Court did follow; the recommendations that it didn't follow and the like. That kind of thing can happen in almost any Bar and does periodically, unfortunately, but it happens periodically, and it happened to ours, but it did not, in my view, hurt the Bar...well, let me take that back.

Anytime something like that is called to the attention of the public, there is always, because we're an adversarial profession, there are always people who immediately begin to take sides. Because we're an adversarial profession, people have opinions about the legal profession and in particular, about lawyers. In my view, the matter was handled entirely properly by the Michigan Supreme Court, and it's behind us.

Mr. Lane:

What about, for example, was Levin and Griffin opposing the dues increase in the Bar, that is, to the extent that it was...

Justice Archer:

Yes, they authored a long opinion and the like outlining their views as to why not.

Mr. Lane:

Okay, it sounded to me like Levin was projecting in the future, and it might be that the Court, at some future time, would, in effect, take direct charge of the disciplinary budget that now is filtered through Bar processes.

Justice Archer:

Well, it's not really filtered through Bar processes, but when I left the Court, the matter in which it was resolved was that the Court would have front-end information, middle information and before the final action of the Bar, it would still have input, so the Court has resolved that matter and I think, in a correct way that keeps hands-on, touchy-feely information and can, at any time, intervene that it thinks it ought to.

Mr. Lane:

How about the IOLTA situation? Is that at rest now, do you think?

Justice Archer:

I think it's at rest. Again, Justice Levin felt very strong about that as did Justice Griffin, but that has now been, I think, resolved and put to rest. I think the public will be better for it. I happen to agree with IOLTA and I happen to agree with cameras in the courtroom. I happen to agree with the resolution as to what occurred with the Bar Association and the Grievance Commission and those matters.

Mr. Lane:

Did you want to...?

*

(End of tape 2)

Topic 9: Justice Archer talks about the State Bar of Michigan and the Supreme Court and the State Bar Grievance Board

Mr. Lane:

This is another in the series of Michigan Supreme Court Historical Society tapes. We continue with Justice Dennis W. Archer. We're sitting in his office on August 29, 1991 in Detroit. With him is Roger Lane. We're going to try to pick up where we left off in the earlier taping. Justice Archer, we have been talking about the situation the Supreme Court found itself in during your tenure with respect to the State Bar, you being the first former president of the State Bar to sit on the Supreme Court.

There has been considerable discussion about various individual issues affecting the interest of the Bar where the Supreme Court felt it necessary to review what was being done in budget matters, IOLTA and all that. One thing that we did not get to, and I would like to have you

comment on today, as to what the Keller decision is going to mean in this context and whether it is going to cause further activity on the Supreme Court following to what we talked about before or whether it is of little consequence, or whether it is going to fracture the Bar, or what it is going to do.

Justice Archer:

Well, I'm not sure if I am the first State Bar president to become a member of the Michigan Supreme Court. That may very well likely be true.

Mr. Lane:

I think it is.

Justice Archer:

However, having said that, let me suggest that the Keller decision that came out of the United States Supreme Court, by virtue of a lawsuit that was filed in the California State courts relating to the expenditure of funds by the California State Bar Association, wound up in the United States Supreme Court. The United States Supreme Court indicated or made certain rulings as to how mandatory dues could be spent. Since it was in the United States Supreme Court, it became applicable to the states, and our State Bar of Michigan, through President Robert Webster, President-Elect Jim Robinson and Executive Director Michael Franck, came to the Michigan Supreme Court and recommended a course of action be taken regarding dues and the amount of money that would be allocated for lobbying efforts, that would give members of the bar an opportunity, should they choose, to opt out and send the money to the Michigan Bar Foundation rather than to spend the money for dues that would be used for lobbying.

They did that on their own motion, if you will, rather than to wait to be sued or wait to be challenged by Allan Falk who had previously sued the Bar and had the matter before the Michigan Supreme Court on its use of mandatory dues which resulted in an opt-out provision for lobbying efforts only, and if a member did not want to have the dollars spend on lobbying efforts, it would then be sent to the Michigan Bar Foundation. There was not an opportunity to get your money back. You had to pay the full amount of dues.

The other things that Allan Falk challenged in his lawsuit were the activities by the Young Lawyers division and other activities by the sections and divisions of the State Bar of Michigan, all of which the Michigan Supreme Court found to be within reason. The only relief that was given toward mandatory dues was toward lobbying. With the Keller decision, the State Bar of Michigan came back, as I indicated before, and indicated that consistent with the decision by the United States Supreme Court, members ought to be given now an opportunity to keep the money rather than just to divert it to the Michigan Bar Foundation so that members would have three choices initially. The three choices would be pay the entire dues, pay the difference or the amount that would be used towards lobbying to the Michigan Bar Foundation or keep the money and send in the difference to the Bar Association. In the meantime, the Bar Association was going to be hard at work at determining what other expenditures that the Bar makes that might come within the Keller decision. They would identify them, quantify the dollar amount by way of expenditures and then come back to the Bar Association with a more complete Keller exclusion that would be included along with the mandatory use of dues towards lobbying and a

larger amount could therefore be either diverted to Michigan Bar Foundation, not paid at all, or pay the total amount. That is what was done. That takes care of the Keller decision, I think.

As it relates to your other references, the Bar Association was challenged a number of years ago by the State Bar Grievance Board indicating that they were being underfunded and therefore, they were not able to adequately do their work. The State Bar of Michigan referred the matter to the Michigan Supreme Court while the Court was being led by Chief Justice G. Mennen Williams. The matter was referred back to the State Bar of Michigan with a strong recommendation from the Court that the Bar Association and the Grievance Board try to reconcile their differences and if not, then bring it back to the Court. They never brought the matter back to the Court. They apparently reconciled their differences. That was publicized in the paper. Subsequently, there was a revelation made in the paper that there were some allegations against a lawyer by the name of A. Robert Zeff having to do with litigation regarding a condominium and the timeliness in which Mr. Zeff was to exercise his option to purchase.

There was a dispute regarding the document and the transmittal of that document exercising his option which led to an inquiry being made by Michael Schwartz who was then Executive Director of the State Bar Grievance Board. Jim Robinson was retained by A. Robert Zeff to represent him. The document in question was sent back to Jim Robinson who had arranged to receive the document, and there was a dispute between Jim Robinson and Michael Schwartz as to what was to be done with the document. From Michael Schwartz's perspective, the document was to be received by Jim Robinson but immediately turned over to Michael Schwartz so that he could have it analyzed by the State Police or others to determine the age of the document, to see if it could be determined if there may have been something done unethical by A. Robert Zeff, and from Mr. Robinson's point of view, he was going to be the recipient of the document and make a determination as to whether or not it should be given or a facsimile of the document given to Michael Schwartz. There was litigation over the document. The matter was coming up before the Michigan Supreme Court. It was briefed. It was set to be heard. Michael Alan Schwartz left the employ of the State Bar Grievance Board and went into private practice.

Another Executive Director was retained, Deborah Gaskin, by the Grievance Board, and then the lawsuit was dropped between the two parties. That is to say, they apparently reconciled their differences, at least as was purported, it was reconciled. The matter was not argued before our Court. Shortly thereafter, there appeared in the paper allegations that an employee, a secretary, quit her employment at the Grievance Board because she felt that she was being asked to do things that were inappropriate, namely to shred a file regarding, again, the relationship or the files related to Zeff, Robinson, et al. Then there was some discomfort expressed again in the media with the lack of prosecution or a moving forward of any type of grievance hearing as it relates to several lawyers who were alleged to have had some dealing with Jerome Bronson, a former Court of Appeals judge who was listened to by tape and caught with marked money as it relates to a pay-off for an opinion to be written in favor of a client for a lawyer. Judge Bronson committed suicide. There was review of entire Court, of the Court of Appeals.

There was some and continues to be some question as it relates to another then-sitting judge on the Court of Appeals, her relationship with two other lawyers, one of which was Mr. Zeff and his office, all of which created a lot of commentary in the newspaper. Our Court appointed a former justice of the Michigan Supreme Court, Theodore Souris, to review the inner-workings of the Grievance Committee. He did so after a number of months, produced a written document, made a number of suggestions which the Court followed. The Executive Director of the Grievance Board resigned. A member of the Grievance Board resigned. Several new appointments were made, and the allegations were looked at again, as it relates to Jim Robinson, and found that there was no ethical violation.

The matter still is under investigation today, I believe, regarding several lawyers and a former judge, but those kinds of things seem to be consistent with society, and the evolution of any profession. Back in 1970, there was a problem with a judge and/or lawyers...I think lawyers, out in Livingston County which gave rise to the creation of the Grievance Board and the first Executive, as far as I know, who did a superb job, Richard Senter. A number of years later, it was felt by the Supreme Court that it would be wise to bifurcate the function between the prosecutorial and the sentencing side or the penalty side, if you will, and we now have a Grievance Board and a Disciplinary Board that administers whatever punishment, if any, that a lawyer should receive because of any violations of our ethical standards.

Throughout the course of events, back in 1970, I think the Supreme Court acted properly. While I disagreed with the Supreme Court's action before I was on it to bifurcate the functions, life goes on and it nevertheless seems to be functioning properly and while there was sufficient ink to be used by the newspapers and opinions to be made by lawyers, judges and others about what did or did not occur regarding members of the Bar around the circumstances of which I briefly described, there was adequate discussion. Throughout it all, I think the Michigan Supreme Court handled the matter quite appropriately. There were some things that I disagreed with, but I agreed with most.

I think history will record that the Michigan Supreme Court stood well, and the profession acted with appropriate dispatch, and the public is and has been and will continue to be well served. As it relates to the ongoing issue of funding of the Disciplinary Board and the Grievance Board, the Supreme Court has continued to allow the State Bar of Michigan its first cut, that is to say, to review the application and application and the request for dollars by the Grievance Board and by the Disciplinary Board, and before it makes its findings, they are to let the Michigan Supreme Court know what the requests were, what the findings were and what the recommendations of the Bar are. Then the Bar acts and if the Court agrees, the Court will allow it to go forward. If not, then the Court will require more funding if it disagrees. There are built-in checks and balances along the way, and I think the public will be well-served as will our profession.

Mr. Lane:

Does that arrangement that you just described in the last sentence or two - does that seem to satisfy the objections of Levin when he dissented on the Bar dues increase?

Justice Archer:

No, I don't think so. I think Mr. Justice Levin strongly believes that the Supreme Court should take over the entire issue of receiving the budgetary requests from the Grievance Board and the Disciplinary Board and to, if there is a need, to make inquiries to assure itself of the adequacy of the funding or whether or not the request is needed, and go through a hearing process, if you will, and then dictate that the funds be made available from Bar Association or in the alternative, for the Supreme Court to set the dollar amount that is to be paid per lawyer for the Grievance machinery and let the Bar deal with its own funding for other issues. I think that's an adequate reflection of Mr. Justice Levin's position.

Mr. Lane:

One of the reasons I thought it was appropriate for you to discuss these matters at some length was the fact that you have...it has been frequently mentioned that you are a good prospect to some day become the president of the American Bar Association. You have this kind of problem, as you have already indicated, in many places, and I just wondered what, if any, relationship all of this sort of thing will have towards your aspirations, if I understand them. I think you mentioned before, and it got lost in my tape problem, that you right now are committed to George Bushnell and his candidacy.

Justice Archer:

Right. I am his campaign manager to become President-Elect, then President of the American Bar. He is, if all goes well...so far, he is unopposed, and if all goes well, he will be nominated by the nominating committee of the American Bar in February, 1993 and elected by the House of Delegates in August, 1993. He will be President Elect from 1993 to 1994 and President of the American Bar Association from 1994 to 1995. Because there are 50 states and because there are some 750,000+ lawyers and because the American Bar Association enjoys at least a 50 to 51% as a voluntary Bar, membership of the total number, you can imagine how many outstanding men and women who are active in the American Bar Association may have the same aspirations, so there is a unstated requirement that a passage of time, a respectable passage of time take place before another person from the same state offers himself or herself for the office of president.

So, my first objective is to get George Bushnell elected President of the American Bar Association. My next long range objective after passage of time is to run for that position myself and hopefully win. I think one's past experiences within the Bar and in my case, the Bench and Bar, is looked at by the members of the nominating committee - there are 61 members who come from at least 50 states; each state has a delegate, and then there are representatives from different sections and divisions of the American Bar Association. They take a look and see how active one has been, the quality of service, the type of service that one has rendered to the profession, the ability to be a leader and spokesperson for the Bar, the type of presence or persona that the person has, and then they'll make that decision. I do believe my service on the Court would be considered as an asset.

I consider it as an asset, having been privileged to serve with the members of the Court and having had that experience, with six others, being responsible for the administration of some 27,000 lawyers, 241 Trial Courts, about 580 judges and about 3.4 million cases filed each year in the State of Michigan. I think that will be an asset along with, of course, having been President

of the State Bar of Michigan, President of the Wolverine Bar which is a predominantly Black bar in Michigan and then President of the National Bar Association which is a predominantly Black, nationwide Black Bar Association as well as the other kinds of leadership positions I've held in the American Bar.

Mr. Lane:

Even before you started your service on the Supreme Court of Michigan, I recall, I think, that George Bushnell credited you with having laid the remarkable foundation in the activities of the American Bar and that this went back to the early or mid-70's, did it not?

Justice Archer:

Yes, I've been active in the American Bar since 1972.

Mr. Lane:

You've chaired several committees, and you served on...

Justice Archer:

I've chaired any number of committees. I was chair of a section of the General Practice Section of the American Bar which then had a membership of about 18,000. I continue to be active in the American Bar today, and I am currently chair of its Rules and Calendars Committee of the House of Delegates. The House of Delegates is the final policy making body of the Bar. I have been there since 1979. The Rules and Calendar Committee of the House sets the agenda for any of the resolutions that are discussed and debated before the House of Delegates.

Topic 10: Activities with the American Bar Association, Basil Brown and issues faced by Black lawyers

Mr. Lane:

I just wanted to fix the relative time elements so you understand. Then you later approached Crockett & Millender. Where were they practicing?

Justice Archer:

They were in the Cadillac Tower where the law firm is still today. It was the Goodman, Eden, Robb, Millender & Robson. Crockett was in there as well. No, I think Crockett, as a matter of fact - I think he was either practicing or was on Recorder's Court. I forget when he was elected, but I got involved in Richard Austin's campaign for mayor in 1969 in an effort to impress Bob Millender, in an effort to impress him enough with the hard work there that he might consider me for his law firm when I graduated in January, 1970. That did not work out but the politics sort of...I got bit by it and have enjoyed the real world of politics ever since.

Mr. Lane:

It was not a totally wasted effort.

Justice Archer:

It was not wasted whatsoever, neither the candidate, the effort of the candidate nor the involvement in the political process.

Mr. Lane:

Justice Archer, I would like to come back to the proposition of your actual case work on the Supreme Court of Michigan and invite you to evaluate, to whatever degree you would care to do it, what you think of as your principle or your main achievement in terms of opinion writing or dissents, speaking out on the case and controversy concept. Do you have a case or two cases or three that stick with you as the things that you are most proud of that you did there?

Justice Archer:

I am proud...I think I am most proudest of having privilege to have served. The contribution that I think I was able to make to the Court was contributing to the tremendous collegiality that had existed prior to my coming onto the Court and helping to promote collegiality. I would like to think that another contribution that I made was to the Bench, to the Bar, and to the public by making myself available while on the Court to speak at civic groups, before charitable groups, before civic organizations, in elementary schools, high schools, junior high, colleges, in the lower peninsula and upper peninsula, in the large cities, in the urban areas, sharing with them the majesty of the law, the respect that we all should have for the rule of the law, and why the rule of law is important.

As it relates to the opinions that I signed that were authored by others, whether a majority or dissent, or those that I authored as a majority opinion or concurring opinion or dissenting opinion, I am equally proud of all of them and the opportunity to have participated. Each case was exceedingly important. I gave it 100% on each issue, and therefore, I regret to say no case, as a result, stands out, and I leave that for others to make their assessment of whatever contribution they think that I made.

Mr. Lane:

One of the notes that I made in anticipation of our talk here - Sizemore vs. Smock, parents' right of action for loss of consortium. You wrote in that a dissent, I believe.

Justice Archer:

I did.

Mr. Lane:

Justice Boyle, also had a dissent. That fits within the framework of what you've just said, or...?

Justice Archer:

Absolutely.

Mr. Lane:
Okay, fine.

Justice Archer:

The great thing about being on the Supreme Court, and I was often asked while being on the Court, did I miss private practice, and I indicated "no" because I did not have time to miss it. I was so busy in the work of the court administratively or determining what cases we should grant leave to appeal on, or researching and writing opinions for cases that we had taken and heard, that I did not have a chance to miss private practice. The one thing that I always remarked, when given a moment to reflect, was that the difference between private practice and being on the Court was that if there was a disagreement with the action of the Court, I had several choices. I could go back to my office and complain.

I could take an appeal to the Court of Appeals, and if lost, the option was to go to the Michigan Supreme Court. If both of those avenues proved to be fruitless, I could still complain to my colleagues and anybody else who might care to listen, which would be few. However, on the Michigan Supreme Court, if I disagreed with an opinion of my colleague or with all of my colleagues, in fact, I could write a dissenting opinion. So, I enjoyed the opportunity and the right proscribed under the Michigan Constitution that if you disagree or if you agree with an action, you either sign an opinion or you write your own to set forth the parameters of your disagreement or your concurrence.

A concurring opinion might indicate that you agree with the result but for different reasons than the majority reached, for example, but you agree with the result of the majority opinion. From that perspective, I enjoyed it. On other opinions where history will not be able to record, nor will I share with anyone else how each of us, in our own way, were able to influence how an opinion ultimately was signed, that is to say, there may have been language within the opinion that I or several may believe to have gone too far and was able to convince our colleagues, whether we signed it or even if we were going to write a dissenting opinion, to modify the opinion to more narrowly have it focus rather than being broad or from being narrow to being broad or those kinds of things. Having the collegiality and the opportunity to be heard and the willingness of our colleagues to listen to each other helped mold, I think, the opinions, and I am pleased that I had that opportunity.

Topic 11: The significance of the first two cases he argued after leaving the court

Mr. Lane:

Justice Archer, would you go back over something we discussed before which was a spin-off, as I recall, from your judicial service on the Supreme Court, that came up to your satisfaction in a subsequent trial proceeding before Giovan?

Justice Archer:

Yes, there was a case, right after I got off the Court. Several months later, I was retained by General Motors to represent them in an automobile roll-over case where a Pontiac T-1000, which is a hatch-back, four-door hatch-back car rolled over on the Southfield Expressway. The allegation of the plaintiff was that the hatch-back door flew open on impact on roll-over and that the passenger was ejected from the rear of the hatch-back, landed on the expressway and wound up brain damaged.

It was our defense that the passenger was not wearing a seat belt and was ejected from the driver's side window which was down in a roll-over. It was the plaintiff's allegation that the car rolled over end over end. It was our allegation that the car rolled over side over side. After a two week trial, the judge indicated that he was going to rule in favor of General Motors, my client, because the plaintiff was unable to prove that the plaintiff was ejected from the rear hatch-back but nevertheless decided that he would allow it to go to the jury.

In those discussions, the question arose as to whether the unbelted passenger could be precluded 100% from any recovery because of comparative negligence on his part, not wearing a seat belt, and I argued the case of *Lowe vs. Estate Motors* where the majority of the Michigan Supreme Court on an opinion authored by Chief Justice Dorothy Comstock Riley, held that prior to the enactment of the seat belt statute, when this accident in Ohio occurred regarding a Mercedes Benz and passenger was ejected from the rear door of that car and the experts had testified in discovery that if the passenger had been seat-belted, she would not have been ejected from the car and the injuries of which she complained of she would not have sustained had she been belted. In a footnote, the Supreme Court said that it was not ruling on the statute that had now come into being, which I think was in 1986, that limited the comparative negligence to 5%. I wrote a dissent in that opinion.

Mr. Lane:

Excuse me, Sir, 5% under these factual circumstances?

Justice Archer:

5% under the circumstances in my case, because the statute would have affected my case, but on *Lowe vs. Estate*, since the accident occurred before the statute was enacted, the statute was not applicable to the case that we decided in *Lowe vs. Estate Motors*. I indicated that I felt we should not go...I felt there should not be an unlimited amount of comparative negligence, that we ought to note what the Legislature had done and that prior to that time, you could not even introduce any evidence regarding failure to wear seat belts. Before the enactment of that statute, you could not introduce into evidence whether or not a person was wearing a seat belt. That was irrelevant to the facts of the case and therefore, on that basis, we should not allow comparative negligence to be considered.

Secondly, since the Legislature had enacted a 5% limitation, it was my view that we should not put somebody in a different plight, especially in *Lowe* where the passenger was in the rear seat. We ought to let them go 100% and the passenger be limited to only 5% in the front seat. I wrote a dissenting opinion. Then I found myself on a case arguing before Judge Giovan that my former colleagues who were in the majority and in particular, Madame Chief Justice Dorothy Comstock

Riley, was correct in her analysis and therefore, he should follow her rationale. He chose not to do so. It did not matter because the jury came back and found in our favor in 55 minutes. My client won any way. The judge, if there had been a dollar amount awarded, was only going to limit the loss of 5% rather than the possibility of 100%.

Mr. Lane:

In a sense, you had a double win there.

Justice Archer:

I did have a double win, and it was interesting because in the very first case I tried after being off the Michigan Supreme Court, I was arguing against a position that I had written on the Court. Hindsight is 20/20, don't you know.

Mr. Lane:

One of the other things that I wanted to get to, Justice Archer, is the matter of choosing on the Supreme Court, the presiding officer, the Chief Justice, which is by the choice of his...

(End of side 1, tape 3)

Topic 12: Justice Archer discusses the selection process for Chief Justice and the responsibilities of that role, and the role of the Supreme Court and the practice of law in Michigan

Justice Archer:

It is true that anytime you have an election amongst one's peers, there is going to be a winner and there is going to be a loser, and the person who loses feels a sense of rejection. It is either momentary or lasts for a while, as the case may be. Having observed it twice, I would not change it simply because the...let me put it this way...I was comfortable with it. I never sought the office myself, and I think it does keep the person who is privileged to serve as Chief Justice; it keeps that person mindful of his or her other colleagues in an effort to lead the Court collegially. Everybody has their own style of leadership. Three general areas or three types of leadership that most have an appreciation for is dictatorial, autocratic or consensus. The style in which one leads happens to be consistent with one's personal experience, lifestyle, professional experience and all that.

I served under two Chief Justices. I served under Chief Justice Williams and Chief Justice Dorothy Comstock Riley. I was not present to vote at the last election because I have left the Court when Mr. Chief Justice Michael Cavanagh was elected, but the Court goes on. The public is well-served by whomever is going to be the Chief Justice of the Michigan Supreme Court. The one thing that I did find while being on the Court is that my vote was just as strong as the Chief Justice's vote. My vote had as much weight as the Chief Justice's weight, so in terms of service to

the public, the Bench and the Bar, each justice, whether they happened to be the Chief or an Associate Justice, makes a substantial contribution in the totality and the sum of it all that we are well-served. There are other jurisdictions, as you may know, who rotate.

Florida, for example, is one. They rotate every two years. Currently, Leander Shaw, who happens to be, I think, the first Black Supreme Court Justice, or maybe the second, on the Florida Supreme Court, and next, following him, will be a female colleague, and so she will be the next Chief Justice of the Florida Supreme Court. They rotate every two years. In New York, that person is appointed by the Governor, and they stay in that position, I think, for about 14 years. Other places, like in Ohio, like Mr. Chief Justice Tom Moyer, ran for that elected position, so there are several ways to get there. Whether one is appointed by the Governor or by the Legislature, as in South Carolina, or you run for the office, and you're elected as Chief Justice Tom Moyer.

They are in office for a long period of time. Where that may have a benefit is there is a conference of Chief Justices where every Chief Justice, or in the case of New York where it is called a Court of Appeals, a Chief of the highest Court of the state. They have an organization where they meet twice a year. Of course, if you're there in office with any longevity, you have an opportunity to take on more responsibility and ultimately, become the leader of that very important body for the country. It is there were ideas are shared, issues that are confronting our courts, and they bring those issues back to the table in their own home jurisdiction. I don't see where the public is any less served or more served, for that matter, by having an election or a rotation amongst our colleagues who are on the Michigan Supreme Court.

Mr. Lane:

Does one justice, because of his or her experience, personality, energy, offer a superior capability for administration in that post than another, or if that is true, is it more or less negligible in effect, given the fact that four votes will do anything?

Justice Archer:

Well, it is true that four votes will gain the majority for most any position, subject to a review by the United States Supreme Court if somebody is able to get a writ of certiorari granted, but having said that, I think that each justice has something substantial to offer to his or her colleagues.

The level of energy that one has or doesn't have, on any given moment on any given issue, the beautiful part about the seven justices who are on the Supreme Court is that each brings something to the discussion which results, in my view, in a more reasoned approach, decision and style. Now, it is true that some Chief Justices may be perceived as being perhaps more warm or gracious than another, more open than closed, more harsh than soft or vice versa, but that, just like beauty is in the eye of the beholder, and so, where one person might have an opinion, you talk to another judge or lawyer, and you'll have an entirely different opinion and assessment.

Mr. Lane:

I think what I really was trying to test in your opinion was whether or not the rancor that sometimes surrounds the process of choosing a Chief Justice...

Justice Archer:

Well, there's really no rancor. You would be surprised. There is, I think, a minimum amount of discussion. Somebody says, "I think I'd like to be Chief Justice next time", and they talk to one of their colleagues. If the colleague is of mind, they say, "Okay, I'll support you". Then they go to the next colleague and say, "I think I will...". "Well, I don't know. Let me give it some thought. Who else is running?" Well, then that person, you know that person may be looking for someone else or may not be sure or whatever the case may be. That's the nature of things. That's okay. We don't lose by that.

Mr. Lane:

Okay. I was thinking, among other things, of the fact that Justice Brennan, when I spoke to him in this same series, recalled that he had been aggressively lobbied before he ever took his seat on the Court with respect to who was going to be the Chief Justice for his first two years.

Justice Archer:

That did not happen to me.

Mr. Lane:

Okay.

Justice Archer:

That did not happen at all.

Mr. Lane:

One of the other things that occurs to me in this context is that Levin has been there for 19 years. Do you think he'll ever be Chief Justice?

Justice Archer:

I think he might be should he seek the office. It is my view, at least while I was on the Court, that he never sought it. He is the senior statesman. He is the one who...I'm just tremendously amazed and in awe at his recall. We could be at the conference table discussing a case, and it will trigger a discussion about a prior case, whether it was ten years ago, 12 years ago. He could walk immediately to the volume and begin to recite what he thinks was in the opinion and pull out the book he is talking about, and it is absolutely there confirmed.

He has a fantastic memory and a tremendous mind set. He is a very gracious, warm person. I liked him very, very much. We would ride together to Lansing, from time to time. I asked him, you know, "Why don't you put your hat in?". "Denny, I'm not interested. Maybe sometime, but I'm not interested right now. It was his view that he thought that all members of the Court should have the experience of being Chief Justices. In some respects, I agree with that because it is important to appreciate the responsibility that a Chief Justice has to undergo, and the responsibility that is given to the Chief Justice to go to different events, respond to letters on behalf of the Court and things of that nature that I didn't have to be bothered with because I was

not Chief. You have to make appearances before Legislature.

You have to go before the different funding units. You have to be on top of all those kinds of issues and work very closely with the State Court Administrative Office. It is problematical enough, and it is burdensome enough just to merely be able to discharge in a timely fashion one's responsibility for the usual and customary expectations of being a Justice. When you add onto that another 15 - 20% of your time administratively being Chief Justice, that's a lot. Yes, it's nice to be called "Chief Justice Riley" or "Chief Justice Cavanagh", or "Chief Justice Williams", I was happy just to be called "Justice Archer".

Mr. Lane:

I would like to have you discuss to the degree that you care to do it the transformation and the work of the Court from 20 - 30 years ago to now. I speak of the character of the work of the Court. If you go back, I think I mentioned before, if you go back 30 years, if you go back to 1960, 1962, the Court turned out 576 opinion cases in that two year period. In 1990, you turned out, the single year of 1990, you turned out 71 opinion cases. That's part of what I'm trying to raise to your attention.

The other part is that the Court, 30 years ago, was very little concerned with matters of supervision of the Bar, setting modification of the Court rules, rules of professional procedure, rules of evidence. We didn't have any state rules of evidence. Such matters as creating study commissions, the gender and race bias commissions, the user, what some people call the user-friendly commission. What would be your observations as to what has happened to the work of the Supreme Court and let's call it the practice of law in Michigan during that period? Has it changed for the better, for the worse? You know, the cases have multiplied like rabbits. I don't know, there are four to five times as many cases filed every year. Fewer are coming out the end of the pipe, so to speak.

Justice Archer:

Well, let me try to answer your multifaceted question. I guess the best way that I can answer it is by an analogy. We did not have the space travel 30 years ago either that we have today. We didn't have the Concorde. We have a Concorde today. We didn't have computers thirty years ago. We have them today in great number, word processors and the like. I would ask you whether you think America or we as a society would be better off if we threw away computers, word processors, the Concorde, the medical advances that have taken place as a result of great work by physicians and others, the increasing expectation of a longer life because of medical advances and experiments.

I think if you were to ask the American public, they would probably tell you no, let's keep them. Thirty years ago, I think I'm correct in suggesting to you, that we did not have an intermediate Court of Appeals. As a result, when you lost in the Circuit Court, you would appeal immediately to the Michigan Supreme Court. There are still some states in the United States that do not today have a intermediate Court of Appeals. As a result, you will find the Supreme Court of that

particular state authoring a large number of opinions. I would also suggest to you that if you look at the United States Supreme Court, you would probably find that they are taking less number of cases and writing less number of opinions. Now, that could be for several reasons.

It could be that there is sufficient law on the books already and therefore, there is no need to create new law. It may also mean that the Court is being more circumspect as I believe our Michigan Supreme Court is, in the cases that it chooses to take. It could, of course, take considerably more cases if it sought to do so, but the Michigan Supreme Court has said, and rightfully so, it is not an error correct in Court. There is no such thing as a perfect trial. If we were to set the standard of it must be a perfect trial with no error, we would never have a conclusion to any case, because invariably, because we are all human beings including the jurists who preside a trial, is bound to commit error.

There are certain standards that we judge the actions of the Trial Court by. Was there manifest in justice? Was the error harmless? Was the exercise of the discretion by the Trial Court, was it abusive? Was it reasonable? These kinds of things have emanated out of a number of decisions coming either from the Michigan Supreme Court or Court of Appeals. Last year, in 1990, while there were...what did you say, 78 opinions?

Mr. Lane:
71.

Justice Archer:
71 opinions.

Mr. Lane:
Opinion cases decided.

Justice Archer:
Opinion cases decided...I would suggest to you that there were probably 2,800 to 2,900 applications for leave to appeal.

Mr. Lane:
I think you're correct, 2,800.

Justice Archer:
Those were acted upon by the Supreme Court during that year which meant that the Supreme Court acted on about close to 3,000 cases but chose to write to only 71 of them. Of the approximately 3,000 cases that the Supreme Court acted upon, many were remanded back to the Court of Appeals for a decision. Many were remanded to the Worker's Compensation Appeal Board for a look at another issue or a look at the whole case in view of the case that had recently been decided before it came up to or in the process of coming up to the Michigan Supreme Court, other than just outright denied because there was harmless error or there was no manifest

in justice or no abuse of discretion, etc. While it is true the Supreme Court authored only 71 opinions, and I would guess about 78 to 80 this year, between 70 and 80 when they are all in, I would indicate to you that they probably will have, again, reviewed close to 3,000 cases. Last year, in 1990, there were about 13,000 cases filed in out Michigan Court of Appeals.

I am not sure of the number of dispositions that were acted upon by the Court, but they typically are reviewing and hearing about 42 cases every month by the Court of Appeals when they have their hearings. We created an en banc opportunity to dispose of cases where there were conflicts between panels, and when you take a look at the efforts of the Supreme Court to reduce the time, not only within the Supreme Court, but in the Court of Appeals so that they could get the opinions out in a timely manner, while imposing this year, though many Courts were acting upon it early on anyway, they imposed this year to take effect October 1st, case flow management guidelines so that the cases could move more expeditiously but not interfere with the due process rights and with the rights of litigants. I am satisfied that when you take a look at the number of cases that come into the system each year. In the District Courts, there are about 2.7 to 2.8 million cases that are filed. They have an automatic right to appeal a loss to the Circuit Court. Already in the Circuit Court, we will have anywhere between 235,000 and 250,000 cases filed each year.

When a case is disposed of, a loser has a right, an automatic right, to go to the Court of Appeals. Then we have, in our Probate Court, anywhere between 195,000 to 215,000 cases filed annually. If you lose there, you have an appellate process there. Out of the appellate process - let's just talk about the Probate Court and the Circuit Court of being in excess of 400,000 to 450,000 cases annually, only 13,000 made it to the Court of Appeals and out of the 13,000 that were in the Court of Appeals, only roughly 3,000 went to the Supreme Court. That should suggest to you as it does to me as I've tried to suggest to the public wherever I've spoken as a member of the Court or today, if asked, the most important jurist in more everyone's life, happens to be the trial court, because it is there where the majority of decisions affecting our every day lives will be affected and decisions made, and they will be final given the sheer numbers that are in trial courts versus the ones that are in our appellate courts.

As it relates to the various commissions, it is interesting to note that the race and gender bias task force, there were one each, made a combined recommendation of 167 recommendations to be enacted or be acted upon, many by the Supreme Court, a lot by the Bar and some by our Michigan Legislature because, in their view, there were findings of fact that needed to be changed, that there was racial and gender bias discrimination. I find that quite appropriate for the Supreme Court to have those kinds of task forces and commissions so that we can keep respect for the rule of law, and so that the courts and the court system itself has the kind of respect for society that the courts demand society has for itself and each other. The citizens' task force that was put into being by Chief Justice Williams and was monitored by Justice Patricia Boyle, was the task force that gave rise to case flow management because having, in addition to taking public testimony - remember, the public participated, and found that 85% of the people who gave opinions before the task force, who were respondents in a survey conducted by the University of Michigan, felt that cases took too long, cost too much, and when they got to trial, they didn't understand what was going on, and they felt that there was some bias in the courts, court rooms, or in the system regarding gender and race. That's what gave rise to the gender and bias task

forces.

I should hasten to add that Michigan was not the first to do a gender bias. New York, California, New Jersey, I believe, were the first three, and there might have been several others, but I believe Michigan was one of the first to do both a gender and race bias task force. Now, the states that started out with gender bias are now going back to put together a race bias task force to determine whether there are problems that need to be addressed in their respective court systems. Michigan is no different, and I believe it is quite appropriate for the Michigan Supreme Court to, in the discharge of its responsibilities, to do that. For rules of evidence, it is important that we do not have trial by ambush. The public loses. It is important that we have some rules in which we govern ourselves by, the manner in which evidence is introduced so that it is not willy-nilly. There is some uniformity to it. There is some level of expectation. Yes, the Court occupies its time with the rules of evidence, changes in the rules of procedure, criminal rules of evidence, etc., but it, and criminal procedure becomes very important. It is a product of the very nature of the society in which we live is more complex. The problems that evolve are new. The issues are new, and they need to be addressed.

Mr. Lane:

One reason for bringing this up was in the Michigan Bar Journal a few years ago, Judge Bill Peterson, now retired, wrote basically on this subject, although his focus was on the Circuit Court, the court of original jurisdiction, and his thesis was...well, to cut it right down to the bare bones were it has some relevancy to what we're talking about...was that the appellate courts, by some of their actions, are choking the whole system, and he referred to such decisions as, for example, the adoption of comparative negligence. A couple of decisions when you were on the Court had to do with the Worker's Compensation and the intentional tort theory, Beauchamp. Then there was the DiFranco case. Do you remember the case that relate to review of sentencing.

Justice Archer:
Milbourn?

Mr. Lane:

Yes, I notice on your period on the Court, you had at least three or four cases that you wrote that related to sentencing review, and there was no such thing, really, as sentencing review until about 1982, I think or thereabout.

Justice Archer:

That's a little bit after sentencing guidelines was introduced by the Michigan Supreme Court at the request of the State Bar because the Michigan Legislature was getting ready to enact legislation that we believed was going to take away the discretion of the Trial Court at sentencing and felt that the discretion should be left in the hands of the judiciary. In any event, I certainly respect Peterson's observations. He is a very highly respected and well...and he has merited all of the respect, and he has earned the respect of jurists. He is a tremendous jurist. I respect his opinion.

I disagree on the basis of the facts that were presented on the cases. Yes, it does...Placek, which occurred before I got on the Court, which was a decision that gave, and it stopped contributory negligence. If you were at all negligent yourself, you could not make any recovery, and of course, that reduced the number of jury verdicts and/or trials that were in favor of plaintiffs. It also allowed for more cases to be dismissed out of the system on summary judgment. Was it fair? No, it was not fair because that's why Placek was authored, I think, by Chief Justice Williams or whoever authored it who was under his administration. I think the public is better served by it. Indeed, more Courts in the United States have gone and adopted the comparative negligence rather than the harsh contributory negligence.

As it relates to sentence review, Milbourn, for one, and I forget the other that came out that was harshly criticized, even by members of our own Court, but sometimes, though we should not respond in that way, sometimes because we are all human, judges respond to public observations and outcries rather than following the law and exercising their own discretion. They play more to the press than playing to the facts. It is a difficult decision for a judge to follow the law in the face of public outcry or a lack of willingness to understand or because the public has changed its mind.

The appropriate place for change is in the Legislature and not because something that is judicially carved out, so to speak, judicial activism, as it used to be called before President Reagan got into office and said that he wanted to appoint judges that were not going to be judicial activists, but in point of fact, they've become more active than those who he criticized in turning back the decisions that stare decisis was said that you leave alone, and you work on other cases that come before you. In any event, we have a mixture, a mixed bag, and everybody's entitled to their own decision.

Mr. Lane:

Sure. Well, we don't want to beat that subject to death. I just...I thought it was appropriate to get your feeling on...

Justice Archer:

Sure, but I just happen to agree with the decisions of the Court and some that they decided, I disagree with. But the great thing is is that life goes on, and they'll be continued improvements as we go along.

Mr. Lane:

Another thing I wanted to get to, Justice Archer, was your appraisal to the degree that you would care to make one, individually of your colleagues, people that you served with on the Court. I know you had a very high regard for Justice Williams.

Justice Archer:

Absolutely. Chief Justice Williams was somebody that I began to work with when he was

running for the Supreme Court and because of my love of politics, my respect for him, I helped in a small way in his election each time he ran. I also helped in the election of Blair Moody each time he ran. When I was appointed to the Court, I had an opportunity to work with Chief Justice Williams who was, in my view, brilliant. I never, at one time, ever focused upon his wealth that people talked about at the time that he died. You'd never know it. He was just a very easy going, very ordinary type of guy, but he was not ordinary. Here's a man who had contributed 50 years of his life to public service, had been married for 50 years, good stable family, a person who had immense executive experience as governor and had been in the State Department. Here's a person who is a living legend.

I was privileged to be called his friend along with having served with him. My other colleagues I really enjoyed working with. I enjoyed working with Mr. Justice Robert Griffin who had ten years experience as a United States Congressman, ten years experience as a United States Senator, several years in the private practice of law before he was elected. He was elected at the same time that I stood for election. He and his wife are very gracious people. He brought to the bench that dimension of experience coming from his professional experience and lifestyle and what he had been exposed to. I found on many occasions that I was signing his opinion or he signed mine just as we differed as well.

When you differ on the Court, you agree to disagree, and it is not acrimonious. The same thing can be said of Chief Justice Dorothy Comstock Riley who was on, started out her career in a friendly court in private practice, in the Wayne County Circuit Court, Court of Appeals, to the State Supreme Court, then back to private practice because of a decision made by the Supreme Court, back to being elected, and then being elected Chief Justice. I followed her pattern of disposal at work. That's what helped me a great deal in being able to get my work done in a timely manner. When I assessed how everybody else did their work, I liked the way she did hers. It was more closer to my style of the way to run my office and to get my work done. She was a superb administrator. I valued the opportunity to learn from her.

Now Chief Justice Michael Cavanagh, then Associate Justice, was my seat mate after the change of Chief Justices from Williams to Riley, and Mike and I played golf together. We would be on the phone kibitzing with each other, teasing each other a lot. He was very helpful, very insightful, very thorough. Justice Levin, as I have mentioned before, he and I got to be the best of friends, and I knew him before. He was very warm and gracious even before I got on the Court. We just became best of friends. We'd ride to Lansing back and forth together. He'd come by the house on holidays. I would go by his house. We would chit-chat. We would have lunch, whatever the case may be. Justice Patricia Boyle - I knew her when she was on the Recorder's Court, the United States District Court. I helped her when she ran for election to the Michigan Supreme Court to keep her seat, she and Terry. I would be down in her office, chit-chatting with her about the cases, about issues, about the law. Her law clerks, my law clerks were good friends. Her staff and myself were good friends.

Jim Brickley was a prince. He was a guy that was of great stature, a former college president at Eastern Michigan, had given 20 years service as Lieutenant Governor. When he ran for Governor, a great guy, good campaign, I talked to him a lot of times. He was very warm and friendly, he and Joyce, to me, when I was on the Court. I just enjoyed all of my colleagues. I felt

privileged to serve with them. It was a good and unique Court and I think whenever new person, as in the case of Justice Mallett, comes to the Court, the chemistry of the Court changes somewhat, always improves, and I'm sure that the same kind, same type of camaraderie that was there before, meaning before I got on the Court, while I was on the Court, has maintained its same level even though I'm gone.

Topic 13: His vision for the legal profession in regards to ethnic and gender diversity and its role in society

Mr. Lane:

By the way, when you mentioned Justice Boyle, it prompts me to ask this question: Do you see anything, or would you care to make any comment on the fairly recent trend for there to be husband and wife combinations serving on the bench? The first instance of this that I'm aware of was when you had the Colemans. Creighton Coleman was elected to the Circuit Bench, then his wife, and so on, and finally became Chief Justice. You have the Boyles. You have the, at one time, the Archers. In Lansing, in that area, in that district, in that Circuit, you have an unusual situation where you have a Circuit judge whose spouse serves on the District Court that has immediate appellate jurisdiction to that, and we had a case of another spouse of a sitting Circuit judge and that sort of thing, make a strong run to sit side by side with her husband. Does this cause you to react in any way?

Justice Archer:

No, not at all.

Mr. Lane:

Does it seem good or bad?

Justice Archer:

But you also, in your inquiry, neglected to talk about sons or daughters, or nephews, or relations, because you have, for example, Mr. Justice Griffin and his son, Judge Griffin who is on the Court of Appeals. No, I don't see anything...it is of no moment. I think you have to appreciate the fact that we, in society, should respect the ability of our colleagues, our peers, and of the interest level of spouses or family members. I think it is a credit to the profession that a family member or a spouse would consider a level of the same involvement, whether it happens to be the practice of law or whether it happens to be serving in the judiciary. I've met other husband and wives in other states that have done the same kind of thing, so it is...it is not a rarity, however, it is not common. It does not interfere with the administration of justice..

Mr. Lane:

Justice Archer, let's come to...let's call it the summing up part of this whole procedure. I would invite you at this time to deliver yourself of any thoughts that you think appropriate to this kind

of a setting where you are making a tape for historical purposes relating to your service on the Michigan Supreme Court. We talked about a good many specifics, but now, if you were in the pulpit, what would be your peroration?

Justice Archer:

I would suggest to you that I believe that it is appropriate for today's society that our Court, as best it can, reflect the diversity, both by way of gender and by way of ethnicity, a reflection of the society in which the Court serves, not only as it relates to jurists but as it relates to law clerks, as it relates to the Court staff, and also within our practice of law.

Lawyers and judges touch everything that is important in America. We advise, protect and defend everything that moves in the United States and in many instances, even beyond. There is not a corporation. There is not a mom and pop grocery, at least who can afford one, that does not have a lawyer for legal advice. There is not a governmental entity, whether it's a township or the federal government itself and everything in between, that is not represented by the legal profession and not subject to the laws and therefore, the activities and the rulings of courts on a state and federal level. Therefore, it seems to me that if there is any person or any group or any group of professionals that should give true meaning to the words "equal opportunity", it should be the legal profession.

We should be leaders in that, both in the Court and clearly as members of the Bar. If we do that, then I think as we go into the 21st century, then we can provide the ground work, hopefully, for a demand for a prioritizing of our values towards education, towards a safe or crime-free environment, a healthy environment and more importantly, an educated environment, or equally important, an educated environment, if we are to compete in the global marketplace of the 21st century. In 1992, the European Common Market will come into fruition and the Nelson Mandela and President de Klerk can resolve their differences and let there be peace in South Africa.

Given what has occurred in the Soviet Union and Russia and given what has occurred with the Berlin Wall having come down, as we close out this century, it occurs to me that if the demographers are correct that somewhere between the year 2020 and 2056, the majority of Americans will be what we refer to today as ethnic minorities, that the largest single group of Americans being Asian Americans followed by Hispanics followed by Blacks followed by whites, that we need to be a country, as we would need to be if we maintained our same level of diversity and ethnicity as present with ethnic minorities being in the minority of population - even if we maintained it - it is abundantly clear that we must always continue to be a nation of laws, that no one, no one person, no corporate entity, no governmental entity, ever becomes above the law, that there is respect for it.

Those who are in the highest positions of leadership, though not the highest paid, and I'm referring to my colleagues who serve on the Bench, it is imperative that they give the highest form of leadership in the most ethical way in which they can do it and whenever human frailty will surface, and it will, that they dispose of it and deal with it in a proper and forthright manner so that it will encourage others to maintain respect for the law.

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