



Interviews with  
**Michigan Supreme  
Court Justices**

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## INTERVIEW WITH LAWRENCE B. LINDEMER

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

Conducted by Roger F. Lane

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**Topic 1: Justice Lindemer talks about being appointed to the Supreme Court after the death of Justice Thomas M. Kavanagh, working for Consumers Power after not winning re-election, and later going back to the firm in which he was a partner before his appointment. He discusses the effects on the court of Justice John Swainson's investigation and resignation in 1975 and philosophical differences among the Justices**

*Justice Lindemer:*

Have you got him on tape?

*Mr. Lane:*

Yes.

*Justice Lindemer:*

Oh, that's great.

*Mr. Lane:*

Well, you know Larry, what I'd like to do. This is testing. I want to be sure that the machine is operating right, and I will stop it in a second here. That right light ought to be on. Okay, this is Justice Lawrence Lindemer sitting in a conference room in his law firm's offices. With him is Roger Lane representing the Michigan Supreme Court Historical Society, and we're here to tape some of the reminiscences and observations, commentaries that Justice Lindemer would care to

make about his service on the Supreme Court. He went on the Supreme Court in...what was it...June of...?

*Justice Lindemer:*  
June of 1975.

*Mr. Lane:*  
And served through calendar, 1976.

*Justice Lindemer:*  
Yes.

*Mr. Lane:*  
Justice Lindemer, what was the first thought you ever had about the fact that someday you might serve on the Supreme Court? As a young lawyer, did you aspire to this or did it come on suddenly later on?

*Justice Lindemer:*  
I really hadn't anticipated going on the court, and it was not one of the things that I had as a goal in my life when I started. I enjoyed the practice of law and I guess to the extent I thought about doing anything else, I thought about doing something in politics rather than in the judiciary.

*Mr. Lane:*  
Did the idea of politics as you thought of then embrace the judiciary?

*Justice Lindemer:*  
No, it didn't, and I guess I never really thought about it. The death of Justice Kavanagh came as a surprise to me. I did not realize how ill he was.

*Mr. Lane:*  
This was in April, 1975, right?

*Justice Lindemer:*  
Yes. Well, I think he...didn't he die earlier, in February, or did he die in April, 1975.

*Mr. Lane:*  
I'd have to look it up.

*Justice Lindemer:*  
I'm not sure. I thought maybe he might have died as early as February of 1975, but I'm not certain about that. I was talking to Joyce Braithwaite in the Governor's office about another matter, I think, and I said at the time, "You know, that's something that might interest me", and she acted surprised because my recollection, Roger, is that the pay at that time was \$42,000.00 which wasn't much, and I was making considerably more than that in the practice of law.

*Mr. Lane:*

At that time, you were a partner in this firm...?

*Justice Lindemer:*

At that time, I was the...yes, I was...the firm's name at that time was Foster, Lindemer, Swift and Collins, so I was second to Dick Foster in the firm name, and I'd had a good practice and things were going well.

*Mr. Lane:*

This was the largest law firm in town, too, was it not?

*Justice Lindemer:*

Yes, it was and is the largest law firm really between the Detroit area and Grand Rapids. So, it came as a surprise and then I mentioned it with some degree of casualness, really. Then she got back to me and made some additional inquiries and so forth, and I began to think if there was a possibility, it was something that I thought I would like to do.

Our children had been educated, and while we were no where near wealthy, Becky and I didn't have any major financial concerns, and I felt it was something that I could do, and if I was successful in doing it and stayed on the court, that it would be something that I would be willing to spend the rest of my legal career on. So, I discussed it with very few people, Dick Foster being one. I didn't discuss it with him initially, but when there appeared to be some chance that at least I was being considered, I discussed it with him. The interesting thing was that in all the speculation about the appointment of a successor to succeed Thomas Matthew Kavanagh, my name never once surfaced.

*Mr. Lane:*

That doesn't speak very well for the newspaper men back then, does it?

*Justice Lindemer:*

But it pleased me because it was a clear indication in whom I placed confidence for the confidentiality were observing it, and it never got out. It came as a surprise to the onlookers. I remember how diligently Bill Milliken went about it. Among other things, I don't know...I knew the State Police ran a check on me.

*Mr. Lane:*

At that time, had you talked to Milliken or was that later?

*Justice Lindemer:*

Later. Not about this. No, I never importuned him about it at all. I felt that neither he nor the Republican Party owed me anything, and if it was something he thought was good to do, fine. If it wasn't, I certainly would understand, because there were a lot of people who were more vocal in their desire for the appointment, who had, I thought, very good recommendations, so I did not

put pressure on him.

But I remember one time, he wanted to...after the State Police had cleared me and so forth, he said, "I want to know about your income tax returns and so forth". He said, "I don't like to do this, Larry", and he called me directly about this. He said, "I don't like to do this, Larry", but he said, "Could I see your last three year income tax returns", and I said, "Sure". He said, "Have you had any problem? Have you been audited?" and so forth. And I guess I was audited in 1964 but had not been since then, and that proved nothing.

So, anyway, we met, and I don't recall where we met, but this entire transaction about the income tax return took place in the back seat of the Governor's limousine while he was going from one place to another and then, as I recall, the driver had to take me back to my car, wherever it was, so nobody knew that I was with him. He went over and asked me some questions about it, and so forth, and decided that he wasn't going to be embarrassed about anything that might come up from that source. Then, I was told that I was going to be appointed, and that the Governor was going to announce it on the 5th of May.

On the morning of the 5th of May, I had to be in Circuit Court in Livingston County before Judge Paul Mahinske, and I remembered that I wasn't sure how long that would take, and I didn't want to be tied up past the noon hour because it was going to be sometime after the noon hour that this would break, that the Governor would announce it, so I went into see Judge Mahinske, and I said, "I hate to ask for any special favors, but if I could possibly get on with this motion early in the docket, it would be a great help to me because I do have something happening this afternoon that I've got to take care of and be ready to take care of", and he didn't ask me anything about it. He was very accommodating, and I think, as I recall, I was either first or second up on the call of motions.

We got the matter out of the way, and so forth. Incidentally, I won my last motion before I was going on the bench. Then it was announced, and at that time, it was...well, I guess, shortly after it was announced, Thomas Giles Kavanagh who was then Chief Justice, called me and said, "When can we get together?", and I said, "Well, I'm available at your discretion", so I think within a day or so, I went over to see him. He came into town, and we sat in his office and talked and set up a time for the swearing in and for me to go on the bench and so forth that would have allowed me to clean up some of the things that I had and get in touch with my clients, and you know, that sort of thing.

*Mr. Lane:*

Was the disengagement process, considering the fact of your heavy commitment in your law practice...was this a problem? It took you what...a month or so, did it?

*Justice Lindemer:*

Well, I was sworn in June 4th. No, it really wasn't a problem because I had within the firm, a number of people who were willing to help, and I was able to get in touch with my clients very

quickly. I think I did most of it by telephone and said, "I'm willing to transfer the file or whatever to anybody you want. If you want someone in this firm to handle the matter, I'm perfectly willing to see that it gets handled properly for you, but whatever your desires are, we will accommodate to them", and I guess there were a couple of people that wanted something to go to Jackson or Ann Arbor, but a lot of my clients...Michigan Milk Producers Association was my largest single client at that time.

I was general counsel of that organization, and I had told, I had given them a little bit of warning about it...just the manager on a confidential basis, and that was another instance; they observed the confidentiality of our discussion. They wanted to continue with the firm, and we got somebody here to move in on that, and so that's the way that was taken care of. It was not a terribly difficult problem. One of the side notes with the quasi-humorous aspect is that we had kept this so tight that the firm had just ordered a whole batch of new stationary...I don't know, \$4,000.00 to \$5,000.00 worth of new stationary with a name on it, which of course, the minute I went on the bench, had to be thrown away, so we got a lot of scrap paper out of that.

*Mr. Lane:*

Your firm name then switched to what?

*Justice Lindemer:*

"Foster, Swift and Collins" and the reason it later became "Foster, Swift, Collins & Coey"...the reason that it remained just "Foster, Swift and Collins" was that we all realized that I had to withstand election in 1976, and there was no guarantee that I would be re-elected, and there would be a slight possibility that if I didn't, I might come back and so forth, and so they wanted to keep that option open.

On that particular point, when I was not successful in 1976, and Blair Moody defeated me, the firm got in touch with me right away, and said, "Are you coming back?" and were most cordial about it, but I felt at the time that...well, when they got in touch with me, I hadn't talked with anybody else about doing anything else, and I thought that maybe I would, but also, the firm had made its adjustment to my not being here.

The clients that I had were happy with the lawyers in the firm with whom they were working and for me to come back and take those or to try to take those clients back and so forth would have been a little bit sticky, and I could see the possibility of there being some other elements of stickiness to coming back in after...although it was only something less than two years, nevertheless, changes had been made, and the firm was operating very well without me. I decided that I would wait before I made that decision and then eventually, as you know, I made a decision to go elsewhere, so it wasn't until that stint was done that I came back to the firm.

*Mr. Lane:*

When did you come back? Do you recall?

*Justice Lindemer:*

Yes. Instead of coming back to the firm in 1976, Al Aymond, who was Chairman of the Board of Consumers Power Company, had come to see me at my home in Stockbridge, and we talked about my going there. The General Counsel at that time was James B. Falahee, Jim Falahee. Al was very high on Jim Falahee, and I think had in mind moving him up in the management of Consumers Power Company which, of course, is what happened to Jim.

He later on became president of it and so forth, so he was moved up, and I went in as General Counsel at Consumers. I stayed there until my sixty-fifth birthday which was in August, 1986, and I retired from Consumers effective September 1, 1986, but they didn't have my successor on board, so at Bill McCormick's request - he was the CEO at Consumers, and at his request, I stayed as a consultant until Tony Smith was able to come aboard which was in late 1986. In fact, I think I really didn't start with the firm here until November, 1986, so I've been back almost four years now.

*Mr. Lane:*

I wanted to point out what I'm doing here so you'll know. This is to index the tape, little tiny notes to tell people that are going to look at this.

*Justice Lindemer:*

It doesn't bother me. Go right ahead. Well, let's see. Go back to 1976.

*Mr. Lane:*

1975?

*Justice Lindemer:*

1975, right, thank you. I had in the practice of law, had done some litigation in the trial courts. I had also handled appeals. I had handled matters in the Michigan Supreme Court, so I was familiar with the Court a bit. A couple of members of the Court, I guess, had heard that mine was one of the names under consideration.

*Mr. Lane:*

Prior to the announcement?

*Justice Lindemer:*

Prior to the announcement, and they didn't hear it from me, and in fact, I don't know where they heard it from. They never indicated, and I never asked, but I remember Chuck Levin was one, and he and I met for dinner in Mason, Michigan one night, and...at his request, and we talked about it, and he told me of the various aspects of it that appealed to him and so forth and urged that if I had a chance to do it, that I do it. I met Ted Souris on the highway one day, and he'd heard about it. I didn't know that he'd heard about it, but he heard about it, and he indicated that he thought it might be something that I would enjoy doing although he had voluntarily left.

*Mr. Lane:*

He had served when...from 1960 to 1967 or somewhere in there?

*Justice Lindemer:*

I can't tell you the years. I would suspect...I would have thought it was later than that, Roger, but I don't have in my mind of the years that Souris served on the Court. I mentioned those just by way of example. I don't recall any member of the Court with a Republican background, and that would have been Mary Coleman and John Fitzgerald...neither of them spoke to me about it that I can recall, and maybe they didn't know what was going on or what possibly was going on.

*Mr. Lane:*

Have you ever seen Levin in Mason since that night?

*Justice Lindemer:*

No. I have not seen Levin in Mason although subsequent to that night, I saw the entire Court in Stockbridge, believe it or not. We had dinner at my home one night. The members of the Court and their wives, and it was during a period of time that the heavy cloud hung over John Swainson, and he wasn't coming into court. He was operating out of his home. He had not retired from the Court. He was still a justice, but he just wasn't around.

*Mr. Lane:*

Would you like to face that whole situation kind of head on? I was going to ask you what the proper time...there were 3:2 decisions, weren't there, at times?

*Justice Lindemer:*

Yes.

*Mr. Lane:*

And there was a Court that had...that wasn't hitting on all sixteen cylinders for obvious reasons.

*Justice Lindemer:*

Or even all eight cylinders.

*Mr. Lane:*

Was there...did this damage the Court or the function of the Court?

*Justice Lindemer:*

Oh, it had to.

*Mr. Lane:*

Was there any remedy for that other than what happened?

*Justice Lindemer:*

I don't have any alternative to suggest for what happened given the various facts that became subsequently known. I don't know what else could have been done. I was so new on the Court. I had no experience to compare the Court during this relatively brief period of time with what had

transpired before. I do know that when he left the Court and Jim Ryan came on that the operation smoothed out and so forth which is only because of the difficulty of that situation. The Court hired counsel...

*Mr. Lane:*

Now, excuse me, Justice Lindemer. Let's pin it down. Now, the resignation of John Swainson from the Court occurred...was it in November, 1976?

*Justice Lindemer:*

1975.

*Mr. Lane:*

I mean 1975...quite late in the year.

*Justice Lindemer:*

It was quite late in the year, yes. My recollection is that it was November, but I can't be certain.

*Mr. Lane:*

And Justice Ryan would have joined the Court at some...

*Justice Lindemer:*

Sometime subsequent to that. It seems to me that it was practically into 1976 before he came on the Court again. I haven't looked up any of these dates, and I don't recall. You've got it right there, Roger.

*Mr. Lane:*

So for a period starting with the death of Justice Thomas Kavanagh...

*Justice Lindemer:*

Thomas Matthew Kavanagh, yes.

*Mr. Lane:*

Thomas Matthew, and that would have been in very early part of 1975. I cannot spot it here instantly, but it would have been in February, March or April.

*Justice Lindemer:*

Yes.

*Mr. Lane:*

And so for a better part of a year, until Justice Ryan, appointed December 2, 1975...I suppose he probably was seated at some time subsequent to that?



*Justice Lindemer:*

Yes, see he had been on the bench, so he could have moved almost immediately after appointment right into the Court. He didn't have to wind down a practice. He'd been a Circuit Court Judge in Wayne County, and he moved from there directly to the Court.

*Mr. Lane:*

So there was quite a long period of time when the Court had...

*Justice Lindemer:*

Well, I think prior to my appointment or prior to my taking office in June, probably Swainson had been more active on the Court, but I know, and the only thing I know is that after I was on the Court, Swainson's participation was very low for the period of time until he resigned, and, as you say, that's November, so from early June through November, there was very little participation by Justice Swainson on the Court, and it was his...his travails were a matter of grave concern to the Court as a body and of course, to the individual justices.

*Mr. Lane:*

That was a most unhappy episode in the history of the..

*Justice Lindemer:*

Well, you were there then.

*Mr. Lane:*

I came...I was in Michigan then.

*Justice Lindemer:*

But you came after that to work for Thomas Giles.

*Mr. Lane:*

Yes, I came in March, the first of March of 1976.

*Justice Lindemer:*

1976, okay, so that preceded you.

*Mr. Lane:*

But, of course, it overhung the entire state agenda, you might say, because of the conspicuousness of the office and...

*Justice Lindemer:*

But you see, Alice Swainson, Justice Swainson's wife, and my wife, Becky, were members of the same art class in Chelsea, Michigan, and knew each other there, so in the early fall of 1975, when we hosted the Court, we invited the Swainsons to come, and didn't know whether they would or not, but they decided to, and we just had a social evening, a chance to get to know each other and spouses better and so forth.

*Mr. Lane:*

That was prior to your appointment?

*Justice Lindemer:*

Oh, no. No, no. It was the fall of 1975.

*Mr. Lane:*

I see, I get it.

*Justice Lindemer:*

No, I was on the Court at that time. So they came...

*Mr. Lane:*

What were some of the evidences of the effects of this? Were cases backed up? Were there cases where there were six votes maybe, and the Court was evenly divided? Were there cases that because of the uncertainty were informally postponed or put off hoping that the Court would have a full complement in a few months? Do you remember any of the details?

*Justice Lindemer:*

I don't recall, other than the fact that there were fewer of us to apportion the cases among, but I don't recall that there was any specific delay in considering matters unless, of course, John Swainson was involved.

If it was an opinion of his, and so forth. My recollection is a little bit weak on this, Roger, but I think that to the extent that he had been assigned matters and had participated in matters before, that those were largely concluded in this period of time, and he was not assigned, during this period of time, at least it is my recollection, he was not assigned anything further to do.

Of course, when I was first there at the Court conferences, I was on the sidelines for much of it because the conferences were considering matters that had taken place, cases that had been heard by the Court and opinions that had been circulated involving cases on which I had not been sitting and about which I had no knowledge.

I recall specifically John Swainson coming to the Court for some of these conferences. I don't recall that he sat on the bench to hear cases, but I think to the extent that he had matters on which he had worked, and those matters were the subject of discussion in conference, that he came to participate in those until, of course, his time that he resigned.

*Mr. Lane:*

And would he participate actively in the sense that he would make recommendations or suggest changes in draft opinions and that sort of thing?

*Justice Lindemer:*

I don't have any recollection of the extent of his participation in those conferences which indicates to me that there was nothing of particular note, either one way or the other.

*Mr. Lane:*

This period that we're talking about was a period during which he was under investigation or had he been...

*Justice Lindemer:*

He had not been indicted. He had not been indicted. My recollection...well, I really ought to check.

*Mr. Lane:*

Well, let's see. Here, I can pull out the date of his resignation. Let's see...Justice Ryan succeeded him, didn't he? He was appointed December 2nd, so it would have had to have been before that. This summary that I've gotten out of the Michigan Manual here is not too clear.

*Justice Lindemer:*

It isn't?

*Mr. Lane:*

Well, it has what are considered to be the...in frail condition there...

*Justice Lindemer:*

Yes.

*Mr. Lane:*

Now, that's the footnotes, and here are the periods of service.

*Justice Lindemer:*

Okay.

*Mr. Lane:*

I'm going to make a guess that it was November when he resigned, and I think if I'm wrong, it would only be by a very little bit.

*Justice Lindemer:*

Oh, yes. It just says...it shows the year of his resignation was 1975. Swainson served on the Court from 1971 to 1975, and it just says "resigned". It doesn't say the date of the resignation. My recollection is that it was in late October or November, and because there was not a long period of time after his resignation before Jim Ryan was appointed to fill that vacancy.

*Mr. Lane:*

Jim Ryan was kind of an odds-on choice at that particular moment, was he not?

*Justice Lindemer:*  
Yes, I think he was.

*Mr. Lane:*  
Well now, when you...if you think it's appropriate way to go...what were your recollections of your reception on the Court in the sense of the individual treatment that you received, and how you clutched into this problem where the court was short-handed? Did they pile you up a little extra with work?

*Justice Lindemer:*  
I have nothing to compare it with. I didn't know whether we had extra piled on us or not. I just know that I was...as soon as I got on and sat and started hearing these cases, I was assigned the same as the other members of the Court who were there.

The thing that I remember most...Giles Kavanagh...of course, you know him well...Thomas Giles Kavanagh was Chief Justice, and one of the most gracious people in the world, and when he called me over and we started talking, I think almost immediately, in spite of our partisan political differences which frankly, were not matters of concern to either one of us, but he was very friendly and helpful. Every member of that Court was.

I did not feel, except very briefly...I think Justice Williams may have been a little bit cool to my appointment at the beginning but very frankly, I think that melted away. It wasn't that we didn't have our differences, and we did, and I had my differences with Chief Justice Kavanagh, but those were differences based on our philosophy of what the law was and what the law ought to be, and you know, the differences were really on a high level. We didn't have personality conflicts in my recollection.

*Mr. Lane:*  
In philosophical orientation...let's call it that...to split basically...I don't mean to put words into your tape here, but so that it can be understood, because I want to ask you about the differences between this period and some other experiences that the Court had...was once you were set on the Court, there was yourself, Justice Ryan...

*Justice Lindemer:*  
No, he wasn't on yet. Myself, Justice Fitzgerald and Justice Coleman sort of shared a philosophy. We had differences between ourselves, too, but basically the three of us would look at an approach to a legal problem in much the same manner and on the other side, basically Justice Thomas Giles Kavanagh, Justice Williams, Justice Swainson and Justice Levin were...looked at things a little bit differently.

Although, you know, if you did it just numerically, probably the number of times in which we all agreed or at least, the agreement broke down this philosophical division, if you can call it that, were much, much more frequent than the times in which we split into those two groups, and

when we did split into those groups, there was no bitterness or rancor or...I have heard stories about the table pounding times and Justices not speaking to each other and so forth in the past.

That did not happen while I was there at all. The differences that we had were differences relegated to the work that we were doing. They were not personality differences. I think we all had a pretty high level of mutual respect. I remember telling Giles that I thought he was a [expletive] of a guy if he could just get his head screwed on right.

*Mr. Lane:*

And he never did.

*Justice Lindemer:*

And you know, and he laughed, and he'd say the same thing to me. We had some things...well, to highlight it, I remember we were arguing about an issue, and the issue was whether or not the Court should consider what some of its members regarded to be an error in the trial when the basis of that error had not been preserved for appeal.

They found something that one of the lawyers had done that they thought that lawyer shouldn't have done, but the lawyer on the other side didn't object to it, and I took the position that if the lawyer on the other side hadn't objected to it, and the Court had not made any exception on it, that the matter was not preserved, that we shouldn't try to look into it.

*Mr. Lane:*

This was an orthodox position at that time, was it not?

*Justice Lindemer:*

I don't know whether it was orthodox or not because it was a position, and I remember Soapy Williams was the championing the change that we ought to consider this thing, and we ought to reverse...this was a criminal matter, and we ought to reverse the conviction because this error had taken place in the trial.

I remember the discussion on that thing because I felt for the first time that I was getting through to Soapy on something. I said, "You know, in the course of a trial, loads of things happen. You don't want to object to everything. Sometimes, as a tactic, you won't object because you anticipate that what is going to happen in the response to which you might otherwise have objected is going to help your cause".

I said, If you give the trial attorney the chance to withhold his objection so that he runs...he gets the chance of getting that bonus in the trial that he thinks the answer will bring and then, in spite of the fact that he hasn't objected, you later on say that that question should not have been asked or that answer should not have been given or whatever you say that you indicates that you find an error there, you're giving the guy two shots at it.

He succeeds the first time, or he doesn't succeed the first time, but he runs that risk because he wants to get that answer in there even though it is objectionable. Now, you find that it is objectionable, but he didn't object to it, so you're going to reverse the thing anyway". I said,

"That gives him a 'no lose' situation", and I said, That is not, in my judgement, the way the thing ought to be done".

*Mr. Lane:*

Did you win the argument?

*Justice Lindemer:*

Um?

*Mr. Lane:*

I'll bet not.

*Justice Lindemer:*

I'm not sure that I won it in that case, but I remember Soapy came down to my office subsequent to that discussion and brought it up again, and we discussed it further at some length. I think really he had a better idea of what I was saying after we discussed it the second time, probably because I wasn't sufficiently articulate the first time, and I'm not at all certain that it didn't have, in the long term, some effect on his thinking. I don't know whether it did or not.

*Mr. Lane:*

I heard something happen here.

*Justice Lindemer:*

That may have been my shoe.

*Mr. Lane:*

I'm nervous about the time here. Maybe I ought to stop it and turn it over anyway rather than risk...I want to pursue this a little bit further if you don't mind

(End of side 1, tape 1)

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**Topic 2: Justice Lindemer continues talking about differences among the Justices, the importance of face-to-face communication in collegial actions, and the geographical fracturing of the court at the time of his interview. He discusses the case of People vs. Cooper concerning double jeopardy, a case on tax law (his first case on the Supreme Court), and relations among the Justices after the 1974 elections**

*Justice Lindemer:*

The light's on.

*Mr. Lane:*

Is it? Okay. That's what we want. I was going to suggest - do you think what was illustrated there was the familiar argument that an appellate court judge should have a good dose of trial experience before taking the Appellate Bench, and in this case, you did have a good dose of such experience, and I think this was something that Governor Williams, Justice Williams did not have. He never did do much private practice, did he? Probably...maybe, I don't know about his trial experience. He might not have had any at all.

*Justice Lindemer:*

Well, I think he did have some trial experience as an Assistant Attorney General, but I never got the idea that it was an extensive trial experience. Well, I think it helps.

I think an ideal court would be a court which contained an academician in the law, a recent practitioner in the law as well as people with judicial experience at lower courts, except for the lowest, of course, then you've got to start with people just from the practitioner ranks, because I think all of those backgrounds lead one to have a different type of contribution that that person can make to the court, to the deliberations of everybody, which brings me to another aspect of the court life which always troubled me, Roger. It still does, and will, and I suspect it will never be changed...historically, the Supreme Court which was based in Lansing was housed in Lansing, and the Justices all lived here so that every day, they saw each other. Every day, they had a chance to exchange ideas face to face. Every day, they had a chance to have lunch together, to explore each other's thinking processes and so forth.

*Mr. Lane:*

As you mentioned in the case of Justice Williams walking down to your office...

*Justice Lindemer:*

Yes, and that was one of the few days that he had some extra time and was in Lansing, because his office was in Detroit. Now, we have Justices in Detroit, we have one Justice only, I think, in Lansing, Justices in Traverse City, and very frankly, the only time that they get together is for official court functions in Lansing or Detroit.

*Mr. Lane:*

How many days...

*Justice Lindemer:*

And that's wrong.

*Mr. Lane:*

How many days or months would you suppose the Court is together in the sense that you're talking about now?

*Justice Lindemer:*

Oh, gracious. What did we have? We had about four days of hearings a month and two or three days of conferences a month and that's it, you know, seven...let's say that that has increased. Suppose that there is a day a week now of conference, and I don't believe that's the case.

*Mr. Lane:*

So you're talking about maybe six days out of 20 or seven out of 20 working days in the month that the court is together.

*Justice Lindemer:*

Yes, and other than that...of course, you have telephone contact, but it isn't the same, and telephone contact is generally one-on-one. There were many occasions, many occasions, and I discussed this, incidently, with Thomas Giles Kavanagh. I said, "As Chief Justice, you ought to move to Lansing", and I discussed it with Jim Ryan, and both of them indicated that they thought there was some merit in the suggestion and it was something that they were going to give serious thought to and neither one of them ever did it, but I guess the guy that broke the pattern that had existed previously was Gene Black. He didn't like to travel from Port Huron over to Lansing, and he didn't want to move to Lansing. Well, you know, I frankly don't have a heck of a lot of sympathy for that point of view.

I think that if you're going to serve on the Court as a Justice of the Court, if it requires you to live in Lansing, you ought to live in Lansing. I can't imagine being Attorney General of the State...well, I guess I can imagine being Attorney General but I can't imagine doing things that involve collegial action.

*Mr. Lane:*

Justice Lindemer, is it not true that the constitution requires the Supreme Court to sit in Lansing at the seat of government, I think is the language?

*Justice Lindemer:*

Yes, that's the language.

*Mr. Lane:*

Do you recall, and I think this would have been before your service on the Court, that on one occasion, the legislature tried to withhold private cars from the members of the Court, and on another occasion, tried to prevent the expenditure of funds for the rental of offices outside of Lansing. Do you recall those events?

*Justice Lindemer:*

I do not recall those events, Roger. That doesn't surprise me, but I don't recall.

*Mr. Lane:*

Well, this happened in the 1960's. I can't recite you chapter and verse, but I have a vivid recall of



this because what you have said just in the last several minutes was a point that was very strongly made by at least a small group of the influential legislatures.

I think of Traxler who was Chairman of Judiciary, Holbrook could have been with him although I'm not sure of that. Gar Lane, he was kind of hard-headed on the subject, and what happened was Kelly, our Attorney General, determined that the legislature had exceeded its authority, and once the Court was appropriated funds, it was entirely within the discretion of the Court how those funds those be expended or something like that. You don't recall that?

*Justice Lindemer:*

I don't recall that. I might have not been paying attention to the Court that closely at that time.

*Mr. Lane:*

But this is what you're talking about?

*Justice Lindemer:*

Yes.

*Mr. Lane:*

Part of the reason, the stated reasons for these things was that these were the instrumentalities of fractioning the Court and allowing and supporting this pattern of court conduct that you referred to a little bit ago.

*Justice Lindemer:*

Well, I probably lost the vote of every justice of the Court except Mike Kavanagh, and I never had his at the start on anything that I've been in court on, so, you know....I firmly believe that, and was never able to convince anybody that it ought to be done.

To me, it would have been very much better if there had been considerably more time and the run of the mine stuff that judges of that court do between formal court sessions could be done...well, I know that I conferred with John Fitzgerald and with Mary Coleman, with much more frequency, and I guess I did with Giles Kavanagh, too, because he was in Lansing a lot more than the others. He felt that his duties as Chief Justice kept him here and when he'd come in for something else, we'd frequently have something to talk about, but you're in the midst of looking at a case and something strikes you, and you'd like very much to have, in addition to your law clerks to bounce the thing around with, to have another justice to talk it over with, and maybe two or three so that you wouldn't get just one opinion but you'd get a couple of different opinions, and I think it would be more constructive, and I frankly think it would improve the speed of the decision-making process, but we don't have it.

*Mr. Lane:*

Do you see any relevance with the line of thought that you have been articulating, the Court...I'll call it fractionated geographically much of the time...between that and the fact that when you

came to the Court, there were four Commissioners. Now, there are sixteen Commissioners. Then, the staff including secretaries and law clerks probably...let's say if there were seven members of the Court, there might have been seventeen or eighteen and now, I suspect, but I don't really know, but let's say there are thirty. Is there any connection, or would you have any observations to make about that?

*Justice Lindemer:*

I don't know whether there is any connection. I know that the work of the Court, the number of cases in which appeal is sought, has increased geometrically, I guess, but I know there was a period of time in which I had one secretary and one clerk. Now, there was also a period of time in which I had one secretary and two clerks.

As I understand it now, every Justice has a secretary and three clerks which all goes towards speeding things up and so forth, but...another thing...I remember when I went in, I was...I didn't have anybody in mind to serve as clerk, and Thomas Matthew Kavanagh had a couple clerks. He'd been Chief Justice, but the previous January, Thomas Giles Kavanagh had been selected as Chief Justice.

One of my predecessor's clerks was Bob Kehres, and I checked with the other justices, and they said that he was a thoughtful, constructive, young man and did his work well, and so forth, and I thought that...I knew his father in the legislature. I knew he came from a Democratic Party background and I thought probably as clerk to Thomas Matthew Kavanagh, he would have a different philosophy than mine, and I thought that would be a good mix, that it would help me in challenging my own predilections to have someone like this on my inner staff, and the only thing I asked of him...I said, "I don't want you to change your philosophy or anything else, but I do insist upon loyalty". I said, "What we do in this office, I want you to give me the same degree of loyalty that you gave Thomas Matthew Kavanagh, and if you think that you can do that, and if you will tell me that you will do that, then I would like to have you as one of my clerks, but if you have any doubt about it, now is the time to fess up", and he said, "No, I can do that". And he did, as far as I know. He was just fine.

He and my clerks always served as a sounding board. I would come back from a court session, and they'd say, "Well, what do you think of such and such a case?", and I would give my preliminary indication, "Well, I think this ought to be done or that ought to be done", and once in a while, they'd say, "Yeah, that's the way it looks to us", and once in a while, they'd say, "Oh, you can't do that, judge. You can't do that", and I'd say, "Okay, maybe I can't, but you guys figure out the best argument you can why I shouldn't and we'll tackle it in a couple days", and they reacted as though it were a game. They ganged up on me. Once in a while, they developed a crack in my thought processes. Every time I ended up agreeing with them, I said, "You're just selling me a bill of goods. I'm losing my mind". But it wasn't that. It was a more thorough ventilation of pros and cons of a given position, and I always welcomed being challenged. Then one day in one of our conferences, I remember Soapy telling me how he selected his law clerks, and the first requirement was that they be philosophically in tune with him, so he had a different approach. He felt that was more helpful to him. I felt to have somebody philosophically in tune to me...I wouldn't have minded if one of my clerks had been and every now and then, one was,

but it didn't bother me if they weren't, and I welcomed it as a challenging to my own thought process.

*Mr. Lane:*

That's very interesting. I think that given the idea of what we're trying to do here is to leave something for the scholars and the students of the judiciary to ruminate about and maybe to be instructed about in the future. I think this is what we're supposed to be doing or what I conceived to be me...

*Justice Lindemer:*

Well, if we've done something right, hurrah!

*Mr. Lane:*

Let me tell you something that I had thought to bring up. You kind of blocked out the whole subject matter, but I was going to ask you, after having looked over this sheet...now, here is the printout through the West Law Retrieval System of the titles of all the cases that you wrote during your service on the court. At least, that's what the machine tells us, and then in a separate list are all those where you dissented, and you'll notice if you look to the bottom number that there are 22 cases that where you were the author of the opinion.

You're shown in the reports, Lindemer, J, and then the opinion of the court follows, and there are 22 where you are recorded as dissenting, either writing a dissent or concurring in a dissent. Now, I talked not so long ago to Justice, former Justice Voelker who served in...let's call it a different era. He served in the 50's, late 1950's. When I did the same thing with respect to his service, it came out 84 to 14.

*Justice Lindemer:*

84 majority and 14 dissent? What did you say mine was - 22 and 22?

*Mr. Lane:*

Right in front of you there, 22 and 22, but I asked him about that.

*Justice Lindemer:*

22 and 23.

*Mr. Lane:*

I beg your pardon.

*Justice Lindemer:*

Actually, I had one more dissent than...

*Mr. Lane:*

Well, the first time that I brought this up with anybody was with him, and I said, "Isn't this pretty

unusual, given the fact of the division on the court then?", Now, if you'll recall, he came on the court at a time when he was hailed as tilting the court, 5:3 to the liberal or the Democratic philosophy as to how it had been before. He succeeded Justice Boyles, and I said, "How is it, when the popular wisdom was that this was a sharply divided court philosophically, that here is what the statistics show?". He said, "Well, I really don't know. I think we tried to be civil to one another and we were reluctant to disagree or to show acrimony", and he mentioned a few instances where he...one of them was the famous nudity case...remember? Well, that was one of the cases much discussed that he wrote, and he dissented without going into the mechanics...it was recorded in the reports as a dissent but had the majority vote. That was an idiosyncrasy of how these things were reported.

Now, he dissented in this case from Dethmers who was the Chief Justice. These two men were classmates, he told me, in law school, and he said that he was a little reluctant to write as vigorously as he did in this case, and he wrote what some people describe, I think erroneously, as an outspoken championing of a certain kind of nudity in a camp setting off in the wilderness, a social kind of nudity, and he was a little...I'm not saying apologetic, but he was very much aware that he was going against the Chief Justice. He didn't want to belittle or ridicule the arguments on the other side, and I thought...I don't know whether he had it right or not, but this was a nice thing to be able to say that "if I can't agree, I'll write concur in result or I dissent, and not bother too much about it".

I don't know whether he had it right or not. For one thing, and this may be more of an explanation, in those days, you didn't have copying machines. You didn't have a lot of Commissioners. You didn't have a bunch of law clerks. You didn't have secretaries that could turn out copies in a zillion words a minute through the modern marvels of communication devices and all that. What...does this suggest anything worth talking about to you on the Court? Now, obviously, this statistical idea of 22 - 23 or whatever it is...this is a statistic. You've already said that you valued the civility that you experienced on the court, and if I recall...you haven't talked about collegiality, but I think that's another way to talk about it.

*Justice Lindemer:*

Oh, yes. It was a collegial group. We...I think we enjoyed each other, and enjoyed exchanging differing opinions and so forth.

*Mr. Lane:*

During your service on the Court, was is perhaps excessively preoccupied with things like the guilty plea cases, procedural matters having to do with criminal trials, Worker's Comp. cases that somehow put into the basket a lot more things that had an inherent philosophical division in them that was normally the diet of the Court?

*Justice Lindemer:*

I don't think the period of time that I was there was outstanding for anything of that nature. I remember one of the cases that I wrote that gave me the most trouble was People against Cooper.

*Mr. Lane:*

I was going to ask you about that.

*Justice Lindemer:*

Cooper had been...had walked into a bank in Battle Creek, and it happened to be the bank in the building of which Mary Coleman had her Battle Creek office, and he threatened them with a bomb.

*Mr. Lane:*

Referring to People vs. Cooper, correct?

*Justice Lindemer:*

Yes, People vs. Cooper...that's...

*Mr. Lane:*

You wrote that one, didn't you?

*Justice Lindemer:*

Yes. 398Mich458. Yes, I did write it, and there was no question but that he had done this. He had raised in his trial in Federal Court for a violation of the Federal Criminal Statutes...

*Mr. Lane:*

Was it bank robbery statutes?

*Justice Lindemer:*

Yes. He had raised the defense of insanity, mental incompetence and insanity and in essence, that he lacked the will to commit, and my understanding is that the Federal case was tried very poorly by the prosecution. In any event, he was acquitted. He then was brought to trial under a State statute that was much the same type of thing, and was convicted. The question that he raised was one of double jeopardy.

There was a real argument and some statutory basis for holding that as between the Federal and State approach to this, there was not double jeopardy, and unless the guy was mentally incompetent, and incidentally, he argued his own case before the Court, and it was a case, Roger...this is a personal note...my father happened to be visiting us from Syracuse, New York at the time that this case was argued, and I told him that I thought he might enjoy that case because it was a case that was causing me some trouble, and he was in the courtroom and listened to it, and did enjoy it...this guy argued his own case...

*Mr. Lane:*

Cooper...very well, too.

*Justice Lindemer:*

Very well, very well. He had had nothing to do for the year or two because he lost his job as an English teacher. He was an English teacher, I think, at a high school or maybe a junior college...I don't recall where, but he had been an English teacher. He was an educated man. His thought

processes were good, and so forth. He did a very good job, and the case was assigned to me. Now, I know the guy did the act. There wasn't any question of that.

*Mr. Lane:*

Did he not...was it not a spectacular...this was not a garden variety bank robbery. Didn't he have some dynamite strapped to his belt or something like that?

*Justice Lindemer:*

I don't recall whether it was that or whether he just had a bomb in a suitcase or something. And, Mary Coleman said to me, "Oh, dear me. The people with whom I live aren't going to understand if this man walks free". So we had to wrestle with this case, and I finally was convinced that the double jeopardy claim was a valid claim and that we had to reverse the conviction, and it was a tough one for me for all the reason that I've mentioned. Mary Coleman finally concurred in that at the end, but that case...I remember very well.

*Mr. Lane:*

Well, you carried the day. Didn't the whole court come along with you?

*Justice Lindemer:*

Yes, we did. We finally all...I believe it was unanimous. My recollection is that it was unanimous.

*Mr. Lane:*

This happened, I think, just before I got there, and it was a celebrated case as I heard about it because of the way this fellow handled himself. Usually...is it not true that when you have somebody arguing...what is the old aphorism..."only a fool would hire himself to defend himself"?

*Justice Lindemer:*

"The lawyer who pleads his own case has a fool for a client."

*Mr. Lane:*

Yes, that's it.

*Justice Lindemer:*

This guy avoided that trap. He wasn't a lawyer. He had spent and where he got whatever help he got, but he made an excellent presentation and raised the issues very well, and those were the issues that determined it. Reading in preparation for the hearing of that case, reading what we had before us, I had temporarily concluded "There ain't no way this guy is going to walk free", you know, and it was a case in which...

*Mr. Lane:*

Was he a personally attractive man?

*Justice Lindemer:*

Nothing particularly attractive...he was...he, you know, heck...he came into court and he was dressed well. He spoke well. He looked decent. You know, I guess he was a personally attractive guy, and didn't have a beard. The record ought to show that you have one so that that comment will be understood.

*Mr. Lane:*

Marx...was there any significance in that name? Is this Carl Marx that gave him his first name? Marx Cooper, wasn't that it?

*Justice Lindemer:*

Was it Marx or Max? I think it was Max. I don't recall. I think it was Max.

*Mr. Lane:*

Maybe I'm mistaken in my recollection. I thought it was Marx. That's beside the point. That was one of the memorable cases, right?

*Justice Lindemer:*

Yes, I think so. It was a case that really taxed me.

*Mr. Lane:*

Were there another case or two during that time that really stand out in your memory? How about the...

*Justice Lindemer:*

I remember the very first case I had, Roger. We had been given our assignments, and I had my first assignment on a case that I had heard...don't even remember what it was. We got back to our offices, and the next day, Soapy called me from Detroit, and he said, "Larry, I picked up such and such a case, and it's a tax matter. The case that you were assigned (and he named it), is one that I've done some work on a companion case back a couple of years", and he said, "I'd like very much to have that case if you'd be willing to switch with me", and I said, "Well, I'd be glad to accommodate. What's the process? Do we have to go to the Chief Justice or what do we do about this?", and he said, "Oh, well we can...we can transfer cases if there's a reason. I think the reason would be that I have done a lot of the basic work on the questions that are involved in the case that was assigned to you, and I've already got it done".

*Mr. Lane:*

Judicial economy, shall we say.

*Justice Lindemer:*

Judicial economy or whatever. So I said, "Look, Soapy, if you work out the details of it, I don't have a problem with it, but I've got to tell you one thing. I don't like tax law, never did like tax law, don't practice tax law, and if you're giving me a tax case, that's going to make it difficult". That's the case he gave me, and I sweated over that "blankety-blank" thing and finally got it worked out, and I guess everybody was satisfied. My recollection is that the Court was unanimous on that, and...

*Mr. Lane:*

Looking back, do you regard this as sort of a little bit of hazing?

*Justice Lindemer:*

No, I did not regard this as hazing. No, no. I don't think Soapy would ever go for that. Incidentally, because I've mentioned him two or three times, I don't want you to get the impression, Roger, that...I think that he and I, by the time I left the Court, had a very good relationship.

I remember when Blair Moody was nominated by the Democrats to run against me, he came to see me, and he said, "Larry, I want you to know that Blair and I go back a long way. His father was a close friend of mine. I appointed him to fill a vacancy in the United States Senate". He said, "I've known him all his life. I've worked with him and for him in getting a judgeship, and he's asked me to head up his fund raising, and I'm going to do it." I said that I appreciated his telling me that, that I regretted that because I felt he would be efficient and effective in doing what he was setting out to do, but I said, "You know, I understand where you're coming from, and I appreciate your straight forwardness of coming in and telling me about it face to face". He said, "Well, that's the way I prefer to do business", and it was the way he preferred to do business.

*Mr. Lane:*

There really wasn't anything sneaky about G. Mennen Williams, was there?

*Justice Lindemer:*

No, no.

*Mr. Lane:*

You know. Excuse me...I don't want to...this is your tape, and if you say you've...I do, though, want to bring up the fact that was there not, specifically with regard to Moody candidacy two years earlier, there was some hard feelings, was there not, on the Court because of?

*Justice Lindemer:*

Yes. Moody ran against John Fitzgerald two years earlier, I think. Isn't that correct?

*Mr. Lane:*

Correct.

*Mr. Lane:*

And Fitzgerald beat him, and I'm sure Williams campaigned for Moody at that time, and I think that Fitzgerald felt more deeply about it and less understanding about it than I. I knew what Soapy's political leanings were and I knew his great adherence to the Democratic Party, and I knew that Blair Moody and he had had these ties and so forth, and frankly, it didn't come as a surprise to me. It came as a modest disappointment, but I couldn't have imagined that I would



have so impressed him with my judicial abilities in less than the two years that he would have said, "I'm going to stay out of this thing". I knew that he'd never back anybody who wasn't from the Democratic Party. He was very strict on his party allegiances, more so, I think, than some of the others, but he was up front about it.

*Mr. Lane:*

Did he overtly campaign for Moody?

*Justice Lindemer:*

Yes, he did. He did.

*Mr. Lane:*

Are there strictures in the canons about such things when you are a...?

*Justice Lindemer:*

I'm not aware that he ever did anything that would violate any of the canons or...but he didn't have to. I mean, he was a former governor, he was a justice of the Court. He certainly had the right to express his personal opinion on matters. I don't have any knowledge that he ever campaigned against me. I don't know...well, he might have said, for instance, to the UAW that he didn't think that my philosophy was consistent with their philosophy, what they'd like to see on the court, something like that, but I don't think he ever took off personally against me. I've never had any indication of that.

*Mr. Lane:*

I hadn't asked Justice Fitzgerald about this, and I'm going to speak to him again next week, but I think, or at least I was told that he was offended by the then Chief Justice Thomas Matthew Kavanagh opposing, for example, in a campaign setting, I guess perhaps for the literature, maybe of Blair Moody in 1974, and I think may have felt that this was not compatible with the collegiality requirement...

*Justice Lindemer:*

Well, Thomas Matthew Kavanagh was a different type of person that Soapy Williams was and much, much, and of course, I know this only by reputation, but after I got on the Court, I heard from people with both Republican and Democratic background, stories about Thomas Matthew Kavanagh which gave me insights into his character. I always regarded him before I was on the Court as a very political guy, and he was...I'll never forget.

I went to a meeting, a dinner that the Michigan Trial Lawyers Association had to pay a tribute to Thomas Matthew Kavanagh, and I went because I felt I had to go, that this was one of those things that I must do, and it was clearly apparent to me that the things that I'd heard about his very close allegiance with that group were absolutely true. I mean, they had their man as Chief Justice, and there was no question, and they didn't like me, and both of those things became...it was an unpleasant evening...both of those things became apparent to me.

*Mr. Lane:*

Does this lead you to comment or make any observation on the selection process, and the...

*Justice Lindemer:*

Roger, you don't have enough tapes to get me started on that process.

*Mr. Lane:*

Okay. Well, let's...would you care to address that subject in this context. If you would, I can...

*Justice Lindemer:*

Yeah, let me say that...

*Mr. Lane:*

If you would speak at some length, I think I will swap this tape.

*Justice Lindemer:*

Okay.

(End of side 2, tape 1)

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**Topic 3: Justice Lindemer discusses the judicial selection process, philosophical differences with Justice Williams in regard to judicial activism, and the functioning of the court system and the power of the courts. He then briefly talks about sentencing guidelines, the role of the court, and state judicial appointments**

*Justice Lindemer:*

Roger, on the topic of the selection of judges, first I've got to acknowledge that my feelings on this are discounted by those who disagree with me because they say, "Well, sure he feels that way because he was appointed to the Court and then couldn't get elected again", and in fact, in discussions, I've had that said to me, and so I know that that is out there.

But the fact of the matter is, on the basis of my experience anyway, the average voter or the multitude of voters in the state do not know who the candidates for judge or justice are, don't know how to make judgments, mistrust the lawyers who have a better handle on it, and the recommendations of those lawyers, and you have a major fall-off between the votes on the partisan races and the votes on the non-partisan judicial races.

You always have had, which indicates two things: 1) a lack of information and knowledge, and 2), a lack of high degree of interest. I think that governors would act responsibly in appointing justices to the Supreme Court and in appointing judges to the Court of Appeals. If we had some sort of a filtering mechanism, and I'd be perfectly willing to consider most anything that would have essential elements of fairness, bi-partisanship and a reflection on legal ability to the extent that you can get that.

It might very well be that a commission, a judicial appointment commission composed of members of the bar, appointed by the Bar Association, together with representatives of the media, and representatives of the public generally would be a commission that could evaluate from among anybody who wants to be considered for a judicial appointment. This commission could evaluate and then rate or return to the governor from, let's say, you have an opening on the Supreme Court, and you have twenty people who submit their names or for whom others submit their names for consideration, and say that they would...this screening group would give to the governor a list of three or four or five from whom the governor could appoint. The appointment would be for, let's say, one eight-year term with no more than one additional eight-year term.

I think you'd get responsible appointments, and I think that you would get...you might get better people to be interested in being considered for the appointments. It's a very tough thing today to get somebody to run, and look at the name identification. The name "Kavanaugh", except for Giles' defeat by the present Chief Justice Dorothy Comstock Riley, has been a name that has been magic on the Court, and I don't know...and Fitzgerald...it isn't just one party or the other.

*Mr. Lane:*

Would you care to relate your observations to what is going on or just has gone on in Washington where you had a choice made on an appointment basis with consent, that I think taxed a lot of people's sense of the process or...I don't know...what would you say about that?

*Justice Lindemer:*

Well, the thing about that...that's a lifetime appointment, and the constitution, the fathers have decided that that's the way that should be done, and I don't want to attack that. I don't prefer a process in which the governor would submit a name, for instance, to the Senate for ratification without this, what I call the filtering process. I think the filtering process is of much greater value than the input of the Senate, whether it be the United States Senate or the Michigan State Senate, very frankly, and I think a properly designed filtering process to keep the situation in which a political hack, and I was accused of being a political hack by some when I was appointed. I had had partisan Republican background. Everybody knew that. I was appointed by a Republican governor, and that was one of the terms that was used in an editorial greeting my appointment.

*Mr. Lane:*

Oh, was that right?

*Justice Lindemer:*

Yes.

*Mr. Lane:*

I don't recall.

*Justice Lindemer:*

Yes, and I think, and it may be immodest of me to say it, but I think that among my colleagues

on the Court, and the personnel who knew about the Court and so forth, that I destroyed that political hack charge. I don't think that that was thought to be a viable charge at the conclusion of my term, but I was not successful in being re-elected.

I remember...she is well-known for her outspoken comments...Martha Griffiths sat on the Board of Directors of Consumers Power Company when I was asked by Al Aymond to serve as General Counsel, and it was a matter that he had to take to the Board of Directors, and he asked...he presented my name and gave my qualifications and so forth, and it was mentioned that I'd been on the Court and had been defeated by Blair Moody, and one of the directors from outside the state and without much political knowledge of the state said, so I'm told by Al Aymond, "How come he was defeated for election to the court on which he'd been serving?", and Martha Griffiths piped up and said, "Because his name was Lindemer. If his name had been anything else, he probably would have been elected". So that put that thing to rest.

And Martha Griffiths, I am told, on that occasion, came to my defense, and said that I had established a reputation among those on the Court as someone that she would be delighted to see be General Counsel to Consumers, so, you know. I don't think the present process is a good one. I have great feelings. I frequently vote for judges who have a background in a Democratic Party. I have in the past, and I shall in the future, if I...because I'm in a position to have some knowledge about what they're like, you know, as people, as lawyers, as people who will serve as judges, so that is an advantage I have, but my God, there are not very many people who have the ability to make those judgments, and I just think that we've been very fortunate, and I think that a lot of people who have been elected and have not demonstrated prior to election a hell of a lot of aptitude for successful judicial work, have grown into it. I think we've been fortunate. We've had some bad ones, too, but that's neither here nor there. I suspect under any system, you're going to have errors made. I suspect even the best system will sometimes produce someone not really worthy of the appointment.

*Mr. Lane:*

But like you say in summary, though, is an appointment system with this filtration process that you described is much to be preferred over what we have now.

*Justice Lindemer:*

It seems so to me, and you know, the thing that bothered me most when I was campaigning for Judge, I remember specifically going to a meeting in Kalamazoo. I don't know, Rotary Club or somebody that would hear me...you know, people are not interested in listening to judges, and what do you tell them? The only thing I could say is that "I will work hard. I will try to be balanced in my approach, but I can't make you a promise about anything. If you have some secret agenda, sorry, buddy, I can't help you with it", because you have to make your decisions, when you make your decisions on the basis of a record that appears before you at that time, not on the political overlays that pertain to the particular issue involved, if there is an issue with political overlays. It's...you go into a group, and they want to hear "What can you do for me?". "I

can't do a [expletive] thing for you except try to be a good judge", and that doesn't have any sex appeal.

*Mr. Lane:*

Not in our system of politics where less than 1/2 the people vote.

*Justice Lindemer:*

I know.

*Mr. Lane:*

And it doesn't do much for the Democratic process, does it?

*Justice Lindemer:*

It doesn't seem to me that it does. Having people on the ballot that are ignored by what...1/4 to 1/2...maybe about 1/3 of the voters...if you have fewer than 50% of the people going to the polls and then of that number, you have about 1/3 who don't vote in judicial races because they don't know or don't care, you know, you've got a very small segment of the population making the decisions. I took my defeat with difficulty because I had tried and I enjoyed it, and I was prepared to end my legal career on the bench if the people were to elect me to do so.

*Mr. Lane:*

If you could have referendum on the Court, you'd be there today until dooms day because, you know, I know enough about the esteem in which you were held because I was there. I can contribute that much.

*Justice Lindemer:*

Yeah. I felt, I always felt...

*Mr. Lane:*

By Soapy and the rest...

*Justice Lindemer:*

Yeah. I always felt that I made friends, and gained respect from my colleagues on the Court. I felt that, but you know...that's the way things go.

*Mr. Lane:*

Let's stop it there.

(break in tape)

*Mr. Lane:*

This is Justice Lindemer continuing the tape that the forward part of this tape was done on

10/4/90 and this is continuing that discussion about his service on the Michigan Supreme Court. Justice Lindemer, how do we start this part of it?

*Justice Lindemer:*

Roger, you were...when we were talking last, you'd made a marginal notation somewhere about a philosophy that I had with respect to the Court letting the legislature set policy rather than the Court stepping in to set policy, and I remember that we had some philosophical differences on that up there, and I think the highlight of the difference was with Soapy. He really believed that there were things which he could see in the light of today's wisdom that mandated changes in what had been established precedent, and I generally felt that if those changes were to come, that they should come as a result of legislative action rather than action by the Court. I didn't think that it was our function to step into that and make those changes but he did. It was just an honest difference in philosophy.

*Mr. Lane:*

Would you go so far as to call his attitude judicial activism or...?

*Justice Lindemer:*

Yes, I think it was judicial activism, and I am or was a judicial conservative, and it isn't that we always disagreed on the outcome of the matter. Some of the things that he was trying to do I didn't think at all were evil or contrary to the interests of the public, but I felt that the Court shouldn't do it, that we should defer to the legislature.

*Mr. Lane:*

Did Shavers come during this period or Placek...comparative negligence was one of the...?

*Justice Lindemer:*

No, those came after, but that is the type of thing...that is the type of thing that Soapy did and did successfully, but those were active I had left the Court. But you know, a part of the consequence of that is that, for instance, the no-fault statutes were enacted during the period of time in which we had contributory negligence, and then...and the remedial action of the legislature took into consideration the fact that we had contributory negligence.

Then Soapy changes contributory negligence to comparative negligence and still leaves the no-fault in there as the no-fault had been devised to apply to contributory negligence, so that you really get differing results that the legislature could have foreseen when they did it, and that's the kind of thing that troubled me, but again, it was just a matter, not of right and wrong necessarily, but philosophy and the belief in what the Court should or should not do, and I felt reasonably strongly that the Court should resist doing the things that were not clearly within its mandate.

*Mr. Lane:*

Did you have the highway cases or some of them where the rule of...I think it was Reich...was tested; the idea that the legislature had said under certain accident conditions where the Highway Department, Transportation Department was a defendant...highway defect, that the aggrieved party, the person who presumably was going to sue, had very limited period of time...I think it

was 60 days to make the first move, and if the party did not do that, the right to go after the highway for defective bridge or whatever was surrendered.

*Justice Lindemer:*

In the Court of Claims, that would have been.

*Mr. Lane:*

I remember that case, but I can't remember whether this was in your time band, and the same principle came up later, and I can remember repeated dissents. Look, here's what the legislature said was the time for this kind of remedy to be sought. In its wisdom or lack of it, it is not for us to second-guess the legislature.

*Justice Lindemer:*

Yes, and that's basically the posture that I would take, but I can't remember, Roger, frankly, whether or not...because I have, since I left the Court, I have tried to follow the advance sheets, and I've done a reasonably good job of it, so that I'm aware of some of those things, some of those points, but I don't remember whether they happened when I was on the Court or whether they happened subsequent there to.

*Mr. Lane:*

Wait a minute...this one may be...maybe these don't ring a bell. Do they with you? Look at these things: 6, 7 and 8. Those were in the wake of the one that I specifically mentioned, and I think you dissented in each one of those.

*Justice Lindemer:*

Yes.

*Mr. Lane:*

That's what I was thinking of. They weren't very spectacular cases.

*Justice Lindemer:*

I don't have independent recollections. I see that I did dissent and basically, I dissented on the basis of the policy that I've stated that if changes were to be made in that, the legislature ought to make them.

*Mr. Lane:*

You served in the legislature, and you served in the judiciary.

*Justice Lindemer:*

And I served in the Executive Branch, too.

*Mr. Lane:*

That's right.

*Justice Lindemer:*

As a Regent of the University of Michigan.

*Mr. Lane:*

That's interesting. I just wondered if you wanted, if you felt deeply about this to expand your observations about the role of the legislature in determining policy and the mechanisms are provided when policy is being determined under our form of government. That is, you have the elected representative answerable every two years, or whatever it. You have a broad range of subject matter that's within the legislative compass. You have hearings at the committee level. You give a committee action the chance for, refinement of the policy, whatever it is. Then you have a review on the floor, then you have action by the plenary body, the House, the Senate, and then it goes back across. Now, the founding fathers, I thought...maybe this is what you had in mind.

*Justice Lindemer:*

Well, this is how to make policy, not three people in the *Manistee State Bank vs. McGowan*...

*Mr. Lane:*

...saying that was wrong.

*Justice Lindemer:*

Yes, that's exactly right. The legislature had the advantage of considering policy changes against the panoply of the entire factual situation, pertinent and not pertinent. The Court's review of these things should have been restricted to the matters presented by the opposing parties to the Court because only those matters to which opposing parties devoted their attention were really properly honed, it seems to me, for the Court to make a decision on them. And to use those as an excuse for a philosophical venture into policy...may have been parallel and may have been similar, but it isn't exactly the same. To the same that it wasn't the same was dangerous.

I don't know that I'm expressing it very well, but I did feel, always have, still do feel that it is not the proper function of a court, any court, to go beyond that which has been properly refined by the adversarial process in getting the questions to the court. That's...you're right. The legislature has the committee system. It has investigative powers. It can get into a hell of a lot of different aspects of all these problems much more fully than the Court can. I think that's where it should have been left. And moreover, by definition, the legislature is basically to represent the wishes of the people. The Courts, basically, are to resolve and to determine the resolution of differences between people, not to represent anybody. The courts don't represent anybody except that court's belief in what the body of law is. That's the only thing it represents.

*Mr. Lane:*

Do you remember, Justice Lindemer, the Indian fishing rights case? Does this ring any bells with you? That was the one where I think you dissented, and it had to do with...the trial was in LeBlanc.



*Justice Lindemer:*

People vs. LeBlanc...okay, it was a criminal case. Gill net fishing.

*Mr. Lane:*

Yes, that was it, and the question that this thing focused on was basically, hundred and some years back, was treaty rights, and my recollection was that you expressed yourself at that time with some conviction as to whether treaty rights in the setting of deciding such matters as the economic benefit of a tribe for, well...what?...hundreds of years, should be treated like a principle imbedded in stone. That is, who knows...I'm getting way off here.

*Justice Lindemer:*

You've had, perhaps you've had the advantage of some refreshing on that, and I haven't. I just don't recall what...I remember the title, because I knew an Indian named LeBlanc. It didn't happen to be the same one, but...so I do remember the title, but I don't recall the theories of that case.

*Mr. Lane:*

One of the situations that strikes me that is rather...not quite unique but comparatively so with respect to your service on the Court, is you had spent a lot of time before and after in the active aggressive practice of law, not slip and fall cases and that sort of thing, but you've been all over the lot as I understand it, and I just wondered if you had any thoughts about the function of the courts from the standpoint of the busy practitioner. This gets into such things as delay, backlog, introducing, as I think you mentioned earlier, the new issues that are not argued and a court comes up and says, "Well, here...we figured this thing out. Here's the answer that you didn't ask us for". I just wondered. You must have some convictions about the court's role in the...

*Justice Lindemer:*

Well, if a court...you have a couple of different things. The trial courts are the courts that ought to move with alacrity. They ought to get decisions made. I think that there are some very fine people, brilliant people, perhaps, serving on courts who lack one essential element that a judge in my opinion ought to have and that is the ability to make a decision, to get something decided...right or wrong, to get it decided.

I'm talking about the trial court level. If you make the assumption that these are basically honest people trying to do what they perceive to be the right thing to do, then I think society is materially benefitted if they get the decision made and get them out and move on to other things. Now, my belief is that most of the decisions that are made are correct. In those minority of situations in which a party feels aggrieved by the decision that is made, the appellate process is there. The appellate process allows for a little bit more thoughtful deliberation, perhaps, but almost by definition, that applies to a fewer number of cases except for criminal appeals and you and I both know, there are lots of criminal cases that aren't appealed, although the courts of record and the courts that are published, you think that all criminal cases are appealed because they so far outnumber the civil, but that isn't true.

So, I think that the trial courts should get decisions made and get them out. I don't know how you're going to do it. I have in mind a Federal judge in the Western District of Michigan whom I

knew well, a wonderful guy...bright, honest, upright, couldn't make a decision if it meant his life. I mean, it was just terrible, and held things up for two and three years until finally either the parties resolved the matter or else he was forced eventually to make a decision, and that is very bad stuff.

*Mr. Lane:*

Is there something amiss in the mechanics of bringing a case to trial that accounts for those many cases where you get to the courthouse steps after an agonizing preliminary over many months or a year and one-half, and on the morning the trial is to begin, the case is settled? What does that tell us about whether the system of...let's call it the justice system...is working or even the practice of law? Is there something amiss when this happens with the frequency that it seems to happen or is this about as good a way as anybody has ever figured out?

*Justice Lindemer:*

Well, I don't know, Roger. It's a better system than the lance and the mace, I guess. You know, we used to historically resolve some things on the field of combat, and the winner in the physical combat was the victor on the issues that were involved, and this is, I suspect, a helpful refinement on that. While it's not perfect, perhaps it's not perfect because the people involved aren't perfect, and you aren't going to do anything about that in your lifetime or mine. So, I think there are abuses of the process.

I think that unfortunately, there are lawyers whose financial interests are served by creating delays, by...make work projects for their clients, and I would hope that sometime, something would happen that that would be changed, but I don't know that it is going to, realistically.

*Mr. Lane:*

Have you paid any attention to the new creation, just coming into focus of the legislature that is called, I think, the Commission of the Courts in the 21st Century or something like that...a big large number of people being put on a commission? Do you see..what do you see coming out of something like that, or is this just...What's your opinion?

*Justice Lindemer:*

I don't know. I guess I'm a little bit cynical about commissions although, and I've served on some. I've served on some study commissions that I thought were helpful. I have served on other study commissions that I thought were a waste of time, but I have to say to you, in all honesty, that the results for the public good as between one group and the other isn't a great deal different. I really don't know that...I don't know what to expect. I don't expect much, but it is not an impossibility that something positive will come out of all of this, and I would certainly hope that that's the case.

*Mr. Lane:*

Is the Supreme Court of Michigan, in your judgement, derelict in not more aggressively exercising the powers it is given constitutionally that regulate the practice and procedure of law?

The Court Rules are a big body of procedure of law, aren't they? The Court has very extensive powers in that area that could arguably either speed things along or get things resolved more fairly or with less motion and cost. Do you have any thoughts about that?

*Justice Lindemer:*

Well, I don't know that there's anything particularly wrong with the way the Court is proceeding in its administration of the practice of law. Now, you can, over the course of time, you can always devise something that is an improvement on that which has gone before, that is, assuming that you don't have a dead society, and we don't, so there are chances to make improvements, and I think improvements are made frequently. I think in my lifetime as a lawyer, the amount of control over lawyers and the disciplining of lawyers has improved. I think it has improved rather markedly, and still, we have and we see it frequently, those occasions in which it fails because some of our brethren and sisters stray from the straight and narrow and commit offenses against clients, other lawyers and the courts and the public in general.

I think there are perhaps too many lawyers now. I think it is a litigious society. I think that in part, it stems from the desire on the part of some lawyers to achieve financial success, but I'm not sure that it is as grievous as sometimes I've heard it charged, and...

*Mr. Lane:*

Either during your time or shortly after the Court, the Court got into the matter of, in effect, reviewing sentences. I'm talking about the concept of sentencing guidelines which, as I recall, started in this state at any rate, with a commissioner of some initiative of the Supreme Court, and...

*Justice Lindemer:*

I think Blair Moody was, my successor was involved in that. It seems to me that he chaired a committee of the Court that was charged with the looking into sentencing guidelines, so that came after I was there.

*Mr. Lane:*

I just wondered if this was an example. Now, we talked briefly about Placek, the comparative negligence. The introduction of that is a great volume of activity within the court system. Let's put it that way. You don't have one guy's out and another guy's in as you do in contributory negligence, and so then you'd litigate..."Well, is the guy 30 or 40 or 10 or what?". In this, in sentencing guidelines, you get into another function of the Appellate courts that was not there before, and you tell the trial court people what to do within...you know, you put fences around what they can do. I just wondered if this was in accord with your thoughts about how the court system ought to conduct itself or whether it...well...

*Justice Lindemer:*

Well, I think the development of guidelines for sentencing by the lower courts is within the proper realm of influence that the Supreme Court ought to have. I guess that doesn't particularly trouble me.

*Mr. Lane:*

Penalties are fixed, of course, initially by the legislature.

*Justice Lindemer:*

That's right.

*Mr. Lane:*

Then it's up to a judge sitting there after hearing the evidence and all of that sort of thing conducted in trial to, within limits, within certain discretion, to fix a punishment that...the limits of it are set out for him in the statutes.

*Justice Lindemer:*

And to be able to justify what he or she does on the basis of the record before them, and that doesn't seem to me to be a particularly onerous or disagreeable aspect of it. I think that that doesn't violate any of my sensibilities.

*Mr. Lane:*

I can remember Justice Williams making a point not so long ago that the proliferation of law cases on litigation was a good,...oftentimes people address that general problem by saying the courts are suffocating, and everything is delayed...his attitude, as I recall it, was that this is good, the proliferation of litigation because it shows that more and more people are vindicating their rights in the courts. I just wondered if this...he had been sort of nibbling around the area...are the courts taking on too much of a volume of stuff that is causing them to lose sight of the central function that originally was the function?

*Justice Lindemer:*

Well, all I have to say about that is that I have difficulty sometimes understanding the logic and the reasoning that leads some courts under some circumstances to greatly enlarge the so-called rights of one person as against the rights of another, and I just...I am just not with it on some of those things. There are some that I think are logical extensions of things that have existed and that are constitutionally based. Maybe this goes to philosophy again. There are a great many, however, that I think are not. I get a little bit disgusted with some of the stuff that I see, but that may be just me.

*Mr. Lane:*

Let me ask a question that harks back to judicial selection with a twist. Suppose when you were approached to serve on the Michigan Supreme Court, the system had been such that you were like Judge Souter and had to submit yourself to the kind of examination that he has undergone before you could sit a first day on the court. Would this have chilled your inclination to serve? Or maybe I'm not...It sort of sounds loaded the way I say that. I'd just kind of...people would be interested in your opinion...

*Justice Lindemer:*

Well, the epitome of senatorial review of court appointments obviously was the Bork case. Souter didn't approach that in rancor and bitterness and nastiness and so forth, and you're talking about a lifetime appointment. Now, I don't know. I guess I would not be in favor of a lifetime appointment system on the state courts. I would think that people ought to be, if I could play God with it, I would appoint members of the Supreme Court for a term of eight years, but then have some review process, either a review by the electorate or some other process, a review by the legislative and executive branches. There are different things that could be done.

(End of side 1, tape 2)

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**Topic 4: Justice Lindemer continues to discuss judicial appointments. He then talks about his involvement with the Honey West (workers compensation) case and the decision in the case against District Judge Ryman. He concludes with his view of law practice at the time of his interview and the situation with Justice Swainson**

*Mr. Lane:*

Now we've got it going again.

*Justice Lindemer:*

Where were we?

*Mr. Lane:*

We were talking about appointments, and...

*Justice Lindemer:*

Oh, yes, the lifetime thing. I don't think that I would have minded a review by the judiciary committee and by the Senate of the State of Michigan. I don't think that would have chilled my...if I had been appointed under a circumstance in which I would have been able to serve for a few years and then had some objective review of my performance that would have allowed me to continue on unless I made, unless I was doing a lousy job, and so I don't think it would have been, would have disenchanted me.

*Mr. Lane:*

The interrogation is very searching. I don't know whether you got a chance to see some of that on...

*Justice Lindemer:*

I saw just excerpts of it.

*Mr. Lane:*

By the way, did we ever figure out Cooper's...was it Marx or Max or what?

*Justice Lindemer:*

I never looked that up. What's the citation on that?

*Mr. Lane:*

Let me see. That was People vs. Cooper and...I've got this written on so much...People vs. Cooper was 398-450.

*Justice Lindemer:*

I don't have that volume in here.

*Mr. Lane:*

I noticed that you were participating in some of the 3:2 decisions early on in your service, those decisions being caused by the disability of....

*Justice Lindemer:*

Swainson?

*Mr. Lane:*

Yes. Let me see, was there some other factor in the timing of it...no, I guess not, at that time. A little earlier, there was the TMK death, you know, and for a while, they were two people short really.

*Justice Lindemer:*

Well, but I replaced TMK.

*Mr. Lane:*

But there were a lot of cases in the pipeline that you could not...

*Justice Lindemer:*

Yes, but a lot of them I couldn't sit on, you see. If I wasn't there for all argument...now there were a couple...I believe there were a couple which, by agreement of the parties, I was allowed to participate in and what I did in those was review the audiotapes of the arguments. We had all of the paperwork, of course, in the courtroom, but the tapes of the oral arguments I was able to review. I'm not sure whether that happened more than once or twice. I just don't know. I don't recall, but it would not have happened without the agreement of the parties, but I remember there were a couple of cases in which I was not allowed to sit but I was in on the discussion of them, and I had pretty strong opinions on them, and I remember one was a Worker's Comp. case in which this woman...the question was whether or not under the statutes, she was the widow.

*Mr. Lane:*

That wasn't the Honey West case, was it?

*Justice Lindemer:*  
Yes, it was. It was.

*Mr. Lane:*  
You didn't get to vote on that, did you?

*Justice Lindemer:*  
No, I didn't. She was before the court two or three different times under different names. She must have been quite a woman because she was constantly living with somebody else and remarrying and so forth. She had a fantastic history of marital and extramarital relationships, and the result of the various Soapy Williams' opinions which were, in every instance, favorable to her, were in my mind, just absolutely ridiculous. I couldn't fathom. But I will say this, and I said just about exactly that to Soapy, you know, and we got laughing about it because...and Mary Coleman...I remember Mary Coleman wrote on the last case a dissent which I have a copy of. I just loved that dissent. I thought it was absolutely marvelous.

*Mr. Lane:*  
For a woman who had raised a family and been married to the same man for 40-odd years, it was wild...Honey West, as I recall, was at the time she received the Worker's Comp. award, was married to some fella in Texas and that she...

*Justice Lindemer:*  
I think that's the second or third case, Roger, that...the first case had been heard before I went on the Court but was under discussion by the Court when I went on the Court, and the final case involving her took place after I was off the Court, and involved a different set of men.

*Mr. Lane:*  
The one, West vs. Barton-Malow Construction Company and I was thinking...

*Justice Lindemer:*  
I think that was the last one.

*Mr. Lane:*  
The determination, as I recall, was that she was a dependent on the fellow that died within the meaning of the provision in the Worker's Comp. law that said little children and...

*Justice Lindemer:*  
Widowed children...yes...parents.

*Mr. Lane:*  
They should come in for consideration.

*Justice Lindemer:*

And what had happened...I may be getting these...but she was legally married to somebody else so that she couldn't be a wife, and that presented the smallest of remark that Justice Williams, but not one that he could overcome.

*Mr. Lane:*

It was overcome.

*Justice Lindemer:*

Yes, it was.

*Mr. Lane:*

Do you remember, shortly after you went on, it fell to you to write a decision upholding the removal of a district judge named...

*Justice Lindemer:*

Ryman.

*Mr. Lane:*

Ryman. Do you remember that? Was that a remarkable case in any respect? I don't remember the...

*Justice Lindemer:*

The remarkable thing about that case was that Judge Ryman represented himself before the Court, and the amazing thing to me was the cavalier attitude that he displayed toward what he'd done. Basically, what he had done was not done to profit himself. He had forged the signature of a decedent and had his secretary notarize it...whether it was a notarization or a witnessing, I'm not sure...and he had done all this to facilitate the probate of an estate, but of course, the whole thing was fraudulent, and it just didn't seem that he had any appreciation that a person in a judicial position, to say nothing of a plain ordinary lawyer, should ever get into that kind of a transgression, and it was his attitude and the facts of the situation that so troubled me and eventually the other members of the Court, I think, joined in removing him from the bench. I don't think there was a dissent on that, although there was a lot of...there may have been a dissent. I don't know.

*Mr. Lane:*

I think Levin said the man should be disciplined but...

*Justice Lindemer:*

...not removed. Yes, that could be. There was sympathy for him. I had some sympathy for him.

*Mr. Lane:*

Where was he from, do you recall?



*Justice Lindemer:*

Yes. It seems to be he was from over in the Nuwego area, north of Grand Rapids, somewhere in there. He was not an evil person or anything else. He just...well, he was removed from the bench.

*Mr. Lane:*

Do you remember the case of the Council 23 of the AFL governmental employees union against Recorder's Court Judge, the probation...the case about the probation officers who under some strange arrangement in Cook County, were employees of the Court, demanding certain financial rights from the Court. There is a jurisdiction of question whether this was for the Court to resolve this or the public employees...PERA...what was that? Public Employees Relations Authority or whatever the proper name of it was. You don't remember that?

*Justice Lindemer:*

I just don't recall that one.

*Mr. Lane:*

Tahash vs. Flint Dodge where the woman took a car for a test drive, smashed it up...do you remember that? I think she had to pay.

*Justice Lindemer:*

Yes, she had to pay. I don't think there were any great points of law in that. It was a question of just getting a decision made. I don't even remember why the court took that particular case. It didn't seem to me that it was all that important.

*Mr. Lane:*

There was, I suppose, an insurance aspect to it. Wouldn't you think that the dealer's insurance would have been broad enough to encompass that type of situation because a dealer has got cars out with some frequency, and the percentages being the way they are, somebody is going to smash...

*Justice Lindemer:*

Well, you know, I just don't remember whether this was some risk she specifically assumed or what. I don't have that recollection.

*Mr. Lane:*

It was an accident.

*Justice Lindemer:*

I don't have that recollection of the case, so I guess I...

*Mr. Lane:*

You didn't get to sit on the Colonial Dodge where the fellow had a car delivered to him. He rode the freeways around Detroit, had to be on the road a lot, and he specified when he ordered the car

that there should be a spare tire, and he paid attention to things like that, and they had to be deluxe tires because of the amount of miles...you know...that was a case that was interesting in the same way because this fellow, when he had his wife pick up the car and drive it home, he found out that they had not put a spare tire in the thing after having expressly agreed to do that, simply because there was a strike in Akron or something like that, and he took it back..."Give me what I ordered or stuff it" ...that was his attitude, and this thing bounced around for a long time before the Court finally, I think, gave this guy some relief.

*Justice Lindemer:*

It wasn't a yes or no, black or white case. I don't have a recollection of it.

*Mr. Lane:*

Is there anything, just about the whole panoply of the practice of law in Michigan...could be this appointment, could be the performance of the law schools, could be the way the admission practice is handled, the bar examiners? Do you have any opinions on any of that sort of thing that you would feel like delivering? Here is a good chance to do it. I don't want to press you for this, but it's an opportunity is the way I look at it. You have had a degree of experience in government, the Court and the other things that were mentioned, and in the practice. My Gosh, Larry, you're not a spring chicken any more. How old are you?

*Justice Lindemer:*

69. Yes...I'm in my 70th year right now, and I'm feeling it a little bit.

*Mr. Lane:*

I'm just trying to say...you have a right to have certain opinions that should be...

*Justice Lindemer:*

Just by lasting this long, huh?

*Mr. Lane:*

I hope I didn't say it quite like that.

*Justice Lindemer:*

I don't know that I have anything particular. I have been...I'm in charge of the committee that hires for this firm now, and so I have been interviewing and talking with some of the young people who are approaching us, looking for jobs and so forth, and I'm tremendously favorably impressed with a lot of them, just a great number of them, and I'm thankful that I do not have to compete with them to get into the profession of the law at this time. That would be very difficult. At the same time, I think that there has been a degree of civility in the practice that has been lost.

I think there has been a degree of acknowledgement of the public interest that has been lost, and I'm not at all certain how much of this is based upon nostalgia...maybe I'm forgetting some of the things that happened 30 and 40 years ago that were troublesome to me at that time and

remembering more prominently those things that I thought were good about the practice. I can't make that judgement, but I think that generally, the practice is moving ahead.

Generally, we have not abandoned the standards that we would like to see maintained, that there is always room for massive improvement, both on the courts and in the practicing profession, but that's as it should be. I don't have any golden nuggets of wisdom or anything like that to pass along to anybody else. I think that the situation is reasonably healthy, and that those problems that exist will find solutions.

I guess I'm a little bit troubled at times on the selection process that we have for our judges, but in the total picture, I'm not sure that it has worked out all that badly. People basically intend to do things correctly, and those who don't most frequently have their comeuppance. You know, when you think of all of the people that have served on the Court of Appeals and the Supreme Court, really the only potential black mark is the Bronson thing. Among judges on the lower courts, there have been things, but they have basically been eradicated. The trouble spots have been found, and that's good.

*Mr. Lane:*

I know there are...talking about trouble spots...I know there are some people that feel strongly to this day that John Swainson was more a victim than a miscreant...but that's not...

*Justice Lindemer:*

And that's why I don't...I didn't list John Swainson as being a particularly black mark. It was a terribly unfortunate series of circumstances, and John operated in a way that perhaps lent itself to that, and I don't mean this in a way that casts any negative aspersions. It's just part of his personality. He wanted to be a friend to everybody, and I've heard a lot of people say, and I'm not at all certain that I disagree, that John is more a victim than a guilty party, but that's history now.

*Mr. Lane:*

Yes...

*Justice Lindemer:*

And he's come back, and I think probably done very well.

*Mr. Lane:*

Given the devastation of these events that we're talking about, it's not much short of miraculous the way in which he has righted himself after a period of travail...you know, he is president...I'm going to talk to him not very long from now, and...

*Justice Lindemer:*

Historical Society.

*Mr. Lane:*

Yes, I think he is...the president of the State Historical Commission.

*Justice Lindemer:*

He's a delightful guy, and Alice is a most-exemplary helpmate, so I'm glad to see the good things that have happened to him, and I frankly think that he's handled himself very well over the past several years. I think there was a period of time in which he was having some problems that he's got behind him now, and that's great.

*Mr. Lane:*

I read somewhere that he said this episode that he went through in 1975 and thereafter was more desolating than the loss of his legs in the war.

*Justice Lindemer:*

I can believe it.

*Mr. Lane:*

Then he came back.

*Justice Lindemer:*

Yes.

*Mr. Lane:*

Well, shall we not...

*Justice Lindemer:*

I think so.

(End of side 2, tape 2)