



Interviews with
**Michigan Supreme
Court Justices**

INTERVIEW WITH HAROLD HOAG

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

Conducted by Glenn Ruggles

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March 27 Interview

(Transcriber's note: Dates in brackets indicate years of service on the Michigan Supreme Court)

Mr. Ruggles:

This is March 27, 2006, and I'm Glenn Ruggles in the home of Harold Hoag, and we're in Springlake Township, Michigan, awfully close to the Lake Michigan shoreline. I'm interviewing Mr. Hoag for the Michigan Supreme Court Historical Society ... about your life, particularly about the Supreme Court, but we're going to do sort of a holistic approach from your childhood forward, but as we just discussed a moment ago, we're going to do it sort of backward. You're going to begin with your memories about the court. And you have a statement you wanted to record.

Should I call you Harold?

Mr. Hoag:

Hal is best.

Mr. Ruggles:

Okay, Hal. And we're going to talk

Mr. Hoag:

Yes. When we were arranging this meeting, Glenn, I described what I wanted to do at this first meeting was make a speech, and in a sense that's to cover two stories that were given to me, and I would like to see these stories preserved. One is about the first clerk of the Supreme Court [Charles Hopkins, 1882-1916], and the story that I was told -- and it had to be my predecessor, Don Winters [1957-1974], who told me this -- the first clerk got in Dutch with the justices by virtue of his having expressed to the newspaper people that he thought that the justices ought to have their offices in Lansing, and some of them had their offices obviously elsewhere, I suspect Detroit, as is the case now and as was the case all the time I was deputy clerk. At that time there were no Xerox machines or any satisfactory substitute, so for copies, the clerk himself, his wife and at least one or two of his children copied papers for attorneys and they were paid a price for that copying, and they did it with quill pens, which Don had one of and showed me how to work it. I don't know, and I've only speculated, as to whether or not the clerk and particularly his family had to do copying with a quill pen because of the low salary, or did he get the low salary because of the news that he gave to the newspaper. The other story I wanted preserved was about Jay Mertz [1916-1952], the second clerk. As the clerk, I believe Jay, as was true of my office and my predecessor Don's office, by Michigan law he was the ex officio secretary of the Board of Law Examiners, which handles the admission of all Michigan attorneys, and also supervises the admission of attorneys admitted in other jurisdictions, like New York or Ohio. It happened, according to the story Don Winters gave me, that a justice of the court, to which Jay was the clerk, asked about the effectuation of an admission to practice law in Michigan of an attorney admitted somewhere else, probably New York. Jay Mertz told him that in his [Jay's] opinion, the man was not entitled to come to the Michigan Supreme Court, a motion made usually by the clerk or some attorney for admission without bar exam. The justice who was making the inquiry was not satisfied, and he said he wanted to see the attorney's request for admission without bar exam. Jay retreated to his office and came back with a small brown grocery sack and handed it to the justice, and in there was the lawyer's petition for admission, not torn up but shredded. Those are the two stories that I wanted preserved, and you've done that for me and I appreciate it.

Mr. Ruggles:

Can you tell me who those justices were?

Mr. Hoag:

No, I do not know who the justices were and I'm glad I don't because if the story I told was not letter perfect, and I could prove it, I'd have a lot of trouble. Now, this story is more substantive and it involves me and I will handle that part of it. Early on in my time as deputy clerk, I asked Chief Justice Dethmers [1946-1971] why don't you have a law clerk? At that time there were seven justices and six of them had one law clerk, but the Chief Justice didn't have any. His answer to me verbatim was, "I don't have time for a law clerk." Now, when Chief Justice Dethmers was elected to the court, there were no Michigan law clerks, and in most other states there were no law clerks, I believe. Possibly some on the East Coast. Judges did their own research and formed their own judgments. Now our judges on the Supreme Court have three law clerks apiece, and the judge's profession and position is a executive one, for which they have had no other training than that of observing a system where teachers -- that is law professors -- pick out the brightest students -- that is the ones they like the best, which means the ones most like themselves, which is perfectly natural. I flourished in that system and was offered one

employment opportunity at the University of Michigan, that is to say support for my application for one position, and that was law clerk for the Grand Rapids federal judge. I didn't apply because I had no idea that a law clerk could ever expect to get a real job, and so I didn't apply. In all of the careers that I have had, they have flourished better than they deserved to flourish, or would have if I had had some tutoring or had some sophistication. Now the system works like this. Step one: Successfully practicing lawyers making a living actually practicing and getting real experience. (A) They hire the best prospects they can get out of law school, and others who can be expected to bring in business, and in effect if successful, then in a career business that can be passed on as an inheritance or sold. (B) The system works. Law clerks, as a rule, become law professors or judges or rainmakers. Rainmakers are lawyers who bring money into the firm, business into the firm, in highly successful law firms. They don't actually otherwise practice law, the law clerks, in a practical sense, and so with rare exceptions law clerks, as law clerks, or when they become law professors, have no or only little actual practical experience, and so they teach law to students and judges from that perspective. (C) The system leads to court decisions being delayed for years. It leads to the decisions being authoritarian. The blind are leading the blind and teaching the blind to lead. The system will not permit change, so we must adopt the West Virginia protection against the situation, (D) and that is a provision in their Constitution that says that an appeal to the highest court in the state that is not determined by a final decision within six months of receipt of the appeal is finished, and the decision of the last court is affirmed by constitutional provision. That would take care of the long delays that occur when the law clerks, who are young and just like I was, and just like all of the rest of us are and will be, believe that they're going to live forever, and that anything in the world is possible. So they can take four years to decide a case if that's what it takes to get it done correctly. That's the end of my planned speech, Glenn.

Mr. Ruggles:

Well, that's pretty good. You raised several issues, and I'd like to go back on some of these points. Explain the term West Virginia protection. Is that the law in West Virginia?

Mr. Hoag:

That was the law while I was the clerk of the Supreme Court, particularly in the early years. They had a constitutional provision that said an appeal to the West Virginia Supreme Court must be issued within six months after receipt, or on that date the last court decision is affirmed in the West Virginia Supreme Court.

Mr. Ruggles:

So you felt that the court was generally moving too slowly in rendering decisions?

Mr. Hoag:

While I was there, we had some cases that were just abominably long, two that pended for days past four years. That's unconscionable.

Mr. Ruggles:

Do you recall any of those cases in particular?

Mr. Hoag:

No, and I'm glad, because this can get down to personalities and that's not my objective. My objective is to criticize the system in general of getting all the input that our justices are receiving from law clerks who in the mien do not have practical experience and who were taught by professors who in the mien do not have practical experience. The danger then is people who haven't been in the trenches and tried to serve the public needs as attorneys do not know by practical experience what is possible and what is not possible. So by optimists, that optimism reinforced by a lack of actual practical experience, and who in at least most of the cases have an aversion to that actual practice experience constitutionally can't bring practical experience to the task. Now, I want to protest that I like the law clerk persons. They are the same thing I was in law school. It was only because I didn't understand that being a law clerk to a federal judge is a first class ticket to any success you want, ultimately as a judge or ultimately as a practicing attorney. It's the best ticket you can get.

Mr. Ruggles:

And your early impression was what?

Mr. Hoag:

Oh, my early impression, because I had no experience in the law and no one to tell me any practical answer, my experience was who wants to be a clerk? I'd been a clerk for three years for Kroger, and after that an assistant manager. I didn't want to go back to being a clerk. I didn't know that it was the path to golden success. And it still is. This critique is offered as a friend who respects the people who are doing it, but it's trying to say you're working in an impossible situation. Until you become convinced that you're not going to live forever and the practical things need to have a practical time-wise solution, perfection is highly unlikely. So settle for a workable result. That's what I'm trying to say. And I'm also pleading that I like the law clerks and I like the judges they're working for. I'm not an enemy.

Mr. Ruggles:

I don't think that would be taken here as an unfriendly voice.

Mr. Hoag:

That's the scope of my speech, and now I'm ready to answer questions.

Mr. Ruggles:

I do have one more question here about your speech. You did mention something about the blind leading the blind. Is that the way you worded it earlier?

Mr. Hoag:

Yes. That's harsh and overstated, but that's characteristic of my attorney style.

Mr. Ruggles:

Could you go back and amplify a little bit what you meant?

Mr. Hoag:

Well, what I meant was with rare exceptions, my experience was the University of Michigan law

professors -- and I'm certain, dead certain this is more so now than when it was when I was there -- the law professors are people who got very good grades in law school and with the minimum of time they could do it, went into actual practice and then got safely back in out of the bad weather as law professors, and with their limited experience in the real world, they're back to showing their students what they perfect solution would be to all of our problems, and their vantage point is you have got time to do it, to the law clerks. If I had known that becoming a law clerk to a federal judge was the best guarantee of success, I would have begged for the job and be singing a different message to you today. I would be telling you all of the advantages of this, of being able to do it perfect, even if it takes us 500 years.

Mr. Ruggles:

Good point. I understand. I'll send you a copy of this tape right away and let you listen to it, and you can add or delete anything you want.

Mr. Hoag:

Oh, I'll stand with it. I have made my plea that I am not an enemy. And the law clerks that work for me don't have any experiences that they can point to, yes, you are, because I didn't sing this song to them then. I didn't know this song then. I had to get out of the business and reminisce to learn these things. I'm 86 now. A gypsy in Norfolk, Virginia, when I first went into the Navy on that ship I told you about, told my fortune and told me I was going to live to be 105 and beyond that she didn't know how much longer. So I believed that until 14 months ago when I broke first vertebrae in my back and it looks different to me now.

Mr. Ruggles:

It's all in perspective, isn't it?

Mr. Hoag:

Yes.

Mr. Ruggles:

You were born on a farm in rural Michigan and started out with very little education. You said you failed the first grade.

Mr. Hoag:

Yes.

Mr. Ruggles:

And here you are a highly respected Supreme Court clerk, and you mentioned that you were trained in international law or qualified to teach international law?

Mr. Hoag:

Yes. I applied for and the Navy gave me two years at Fletcher School of Law and Diplomacy in Medford, Massachusetts, on the Tufts University campus. There I had absolutely superb training in international law by two professors, one of whom was Leo Gross. I knew that the Navy's creed, belief, program was that the breadth of the territorial sea was limited to three miles, and outside of that a state cannot control our actions on our ships, peacetime or wartime. I knew that

was the Navy program, but I was able to write a master's thesis that said the law is unsettled. It is not three miles or 200 miles, but there are claims for everything in between, and it is simply not settled. Professor Leo Gross gave me an A+ for that thesis, I think because I did not try to preach and teach simply the party program, but stuck to the real facts. In addition to that very fine grade, I want to tell you that he pointed to one weakness. On one of the early pages of my thesis I had a footnote for a New York Times newspaper article, and I could not identify the page. Professor Gross wrote on my paper where the gaps were, "These gaps gasp for fillers." He spoke Spanish, German, French and I believe he was born in Poland, and I think he spoke Polish. I don't have any problem at all -- I should have -- taking on Harvard's international law professors when they perform poorly.

Mr. Ruggles:

Can you give me an example of a poor performance?

Mr. Hoag:

Yes. The tribunals after World War II, the Nuremberg trials, where the honorable, venerable, long-standing defense to a charge of a war crime was respondeat superior, meaning that I was a loyal soldier, sailor, airman obeying my leader's orders, honorable, venerable, long-established. And Harvard was rolling their hands. It can't be wrong because it ain't nice. Well, that argument won't make it, that won't make it.

Mr. Ruggles:

What's your position on that?

Mr. Hoag:

Because it would be nice if it was the other way doesn't do either of two things. It doesn't prove that it is the law instead of something else. In addition it doesn't prove why it should be the law instead of something else. The other was obeyed and respected. Now, was it perfect? No. And most laws are not perfect. But as in most laws, there's something to be said for the other side. For instance, I learned at the University of Michigan one day something profound in a criminal law case. The defendant asserted the argument that I should not be subject to punishment for the crime that you allege because I did not know it was against the law, and the court's answer was you are assumed to know what the law is. I wouldn't criticize that position if I had reasonable proof that the person should have known, but I can't take this blanket assumption that you know the law. I agree that probably most of those defenses would be not well-founded. I agree they probably won't be, but that's not an adequate answer for me to say you can't make that case.

Mr. Ruggles:

You've given me some good examples of the law, but in a nutshell, if you were to describe the word "law", what is law to the average passerby, and for the tape recorder today; in its purest form, what is a law or what is the law?

Mr. Hoag:

We English-speaking people in the law profession claim that the base of the law that we have is called common law. It came from the British Isles, and as I understand that law, it is law that has become established and will be pronounced as the law established by a judge in a constituted

court. When the community -- on the average any informed adult, one who reads the papers, one who talks to his neighbors, one who lives -- would take the position you can engage in this activity, you can't engage in that activity, this activity is not clear. The common law should be the first of those things. You can engage in this activity or you cannot. It has been accepted by the community. And the community has a remedy when that practice does not serve the needs of the community. Then the community takes its own curative action. I hope my pronunciation of the Latin term is close enough to be recognized. It is the law of posse comitatus. That is to say, the community takes correction of the event in its own hands. The most notorious of those solutions was hanging, and that would typically occur on horseback and it would be men who would be involved, and the leader of the group, the one who would answer as the leader of the group, would be a successful person, well-known, regarded as trustworthy enough to lead the posse. In other words, what I'm suggesting is that over time that established itself as the safety valve. When the common law wasn't taking care of matters adequately in a measured, considered public dispassionate manner. Posse comitatus was not that. Posse comitatus is passionate. The leaders of the community consider their community to have been mistreated to the extent that it deserves immediate, painful collection.

Mr. Ruggles:

Doesn't that theory of posse comitatus lead to a great deal of abuse?

Mr. Hoag:

It can lead to a great deal of abuse. I saw as the clerk of the Michigan Supreme Court the appearance of people from a smaller suburb -- I think it was south of Ann Arbor, on the way to Jackson -- farmers who were scraping a living off soil that didn't give them a handsome living, with not much resistance, seeing people sponging off the state, and their tax money being spent on them, and they were resentful. They came to my office, the Clerk's Office of the Court, and they wanted to file papers to effectuate a measured, authorized corrective action. And from me they got what they regarded as bad news, that they had to go to another Michigan court first. You can't start this case of yours in this court. Well, what court do I have to go to and why can't I do it? And I would say, well, I recommend that you try either the circuit court or the district court. I think if you go to the Court of Appeals, that's what they're going to tell you. But that's what I've told you. Now, you don't have to take a dumb deputy clerk's advice about this matter. I will take your papers, and you tell the court that I have told you just what I've told you, and that you said, I don't want any deputy clerk's advice. I just want you to take the papers. I said, then I'll take them, because I don't consider that I have the authority to say to you, I'll give you a slip of paper here, and that's what you get, instead of action by the court. And none of them ever filed their papers with me. They said, can I go to the Court of Appeals? I said absolutely you can go to the Court of Appeals. I said, I'll give you a guarantee that the Court of Appeals is going to tell you the same thing I just told you. So I would try the circuit court or the district court. And those people were reasonable enough to back off.

Mr. Ruggles:

You never heard from them again?

Mr. Hoag:

Oh, no, no. They kept going, different ones kept coming to the office to get the same story, and

some of them, the case did get to the Chief Justice, and I said that's what I had to do. And now I've got the paper that he said no. You said you would take it if I refuse you. I want you to take it. And I said, no, it's your problem. And the Chief Justice, as I recollect it, said send them your letter saying the Court didn't accept it. And that's what I would do. And I had one happy experience. I want to tell you about that.

Mr. Ruggles:

Go ahead.

Mr. Hoag:

I got a lot of letters from prisoners, and by far most of them were accepted and presented to the Court for decision, and were ultimately decided, and the Michigan Attorney General's Office answered those cases that I filed. My iron rule with regard to the prisoners was you have got to make one copy of the papers you want me to take, and you have got to swear to me in writing that you served a copy on the Attorney General, and this is his name. And so they knew my rule and ordinarily they did it. One guy didn't do that, and he filed a suit against me in Federal District Court. The District Court did me the extreme honor of telling that applicant that he had not been mistreated by me, that I had a fine reputation, and that all I had demanded of him was that he serve a copy on the Attorney General so then your papers would be accepted. And that disposed of that claim that that person wanted. He wanted \$3 million of my money, and you know that would have just about wiped me out.

Mr. Ruggles:

Was that rule of yours, that is to serve a copy of the papers on the attorney general, was that just your rule or was that a law of Michigan?

Mr. Hoag:

That law bound all attorneys. If you want to file your case here, you have got to swear that you served a copy on the opposing side.

Mr. Ruggles:

I'd like to ask you a little bit about the justices on the bench both while you were both Deputy Clerk and the Clerk. Can you take me to the beginning of your years as deputy, and you mentioned Chief Justice Dethmers. But can you recall some of the other people?

Mr. Hoag:

Yes. This is a story I am delighted to have recorded. Two of the justices on the Court at the same time were well-known for good and many reasons. One was Thomas Matthew Kavanaugh [1958-1975], and one was Thomas Giles Kavanaugh [1969-1984]. And my understanding was that among the fractious part of practitioners and the also jolly part of the practitioners and also the inside part of the practitioners with regard to the Supreme Court referred to those two splendid gentlemen as Thomas the Great and Thomas the Mighty, with respect. In commenting about those two gentlemen, I again mention Justice Dethmers, my great respect for that man is imbedded a little bit in my earlier remarks about him. He also cut his own lawn and watered his own grass.

Mr. Ruggles:

I don't think we got those on tape though. We were talking off the record. Can you go back over why you think Justice Dethmers was such a great justice?

Mr. Hoag:

Yes. Because he mowed his own lawn, watered his own grass, and was a practical man. He didn't have time for a law clerk. He had come up through the ranks when there weren't any law clerks and he practiced real law and he judged real law. When two capable lawyers appeared before him, one arguing for and one arguing against, he wanted to consider what they had to say, and measured against his own experience and his own understanding, based on his, how many years, 20 years, 40 years of practice in judging, as opposed to a young man who was trained in a different system than mine and who may know a lot of things that I don't know, that isn't my experience. And he may be right. It may simply be that the law is being taught differently now than when I was there. So I'm not saying that he's wrong because he's young, I'm not saying he's wrong because he was taught differently than I was taught. What I'm saying is I don't have time to read those advices and speculations and test them against my experiences. I barely have time to do my own work and still get the grass cut and the lawn watered.

Mr. Ruggles:

A practical man. Is there a lot of common sense in law? Speaking of Dethmers, is there the old-fashioned sense of common sense?

Mr. Hoag:

Well, one of the professors at the University of Michigan said to me and perhaps two or three others in a class of, as I remember, about 12 of us in the entire class. It was corporate law, so you can figure out who it was if you're of that vintage and era. He avoided politics and he did not oppose what politics there were on the faculty that were not his own. He just stayed out of it, for practical reasons. I'll say something about another professor, and this time I'll identify him by name. Durfey was his name, and he taught Equity I and Equity II. I took them and got an A in both courses. I gave him the same answer to all the questions he asked. What is equity? Well, I can't do it as well as I could do it in those days, but equity is what is fair among people who aren't going to dissect the word and find it's got 37 different meanings, but just "what is fair" to all the questions.

Mr. Ruggles:

So you had good grades.

Mr. Hoag:

One of the professors punished me severely. He can't be reached now. I'm going to try to keep him from being identified, but classmates would be able to put the finger on him. Maybe I said this earlier and it wasn't recorded, but one of the exams there was a note on the board saying there are some people who don't like their grades and who are critical of the grading, I'm going to take you all on starting at four o'clock in this big room. We went in there and he read my blue book as the model answers to the questions and he gave me a C. The only one I got in law school. And the one that kept me from making Law Review. If you got out of Michigan with

Law Review, you were certified to get a good job. They offered to help me get a clerkship, but I didn't know they were offering me that. That was a perfect job.

Mr. Ruggles:

Back to that answer, you said it was a model answer that he read, but he only gave you a C.

Mr. Hoag:

Well, he wouldn't have any trouble with that. He wouldn't have any trouble admitting that for various reasons. I charge him with being an elitist, crying at the decision to admit MSU into the Big Ten, or taking a farm boy who is probably honest and industrious and able, but not of the class that can be trusted to perform in one thing and another in this fashion; simply something that isn't his fault. Now, he got these answers right, but that's not all that's involved. There are other very important things involved. Such as knowing whether MSU should be in the Big Ten or not. If you don't know the answer that, my suspicion is there are a lot of other things you don't know.

Mr. Ruggles:

He would actually say these things?

Mr. Hoag:

No. No. It's only because he's deceased, and the number of people who could trace this back. Of course if you get my grades, I guess I have nailed him. But the people who are listening to this, you're going to have to catch me quick because I'm 86 and I've got a lot of 86 done already. So I ain't going to be here forever to get caught.

Mr. Ruggles:

Let's skip ahead. We were beginning to talk about the Justices, but we didn't get past Dethmers. Some of the most memorable that you'd like to comment on and the Kavanaughs you've mentioned.

Mr. Hoag:

Yes, I mentioned the Kavanaughs and I'm going to mention two others. I'm going to ask any who are listening not to try to draw conclusions from omissions.

Mr. Ruggles:

Sure.

Mr. Hoag:

Justice Thomas Brennan [1967-1973] was in my experience a relatively young Chief Justice. And I ask you not to draw too many conclusions from that, because I was relatively young, and particularly with regard to years of service, as the clerk young practitioner. We received a letter from the management side of the State of Michigan government regarding assigned parking spaces for the Justices of the Court. I don't know whether it was seven or less than seven, but I'm going to say it was seven to be on the safe side. In the letter there was a place for each one of them, different than the space they were occupying and marked as Supreme Court spaces. But these were much less handy for the Justices than the spaces that we had marked for us now. He

brought that letter to me, in effect saying what do you think we can do about this? Eventually I gave him my opinion -- turned out to be advice -- that he should issue a writ of mandamus, saying that the Supreme Court spaces are going to be where they are. That's that. He said to me, "Do you think this is legal?" Those may not be his exact words, but they were the import of his question. I'm going to put it now in my and Chief Justice Tom Brennan's language and say, "Hell, you think this is legal?" I told him yes, and we wrote the letter and it worked. And my relationship with those senior policemen of the State of Michigan, they had their office where they could see a car come in and go out, and they always gave me the sign of highest respect, and I gave them the same sign.

Mr. Ruggles:

We can't describe this on tape, but it has to do with one of the digits on your hand.

Mr. Hoag:

You son of a gun. You've got me this time, I'll get you next time. Each of us knew that there was no other sign that would convey as much as with respect to that one. But we had been in the trenches, and each of us had fought according to the rules, and the better man had prevailed this time, but maybe not next time.

Mr. Ruggles:

It has a friendly connotation then.

Mr. Hoag:

Sure. We were the best of friends. They came along inspecting offices, and I told them they were welcome any time on any terms when we were there or not there, that I would appreciate them telling their personnel, don't go in the Justice's personal offices unless you need to. If you need to, fine. Then tell them don't touch anything. Don't touch anything unless you have to. And if you have to, then the next day say what happened. There are two rooms that are locked all the time. One of them is in my office here, and I'll give you a key to that. For one reason or another we have to have a place to put things that there isn't access to. The other room I can't give you a key to. It's got records in it that I don't know what they are, and I don't want to know what they are. They are grand jury records that by law are to be kept secret. Any time you want you can get me or my deputy, and we will take our key and go down there and unlock the door, and you can go in there and look. It's a mess because everything is piled here and there, but you can see there are no people in there. But that's all I can do for you with regard to that. And that's the relationship we had, that they absolutely trusted me, and I absolutely trusted them. This time they couldn't send our parking spaces somewhere else. And I know the guy who wrote the order, and I respected him then and I respect him now, and he respected me then and he respects me now. And we did business together successfully on a lot of things. He had just been under pressure from someone higher than himself, and he was pretty high, that he had to accede to his command with regard to where these parking spaces were going to be. And he probably thought it's justified that these high-ranking people have these places that are so convenient to the elevator. So he did what he had to do. He wrote a letter that said your parking places from now on are going to be over here, and I wrote him a letter that said no way. And we respected each other.

Mr. Ruggles:

Back to our list of justices, let me ask you this. Who stands out as the most memorable justice?

Mr. Hoag:

Well, the most memorable justice has to be Thomas Giles Kavanaugh because he was the chief justice for the longest time while I was there, besides another fact, just as important. He trusted me all the way, and he in effect simply asked me, Hal -- he didn't use these words. We had a style of working with each other. Where are you at? when you tell me this is the answer. I can judge you pretty good. I can tell when you're at 90 and when you're at 93 and when you're at 64. I give you a lot of things for you to decide because I think it's right. Are you going to keep me covered so that when we get down to 64 percent you're going to tell me it's 64? And I said, "Of course I'll cover your ass." It was bordering on the obscene. It wasn't of course, but it bordered on it.

Mr. Ruggles:

In the sense that he gave you too much authority?

Mr. Hoag:

That he would tell the other Justices when we were there at meetings, seven Justices, and I was the secretary taking the confidential notes. He would tell them, "Hal can do it. Hal can do anything." And one thing and another. Let me tell you a story. You asked some of this to be personal. This is personal and it's hot. The Court had a problem with a judge misbehaving, and it was not a case that you could give successfully to the Grievance Commission where they investigate and hold actions to make attorneys accountable for misbehavior. It wasn't that kind of misbehavior, but it was embarrassing and annoying to the Court in an inordinate degree. A suggestion was made to have the clerk to take certain action, and the clerk was me. Justice James Leo Ryan [1975-1985] said six of you are in favor of this solution, having Hal take this action on this problem. It's not legal and you shouldn't do it for at least two reasons. One, because it's not legal, and it shouldn't be Hal doing it. But I'll tell you this. You don't have my vote to do it, but if you're going to do it, you've got to have Hal do it. You've asked for whatever could be made personal. I have made two Justices personal. One was the Chief Justice I worked for the longest, and also Thomas Brennan. So I've identified Thomas Brennan. He preferred Tom Brennan. James Leo Ryan. And Thomas Giles Kavanaugh. I can go back to Thomas the Mighty Kavanaugh. He came to trust me, and I valued that very highly because he had the reputation, deserved or not, of being partisan, Democrat or Republican, and I know he was looking at my conduct to see if I was a Republican, and I'm satisfied he came to the conclusion, I don't know whether he's Republican or Democrat but it ain't interfering with his work, so he makes the grade with me.

Mr. Ruggles:

Can I ask you about a couple other names. Did you serve on the Court when John Swainson [1971- 1975] was on the bench?

Mr. Hoag:

Yes.

Mr. Ruggles:

You don't want to touch that. Okay. Did you serve with [G. Mennen] "Soapy" Williams [1975-1986]?

Mr. Hoag:

Oh, I'm glad you asked that question. This will be very personal. During my time as Clerk of the Court a person was hired as the State Court Administrator, Einar Bohlin, a man of extraordinarily great capabilities, and he was -- I don't want to use the word anxious, but it's almost necessary -- to serve to the fullest extent as an active State Court Administrator in a court where at least four did not share a desire for acute and active state court administration of judges. Administration, yes, but not that kind. Justice Williams -- "Soapy" Williams -- said with all the respect that it is possible to say it, and perhaps one or two others, but particularly "Soapy" Williams, was in favor of Einar Bohlin as the person and of his program as a program. And I served the interests of Thomas Giles Kavanaugh and enough of the other Justices to be a majority of thwarting almost everything that Einar did. Almost everything Einar did. Openly. The seven Justices and myself as the secretary, and I don't thrust myself into that argument. I never, to my knowledge, thrust myself into one of those problems. I could be pushed into it, and I was pushed into it sometimes. What I'm saying is I was opposed to Justice Williams on that score over and over and over and over and over again. And if you want to, you can say that I always won. I didn't win, but the side I was on, which was the majority of the Justices, did thwart Justice Williams. And this is what Justice Williams did. After I had petitioned for retirement -- and a number said they would rather have it otherwise, but they would not oppose my retiring -- they asked me to attend a special session in Detroit at which Justice Williams was going to be installed as the Chief Justice, and he knew it because Justice Thomas Giles Kavanaugh, who had the means to pass his command on, and I don't say that he engineered it, but he had approved it, so everybody knew it was going to happen. Justice Williams' response to the word -- and it was given to him when I was in the Chief Justice's office, given to him by telephone -- Justice Williams asked, "Can I tell Justice Leo Ryan?" and Justice Giles Kavanaugh said certainly. Well, then at the meeting when the Chief Justice was nominated and was unanimously elected of course, one of the first things he did was to ask me to stay on a little longer and to be the court administrator subsequently. That increased my retirement pay from what it would have been as a civil servant of \$12,000 a year or less to I think it was \$36,000 then. The man I had opposed, and it would have had to seem to him like day in and day out, week in and week out, month in and month out, had done that for me. So I have now personalized Justice Williams, Justice Thomas Giles Kavanaugh, Justice Thomas Matthew Kavanaugh, Justice James Leo Ryan.

Mr. Ruggles:

You were on the Court when women first came on the bench; right?

Mr. Hoag:

You're getting into the quicksand.

Mr. Ruggles:

May we for a moment?

Mr. Hoag:

Well, I'm going to be very careful.

Mr. Ruggles:

I don't know much about the quicksand I'm just wondering who was the first woman justice?

Mr. Hoag:

The first woman justice served a very brief time and then was ousted from the Court.

Mr. Ruggles:

Was that Dorothy Comstock Riley [1982 1985-1997] ?

Mr. Hoag:

Yes.

Mr. Ruggles:

Can you talk about that? It was in the newspapers.

Mr. Hoag:

I can talk about that.

Mr. Ruggles:

Were you involved in that ouster at all?

Mr. Hoag:

Not in terms of effecting the happening of the event. I had nothing whatever to do with that. Now, this is going to be extremely interesting to one gentleman, her husband. I had nothing to do with the event happening, but after it happened -- I don't remember the factual circumstances. I don't remember if I offered to take the written order to her in her motel with her staff or not. But I do know that that was undertaken voluntarily by Justice Williams.

Mr. Ruggles:

He delivered the papers?

Mr. Hoag:

He delivered the message. I don't know whether he had a copy of the paper or not, but he delivered the message. Then I was there and I asked if there was anything I could do with regard to the fact that she was in Lansing or East Lansing in a motel not very far from the Court with her staff, and with transportation, if I could do anything with regard to her getting back home safely. She answered no. I can't go beyond that.

Mr. Ruggles:

Can you just recap for a layman the issue involved as to why she was ousted?

Mr. Hoag:

Yes. I can talk about the issue in the broadest and most general of terms. The issue was whether

or not Governor Milliken had authority to appoint a Justice to serve in the circumstances that she was nominated, which I can't say incidentally that I know. I don't know whether she was appointed to serve to the end of the year in which Justice Moody [1977-1982] died, or whether she could be appointed to the end of what his term would have been if he lived or beyond. That's what I think it was. I can tell you this with confidence. It involved the Governor's authority to appoint her for as long as he appointed her.

Mr. Ruggles:

And wasn't there a new governor coming in? Blanchard?

Mr. Hoag:

I think that was part of the discussion. I think it would have been what is the term of the officer who appointed her? I can say it was about the Governor's authority. What the particulars are about that I can't say.

Mr. Ruggles:

Well, it made the newspapers and there's no guarantee the newspapers were accurate in their description of what happened.

Mr. Hoag:

You can see that there is another point, and I cannot get into that. And you can see that it isn't my shirttails. My shirttails are involved, but it is not the critical factor.

Mr. Ruggles:

We're going to be running out of tape here in just a minute, and that's probably a good time for me to quit for today. What I'd like to do is send you a copy of this tape and you can play it and listen to it, and I can come back and we can finish.

Mr. Hoag:

You won't have to make any erasures. I'll stand by what I've said.

Mr. Ruggles:

Good. That makes my job easy. But we do have to cover your childhood as we talked about before we turned the tape on. That's quite a story, all the way through your military career and on to the court. And then you'd have time to also examine your memory for even more thoughts about the Justices and the operations of the Court and your duties and why they said so many nice things about you when you retired.

Mr. Hoag:

Yes. The extravagance of that time overpaid me for everything I did.

Mr. Ruggles:

Let me close with one question. You keep always claiming you were overpaid and not taking a lot of credit for things you did. Your values that you have, your ethics, not only your work ethic but your moral ethics, where do they come from? Where did you get these values of hard work and loyalty?

Mr. Hoag:

From my father and my mother. My father died on his 64th birthday of emphysema, misdiagnosed as TB at the time when those were commonly misdiagnosed because there wasn't enough known about emphysema. I was a new, green lawyer, and I said, "You can sue the doctor." And he said, "The doctor did the best he could possibly do for me. We certainly are not going to sue him." Those are the kind of ethics my dad had. When he said something wasn't right, I'll tell you what that meant. The best way I can do it is this. I told you before he had a fifth grade education. I should have told you he also played third base on the baseball team for the Sparta High School team and the Kent City High School team, except when they played each other. And he wasn't in school. He was a remarkable man, a wonderfully good man. My mother taught me to read after I hadn't done well in the first grade, and then my second grade teacher promoted a half a grade. While we lived together, my father and it would have been my sister Dorothy, and maybe my sister Doris and maybe not, lived in a different house. My father and Dorothy and maybe Doris lived in a house we had been living in, and my mother and I moved about 600 feet to another house. And I don't know how the Warrens happened to let us have their house. A sign was put on the front door, Chicken Pox or Smallpox, I don't know which one. But in those days you were quarantined. But my mother and I lived there, and that was when she taught me how to read. When I got to the eighth grade, we were assigned a special project and I wanted a cardboard ship of some kind, small of course, gun for this, and my mother made it. I looked at it and I said, "That won't do." She then had Dorothy and Doris and Bob at least in addition to me, and was probably pregnant with Dick. She said, "Well, then you'll have to do it." Then I had to start doing my own work. And I was clever at it. I saw that the teachers wanted you to do what they liked to have you do, and to have you like what they said and to agree with it. So I did and I did well with it from then on. And I could do my own work. I learned how to skim by. There came a time when they wanted me to be on the school paper staff and write articles. So I did that, but I did it on my terms. I was not going to go around looking for facts and stories like you're doing here, working at it. I was going to get the gossip and print the gossip. I had a column entitled "Polly Tishun". And that's how I did it from then on. I'd be famous when you were talking to me now if I had learned how to do it. I might have been president. But I didn't know how to do it. My father was telling me to do the right thing, and I kept trying to do that. So I was honest instead of a crook. If I had been a crook, man alive, this would have cost you a million.

Mr. Ruggles:

I wouldn't be able to print most of it.

Mr. Hoag:

Yeah, but you could also get it free for my being in jail.

Mr. Ruggles:

One more thing I should cover on tape, I am going to ask you to sign it, but you are giving the Michigan Supreme Court Historical Society permission to use this in any educational way they choose, including the Internet, putting it on the Internet. Is that your understanding?

Mr. Hoag:

Yes, that's my understanding. Of course they will have to sanitize everything before they use it.

Mr. Ruggles:

Well, I'll leave that to them. They may or may not. But you haven't said anything too awful.

Mr. Hoag:

Well, I haven't said anything that I'd be ashamed of saying. I haven't said some things that I would very much like to say, but I can't. I can't be confident saying them would help the Court, and so I don't feel that pressure.

Mr. Ruggles:

Well, I don't want you to say anything that would defame anybody or slander anybody.

Mr. Hoag:

Or that they would think did that.

Mr. Ruggles:

Yes. Very good distinction. But I'll leave you now, and you can be thinking over things that you might want to consider adding in our second interview.

Mr. Hoag:

Okay. I'll think that over, and approach it with a lot less trepidation than I had approached this one, because for physical reasons, I was beginning to consider -- you still have some responsibilities to the Court and to the four guys who preceded you, and left your job just enormously easier to do for reasonable people, and you ought to go out and give the rest of the people the same benefit. I feel some responsibility. It's been a gaudy presentation of what I had to do, and I realize that, but the Justices will say, starting with Tom Brennan, when you did get to Hal Hoag, it wasn't a fake, it wasn't a copy.

Mr. Ruggles:

Well, I'm glad we didn't have you read your entire life history, because it does sound real coming from you, the way you presented it. I'm looking forward to coming back and getting more of this real story. Before I shut this off, do you have any closing remarks? Any pearls of wisdom?

Mr. Hoag:

Well, yes. To my dear friends on the Court, the justices and the clerks and secretaries. My story about the system of law clerks told in spare terms and less energetically I believe to be true. And the poison that is in it and the fire that is in it are there to get you past the initial criticism of the law clerk system. And we're not going to get rid of the law clerk system. I'm not goofy. But there are perils in it that you can help avoid, and it starts with one way or another getting the law schools to have on their faculty some people who have been in the trenches, with authority, so they can talk to the people who never got their feet wet, or got their feet wet maybe up to the knees, but never seriously. That's all. I honestly believe what I said almost.

Mr. Ruggles:

That's a good close. Thank you very much.