



Interviews with
**Michigan Supreme
Court Justices**

INTERVIEW WITH PATRICIA J. BOYLE

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Conducted by Glenn Ruggles

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May 23 session

Mr. Ruggles:

It's May 23rd, 2002. I'm Glenn Ruggles in the home of Patricia Jean Boyle, former Justice of the Michigan Supreme Court. And we're interviewing Justice Boyle. Shall we call you Justice Boyle or Judge?

Justice Boyle:

Judge is fine.

Mr. Ruggles:

For the Michigan Supreme Court Historical Society.

Judge Boyle, let's begin with your family. I mentioned we were going to go back to your childhood and do a holistic interview. I'd like to talk about your parents, Albert and Mattie.

Describe your father for me as far as his personality or disposition; what was he like?

Justice Boyle:

He was very intelligent, very intense, not even-tempered individual. He immigrated to this country from Canada at about 19. He was the last of a large family whose mother had died when he was quite young. His eldest sister, who was married herself at that time, brought him up. I believe that he was indulged as the last child of the family.

In any event, he followed my mother here from Canada and worked, as so many immigrants did, at Ford Motor Company for many years.

Mr. Ruggles:

They were immigrants from Canada --

Justice Boyle:

From eastern Canada.

Mr. Ruggles:

But originally from what part of Europe?

Justice Boyle:

Ehrhardt is German. Actually, my grandfather was born in Philadelphia, which is where his parents came to from Germany. Then they migrated to Canada. So my father always said that he had dual citizenship.

My grandfather was an inventor. He was the first person to electrify the city of Sackville, New Brunswick, where they settled. He had a plating plant. He had the scientific genes in the family, none of which my father inherited, nor did I.

Mr. Ruggles:

So you grew up in a working-class family. Your father worked at Ford.

Justice Boyle:

My father worked at Ford. My mother came from also a large family, and many of her siblings had already immigrated to the States when she came here, preceding my father by a few months. They were going together. I guess they would say they were courting at that point. She was very bright, my mother, but had only finished high school. My dad didn't even finish high school. She was the sort of person in today's world who would have gotten a scholarship. She would have had more opportunity than she had then. I know that she always regretted the fact that she didn't have a chance to go on with higher education. Both she and my father were committed to the notion that I would. I simply was part of that generation of people in the '50s who were children of people who had lived through the Depression, who it was assumed were going to go to college.

Mr. Ruggles:

Not to put words in your mouth, but is that where your drive came from, those conditions that propelled you into a professional, well-educated life?

Justice Boyle:

I certainly didn't recognize it as drive at that point. It was just what you did when you graduated from high school. Probably 80 percent of the people in the high school that I went to, which was a public school in the city of Detroit, almost all of us were the children of working-class or perhaps one step above working-class people. Teachers. We were not a student body of children of doctors or lawyers or wealthier people. Still, the expectation in the '50s in the city of Detroit in

public high school was that you were going to go on to college. Public education was not as expensive as it is today.

So I didn't see it as drive. It was just what you did. If there was drive in any sense, it was the fact that the family was very interested in current events, in politics. Those were also still the days before television, when people ate dinner together. Our dinners were discussions around the table of current events. It was exciting to me to learn. That was the drive.

Mr. Ruggles:

How many people around that dinner table?

Justice Boyle:

Well, I have a sister and I had -- I called him my brother, but he actually was my first cousin. My mother's sister's son. Again, I think like many immigrant families, our house was always filled with people who were coming and going. Coming from Canada and staying with us for a while. At any given time there might be three other people staying in this three-bedroom house that only had one bathroom. No wonder my father didn't have an even temper. But they were exceedingly generous to these people.

My aunt and uncle lived with us and when my aunt died, having this one boy, he and his dad remained with us. His dad eventually moved out and remarried, and my mom and dad raised him, and my grandmother lived with us. So there would have been my mother, my father, my grandmother, who was herself a remarkable woman, very interested in everything that was happening in the world, and my sister, my brother and myself, at least.

Mr. Ruggles:

Back to your mom for just a minute. You mentioned her IQ and that she was not a formally educated person. What other outstanding attributes do you recall about your mom?

Justice Boyle:

She had an absolutely wonderful disposition. I still miss her. She was so even tempered and so welcoming. I remember going to a high school reunion several years ago, and there were old women, my age, at this reunion who remembered my mother when she was a Brownie and Girl Scout leader when we were in grade school. Because of her warmth, people wanted to be around her. She's sort of a model for all the women in our family in that way.

Mr. Ruggles:

I'm interested in these discussions at the dinner table. Who promoted them, mom or dad or both?

Justice Boyle:

I think my dad. He felt acutely the absence of -- that's putting it in too judicial a way -- I think he felt acutely the class distinctions in this country. Some of the things I remember him saying, for example, I remember him saying that to defeat communism the diffusion of wealth had to spread to the lower classes; that that was the weapon against it. When he was in the plants he learned that and there's no place else to go; that's the rock bed of revolt. And I think he felt that very acutely. That was part of the passion about politics. That was part of the passion and the love for

FDR. That was part of his passion in his hatred for the Red Wings. He still today views the Red Wings as having been captured by American money. It's a Canadian sport.

Mr. Ruggles:

Well, when we bring the Canadian cup home, that might brighten him up.

Justice Boyle:

No, no, no.

Mr. Ruggles:

That doesn't do it?

Justice Boyle:

Nothing will change his opinion.

Mr. Ruggles:

So you grew up in a strong workingman's family, a strong FDR type family during the Depression.

Justice Boyle:

Right.

Mr. Ruggles:

You were born right at the height of the Depression in '37. Aside from your dad's position, did you sense any hardship or limitations because of the Depression?

Justice Boyle:

No. We had a personal family depression in the late '50s. It might have been later than that. It would have been during my adolescent years. During the war my father began to sell real estate and after the war the real estate market exploded. All of the years when people couldn't buy and all of the GIs coming home and marrying, beginning families. So he left his job at Ford. He had been there some 20 years. He went full time in the real estate business where he did very well. Although, the business is subject to radical ups and downs. We were either rich or very poor. By "rich" I don't mean that we were ever really rich.

He then went into business for himself and he lost everything there. I can remember his 50th birthday, and his saying that his life was over because he was too old to be rehired. He had lost everything. He was very proud of the fact that he had become a success. I think I felt it then, but I never really had any kind of deprivation until then. Enough so that my definition of wealth today is if you have a car that starts in the winter, if you can open the refrigerator and there's food, if you can be warm when it's cold, and now at this age if you can afford to go to the doctor when you're ill.

Mr. Ruggles:

That's the American dream.

Justice Boyle:
Yes. Absolutely.

Mr. Ruggles:
In modest terms. Again, I want to go back to your family for just a moment. You talked in such loving terms about your grandmother, Mattie. Could you describe her for me a little more and why you speak so highly of her?

Justice Boyle:
Well, not everyone in my family speaks highly of her. I think I may have been fortunate enough to have escaped some of the negative sides of a very strong personality.

She and my grandfather were missionaries. She was a very young woman. He was some years older than she was and he was already in the mission field in the Salvation Army. He came back to the town that my grandmother lived in, and spoke at her church. That's where they met each other. They married and she went into the mission field with him. They were in places like the Amazon jungle. She had children without any medical attendance.

She literally had been many, many places in the world, traveled in many places. I remember reading a diary of hers. This was years later after the kids had grown and moved out, they took a trip to California. I remember seeing this diary entry in which she was talking about Hitler and about her perception that Hitler was intent on dominating the world, and what was happening in Europe was a sin of enormous magnitude.

She was righteous, and extremely bright, extremely determined and extremely opinionated. As she got older, as we all do I think, she became more tolerant. I can remember she used to say things like in the Apostles Creed, when you say, I believe in the holy catholic church, she used to tell me all the time, that's with a low "c" not with a capital "C". So, she was quite formidable herself.

Mr. Ruggles:
And she lived with you?

Justice Boyle:
She lived with us from the time I was four years old.

Mr. Ruggles:
You had the benefit of this woman in your household.

Justice Boyle:
I did.

Mr. Ruggles:
I'm not trying to put words in your mouth or make a connection that's not there.

Justice Boyle:

No.

Mr. Ruggles:

I see three strong people in your life as you're growing up: your dad, and your mom and grandma.

Justice Boyle:

That's absolutely true.

Mr. Ruggles:

Plus these round-table discussions in an era when, as I recall, children were to be seen and not heard. It doesn't appear that was the case in your family discussions.

Justice Boyle:

That was not the case. Even though my father was a hard person to discuss things with if he disagreed with you, because he was extremely intent on his opinions. But my grandmother was also very interested in the world and what was happening in the world.

I had another strong person who influenced me a great deal as a girl. I had a couple of teachers who were very instrumental in keeping me interested in politics when I was in high school.

Mr. Ruggles:

Do you recall their names?

Justice Boyle:

One's name was Vivian Walker and the other's name was Catherine Dolan. Her daughter, Rosemary, was married to Judd Arnett. One taught civics and the other one taught history. Vivian Walker, for example, made us very much aware of what Joe McCarthy was doing. She did that at some peril to herself, because there were complaints from parents about what she was saying, about what he was doing. There were complaints from parents who said she was being unpatriotic and probably she was a communist.

Mr. Ruggles:

So this was about 1953. You would have been about 16, in high school.

Justice Boyle:

Right.

Mr. Ruggles:

That was a hot time.

Justice Boyle:

Yes, it was a hot time. And at that time as well, I became friendly with a woman who lived down the street from me, who was a precipitating influence for me to get interested in politics on a party level. Get to know some of the people. They were Young Democrats and they were very

active. And I started out as their baby-sitter. I've told this story lots of times, but it's true. They used to take me with them when they would go out and put up signs. They would make me put signs in places they weren't supposed to be. All the hard places. Go up the telephone pole and put the signs up. And the idea was, if the police ever came, they wouldn't do anything to me because I was a juvenile. But I got to meet lots and lots of people. I met Martha Griffiths, who was a senior person in this group of Young Dems. Lots of people who later became judges. That's how I got my first job as a lawyer.

Mr. Ruggles:

So you really did get your baptism under fire, climbing telephone poles.

I want to stick with your family for just a minute. Any other customs? You described the dinner setting. Were there any other customs in the family that you recall were influential in shaping your life, other than the normal holidays?

Justice Boyle:

Yes, holidays would immediately come to mind. Oh, that's such a broad question. Can you narrow it for me?

Mr. Ruggles:

Let me ask you then, how did religion influence your life? You mentioned your grandparents, the Salvation Army.

Justice Boyle:

My father was a-religious. He had been raised a Baptist and he was not interested in church. I don't recall his ever entering the door of a church. My mother and her sisters and my grandmother attended, but sporadically, the Methodist church. I can't really say that religion was an influence. At least organized religion. Values were, definitely.

Mr. Ruggles:

You mentioned that Grandma Mattie emphasized the lower case "c" in catholic. The German population as a whole is generally Lutheran, especially in Northern Germany. I thought perhaps that was a factor.

Justice Boyle:

No.

Mr. Ruggles:

There are no other major customs or habits or family reunions or get-togethers?

Justice Boyle:

The immediate family for years would go down home to a cottage that my dad had purchased for back taxes. It was really a shack. But it was an idyllic time for us as kids. So different from the contrast of the city. You were free as a child.

Mr. Ruggles:
Where was this?

Justice Boyle:
Nova Scotia. Right on Northumberland Strait across from Prince Edward Island. Just gorgeous.

I'm sure there should be something else. I feel that there's something else that I should be able to identify, but I can't.

My mother went back to work at a certain point and my grandmother really ran the house. That was difficult for me, how that impacted on me.

Mr. Ruggles:
That your mother went to work?

Justice Boyle:
Yes. That she went back to work before I was in high school. I think it was a combination of this financial reverse that I was speaking of earlier, and the fact that if I wanted to go to college, she had to come up with some additional financial assistance. She liked her job a lot but she was already not well. It was an enormous burden on her to do the things that she did and then to work and run a family. All that burden in those days fell exclusively on her. My grandmother of course helped.

Mr. Ruggles:
Those were the days when the working mother was just becoming in vogue or stylish.

Justice Boyle:
Right. I don't think she saw it as stylish. She saw it as a necessity.

Mr. Ruggles:
Can I talk about your friends in high school? Did you have a best friend, someone that you really spent time with?

Justice Boyle:
Yes. I just got a postcard from her today. She's in Guam. She was a person who I thought came from a wealthier family. They were privileged by my standards.

Mr. Ruggles:
What was her name?

Justice Boyle:
Nancy Shelby. She lives in Traverse City. And I'm not sure how it is that I became friends with her. We were very different. I felt very big and awkward and she was a tiny petite little girl. At the time the style of hair that was in was like a cap on your head, a short pageboy. She had blond hair and it would fall perfectly into a pageboy. Mine would just stick up all over the place. I always had frizzies in my hair. Somehow we became very, very good friends.

Mr. Ruggles:

I was wondering why a best friend is a best friend. What makes a best friend a best friend?

Justice Boyle:

Well, in our case I think it was sort of united against the world.

Mr. Ruggles:

And what was the world that you were united against?

Justice Boyle:

Parents, things we thought were stupid, girls who were silly, the in-crowd. That sort of thing. And I think that that was where we went our separate ways, because around the 10th or 11th grade the in-crowd boys discovered her. And I was an outsider. Always the outsider and hung around with the outsiders.

Mr. Ruggles:

I don't want to spend too much time. I don't want to beat this question to death about your childhood, but I was wondering if you could describe your home for me. Where in Detroit did you grow up?

Justice Boyle:

Northwest side, not too far from Cooley High School.

Mr. Ruggles:

Cooley is where you went to school?

Justice Boyle:

Right. Actually, the area is between Five and Six Mile and about maybe three or four miles east of the western-most border of the city.

Mr. Ruggles:

I'd like to know physically a little bit more about your house.

Justice Boyle:

It was a three-bedroom colonial.

Mr. Ruggles:

Take me on a little tour.

Justice Boyle:

It was center entrance, three-bedroom colonial. You came into the front door, into a little vestibule. Oh, what a wonderful question. Because of the memories it brings. I just remembered that my grandmother had these cats and at least one of them used to spray in the vestibule. You could smell it. Every time my father came in, I'm sure he would just want to run away from home. Kill the cat. Throw my grandmother out. And then when you came in, to the right was the living room. Behind that was the dining room. And now you just reminded me of a family

custom that meant a great deal to us.

We had a player piano. Where it came from, I have no idea. My Aunt Eva, who was my mother's oldest sister, was very musical. My grandfather had been very musical. She could play the piano by ear. She would play this piano and we would sing. The whole family would sing. Even though we were not church-goers and even though my dad never went to church, I grew up singing all the old hymns. Today, when my sister and I go to church together, we'll sing some hymn and we'll turn and smile at each other and say, "granny" because those things are just so deeply associated with our family life. They were some of the best moments of our family life.

Then the kitchen. The dining room and kitchen were connected by a door that you pushed to open. The dining room had this heavy old dark oak furniture, my mother's china cabinet with her little teacups that she collected when she went on trips. And then the stairs going up to the second floor. There was no bathroom on the first floor and I can remember what a big deal it was when we got a Save-You Time. Do you remember what that was?

Mr. Ruggles:

No, I don't.

Justice Boyle:

Save-You-Time was something that you pushed a button and it turned on the hot water heater, so you didn't have to go to the basement to light the hot water heater to get hot water.

Upstairs there were three bedrooms and the one bathroom where my father actually hid his comb. He had different hiding places for his comb because he said with all these women and people in the house he could never keep a comb. He carried his fingernail file with him at all times.

Mr. Ruggles:

By today's standards, describe the kitchen for me. What did your mother have or not have in the way of appliances? Was it typical?

Justice Boyle:

She had a terribly under-furnished kitchen. I really don't know why that was so. I can remember as a young woman, after I was grown and married, had kids of my own, going home and trying to cook, and just being so frustrated with her. She didn't have a measuring cup; she didn't have measuring spoons. She didn't have anything. I don't know why. I always think of her as a fairly good cook. It was a kitchen-kitchen. No dishwasher.

Mr. Ruggles:

Bare bones.

Justice Boyle:

Bare bones. Maybe they didn't have dishwashers then.

Mr. Ruggles:

Well, if you go back to the time you were five or six, in the early '40s, just as the war was developing, that would be the period I was interested in. I think dishwashers would have been rare.

Justice Boyle:

Yeah.

Mr. Ruggles:

But you did have running water and electricity.

Justice Boyle:

Oh, yes. It was a nice little urban neighborhood. Modest. I've always been impressed with the fact that Detroit has so many neighborhoods that really have very nice housing for working class people. On the one side of us was a girlfriend of mine that I grew up with, my age. Across the street was another, down the street was another.

Mr. Ruggles:

Was it an ethnic neighborhood in any sense of the word?

Justice Boyle:

No. Not in any sense of the word. The biggest difference between us was some of us were Catholic and some of us were not.

Mr. Ruggles:

Did that show up in any way?

Justice Boyle:

I remember a sense of feeling foreign when kids started to go to catechism, so that they wouldn't be around. They went to prepare for confirmation. We all went to public school. The kids that were Catholic went to public school, too. I remember that sense that they were learning something mysterious and they were learning that they were different than I was. I remember feeling outside.

Mr. Ruggles:

Just during the catechism period? Were you allowed to play with them?

Justice Boyle:

Oh, yes.

Mr. Ruggles:

There were predominantly Catholic neighborhoods where Catholic children were not allowed to play with the Protestant children.

Justice Boyle:

Right. My husband's told me how much division there was in Grand Rapids between Catholic and Protestant. There wasn't any of that as a child or in high school, as far as I was concerned.

Mr. Ruggles:

You grew up in what is now a historic period in the sense of neighborhoods and community in Detroit. All of that's gone. To hear people describe this well-established neat little neighborhood, everyone working, steady jobs, good values, all sitting down to dinner at the same time, that's almost foreign to people today. Not just because they may be deprived but even in rather affluent neighborhoods today, that type of lifestyle is almost unheard of.

Justice Boyle:

Sure. Television, for one thing. I can remember when we got our first television and all the stories about people sitting around watching the test pattern. It was true. We would watch the test pattern, wait for the TV to come on.

Mr. Ruggles:

So out of this lifestyle in the '30s or '40s primarily, without strong religious ties you, were developing a set of values and a philosophy of life that would apparently influence you later on. Maybe it was accidentally happening.

Justice Boyle:

Oh, I think definitely. I was going to say the streak of liberalism, but I think I shouldn't say that. What I should say really is that I'm very impressed with the fact that the school was teaching values. No question about it. The school was teaching values positively. They were not just the values, we have to get along with people, but they were patriotism. Nobody prayed in school, but certainly it was never questioned that you could believe but you didn't have to believe. It just seemed to me that the school was much more positive in asserting values. I think everything that we were exposed to really was promoting the kinds of things we would identify as middle-class American values. So people who grew up when I did got that at home and they got that at school as well.

Mr. Ruggles:

So the public school was the source of -- I don't want to use the word "propagandizing" --

Justice Boyle:

Well, yes, I think that's fair. Some people would call it propagandizing.

I was going to really ask myself, where did the notion come from that we were open to people who were Jewish for example. I remember when I went to undergraduate school at University of Michigan someone from some suburb outside of Chicago saying that she had never met anyone Jewish. And I can remember just being so scornful of her. Probably it took courage for her to say it, but I was looking down on her, thinking what good values I had. And that didn't come from my family. I think that came from school. I think that came from people like Vivian Walker and Mrs. Dolan.

Mr. Ruggles:

You grew up in sort of a melting pot existence in public education then?

Justice Boyle:

Yes. Although, you know, there were no African Americans, very few Jewish people. But just a sense of openness that everyone is as good as everyone else. We're all Americans.

Mr. Ruggles:

You may have answered this already, but after high school, what was expected of young girls as far as job opportunities? Were you limited? Did you have to go in certain directions as opposed to boys, if you recall?

Justice Boyle:

You mean if you were going to go to work right out of high school?

Mr. Ruggles:

You already mentioned you were college oriented, but even there, there were certain things expected of girls in the work world, opportunities, as opposed to boys. Boys were generally taught the sky is the limit, we can do what we want and go in any direction. What do you recall about that?

Justice Boyle:

I think I never had a notion of what I wanted to do. I did have an experience, because I didn't go to school right away. Graduation was in January. There were so many kids in the public schools that there were January and September entry classes at that time. So I had six months to go before college after graduation from high school.

I got a job. I worked for Equitable Life Assurance, downtown in the Ford Building. It was not a happy situation. That was the sort of thing that women did. The woman that I worked for, probably 23, 24, had gone to work for this company right from high school and she was their bookkeeper. She would have been making what in her eyes was pretty good money. She was my boss. But she was never going to go anyplace else in that company. She never expected to. It's clear to me that it just wasn't a possibility.

I think we just accepted at that point that there were limitations.

Mr. Ruggles:

Was that unspoken that she wasn't going to go anywhere?

Justice Boyle:

Oh, yes. Unspoken. Those were the kinds of jobs I worked all during high school, part time. I worked for a real estate company where I answered the phone, I worked in a hardware store, I worked for a foot doctor. I did a lot of menial kind of jobs that kids do. I think we just didn't have any role models. There weren't any woman doctors; there weren't even any women real estate people who were making a lot of money selling real estate. In that world, I never saw any successful woman.

Mr. Ruggles:

But you picked a job in a man's world. You picked law.

Justice Boyle:

I didn't really pick it. I just kind of fell into it.

Mr. Ruggles:

Tell us how you drifted into law. There wouldn't have appeared to be much opportunity for women.

Justice Boyle:

Right. When I went to law school -- we're leaving out a whole significant part of my life here, which is the fact that I got married.

Mr. Ruggles:

We'll go back to that.

Justice Boyle:

Okay. And it does have a relationship to how I ended up in law, as well. The man that I married, Nathan Purnick, who was my boyfriend at the time that I was in undergraduate school at the University of Michigan, his brother was a lawyer. His brother was a part of this group that I told you about, these Young Democrats. And a friend of the people who lived down the street from me, Patty and Bob Knox, who had gotten me into politics as a teenager.

When I went to undergraduate school, I just fell in love with education and with learning. It was a heavy, heavy time for me. It was really the first time in my life that I felt in this milieu brains matter more than anything. It doesn't matter what you look like, that your hair is frizzy and won't go into the pageboy style. Here, I can stand out, I can be a success. And I loved the University of Michigan for that reason. I loved my studies.

Mr. Ruggles:

But you weren't then in law.

Justice Boyle:

I was in undergraduate school with a major in political science.

Mr. Ruggles:

But you were headed toward education, weren't you?

Justice Boyle:

Yes. And that's exactly what happened. I started in the School of Education and I was just very unhappy with it. It was filled with women, only women. It seemed to me that everybody there was just planning for the day they would get married. Education was an insurance policy, and I was really unhappy.

Then I got married, I came back to the city of Detroit to go to Wayne, and I didn't want to stay in

the school of education. And at that point it really was my mother who said, why don't you try law school? Which I have described since as, as wildly improbable as being a 10-year old watching the Olympics and saying, I'm going to turn out to be a gold medallist ice skater. That never had been in my frame of reference. But I started it. It was wonderful.

Mr. Ruggles:

As you look back today, did you ever imagine that you would achieve the level that you had achieved?

Justice Boyle:

No, of course not. I never did.

Mr. Ruggles:

You got your J.D., doctor of Jurisprudence, in '63.

Justice Boyle:

Right.

Mr. Ruggles:

You graduated from Wayne with a BA.

Justice Boyle:

Actually, Wayne had a combination. That was another thing that appealed to me. They had a combination degree program. I was really finished with all my major requirements in undergraduate school. I could enter law school at the end of the first year, be eligible to get my undergraduate degree. Those law school credits would count toward my undergraduate degree. So I got my BA at the same time that I graduated from law school. They awarded the BA at that time and the JD.

Mr. Ruggles:

You were married.

Justice Boyle:

Yes.

Mr. Ruggles:

You were quite ambitious to take on this load, weren't you? How many hours were you carrying?

Justice Boyle:

Full schedule the first year.

Mr. Ruggles:

Had you encountered any prejudice or discrimination between male and female population in the law classes?

Justice Boyle:

There were, as I recall it, two other women in my law school class who started with me. That's all I can remember at this point. By the time of graduation I was the only woman in the law school class.

Mr. Ruggles:

How big was the class?

Justice Boyle:

When we started out, it was much larger, probably about 130. But we lost about a third of the group over the course of the three years.

I wouldn't say that there was discrimination but I recall, because we had discussed this before and I had really forgotten it, that there was at least one person in the class who really upset me because he assumed I was in law school because I was looking for a man, that I was there because I was unhappy with my marriage. I'm going to say it more directly, that I was there because I wanted to have a sexual relationship with someone. And he was very direct about suggesting that he might be the one.

There was also some kind of sensitivity about having me involved in the study groups because they were all men. And very quickly I learned how valuable those study groups were for the purpose of going over the material and trying to understand whether we had understood what had been said. Getting different perspectives. But I can't say that I felt discrimination from my fellow students, particularly after it became clear that I was going to do well. Then it was okay to have me in their study group. I had something to contribute. I didn't feel it then, but I did feel it when I graduated from law school and started looking for a job.

Mr. Ruggles:

What was the attraction for law, law in general? And we may be repeating ourselves here. But going back to your Young Democratic days, what --

Justice Boyle:

It wasn't political. At that point I was very away from politics. I had just been laboring with my studies.

Mr. Ruggles:

What is there about law that attracts you?

Justice Boyle:

It's the ability to think, to reason. And it was just an enormous intellectual leap from undergraduate to law school, to the development of those kind of analytical skills that I really think I had never had. I remember this woman who I thought was so brilliant, who was one of the other two women in law school, saying to me one time that I thought like an English major. I was just devastated. But I knew what she meant. She meant that I was a fuzzy thinker. It helped me a lot. It's the most important thing I think that ever happened to me in my life, was to go to law school.

Mr. Ruggles:

Describe what you mean by fuzzy thinking. You take that as a compliment?

Justice Boyle:

No, no. I took it as an insult.

Mr. Ruggles:

Okay. But she meant it as a compliment?

Justice Boyle:

She meant it as an insult.

Mr. Ruggles:

I see. Do you think of yourself as a fuzzy thinker?

Justice Boyle:

No, now I don't. I am not as brilliantly analytical as I would love to be, but I learned a set of methods of approaching things that not only helped me professionally, but just helped me enormously in having a sense that I have control of my life, more control of every situation in my life, because I knew how to dispassionately come at it, to try to get a hold of it and understand it, and try to project what parts of it meant.

Mr. Ruggles:

You mentioned these methods. Is there a way to describe or illustrate those for us laymen?

Justice Boyle:

Well, one of the first things is, what is the issue? What precisely is going on here? That's the first thing that you learn in law school, is to identify what the issue is. And that in itself is a skill. It's refining whatever you're facing, down, down, down until you can see what the question is. And until you can see what the question is, you don't really begin to hypothesize the possible solutions to the question. But that, of course, is the next step. Then there are the possible solutions to the question, and then the third step is which solution is more likely to be the effective solution in terms of whatever your goals are, or the right solution, or one that will make other people the happiest.

Mr. Ruggles:

Many people in law using this same process would arrive at many different conclusions, wouldn't they?

Justice Boyle:

Yes.

Mr. Ruggles:

Does that add a lot of confusion to the body of law when this happens, if there is no one pat answer?

Justice Boyle:

It adds confusion in one way. I think that a life in the law tends to promote tolerance of different answers to questions. Because it's so clear that there is more than one reasonable answer to many, many questions. To most questions there's more than one reasonable answer.

As a lawyer, I was of the opinion, and I guess as a citizen, I am, too, I remain of the opinion that there may be more than one reasonable answer but there is an answer that is more reasonable than other answers. And that's the answer you're looking for.

Mr. Ruggles:

I've heard it said, and I'm sure you have, that people very almost tritely say that, well, the law is the law. What you just said would seem to contradict that there's just one pat answer. Some people very simplistically say, well, it's the law. But thrown into a court with many legal minds going at a particular issue, it wouldn't be the same law for everybody.

That may sound confusing, what I just said, but is there a simple definition for what law is, as a body of knowledge? If I were to say to you, "what is law?" is it possible to define that?

Justice Boyle:

My immediate answer would be the set of rules, standards, expectations that guide conduct.

Mr. Ruggles:

I'm thinking of split decisions like 5 to 4 decisions or 7 to 2 and the majority wins.

Justice Boyle:

Well, if I can back up a second. I maybe haven't been clear enough in saying that I do believe that there is a right answer. And I mean not right in the sense that the answer comes from God. I mean that one answer is more right than others. So that if I were looking at a 5 to 4 opinion, naturally the 5 take the day. They win, because the democratic principle obtains, which is in itself a good. But when I look at that opinion, I would say to myself, which opinion is more right than the other. By that, I mean which one accords more with precedent, because I believe in the accretion theory of the law, not radical turns from prior precedent. And that's how I performed, I think, as a justice on the bench.

Mr. Ruggles:

Is that called stare decisis?

Justice Boyle:

It is stare decisis. Right. I don't believe in stagnation, but I do believe that people have a need to be able to predict what the law will be. And one of the ways you're able to do that is if it doesn't wildly change from what it is. If it just changes gradually. That allows people to understand, look at the law as it is, take the underlying principle, and then take the facts of their situation and say, how do these facts fit these principles?

So I do believe that there is a right answer and that your job as the judge is to find the answer that's more right than the other one. And one that works, too. Because I believe that the answer

has to be pragmatically sound. You can't have a rule of law that dictates conduct for people, that is impossible. Or that tells the judges you ought to do something a certain way, when it won't fit the world that they live in.

Mr. Ruggles:

So there's a bit of sociology in law?

Justice Boyle:

Oh, yes. Definitely.

Mr. Ruggles:

And the Supreme Court has been criticized the last three or four decades or last half century because they were introducing too much sociology in the law. We'll get to that later. I have some questions about particular cases.

We're taking you through your career. Have we graduated you from law school here? Did you graduate with honors?

Justice Boyle:

I would say summa cum laude, the equivalent. I had the gold scholarship key and I graduated first in my class. And I had at the time three children.

Mr. Ruggles:

You were the only woman.

Justice Boyle:

Right.

Mr. Ruggles:

The top of your class. Did that give you or anyone a hint of the future and your role in the legal world and possibilities that you never dreamed of at the time?

Justice Boyle:

Well, I certainly felt good about myself. I felt enormously relieved and I felt that I could do this. But then I had the crushing experience of finding out that I couldn't get a job.

Mr. Ruggles:

Tell us about the difficulties that you had at that time.

Justice Boyle:

I've thought since that this may have been one of the most instructive experiences of my life. It certainly has stayed with me in its intensity. First of all, almost everyone in my class had a job by the time we graduated. People were interviewing during the senior year. There were many firms that would not interview women.

The interviews that I did have -- I don't know if I had any interviews before I graduated. But

when I began to get interviews that I did have, there were experiences such as people asking what kind of birth control I used. They wanted to be assured that I wouldn't have any more children. And of course, the absence of reliable birth control is something people don't have any notion of today.

When I speak to young people and the fact that I had all these children, they simply don't understand how that could have happened. One man said to me after what I thought was a successful interview, that it all sounded good to him but he would have to have a meeting that the partners' wives would have to be there, because he wanted them to understand that I wouldn't be any kind of threat to them, which I took to mean, you're not attractive enough to be a threat to them. None of that made me angry, it just made me sad.

But I became angry. A friend of mine had interviewed with this law firm and they had offered him a job. And he told me how much money he was going to make. Then he said, I think they might interview you and offer you a job. They did interview me and offered me a job and said, "okay, we'll give you \$100 a week. That's four weeks in a month. That's 12 months in a year. That's \$4,800." I was on the bus on the way home before I realized that he was stiffing me. Then I was angry about that. But I was also depressed, because I just could not get a job.

I think everything up to that point had led me to believe that if I just worked hard enough and I just did the right thing, and if I tried, I was going to be able to succeed. And now I was confronted with the fact that that was childish. That was innocent.

Mr. Ruggles:

What great strides we've made in the last four decades, another historic era that you've lived through. I have in my notes here that you were a law clerk for Kenneth Davies. Is that during this period in the mid '60s?

Justice Boyle:

That's after I got out of law school. That's the first job that I got, and that was really only part time. Ken Davies, who now practices law, this is the father that I worked with, and his son and I went to law school together. He was a law school buddy. His dad had some big tort case and he wanted to have someone do some research, so he let me come to work for him on sort of a part-time basis.

Mr. Ruggles:

And then you were a law clerk for Thaddeus Machrowicz of the U.S. District Court?

Justice Boyle:

Right. The way I got that job was I had put my name in at different reference services. The Bar had a reference service. Judge Machrowicz's permanent law clerk, a woman, had had a very serious automobile accident and it was predicted that she would be off work for months. So he was looking for someone to fill in for her.

Those were the sorts of jobs that women had in the legal profession at that point. They would be law clerks, librarians, wives of other lawyers in a partnership, mom and pop law firms, some

probate work. It's interesting and I've never really found the answer to why this is so (but you probably would know as an historian). There were women who came into the field of law in quite large numbers around the 1920s. I associate it with the era of liberation of the '20s.

Mr. Ruggles:
Suffragette movement?

Justice Boyle:
Well, more like flappers. If you go to the law schools and you look at the old pictures that they have of the graduating classes, it's really so surprising to me to see that there were not just one or two, but maybe 10 or 12 women. At Detroit College of Law they have all the old pictures of the law school classes. I sort of associate it, too, with the fact that there was kind of a wealthy class of people in England and in Ireland, whose daughters wanted to be educated and they had the money to educate them. If you became a law clerk or if you did something pristine like being a librarian, you would be getting an education but not straying too far from things that were nice for ladies to do.

Mr. Ruggles:
And not threatening men's jobs.

Justice Boyle:
Exactly. Not take any jobs. Those are some of the words I heard, too, when I was interviewing. You know, you can't go into court because jurors, "it's not me, mind you" -- someone interviewing me would say -- "but jurors will resent women lawyers. We just couldn't have our client put in a position where it might be taken out on the client."

Mr. Ruggles:
Going back to the '20s and your question there, it could be several factors. The flapper era and the suffragette era, and even things like the first woman in the cabinet was Frances Perkins, in FDR's cabinet. There was a woman senator from Wyoming.

Justice Boyle:
Frances Perkins was on the Sixth Circuit, too, I think.

Mr. Ruggles:
And then she became Secretary of Labor. But then the Depression and the scarcity of jobs shifted things downward, and the women were expected to stay in the home, even more so, aside from the fact that 100 years ago you were considered to be chattel and the property of the man. It took us a long time to shake loose of all these things, not just socially, but politically and economically.

Justice Boyle:
Right.

Mr. Ruggles:

A lot of things at work that took until the '60s or maybe the '70s to re-emerge, women's lib and so on.

Justice Boyle:

Maybe it started with women during the Second World War.

Mr. Ruggles:

Yes. Rosie the Riveter. Some accidents of history.

It's a fascinating study. You mentioned you came from a very open-minded family, a very liberal leaning family, and that type of approach allows you to look at these. Some people still can't examine this question of women's equality without getting all upset about it. I run into men a lot and wonder where they've been for the last 30, 40 years. But we're digressing.

Tell me a little more. Your first full-time job was clerking with Judge Machrowicz. What actually does a law clerk do, or at least what did you do as a law clerk, besides the obvious?

Justice Boyle:

Well, very much depends on the judge. The judge defines what the clerk does. If the judge is very active in terms of wanting to do the writing of opinions, then the law clerk acts in an advisory capacity. If you work for a trial judge, as Judge Machrowicz was, that would mean that during the course of trial you would be helping him with research on any evidentiary objection. Something comes up in the course of trial and there's an objection to the introduction of an exhibit or testimony, and the judge wants an answer to the question, "Is it admissible?" you'd be researching that.

The law clerk also handles the motion docket, which is probably the primary responsibility in federal trial courts of law clerks. And that means you have responsibility for scheduling, you have responsibility for drafting rulings on motions, and it is a wonderful opportunity not only to learn from the judge, whoever your judge is, but because contact with lawyers comes about because you have responsibility for scheduling and you're in contact with some of the best lawyers, who are practicing in the community because they're in federal court. It is just a wonderful exposure for any aspiring clerk. It also gives you an opportunity, at least when I was in law school, we didn't have the sort of hands-on programs, internships that students have today. So we really came out of law school not knowing who the firms were, what they did, whether you'd really like to be associated with a particular group of people. So it was an opportunity to learn about the reputations of different firms. And other than my husband's brother, I didn't know any lawyers. I was the first college graduate in my family, let alone lawyer.

Mr. Ruggles:

On the outside as a layman looking at the term "law clerk" could seem to be demeaning. Could that be the case with certain judges? Could you just become a high-class go-fer?

Justice Boyle:

No. I think that in the profession, the notion of being a judicial law clerk is regarded as a

professional accolade. To a person, judges try to hire the brightest person they can for that job. Even if they are a judge who wants to do most all their own work, this is the closest person to you, professionally. It's the person you're going to be able to talk over everything with. You're going to be working with that person constantly. And the competition for a really bright law clerk is so fierce that the federal courts have tried to impose limitations on themselves and even impose them on state court judges not to raid the graduating classes of the best law schools. Not even to accept applications from people in their junior year, because it's so competitive that judges were going back to the junior year law students to try to get in on the ground floor for the brightest kids. So this many years later to say that I was a law clerk I think is recognized by lawyers as still an accolade. It was a great opportunity for me.

Mr. Ruggles:

Back in the mid '60s, even though you were one of the brightest, you were not readily accepted. You still had the hurdle of overcoming being a woman.

Justice Boyle:

Right.

Mr. Ruggles:

You did eventually break through. Was it a year or two? How long did it take for you to break through?

Justice Boyle:

Well, I was there as a law clerk for longer than the expected period of time. But the federal district court offices were in the same building as the U.S. Attorney's Office. And the U.S. Attorney was a member of this group of "Young Turks", Young Democrats I had met as a teen. I had actually baby-sat for his children. They would have all been in their early 30s, this group of people.

Mr. Ruggles:

What was his name?

Justice Boyle:

Larry Gubow. Soapy (G. Mennen Williams), in the meantime, had gotten elected. Martha had gone to Congress. They had moved up these people. Several of them had become circuit court judges. Larry Gubow was Real Estate Commissioner in the state government and then he was appointed U.S. Attorney. I had put an application in that office. The opportunities for women, where there were opportunities, were in government, which has always been so. He eventually hired me in the U.S. Attorney's Office.

Mr. Ruggles:

In the Eastern District of Michigan.

Justice Boyle:

Right.

Mr. Ruggles:

This would be a good time to ask you, how well did you know Soapy Williams and Martha Griffiths? Was it casual or did you work with them closely?

Justice Boyle:

At that time I didn't know Soapy. I can't tell you where he would have been at that time. I have to think who was in office.

Mr. Ruggles:

He would have been governor then, I believe.

Justice Boyle:

Or would he have been with Kennedy? He would have been in Africa.

I recall meeting him as a little kid, but I don't recall in the period of time when I was campaigning. But Martha I did know.

Mr. Ruggles:

Because of your political relationships in the Democratic Party, you were fully aware of him?

Justice Boyle:

Yes.

Mr. Ruggles:

Now, these two people have become leading figures in the political scene in the late '50s and '60s in Michigan, reorganizing the Democratic Party. It was in the late '40s.

Justice Boyle:

Right. Martha and Hicks, her husband, and Soapy.

Mr. Ruggles:

Give me your impression of Soapy Williams as a political figure and as a historic figure. If we were to write the history of Michigan in the last 50 years, especially in the political scene, how would Soapy Williams fit?

Justice Boyle:

Well, I think they transformed the Democratic Party. They obviously did. He did so much more than that. I wish I were an historian.

One thing, since we're talking about women, one thing that I should have known but was vividly impressed by when I was inducted into the Women's Hall of Fame, Soapy spoke. He was my colleague then on the Supreme Court. There were other people who were inducted at the same time and I was just so impressed with the fact that he had been a part of their success. He appointed women everywhere, to commissions and to fact-finding, and to just so many things. The university, the board of trustees. I think he was the first person to appoint Wade McCree (an African American) to the circuit court. He was very conscious of the distribution of power

throughout society.

I can't speak of him historically without also talking about him as a colleague, because I think that before I went on the Court I did not have a proper appreciation for his intellect. In fact, I know I didn't. I think I always thought he was a smart politician, but I had no idea of how really exceptionally brilliant he was. I think he felt that, too.

After I was on the Court with him, I can remember going with him to a group of Yale graduates. I think he was prouder of that Yale degree and his association with these very bright people than lots of other things. I think he knew that he was underrated intellectually. That was the first thing I learned about him, that he was enormously underrated intellectually. But among the things I always say about him is, I never met anyone who had more vision. He could plan things and he did plan things. The things that he did were all incremental steps toward an ultimate goal. He is certainly the first person that I ever saw do that over the course of time. I just marveled at his foresight. He's a natural, self-educated leader.

Mr. Ruggles:

Can you illustrate that, these organization steps toward the goal in any instance?

Justice Boyle:

Well, what immediately comes to mind, part of his general plan was to always be assured that there was an open door. He regularly visited with the editors of all the papers in the state. When he wasn't visiting, he would call. He invited them to call him with concerns.

When Terry and I were in the prosecutor's office, he would call there and ask if we had any concerns, if there was anything we needed to communicate with him about. Now, he wasn't asking us to tell him what to do with a case that was pending, but he was always building those kinds of bridges that meant people had access to him, but he also had access to them.

And if there was something that he was interested in -- for example, he was interested in state funding of the judiciary. It had been a goal of every justice for some period of time. In the '63 constitution, the chief justice at that time recommended that the constitution allocate to the judiciary a certain percentage of the budget. I don't know if it was 1 percent or 3 percent. Well, it was just shot down politically, the perception being that if you had the judiciary independent of the legislative branch, you have a judiciary that could be threatening to whoever was in power. It was an extremely unpopular idea.

But ever after, there's a whole problem of the judiciary being beholden to the legislature, having to live on whatever the legislature gave us to exist. Soapy went at it programmatically. He would do things such as decide that the judges were going to go on the road to build bridges in the same way that he himself visited the editorial boards. This was before and after he was chief justice, and during. He would take the Court to different parts of the state and we would meet with all the judges in a particular area. They would express their concern. They would ask us questions. We would meet with the bar associations in a particular area and do the same thing. This is building enormous goodwill. It's as simple in one way as saying we really do care about you. But in another way it was building these political links toward a political objective: Support for state

court financing. And the judges in these areas are influential people, particularly probate judges outstate are very, very influential. Usually they're community activists, which is something else I learned from him. But that is an example.

So when Soapy had an interest in something, he would get very good editorial support. I never saw before or after the kind of support that he had from the troops, and all those troops were little constituencies taking him to where he wanted to go.

Mr. Ruggles:
Networking at its finest.

Justice Boyle:
You bet.

Mr. Ruggles:
I want to go back to your early career as you got into the field of law, U.S. Attorney's Office and so on. This may be a little too personal, but what effect did this have on your family life as you were struggling to get ahead and then finally establishing yourself? You said you had three children. Did it have a negative effect?

Justice Boyle:
Oh, yes, I think it did. It had a negative effect. The fact is in retrospect that I married too early. I thought that I could do it all and I couldn't really do it all. I couldn't hold all of it together. Sometimes I say that when my third child was born, I swear that I was in shock because I remember so little of the infancy of those kids. But I think it was partly because I just had so many balls in the air that I couldn't juggle them all. Our relationship decidedly suffered. I could be more specific about the difference between us, but I think suffice it to say that my first husband had a lot of pain in his own life that was unresolved and he really needed someone who could more maturely address what he needed. Then of course I met Mr. Boyle, and like many people in that time, believing that all things were possible, we believed that we could move forward, get married and no one would suffer. Of course, that is also ignorant and innocent. People did suffer, which is something I try to communicate, particularly to young women. It's interesting to me that the women in my field who have children and who have worked for me as law clerks, many of them now do not work full time. By choice. Because they have decided that it is simply too difficult to do what they want to be able to do with their children and to have a home life, and still succeed on a professional basis. But my point is simply that those choices cost and it's not just that you're paying for them. Someone else is paying for them, too.

Mr. Ruggles:
Is the pendulum swinging back today to stay-at-home mom more than it was in the last 30 years?

Justice Boyle:
Oh, I think definitely so. I think part of it is that this generation, many of them are the products of divorce. They are the products of homes in which mothers worked full time.

Mr. Ruggles:

In 1978 when you were on the Recorder's Court bench, you were ranked number one in just about every category among all the Recorder's Court. That must have been a great source of pride to you.

Justice Boyle:

Oh, it was. It was a wonderful thing to be able to say in the campaign that year, too.

Mr. Ruggles:

This is only a mere short 10 years or so after you were running around looking for a full-time job.

Justice Boyle:

Right.

Mr. Ruggles:

And by '78 you had been ranked number one over -- were there a dozen or more?

Justice Boyle:

I think there were about 20.

Mr. Ruggles:

Twenty Recorder's Court judges. And you were on the top of the list.

Justice Boyle:

There's a little historical footnote to that. I told you before that Mrs. Dolan, my teacher's daughter Rose is married to Judd Arnett. Judd Arnett was writing his column for the Free Press and it was the Free Press that did that poll. He wrote a wonderful article about me in which he also talked about Cornelia Kennedy and of course it was fantastic company for me to be in. We used that as part of our campaign. It's a very neat little historical postscript all those years later. Here was Mrs. Dolan's son-in-law doing me a great political favor.

Mr. Ruggles:

This is a good place to stop. Unless you have any pearls of wisdom or little gems to throw at us here.

Justice Boyle:

No.

Mr. Ruggles:

We can continue later on.

SESSION 1 ENDS

July 17 interview

Mr. Ruggles:

This is July 17, 2002, and I'm Glenn Ruggles, in the home of Justice Patricia Boyle, for our second interview for the Michigan Supreme Court Historical Society's oral history project. Judge Boyle, I've got a few loose items before we get into some of your cases, and then some of the 11 dissents that we talked about which involved you a lot. I notice that in articles referred to in 1992 President Clinton's office called. You were being considered for attorney general.

Justice Boyle:

Right.

Mr. Ruggles:

Comment for us about your feelings. This was quite a momentous event, the little girl from working class Detroit.

Justice Boyle:

Well, it certainly was. I almost thought that someone was kidding me. Although my husband, I think I've mentioned to you, is my greatest backer and also prescient politician. And he had said to me after there were several failures on the Clinton administration's part in terms of people that they had nominated, that is failures on Capitol Hill when they couldn't get them cleared. He had said to me, I wouldn't be surprised if you got a call. Actually in January of that year Governor Engler called me and told me he had been to the White House with a nationwide group of governors, and I believe they were watching the Super Bowl. The President asked him about me. He called to tell me that he thought maybe I would be hearing from the White House. But even so I just really passed it off. Not good to get yourself all wound up about something that might never happen. When the call came, I was enormously excited, of course. I told them that I would call them back on Monday. The call came on Friday afternoon. So I called my husband right away. We agreed to go home and discuss it that evening. Some very good friends of ours, very close in terms of both friends and political confidants, came over the next day and we discussed it with them. Then we went out and took a ride. My husband said to me, your head is really turned by this, isn't it? I said, yes. You know, I had to think about it but I said, yes, it is. It is turned by it. He said, "well, do you really think you would like this job?" The fact is that it wasn't the kind of job that I would like, even with all of the honor of being selected. It's an enormous responsibility and it calls for somebody with a great deal of administrative ability and experience, which I did not have. I also learned that the president did not intend to give to the candidate for attorney general the choice of staff. He was going to designate who the chief assistant was. I learned that from these sophisticated friends of ours, who were able to put some calls in and find that out during the discussion. But that was really not the deciding point. I know people, in fact a good friend of ours ultimately did go to the attorney general's office as deputy chief of the criminal division. He wanted that job desperately. He wanted to be attorney general, but I didn't. And when my husband said to me, "your head is really turned, isn't it?" he was right. And that enabled me to see clearly that it was just the head turning prospects that had me so

excited for a short period of time. I called the contact person and told him I wasn't interested, but that I hoped he would keep me in mind for an appointment to a higher federal judgeship; that is where I thought my abilities and experience were and that I would be interested in that. I think it was the following week I was going to give a eulogy at a friend's funeral and on the way there I heard on the radio that the president had submitted Janet Reno's name (for Attorney General).

Mr. Ruggles:

You mentioned in one of the news articles that had you agreed to the luncheon proposal—there was a luncheon proposal—that you probably would have received the appointment?

Justice Boyle:

That's what I was told.

Mr. Ruggles:

So now you can tell your grandchildren that you turned down the opportunity to be attorney general of the United States.

Justice Boyle:

Yes. Some real pressure was put on and there were some people who knew about it. In fact someone very high in Michigan politics had heard about it and was thrilled at the prospect and called me. I said what I had decided to do was not to go through with it. He said, well, you know, just think of what you'll be able to tell your grandchildren. And I said, yes, but just think of this, I won't see them.

Mr. Ruggles:

Is that the kind of pressure, just phone calls? Was there any other kind of pressure?

Justice Boyle:

There was no pressure from the White House itself, unless these calls originated at the White House, and they might have. I received a call from both Senator Levin and Senator Riegel, from Governor Blanchard. It was sort of out there in the Washington community. Governor Blanchard was then in Washington and his wife was actually serving on the Clinton transition team. I assume that's how the word got back to them.

Mr. Ruggles:

You'd certainly be flattered by the fact that your name was submitted.

Justice Boyle:

Oh, I was flattered. And also, it was very challenging in a pragmatic way, in a selfish way, because you don't say no very often to that sort of an honor and opportunity that so many people would like to have without being crossed off the list of prospects for other jobs that you might like. I knew that when I said it, but that was part of the mix of the decisional process.

Mr. Ruggles:

Do you think that did happen, that your name was crossed off?

Justice Boyle:

I think my name was crossed off, but I think not because of that decision. I think it was crossed off because when it came time to be considered for a federal judgeship, the White House leaked the name, which I think is a pretty—let me say it this way: I assumed the White House leaked the name, because there was a story in the newspaper. I called the person who wrote the story—either I called that person or that person called me and wanted me to comment, and I wouldn't comment. But I said to him, if you'll tell me who your source was, then I'll comment. And he, of course said, no, I can't tell you who my source was. But it's not unusual for the name of a prospective appointee to be floated by the story being released, that the person is being considered.

Mr. Ruggles:

Get a little reaction.

Justice Boyle:

Yes. And I always thought that my name getting crossed off the list came from two sources. And I should stress that this is my thinking and my surmise. I thought it came from the fact that there may have been reactions from Democratic lawyers who thought that I was too conservative, although a Democrat. Too conservative on criminal justice issues perhaps, or maybe too conservative on other issues that interested them. And the other source, and I think this is really the most significant source, again I say I surmise. I surmised because of the total absence of any contact from this side, and that is labor. And I always assumed that if labor had a hand in crossing you off the list, it was not because they had any objection to where I stood philosophically. It was because to leave the Court meant that Governor Engler would have an appointment. And that's "real politique". I know that has happened in the past. I know that happened to one of my colleagues from the other side of the political aisle when he was being considered for appointment from our Court to the Sixth Circuit—he was imminently qualified but he was getting blocked at the pass because had he left, then Governor Blanchard would have gotten the appointment. So I think that was the dynamic of being crossed off the list. But in the end, at the end of the day, I'm perfectly content with the way it worked out.

Mr. Ruggles:

Do you get to see your grandchildren?

Justice Boyle:

Yes. I get to see my grandchildren. I would have had to move. I would have had to leave my children and my grandchildren and my family behind.

Mr. Ruggles:

You would have had a chance to go to Waco and Miami.

Justice Boyle:

Oh, my, yes. Waco was right after Janet Reno became attorney general.

Mr. Ruggles:

I see Terry's name pop up several times. He suggested to you once that he make a few phone

calls, and it might have been in connection with this possible appointment. And you told him not to.

Justice Boyle:

Right. I told him not to.

Mr. Ruggles:

And you mentioned also he was one of your biggest boosters. Would it be incorrect for me to describe him as a sort of a king maker, that is trying to boost your career?

Justice Boyle:

I think that's so, yes, and I think he'd probably say that. He'd probably acknowledge that. He did say to me, immediately after Clinton was elected, you know, you're going to have a chance to go maybe to the United States Supreme Court. And that had always been a dream of his for me. He has said this publicly. He wanted to go to work on it, to organize it. And these things are organized and orchestrated. I just got a call this morning from a former Supreme Court justice, who is organizing a committee of judges and justices in support of his son who is running for a judgeship. So these things are orchestrated. He really wanted to go to work on it. I did not want him to, and he was very unhappy with me. But for me it was almost a coming of age. A time when I would be able to say to him, I know what I want and I do not want to do something simply because you want me to do it. Or as I say to him now, you ain't drivin' this ol' mule up another hill.

Mr. Ruggles:

A little bit of folklore.

Justice Boyle:

Right. He was just telling me recently, I don't know if I told you this before, he was reading the paper and said that because of reapportionment, there was going to be an available congressional seat in this district. He started immediately saying, you know, you have a well-known name, you could run for this. That's when I said, you ain't runnin' this ol' mule up another hill.

Mr. Ruggles:

This orchestrating that you describe of these collection of judges, there's nothing wrong with that, is there?

Justice Boyle:

Nothing wrong.

Mr. Ruggles:

A form of networking that we all do.

Justice Boyle:

There's nothing at all wrong with it. It's just that it's not as well known by the public insofar as the judiciary is concerned, as it is that that is done for a legislative post. But it's true of all appointed posts, it's true of all elected posts, I'm sure.

Mr. Ruggles:

And in most cases would there be sort of a filtering out process that you wind up with the better-qualified candidates as opposed to any Tom, Dick or Harry that comes along?

Justice Boyle:

I think it's probably always happened, and I think history has certainly made some judgments about poor appointees. I'm not a Civil War buff, but when you look at how those generals kept getting fired because of the things they did. I'm sure there have been some bad appointments made because of the ol' boys' network or the ol' girls' network.

Mr. Ruggles:

I think of a few during Nixon's administration. Carswell. A few people that didn't get nominated because they were totally unqualified.

Justice Boyle:

Yes. Sure. Eventually these things surface in the political process.

Mr. Ruggles:

Sure.

Justice Boyle:

And I think now we say a lot of bad things about the media or at least we did before 9/11. But it may be, at least I had the sense, that people are less willing to take the risk because it's so much harder to cover major flaws. You might be able to do that in a country where there wasn't so much power of the press, so much access that the press is able to get. So I really doubt that a person can just be anointed. If they have major flaws, the people who are in positions to appoint them or anoint them are not going to make themselves vulnerable either. Hence, the leaking of the stories.

Mr. Ruggles:

Squeaky clean becomes a prime qualification then.

Justice Boyle:

Yes, it certainly does. So does a short paper trail.

Mr. Ruggles:

That's interesting you bring this up, because my next comment to you was to talk about impropriety on the Court, and as I've seen the Michigan Supreme Court, it's been rather squeaky clean. There's never been much scandal or however else we might describe it. Would you comment on that, the impropriety in the Court? You don't have to if you don't want to. I'm thinking about Jerome Bronson. Was he on the Supreme Court?

Justice Boyle:

He was on Court of Appeals.

Mr. Ruggles:

And of course, John Swainson. Couple of cases that come to mind. I don't want to put words in your mouth, so I should stop right there.

Justice Boyle:

You asked me if I would comment on it.

Mr. Ruggles:

Yeah. On the impropriety of anyone on the bench, not just of the Supreme Court. Circuit Court or Court of Appeals.

Justice Boyle:

Well, I have always thought that the judiciary in Michigan is remarkably untainted. In all the years that I've been a judge, maybe once someone approached me and then not directly. Very indirectly on behalf of the person who was allegedly in the Mafia who had been convicted in my courtroom. And this person was a lawyer and a good friend of a friend of mine. He did not represent this man. He just dropped into my office and he happened to get around to talking about this person. I just said, "that's the last thing you want to be talking to me about when he's awaiting sentence. If I had any notion that your inquiry came from him...I'm sure you wouldn't want me to think it came from him." And of course he understood what I was saying. Personally, I never had any experience that I can recall right now, other than that. There was the issue with Bronson, which I think the Court never really got to the bottom of.

Mr. Ruggles:

Can you just summarize a thumbnail sketch of his problem?

Justice Boyle:

Well, basically for some period of time, as I understood it, after the fact, he had not really been working at the court. He kept horses, if I recall correctly, and he worked either at home—he lived in Oakland County—or he spent a lot of the year in Colorado, I think. In any event, he really wasn't doing his own work. The particular scandal came out as a fact that there was a very large verdict appealed, and he had—trying to remember precisely—he was represented—I cannot remember the facts.

Mr. Ruggles:

We can skip it if you —

Justice Boyle:

I'm trying to remember precisely what happened. In any event, the implication definitely was circumstantially that he had taken a bribe because the brief that was written on behalf of the plaintiff ended up being almost mirrored by the opinion written by the court that reversed the trial court's ruling in favor of the defendant. I vividly remember when he was arrested. I remember we were in session. The attorney general's first in command, a deputy attorney general, came into the courtroom and asked if he could speak to Chief Justice Williams. When the argument was finished, he called a recess and the deputy said that Bronson had been arrested and then he told us why. The way that it was revealed was that one lawyer went to another

lawyer and offered money. That lawyer said that he would have to talk to Joe B. Sullivan before he became involved. And it was a kind of joke in the legal community, sort of an amusing irony that people would say, well, if you ask Joe Sullivan whether you should do something like that, it's like asking God or St. Peter. Joe Sullivan would have said, of course, you never do that. Your obligation is to turn these people in. So that's how it came to light. It was an attorney who called the attorney general's office. I told the story very frequently and spoke about how our Court reacted to the news but I would like to do it for the oral history, because it was such a significant moment for me. Mennen (the Chief) said that he thought we had to suspend him. The Court was just shocked and stunned. Judges at that kind of remove are not used to making on-the-spot decisions. They're used to a lot of reflection, a lot of testing, more abstract conclusions. So we were having a lot of trouble coming to a decision. He stood up behind his chair, which was at the head of the conference table, and he looked at us and he said, "I would like you all to be part of this decision, but if you can't be part of it, then I will make the decision. The judge is going to be suspended." Even as I tell it right now, the hair goes up on the back of my neck. We were thinking about his wife and his children, and the disgrace. What if in fact he was innocent, could he ever recover from that kind of public disgrace? The result of it was that he was suspended. The chief called him, told him he had been suspended. He left his office and, tragically, he went home and committed suicide that afternoon. He shot himself in the barn of the home where he lived. I always thought it was an indication of the righteousness of the Chief and his strength. He, to me, was just a living example of someone who had done right so long, that in the Aristotelian concept, doing right had become habit. So he really didn't have to think agonizingly about what was the right course of action, even though it was a very tough course of action. He did the right thing.

Mr. Ruggles:

Looking back now after several years have passed, did Williams have any other choice, really?

Justice Boyle:

He could have waited. Yes, he did have alternatives. He could have waited until there had been a preliminary examination, some determination of probable cause. An arrest is a determination of probable cause, but it's very threshold. He could have waited, but he was heroic in acting.

Mr. Ruggles:

Did anything come to light afterwards to indicate — ?

Justice Boyle:

That's what I was referring to earlier. There was a painstaking investigation. There was some attempt to, many years later, to reform the methodology by which the Court might investigate any other problems of the same sort. But the whole methodology was flawed because the Court had all these rules about no communication between agencies. No communication between the Attorney Grievance Commission and the Judicial Tenure Commission. All these agencies just hedged around with incredible privacy restrictions. We did do something about that. As I'm speaking about that, I'm thinking about the fact that in response to your original question that there was an FBI investigation. There were two judges in Recorder's Court who were taking bribes. They were suspended, quickly prosecuted. And one person in district court that I knew of. And then Swainson. Those are the instances that I'm aware of. And I really don't know factually

about John Swainson's background. My recollection is that they had pictures of him with a television set that he was alleged to have taken from this person, who had been a defendant before the court or a relative of the defendant before the court.

Mr. Ruggles:

He wasn't on the bench when you were.

Justice Boyle:

Oh, no.

Mr. Ruggles:

This was early on.

Justice Boyle:

Yeah. He was not on the bench. I was at his wedding as a young woman. He was a law partner to my former brother-in-law, so I knew—all I knew really about it was that it was a personal tragedy. Such an ignominious way for a career to end.

Mr. Ruggles:

Yet before he died, he was involved at least socially and somewhat politically in state affairs.

Justice Boyle:

Right. He rehabilitated himself. I remember the Ionia Free Fair where there were several former governors there at the fair. He was a very nice man. He was wonderfully generous in terms of the work that he did. And that was so even after he left the bench. He was a double amputee and he was always going to hospitals to talk to people who had suffered similar plights.

Mr. Ruggles:

Let's talk about some of the people you have served with. I counted them up. You served with 11 justices between 1983 and '98. You worked closely with these people, because before you render a decision you meet in conference a lot. Any comments on the 11 that stand out, anything unusual in working with that wide variety of legal minds?

Justice Boyle:

Well, to understand the process, I always said that it was like a marriage that you couldn't get a divorce from. You had to get along with people. You might have some very intense arguments, but there couldn't be words that could never be taken back. There had been a period of time in the history of the Court when there were terribly bitter feelings. That sort of haunted us as oral history. I remember Charles Levin telling us that when he came on the bench, this judge was leaving and it was his last day. Charles came early. He had been elected. But the tradition has always been for the Court to invite someone who's about to join to come in ahead of time and watch the Court, and see what goes on in the process. Well, it was the last day that they were meeting. He got up and left and no one even said goodbye to him.

Mr. Ruggles:

The retiring judge?

Justice Boyle:

Yes. So that's how terrible the feelings were.

Mr. Ruggles:

You can't tell me who that was?

Justice Boyle:

Sure, I can tell you who Charles said it was, and it's near to being public knowledge. If you read the opinions you would see the amount of rancor there was. It was Justice Black. It was said that he did this to Justice Souris—the Court circulates opinions and in the course of circulating an opinion you might change your mind. Let's say you circulate the opinion that's a dissent and then somebody circulates another opinion and you're persuaded, then you withdraw your opinion if you're persuaded by someone else's opinion. He once took Souris' opinion and he published it himself as an appendix to his own opinion, saying in effect, this is what kind of a wimp this guy is. He's changed his mind and now he's on the other side. It was sort of a veiled reference—I wish I could remember the phrase—to Souris being effeminate, which he was not. But he seemed to be questioning his manliness. So there was a lot of oral history that came down to us that we wanted to avoid. There were tough times. When Dorothy Riley joined the Court, that was a very bad time because the Court had really not treated her well. At least that was the public perception. I wasn't there. But the Court had not treated her well. She and Mennen put that back together again. Mennen was chief, and he was enormously gracious to her. And she was very responsive to him. People worked hard. They were a good group of people to work with, by and large.

Mr. Ruggles:

You knew in advance, of course, their political affiliations were different from yours in many instances. Was that a problem, knowing in advance that you've got conservatives and liberals and independents, in rendering a decision were you influenced?

Justice Boyle:

Well, it's not so much party, as it is philosophy. Except in administrative matters. There is party, and if the Democrats have a majority, the likelihood is that the chief is going to be a Democrat. Likewise, if the Republicans have a majority. I'm not really responding in an organized way. Just as thoughts come to me. But the Court adopted a chief judge rule in the '90s, which gave the Michigan Supreme Court the authority to adopt chief judges in all of the circuit and district courts, and probate courts in the state, and also in the Court of Appeals. I voted against that and in point of fact, it was the only time that politics, in the form of, well, I don't want to say pressure, but inquiries from political people surfaced before decisions were made. And that was one of the reasons that I was opposed to it. Because in effect, it was assuming patronage for the Court, and that meant making ourselves the point people, and inviting people to call us and complain about who might be the person or who they wanted to be the person. Those decisions tended to fall out also in partisan ways. So administratively that partisanship existed. In writing opinions, I say this with modesty, because I'm at an age when I understand that these sorts of statements are fragile. But I tried to do what I thought was right. I really tried to do what I thought was right. And sometimes that fell on one side of the line and sometimes it would fall on the other side of the line. It allowed me, I think, to have good working relationships with people.

Mr. Ruggles:

In my notes that were sent to me from Lansing, they describe you as an enigma. Is that possibly why you, in trying to do what was right, you often went from the left to the right or conservative to liberal?

Justice Boyle:

I have no idea and I would be —

Mr. Ruggles:

Were you aware of that phrase?

Justice Boyle:

Absolutely not. That's striking to me, because it's the last thing I would think anyone would think to say of me.

Mr. Ruggles:

But I think it was said in a complimentary way in that you didn't follow the party line, necessarily, but that you went with what you just described, what was right. I take the word "enigma" to mean mystery, not knowing for sure which way she's going to go on a given case. We'll have to ask Angela who wrote this.

Justice Boyle:

Yes. That's very interesting to me.

Mr. Ruggles:

She had a couple of assistants pull—they've got a big loose-leaf binder on every news clip that came out on you. All of them, I couldn't find anything negative about you in all those news releases. I didn't mean to throw you.

Justice Boyle:

No. I find it fascinating.

Mr. Ruggles:

I think they're referring to the fact that you couldn't be easily pigeonholed into one political philosophy or another depending on the case. You were described as more tough on criminal cases and more liberal on civil rights issues.

Justice Boyle:

Right. That's a fair description.

Mr. Ruggles:

That's what they meant by enigma.

Justice Boyle:

We're still talking about my colleagues. A few things I would like to say.

Mr. Ruggles:
Sure.

Justice Boyle:

When I first went to the Court, Jim Ryan was on the Court. In fact, he was instrumental in my going there. I was on the federal court and I left the federal court to come to the Michigan Supreme Court. And I still kid him about it today, because I tell him, "you know, you don't recall, but you said to me, 'oh, there's not much work, Pat, and you'll get a car, the cases are so interesting. And there's nothing boring ever.'" I said, "just Irish malarkey, Jim." But I had always admired him as a circuit court judge. He was the first person I argued a case in front of, when I was a young assistant prosecutor. He was a Wayne Circuit Court judge. He really is a brilliant lawyer. And working with him on the Court just was such a privilege. It was such a wonderful experience. Because being on the federal court was a wholly isolating kind of experience. I was a trial court judge. I don't remember how many other trial judges there were in our building. But we all worked so hard and we all were in our own isolated chambers. Were it not for the fact that we had a monthly judge's meeting, we might go a year and not see each other except at the Christmas party. We were so busy I worked through lunch every day. Had my lunch at the desk and rarely went out to lunch. It was wonderful to have colleagues on the Michigan Supreme Court; to have someone to kick an idea around with, to discuss a case, to see if we were going in the right direction. To test how a proposed solution would work in the real world, which was always very important to me having been a trial judge. Very important to have a notion, a pretty clear vision of how a decision would play out at the trial court level, which is really how I saw our responsibility. We're not just making up words to make up words so they look pretty on a page. We're giving guidance to the system. Well, it was wonderful to have Jim to work with. I'm sure every judge that's ever worked with him says that. After Jim left, Charles Levin was my major intellectual opposition.

Mr. Ruggles:
You say with a friendly tone?

Justice Boyle:

Oh, definitely I say it with a friendly tone. Although there were times he drove me crazy and I'm sure he feels the same way about me.

Mr. Ruggles:

Both you and Levin seem to come from the same political background. A Democrat, factory-oriented, city. Am I wording that correctly?

Justice Boyle:

Yes. But I think that Charles really came, in fairness, from a more significant intellectual tradition than I did. His father and his uncle were successful lawyers. His family had been involved in political life for a long time. And I think both of us in a sense are children of our decade. He is about 10 years older than I am. He came from the height of liberalism in the Democratic party. I come from a more mainstream, more Clintonesque middle-of-the-road Democratic tradition, at least by the time that I got to the Court.

Mr. Ruggles:

That's a nice clear way of putting it.

Justice Boyle:

I think that there's an additional thing, too, which has to do with the difference in our ages and experience. That is that as a trial court judge I saw playing out the results of some of the decisions that had come out of the Michigan Supreme Court in the '60s and '70s. The height of the liberal court. And I was a trial court judge in the city of Detroit. I lived in the city of Detroit. My kids went to school in the city of Detroit. I did my shopping there. Crime and the consequences of crime, the blight of neighborhoods, it was very much a moving issue for me. I think not with the same degree of intensity for people who were older than I was, whether liberal or conservative, who had achieved a measure of success and didn't live right up close to it, right in it.

Mr. Ruggles:

You lived in Rosedale Park?

Justice Boyle:

Right. Which was itself a privileged place to live. But we lived east of there when we were first married. I had lived considerably east of there at Dexter and Joy Road, in that area. I have seen the change in the city and not to say that other people didn't. I just think that as a woman with children living in the city, I saw firsthand what crime was doing to our community.

Mr. Ruggles:

These changes in Detroit have any influence or effect on your legal thinking, your judicial decisions?

Justice Boyle:

Yeah, sure. There were decisions that had come out of the Court, both United States Supreme Court and the Michigan Supreme Court, that at least were being interpreted in our local court as requiring certain results which we thought—we, people on the prosecutor's staff—thought were ridiculous. So when I was on that staff and I became director of appeals, we—my husband was my boss—he was chief of the criminal division—we were able to select cases that got dismissed by the trial judges and create vehicles to take to the appeals court to try to craft what we thought were more sensible results.

Mr. Ruggles:

Can you illustrate that with a case or particular situation?

Justice Boyle:

Well, I'll give you one that we lost that I think we would probably win today. We wanted to have a reverse line-up. We had a person who was suspected of breaking into homes and killing older women in the neighborhood, robbing them and beating them to death. We had one tentative witness. There had been a number of these incidents all in the same neighborhood. This kid had a record, he lived in that neighborhood, and we had one tentative witness, who had seen someone leaving one of these houses. There was not probable cause to arrest him for anything. So what

was wanted to do was to get an order to have him in a line-up. Our theory was, it's not an arrest, so it doesn't require probable cause. There's going to be no detention of him for any longer than what it took for him to stand in a line-up. There's no invasion, because no search, the order would say, you can't search him. This should be a lawful investigative technique, and we lost that case. There were other cases that we won. For example, we took a case called *Mosely* to the United States Supreme Court. I think we had about five cases go to the United States Supreme Court, mostly having to do with search and seizure and Miranda issues. We won four out of five. But they were refinements. They weren't overturning any United States Supreme Court precedent, but they were refinements that made application of these decisions more sensible. And most significantly, and this we did win, ultimately, the prosecutor had no right to appeal in those days. Of course the prosecutor has no right to appeal an acquittal. Double jeopardy bars that. But I'm talking about an instance where a judge would say, somebody's rights were violated during the arrest. The evidence is suppressed. The case is dismissed. There was no appeal during the '70s from that decision by a trial court judge, which you can predict meant that some judges use that as a clearinghouse device or a docket management device. That we litigated for a long time. We had to go by extraordinary remedy. Eventually we got a statute passed that gave the prosecutor a right to appeal if a case was dismissed on a legal ground. That was an enormous victory. That was an enormous way of introducing some balance into the process and to use a hackneyed phrase, "giving us an even playing field."

Mr. Ruggles:

That's a good phrase.

Justice Boyle:

It is.

Mr. Ruggles:

Not to belabor an issue here, but we were talking about the 11 justices you served with. Have we fairly well exhausted that topic?

Justice Boyle:

No. I think I would want to say that Michael Cavanaugh became a very dear friend of mine, even though we did not always agree. He was more liberal than I. But he and I ran together in '83 and in '90. Particularly in '83 he was very helpful to me. And running for office with someone else really bonds you. You get through fires of hell together and no one understands it as much as another candidate going through the same process at the same period of time. He and I are very, very close emotionally. Dorothy and I became good working buddies. Justice Griffin and I had a good relationship. Justice Brickley's relationship and mine had some ups and downs.

Mr. Ruggles:

Politically? Philosophically?

Justice Boyle:

Philosophically. Many times he was more liberal than I was. Even though he's a Republican, but a "Milliken Republican." I remember one time I said something about Governor Milliken having appointed me to Recorder's Court. It was always a nice thing to be able to say that I had been

appointed by both a Democrat and a Republican. I was very proud of that. I was up north someplace and I was giving a speech. Someone introduced me as having, from my resume, having been appointed by both a Democrat and Republican. And then they said Jim Blanchard and Bill Milliken. Somebody said, "Everybody knows Milliken is no Republican." Jim Brickley was very much a Milliken philosophical comrade.

Mr. Ruggles:

He wound up living in Traverse City right near by.

Justice Boyle:

So we had our ups and downs. And I had reason to believe that Jim would support me for chief justice, and eventually he would not. That hurt my feelings. We got over it. We worked it through.

Mr. Ruggles:

Bob Griffin came from a strong political background. A United States senator. I suppose except for Soapy Williams, who had also had that kind of a background, most of these people came from a legal background. They were lawyers or lower court judges. Does that make a difference when a person comes right out of the hot bed of politics? In Griffin's case, Washington D.C., United States Senate? Is that a good preparation for the Supreme Court?

Justice Boyle:

Well, it adds something very interesting to the mix. It adds a level of sophistication that others of us might not have. Bob Griffin's a very, very bright guy. I found him to be a wonderful colleague. In Soapy's case there was so much knowledge of state government that was so helpful. He was, in my mind, the best chief justice of all the four that were there when I was there. And he was because he knew state government, among the reasons. He was because he was a superior administrator and he knew inside and outside state government. My own view is that what needs be on a bench is people who have had trial court experience, for the reason I've already said. But there was a willingness on the part of many people, on the part of Bob, for example, to ask the question and want to be satisfied with the notion of how something would work out. He's a pragmatist, too. I think if you're in politics a long time you're a pragmatist. But he's a great idealist. I admire him so much for his courage during the Nixon years, because he actually told Nixon, "I've changed my mind and you should go."

Mr. Ruggles:

That had to be a dramatic moment for him to bring that experience along with all this other stuff to the Court. Must have been, as you say, enriching. You served with the only state supreme court in United States with four women justices. A majority for that brief moment.

Justice Boyle:

Right.

Mr. Ruggles:

Is that significant or does the media just make a lot of that for no particular purpose?

Justice Boyle:

I think the media makes more of it than it deserves, in the sense that the media presumes that that means that we share something that will affect all the decisions. That's obviously not correct. I think there are things, though, that one can maybe assume that women share or at least it's my experience that the women that I worked with shared. I'm not sure about contemporary women, because things have changed so much. I know that all the women on the bench when I was there had experienced some disadvantage of some kind in their professional lives because they were women. So there was that common sense, not always able to be tapped into by the same facts, but certainly an underlying experience. If you were a trial lawyer and you were trying a sex discrimination case, all four of those women might be people you'd want on your jury. That doesn't mean that all the cases they looked at they voted with the plaintiff. But if you're operating just on limited information, people of that age would have been through that kind of experience in professional school and afterward, trying to get jobs. I think it's probably fair to say, too, that there is an interest in victims. People who have less power. That translates into a concern for children. Even though of the four women on the Court, only Dorothy and myself had children. Betty is single and Marilyn was single at the time.

Mr. Ruggles:

We automatically assume that minorities or representatives of a minority group, of course which you are not a member of, 52 percent of the population, but we assume that minorities would have compassion and feeling for issues that others wouldn't. The white Anglo-Saxon Protestant group. I see not only four women, two black people, Dennis Archer and Conrad Mallett, and of course Charles Levin is Jewish, all of whom have suffered tremendous injustices somewhere in the past. Along with four women, I wonder if that added a flavor to the Court that was identifiable? Does that make sense to even suggest that?

Justice Boyle:

Well, sure it makes sense and it's certainly a legitimate question. It's a complex question, though. And it's complicated by the fact that Dennis is a Democrat and a liberal Democrat. And also a person who was destined from the beginning not to stay on the Court.

Mr. Ruggles:

Can you explain that? I'm not sure I understand.

Justice Boyle:

Not destined for an entire career so removed from the front line. Just as you would have thought if you met Mennen at the beginning of his career, that if he was ever going to be on the Supreme Court, it would be at the end of his career. Dennis, to meet him would be, you know—he was young, energetic, outgoing, interested in advancement through the chairs of the state bar and the ABA. Very service oriented. It just was clear to me that neither Dennis nor Conrad were destined to stay on the Court for a career. That's not a career for them. And Dennis is more in the classical mode of a liberal Democrat. Conrad is more conservative. More a Bill Clinton conservative kind of Democrat. Dennis's upbringing I think was much rougher. He was a child of a single mother and I think they had it much tougher. Conrad's father was active in politics, active in Coleman Young's administration and actually an officer in the administration. His mother was a teacher. They lived in upper-middle class, lived a privileged life in the city of Detroit, very active in the

community. But still, sure, I think that there's a sense more than any of us had, of the experience of black men, of desperation of some people in that community, that's much more poignant. I guess that's only to say that each person brings to the table something of their own experience and the way they see things. And that enriches a whole process. You think at times how wise the framers were to have that unbalanced number. Five, seven, nine, and I don't mean to say the Court was unbalanced. But to have that unbalanced number, which forces compromise, and then to put people together and make them sort it out.

Mr. Ruggles:

Wasn't it Jefferson who said there are three major ingredients to running government? Compromise, compromise and compromise, or something like that.

Justice Boyle:

I don't know, but certainly true.

Mr. Ruggles:

One comment about Levin and then I want to talk about some of the cases. In 1996 as just one example, he dissented 86 percent of the time in his cases, in all the cases before the Court. And that seems to be quite high. I'm not too familiar —

Justice Boyle:

Oh, that's enormously high.

Mr. Ruggles:

Does that have anything to do with his background? Was he champion of the poor or the little guy or how would you interpret that?

Justice Boyle:

Well, I mean, he's the best exponent of the reasons for it. My theory is he wanted to have something to say about everything that came in front of him. He saw that as his responsibility. He would articulate that. Because the Court was frequently on his case for the delays occasioned by the time it took Charles to do his work. He single-handedly was the reason for the Court passing a rule that adopted a Court term. First, the Court was always having new rules, and they were all designed to try to get our brother to get his work done on time. I can say that, because I think I was the second most dilatory person in the Court. But I was an amateur compared to Charles. He simply could not give up the opportunity to express himself on an issue that interested him. As a matter of fact, I've said to people, since Charles has left, I've said to people in seminars, lawyers, if you are looking for creative ways to approach issues, you should look at Justice Levin's dissents, including the dissents that are published in the back of the book. You know how the opinions are reported. If the Court denied leave and he dissented to the denial of the leave, that is in the back of a book of reported cases. And some lawyers never even think to look there as a resource. But some of the most creative ideas written about are in Levin's dissents from cases—from an order. That is, it was expected the dissent in a published case, would be read. Lawyers would read that. But dissent from an order denying leave? That is really extreme effort in pursuit of your craft.

Mr. Ruggles:

That's not the usual procedure?

Justice Boyle:

Rarely. I wrote sometimes and it happens, but most people can't or don't take the time to do it, because you're writing for a very limited audience. You're hoping sometimes that someone will pick it up and say, this is a significant issue. The Court ought to grant leave or we ought to try to get this issue before a Court. And indeed, maybe that was what Charles had in mind. But he just couldn't help not saying something. When we had the Baby Jessica case, Charles and I had near to a real falling out. Not just Charles and I, but Justice Riley as well, because he published his opinion after the Court had written the opinion. And his opinion was in favor of allowing Baby Jessica to stay with her alleged adoptive parents in Ann Arbor. And so his was the much more popular opinion, and the Court was already anticipating that we would be not just criticized, but castigated for the decision that returned Baby Jessica to her birth parents.

Mr. Ruggles:

As long as you brought that in, let me just comment on that and ask you a question. In re: Clausen, 6 to 1 decision. As you know, he used the carload of hay analogy. Justice Charles Levin condemns the majority for treating Jessica as if she were a carload of hay. And focusing their analysis on, "whether the biological parents or persons acting as parents have the better legal right, better legal title." And he goes on to say, "But this is not a lawsuit concerning the ownership, the legal title to a bale of hay. This is not the usual A versus B lawsuit. There is a C, the child." Your thoughts on that. That's apparently a part of his decision. I don't have the entire case here. That's all they gave me on the case.

Justice Boyle:

Well, in point of law, justice and order, as well as equality, there is no other possible result but the result that the child had to be returned to her biological parents. And I say it as a matter of justice and order and equality, because if the test of who got a child was who could better provide for the child, then the wealthier, the better educated, the healthier, all the privileged people in our society could do what they wish with the children of lesser-privileged people. So even though the sentimentality of the situation certainly was with the DeBoers, the couple in Ann Arbor, and when we ordered the child returned to the biological parents, I can remember waking up, it was in the summer time, and I can remember waking in the morning, every morning, and my first thought would be, one more day, one more day off the time that she has with the DeBoers before she has to go. Thinking about that adoptive mother and having to give up that child. But it was like having to sentence someone. It was the weight of having sentenced someone. But it was, in my judgment, indisputably the right thing to do. A lot of people would say, an absolute no-brainer. It had been incredibly orchestrated and the media did a real disservice to the public in the way that it was publicized, because there were a number of people—I was campaigning at the time, so I was out on the road around the state—there were a number of people who asked me about it who were adoptive parents, who were terrified because of the way the media characterized it as adoptive parents having their child taken away from them. These people were frightened to death. I saw women in tears that if the DeBoers could lose this child, they could lose their child. Well, the fact of the matter is, that the DeBoers never adopted the child. They removed the child from the state when she was born illegally. As usual,

you know, a lawyer is behind all the bad things. I believe this person was their cousin. He was an attorney. He removed the child from the hospital before the law in that state allowed him to. He let the DeBoers remove the child from the state. The judge in that state, who was the adoptive judge, ordered the child returned and they never returned the child. And all that happened right at the beginning. So if they had done what was appropriate, they would never have been able to make the argument that the child would be harmed by her removal from them two years later. And they never adopted the child. So it's as simple as that and it was really mischaracterized. But still, behind it all there's human tragedy and that's why it was so upsetting to us that Charles did not file his opinion until the day after and also for another reason. I said this to him many times. You count on your colleagues' view of things. And particularly in this case. If there was a way that the DeBoers should have had that child, if Charles could have shown me a way, my mind would have been opened to seeing it. But we never saw what his view was. When you are on a Court with colleagues and people have these wonderful minds and experiences, you want to know what they have to say. That's the story of that case.

Mr. Ruggles:

That's a good analysis. Obviously, a lot of us hadn't heard all of that because we followed it in the media and we heard the bits and pieces they put together. That was a very emotional case.

Justice Boyle:

It's the only time that I was ever threatened on the Court.

Mr. Ruggles:

Oh, you were threatened?

Justice Boyle:

The Court was actually threatened.

Mr. Ruggles:

Can you describe that?

Justice Boyle:

Well, we received anonymous death threats. There's an area where the judges all parked in a state garage. We never even thought about security at that time. Our names were on plates hanging above our state cars. State Police came and said, you know, that's not exactly what we would recommend in terms of security—so we changed the method by which our parking places were identified at that time.

Mr. Ruggles:

You took Levin's and he took yours?

Justice Boyle:

No. We did it by number. Each of us knew what our number was. There were some cases that we decided that were really hot potatoes, that people criticized us for severely afterward, but nothing in my recollection nearly with the emotional intensity of that case. Not even Kevorkian.

Mr. Ruggles:
Or Budson?

Justice Boyle:
Not even Budson.

Mr. Ruggles:
Those seem to be the real hot potatoes in the last 10 or 20 years.

Justice Boyle:
Right. Well, the Durant case, the school financing cases —

Mr. Ruggles:
Special Ed.

Justice Boyle:
Right. They were big issues in local politics. If you were out campaigning, you'd hear about those cases.

Mr. Ruggles:
Did you like campaigning? Pressing the flesh, as Lyndon Johnson used to call it. Shaking hands.

Justice Boyle:
I guess I didn't mind it. I like people. But it is incredibly wearing. The year that you have to run is really two years because you start the year before. It just consumes your life. You have your job to do and then you have campaigning to do. It's like having two more-than full-time jobs. Because there are more demands from each perspective than you can possibly meet. I'm sure it's true of anyone in public life. In retrospect, the burden of always being a political figure weighed very heavily. Out to dinner and you're a political figure.

Mr. Ruggles:
All those chicken dinners you get.

Justice Boyle:
Not so much that. It's not the food. It's being careful of what you say. It's being sure that you don't drink. At the time I was a smoker. I didn't want anyone to see me smoke. It was like Mennen's first rule of politics. Never let your photograph be taken with a glass in your hand, even if there's water in it. It's that sort of thing. Always thinking, these are prospective voters. I have to be very careful.

Mr. Ruggles:
We want to elect saints to office. That's the nature of the American public. We want perfection.

Justice Boyle:
Right.

Mr. Ruggles:

Isn't that somewhat naive of us?

Justice Boyle:

But there's a duality there, because we want to elect saints and then we have great joy in finding out they're not saints and tearing them down.

Mr. Ruggles:

I wanted to explain that phrase that I described to you under a category called Legal Jurisprudence that they sent me from Lansing. Let me read you this. It says: "Justice Boyle has been considered an enigma. It has been noted that no other justice voted less in harmony with political party expectations than Justice Boyle. A highly respected Democrat, she voted conservative in 70 percent of the cases considered in the study examining whether justices voted along party lines. She'd been noted by several commentators as tough on crime. Justice Boyle, a former prosecutor, this experience is reflected in her disposition in criminal appeals cases, where she voted in the defendant's favor only once during the period in question." And then they have the figure of 98 percent. "In other kinds of cases, however, Justice Boyle is significantly more moderate. In economic distribution cases she voted conservatively only 56 percent of the time." Someone did a lot of homework here.

Justice Boyle:

That's about right, 56 percent of the time.

Mr. Ruggles:

"Although slightly conservative overall, these scores reflect a moderate attitude toward issues outside the criminal realm." That's where I got that information from. All I did was take a yellow marker and highlight it.

Justice Boyle:

Well, there's an additional factor, just for your information. The Court selects the cases that it's going to grant leave in, and it takes four votes to grant leave. So we would read about 2,000 cases a year, applications for leave to appeal, and out of that we would identify maybe 100 or more than that for the first go round. We did it quarterly. Say, 400 to 500 cases of interest, of potential grant material. Once those cases were designated, and they would be, by any justice indicating an interest in the case, they were scheduled on a regular agenda. If nothing happened, no justice said anything about the case, the case would be denied and it would go away. Unless Charles wrote a dissent. The vast majority of cases that is precisely what happened. If one or more justices indicated interest, then it would come up on an agenda, which we called a deferred grant agenda, held quarterly. At that time if four justices were interested in granting leave to appeal, it would go on a final deferred grant agenda, where we'd go through it once more. And it would be gone through by staff lawyers, too, to determine if the issues were significant, if they were properly framed, properly preserved, and any potential down sides to this case as a vehicle for whatever issue the justices were interested in. If there were four votes, it's clear that four people thought what the Court of Appeals did was wrong. So that's a long-winded way of saying 98 percent of the time it's not so indicative of prejudice while admitting that it certainly is true that, as I said at my portrait presentation, I came to the Court from federal court, to give some

voice to the position of victims that I did not think had been adequately represented at the table. That is true.

Mr. Ruggles:

Before we wrap it up today, you wanted to talk about Dorothy Comstock Riley, that mix-up or however we should identify it, where she was appointed and then it was rescinded or denied. And how you feel about it.

Justice Boyle:

Yes. If anyone in history were to be interested in it, Justice Jim Ryan, whom I spoke of earlier, —who has now taken senior status as a judge on the Sixth Circuit Court of Appeals—spoke at the portrait presentation of me, which was in November. That will be printed in the front of a volume of the Michigan Reports, a subsequent volume. So it will be retrievable in hard form.

He told the story in a much more eloquent fashion than I can, but essentially what had happened was that Governor Milliken was going out of office and he appointed Justice Riley as sort of a lame duck appointment. She was the last justice to be appointed by him after the death of Blair Moody, who had been elected in November to a new term, which was to begin January 1st.

On January 1st, Governor Blanchard became governor. Justice Riley, thinking that her term would carry over past January 1st, did not file to run in that election. You have to file an affidavit of incumbency if you are planning to run at the next election, at which you must run.

A lawsuit in the nature of mandamus was filed, which claimed Justice Riley has no right to sit. In the meantime, Jim Blanchard started looking for somebody to fill Justice Riley's seat, if in fact the Court held that she did not have the right to sit.

My husband told me, you better watch out. I was over in federal court, not thinking of going anywhere, just watching it from a distance. Indeed, Governor Blanchard did call me. He took Terry and me out to dinner and we talked about it. By that time Justice Riley had in fact been removed from the bench. It was a terrible acrimonious time inside the Court, which we were later told about. Ryan talks about that in his remarks. The decision was made along political lines. It just fractured lawyers along political lines. Justice Riley heard the news when she returned with her law clerk to the hotel that she was staying in. In the lobby, someone came up to her and said, "The Court has removed you." She was sitting then as a justice, but of course, not participating in this case, since it involved her. So not part of the discussion.

Nothing I think in current memory so riveted the public as the image of this little gracious woman having been kicked around by all these men. I can remember when I ran for office, going to speak to civics classes and asking them the usual kind of question that you would ask, who knows what the Supreme Court does? Can anyone name any Supreme Court justices? They were kids who were able to say, yes, I know a Supreme Court justice. Dorothy Comstock Riley. So there was a lot of visibility. An unusual amount of visibility.

Then I was appointed to the Court in April of '83.

August 19 interview

Mr. Ruggles:

This is August 19th, 2003. I'm Glenn Ruggles in the home of Justice Patricia Boyle in White Lake Township. Interviewing Justice Boyle for the third time, for the Michigan Supreme Court Historical Society's oral history project. When we ended the second tape, Justice Boyle, you were right in the middle of discussing Dorothy Comstock Riley, and you were telling me about you being appointed to the Court in '83. We may as well go back to the beginning of that situation, where the Court decided to remove her. Then I'll let you start.

Justice Boyle:

Well, stop me if I have already told you this. But to begin at the beginning, Blair Moody was re-elected to office in November of 1983, to a full eight-year term. He died after the day after Thanksgiving. Had a heart attack and died, totally unexpectedly. Governor Milliken, whose term was due to expire—and he was term limited so he was not going to run again—appointed Dorothy Comstock Riley, who was then sitting as a Court of Appeals judge to the Michigan Supreme Court. There are two ways for an incumbent justice to be on the ballot. Either nominated by a political party, or at that time self-nominated, which took a number of signatures which could be obtained by petition. Justice Riley was of the opinion, apparently, that her appointment would carry over when the new term began. In other words, that Governor Milliken had the power to appoint her not only to fill out Blair's existing term, but to succeed to the next eight-year term. A lawsuit was filed challenging that. The claim was for, I believe, a writ of mandamus. But the nature of the writ was to require that the appointment be declared ineffectual, because the claim was the governor did not have the power to make that kind of appointment to carry over into the next term. At the time, I was on the federal court bench, and had no thought at all of leaving that bench to go anywhere but up the ladder maybe federally, if I was lucky. I recall my husband calling me—he was then in the Wayne County Prosecutor's Office—and saying to me, does Milliken have the power to appoint Dorothy to the new term? And I said, yeah, I think so. He said, well, have you looked at the statute? I said, no, I'm just saying that off the top of my head. And he said, well, I'm looking and I think it's a doubtful proposition. He also said (being a person of great intellect) I think you're going to hear from Governor Blanchard. And it wasn't very long, perhaps two or three weeks, and the Governor called and asked if Terry and I would come up to visit him. It had to be more than two or three weeks, of course, because now Blanchard was the Governor. He had succeeded Milliken and become the Governor. So it must have been early in January. And we drove up to his house in Lansing and had a nice chat, and basically he was really trying to steam roller me. I think he was really trying to say, tell me right now that you will take the appointment. And I said, no, I really have to think about it. It's a momentous step. It meant giving up a lifetime appointment, it meant coming back into politics in the sense of having to run for office. And as a statewide officer, you're always running for office. You're running when you're not running. There are always political appearances to make. And when I say political now, I'm saying small "p", speaking opportunities and all of the things that

one does when one is in public life. So it was a very serious decision to make. We had planned a vacation, my husband and I, to go to a seminar in Jamaica I think it was. So I said to him, let me think about it while I'm gone. But if you have to have an answer today—because he called me right before I was going to leave—the answer is no. So he said, "why don't you think about it? Continue to think about it while you're gone. I don't want the answer to be no." So I thought about it. And we talked about it, talked about it, talked about it, of course, all the time we were gone. When we came back, I said to my husband, I really would like to do it. He said, well, what's the hesitation? I said, I'm afraid that if I take it, I will run (I would have had to have run in the next election) and I will lose. Because there was this massive outpouring and sympathy for Justice Riley. So I said, she'll run. She's bound to run. And if she runs against me, I'll be defeated. I can remember as one of the nicest times in my life, he came over to me and took my hand. He went back to his chair and he pulled me over and sat me down in his lap, and he said, "if you take it and run, we'll win. I'll make sure of it." So I did take it, of course, and in one of the most fortuitous things that ever happened to me, most fortunate things, Justice Riley decided not to run against me. I think, although she would have to really corroborate it, that one of the reasons was that she was prevailed upon by some people within her own party. Because I had been a prosecutor, I had a lot of friends in out-state Michigan who were Republicans. Because the history of the Court had been pretty solidly anti-law enforcement, as they saw it, they were very eager for me to stay on the Court. So I know that there were certain people who put bees in her ear. But fortunately for me, she did not run against me. She ran against the other Justice Kavanagh, and she defeated him.

Mr. Ruggles:

What year was this?

Justice Boyle:

This would have been 1984. And the defeat of a sitting justice illustrates how much public support there was for Justice Riley. In fact, I can remember when I was campaigning being in high school civics class—you'll probably appreciate this having been a teacher yourself—talking to the kids about the Supreme Court of Michigan, and telling them what the function was and so forth. And then I said to them, does anybody know the name of one United States Supreme Court justice? Silence. Okay. One Michigan Supreme Court justice? And a couple of kids raised their hand and I said, who, and they said well, there was that Riley women that they were so bad to. So that was that story.

Mr. Ruggles:

This was just a year after she had been removed then?

Justice Boyle:

Yes.

Mr. Ruggles:

Just about a year after she won under her own power?

Justice Boyle:

Yes.

Mr. Ruggles:

Why was there so much confusion over her being removed? She thought her appointment would carry over into the next term, but apparently she was mistaken. Your husband questioned it.

Justice Boyle:

Well, the law wasn't clear and there never had been a case on point. And Justice Levin's role in this contributed to the newspaper coverage and how it was perceived as a very dramatic event. Because apparently the first vote was to retain her. And then overnight Justice Levin decided to change his mind. He changed his vote on the principle that to keep her in office, for her to keep her office, she had to show a clear legal duty or something. I can't remember the details of this, I'm sorry.

Mr. Ruggles:

That's all right.

Justice Boyle:

I wasn't on the Court when the case was decided, of course.

Mr. Ruggles:

Well, I'm taking you back 20 years, and that's not fair of me to that.

Justice Boyle:

Well, if I had looked at it, I would be able to or if I had been there when it was decided, hopefully I'd be able to. But Justice Levin changed his mind and Dorothy was in a hotel in Lansing with her clerks, believing that she had survived the vote, when she was told by reporters that in fact she had been ousted. So it was a big newspaper story. I think however one feels about the merits of the matter, it was handled in a very unfortunate way. And so it created great sympathy for her. But to her credit, to Mennen, the two of them, between each other, made the climate go well. They were both very gracious. Whatever had gone before was not discussed. And we went on.

Mr. Ruggles:

You spent most of your time on the Court with Dorothy Comstock Riley, at least quite a bit of it. She came back in '84.

Justice Boyle:

I spent all the time with her until she left. She and I became quite close. Certainly in many opinions we were on the same side. Our offices were next door to each other in Detroit. We worked together very closely.

Mr. Ruggles:

Her name has a nice ring to it. It's an easy name to remember.

Justice Boyle:

It's a good sounding name.

Mr. Ruggles:

Almost like Patricia Boyle. Unless you have more to say about that situation —

Justice Boyle:

No. Only to say that I would like history to note that I had absolutely nothing to do with it. I think sometimes people have the sense that I must have been involved, that I personally had something to do with Dorothy's ouster and I had nothing to do with it.

Mr. Ruggles:

I'd like to go back to Jim Brickley for a moment. You talked about how much you enjoyed being on the Supreme Court because you had a chance to kick around ideas with people, where on the federal court you were somewhat isolated.

Justice Boyle:

Isolated. Right.

Mr. Ruggles:

And you mentioned Jim Brickley being such a great companion. Since he's gone now, I thought perhaps we could dig a little bit and tell me more about him, about he was a "Milliken Republican" but you were great friends. And I recall him fondly, but certainly not in the way that you would on the Court. Describe his personality for me. What makes him so memorable in your mind?

Justice Boyle:

Well, what makes him memorable is he was very charming. One of the world's most charming people. I said I wrote sort of a eulogy for him when they had his portrait presentation, which I have here and could give you a copy of if you'd like to see it. And I said something which was true, that my own relatives, I think, frequently forgot who was on the Court. But they never forgot Brickley, especially the women, because he was extraordinarily good looking and just sort of a gentleman's gentleman. Very charming. Gave you the sense that he was delighted to see you. In fact, I think there was a kind of, at least there was with me, something that I associate with the Irish, which is the appearance of intimacy without the delivery of intimacy. There is a reservation about many people who are Irish that keeps you at a distance. It creates a lovely aura, but it's an aura. So Jim and I were friends and we had a lovely kind of professional companionship. But we weren't friends on the level that, for example, that Charles and I were or that Dorothy and I were. The thing that I loved Jim the most for was his relationship with Joyce, which was really a remarkable marriage and a remarkable story in itself. Joyce is a remarkable person in her own right.

Mr. Ruggles:

What was her maiden name?

Justice Boyle:

Braithwaite. She was called the governor's bag lady. She was his appointment secretary.

Mr. Ruggles:

You describe Jim Brickley as a "Milliken Republican." Since we've gone through several decades, a lot of people today wouldn't quite understand that. Tell us what that means, to be a "Milliken Republican."

Justice Boyle:

Well, I took it as a point of pride and had it in my resume, that I had been appointed by both Democrats and Republicans. Appointed by Jimmy Carter to the federal bench and by Governor Milliken to the Recorder's Court bench in the city of Detroit. I remember that being, many times when someone was introducing me to give a speech, and several times people coming up to me and saying afterwards, well, everybody knows Bill Milliken is not a Republican. So being a "Milliken Republican" means being a lot more liberal than where people currently see Republicanism, where Bush is or certainly where Engler was. The Milliken people, I think from my perception was, certainly were not all that happy with John Engler. There would be people who would be pro choice, many of them. Joyce was, Jim was. They were environmentalists. They were capable of taking views other than the party line.

Mr. Ruggles:

Would you describe them as progressives?

Justice Boyle:

Yes, I would. And Bill Milliken is still that today. I call Bill Milliken a feminist and I think Jim was, too. Bill Milliken can say things and do things that are very surprising. He and Coleman always managed to have a way to get along. That's indicative of what he is as a person.

Mr. Ruggles:

He's just been appointed, as you know, to the Land Use Study. I hope he carries a little weight.

Justice Boyle:

Right. Agreed.

Mr. Ruggles:

That's a nice description of Jim Brickley. One comment about Levin from our notes here, you said, "he drove me crazy". And we've been spending a lot of time on Charles Levin, and tell me a little bit about how he drove you crazy.

Justice Boyle:

At times, he drove both Dorothy and I "crazy." I love and respect Charles, but he'd never get his work done on time, ever. He was never on time to a conference. But you couldn't stay angry with him because it was all unintentional. It was just that he marched to a different drummer. But if you had been working and working and working, and trying to comply with a deadline for the sake of seven of your colleagues, and then one person would take another month to get something done, that would really be irritating. It was all over, once the wash was hung out and dried, and the term would be over. But during the course of it, Dorothy and I used to just gnash our teeth at Charles. And the Court did, too. The Court would make up rules. About once every six months somebody would blow their gasket and we would have this long conversation about

what are we going to do about Charles. Then there'd be a whole thing, and he'd sit there patiently and I'm sure he heard the lecture for all the years he was on the Court. And rarely did I ever become seriously angry with him. I think I may have told you that I did on Baby Jessica case. And if I didn't, I will tell you about that.

Mr. Ruggles:

Sure. It would be okay to repeat it.

Justice Boyle:

Okay. Well, this was one of the most extreme examples. You recall the case having an enormous amount of publicity; it was intensely emotional. We had a fixed deadline by which we had to act. Every day that we delayed made the situation worse, not only for us—because the public could point the finger at us and say, "You have someone's life in your hands and you people can't be sitting on this important decision"—but in very human terms on this little girl, and if her custody was going to be changed, on her parents and on her putative adoptive parents. And so Dorothy and I and whoever else was working on the majority opinion which we knew what it was going to be, had it done. Maybe Michael wrote the opinion. I don't remember who wrote the opinion, but we worked on it as a joint product. And he told us, and we knew that he would from the outset, he told us he was going to dissent. Well, he didn't get it in, and he didn't get it in, and he didn't get it in, even though we had set a deadline. And so we said—this was one of the rules that we made up to try to control him and make him report and get his work done on time—we're going to issue the opinion. We issued the opinion and the next day he issued a dissent, which meant we really couldn't reply to it. That's one of the reasons you want the dissent. You want the dissent in order to be able to see what the person has to say. And in this case in particular, had there really been an argument on the other side, it certainly was something that all of us, or at least I speak for myself, would have wanted to see. So that was the time I was very unhappy, because the newspapers printed what each side had said but the people who wrote the majority opinion did not have the benefit of Charles' views, nor did we have an opportunity respond.

Mr. Ruggles:

You needed his dissent before you issue the majority opinion?

Justice Boyle:

Before we issue the entire opinion. The process is, the majority writes the opinion—someone is assigned for the majority to write the opinion. And someone who writes a dissent, people who are in the majority can and frequently do go over to the dissent, because they're persuaded by what the dissent writes. So the sides can even change. That's not unusual at all. The disposition of the case can change from the first vote.

Mr. Ruggles:

Was there any sign that some might have gone over to Levin's side?

Justice Boyle:

No, I don't believe so, because I think that the Court was, and I think if people were still able to be polled, the Court would be even clearer today than it was then, that that was the correct decision. There was just a decision from the United States Supreme Court, a couple of them

actually, relative to grandparents' rights, and there was just one from the Michigan Supreme Court. It's the same principle that's involved in the Baby Jessica case. Namely that the mere assertion of best interest of the child cannot be outcome determinative of who has custody of the child. Because if that were so, the richest people would always win the custody fight. The people who can provide the most advantages for the child would always win.

Mr. Ruggles:

That's an interesting point. That's a good point. I have a question about Michael Cavanagh. You described him as a very dear friend and more liberal than me.

Justice Boyle:

Yes.

Mr. Ruggles:

The word "liberal" keeps popping up here in a lot of these cases and I'd love to hear you distinguish between your liberalism and Michael Cavanagh's.

Justice Boyle:

Well, I think Michael and I were pretty close. A statistical breakdown would show that we were pretty close philosophically. And that is always what I'm talking about. Talking about judicial philosophy when I use the words "liberal" and "conservative." I think that we were pretty close in civil cases. But in criminal cases I was much more, I would say, "right," and someone else would say "conservative" than he was. I had grown up in the prosecutor's office; I had lots of experience in the criminal law area. Michael's inclinations were much more attuned with those that came out of the Warren court. Now, he wasn't as far to the left as the Warren court was in terms of criminal law, but he was more liberal than I was. But Michael is just a dear, wonderful person in any event, but one of the reasons he was such a wonderful friend and colleague is because Michael would always listen to an argument. Michael is a committed Catholic, and so if you speak to him about morality, Michael responds. He'd say to me, why do we always have to do what's right! Why doesn't somebody else do what's right for a change!

Mr. Ruggles:

Would Michael Cavanagh as a justice be pro choice?

Justice Boyle:

Oh, no, I don't think so.

Mr. Ruggles:

He'd be pro life?

Justice Boyle:

Yes.

Mr. Ruggles:

Very conservative.

Justice Boyle:
Yes.

Mr. Ruggles:
But very liberal.

Justice Boyle:
Yes.

Mr. Ruggles:
It's not easy to pigeonhole people, is it?

Justice Boyle:
It certainly isn't.

Mr. Ruggles:
We often find ourselves being put in those little cubbyholes.

Justice Boyle:
Yes. I always used to think it was unfortunate in a way that when the newspaper printed a story about an opinion that the Court had written, they would identify members of the Court as Republicans or Democrats, as if that explained what each person's vote was attributable to.

Mr. Ruggles:
The media should some day learn that we're much more complex human beings than what they report.

Justice Boyle:
Yeah. And it has the unfortunate fact too, of the implicit statement to the public; these people are voting some kind of party platform.

Mr. Ruggles:
You described yourself as a Democrat in the tradition of Bill Clinton. I'm not sure that's your exact wording, but a Clintonian Democrat. And you've already described, I think, middle-of-the-road.

Justice Boyle:
Yes.

Mr. Ruggles:
But I'd love to hear your capsule description of Bill Clinton, from your words. As the President. I don't mean the scandal. I'm talking about his political career and as a President.

Justice Boyle:
Oh, you know, I'm endlessly amazed by his brilliance and his charm. I read something recently that Louie Lapham, the editor of Harper's, had written about meeting him. He said that he was

halfway back to New York on the plane when he realized that Bill Clinton wasn't really absolutely thrilled to have met him. Louie Lapham, who hangs out with the sophisticated people of the world, had been absolutely charmed and fallen under the spell of this charismatic man. And I did meet him, and he is just captivating. It's certainly not based on the fact that I have any kind of inside information, but there's lots more to learn about Bill Clinton's presidency. I heard someone say recently, from someone who was a Democrat, that it was one of the most disorganized White Houses that ever existed. So I think there's a lot that we don't know. There's a lot that's still waiting for history. It's waiting for time and distance.

Mr. Ruggles:

It's too early to tell, and we have a tendency in our society to want to have these instant analyses of someone who just did something yesterday, when in fact we should wait 50 years.

Justice Boyle:

Right. The economy is one good example. People will just so glibly say, well, it was wonderful under Bill Clinton and it's just going to hell now. Well, it would seem to me that the seeds of that are something you really need to look at for the long distance, from the bigger picture. It will take awhile to see that.

Mr. Ruggles:

Certainly. We're just now getting a good grasp of Truman and FDR, really. Some of the best work is coming out now. Fifty years later. I think the American politics should take a clue from the Catholic Church, you have to wait 50 years to be nominated as a saint. And we should have a rule that you need to wait 50 years to be nominated as a great President, or a great anybody, so we'd have that historic perspective.

Justice Boyle:

But a brilliant man, brilliant politician. I recall Jim Blanchard early on promoting this little known governor from Arkansas he saw back in the '80s — The Court was at a dinner at Jim Blanchard's house. He was telling us about Bill Clinton and how Bill Clinton had just galvanized all these people, how he was just a phenomenon and he was going to be the next President. That's one of the first times I think I ever heard of him.

Mr. Ruggles:

That's great. You've had some wonderful experiences of being on the ground floor, not just on the Court, but in the political circles that you traveled. That was great.

Justice Boyle:

Right. That was one of the good things, too, about leaving federal court. You come back to the much more active life in terms of involvement with the community and politics.

Mr. Ruggles:

If you want to take a look at some of these court cases now, I'll throw them at you and I'll give you, if you'd like some materials on them. The one case after the Baby Jessica case was Martin in 1987. It was a case where a young man was in a vegetative state.

Justice Boyle:
Right.

Mr. Ruggles:
But not terminally ill. Would you like to see my notes on that? Would that be a help to you?

Justice Boyle:
It might be of help to me in terms of spelling out the standard. It was a very important case and one I look back on.

Mr. Ruggles:
There's two pages there. Levin dissented, of course, saying that the Court—well, I'll let you read that.

Justice Boyle:
What we were attempting to do here, there was a debate between the caregivers and the family. The family was the wife and I believe her parents. I could be wrong about that. But the wife's position was that he was no better than a vegetable. The caregiver's position was that he did respond; he could, according to their testimony, he could feed himself. He had the intellect of perhaps a three or four-year-old. Some said maybe five or six-year-old. Testimony was offered in support of the right to starve him to death, because that's what was being asked for. He wasn't on any kind of life support. They just proposed to starve him to death. And actually, the trial court had issued an order permitting the facility that was housing him to stop feeding him and stop giving him water. So it seemed—the testimony that was offered were things like, oh, he had said to a co-worker, after they had read a story about someone becoming a paraplegic, that he'd rather be dead than live like that. That kind of statement. And it seemed to me that a very high standard of proof would have to be met in order to allow for that kind of decision to be made. And we really tried to make it the highest standard that we could make it, because of my belief that it was open to us to do it, that is to say, there was not a statute governing it. Had he executed some power of attorney or durable will, then the decision and the standard of proof would have been clear. But he had not. So absent that, we had the authority to devise a test and it was my feeling that that test should set a very high barrier to the taking of life. There are too many incentives, financial and otherwise, for people to after the fact say this person wouldn't want to live like this.

Mr. Ruggles:
That's a huge problem, isn't it, dealing with the estates, money—

Justice Boyle:
Sure.

Mr. Ruggles:
—and it's got to be in the background, and maybe in the foreground.

Justice Boyle:
There's an instance in which theoretically, and I don't know the answer to this, the man could have been worth more dead than alive. His expenses probably would have been taken care of by

the government, by combinations of safety nets. But he had young children and he might, you know, he might have been—have had an estate that contains a cause of action that was worth a lot of money.

Mr. Ruggles:

It's sad, because he was a young man in his twenties.

Justice Boyle:

Exactly.

Mr. Ruggles:

Martin was just under 30. Levin uses some rather strong language in attacking the majority. Your decision was nothing short of barbaric, he said. At least he refers to the life of someone left in this vegetative state as being that. Any comments on that type of language?

Justice Boyle:

I think he's making assumptions about what the life was that this person was experiencing. Something that wasn't in our authority to determine. We didn't know whether he had the capacity of a five-year-old or of a two-year-old. He had some capacity. A five-year-old, presumably, would be able to say, do you want to live or die. To me, it would seem much more barbaric, although we didn't use that word, I'm sure, to let someone else take his life, starve him to death, it seems to me that a civilized society should be able to take care of people who have that degree of misfortune visited upon them.

Mr. Ruggles:

Related to that is the Jack Kevorkian case, should we live or die, and so on. I suppose we could spend a week on Jack Kevorkian because he's—this is some of the material here. It was on the bottom of that page on Martin. You and Riley are in the dissent, minority opinion.

Justice Boyle:

Right.

Mr. Ruggles:

You said it's a combination of criminal law and —

Justice Boyle:

And the question of the right to take one's own life.

Mr. Ruggles:

Sure. Do you still feel the same as you did back when this was issued, this decision was—it doesn't have a year on it?

Justice Boyle:

Yes. I do still feel the same. And I actually have had reason to just revisit it with my husband, because in his current job, which is with the prosecutor's office, they just have had someone who

was facing a charge of assisting a suicide. What Justice Riley and I wrote here happens to be correct law. It's just correct legally.

Mr. Ruggles:

His crime was murder.

Justice Boyle:

Yes. Anybody who assists in the commission of a homicide has from time immemorial on through the common law of England been guilty of murder. Now, whether that is first degree murder, second degree murder or manslaughter, that would be something for a jury to decide the degree of culpability. And frequently when there had been what would be called mercy killings, people would either be acquitted or they would be found guilty of manslaughter because obviously, these are not people who are the kinds of criminals we think of as hardened felons. But the law was definitely against Kevorkian. The distinction made that he was just trying to help people commit suicide, doesn't make any legal difference. If you're helping, you're aiding. And if you're aiding and assisting, you're as guilty as the principal. But the other issue was an issue that I believed firmly in, and I believe Justice Riley does, too. The other issue was just as important to me, and that was that the public should resolve this question. This should not be a question that is resolved by four members of the Michigan Supreme Court. This was a question that was being debated widely in the community. And it's obviously a question of great public interest and significance. That's precisely the kind of question that the Legislature should address after lots of public debate. The Legislature was ready to address it, and by doing what the Court did here, it took the heat off of the Legislature to address the issue. And the next thing that happened, and I'm not blaming this on the majority, but what happened in point of fact was that Dr. Kevorkian was emboldened by what happened. He, fortunately for the rest of us, just finally went too far. He went too far and he made a judge so angry and the jury so angry that they convicted him, and Judge Cooper sentenced him. And then the Legislature sometime in that period of time finally got around to passing what I deemed to be politically and socially a good statute. It made assisting a suicide a felony. It certainly wasn't that either Justice Riley or I wanted to say, "This is murder." We wanted to say, this is what the law says is murder. And if the law is to be changed, then this is quintessentially the kind of situation that should be changed by the Legislature after a spirited public debate.

Mr. Ruggles:

Do you think the Legislature did a good job?

Justice Boyle:

I do think they did a good job.

Mr. Ruggles:

Do you have any thoughts about what was motivating Kevorkian? As you say, he went too far. Was he just a headline seeker?

Justice Boyle:

There are issues. I think I've talked to enough doctors about it. Doctors are always fascinated to talk to lawyers. And one of the things they want to talk about when they get past their

malpractice insurance is Kevorkian. Certainly it was at that time. And some doctors have said to me that, you know, there is a significant issue regarding pain management. There really are significant issues surrounding end of life and how doctors are not really treating a patient's emotional state anymore or managing pain for people because of fear of liability. So sure, I think that there's some very significant issues that certainly still need to be addressed. They'll get larger as the population ages and as the means for keeping people alive longer grows ever more sophisticated.

Mr. Ruggles:

Is this okay if we go through these cases?

Justice Boyle:

Sure. I'll just tell you if I can't remember it well enough to be able to go into it.

Mr. Ruggles:

The next one is *White v. Beasley*. The police were called; a husband was threatening a wife. They circled the block, did not knock on the door. The wife was stabbed and died. And the issue here is public duty doctrine, as described here. On the surface, the decision seems kind of cold-hearted to a lot of people. Are you familiar enough to recall public duty doctrine? That needs a little explanation.

Justice Boyle:

Well, it's part of a broader principle that really is pretty cold-hearted, but pretty firmly imbedded in the law and also part of the English common law, and that is that nobody has a duty to go to the aid of another person. If you saw someone about to be hit by a car, you would not have a duty to go to the aid of that person. The doctrine has been criticized; exceptions have developed over the years. For example, you do have a duty based upon the fact that you're a householder to an invitee to your home. If you're an innkeeper, a taxi driver, a common carrier, if you own a business. So there are exceptions that impose upon you a duty to protect a given individual. But the general principle is you do not have a duty to protect individuals, the general public or specific individuals. The principle is, I suppose, one that keeps the courts from managing relationships between people. And if I gave you an example that came after this *White v. Beasley* case, you'd probably see a better illustration of it, and that's the *Jenny Jones* case. Because there it's precisely the argument, they should have seen that it was foreseeable that someone could be murdered as a result of what went on on the show. That's true, but in order to get to that point you have to impose a duty on the media to protect these individuals. Well, okay, then the next step would be, what about kids who are playing media games? What about the kids in *Columbine* who allegedly shot people because they had watched something on TV? The "what abouts" are sort of an endless thing for the legal system to involve itself in. That's the principle that's behind this case. I don't remember the details well enough. I do remember that the woman died and that it was really a very unfortunate circumstance.

Mr. Ruggles:

So I don't have to feel guilty about not jumping in the lake to save that little kid drowning.

Justice Boyle:

That's right. If you do jump in the lake to save that little kid drowning—well, you need to feel guilty on a moral level, of course. But on a legal level you would not be obligated to do that. But if you did do it, you would be held to the standard of a reasonable man. In other words, if you acted negligently as you tried to save that person and the child died, you'd be liable. So in a sense, you're actually punished for going to the aid of a person unless you do it without negligence. Any time you do it, of course, you're risking a lawsuit. That's why there are exemptions for physicians; Good Samaritan laws that allow people, ordinary civilians, to go to the aid of people who have been injured in accidents without fear of personal liability.

Mr. Ruggles:

The law gets awfully confusing at times, doesn't it?

Justice Boyle:

It does. It doesn't always make sense.

Mr. Ruggles:

The next case we have here was two cases combined. People versus Suds and Adkins. Suds was dissatisfied with his attorney and Levin argued that he did not waive his right knowingly, that he was not competent. He decided to represent himself —

Justice Boyle:

I think I don't remember this one.

Mr. Ruggles:

Okay. We can skip over it.

Justice Boyle:

I think I want to add something to what we just said, because I said that it doesn't always make sense. But I think a better way of viewing that doctrine of no duty to go to the aid of another is that that's a compromise that the law has drawn. In other words, if you do go to the aid of another, you can be liable if you don't act with reasonable care. On that side, there is liability. On the other side, there isn't. So it's not as strange as it appears to be.

Mr. Ruggles:

The next case is a child custody case. Frame v. Nehls. It deals with the right of grandparents to see the grandchildren in a case where the mother and father were not married.

Justice Boyle:

Right.

Mr. Ruggles:

You recall that?

Justice Boyle:

I could look at the notes for a second. Well, this case is one of a series of cases in which the

Court struggled during this period of time with the issue of grandparent visitation. Michigan was one of the states in which there was a very active grandparents association. A movement for custody, to recognize custody rights of grandparents. It's important to recognize that this always means that the parent opposes custody on the part of the grandchild or it would never get to court. If the parent consented, then of course there would be no problem. First, I think there was not a statute and grandparents tried to sue for custody, just to come into court and say, it's for the good of the child that we get to see the child. In those cases the courts found that the grandparent didn't have any standing. That is to say, they could not assert that the child's best interest required something any more than a school teacher could come into court and say this is what this child should have.

Mr. Ruggles:

Levin is saying here, it appears in the Nehls case that the right of the grandparent, the visitation, was based solely on the marital status of the child's parents, and then thereby creating two distinct classifications that discriminate between children born illegitimately and those who are not. Is that the heart of the case? Is he correct?

Justice Boyle:

Well, the statute came along and the statute said basically, if the parents are divorced, I believe, and one parent is deceased, there were exceptions in which the grandparent could seek custody. The statute did not provide at that point in time for the grandparent of the child of an illegitimate relationship. So he was saying this legislature distinguishes between illegitimate marriages and legitimate marriages. The equal protection argument is just wrong. Of course, the state can distinguish between legitimate and illegitimate relationships. This state refuses to recognize illegitimate marriages. We have no common law marriages in this state. So of course it's a distinction that a Legislature can constitutionally make. But the argument, interestingly enough, is the same argument as in the Baby Jessica case. The focus is on the best interest of the child. I remember being so gratified when one of my old friends, who was a labor leader, wrote me a letter. He's also an attorney. He wrote me a letter, in fact he wrote a letter to the letter box after the Baby Jessica case. And he commended the Court for what it had done, because he pointed out that the people who would suffer from the principle that courts can do anything that they find in the best interest of the child, are poor people and working people, and people who cannot afford to give the advantages that other people can. It sounds harsh, but this country has always recognized the parental rights of parents to direct their children. And it's better probably in the societal sense that those things be worked out on a personal basis, and not let the courts involve themselves in deciding who is more fit, a grandparent or a parent. And it should be really carefully noted here that in these situations there is no question about the parent's fitness. There's no question of abuse. If you could show that, you would have a different lawsuit. These parents are fit parents. These parents are taking care of their children. So there isn't any suggestion that there's anything wrong with the family situation. One other comment I want to make, too, is that I think this is a situation in which a number of people were lead astray by promises, both in the Baby Jessica case and in these instances of grandparents' rights. Someone is telling them, you can go to court and the court can solve this problem. And someone was not advising them that they could be in for a lot of heartbreak because the law wasn't there. It's a cruel trip to take people on.

Mr. Ruggles:

That's an interesting note. I hadn't heard that before. Very good. Changes the entire complexion of the case when you put it that way.

Justice Boyle:

Well, I said it years ago and it came back to mind because of what the Michigan Supreme Court just did. They just held that a statute granting grandparent visitation rights over the objection of a parent was unconstitutional, as indeed they were obligated to do because the United States Supreme Court had so held.

Mr. Ruggles:

We have several other cases and I don't know that we have time or if it's even necessary to go through these. Perhaps we should discuss major issues like the Miranda decision, not necessarily a particular case. There is a Miranda case here, *People v. Ryan*, where a DEA agent played footsie with the defendant, allowing him to go through federal court and get a lighter sentence. And if he didn't cooperate, we're going to run it through the state, which is going to give you a life sentence. Do you recall that case?

Justice Boyle:

Vaguely.

Mr. Ruggles:

Anyway, Levin argued that it was a violation of Miranda. Let me just interject a new thought here and since you brought up the Warren court, the Miranda decision, along with many other of the Warren court decisions, just literally set this country on its ear legally, back in the '50s and '60s. Can we talk about the Warren court in general and those very liberal Miranda, Escobedo, Gideon cases, most of which have had their own Hollywood movies written about them.

Justice Boyle:

Yes.

Mr. Ruggles:

What's your impression overall of the Warren court, not just Earl Warren, but the entire court?

Justice Boyle:

I think that overall, what the Warren court did for the criminal justice system needed to be done and turns out to have historically been a good thing to have done. The fact that they did it, of course, means that there are other courts who either got it wrong or they outran them. For example, Michigan Supreme Court at one time held that you couldn't—that you had to suppress—no. I can't. The example I was trying to think about, I can't come up with it right now. But there are at least 10 or 12 different things that the Michigan Supreme Court had held, citing what the United States Supreme Court had done, that were extensions of what the United States Supreme Court did in the Warren years. The Michigan holdings were (A) unnecessary and (B) just simply didn't make any sense. They weren't practical. They were pushing the envelope to take it to a stage where it made it more difficult for prosecution. Justice Corrigan's husband, Professor Joe Grano, once said that no one objects to the system being made more difficult in the

interest of it being more fair, but everyone should object to the system being made more difficult just to make it more difficult. And those were the kinds of objections that I had to some of the things that the Court did in the '70s. I think to take the long view, and I would say this when I was speaking to prosecutors during those years, that the wind was really at their back for a while because the public became very alarmed about crime. I can remember when I first started running for office in the city of Detroit, being at a gathering of almost all African-American citizens, and a white judge from Wayne County Circuit Court saying to this group of people, well, I want you to know that my sentence of choice is always probation. And then he was astounded because everybody was going whoa!! He was just out of tune with what was happening in the community, because crime was just ravaging the city of Detroit and neighborhoods weren't safe. And people were having to send their kids to school and worry about them being raped. So the times changed and the courts reflected that change. But I would tell prosecutors then, this is cyclical and if you don't use the authority responsibly, then you'll find yourself losing the authority. And I'm amazed when I see some of the prosecutions that are brought now. You know, you have to say to yourself, my gosh, do they have that many resources that they can bring something that is clearly not that serious. A ten-year-old kid was carrying a knife to school and was prosecuted! Now, I know there's a zero tolerance policy, but surely that doesn't belong in a courtroom.

Mr. Ruggles:

So it's our own fault that the court dockets are overloaded or the prosecutors are the cause of this?

Justice Boyle:

Well, we've certainly brought a lot more prosecutions. We put a whole lot more people in jail. I'm not of the mind that we put a lot of people in jail who didn't belong there, because I think that if you look closely at the statistics, you can't say these people were just drug offenders. But you can't see people go in and out of the system three and four times, and then say they are just victims. They are recidivists. And now we're letting people out because we don't have the money to keep them in. That's really the truth of it. And in five, six years from now the community will pay the price for that, and then we'll probably see the community come back and say, at least if the economy comes back, we'll have to do something about this.

Mr. Ruggles:

With the high rate of recidivism, I can't help but wonder that there is something wrong with our prison system or it doesn't do what it's supposed to do.

Justice Boyle:

I don't think that it does—of course, it doesn't do—it's not even arguable whether it does what it's supposed to do. It is also true, I think, that we don't have the resources at the front end of the system. That's what I've always thought. It's even worse now than it was when I was involved actively in the system in the prosecutor's office or when I was in federal court as a trial court judge. There are not resources for people to prevent them from—they are on probation two or three times. Now, for example, people have a case load of maybe 400 people that they have on probation to them or 200 people on probation to them. There's no meaningful supervision. There isn't money in drug programs any more, and I'm talking about outpatient drug programs, the

places like Brighton and places that you had money from the state to allow people to go and make an attempt to get themselves off of the kind of addiction that leads people into crime. Community resources in the mental health area, it's just not—it's a sin what has happened to the absence of resources in the mental health area. So by the time people get to prison, most of them are pretty hard core people. There's not a lot of opportunity for rehabilitation in prison, even with the best the system has to offer.

Mr. Ruggles:

Are you saying that the system is hopelessly in a state of chaos? There's no way to reform it?

Justice Boyle:

No, I'm not saying that. Because I think there are ways to reform it. I think if the nation made a commitment to reform it, we could reform it. We've not made that commitment. We've just never made that commitment.

Mr. Ruggles:

Going back to the Warren court for just a second, though. I'm not changing the topic, I just want—I'm thinking of the '50s and Brown v. Topeka Board of Education and Miranda and so on. Should we have been surprised? The Warren court appears to be so revolutionary, but shouldn't we have been surprised at these rather radical decisions for the time were going to be coming from the Supreme Court, or was it a natural evolutionary process that had been appeals earlier in the area of civil rights?

Justice Boyle:

Well, I think Dwight Eisenhower was surprised.

Mr. Ruggles:

I don't mean to interrupt you, but Earl Warren was—I'm going back to 1942 now—Earl Warren was, I think, attorney general of California, and signed that executive order to intern Japanese Americans, which led to the famous —

Justice Boyle:

You know, I didn't know that.

Mr. Ruggles:

Well, Roosevelt signed the executive order, but he endorsed it. His name is on the record and I believe he was attorney general, which led to one of the greatest scandals socially in American history.

Justice Boyle:

Right.

Mr. Ruggles:

Something like 117,000 Americans imprisoned. All the way to Arkansas. There must be a tremendous change that occurred with him, from going from that kind of decision to heading up probably the most liberal, farthest reaching court decisions that are still shaking this country.

Does that happen very often to people in the court, who make this tremendous change? I think we can safely assume that Charles Levin has always been a liberal, for instance.

Justice Boyle:

Yes, I think we can. And we can prove that through the years.

Mr. Ruggles:

And probably most people have not had this —

Justice Boyle:

Epiphany.

Mr. Ruggles:

Does that often happen where there's a tremendous change?

Justice Boyle:

Well, you know, there's been a lot of attempts to explain the current use in Supreme Court's metamorphosis this year into a more liberal—their decision, the most recent one, that a state cannot criminalize private sex acts between people of the same sex. And the New York Times has done some pieces about trying to explain why the Court, this very conservative Court, has apparently become more liberal. But I was saying to my husband, and this is only speculation, that it might have something to do with the age of the Court. It might have something to do with how long it takes to be comfortable with having that kind of power, and confidence in your ability to declare the law of the land. Looking at it as an outsider, I always think—I always thought when I was on the Court, the thing that worried me the most is what have I done wrong. What if I have done something that really is going to harm a lot of people, that's going to cause some rent in the social fabric. You must have to have a lot of self-confidence. So one thing I think might have to do with the age of the Court and how long people have been on the Court and how long they've sat together. And maybe even age, because I think in some ways, age itself gives you more confidence in your perceptions.

Mr. Ruggles:

Does age automatically lead to a more liberal approach?

Justice Boyle:

It might. I do think it leads to more tolerance. That's my personal experience and observation.

Mr. Ruggles:

I have some other topics that I want to discuss with you while we still have time on this tape. One is the right of civil disobedience. I'm looking back over the years to Martin Luther King and Gandhi, of course which was outside of this country, but Viet Nam protesting. Even down here on Walled Lake the picketing and throwing of red paint on Williams Research during the—must be 20 years now—when they were making the engine for the cruise missile.

Justice Boyle:

We handled one of those Williams cases.

Mr. Ruggles:

Did that wind up in your Court?

Justice Boyle:

Yes.

Mr. Ruggles:

Three nuns, I believe, were arrested for getting near—they began blocking the entrance, I think is where they made their mistake. They didn't keep moving. And also throwing red paint on private property. Your feelings about civil disobedience and the limits to which it should go.

Justice Boyle:

I know I'm not the right person to ask, but I do recall a case in which, if my recollection is correct, the resolution that the United States Supreme Court has ultimately come to in terms of the right to life debate and the demonstrators on that issue, is there was sort of a safe zone, a no man's land established in which the demonstration could take place on one side and the people's right of egress and personal property would be protected. Seems to me like a very sensible solution. Civil disobedience probably though doesn't work unless the people who want to make the point take it further.

Mr. Ruggles:

You have to be willing to, like King, go to jail if you want to go that far.

Justice Boyle:

Yes.

Mr. Ruggles:

We talked about justices in your realm here in Michigan. Soapy Williams. You admired him a great deal. You said he was probably one of the finest, one of the best chief justices. Nationally, though, great jurists of maybe not the Supreme Court level, but even I think people like Learned Hand and others, do you have some great justices in mind, if you could emulate them, who would they be?

Justice Boyle:

Well, if I had the sheer intellectual brilliance, and I am a great admirer of sheer intellectual brilliance, of Judge Posner in the Second Circuit, or Easterbrook or Scalia, that would be devoutly to be desired. That isn't to say that I would decide issues the way that Justice Scalia decides them. But his capacity with the language. You can disagree with him totally in terms of his conclusion, but as an admirer of rhetoric and language and analysis his work is just stunning. And Posner has the same ability, and he seems to have endless capacity. He writes books and he writes opinions. It's almost as if his opinions come off the top of his head and they're so well grounded that they're never pedantic or they're never preachy. They're fabulous.

Mr. Ruggles:

I'll have to read some of those decisions now.

Justice Boyle:

You really should. He's really worth reading. And of course, I admired Learned Hand and I think I told you at the outset I always admired the quote from Cardozo that judges are not to roam at will like knight-errants. Although the work of the current Court has reaffirmed for me that what I sensed and what I think I wrote to on the civil side, is something that I believe strongly in. That is to say, I believe in the court's common law authority to develop the law. When the Legislature has spoken I am conservative in the sense of agreeing that judges don't have the authority to decide we don't like what they have decided to do. As long as it's constitutional, that's part of our government, that's our constitutional obligation to uphold it. But the court, and its interpretive role, is an indispensable part of the balance of power, both on the state level and the federal level. I've become increasingly concerned that as the Legislature goes into every area, the court's authority could be progressively restricted. And it's important for the court to protect its own area.

Mr. Ruggles:

There are people who are nervous today because of the three branches of government pretty much controlled by one party and the independence of the court is threatened in that sense.

Justice Boyle:

Yes.

Mr. Ruggles:

Your comments on that.

Justice Boyle:

Well, I think that that is a phenomenon that we've seen in Michigan as well. During the Engler years the Legislature and the government was very much on the same page. And part of what I think we're seeing now is a very strong governor who had a Legislature that was also very active, and between the two of them, the two houses reformed Michigan law. I'd like to see a little more play in the joints, I guess that's what I'm saying. I think a little more play in the joints is healthy for the system.

Mr. Ruggles:

I'm glad you brought up the idea of common law, too, because so many people I talk to, speak of law as if it were carved in stone as opposed to those who think that law is simply a rule agreed upon and it can change.

Justice Boyle:

Yes.

Mr. Ruggles:

We have a tremendous body of common law and stare decisis, going back to previous decisions. Is that common law?

Justice Boyle:

Yes.

Mr. Ruggles:

And not carved in stone, with this flexibility —

Justice Boyle:

To develop. The Martin case that we talked about— there's an example of the court's common law authority, I would say, at its best. Whether you agree or disagree with the result. There's a problem that the court is faced with. It's an issue in which the Legislature has not acted and it won't do in such a situation to say we're not going to act, because we are acting. If we had said but we don't have any authority to decide this question, they would have starved that man to death. So there's a problem, the problem has to be met, and the court is challenged to come up with an answer that makes the most sense that it can come up with for the good of society and for the good of individuals. That's a very important function to which historically the authority has been committed to circuit court judges, people closest to the people.

Mr. Ruggles:

Controversial topic. Homeland security, 9/11 and the Homeland Security Act and the suspension of habeas corpus. Some people are frightened by that. The attorney general's office, federally, is going too far. Does that concern you?

Justice Boyle:

It concerns me, but I wouldn't venture an opinion on it at this point because I don't know enough about it. I don't know if what I'm hearing is rhetoric. That I think is the biggest thing to be concerned about, the raising the shield of national security virtually means the ordinary citizen can't analyze what the facts are. The facts are not in the public domain, so we have to rely on those people who tell us it's necessary and I guess, the loyal opposition. We have to rely on the Democrats to say this is bunk or it's not necessary. But I think I found personally the most disturbing thing about the war that we didn't know who to trust. At least that's the way I felt.

Mr. Ruggles:

In this country in deciding that?

Justice Boyle:

Yes. I didn't know whom to trust. What public leader could I look to and say to myself, I believe what that person tells me. That person would not say this purely for political reasons. And to make that observation I think is to say something pretty bad about either the state of my cynicism or the state of politics.

Mr. Ruggles:

I have two documents here, one of which addresses that very issue. George McGovern wrote a beautiful essay for Harper's, in which he speaks very clearly against the war, takes a position and in a short essay documents it quite well. But the issue I wanted to raise here was one of liberalism. He has a beautiful description of liberalism. I don't know how historically correct it is. I'd like to have your reaction to this. Let me read to you. This is by George McGovern. "I believe that the most practical and hopeful compass by which to guide the American ship of state is the philosophy of liberalism. Virtually every step forward in our history has been a liberal initiative taken over conservative opposition." And he mentions civil rights, social security,

Medicare, rural electrification, the establishment of minimum wage, collective bargaining, the Pure Food and Drug Act and federal aid to education, including land grant colleges, to name just a few. Does that strike a responsive cord with you?

Justice Boyle:

Yeah, absolutely. I agree, totally.

Mr. Ruggles:

And he says, "Many of these innovations were eventually embraced by conservatives, only after it became clear that they had overwhelming public approval." And he goes on to discuss the war and the lack of evidence for it. And he claims that nearly all Americans have some identification with liberalism, whether they know it or not.

Justice Boyle:

Oh, right.

Mr. Ruggles:

And how could anybody read history and not be a liberal? Obviously some people do read history and are not liberal. Is that a path you think this country's on, that the liberal path is the path that the country should follow, according to McGovern's thought there? Does that make sense?

Justice Boyle:

Oh, it makes all sorts of sense. I think that our problem always is trying to determine the efficacy of particular solutions. Just to name one that I saw in the paper the other day. There's a woman judge in Macomb County—and this ties together the question you asked me earlier—who has decided that—she's a former commissioner, I think, and she has a laudable goal and that goal is to determine how many people coming into the criminal justice system need mental health care. But she and some other people are already claiming that 75 percent of the people in the criminal justice system are mentally ill. Well, that is a preposterous figure on its face. It would depend on whose definition it is. So, you know, there are a lot of half-baked ideas, too, that people who want things to be better come up with. But the instinct to be better, the instinct to have a world in which everyone, whether you're black or white or indian or whatever you are, achieves the promise of this country. That's the heart and soul of this country, and that, I hope we never abandon.

Mr. Ruggles:

I have one final thought and I have the Women's Hall of Fame brochure here with your name in it. You're in awfully good company here. And of course, you already know who is there, but I just—you're listed here along with Harriet Simpson Arnault and Mary Coleman, Gwen Frostic, and the great Martha Griffiths and Mildred Jeffries. Olga Madar, the first woman on the UAW board of directors.

Justice Boyle:

She was very helpful to me. Millie was, too.

Mr. Ruggles:

Helen Milliken, Rosa Parks, Dorothy Comstock Riley and Helen Thomas. Might be a foolish question to ask you, how did you feel when you were elected to the Michigan Women's Hall of Fame and how do you feel being in that great company?

Justice Boyle:

Well, it was really one of the most wonderful nights of my life. I'm glad you asked me that. I can't really think of it without having tears in my eyes, because Mennen presented me and I was so struck—I have said it other times—I was so struck by how many women's lives he had an impact on. How many women he first appointed to office. How many women he gave first employment opportunities to. And of course, my four sons were there and my husband was there, some of my other colleagues were there. It was a wonderful night. Just wish my mother had been there.

Mr. Ruggles:

I almost say this too late, one of the better topics to bring up, your Hall of Fame status. We have just an inch or so left. Any final pearl of wisdom or thought that you'd like —

Justice Boyle:

Final thought that I would definitely like to leave history with is the support of my husband, without whose courage and intellectual support and endless re-education of me politically, I would have slipped into conservatism, but he's never allowed it, that flaming Irishman. We've had a wonderful ride together and I'm deeply grateful to everyone who's made it possible for me, but particularly to him.

Mr. Ruggles:

Thank you, Justice Boyle. I'm going to shut this off now and I'll send you a copy of it right away and we'll move on from there. Thank you.