ONE COURT OF JUSTICE BLOG'S

INTERVIEW WITH CHIEF JUSTICE KELLY

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1 Q (Mr. Nelson) Chief Justice Kelly, thank you so much for
2 meeting with us. As you know, I'm Matthew Nelson from
3 Warner, Norcross & Judd, and we're conducting this
4 interview for Warner Norcross's One Court of Justice
5 Blog. For the purposes of the record, as it were, we
6 have provided you with the questions beforehand. And
7 we, again, thank you for the opportunity to do this.
8 Please tell us about the 17 years you spent in
9 private practice before ascending to the bench. What
10 was your practice like? What types of cases did you
11 handle? What did you learn from that experience, and
12 what was your philosophy as an advocate?
13 A (By Justice Kelly) I spent 17 years in a variety of
14 legal settings, and in retrospect I recognize that it
15 was helpful to me to have such a variety of experiences.
16 I was at one time in my own law firm, at another in a
17 small partnership, and at another in one of the largest
18 firms in the state, Dykema Gossett. I probably handled
19 almost every kind of case, civil and criminal. Well,
20 not all criminal, but certainly all civil that one sees
21 in the law in both federal and state courts.
22 Particularly at Dykema Gossett I did contract
23 litigation, construction and commercial litigation in
24 particular. In the latter years I did a lot of domestic
25 relations law.

1 What did I learn from that experience? Well, I
2 learned something about the variety of courts that we
3 have in the state of Michigan; the different levels of
4 skill that the jurors exhibit and the practitioners in
5 those courts. And my philosophy as advocate was to
6 represent my client to the best of my ability and to try
7 to adhere to the canons of the profession regardless of
8 the situation. I remember early on making the decision
9 that I would sacrifice volume of work if need be in
10 order to make sure that I was giving my clients as much
11 attention as they needed in their legal matters.
12 Q You were elected to the Court of Appeals in 1988. What
13 led you to decide to serve the state of Michigan as a
14 judge?
15 A I had prior experience as an elected official, so I had
16 some concept of what it was like to run and I wasn't too
17 daunted by the prospect. And I had some constituency.
18 Also, there was a wonderful opportunity in 1988 because
19 in my district, which was then the 2nd District of the
20 Court of Appeals, there were two openings and no
21 incumbent. As you realize, incumbents just have never
22 yet been beat on the Court of Appeals in this state. So
23 this was an opportunity to run when there were much
24 better opportunities to win. And I received some
25 encouragement, and I was at a point in my career after

1 17 years of service where I had been able to gain a
2 certain amount of recognition, most recently as a member
3 of the State Bar Board of Commissioners and as President
4 of the Women's Bar Association and then as President of
5 the Women Lawyers Association. So I had a leg up, so to
6 speak, at that particular moment. So it was just the
7 right time to do it, and that's what made me decide to
8 do it in '88.
9 Q What adjustments did you have to make moving from
10 private practice to your new role as a Michigan Court of
11 Appeals judge?
12 A I've always said you lose something and you gain
13 something when you go from private practice to being a
14 judge, and I still regret some of the losses. The
15 thrill of combat in the courthouse -- in the courtroom;
16 the challenge of preparing a case so as to be able to
17 try it to completion, to success; the interaction among
18 other members of the Bar. I missed some of that because
19 when one becomes a judge a certain barrier goes up
20 between former friends in the Bar and oneself. But, of
21 course, the job of judging is a thrill, and one I've
22 always been -- I've always felt enormously privileged to
23 have got. And so I found that the adjustments that I
24 had to make were well worthwhile, and I've never really
25 looked back from that point of view.

1 Q Taking a step back to when you were in private practice,
2 did you have an opportunity to argue in the appellate
3 courts in the state in private practice?
4 A I did. Even when I was running for the Court of
5 Appeals, interestingly, I remember being up before a
6 panel on a domestic relations matter. And that was the
7 first time I remember looking at them and thinking, I
8 just wonder if I'll ever be where you are?
9 Q And, sure enough, within a few months you were
10 colleagues with that panel.
11 A That's right.
12 Q In the more than 12 years that you've now been a justice
13 to the Michigan Supreme Court and now, obviously, the
14 chief justice, how has appellate practice changed?
15 A Well, I'm not certain -- it seems to me that I sense
16 more -- less civility among lawyers today or more -- let
17 me put it this way, more instances of incivility than I
18 was conscious of before. I'm aware that there's
19 tremendous competition today that has to account for
20 some of that and that the times have changed such that I
21 think generally people in our society have grown less
22 civil with one another, which flows over, not
23 surprisingly, into the legal profession. That's one of
24 the things I'm most aware of.
25 Q If I can step onto the answer of the last question, how

1 have you seen that incivility appear in practice before
2 the Michigan Supreme Court?
3 A Generally in our court, as in the Court of Appeals,
4 lawyers treat one another quite well, and that's always
5 appreciated by judges, by the way. But I do see
6 examples where lawyers clearly are not showing deference
7 to one another and tend to some ad hominem attacks that
8 are inappropriate. And then I hear, you know, in just
9 moving around the state and intermingling with lawyers a
10 lot of complaints about -- especially from friends who
11 have been in the practice a long time about what they
12 view as the deteriorating condition in the practice with
13 respect to civility.
14 Q Do you have any recommendations for new appellate
15 lawyers who are just getting into the practice in terms
16 of how they can model their practice in a way to ensure
17 that they maintain civility even with -- excuse me, so
18 that they can maintain civility even with incivil
19 opposing counsel?
20 A It's a good question, and I think I've always felt that
21 new lawyers should try to find a good role model to
22 emulate or several role models to emulate, because we
23 certainly do have in the practice many lawyers who
24 behave very appropriately and even in situations where
25 they're faced with incivility by others. But I

1 recommend modeling oneself after a lawyer who has a
2 reputation of being civil, who is respected by other
3 members of the Bar, particularly members who practice on
4 the other side, so to speak.
5 Q Has there been an increase in appellate specialization
6 by attorneys practicing before the Michigan Supreme
7 Court? And, if so, do you notice any difference in the
8 advocacy of appellate specialists versus those who only
9 occasionally appear?
10 A I think that there's always been a cadre of lawyers who
11 are the specialists, so to speak, that we see
12 frequently. I suspect that I see more today than, well,
13 20 years ago when I was on the Court of Appeals, who are
14 not specialists. And as far as their competency, their
15 ability, the quality of their performance, generally the
16 ones who are specialists tend to do better, although
17 certainly I've seen many who only occasionally appear in
18 appellate courts and do an excellent job.
19 Q How has the Court's docket changed over your tenure?
20 Have there been changes in the volume of applications,
21 the number of cases heard, or the subject matter that
22 the Court has been hearing more of?
23 A There has been -- there's been a steady flow of cases in
24 the last five years, for example. The numbers have
25 remained pretty constant between 2,200, 2,400. Now I

1 asked the clerk, Corbin Davis, and he goes back quite a
2 few years, and he said that in 1974 there were only
3 about 750 cases. So over that length of time certainly
4 there has been a huge increase. As far as the type of
5 cases, it tends to reflect what's going on on the
6 Supreme Court, it seems to me. For example, when the
7 Court decided that criminal defendants who were entitled
8 to an appeal even if they had pleaded guilty at the
9 trial level, when it was ultimately determined by the
10 U.S. Supreme Court that they were entitled to an appeal
11 we saw an increase of criminal cases. For a period
12 there was like a bubble there. And often I perceive
13 that if attorneys suspect that the Court is ready to
14 rule on a certain issue they will then be more likely to
15 bring that issue before us if they can. Certainly there
16 have been many instances where members of the Court have
17 broadcast allowing us to look at an issue. So they've
18 encouraged, I think, some of those issues to come up.
19 And now with the change on the Court this last
20 year I'm expecting some change also in the types of
21 cases we're seeing because, again, of the expectation of
22 experienced counsel on what will be of interest to the
23 Court.
24 Q To change the conversation from the more legal to the
25 more technical, how has technology affected the Court

1 and your work as a justice and now the chief justice?
2 A It's affected it a lot. I go back to times when --
3 well, before I was a judge we didn't have computers and
4 we were using Selectric typewriters and copying a paper
5 to make copies. I can remember having a secretary have
6 to repeatedly type a Will because they all had to be
7 original. I mean, it's unheard of now, right? And I
8 can remember when computers came in. Certainly since
9 I've been a judge we've seen increased communication
10 among judges and justices using the Internet and the
11 e-mail. There was a time when one could plausibly argue
12 that all seven justices really ought to be housed under
13 the same roof because that would increase the likelihood
14 that they would confer with one another, you know,
15 amicably. But now the ability to communicate using the
16 Internet is so widespread that it's no longer really a
17 question. We're also now, and I've seen since I've been
18 chief justice, increases in our ability to communicate
19 information among the courts and between the courts and
20 the State Police so that, for example, when a judge is
21 sentencing someone now it's much more likely that the
22 judge will have an up-to-date record of that person's
23 criminal convictions than in just even a few years ago.
24 That's a great improvement that we're hoping to be able
25 to improve on even now.

1 And I'm looking forward to the day when the
2 court will become, if not paperless, certainly at least
3 far less cluttered with hard copies of things and when
4 e-mailing will be far easier and more available to
5 attorneys. I think particularly in areas of the state
6 where there is no court nearby this is very important.
7 And, again, as I said at the very beginning, my
8 experience in the practice did teach me that there are
9 parts of the state where it's not convenient to try to
10 file a paper if it has to be done by hand or by mail --
11 by snail mail.
12 Q I'm familiar with that as well.
13 A Are you?
14 Q Your Honor, with regard to -- you said that the justices
15 now have, obviously, an easier time communicating
16 because of the technology. Has it also led to a
17 decrease in the amount of face-to-face interaction with
18 justices where justices would, for instance, visit each
19 others chambers?
20 A I'm not certain. I know that it's not practical to try
21 to communicate with the other justices about many cases
22 on a daily basis because there is so much to do. I
23 mean, I could see how the communication over the
24 Internet and e-mail has made it more likely in some
25 cases that justices might drop in and speak with one

1 another in person merely because there's been more for
2 them to read to encourage that.
3 Q According to the most recent annual report of the
4 Michigan Supreme Court there were 2,612 cases filed with
5 the Court in 2007, most of which would have been by
6 application. Do you personally review each application
7 for leave as filed with the Court?
8 A Yes. I think all seven of us do. The applications are
9 processed through the clerk's office. The
10 commissioner's office then prepares a recommendation for
11 us with them, along with a copy of lower court opinions
12 and sometimes some exhibits, attachments, along with a
13 recommendation. So we see each application and vote on
14 it. And each month, twelve months a year, I go through
15 anywhere between 150 and 250 applications. And I do it
16 with the help of my clerks, but I definitely pour over
17 each one. And I do that probably because I view each of
18 them as important, and if I should miss an application
19 that should be considered at greater length, it probably
20 would never come back before me. It would probably
21 simply be dismissed. So I view it as very important,
22 and I actually hold or cause many applications to be
23 discussed before the others partly because of my concern
24 about allowing things to slip between the cracks.
25 Q Do you have an understanding as to whether or not your

1 practice of reading all of the applications is shared by
2 your colleagues on the Court?
3 A We don't necessarily compare notes about that, but I
4 know that each justice votes each month on whatever
5 number of applications have been submitted. So that --
6 and many others hold cases, too, so it certainly appears
7 that they've had a close look at them.
8 Q Under MCR 7.302(g) the Court can resolve an application
9 for leave to appeal by granting or denying the --
10 issuing a peremptory order or by issuing a final order
11 on the application. What do you personally look for in
12 an application for leave to determine whether it should
13 be heard as a calendar case?
14 A Well, I look at the factors laid out in MCR 7.302(b).
15 And, obviously, one is always interested in knowing
16 whether the case history has potential significance or
17 particularly whether it involves an issue that has been
18 resolved differently by different courts below or if it
19 involves a new statute, one that has never been tested
20 before. Or if it involves an old law which maybe has
21 seen better days and should be replaced. Those are some
22 of the major reasons that I know I look at an
23 application of being meritorious of grant.
24 Q And what factors go into your decision or your
25 preference with regard to hearing cases as a calendar

1 case or, for example, on argument on the application?
2 A Occassionally a case has only one issue and it looks as
3 if it could be disposed of rather easily if counsel
4 argues in a certain way. And that is one reason why I
5 might be interested in what we call a MOA, or an
6 argument on the application. Occassionally the granting
7 of a MOA is actually a compromise. You may have three
8 justices who want to grant leave and three who don't
9 want to grant leave, and the seventh one will say, Well,
10 I don't want to go all the way through a grant, but I'll
11 at least vote for a MOA and we can give it a closer look
12 by allowing counsel to come before us. My default
13 setting is that I'd prefer to grant leave on cases that
14 appear to have merit and give counsel and -- to give
15 counsel full opportunity of argument and briefing.
16 Q When you look at an application for leave I know from
17 experience that because the Court has the ability to
18 peremptorily decide a case based on the application that
19 counsel tend to essentially resubmit all the arguments
20 they made to the Court of Appeals. But there's another
21 train of thought that perhaps what counsel should be
22 doing is addressing those grounds -- focusing their
23 application on the grounds for leave to appeal and
24 diminishing the actual arguments in favor of their
25 position. In other words, arguing this case is worth

1 granting leave and leaving the merits of their position
2 somewhat in a lesser state. What is your preference
3 when you see an application?
4 A My preference is to look for the grounds for grant
5 rather than all of the merits. And my preference also
6 is not to dispose of cases peremptorily. There's been a
7 tendency to do that a lot in recent years, and I'm
8 hoping that we will depart from that in the future.
9 Q How and to what extent do amicus curiae briefs influence
10 your vote on an application for leave?
11 A They can be very important, and I'm always happy to see
12 amicus. Number one, if I see one or several amicus I
13 tend to suspect that the case involves an issue that has
14 some broad appeal or interest. Also, frequently --
15 well, not frequently, but certainly from time to time
16 counsel for the litigants, although he or she might do a
17 good job for his or her client, doesn't really look at
18 the big picture that we really must look at in this
19 court to determine what the effect of the case could be
20 on the juris prudence of the state. So often amicus
21 will come in with a more broad view of what the
22 implications of the issue are and give us an
23 understanding that we might not get from retained
24 counsel or assigned counsel.
25 (Brief break.)

1 Q Chief Justice Kelly, I think I know what the answer to
2 this question is after your response with regard to
3 reading all of the applications for leave, but do you
4 read every brief that's been submitted to the Court
5 before oral argument?
6 A Yes. Sometimes I read some briefs more closely than
7 others. It depends, of course, on the status, you know,
8 of the case, just how challenging it appears to be. But
9 I certainly do get all the briefs.
10 Q What do you find persuasive in a brief on the merits?
11 A Well, I like a brief that -- where the attorney is able
12 to identify the crucial point or the linchpin of the
13 issue or issues and to also grasp the significance of
14 the holding that the attorney is requesting from us, the
15 significance on the rest of the law in the area, and how
16 it will affect the development of the law in the area.
17 And I find very helpful if counsel can describe in
18 logical steps the course that the rationale of the
19 opinion might take in order to arrive at the holding
20 that is sought.
21 Q And on the flip side, what do you find particularly
22 unpersuasive?
23 A It's always unpersuasive if a mistake is made or a
24 misrepresentation is made of fact or law. It's not
25 persuasive and it's somewhat vexing when the brief is

1 not easy to understand. So clarity is truly essential.
2 And it can get irritating if the counsel is making a
3 shotgun approach to the case and covering many issues as
4 if they were all of equal importance when in fact
5 counsel should be able to identify the most important
6 issues and the most -- the most important issues to the
7 success of the case and get them right up in front for
8 us.
9 Q What would your advice to counsel be with regard to the
10 maximum number of issues that should be presented in
11 a -- to the extent there is one, in a case?
12 A Well, I don't know what the maximum is. I know that
13 when we get over five it's unlikely that it's going to
14 be effective, I think. It certainly does depend on the
15 kind of case, of course. For example, when we get some
16 of these MPSC cases, Public Service Commission cases,
17 there can be a huge number of issues because they will
18 involve enormous amounts of money and many organizations
19 and sometimes the litigation has been taking place over
20 a period of years. So in cases like that one expects a
21 great number of issues.
22 Q What three to five suggestions do you have for a
23 practitioner hoping to submit a winning merits brief to
24 this court?
25 A We're talking briefs now, not oral arguments?

1 Q Yes.
2 A Well, I'd suggest trying to identify what I'm calling
3 the linchpin or the crucial point on the issues and
4 trying to organize the issue so that the most persuasive
5 issue is probably first. And, again, trying to give the
6 Court a clear sense of how -- not only how to rule but
7 what steps the ruling should take in order to reach its
8 conclusion. Because it's often in laying out the
9 logical sequence that one finds the error or the glitch
10 that prevents one from getting from Point A to Point C.
11 Q Do you have a typical practice in terms of do you
12 approach briefs in the same manner every time, reading
13 the same parts first and the same parts last?
14 A I don't approach them the same way, but by the time I
15 get to the briefs I know what I'm looking for. So I
16 will, for example, look at the index and look for the
17 issue that I feel is most important and go to that
18 first. Of course, if it's a real short brief then, you
19 know, it doesn't take long to get through it no matter
20 how one does it. But that's the best I can say with
21 regard to my approach.
22 Q Do you spend much time reviewing the questions presented
23 in the briefs?
24 A Oh, yes. As a matter of fact, I try to look out
25 appropriate questions for oral argument when I read the

1 briefs so that I know exactly what information I need
2 and what flaws I'd like to try to probe with counsel in
3 that oral argument.
4 Q What role do your clerks play in preparing for oral
5 argument?
6 A Well, they write a bench memo for me, and usually the
7 clerk who does that is the clerk who is working the case
8 right from the start. The clerk also gives me a written
9 update on the position that other -- the questions that
10 other justices have put forth in written memos that have
11 been circulated so that by the time I get on the bench
12 for oral argument I know not only what the issues are
13 but how other justices have expressed their positions or
14 their questions on those issues and how I have come down
15 on those issues in prior conferences and the justices
16 and also how the commissioner's office has made -- what
17 recommendations the commissioner's office has made.
18 Q Is it true that the justices never discuss a case
19 amongst themselves before the argument?
20 A You realize we always discuss them many times in the
21 sense that by the time they get to oral argument they
22 will have gone through probably a number of conferences.
23 The initial conference after the case comes in on
24 application, and then sometimes a whole series of
25 conferences before the decision is made whether to grant

1 leave. Now maybe from the time the decision to grant is
2 made until oral argument there may be no group
3 discussion on it at all. Usually there's no discussion
4 just before oral argument on the cases among the seven
5 of us.
6 Q You referenced a moment ago that there are memos that
7 pass between the justices before oral argument.
8 A Right.
9 Q What's typically contained in those memos, if I may ask?
10 A Sure, you can. By all means. I think that's
11 appropriate. It's a huge variety of things. For
12 example, I or another justice might write the others
13 saying, I really think that we should give this case
14 special attention because it raises issue X and this is
15 why that issue is deserving of our attention at this
16 time. Now that might be the kind of memo that would go
17 out when we're first looking at the case after the
18 application has been submitted to us. And then later on
19 as we're preparing the case for oral argument it's not
20 unusual for justices to issue a memo saying -- well, for
21 example, before then even it's not unusual for the
22 justices to issue a memo saying, Here's how I think the
23 grant order should be worded so as to make sure counsel
24 knows to treat a certain issue or here's an issue I want
25 to make sure is treated and this is the wording I'd like

1 to see. So that could be another subject in a memo.
2 And then later there might be memos before oral argument
3 indicating that a given justice has learned about some
4 recent ruling by the United States Supreme Court or
5 another court even, the Court of Appeals, that does
6 impact the case.
7 Q Do you have any intention to modify the five-minute
8 free-fire zone that has been used in recent years at
9 Michigan Supreme Court oral arguments?
10 A No. I think it's a good practice. And I moreover urge
11 people to waive it with great caution, because it's the
12 one chance that counsel has to speak without being
13 interrupted, and we tend to be what's called a hot
14 court. So I think that counsel should take every
15 advantage of that five minutes free-fire. And if a
16 justice asks them to waive it, I think they should
17 consider politely requesting the justice to allow them
18 to finish and then telling the justice that they'll get
19 right back to them as soon as their free-fire time is
20 over, because otherwise they may never -- counsel may
21 never be able to get the big point out. Likewise, that
22 five minutes should be used to make the most effective
23 presentation of the most convincing points that the
24 attorney has to make. Too many times I see counsel
25 using that five minutes to just review the facts or

1 review what the issues are, and I always think to myself
2 it's a waste of their time. If any of the justices is
3 not aware of the necessary information they'll probably
4 ask about it, but it's -- counsel shouldn't waste that
5 time by telling us things that are in the briefs that we
6 ought to know.
7 Q What do you find persuasive in an oral argument?
8 A Well, I like a good response to the opposing brief --
9 the opposing counsel's brief. In other words, picking
10 up the give and take where it left off when the briefs
11 were last -- were finished. I particularly like oral
12 argument that will show an understanding of where the
13 various justices have been on the issue if it's one
14 where justices have taken a position. And, finally, I
15 particularly like to hear some vision of how the
16 decision will shape the law. Now not all cases lend
17 themselves to that, of course, but some do. And where
18 they do I've found this is -- a failure to do that is
19 one of the biggest weaknesses in oral argument that I
20 have seen.
21 Q And again on the flip side again, what do you find
22 particularly unpersuasive in oral argument?
23 A It's really unpersuasive if counsel makes a mistake or
24 misrepresents fact or law, just as in the written
25 briefs. It's unpersuasive if counsel is asked a

1 pertinent question and can't seem to find a good answer.
2 Some justices will go after an attorney under those
3 conditions. My approach usually is not to -- although I
4 do sometimes, but usually not to because I form the
5 conclusion at that point that if the counsel can't make
6 a better answer to that question there isn't a better
7 answer and that that's why they didn't say something.
8 Sometimes, too, it's unpersuasive, if you like, for
9 counsel to miss important points that they really ought
10 to be making. One wonders why they're not picking up
11 sometimes on points that are so obvious and needed, and
12 even sometimes when questions from the bench hint at the
13 need to do it. One mistake I've seen many less
14 experienced attorneys make is to misread a question and
15 assume that it's a combative question when in fact it's
16 really meant to encourage them to make a point they
17 haven't made and ought to be making.
18 Q And what suggestions do you have for a practitioner
19 hoping to make a winning oral argument to the Court?
20 A Well, I'd suggest that they certainly be accurate in
21 their presentation, that they stay on message even
22 though they're questioned lots of times so that they
23 make sure they get their points out before they have to
24 sit down, and that the time they get before us they have
25 a clear view of what the linchpin is of their issues and

1 that they have a vision of how the result they're
2 seeking will shape the area of the law that they're
3 arguing about.
4 Q How often does oral argument change your mind about a
5 case's outcome?
6 A It changes my mind, and it changes other judges and
7 justices' minds, too. I can't tell you how often, but
8 the fact that it does sometimes is enough to make it
9 important, in my view. And I can scarcely tell you the
10 number of times that I've come off of the bench and
11 heard another justice or judge say to me, You know, I
12 went in ready to vote for the petitioner, and I came out
13 on the other side. So there can be no question but that
14 the oral argument had a huge outcome on the -- a huge
15 impact on the outcome of the case.
16 Q What is the single most important judicial philosophy to
17 which you ascribe? And I realize that's a very broad
18 question.
19 A That's a very broad and tough question, but it's a good
20 question and a fair one. And I sat down and worked a
21 little on this and I have an effort at this, although
22 obviously from one day to the next I'm sure I'd pick
23 something different on what I want to talk about. But
24 let me say this regarding basic judicial philosophy, in
25 interpreting precedent I think that there must be a

1 presumption that existing precedent -- that the existing
2 interpretation of the law is valid and it should be
3 upheld, but, of course, the presumption is rebuttable.
4 In interpreting Constitutional or statutory law the law
5 should be construed as written. If there are two or
6 more reasonable interpretations of it, it has to be
7 construed according to the intent of the drafters. And
8 I agree with Justice Stephen Breyer who wrote in his
9 book, Act of Liberty, "A judge when interpreting
10 provisions must avoid being willful in the sense of
11 enforcing individual views. At the same time a judge
12 must avoid being wooden and uncritically resting on
13 formulae and assuming the familiar to be necessary and
14 not realizing that any problem can be solved if only one
15 principle is involved. But then, unfortunately, all
16 controversies of importance involve if not a conflict,
17 at least an interplay of principles."
18 Q Thank you. I suspect that had we done this without
19 providing you with notes we wouldn't have gotten nearly
20 as comprehensive an answer.
21 A That's right. I'd probably say something about --
22 certainly much shorter, you're right.
23 Q I think that's very insightful. I think it'd be helpful
24 for the bench -- or, excuse me, for the Bar.
25 A Thank you.

1 Q What goals do you have now as the newest chief justice
2 of this court?
3 A Well, my goals are emerging, but I can say that I'm
4 particularly interested in improving access to the
5 courts for people. Not just the underprivileged, the
6 economically underprivileged, but even the middle class
7 for whom it's often too expensive to go to court. I'm
8 particularly concerned about criminal indigents who have
9 to rely on the State to provide them attorneys for their
10 defense. And the statistics show that they are so badly
11 underpaid in this state that we're almost at the bottom
12 of the ranking of the entire United States. I'm
13 interested in -- very interested in doing what can be
14 done to improve the public's perception that the system
15 is fair and unbiased. I'm very aware that great
16 segments of our population believe that those who are
17 not in the minority, for example, are treated more
18 fairly.
19 I'm very concerned about transparency, and I've
20 been an advocate of our doing all our administrative
21 work, to the extent at least that it's not involving
22 personnel matters and things of that sort, in public and
23 letting the public see how we operate when we make rule
24 changes and do other things that are strictly
25 administrative. I'm very interested in these bad

1 economic times in seeing initiatives that are underway
2 to improve the courts continue. And so I, in testimony
3 to the Senate and to the House, have urged the use, if
4 necessary, of federal stimulus money for the
5 continuation and growth of drug courts and mental health
6 courts and also for handling the problems that have
7 arisen as a result of the closing of the crime lab in
8 Detroit. I also have urged the use of stimulus money to
9 allow us to continue to keep our -- to bring our
10 computerization technology into the 21st century,
11 because it's moving so fast and it's expensive. And so
12 I'm, as I said earlier, interested in seeing technology
13 be a major concern of our court.
14 Q During the 2007-2008 term the Court heard oral arguments
15 in 88 cases, but reached a unanimous result in a
16 published decision in 11 cases. What value do you as a
17 justice, and now as chief justice, place on unanimity?
18 A Well, I place a great value on it, and I strive to bring
19 my colleagues into a unanimous position on cases. I
20 remember when I was practicing law I used to really
21 criticize the Supreme Court in particular for its
22 splintered decisions, but now that I'm on the Court I
23 understand a little better why that happens. And one
24 fact is -- and it's true in the case that you had before
25 us, that where you have a multiplicity -- the most

1 recent one. The Tomecek.

2 Q Tomecek versus Bavas.

3 A Bavas case, uh-huh. There were a number of issues,

4 important issues. If you have a multiple of important

5 issues for seven people to decide, the likelihood that

6 you're going to get a unanimous decision of seven -- on

7 all those issues among seven is not very high. And so

8 it's not surprising in many ways that there are so few

9 unanimous decisions, as troublesome as it is to the

10 bench and Bar to have to sort those out. And I'm very

11 sympathetic with that, but strong differences in

12 philosophy among justices certainly can make it

13 impossible for us to be unanimous on many difficult

14 cases.

15 Q And if I may on follow-up to that, when do you for

16 yourself consider it appropriate to write a dissenting

17 opinion?

18 A Well, if I can't sign the majority opinion then I feel

19 it's necessary to explain why. So either -- at that

20 point either I sign someone else's dissenting statement

21 or opinion or I write my own. Or I write a concurring

22 opinion, which makes a distinction in the reasoning

23 without changing the result. But I do feel that even

24 with respect to orders people are entitled to know why

25 justices take a position, not just simply what their

1 position is. So I avoid simply signing on the left, as
2 we say, showing that I concur in result only. I avoid
3 it whenever I can.
4 Q In this challenging budgetary climate what conversations
5 should the bench and the Bar be having with the
6 legislature about the importance of a well-funded
7 Judiciary?
8 A It should be, I think, the same conversation that I was
9 describing to you that I had with the House and the
10 Senate when I gave testimony on behalf of the Judiciary,
11 and that is that the courts simply must be allowed
12 enough funds to keep up with the times in their
13 technology and their new approaches, such as the mental
14 health court, and to remedy possible major breaches of
15 just decisions such as could be the result of the
16 problems with the crime lab in Detroit. And ultimately
17 the members of the legislature need to be reminded that
18 if we can't fund the system well enough to keep it
19 running well that we're going to run into frequent
20 instances where justice delayed is justice denied. And
21 it's just not acceptable in this society.
22 Q On a much lighter note, do you read the One Court of
23 Justice Blog?
24 A Yes, I do, and I applaud you for it.
25 Q Is there anything that you find particularly helpful

1 about it?
2 A I like the timely updates. For example, I think today I
3 could look and learn all about the possible resignation
4 of one of the U.S. Supreme Court justices and get a
5 little information there and also some links, I think,
6 also. I've enjoyed looking at the summaries of
7 decisions as well, and I appreciate the work that goes
8 into that. I'm not aware of any other source right now
9 of that kind of information, so I think you should
10 continue to do it.
11 Q And speaking of that recent Supreme Court justice
12 resignation, have you heard from the Obama
13 administration about any interest that you might have in
14 moving to Washington?
15 A That's a nice question and I appreciate it, but one
16 thing I think they're going to look for is someone to
17 appoint who they could count on being on that court for
18 a long time. So that means they're going to look for
19 somebody in their 40s or 50s at the most, I think. And
20 that's not surprising. It makes good sense.
21 Q Is there anything else that you'd like to tell us or to
22 share with the bench at this time?
23 A Well, I'd like to remind lawyers that the Supreme Court
24 really values their input on our proposed rule changes
25 and other administrative matters. And maybe everybody

1 knows by now, but you can go to our website,
2 courts.mi.gov and read what proposals are before the
3 Court and make comments, and you can also read comments
4 from other people, which is very helpful sometimes.
5 You're actually looking at the same material we look at
6 when we make our decision. And I think this is a very
7 appropriate improvement in our process, and definitely
8 comments from people who know about the effect or the
9 likely effect of rule changes has a big influence on us.
10 So don't be shy.
11 Q Well, thank you so much for your time this afternoon.
12 A Thank you. It's my pleasure.
13 Q I really appreciate it.
14 (End of interview.)
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