

[Stephen Rhodes]

I am Steve Rhodes and I am retired, I was a United States bankruptcy judge and I was assigned to the Detroit Bankruptcy case.

[00:00:38 Please summarize your ruling of LYDA]

Well, there were several aspects to the ruling. Probably the most important of them was my conclusion that a bankruptcy court lacks the jurisdiction or the authority or the power to grant much of the relief that the plaintiffs in the case were seeking. And because I did not have that authority, I had to dismiss those portions of the case. Uh, beyond that, there were portions over which I did have jurisdiction. Those were the constitutional claims and the claims under the United States Bankruptcy Code. As to the constitutional claims, I found that the complaint failed to state a claim on which relief could be granted because I found that it did not allege, sufficiently allege, a violation of the due process clause of our constitution. And as to the bankruptcy code claims, I found that the relationship between customers of the water department and the city itself was not what we in bankruptcy call an executory contract and therefore was not subject to the rules in the bankruptcy code that deal with executory contracts. Beyond that, and in the alternative, I found that even if the bankruptcy court did have jurisdiction over the plaintiff's request for a preliminary injunction, the evidence that the party submitted did not warrant that relief.

[00:02:44 So could you just explain in sort of a little bit more laymen's terms what it means when there is a due process claim and and when there is a breach of the executory contract?]

(laughs) I'll try. Let's deal with due process first. Uh, the due process clause of the constitution simply requires the federal government and the states to afford reasonable notice before depriving any person of property-- or liberty, for that matter. Um, and so, the issue for me was whether the city was providing adequate notice to customers before shutting off their water. And I found that there was, in the constitutional sense, minimally adequate notice. On the executory contract side, the definition of an executory contract is quite complex in the bankruptcy code. But I found that the relationship between the customer and the city wasn't a contractual relationship really at all. It was a legal relationship by which the law set forth the terms by which services would be provided and a customer either complied with those terms, either agreed with those terms, or did not. And it would be like, it was like paying a fee for a governmental service and that's just not considered an executory contract.

[00:04:43 Right, right, right. OK, so, you know, I'm gonna ask you sort of one more follow up question on that and then I'll sort of get on to the second question. Throughout the entire bankruptcy process, I saw you exercise your po... I mean, when Kevyn Orr came back with sort of an insufficient plan of adjustment for the city in terms of the swap termination fees you said "no, you have to go back into mediation." Why

were you not as hard on the water department as you were on some of these other issues? You know, I was excited about your role that you were playing in forcing some sort of justice for the citizens of Detroit, but this seems so completely out of context.]

Well, the answer lies within a complete understanding of the role and jurisdiction of the bankruptcy court. Chapter 9 gave me the complete authority to decide within my discretion whether the settlement that you referred to, the settlement between the swap banks and Kevyn Orr was a reasonable settlement or not, and there's a lot of a case law that helps bankruptcy judges decide whether a given settlement is a reasonable settlement or not. So, my jurisdiction was not at all contested or challenged or even an issue in that context. But as we have discussed, my jurisdiction to deal with the water department issues was just not there. It just wasn't there. Let me expand upon that a bit so that you and everyone watching can understand it a bit better. Uh, generally speaking, outside of chapter 9, in chapter 11 or any of the other chapters, a bankruptcy court has jurisdiction to decide any issue that's related to the bankruptcy. Clearly, the water shutoff litigation was related to the bankruptcy. There is however, in chapter 9 specifically, section 904, which contracts the court's, the bankruptcy court's, normal jurisdiction. It prohibits the court, without the consent of the municipality involved, to have any jurisdiction over any decision the municipality makes regarding its property or its revenues or its political decision. Those are still left to the democratic process of the municipality. What this means of course is that the bankruptcy judge is not the mayor, is not

the city council, is not the emergency manager, is not the dictator, has no authority over the revenues, property or political decisions that the municipality still has the right to make. And so, many of the issues that the plaintiffs presented in the water shutoff litigation were, I felt, barred to me for review by this section 904 of the bankruptcy code. They related to the city's revenues, to its property, the water department and its assets, and to its political decisions. Now, the difference with Kevyn Orr's settlement with the swap banks was that the city there specifically consented to my jurisdiction to review that. They were not required to ask me to review that, but they asked me to review it and I did.

[00:08:50 When you say the city, you mean Kevyn Orr.]

I do.

[00:08:54 Sorry, could you say that in a sentence?]

The city and my bankruptcy case was represented by Kevyn Orr. He made all of the litigation decisions in relation to my bankruptcy case. And so, when I say "the city," I do mean Kevyn Orr.

[And so I'm just gonna clarify so I don't use this incorrectly. There's an argument that a lot of the activists and community organizers have made that the bankruptcy judge does not have the jurisdiction to give away what they say is revenue-generating property, and so they make the argument that "well, if you're using that argument to not intervene in the water department, then how come he is able to intervene in

other sectors of, you know, when you talk about giving certain property to creditors or allowing authorities to be formed. I mean that could conceivably be seen as intervening with the property, Now what it seems you're saying is that there has to be consent for you to do that, and with the water department case, there was not consent given to interfere. Am I reading that correctly? Because I don't want to present it simplistically.]

I think you are essentially correct. The property and the management of the property and the disposition of property is all entirely within the discretion of the city and in our case, the emergency manager. To the extent that the city or the emergency manager in our case consents to the bankruptcy court's jurisdiction to review any of that, they are permitted to do that and then I have the jurisdiction to do it. The water department is a department of the city, its assets are owned by the city, the city has complete authority over it and the revenues that come from it.

[00:11:04 Ok, great. Thank you. So, why, to the best of your abilities, DWSD as an enterprise fund and not as part of the city' general fund, why was it brought into the bankruptcy at all? Why were there no attempts by any party to sue despite the comments that you made that the swap deals may have been illegal. Why was there no attempt to sort of go back and sue over those swap deals that were already being paid by the water department if it was indeed being brought in as part of the reason for the bankruptcy? I'll start with that and then I'll ask you the second question.]

It is true that the water department is what you all an enterprise fund. It is, nevertheless, a department of the city, It's assets are assets of the city and its revenues are revenues of the city. ITs obligations are obligations of the city. So, what the phrase enterprise fund means in a technical sense is that the revenues of the water department are used to pay the bonds that the city issued for it's water dept assets. That's really all that that means. Uh, so, uh, the fact that it;s an enterprise fund, doesn't provide any basis to treat its revenues or funds any differently than any other revenues or property of the city. That's a very important point. And I do want to correct one misstatement in the question. There actually was substantial litigation that the city commenced regarding the illegality of the swap transactions. They filed a lawsuit and the parties to that swap transaction filed actions and it was, in that context that the negotiations and the mediation took place which lead to the ultimate settlement of that dispute, which I did later approve. It didn't go to trial, that's true, but only because they settled it. But they did commence litigation-- very serious litigation.

[00:13:46 So in the context of the bankruptcy, there was a lawsuit]

There was.

[00:13:51 And did that include the water department bonds?]

Well, it included the city's claim that the swap banks transaction from the 2005 and 2006 cops and swaps transaction was illegal, and so any benefit that the city might

have been able to achieve from that litigation certainly would have benefitted the water department and its ability to provide services to the region.

[00:14:35 And so, I mean there was some benefit, right? So the benefit was that the payments got reduced to \$85 million...]

Well that's right. And so, to the extent the city was no longer obligated to pay \$240 million, the water department's fair share of that was settled out, was excused; absolutely.

[00:15:03 What was that number that the water department was excused?]

It was never broken down that way, only because the water... it wasn't broken down by department for any of the departments.

[00:15:25 So, um, maybe in a more, in a simpler way, could you talk about what the benefit to the department was as a result of that litigation that took place?]

Sure. So, if the city had been responsible to pay to the swap banks the full \$240 million that they were claiming for terminating the swap agreement, the water department would've been obligated to pay its fair share of that, whatever that was, however that was determined. Because the obligation was the \$88 million, the water department's proportionate share of that was therefore reduced proportionally.

[00:16:14 Hmm, ok. that makes sense. It's confusing for me to read the water department's financial statements from 2012 and 2013 and see that they've paid, you know, \$100 million, \$200 million, you know, on debt service every year. Essentially half, and that doesn't seem to be getting reduced to a lower number through the bankruptcy process...]

Um, ok if the debt service numbers that you are referring to are the debt service on the water department bonds, they paid whatever they were obligated to pay and that may or may not have resulted in any substantial reduction in the bond obligation depending on the amortisation schedule of them. The water department bonds, or a substantial portion of them, were restructured during the bankruptcy at a lower interest rate, and that did save the water department tens of millions of dollars.

[00:17:34 And that's another good point to make]

And by the way that's a restructuring which the market would not have accepted outside of bankruptcy

[00:17:53 Ok, so what are your criticisms of the 10-30-50 plan that the mayor put in place at your urging?]

Uh, there were two major criticisms that I expressed. The first was: there were organizations in the community that were coming together to try to make available, to water department customers who needed it, help to pay and catch up on their water bills. And that was great. It was a wonderful

recognition of need by the community coming together by a number of organizations. I felt however, from the customer's standpoint, it could've been much better organized so that a customer could go to one place and get the help he or she needed without having to be directed to a number of different places with different criteria and different waiting times and different conditions. That was one criticism I had. The other one was, I never felt that there was a calculation of what the need was in the community-- what the total dollar amount of people who needed help would need, an analysis, a financial analysis of what the need was. That was a problem because it was never clear to me that the assets that were being marshalled to address this problem were sufficient assets. And I was concerned about that, I was concerned about that because what would happen to these residents who need water if all of these different organizations who were making resources available ran out of resources? And it never struck me that there wasn't an adequate analysis of that question.

[00:20:23 Wasn't it frustrating for you to realize that it was out of your jurisdiction to order a more proper moratorium?]

It was frustrating to me in one sense. Obviously people need water to live and they need water at a price they can afford to pay. What was perhaps more frustrating to me was that the plaintiffs in the case and their lawyers did not take their claims to a court that would have jurisdiction. I still don't understand why that didn't happen.

[00:21:16 You made that recommendation now that you've finished the bankruptcy. Can you say what it is that you think

they should have done?]

Um, in the bankruptcy code, there is a provision that stops parties like these plaintiffs from bringing lawsuits against the city. We call that the automatic stay. But, there's another provision in the bankruptcy code that grants the bankruptcy judge the authority to grant relief from that automatic stay, so that parties like the plaintiffs here can go to state court or any appropriate court to seek relief within the jurisdiction of that court. And as I say that did not happen here and I don't understand why it didn't .

[00:22:10 So you're saying that you would have granted an exception to the stay had they requested it?]

Well I would have heard any objection the city had to doing that, but it seemed to me that the plaintiffs would have been able to make out a good case.

[00:22:26 And what would the result be in a state court?]

I can't predict that. Because of my lack of jurisdiction over their state law claims, I never really did dig much into the merits of those claims.

[00:22:49 And then just one more follow-up on that, the regional authority, you said that there was no calculation done in the 10-point plan on the need. Could you comment on that in relationship to the final regional authority agreement to give \$4.5 million do an affordability fund?]

Regarding the \$4.5 million from the regional authority, if that's what the amount eventually was agreed upon, I don't know how that number was arrived at, um and as I say, no one has done an analysis to determine whether that is an adequate sum to address the needs of the people in Detroit who need help.

[00:23:45 Do you have any other additional criticism for the outreach. If you were instead the emergency manager or the mayor, what would you have done differently?]

Well beyond what I've already said, not really. I would have made access to the program much easier for people who needed help and I would have insisted on an analysis of what the need would be and a plan to marshal the community and perhaps state resources to meet that need, that financial need.

[00:24:31 So, you know as I'm not...]

But I'm not the mayor, I wasn't the mayor.

[00:24:37 So, I'm not a lawyer, so I have analyses of certain legal procedures that are not as airtight as yours, so I'd like you to help take apart my argument, which is that the city has argued repeatedly that it is against state law to implement a rate-based affordability plan because they can only charge cost of service. Numerous outside legal opinions have refuted that and said actually, it's within your right to find a structure of rates that is going to generate the most amount of revenue for the system. There, you know, if you

could sort of take apart that or help me understand where the marbles are sort of falling with that...]

Well, I want to preface my answer to your question about rate setting by again emphasizing that although I did have a look at the statute that's at question here, I did not come really to a final decision about it. But what the statute says is basically that rates shall be set so that each rate customer pays their fair share of the costs of providing the service. That language seemed pretty straightforward to me to prohibit the city from implementing on its own a rate structure based on ability to pay. But having said that, it's really up to the state courts to interpret their own state laws and come to their own determination. And so, it wasn't really for me to do that. So, as I say I felt that would have been an interesting argument for the plaintiffs to make in state court where jurisdiction would not be an issue.

[00:27:08 And then the sort of follow-up to that argument is that, um, and again this has to do with my lack of a full understanding of how state legislation works, but there are certain laws and statutes that are on the books, whether they're Michigan constitutional laws or public acts, and they are to my eyes, it seems that they are bent to suit the needs of the process at hand. One example of that would be the law that pension shall remain whole. Another would be that the emergency manager law that voters repealed is now pushed through with the special funding and excuse my lack of vocabulary, and there are always multiple interpretations to laws. And it seems as though maybe political forces in the state have interpreted those laws to benefit the process that

they are attempting to push forward, and that could have been done with this law as well. That it didn't, to me, says that there's some sort of callous disregard for low income people. Could you um, take that argument apart? That's sort of one of the arguments of my film and I want to make sure that it's sort of refuted properly.]

Uh, I'm not quite sure that I agree that the attitude of the city and the water department in particular was a callous disregard for the needs of low-income residents. I was concerned that they were not paying enough attention to it and although I eventually come to the decision that I lacked jurisdiction, I did feel that it was appropriate for me to use the spotlight that my courtroom would provide to bring the leadership of the water department into court and have them explain to me and to the residents of the city what they were doing in response to this need. [00:29:49 film restart] And so I felt that that was one thing I could do although I had questionable jurisdiction in an attempt to address this problem, and that's when Mr. Ladimore came in and others and we began to have a dialogue about what could be done and that's what led eventually to the mayor's plan. So it felt like I did what I could given my lack of jurisdiction. But in those conversations I didn't feel a callous disregard. There was a certain amount of neglect, certainly. The water department was under tremendous pressure, financially, financial pressure, to make its collections as effective and efficient as it could. So it was under a conflict; on the one hand, it has an obligation to collect for the service it provides because if it doesn't, then it has trouble paying its debts and people who do pay then have to pay more. ON the other

hand, there is the economic reality that you and many recognize that not everyone can afford to pay the rates that the city has set, that the water department has set. So as part of the bankruptcy and restructuring process, it chose to focus on collections and less on meeting the needs of people who can't pay and I attempted to refocus that to the extent I could and I think I was successful to some extent.

[00:31:51 Yeah, and I think you were too. The amount of media attention that was generated was....]

And I know that people, many people, were disappointed in my ultimate conclusion that I didn't have the jurisdiction to grant the formal injunctive relief that was requested, um, but the truth there is, it doesn't do anyone any good for a court to grant relief that it doesn't have the jurisdiction to grant. So, I did what I could.

[00:32:28 And in your experience as a bankruptcy judge, was the reduction of debt that the water department had during the bankruptcy process on the low end? On the high end? How, relative to other, I know this is an unprecedented case but relative to other cases that you've seen...]

Well, the type of debt that the city had, is a type that is very difficult to get reduced in bankruptcy. Mostly, it was secured debt. So, any reduction in obligation that the city could realize coming out of the bankruptcy was a bonus for it.

[00:33:20 And did you feel like the water department should have... and I'm asking so many questions about the debt

because my other argument in the film thus far is that if interest rates were not so high and if there was less debt that the city was responsible for, rates would not be so high and we wouldn't have mass water shutoffs. And in my mind, tens of millions of dollars is a drop in the bucket compared to what, you know, what sort of system could be put in place to ensure that people have water for decades to come. So, could you help me take that apart so I'm not making simplistic claims about the debt versus the rates?]

I'm not sure how much I can help you there because once again, the process of setting rates was very far outside of the jurisdiction of the bankruptcy process. Um, as I said section 904 specifically carves out from the bankruptcy jurisdiction any power over the municipality's revenues, and that's what we're talking about here. There is a political process by which rates are set, and um there is state law that says how the rates are to be set and neither of those are within the bankruptcy court's province. I know that the debt service is a major expense of the water dept that has to be considered when setting rates but I'm not even sure I know how much of the water rates are attributable to the department's debt burden.

[00:35:26 It's half, it's right about exactly half...]

It's half, see this was just never an issue in the bankruptcy case because it wasn't anything I could deal with.

[00:35:36 So, if Darryl Ladimer or Sue McCormick had come to you and said "judge the reason we are having such a hard

time keeping people's water on is not because they're delinquent, but because we're paying a tremendous amount every year in debt service costs, could you have helped them enter into further mediation with the parties that held that debt to then trickle back into the water shutoff issue?]

Well, I did order mediation between the bond holders for the water department and the city, and it was that mediation that resulted in the deal that eventually became the restructuring of those bonds. So, the process that you ask about did take place. **Could it have realized more savings for the city? It's possible, but this is the deal that they came to.** So having come to that arrangement, there really wasn't much I could do about it at that point.

[00:37:09 I ask some of these questions for sort of summary purposes in the film. Could you just say a little bit more about your belief set, specifically as somebody who spent their entire life in southeastern michigan where I'm sure you're aware has extreme racial and economic polarities between its city and its suburbs. According to your beliefs, should water be shut off to low-income, predominantly african-american people who have an inability to pay? Could you speak to that from your perspective as a citizen?]

Uh, a just and compassionate society would not shut off water, a basic necessity of life, to a family simply because they haven't paid if their failure to pay is due to an inability to pay. there's really nothing more to my belief set than that. And, as a just and compassionate society we have an obligation to marshal our resources to prevent that from

happening just as we have an obligation to provide food and shelter for people who are unable to provide those for themselves and their families.

[00:39:06 So, I think this will be my last question and I don't want you to feel uncomfortable with it but, you know, there's Stephen Rhodes the former judge and Stephen Rhodes the individual who has been informed by social patterning in this region and cultural norms in this region and those cultural norms and patternings have been formed by racial inequities. So have you ever in your personal life come up-- and I feel qualified to ask you this question because I've spent the first part of my life sort of examining my own racist tendencies as a product of this region--have you found yourself having to do the same as an individual?

Well I'm not exactly sure what the question is but I will tell you that, day in and day out, as a bankruptcy judge for nearly 30 years, I dealt with low income people all the time, I dealt with blacks, whites, latinos, whoever needed the help of the bankruptcy court. And, that job required me to treat everyone equally and in compliance with the law, mostly the bankruptcy code, and I believe I did that.

[00:41:02 Yeah... I also think that there's a certain... are you saying that the demographic that you saw within your practice was fairly, heterogeneous and diverse?]

Absolutely. People who file bankruptcy are lower income, are middle income, are upper income. They're blacks from the city, they're whites from the suburbs, there's farmers, there's

business men, there's professionals, there's blue collar; I mean, there's no demographic that escapes bankruptcy.

[00:41:49 That's a really interesting statement actually. Um, you know I would wonder if those who actually have the opportunity to own a business to enter into bankruptcy, you know, there's probably some weightedness in terms of opportunity levels...]

I'm not sure what you mean.

[00:42:12 I just mean that it's possible that African Americans and People of Color in the region have had less opportunity to enter into businesses that would then give them the authority to declare bankruptcy as a business]

Well, that's a socioeconomic questions. That's a little bit outside of my wheelhouse and my expertise, um, but I have to tell you that far and away the vast majority of people who file bankruptcy, over 90%, are not business owners at all. They are individuals and wage earners.

[00:43:00 Yeah, um, so I don't mean to prod but is it shocking to you that the vast majority of the African American population in southeast michigan is concentrated within the city limits of Detroit and Hamtramck and Highland Park... whereas, you know, I mean, it's astounding! \$136,000 income in Bloomfield Hills \$26,000, 80% african american in Detroit. Does that shock you, I mean, when you really look at it?]

Well, shock in describing the racial makeup of Detroit and its surrounding communities is probably not the right word just because I and so many others have lived with it for 30 years, and so there's no shock value to it. Is it disturbing?

Absolutely it is disturbing. I have said before and maintain that it's in the best interest of not only Detroit but also its suburbs for there to be much more regional cooperation than we experience. And, um that's why I was so insistent to Detroit and the surrounding counties that they try as hard as they could to create the regional water authority because I thought that would be a good first or second step after Cobo Hall as well to accelerate this process of regional cooperation for the economic development and betterment of everyone in the region. And I certainly hope that our political leaders will recognize this and find other ways to cooperate.

[00:45:28 Is there anything else you want to say? I mean I'm sure you don't want to say anything else, but...]

(Chuckles) I mean, I'm happy to answer any of your questions.

[00:45:39 What time is it? (background voice: it's a little before 11. Could I ask a quick question? That 90% of bankruptcy cases are now filed by wage earners and individuals, my understanding was that, bankruptcy court, that wasn't its original intent, what it was created for. Have you noticed a shift in the years that you've been practicing? Has it always been mostly individuals? I think it seems... that something is a little off there.]

I don't know where the concept that bankruptcy was not for individuals and wage earners would come from because as far as I know, in the history of bankruptcy not only in this country but in other countries, it has been to deal with oppressive debt by whomever.

[00:46:38 Even individuals and wage earners...just people who... and how do they get under such debt when they're... just getting off...]

I think so

[00:46:50 How does that happen with someone who works in a low-income job? Is there a way that debt comes to get them? Or do you think it's a matter of extravagance by individual wage earners ?]

You know, it's always a combination of factors. In many cases, there is an interruption in income: a layoff, even a temporary layoff, a long-term layoff or a termination from a job and an inability to find a new job. More recently, we have seen many situations where debtors have relatively good-paying jobs, 50-100,000 dollars a year, and then for whatever reason, they find themselves in jobs paying much less and then for whatever reason can't carry the debt like they thought they would be able to. Then there's always divorce; some have calculated that as many as 50% of bankruptcies are caused by medical issues. Is there a certain amount of extravagance involved? Yes, and I would say that that applies on both the debtor's side and the creditors side. **Because for every dollar that a debtor**

borrows that they shouldn't borrow, there's a creditor that shouldn't lend it and knows they shouldn't lend it. But they're taking the risk of non payment. So, but the thing about bankruptcy that's so beautiful is: we don't ask why. We don't ask whose fault it was, generally speaking. Very rarely. If you need help, we give you help; we give you a fresh start. We did that for the city of Detroit. We didn't ask why the city filed. They came to us for help, we gave them help.

[00:49:04 It's just that, it seems like bankruptcy court is so central to just the whole social system, it's like where you clean up the messes that are caused by a huge range of forces and so, um, I would think it would be a vantage point to observe changes in society over the decades as for changes in the type of people coming. You don't look at the reasons, but you might see more of a demographic change.]

The only demographic change I would say is that perhaps more and more middle class people have chosen to take advantage of it or decided that they need to take advantage of it.

[00:49:52 Since 2008, or...?]

No, no, since 1985, when I started. And I would say more older people retired people.

[00:50:01 I mean this idea of not asking why is... it strikes me as, you know, if you were to ask why, maybe to the creditors, it might shift predatory lending practices towards something a little bit less predatory. And I understand that it's

not the bankruptcy court's jurisdiction but if it was, it there was a hypothetical... or maybe you could talk about when you actually do ask why.]

It's not the bankruptcy court's role or function at all to deal with illegal or imprudent credit practices, except only indirectly. Hopefully creditors will adjust their practices when they see what the consequences of those practices are, but we have no direct control over them. That's for other authorities or the marketplace. When do we ask why? We ask why mostly when we suspect, um, outright fraud by a debtor. Then we want to know why because people who are dishonest are not entitled to bankruptcy relief. That's why. And it's a very small percentage. Some people say it's 10%; I don't think it's even one percent. By the way, gambling is another major cause for bankruptcy that many people don't talk about.

[00:51:45 Did you see that increase when the casinos were built in Detroit?]

Yes, it had been somewhat of a phenomenon with the lottery, but when the casinos came in, yes.

[00:52:04 Could you just rephrase that in a... I would have to cut my question, so...]

Before the casinos came in, and I can't pinpoint in my memory when that was, our state lottery offering did result in some bankruptcies. But when the casinos came in, we did see a substantial increase in gambling-based bankruptcies.

Now, again because we don't ask why, we only have sort of anecdotal evidence or suggestion of this. But I've talked with attorneys for debtors who do dig more into the facts and circumstances that let their clients coming to them and they report to me that gambling-based bankruptcies are as much as 10 or 20% of our bankruptcies.

[00:53:15 That's a lot. That's a whole lot. And could you pinpoint the percentage of subprime mortgage loans that result...]

Well that's much harder to do and it varies significantly over time depending on what the market is doing. At the height of the subprime crisis, which I vaguely recall was in the 2007, 2008, 2009 time period, it was a majority of the mortgage based bankruptcies that we saw. But I have an idea that it has fallen off since then because the market for subprime dried up.

[00:54:12 And was there any racial disparity or could you see, you know, now it's shifting to middle class white or middle class black or Detroit or outside of the detroit in terms of the bankruptcy filing around mortgages in that period?]

Oh, in that period, it certainly was focused in Detroit.

[00:54:33 Um, could you say that in a sentence?]

Oh, yes, I'll try. In the time period of the subprime crisis, it certainly was my experience that it was focused in Detroit. In the time period of the subprime crisis, I would certainly say

that bankruptcies that were filed because of mortgage difficulties did primarily come from Detroit. Absolutely.

[00:55:20 And, you know, (background voice: and Detroit is mostly black so you could see...) No, I'm gonna ask about... (ok, sorry). I want to ask about Quicken Loans and Rock Ventures' role in this because I understand that they were functioning as mortgage brokers, so the loans originated and ended up with other banks besides Quicken Loans, and I don't even know if this is traceable through the bankruptcy process...]

Let me just stop you to say that I can't speak to any specific participants in this market, it's just nothing I have any recollection of at this point.

[00:56:15 Yeah, it's just always a little preposterous to me though how a city decimated by the last blow being the mortgage crisis and the first one up is the mortgage banker. It strikes me as perplexing and, at one end of the spectrum, conspiratorial and hypocritical and at the other end, just a very dissonant coincidence.]

This is nothing I have any comment on.

[00:56:56 (to other interviewer) Do you have any other questions? (I just think it's so interesting about bankruptcy court and where it sits in society... you know, I think about things like wage garnishment, is that still happening? You know, I'm wondering again sort of on working class people in bankruptcy court versus people who have more assets to be

reallocated and so, I guess I' wondering...]

Well, the three primary immediate causes for bankruptcy are repossession of a car, mortgage foreclosure and wage garnishment. Bankruptcies are filed to deal with those immediate crises. Absolutely.

[00:57:51 And who gets their wages garnished, how does that work?]

Well the process by which wage garnishment happens is really quite simple. A creditor who claims that a person owes money files a lawsuit against that person and either through default judgement or after a trial, the court enters a judgement, and then if the judgement is in favor of the plaintiff, in favor of the creditor, that creditor goes back to the court and gets an order of wage garnishment and serves it on the employer and then the employer turns over up to 25% of the employee's wages to the creditor. And it's done for every paycheck until a bankruptcy is filed and then it stops.

[00:58:46 But is there, um, certain... does it happen... do lawyers get their wages garnished or do dentists or do... what kind of people? It seems like... I'm just wondering if that is an across the board... you can't see any distinction among who gets their wages garnished or is it the kind of thing that is concentrated in particular types of occupations.]

Well, wage garnishment is focused by definition on people who earn wages from an employer. [video restart] Others who have assets can have those assets taken by the court

by means of what's called an execution, and sold, and the proceeds given to creditors. That happens I think much less frequently but it does occasionally happen.

[00:59:48 So that would mean that wage garnishment is by definition for people who that is their only asset, their wage, so that means it is probably lower income people (Rhodes: Yes) and that's about 1/3 , you're saying there were three major types...]

Well and they often overlap. It doesn't divide $\frac{1}{3}$, $\frac{1}{3}$, $\frac{1}{3}$ by any means.

[01:00:11 That's really fascinating. I'd like to ask you about any memory that you have of, you know, working with my father or uncle as witnesses. You know, any sort of cases you've had...]

I wish I could help you, but I can't. That's one of the things that happens when we age. We lose our memory.

[01:00:48 That's OK, um, ok so do you have any other questions? (background voice: You know, I keep thinking about the things that bring people into bankruptcy court and how it's connected to other political and economic trends that are occurring in society and like I said, they all end up at your door. And that's just profoundly interesting. I didn't think I'd get interested, but listening, I do. And I'm still thinking about this wage garnishment because my father was an attorney, and one thing he worked on was wage garnishment issues. He thought that people who ended up getting their

wages garnished were the people who most needed their wages and he was interested in how people ended signing away the right to their wages. There used to be a kind of law in Illinois where you would sign a form and you gave up in advance your right to contest a wage garnishment. Yeah, there were all kinds of things and then the guy that made you sign up for the hundred dollar watch that was worth twenty had you sign that also so that then you ended up having no choice and they just took the wages. And so there were all kinds of inequities and scams around wage garnishment and this was in the 1960s. And, there were books about it and stuff and so I'm just wondering where wage garnishment is today. You hear a little bit about people saying I wonder if we're just back there where it;s a conscious effort to collect wages is yet another way of getting blood from a stone, or whatever that term is. And if you see that, because back in the 1960s my father observed so to speak--he was not a bankruptcy lawyer but he represented as an attorney in those courts, he was more general practice. And um, seeing sort of more and more impoverished people in bankruptcy court, he was so surprised to see them there. It used to be a little more mixed and now I'm seeing a demographic shift in whose ending up and then finding out why and how. So, that's... I'm wondering if you have comments on observing trends since 1980. In all the years that you've been doing this, what have you seen in a general sense of this going, up , this going down I mean you said there were sort of ebbs and flows and where are we today?]

[01:03:42] Well, I can't say that I've seen any trends that are

specific to wage garnishment. Creditors, as far as I can tell, always use it when it's available to them. I haven't noticed any particular abuse of it the way, for example, the subprime abuses occurred. What creditors by the way say about their enforcement remedies that state law gives them is that without them, credit would not be available to many people and would be more expensive than it is now for the others. So that's how they economically justify these laws that give them these remedies. In terms of other trends of creditor enforcement, there was a Michigan state law a few years ago that granted some process relief for people whose homes were in foreclosure. Instead of rushing straight into foreclosure when there was a default, the law provided for an opportunity for the parties to go into mediation and to try to work out some arrangement for the individual to keep their home. I don't know how successful that was and I think it has since been discontinued.

[01:05:31 What keeps some people from declaring bankruptcy if they're in a lot of debt?]

Well, contrary to a lot of popular opinion, many people still feel a significant stigma associated with it--embarrassment, humiliation, shame-- and I think that is a major deterrent to filing bankruptcy. I think there are also some people who don't file bankruptcy because they can't afford to file bankruptcy. It costs money to file bankruptcy. The filing fee itself isn't so high and can be waived by the court if a person can't afford it, but mostly it's the attorney fee. So some people file on their own. The court itself, our court, has a program available for low income people to have access to

legal council for free--pro bono council-- and it is sponsored by a fund that pays a very reduced rate on the debtor's behalf to the attorney. But that's still a major obstacle to people who need bankruptcy, filing bankruptcy.

[01:06:58 Do you see a fear of people's credit ratings going down? Is that a relevant fear or...?]

Mostly people's credit ratings are already really bad by that time so the additional hit that results from filing bankruptcy isn't that significant. So no, I don't think that's a major consideration. In fact, many creditors consider that people who have gone through the process are a better credit risk than people who haven't but need to.

[1:07:37 So what were to happen if every person who owed on their water bill beyond their ability to pay filed bankruptcy?]

I don't know, I haven't contemplated that. I would hope that as a just and compassionate society we would find a way to get help to these people that doesn't involve them filing bankruptcy.

[1:08:09 Anything else?.... no, ending comments, video off, final thank-yous].