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BB: I'm visiting today with Jean Turnage. It's the second of February 2006. We're in his law office in Polson, Montana. Jean Turnage was a chief justice in the state Supreme Court. He's a long time state Senator and also president of the Montana State Senate. Prior to this, he was a county attorney in Lake County and holds the interesting distinction of having chaired the Montana Attorneys Association as a county attorney, having been president of the state Senate as a state Senator and also was, I believe, the president of the National Association of the Chief Justices. So he has had a career in Montana politics that has extended from the early 1950s until the turn of the century. Jean it's a pleasure to interview you. Maybe I could ask you to begin with if, what got you involved in public service? What got you involved in politics?

JT: Well, my attending of law school at the University of Montana of course, law and politics seem to have a certain affinity. My graduation of school in 1951, I was offered a job by an old time lawyer in Lake County, Lloyd I. Wallace, who served at that time in the Montana State Senate and had served in prior terms. That I believe had some, undoubtedly some, influence on my thinking about running for public office.

BB: Wallace was a Republican?

LT: Yes.

BB: Did that perhaps influence you early on in your thinking to become a Republican or perhaps you maybe were leaning towards the Republican Party before then?

LT: I don't think my association with Lloyd Wallace had a great deal to do with my selecting the party. I think I was inclined that way before then. Of course his offering me a job was important because jobs are not easy to come by in 1951. The next year I think it was 1952, I ran for Lake County attorney because the job paid a little more money, which was also important. I think it paid \$300 a month at that time. Of course the terms were two years instead of the present four. I had five terms as Lake County attorney until 1963.

BB: Now Jean, before we go further, I'm kind of curious, you mentioned you leaned toward the Republican Party before you had met Mr. Wallace. I think there are a lot of people, more or less in your generation, who kind of developed political ideas during the great Depression and the administration of Franklin D. Roosevelt, who tended to side with the Democratic Party. Can you remember what may have caused you to side with the Republicans?

JT: I'm not sure if there's any specific incident. However, Lake County where I was starting my career in the practice of law was on balance, was a Republican county. That may have had some influence because the people I had as clients and associated with were tending to support the Republican Party more than the other party.

BB: So just the Republicans were the people that you came in contact with in your world as a young man?

JT: I think that's correct, yes.

BB: Now you were county attorney during the 1950s. You probably would have had some contact with Arnold Olsen, who was the Attorney General?

JT: Yes indeed, we did.

BB: Do you remember much about Arnold?

JT: Of course this was a rural county attorney, we didn't have a great deal to do with the Attorney General in Helena. What little we did, I got acquainted with Arnold. We became friends. As a matter of fact, he moved my admission to the United States Supreme Court.

BB: He was a congressman?

JT: When he was in Congress, yes, not as Attorney General. Of course his historic event with the slot machines occurred before I had graduated from law school. So that all had developed.

BB: Attorney General cracked down on illegal slot machines in Montana.

JT: Yes he did. He wasn't the one that initiated the crack down. There was a lady by the name of Louise Replogle who was a county attorney in Fergus County. Louise Replogle married Rankin and presently is married to Jack Galt. Louise got to looking at the constitution of Montana and discovered that the legislature had no authority to authorize lotteries. A slot machine is a classic lottery where you pay a contribution to participate in the distribution of a prize.

She tried to enforce that rule as county attorney against a business called the Joyland Club in Fergus County. The local court denied her request to find the machines unconstitutional. She appealed at the Montana Supreme Court. She won that appeal. After her victory in the Supreme Court, that's when Arnold Olsen as Attorney General decided that he would further the enforcement and indeed did. He essentially removed slot machines that the legislature had authorized from Montana for a period of time. I think that all occurred about 1950 and '51. [Began in 1947 with a raid of Joyland Club. Supreme Court upheld the slot machine ban in 1950.]

BB: I see. You, I remember, when we served in the legislature together [we] had a pretty strong feeling against gambling. There were pressures when we were in the legislature continually to expand gambling and expand the legalization of gambling especially after the 1972 Montana constitution went into effect. Of course the 1889 constitution prohibited gambling, including lotteries. I guess that was the basis for Louise Replogle's move against the slot machines in Fergus County. Do you remember what might have caused your feeling against gambling and why you took the strong positions you did against it? Any early thoughts about that?

JT: Well somewhat. When I was still in high school, I worked for a fellow and drove a crew truck and lived on the farm, his parents' farm. The father of my employer would go to town on a Saturday night and he was a hardworking, hard scrabble, small farmer. He'd lose the equivalent of one good milk cow about every session with the local gamblers. I didn't think that was a good idea.

Then when the state got into the business, it made it worse. I think the state has a duty to protect the people and not to prey upon their weaknesses. The present gambling that we are experiencing today is a good example. Most of the participants, I believe personally, that they unfortunately are those that can least afford to participate in the electronic slot machines and the other forms of gambling that are presently authorized.

Be that as it may, I know that, I think there's a false impression that the counties and the cities are dependent upon the slot machines for revenue. I think that's not a well-thought-out position because in the long run, I believe a cost for social services have escalated with gambling. It's a no-win game for the citizens.

BB: When you were county attorney, you had to enforce the laws against gambling. I suppose you probably saw some of the downside of it in addition to the experience you had when you were younger. When you were county attorney, here in Lake County, too, is that right?

JT: Somewhat. Actually when it was illegal, the gambling was pretty well relegated to the back room of a saloon. Only the participants basically were, shall we say, more or less able to participate. It didn't affect the broad spectrum of the people who can ill afford any of their public assistance money to go into the gambling thing. So it wasn't really a big problem. In other words, we have far less gambling when it was illegal than we do now. When the 1972 constitution authorized it, it's been like a snowball getting larger as it rolls down hill. We haven't seen the end of it yet.

BB: Jean, you entered the Montana legislature as a state representative in the election in 1962. Then you went into the Senate as I remember in 1964 and you remained there until about 1984 when you were elected chief justice.

JT: That's correct.

BB: So you were in the legislature for many years. You served in various leadership positions and responsibilities. Maybe I can begin with the House of Representatives. Anything, any particular issue or anything that stands out in your memory in your career as a member of the state House?

JT: Well I introduced a bill coming from Lake County, which is a part of the Salish-Kootenai Flathead Reservation, to allow the state to have certain criminal jurisdiction involving offenses committed by tribal members. I did that at the request of members of the tribal council. The reason for that was some serious crimes had been committed and the United States Attorney's Office, that was basically responsible for prosecuting, simply wasn't doing it.

The federal system wasn't protecting the people. So they wanted to have some state jurisdiction to protect the members of the tribe as well as the rest of the citizens from criminal offenses. That got the bill passed. Eventually the tribe got together with the state government and it resulted in the bill being signed and a workable solution put together. That was important in '63. Outside of that, I don't recall a great deal.

BB: Was the liquor quota system legislative (unintelligible) did that come later?

JT: Well they were interested in tightening it up because all of the tavern owners that had licenses obviously for economic reasons, wanted to limit the number of licenses and therefore limit competition. They were generally successful. So a quota system was devised that tightened up the issuance of licenses. That started in '63 as well. It may have gone into some later sessions.

[In] 1963, the tavern effort resulted in eliminating a clause in the pre-existing law that allowed a license to be issued without population quotas if the applicant could establish that there was a "need and necessity." That was a big loophole. So that was wiped out of the law. Now it became strictly a matter of mathematics and population at that time. Then the quota system came into play in the '72 constitution and gambling exploded, I think, very unwisely. I don't recall the session. I think I was (unintelligible) then.

They made a change in the law as to issuance of gambling licenses that required an owner of an all-purpose beverage license, one where you could sell all beverages, whiskey, wine, beer, to have such a license, before they could have a gambling license. Well, that simply wrote the quota system in granite or in diamond, you might say. Licenses became extremely more valuable, if you will, although they certainly should not have been. That's where we find ourselves today, faced with a problem with the quota system itself as well as a gambling lock on the number of licenses.

BB: Switching subjects here just for a minute, do you have a recollection at all with governor Nutter?

JT: I don't really other than...See, I was still in law school when he was governor.

BB: Oh, no, remember he was elected governor in 1960.

JT: Oh.

BB: But you were in legislature in 1962.

JT: That's right. I was in the legislature then. That's true. He'd been in law school before I was. I didn't—

BB: You didn't really know the guy?

JT: Not really no.

BB: So when you became a legislator, his Lieutenant Governor Babcock had succeeded him after his death in the plane crash. So you'd probably have some, whatever, working relationship with Babcock. What do you remember about him?

JT: Well I didn't know a great deal about him. He first came to my focal attention, if you will, when he promoted a sales tax bill in '63. Unfortunately, that got out of hand, I think. It ended up in a situation now where even though a sales tax might well be the real best answer to taxation, we find it very difficult. If I remember one of the opponents was Governor Forrest Anderson and he came forth with a phrase. He said, "Pay more, what for?" Well we're still paying more for his what for.

Taxation of course is always a problem. The people don't like it, naturally. They don't like to be taxed. They recognize that certain amount of taxation is necessary for education and public safety and public welfare. The problem with the taxation, putting it simply, is this: The beginning years of this country, what did they tax? They taxed 40 acres land and a mule. Why? Because that's where the action was.

Then later on somebody invented a machine and they went to the cities and started manufacturing things and hiring people. What did they tax? They taxed income of the workers. Why? That's where the action was. Now where's the action? Consumptionary spending, in the spending of money by the populace, that's where logically some form of taxation could well be visited.

BB: It's been, at least in our lifetimes and our involvement with politics, as you mentioned, Babcock proposed it in the 1960s and wasn't successful in getting a sales tax enacted—a tax enacted in Montana—and it resurfaces every few years. It has for the last 30 or 40 years. It never seems to get out of the birthing cradle. What do you think? Do you think it ever will?

JT: It might if things become difficult enough to fund things of great importance, such as education for example. A very costly thing to fund. There will be a lot of other alternatives. If you keep heaping the property taxes onto what we have, you're going to drive a lot of people out of their homes. So it would take something real drastic. Of course, if you let people vote initially on whether or not they want to be taxed or not, well they're going to say "No." Unless they could pass a rational bill and then make an argument to the populace that it is indeed necessary, it might work, but not today.

BB: As you think back perhaps in your early years in the legislature and the House of Representatives and your early years in the state Senate, I believe you became minority leader in the state Senate in 1967 or something. Are there any legislators that kind of stand out in your memory, anything about them?

JT: Well there are some real excellent legislators all across the state until they reapportioned. Then all of the rural areas virtually lost their representation as a practical matter.

BB: That was the Baker vs. Carr decision in the 1960s that required that legislatures had population as the basis for representation both in the House and in the Senate.

JT: Correct.

BB: Of course that put the cities and towns in a dominant position in state politics and that's your point.

JT: Indeed. I served in the last unapportioned Senate in 1965. The very next session required the apportionment and it occurred. There were a lot of fine people on both sides of the aisle that I had the pleasure and the privilege of serving with. It was difficult for me to name them all because there were so many. I can't name them all, but some of them that impressed me of course were James Haughey from Billings, a noted attorney as well as a fine watercolor artist. Frank Hazelbaker, a friend of mine as well; he was a good hand. There are so many of them. On the other side of the aisle, there were excellent senators that I knew well. Stanley Nees, for example was a great man.

BB: (unintelligible).

JT: Bill Groff was a good friend of mine. He was an excellent legislator.

BB: How about a lobbyist. Do you remember any of those, or do you remember...

JT: There were good lobbyists and then they were in different lobbying (?). The lobbyists as well, I remember a number of them. I didn't get to know so many of them when I was in the House because I was only there that one session. In those days, the major corporate interest in the state usually employed lobbyists. Usually multiple ones worked the Republican side as well

as a bunch of their lobbyists that worked the Democrat side. That was standard procedure. The Anaconda Company was a big player. The railroads were big in that too. The Montana Power Company was big. They usually operated the same way. Among them they had good people. The telephone company had excellent lobbyists. I can't even start to name all of them. They're on the record.

BB: Any other important legislation that you might want to mention that you were involved with when you were a member of the state Senate?

JT: How about the House? I have...

BB: Sure, yes.

JT: I'll try that. I introduced a bill; I call it the "milk bill." We had a lot of dairy farmers in Lake County. It had been called to my attention that things weren't always as fair as they should be because the farmer was paid for milk based on either the butter content, fat content and in addition the classification the milk was put in, whether it was manufacturing milk or milk that was bottled for drinking.

Of course the bottled for drinking milk brought a higher price, although ironically, the manufacturing milk that made butter and cheese was more profitable to the processor than even the bottled milk. There was fudging I think on the butter fat. That set the price due. I introduced a bill to make accountability a lot better for not only what class they put the milk in for manufacturing or bottling and the butter fat content. Now my bill was not going to eliminate stealing, it just made stealing a little more difficult. It passed. Well, I was called down to the governor's office. The governor said to me...

BB: The governor would have been Babcock?

JT: Yes, Babcock. He said, "I'm leaning toward vetoing the bill unless you have a good reason to not veto it." I said, "Well governor, I think the numbers"—they escape me exactly, but it was something like—"there were 2,500 farm families in Montana, milking cows for a living. There were about 5 processors that are milking all of them. I think it's time we level out the playing field." Going into his office I had to step over the feet of a fellow named Paul McClure, who was one of the big wheels in the National Dairy Association. The bill got vetoed. That's the way life was, I guess, in that day and age.

BB: That's too bad. I guess the point you were trying to make is that if he just even looked at it from the standpoint of naked politics, there were a lot more people that would have preferred he signed the bill and not signed the bill.

JT: Oh, definitely.

BB: He probably, in many cases, never knew or understood what happened either.

JT: They had some pretty good lobbyists that were supporting the bill. Maybe they let them know, I don't know that. I have no way of knowing. That was one of the interesting bills.

BB: That was an interesting bill. And you weren't able to override obviously, either.

JT: Oh, no. there wasn't any chance of that. Well there was a big battle that had been going on when I arrived at the legislature in '63. It went on for another three or four sessions. I don't recall exactly how many. It was called a territorial integrity bill, where the Montana Power and MDU, North Dakota—Montana Dakota Utilities—were in these battles constantly with the rural electrical associations. Finally they got their act together and they compromised. The war ended. It was a real political turmoil for a number of years.

BB: The '60s up into the '70s I think.

JT: It lasted quite a while. We had a big battle in the early sessions in the Senate when there was a great effort to, I think, essentially provide for an appointed government at all local levels in the cities and counties where the people wouldn't elect the ones that made the decisions. I put up a big fight against that and we did get it whipped into shape. It was quite a battle. I think it was unwise. In an appointed government system, you don't essentially have a right as a voter to get to the mischief that's really happening and those that are creating it.

BB: Babcock left the office of governor as a result of the election of 1968. He was replaced by Forrest Anderson, who had been Attorney General, I think, for part of the time that you were county attorney and also while you were a legislator. Of course you served in the state Senate at the same time that he was governor. Any impressions of Governor Anderson?

JT: I didn't really have a great deal to do with him because he was only there for one term I believe in the governor's seat.

BB: Did you work directly with him on anything?

JT: Oh, one bill that I was promoting. It was a bill that required the state agencies to adopt administrative rules. It had been tried a time or two and so I introduced it. I don't remember what session, but it got through. It did have some technical problems, I'm sure. Anyway, Anderson vetoed it. He called me down and he said, "Now if you will make some of these amendments that are needed in here, I could go for it. We're having a special session. I'll open the special session and provide for it." I said, "Well, governor, where am I going to find lawyers that will help draft that? You must have them here." He said, "Where in the hell could I find good lawyers?" We got the job done.

BB: That did occur in the special session that followed?

JT: Yes and it was passed and adopted. Now we have what's called the administrative rules.

BB: Administrative Procedures Act; that was the name of that. Well that's good. Just to make sure people listening to this tape sometime later on might understand what your bill did, as I remember, is lay out a procedure for how administrative rules would be promulgated by state agencies. It was uniform across the state bureaucracy.

JT: That's correct.

BB: Anderson was followed by Governor Judge and as I remember it, in the early Judge administration, the legislature had a big issue before it involving the development of coal in Montana. There had been a, as I remember, kind of a crisis worldwide that some of the Arab countries had imposed a boycott on trading oil to the United States and the western democracies so there was an effort made then, that continues I guess, to be somewhat of an issue to try to get our country more energy independent.

In the process of accomplishing that, there was a major interest in developing the Fort Union Coal Deposit, the eastern Montana. So there was a fair amount of legislation in the early 1970s that pertained to the development of coal and also the taxation of coal. Any thoughts or recollections of that whole business?

JT: Well yes, there was a great battle that went on. One of the battles that, or one of the issues that became a focal point in battle, was the effort of some environmental interests to really shut down coal mining. There was a bill introduced to put a 40 percent tax on coal. That wasn't intended, I feel, to raise money. It was intended to shut down the coal mining. Lo and behold, it didn't. The issue...

BB: I think actually maybe it was legislated at a 30 percent rate, wasn't that where it finally ended up?

JT: Well it started out at 40.

BB: Yes.

JT: It may have been amended to 30. Finally it ended up as a battle in the United States Congress. I went back and appeared before a Senate committee. There was a great deal of complaint about, from the coal companies, about the exorbitant tax. They couldn't function.

BB: What position did you take then?

JT: I was supporting our legislation, the tax.

BB: Even though you felt perhaps it was a little bit high?

JT: Yes I did, but I think about that time, which wasn't the same year it was passed, it became obvious that it wasn't going to shut the coal operation down. They were going to go ahead. Eventually the United States Senate let our law virtually stand. They didn't override it.

BB: During that same period, there was also dispute, I think, over the tax on railroad property. The Congress became concerned because apparently different states, the railroad corporations felt it had been punitive against the railroad companies in regard to their individual state taxes on railroad property. So they passed what was called the 4R Act. I can't remember what the R stood for exactly, but the result of that was that the Congress basically limited states in that they couldn't tax railroad property in some discriminatory way differently than other property within the states. That was a battle as I recall for a couple of legislative sessions when you were there. Do you remember much about that?

JT: Not particularly, no. They finally came out with a tax. I'm not sure how we approached it at one point. Usually one of the factors that was discussed was the number of miles of railroad track and why did they tax the rolling stock differently and the buildings differently. They finally came up with sort of a uniform tax on public utilities of that type. Apparently we've been living with the number since.

BB: Yes, I think that's how it was settled. Anything else you can think of as you think about the legislature back in the 1970s? You know, Jean, that period in politics has sometimes been referred to by historians as Montana's second progressive era. It was during the 1971, '72, '73 period that the new constitution was referred to the people and ratified by them. It then went into effect in 1973. There were a whole series of environmental protection pieces of legislation that passed at legislature during that period of time. Any thoughts or recollections about that?

JT: Well the new constitution gave rise, shall we say, to a multitude and many-faceted field of litigation. Well, we dropped the sovereign immunity that governmental entities at one time were protected with. That created many, many court suits. Just where we could manage those and how we could go with it. That was one of the facets that I think were important. It is important. The centralization of taxation gave rise to a number of lawsuits and litigation that was important. They took away the power to assess property from local county assessors, centralized it in the state Department of Revenue, and that changed the face of how business was done. There's no doubt about that.

BB: There was a feeling, I think, wasn't there...There was some chicanery going on, that there wasn't uniformity between the assessments in the counties and the county assessors were, in many cases, well intentioned, but locally elected people who interpreted the law differently and implemented it differently? The idea I think in the 1972 Constitutional Convention, whether it broke down an absolute benefit or not, was to try to bring some standardization and uniformity to the rules for assessing property statewide. That was the idea at least, wasn't it?

JT: Yes, and I think there was probably a truth in the fact that on a local level, often times, there was some discriminatory practices. Local county assessors who were elected and they undoubtedly were not disinclined to favor certain elements in their county. So what the new constitution did, they removed that local discrimination from the local areas and centralized it in Helena. Now we have some centralized discrimination.

BB: You know, one of the things the 1972 constitution did also, at least it's been described this way, was to make environmental protection a constitutional right because we've got terminology in our state constitution that guarantees the citizens of Montana a clean and healthful environment.

JT: Indeed.

BB: Any thoughts on that?

JT: That's going to be fruit for litigation for I don't know how long. We certainly never heard the last of it. What exactly would be a denial of that constitutional right on any specific individual issue is going to result in litigation. There are no standards to go by in the constitution. What is clean and what is unclean? It's going to have a great future for many attorneys that are going to litigate those issues.

BB: The constitution also guarantees a quality education and I believe equal access to a quality education, which also has been the focal point of a fair amount of litigation. Any thoughts on that?

JT: Well there's no doubt that properly sold, the constitution requires equality in education. It guarantees our people and their children a quality system. They don't define quality. The battles up to date, and they probably continue too long this way, they're equating equality with money, or quality with money. I think they have to look deeper in that. They have to go, I think, to a point where, "Okay let's analyze what it takes to have a quality education in the field of science and the field of literature and the field of history." You know, talk about that. So legislators being human like everybody else, they've come up with a solution: throw more money at it.

That will establish a quality. It doesn't really do that. At least it doesn't get down to the core problem. I don't know if we'll ever reach the level of legislative sophistication where we'll do the thing that has to be done and that's start to define what a "quality education" really is. Now I think there's another problem. I think the courts have gotten into this a little bit too much.

The question of how much money a school system should have statewide or local, or otherwise, should be a legislative issue, not a judicial issue. So what has the court done so far? They simply said, "There isn't enough money. You're denying a quality education." I know why they don't go

any further because they don't know how to do it. They're not going to sit down and start defining quality education in mathematics and science. They're not capable of doing that. That belongs to the legislative body.

BB: Because that term "quality," which is a suggestive term is in the state constitution, it's within the duty of the court to interpret what that means. So because it's hard to define, but because whatever it is has got to be paid for by the legislature, there's sort of a contradiction in our system there, it seems like. Is that what you're saying?

JT: I think so. I think the legislature should be the ones that should decide how much money is going to be provided and how they're going to do it.

BB: But if the court gets asked, "What do you think quality means?" And they render a decision, and then they've implicated it themselves. Is that the (unintelligible) of the Supreme Court that said it's up to the legislature to make that determination?

JT: Oh, I think they could have said that and probably rightly so because I don't believe our judicial system is equipped to start defining, "What's quality of chemistry?" What's quality of mathematics?

BB: But because our system provides for courts to interpret in terms that need to be interpreted in the laws and the constitution, I guess could the court have dodged that?

JT: The constitution has been, shall we say, violated. I don't know whether they can do that without defining everything or not. If they start to define what a "quality education" is, they're going to be over their head in deep water. The legislature will be somewhat in the same boat but the legislature is a little better at dog paddling than the courts are. They can probably survive.

BB: There's another kind of an interesting provision in our state constitution that provides for full legal redress, which I think is unique among the constitutions in the nation. Help me understand that. How would you describe what that means/

JT: You've got to understand first of all, and thankfully our court—while I was on the court—have left to the legislature the decision as to what will be redressed in the field of negligence. In other words, the legislature can set the standards of what is a negligent act. The full legal redress issue arose in the constitution over the worker's compensation issues. The effort that was being made to...if back in the old days before the new constitution, if a workman was injured even by a willful act of his employer, he couldn't go any further than what the work comp provided his pay was.

Well there wasn't full legal redress for him, see. That's where that really focused. If you analyze the debates in the '72 constitution, it will pretty well tell you that. It doesn't mean, and the

court hasn't really said it would mean, that you get anything and everything that you deem is necessary to give you full legal redress. There's got to be a standard of review on that. There is. Now statutory law sets the basic framework. Unfortunately, people in the—in trying to understand what courts do and what the legislature does—ignore the fact that the first section of our Montana code has a definition. Not that this is really something that everyone should understand what law is.

That section 1-1-1-01 of the Montana code annotated and the law is: "The solemn expression of a will of the Supreme Power of the state." That's, of course, the people. How is it expressed? By the constitution and by statutes. Those are called the written law. Then it goes on to tell us what written or unwritten laws [are], whether organic or otherwise, or written or unwritten. In other words, they're saying that unwritten laws can be the law. Written law is defined as: "That which is promulgated in writing," of a statute or a constitution, "of which a record exists."

We understand that. Okay, now, unwritten law is: "The law not promulgated by statute or by constitution or recorded, but which is nevertheless observed and administered in the courts of the state." So that's where the common law comes in. Here's something that we should all understand and why courts should never propose to legislate. The statute says that: "In this state, there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision."

Now, if a court is faced with an issue, and there's no statute covered, [the] constitution doesn't give them any help either. People are entitled to have their issues decided so they can write a common law decision. It will have the same force and effect as a statute. That's the only area where they should legislate, not when there's a statute covering the issue. That's where the real mischief comes in and people become dissatisfied is by courts proposing to impose their views on what a statute should say and didn't. That's a problem.

BB: So clearly from what you've just said, it was your judicial philosophy to try to be restrained in maybe, I guess, in the term that's used commonly, maybe used too commonly, that you regard yourself as a strict constructionist?

JT: Well I'm sure restraint in not trying to write into a statute what isn't there or to write out of a statute what is there, yes. I think we should stay with...if a statute covers the issue, we're supposed to follow the statute. I don't know if you call that strict construction or following the law.

BB: I want to talk to you about your period as chief justice. You were chief justice 16 years, longer perhaps than any other chief justice has (unintelligible).

JT: I don't recall right now. Recent years, yes, I think that was quite a pile.

BB: Before we go there though, Jean, you finished up your years in the state Senate as president of the state Senate. You of course were Republican floor leader, I think maybe a couple of different times. You had leadership positions, as I remember, that you chaired the judiciary committee and perhaps other committees. Any other prominent memories connected with your service in the state Senate, maybe particularly as president of the state Senate?

JT: No, but there are some overriding things, I think everyone should understand, that serves in the House or the Senate. An individual legislator is probably not going to be very successful in his bills either passing them or opposing the bills if he doesn't learn to cooperate with members of both sides of the aisle. They're not going to do it on their own. If you are fundamentally correct in what your argument is, you should be able to get some cooperation from both sides of the aisle, and usually do. I think that's important.

BB: Do I interpret that to mean that as a legislator, you attempted to tailor your arguments so that they could be acceptable to the other political party as well as your own?

JT: First of all, you have to be correct in what you're promoting or espousing. It's got to be expressed in a logical manner that's understandable by both parties in the body. If they do understand it, and understand this correct, you're probably going to get support.

BB: Related to that, as you look back in your long service in the legislature, is there a lesson or an overall impression that you came away with, something that maybe you wouldn't have known very well or have understood very well unless you'd been a legislator?

JT: Well yes, and it shows. There's inevitably a big pitfall that's called the law of the unintended consequence. You very well better be able to see down the road as to what this law is going to do to the citizenry. Avoid that pitfall of unintended consequence, that's very important, yes.

BB: Any impressions that you might have formed about human nature, just kind of in general from the process of legislative, which is sometimes...sometimes there's conflict involved. Frequently there's compromise, as you mentioned. There are two political parties. There are some differences in philosophy. We've got people from all walks of life, all kinds of temperaments, ages, abilities, and so on. Any, just any conclusion at how you might...

JT: My one conclusion I think that could be readily reached is that it's very difficult to have an individual set aside their own personal interests in voting or dealing with an issue. It's so important that they do. If they can't see what's wrong and what harm was going to come to the people, and they still persist because they see a personal benefit in some legislation, that's bad news. It really is. So if they're going to be a good senator or representative and serve the people not only in their district, but the whole state in a proper manner, they've got to understand that and practice it. I realize that it's pretty hard to put aside all of one's perception of what's good for me and vote for what's good for everybody or vote against what's bad for everyone, really.

BB: Just briefly, Governor Tom Judge, what jumps into your mind?

JT: Well, I think he was not as effective a governor as he might have been if he had less of Judge's...interest in Tom Judge's interest all of the time. Outside of that, he didn't make any great impression. I'm sure he hasn't left any great legacy as a governor.

BB: Governor Ted Schwinden?

JT: I think he was a good governor. Ted Schwinden, I believe, in spite of the necessity of promoting the interest of his party and himself as an elected official, nevertheless had the interest of the people at heart. I think he was a good governor.

BB: You were elected chief justice in the election, I believe, of 1984. It was a tough campaign. You made it by just a couple of thousand votes, I think. You defeated a fellow who had been a speaker of the House of Representatives. You had been president of the state Senate. What do you remember about that campaign? It was the campaign between yourself and Daniel Kemmis.

JT: I think my vote margin was much larger than that, by 20,000.

BB: Oh was it?

JT: Yes with Kemmis, not with [Terry] Trieweiler. That was the one that was so close.

BB: Any thoughts about the campaign? Maybe I should ask you first, what persuaded you or induced you to run for chief justice?

JT: Well, the chief justice, Frank Haswell, called me, I suppose it was early in '84 and he said, "I'm not running again. I think you should consider it." So I got to thinking about it. That's how I really got started thinking about it.

BB: Any recollections of that campaign that stayed in your memory?

JT: It's no small task to visit every county seat in Montana. That's one of the recollections. It's a terribly large state and to try and...being not a wealthy individual, trying to raise support for campaign expenses is a very difficult job. The campaign costs of the public media, television, and radio are pretty daunting, I guess you'd say. That's an impression I have from both campaigns.

BB: It's a marathon. It's a big (unintelligible).

JT: Oh yes, huge amount of work. A lot of effort and it's not for the timid or the weak.

BB: So you were elected chief justice, sworn into office in 1985. Any thoughts or impressions, any important cases or important involvement that maybe you could share with us?

JT: There were literally thousands of cases in those 16 years, all of which were important, particularly the people that are involved. Some cases had more of a statewide impact than others. We decided a school funding case and found the constitution being violated. That was a shockwave across the state. That's one of them.

BB: That one, if we're talking about the same one, didn't have so much to do with the adequacy of funding of a quality education. It had to do with the equity of how the income of taxes was distributed among the taxpayers to pay for it.

JT: Yes exactly.

BB: So that would be something that the courts were more correctly involved in.

JT: Yes, I think we were. There was equity on division of funds provided by the state, the foundation program, for example. Some counties were taxed rich. Some were taxed poor. They were all treated the same under the existing law at that time. That was the different...a different issue.

BB: Wasn't the coal tax argued before the Supreme Court, Montana Supreme Court when you were there? What I remember, maybe this involves you, maybe this was before your time, but I think I remember that William P. Rogers who was the Attorney General at one time of the United States [under Eisenhower] and was the Secretary of State of the United States [under Nixon], didn't he come before the Montana State Supreme Court to argue a case?

JT: Not when I was there. There was a big fight over Colstrip number three and four that was before the court before I was there, right before actually.

BB: That could have been when Rogers was here.

JT: I think so.

BB: There were probably cases that came before the Supreme Court when you were there involving the implementation of the new constitution.

JT: Oh lots of them.

BB: Anything that's particularly memorable there?

JT: There were a constant number of bills that were being introduced every session in order to implement some of the sections of the constitution that made certain provisions for the rights of the people and that simply didn't tell us how to go about attaining that. That's what the legislation was needed to implement. For example, the right to know, the right to access public records, so we had to flesh those out. A lot of legislation was on that.

BB: Was there a Supreme Court ruling that resulted in the forcing legislative caucuses to be open to the news media and the general public?

JT: That was after I was out of there.

BB: After you were out.

JT: Yes, I think there was, yes.

BB: Do you have any thoughts on that?

JT: Not really, I don't think it accomplished anything.

BB: Do you think it will be a wise public policy to have the deliberations of the Supreme Court made public?

JT: No, I really don't because if you go to that extreme, there's no state in the union that has that at all. As a matter of fact, Texas has a felony statute if a leak comes out of the Supreme Court conference. Anybody getting nailed for doing it goes to the penitentiary for a number of years.

BB: How would that work?

JT: The reason for that, Bob, is that let's take for example a case where the local schoolteacher is accused of molesting a child. He was convicted in a local district court where there was not a fair trial at all. The appeal comes before the Supreme Court and at the first conference, the court votes tentatively five to four or four to three to uphold it. They don't finally vote, that's the tentative vote.

The press is there and goes out on the radio and the television and of course the defendant is listening to that on the local news. So he immediately goes in the bedroom, gets his shotgun, and shoots himself. He puts it in his mouth. The next day, the court revisits the issue and vote is reversed. The vote is now four to three to reverse the conviction because it wasn't a fair trial. It was too late for him. All kinds of property rights come up that way. Until the final vote is cast, it'd be real dangerous to start publicizing that.

BB: When the case becomes before the Supreme Court, in Montana, I believe the court has to accept jurisdiction doesn't it, the Supreme Court does?

JT: Virtually, yes, unless the appeal was filed in contrary to the rules. If the rules are followed, you do, even if there's no merit in the appeal, you have to at least accept it and dispose of it.

BB: I'm certain there's a regular procedure or routine that most people probably don't understand. I don't know how important it is that they do understand it. Just walk us through a case. Someone loses in the lower court and so they appeal to the Supreme Court. Let's say it's a fairly major thing, not a trivial thing. So it's something without regard to whether the Supreme Court should have taken jurisdiction. Let's just assume that it's a major case that arrives before the Supreme Court. How does it arrive? Does it arrive physically in a written agreement?

JT: The initial document filed in the lower court, the district court is called a notice of appeal. It can be a just one short paragraph on one page. The document says essentially that the appellant appeals the verdict of the jury and the (unintelligible) cause. It's signed by the appellant's attorney and is filed. That triggers the time running. Then he has 30 days to prepare and have prepared a transcript of the trial.

Often times, a lengthy trial, you have to have more time. The court reporter can't get 5,000 page transcripts out in 30 days. Routinely, the appellant will be granted an additional time for the reporter to prepare the transcript. Let's say he gets it prepared within 60 days. The transcript then is filed in seven copies with the Clerk of the Supreme Court; no it's filed with the clerk in the district court. Then they have to transmit it to the Clerk of the Supreme Court along with the file on the case in the district court.

BB: The seven copies of the transcript would be one for each of the seven justices?

JT: Yes, right. When that arrives at the Clerk of the Court's office, a notice is given to the respondent, the party that won, to file their brief within 30 days. Actually, the appellant has 30 days to file a brief after he gets his record in shape. Once that's all done, then he's through for the time being. Then the respondent has to file a brief and they may ask for additional times and all that for all kinds of reasons, or they may not.

If they get their brief filed in time, then the case is first, in all this proceeding, ready for the Supreme Court to even look at. So the Clerk of the Supreme Court is supposed to deliver the transcripts and the court record, the briefs to all of the justices, really, except for the transcript goes in a room until the thing is assigned for the writing judge. After that's done, it's ready for the first time actually for the Supreme Court to start looking at it. Then at a conference, the Chief Justice will assign that case to one of the seven justices, including...

BB: Was that on a rotational basis?

JT: On a rotation base, if you don't use rotations, you're going to have all kinds of squabbles going on. So it's rotating.

BB: So the guy who gets it assigned to do the first (unintelligible), reads both the briefs. He's got access to the transcript and then what does he do? Does he come up with a preliminary (unintelligible)?

JT: Well he might not write a four-page opinion, but he'll come up with a memo saying, "This is what the issues I find and this is how I think we should decide it." If you wanted to, it's a simple case, he might prepare a proposed opinion, but he's not required to do that. That's circulated and discussed.

BB: How do you discuss it? Do all seven justices come together after it's been distributed to all of your offices, and sit down to kind of talk it over?

JT: Yes, the one who it was assigned to will say, "This is what I believe and this is why I suggest we do this and why I circulated my memo." They talk about it. If he has three others that agree with him, you've got a majority.

BB: So is there some kind of a formal vote taken as Chief Justice, head of the table, does he say, "Well if you're ready to vote on this or anyone has anything else to say, do you agree with suggestion of those who say 'Aye' and those who don't say 'No.'" That's a majority, that's what it's for.

JT: Then you prepare a formal opinion. It goes through virtually the same number of procedures. Changes can be suggested and all that sort of thing. Votes can be changed.

BB: Something literally started out by (unintelligible) not the majority.

JT: Maybe. That isn't the common practice, but you bet. Then finally if everybody agrees with a draft opinion, then the assigned justice will go prepare an opinion, we call it, "in red back," because we use a red folder for the final. We get it all ready for signatures. Then it comes back to the conference and goes around the table. Those who are for it will sign it. Those who are against it having hopefully not more than a week or so, to file a dissent if they want to, if they don't drag their feet. They don't have to write a long dissent, but they can say, "I dissent."

BB: You've got the experience in well educated jurists or lawyers that make up the Supreme Court and so I guess this is kind of a philosophical kind of question, but do you think that if they were all given the same evidence, the same court transcript and the same briefs and that sort of thing, that they would all rigidly (?) objective that all the decisions in the Supreme Court would be unanimous? So there's got to be some judicial philosophy that plays here.

JT: Yes, I think so. Maybe they simply don't agree with the view that's taken, as to the evidence. They might have all kinds of disagreements on that, some legitimate, some maybe not so legitimate.

BB: Well if that's the case, anything else to talk about in your involvement on the Supreme Court?

JT: I don't think so except it's a great experience.

BB: Jean when you look back at your involvement in Montana history and of course you started out as an elected county attorney back in the early 1950s and you ended up retiring as Chief Justice nearly a half a century later, are there any conclusions that you would draw from what happened in that period of Montana history? Maybe some thoughts on how you interpret what made Montana tick in the early 1950s and how you think it might have changed for the better or worse in the time that you've been involved?

JT: Well, I think fundamentally, most people and our citizens in Montana are good citizens and good people. That's what makes it work without trouble. The economic times have had their ups and downs and sometimes we can't do a great deal about that as individuals. When employment is available and a citizen can support a family, raise a family and do it in safety, I think the system is working well. I think there's more good than there is evil. I might just conclude that remark by saying that evil need not exist, but if it does, it need not last forever.

BB: Is there any way you could think of Montana or Montana people might be different today just as an observation about our society than it was when you were a younger person?

JT: I don't like to say that the younger generation that's coming up the road is, I think, being raised without some of the benefits of work ethic that we used to have. I don't think we have to go back into a recession or a Depression in order to obtain a work ethic. It's unfortunate, I believe, that there are so many young folks today with no opportunity to have work.

BB: Technology is rapidly changing society.

JT: It's rapidly changing that, you bet.

BB: So it might be a little tougher for kids to grow up and figure out how to fit in today than maybe when we were kids.

JT: There are not as many manual jobs available.

BB: Probably more decisions to be made in...education becomes more important.

JT: It certainly does.

BB: What do you see as you look into the future for Montana?

JT: I think we'll be a survivor and a good place for people to raise families and work, and prosper.

BB: So you're optimistic?

JT: I'm optimistic.

BB: Well thank you. I very much appreciate your interview, Jean Turnage.

[End of Interview]