

INTERVIEW OF LAWTON NUSS BY RICHARD ROSS, JULY 27, 2022  
KANSAS ORAL HISTORY PROJECT, INC.

Richard Ross: Today is July 27, 2022. Today I will be interviewing retired Chief Justice Lawton Nuss of the Kansas Supreme Court in a location he's quite familiar with. We are now in the Supreme Court conference room, located in the third floor of the Kansas Judicial Center of Topeka. We are directly south of the Capitol building.

My name is Richard Ross. I served the State of Kansas, the Supreme Court, and the Court of Appeals as the Reporter of Decisions for thirty-eight years. During sixteen of those years, my last sixteen, I had the great pleasure to work under Chief Justice Nuss. We are also welcoming today David Heinemann. He is the videographer, former Speaker Pro Tem of the Kansas House of Representatives.

This interview is part of the Kansas Oral History Project collection known as the "Kansas Courts and the Rule of Law." This series of interviews examines the Kansas judicial branch and how the courts interact with the other two branches of government, the legislative and the executive. The Kansas Oral History Project is a not-for-profit corporation created to collect oral histories from Kansans who were involved in shaping and interpreting Kansas public policy. Funding for the project is provided by individuals and volunteers as well as prominently by Humanities Kansas, a nonprofit cultural organization. Recordings and transcripts of these oral histories are available to researchers, educators, and the general public, and you can view them at the Kansas Historical Society, the State Library of Kansas, and also online at [ksoralhistory.org](https://ksoralhistory.org).

And now we'll proceed with our interview. Chief Justice Nuss grew up in Salina, Kansas, and he attended the University of Kansas on a full-ride Navy ROTC scholarship. He graduated in 1975 with a BA in English and in History. Following graduation, he served four years in the United States Marine Corps where he attained the rank of captain, and following that, he entered KU Law School where he got his juris doctorate degree from KU in 1982. For the next twenty years, he was a trial attorney for a prominent law firm in Salina, Kansas, before being appointed as a justice on the Kansas Supreme Court in 2002. Eight years later, he became Chief Justice, and he served with distinction until he retired in December 2019.

Welcome, Chief Justice Nuss. It's my pleasure to interview you today, and if you will indulge me a little, I will refer to you throughout as Chief, which is the term I've used ever since you were a Chief Justice.

Lawton Nuss: Thank you, Richard. It's my pleasure to be here.

RR: Great. We've got a lot of territory to cover today in a short amount of time, but I gave a brief bio of you. Is there anything you'd like to add to that?

LN: I think that's a good summary, and I think we can proceed to the heart of the interview, if that's your preference.

RR: That's great. Thank you. Chief, what motivated you to leave private practice and change your legal path to pursue appellate work?

LN: Well, I had applied [twice] in 1995 to be on the Kansas Court of Appeals, and I think that's because I got a taste of being a judge or making judicial decisions when I was in the Marine Corps. I sat on a special court martial board. I also served as an officer—when our commanding officer was absent—to handle what they called NJP or nonjudicial punishment, very low-level offenses. I would bring the Marine in who allegedly had committed the offense. I heard his story. I listened to witnesses, collected all the facts, and I pronounced judgment, whether he was guilty or not guilty. Then I imposed a sentence.

I think I did that when we were in the Philippines. I just enjoyed those experiences, hearing evidence, thinking things over, reaching conclusions, and then making a decision and carrying it out. That was one of the reasons why I applied for the Court of Appeals in 1995, and why I pursued appellate work even after that.

RR: What was the process that you went through to be appointed to the Kansas Supreme Court by Governor Graves?

LN: Well, as I said, I had applied twice in 1995 for the Kansas Court of Appeals. I was not selected for the panel of three whose names would be submitted to Governor Graves by the Nominating Commission. As you probably know, that commission is nine people. Four of them are appointed by the governor, and four of them are elected by the lawyers in each Congressional district, and then the chairperson is elected by lawyers statewide. They take the applications from people, and they do interviews. They check references, and they dig deeper than the references that you supply. As I said, they do the interview. The interviews are open to the public. Their deliberations are now open to the public. They choose three names to go to the governor. The governor then interviews you, and then the governor makes a choice. One thing I would add is that that system has two very important features. Number one, anybody with a law degree [licensed to practice] in Kansas and who is at least thirty years old can apply. So when an

opening occurred, about 11,000 notices are sent out to all the lawyers and judges saying, "Here's an opportunity for you." So it's equal opportunity. And then, of course, [number two] once you apply, you are in a competition with your fellow applicants to see who is going to be named to that panel of three and then ultimately chosen.

I'd like to point out the example of Simone Biles. No one said, "We now pronounce you the greatest female gymnast in the world." She had to prove it. She had to compete against her fellow Americans in the Olympic trials and in the championships and then also against all comers around the world, and impartial judges said time and time again, "Simone Biles, you are the best."

So I like the fact that we have a competitive process in Kansas. It's not an election like we used to have before 1958. It's not a federal model where the governor just says, "I'm going to choose this person to be on the court," and then you get Senate confirmation from the Kansas Senate, and then you are in. That does leave many other people in the state saying, "Well, wait a minute. I wanted a chance at this" and "How do you know that person is the best candidate? You just happened to choose one person that you wanted." So I think those are real important features of our system, and I really embrace them.

RR: I witnessed a lot of those proceedings over time, and I was always very proud of the fact that the three nominees were all highly qualified. So I knew it was a difficult decision by the governor to select from the three, but that just proved to me how our system worked well to choose the best.

LN: To carry that point a little further, Richard, with an example. Around 1998, Governor Graves chose Carol Beier to be on the Kansas Court of Appeals and rejected Lee Johnson for that position. In 2000, he appointed Lee Johnson to the Court of Appeals but rejected me. In 2002, he appointed me to the Kansas Supreme Court but rejected Judge Marla Luckert. And now, of course, Judge Marla Luckert is the Chief Justice of the Supreme Court. She was appointed directly after my appointment.<sup>1</sup> I think Governor Graves had a pretty good idea for qualified candidates.

RR: I would say so. I wish to focus this interview primarily on your tenure as the Chief Justice, but before we get there, can you describe what it was like to adapt to serving on the Supreme Court after twenty years of private practice, becoming a

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<sup>1</sup> Beier and Johnson were later appointed to the Kansas Supreme Court, joining Nuss and Luckert.

government employee as opposed to a private practitioner?

LN: Yes. Let me start to answer that by saying that is one of the points that I emphasized when I applied for the Supreme Court in 2002. Before that, as I said, I applied twice for the Court of Appeals in '95, wasn't selected. In 2000, I applied for the Court of Appeals again. Then Lee Johnson was appointed instead of me. And then in 2002, I was waiting for the next Court of Appeals appointment because I thought, "It's not hard to move from private practice to the Court of Appeals because it's done pretty frequently."

And then three judges in Salina approached me and said, "There's an opening on the Supreme Court. You should apply for that." Then I said, "Oh, that's for the really smart people." I'd never even thought about that. They said, "We've seen you in our courtrooms. We've read your briefs, your motions for summary judgment. You can do this."

So I thought, "Well, all right, but I'm going to be competing against people who are district court judges and Court of Appeals judges." I said, "I will turn what looks like a disadvantage of mine into an advantage." I emphasized to the Nominating Commission that the last time someone had been elevated from the practice of law directly to the Supreme Court had been about twenty-five years earlier. That was an individual who also happened to be the Minority Leader of the Kansas Senate. So he had some political influence. I thought, "Okay, if it's been twenty-five years since somebody moved in that direction, then I can say it's time for attorneys to have a voice on the Supreme Court, a fresh voice."

And I looked at the people who were going to be my colleagues if I got appointed. It had been about fifteen years since any of them had ever tried a case to a jury. I told the Nominating Commission it was a month ago when I had my last case that I tried to a jury. So I bring that perspective. And I think that was part of the reason why the Nominating Commission selected me, and I think it was also part of the reason why Governor Graves appointed me because it had been such a long time.

Next, to answer your question directly, it was a challenge to move in from somebody who was arguing cases in front of a judge to now being one of the people who decided cases. And I remember very well my first couple of days on the court when we were having oral arguments. I saw some attorneys on the other side of the lectern that I knew, and they were arguing cases. I looked to my right down the bench. I saw my six colleagues, and I said, "I can't believe they're paying me to do this. This is great."

Another thing I would mention is the next youngest member on the court was fourteen years older than I was. We had two more people who were set to retire in three months because of age. The next youngest was then Justice Robert Davis, who was I think sixty-three at the time. So I brought that perspective, too, not only as someone who had come direct from the practice of law but the age difference as well.

RR: Very good. It worked.

LN: But I had a lot of learning to do. A lot of learning.

RR: I know you mentioned Robert Davis. It was a very difficult time in this building for the Supreme Court towards the end of his tenure as Chief Justice. He had a terminal illness. I don't think we knew initially it was going to be terminal. But he was gone a lot because of treatments. We didn't have Zoom back then. So he was unable to travel from where he lived outside of Topeka. And you had to step in because you were the next senior justice. Can you describe what it was like during that period of time to be acting as the Chief but not really being the Chief?

LN: Yes. On Kansas Day 2010 after Bob Davis had been Chief Justice for about a year, he called all of his colleagues into this conference room and said, "As some of you know, I've not been feeling right for the last couple of months. I just got a doctor's diagnosis. I have a form of blood cancer, and I'm going to have to be gone for a few months, and I may wind up getting a bone marrow transplant. But in the meantime, Lawton Nuss will take over."

To make a real long story short for Bob, he never came back. He wound up in KU Med. I went to visit him there once. He was quarantined so he could try to get a bone marrow transplant. Then in August of 2010, he resigned or retired and then died the next day. During that time, we didn't know what his condition was, whether he would be coming back or not. So I was trying to run things but not make irrevocable decisions that he would not like when he came back. But I want to emphasize I had the full support of my colleagues. And so for about seven months, we had six people, six justices doing the work of seven, and I kept my other duties as a regular justice, such as being a departmental justice for the first departmental—the number one department in Kansas, which is an area from Salina north to Nebraska and west to Colorado. I kept all my other liaison duties, and I was trying to be the head of a judicial branch of government.

You may remember at that time the nation was suffering from a recession. Funding was very hard to come by. And basically the legislature and Governor Parkinson at that time said, "I'm sorry, but we just don't have the money that we can give you, judicial branch." So I wound up closing the court statewide for four days in the spring of 2010, the first time that had ever been done in the court's history, in the history of the state. There were some tough times. In addition to closing courts, we were looking at underpaid employees, underpaid judges—

RR: Now this is the time when you were Chief Justice?

LN: This was when I was Acting. I was still Acting. And as I said, my colleagues backed me all the way, and we decided that we would do something called a Weighted Caseload Study. We wanted to see how much our judges were working and how much our employees were working, whether they were overworked or underworked, and then we would make adjustments by shifting them from place to place.

And we also during that time a little later, a couple of months, formed what we called the Blue Ribbon Commission, and that Blue Ribbon Commission was chaired by Court of Appeals Judge Pat McAnany. We had a real diverse group of people who were on the commission, and their charge from us was to look at the Kansas judicial branch and find out what we're doing right, what we're doing wrong, what improvements you could suggest.

So about a year later, they gave us a report with over seventy recommendations.

RR: Oh, my.

LN: We called that Project Pegasus, and we also looked at that and then the Weighted Caseload Study. One of the things we found about judges was we did have enough judges in the state to handle all of the caseload, but they were not in the right places. Some places had an overabundance of judges and didn't have to put in a lot of time, and other places were really short of judges, and those judges were really getting overworked.

We had the same issue with some employees. With employees, we could shift them around, but for judges, the legislature had passed a statute probably forty or fifty years earlier that said there will be one judge per county in Kansas. In some of those counties, those judges did not have a lot of work because there wasn't a big population, and other places, some urban counties, they were shorthanded. They needed more judges, but we were not authorized as a Supreme Court to move

them from the over-served area to the under-served. That was a recommendation that we received from the Blue Ribbon Commission, and that we asked the legislature to change. Ultimately, the legislature said, "No, we're not going to change that."

I might also add, if I could, my colleagues said, "There is something called the Conference of Chief Justices." It's the Chief Justices of the fifty State Supreme Courts and also the head Appellate Court for Washington DC—it's not the federal court, but they have a state-level court—and then our five territories. Every year, that conference has a meeting, and my colleagues said, "We want you to go to that conference and learn what you can and bring back the news."

So there was a Chief Justice there that I had just seen in action. I was real impressed with him. I said, "I'm really struggling here. I'm just filling in for our Chief Justice while he's gone." I said, "But I'm having a lot of trouble getting all my regular duties done plus doing this Chief Justice's duties and writing my opinions for the court." And he laughed, and he said when he became Chief Justice, he also had trouble getting his opinions done. So he went to his former Chief Justice, went to her house, and he said, "What am I doing wrong? I can't get this done." And she laughed, and she said, "That's what nights and weekends are for, to get your opinions done because as Chief Justice, you're spending a lot of your time on administrative matters."

I felt much better after I talked to him, and that turned out to be proven over the years in talking with fellow Chief Justices from around the country. They would say, "Yes, about 80 percent of our time is spent on administrative matters." When I was not a Chief, but just a regular or an associate Justice, I probably spent about 20 percent of my time on administrative matters.

So that was a real challenge for me to embrace. We did not get a replacement for Justice Davis until January. So for about a year, twelve months, my five colleagues and I were trying to run a Supreme Court that typically is run by seven people.

RR: Did you have some appointed judges that served during that time?

LN: We did. One of the things I changed when I was Chief was a practice by a prior Chief Justice or justices, I won't mention their names, but when there was a justice who needed to recuse on a case, this particular Chief Justice would choose the same one or two people over and over again. And I talked to my colleagues and I said, "I don't agree with that. I want us to be able to appoint a variety of people, in particular a district court judge. [For example,] let's pick somebody from Colby who

often wonders how the Supreme Court does things.”

So I want to invite that district court judge to come sit with us on a case so he or she can see how we do things. We can lift the veil of mystery, and then we can also get that judge’s input on our cases because a district judge sitting with us might say, “You know, I’m looking at this case that was assigned to me, and I can see how a district court judge would do this because I’ve been tempted to do this myself,” or “I have done that myself.” So both sides.

RR: That provided additional information and perspective.

LN: Exactly. So I asked my assistant to prepare a list of all the judges by seniority in Kansas, and I said, “I want to do the Chief Judges first. Then I’m going to go strictly by seniority.” So if a judge has been on the bench for twenty-five years, and they’re the most senior, I’m going to call them here on a case. And as you point out, we had, well, a year’s worth of dockets that Chief Justice Davis was not there to sit on, and we didn’t have his replacement assigned yet. So I had a lot of people that I needed to contact to come sit with us. It turned out to be a win/win, and I had a lot of judges say, “This was great. I got to—”

RR: I know it was a win/win. I knew quite a few of those judges that you appointed. They would come into my office just to visit. To a person, they were quite honored by that and really enjoyed the opportunity. They learned a lot, but it really gave them a boost in morale that they were chosen for that particular litigation.

LN: And I might add, if I may, they then went back to their districts, and they told their colleagues there, “The veil of mystery has been lifted, and those justices don’t just sit around in their ivory tower, ordering people to do a lot of things.” They don’t flip a coin or roll the dice when they’re in the conference room, trying to make a decision. They’re actually working hard. They’re reading all the briefs. They have sometimes very vigorous discussions about the case. They take a vote. And they say, “So if you’re complaining that the Supreme Court Justices are lazy, that’s not the case at all. They’re very hard working.”

RR: I would agree with that part because I worked with all of you. You pretty much answered what my next question was going to be, but maybe you can add a little bit to it. As Chief Justice, you indicated that about 80 percent of that role is administrative. So on August 3, 2010, you became Chief Justice. As the Chief, you’re the head of the judicial branch. You’re the top person. So all the 1,500 or 2,000 employees, whatever it is, in the court system, you are in charge of them. What all



duties did that involve? You don't have to tell me all the duties, but generally.

LN: Yes, I can tell you that the legislature has specified, or at least I guess I should say has recognized several of the duties. They say that the Chief Justice shall be responsible for presenting the budget for the judicial branch to the legislature. The legislature has also specified the Chief Justice is the spokesperson for the entire judicial branch. So if there's something going on in the judicial branch and one of the reporters has a question because it might impact on how the Supreme Court is doing things or how district courts are doing things overall, those reporters come to me. They want to ask me questions one on one, or they want me to conduct a press conference, and the TV stations are there, and I explain what is going on.

You also mentioned if there are justices who need to recuse on a case, then I was responsible for finding their replacement. I would go down the list, and then we would call some judge in some other part of the state and invite them to come up with us. I also attended the annual conference of Chief Justices, and they conferenced at different places throughout every year, came back with some good ideas. We tried to implement those if they were really good.

If we as a court decided we needed to have something done, I would be responsible for appointing the committee and usually their members. For example, I appointed Judge McAnany from the Court of Appeals to chair the Blue Ribbon Commission. I helped my colleagues decide that, yes, we need a Weighted Caseload Study, and I would be checking the reports on that.

We had a Court Budget Advisory Committee around 2014 or 2015 because we were facing an \$8 million budgeting shortfall. So I appointed that chairperson and that committee. The same thing for a Pretrial Justice Committee. I appointed that chairperson and then the committee members.

Just a lot of things that I think most people don't normally see. I had meetings with my staff every morning. I met frequently with our judicial administrator. She was kind of the CEO for the judicial branch. I was instrumental in hiring her years ago, also instrumental actually in hiring your successor on your recommendation. I hired people to be our liaison with the legislature. And every year, I would go to legislative committees—the House Appropriations Committee, the Senate Ways and Means Committee, and I would present our budget and answer questions and try to extend a hand of friendship, if you will, to members of the executive branch and the legislative branch.

I hosted lunches for those folks in this conference room. To my knowledge, that had never been done before, but we had the Governor and the Lieutenant

Governor come speak, the Senate President, the Senate Vice President, the Leader of the House Democratic Party, etc., etc. We had those probably two or three times over the course of my tenure. Governor Kelly was here. Governor Brownback was here. So we didn't play any favorites on political parties. We just wanted to get to know them better and know that we're all Kansans trying to do the right thing.

So that's just a sampling of the many things that go on that somebody, a Chief Justice of North Dakota, described the job to me as "half legal, half administrative, and half PR." And we all chuckled and said, "That doesn't add up. That's 150 percent," but he was making the point that you spend a lot of your time doing that, that your colleagues on the court are not. Those are unique to the Chief Justice.

RR: I know it's a tremendous duty and responsibility, and lots of things come up. That's the next topic I want to get into. During your seventeen-plus years on the Court, as always, before and after your tenure, the Court receives a lot of very difficult cases, and they have to make the final decision on those cases, and the public doesn't always understand. The legislature doesn't always understand.

There are some difficulties involved, but there is a particular period of time when I know you recall this, when the cases of the school finance, how much money should the legislature appropriate to the schools, the public schools, in order to satisfy the requirement of the Kansas Constitution. That came before the Court on numerous occasions. It was quite a period of time, and you were Chief Justice during that time. This will probably be a more lengthy discussion, but it's very important because it was a confrontation really of what role the judiciary plays and how independent it can and should be. So I'll let you move forward on that.

LN: Very well. Please feel free to interrupt, or when I pause to take a breath and say, "What about this? What about that?" because trying to distill four or five years into one little monologue here is very challenging.

RR: Exactly.

LN: I might say that around 2002 and '3 and '4, the Supreme Court was handling one school finance case. The plaintiff was called Montoy.<sup>2</sup> Ultimately, after hearing the case three or four times, in 2006 the Supreme Court said, "Okay, legislature, you've substantially complied with our prior orders. You're in substantial compliance with the mandate of our Constitution to provide suitable funding for

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<sup>2</sup> The next-to-last *Montoy* decision, *Montoy v. State*, 279 Kan. 817, 112 P.3d 923, 198 L.Ed.2d. 703(2005)

public schools K-12.” And basically *Montoy* was dismissed.

Then around 2010, as I said earlier, there was a nationwide recession, and the legislature not only required me to close courts, but they also cut funding for the schools. There were some residual hard feelings from certain legislators because of *Montoy*. They didn’t like what the Supreme Court had ordered.

So in 2010, once some of the people who thought that because these education funding cuts were resulting in inadequate and inequitable education, they filed a lawsuit against the State of Kansas once again. So that just kind of raised the hackles of some of the legislators who had remembered it from 2006 and *Montoy*.

I became Chief Justice, as you said, operating essentially as Chief Justice starting in January of 2010. I was either operating as, or the actual, Chief when that lawsuit was filed. It was called *Gannon v. State*, and we heard that case seven different times over about a four or five year period. A final decision was reached in 2019.<sup>3</sup>

About that time, that November 2010, Sam Brownback, a conservative Republican, was elected Governor of the state. In January 2011, he took office, and I asked for and was granted the opportunity to give my State of the Judiciary speech to the assembled chambers of the legislature. You may know that forty Senators and 125 Representatives all assemble in the House Chamber. The Chief Justice comes into the Chamber and makes about a twenty-minute speech, talking about the State of the Kansas judiciary. The same thing is done for the Governor. The Governor presents every January and gives a State of the State speech, the same audience, and other dignitaries are in the audience.

Then in 2012, I again went to the legislature and was given the opportunity to give my speech on the State of the Judiciary. That is the year when this *Gannon* case made its way to the Kansas Supreme Court for argument. So it was pending for some time.

In November of 2012, I think at least eight, maybe more, moderate Republican Senators were defeated in their bid to be re-elected, and I will say according to the news media, Governor Brownback had a hand in their defeats. He wanted them out and wanted them replaced by more conservative—

RR: They were being challenged by other Republicans who were more conservative.

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<sup>3</sup> The seven *Gannon* decisions are appended to this website and may be downloaded.

LN: Yes. They would lose in the primaries, most of them, and they were replaced by more conservative Republicans. What's interesting is the then-Senate president, Steve Morris, who had been in the Senate for I think twenty years, he was defeated by a more conservative person out by Stevens County, that area where he's from.

At about that same time, the Speaker of the House, Mike O'Neal, chose not to run for re-election. So in December, that meant that both chambers had new leadership. A very conservative Republican named Ray Merrick became the Speaker of the House, and a very conservative Republican named Susan Wagle became President of the Senate.

Of course, what that meant was the conservatives now controlled both chambers in the legislature, and conservative Republican Sam Brownback was the governor. So the other two branches of government were now being led by very conservative folks, and I apologize for having to refer to a couple notes here because it gets a little complicated.

RR: That's fine.

LN: And my memory is not as good as it used to be.

RR: No, I think your memory is great.

LN: Good. About that time, some proposals surfaced to change the way the Supreme Court justices were selected.<sup>4</sup> I mentioned earlier the Nominating Commission. That had been our system since the 1958 amendment to our Constitution, and it in fact replaced the prior method which was statewide elections. If you wanted to be a justice on the Supreme Court, you just said, "I want to run," and it was just like running for governor, running for attorney general, or running for secretary of state.

There was an issue that arose in the late fifties that a lot of voters didn't like. I won't go into the details. It's called the Triple Play. And so the Constitution was amended. So we changed to what's called the Merit Selection. We no longer elect. But that possibility is being raised again to go back to electing them, and if we don't do that, let's do the federal model, which as you know, the governor—like the president of

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<sup>4</sup> I wrote an op-ed, "General Patton and the Chief Justice," supporting the current merit selection method which appeared in [several newspapers](#).

the United States—says, “I’m going to pick this person to be on the Kansas Supreme Court,” and then if they get confirmed by the Senate, then they’re in. Then the other people in the state who say, “Well, wait a minute. I want to be on the Supreme Court. I want a chance at that,”—that’s just lost.

For example, in 2002, when I applied for the Supreme Court, there were a total of eighteen people who applied. There were four Court of Appeals judges. There were six District Court judges, and there were eight lawyers. It was come one, come all. We like competition. Let’s see who the best candidates are. That was a system that some legislators and the governor wanted replaced.

In 2013, in January, I asked then Speaker of the House Ray Merrick for the opportunity to come over once again, give my third State of the Judiciary speech in a row, and he refused. He basically said, “We’re too busy to listen to your twenty-minute speech. Just send your report over in writing.”

RR: I will interject here. There’s not a statute that requires that you give a presentation before that branch, but it was very traditional. I think Chief Justice McFarland often did not, and she submitted it in writing. But it was more often the case, as you described earlier, that the Chief would enter the House of Representatives with the other justices to give that presentation to that assembled body. All the legislators from both House and Senate would hear that in person.

LN: Right. I just thought, “This is the one chance per year that I have to speak directly to our elected representatives, and they get a chance to see me. They get a chance to see my colleagues.” I [also] invited the Court of Appeals judges to go, sit in, they were all in their robes, and I just thought, “Here’s my chance to explain what we’re doing and why we are asking for a few things.”

But, as I said, Speaker Merrick said, “No, we’re not going to do that.” That was, as I understood, seconded by Senate President Wagle. She said, “Yes, we’re too busy. Submit it in writing.” One of the papers in Kansas called it a “rude snub” of the Chief Justice.<sup>5</sup>

It’s interesting. A week or so later, President Wagle said, “We’re waiting on that school finance decision in *Gannon*.” Once the court releases that decision, and I’m going to quote her if I may, she says, “What we’re going to do is focus on what is the role of the Supreme Court. Should they be interpreting the law?”

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<sup>5</sup> The Wichita Eagle, [article 1105851](#) by Rhonda Holman, originally published January 4, 2013

Well, that's what courts do. That's a core function of the courts, and they've been doing it for hundreds of years. So for the Senate President to say, "Well, when that decision comes down, we're going to have to see if the Supreme Court really should be interpreting the law," I wasn't quite sure what she had in mind, but it didn't sound like it was consistent with the Kansas Constitution and what judges typically do. And even though Speaker Merrick had refused me the chance to come give my State of the Judiciary speech, he invited Governor Brownback over to give his State of the State speech that same time in January 2013. And in his speech Governor Brownback said, "You know, it's important that we change this way of selecting Supreme Court justices. We need to either elect them or we need to have the federal model."

The seven justices were sitting there, hearing him say this and thought, "Okay. What does this portend? What's going to happen?" So we were kind of keeping our eyes open.

In fact, later that year there was a very influential state senator who approached the judges in the Kansas District Judges Association. It's a group of about 150, 160 judges, and he said, "You know what? If you will support changing the way that we choose Supreme Court justices like Governor Brownback wants, then given my influence, I will urge the Senate to pass a bill giving long overdue pay raises to all your employees," 1,500 to 1,600 of them. Long overdue. And this association of judges says, "No, we're not going to do that."

In the meantime, we still had the *Gannon* decision pending. Our court has heard the oral arguments, and we're thinking how do we want it to come out, based on the law? What are the requirements? And then have the opinion written. That takes us through 2013. Ready to move on to 2014?

RR: Yes, keep going. It gets more exciting.

LN: It gets more exciting. In January of 2014, I told the legislature that unless the judicial branch got about \$8 million more in funding, we were going to have to close the courts after July 1, when the new fiscal year started. And I reminded them because we didn't have funding in 2010, I had to close the courts for four days. So this was not a threat. I'm not bluffing. This is a reality. I also had to close the courts for one day in 2012. So I said, "Believe me when I tell you this."

Well, perhaps in response to that, the legislature created what was known as House Bill 2338, and it provided \$8 million in funding. But it also provided that the district

court judges in a judicial district would now choose their own chief judge in that district, and that chief judge would then be responsible for operating and supervising their own budget.

This was directly contrary to how things had been done for about forty years in Kansas. There was a Constitutional amendment in 1972 passed by I think about 60 percent of those people who voted statewide, and they said, "We want to unify the Kansas court system" because it was kind of disjointed at times, and "We want to give the Supreme Court the general administrative authority over all the courts."

So this same influential senator who had been trying to persuade the Kansas District Judges Association in 2013 approached them again. He said, "In exchange for your support of this bill with this local chief judge selection and the budget control, I will urge that the Senate pass this bill so you can get \$8 million and keep our courts open."

According to my information, he said, "There is no other measure in the legislature to provide you the \$8 million other than this one. So if you don't agree to this, then the courts will have to close." They reluctantly said, "All right. We'll support it," and within hours, the Senate passed this House Bill 2338.

On March 7 right about the same time, we released our decision in *Gannon*. I'll call it *Gannon 1*. This is March of 2014. We held that the legislature had violated the Constitution because the public education funding, K-12, was inequitable, and we sent it back to a three-judge panel for the panel to determine if it was also inadequate.

About that time, I sent a letter to some legislative leaders primarily on the Judiciary Committees and I said, "In looking at this proposed bill, House Bill 2338, please keep in mind what the Kansas Constitution actually says." And I said, "It's [Article 3, §1](#), quote, 'The Supreme Court shall have general administrative authority over all courts in the state.'"

Then I went further and I did an op-ed piece on March 17 that was published in a lot of state newspapers, and it was titled, "[Do you Like Where This Road Could Lead?](#)" And I asked, "If Kansans start down the road where judges feel compelled to bargain away the Court's authority, where does that road end?"

Well, despite my letters to legislative leaders and my op-ed piece, the House passed HB 2338. Governor Brownback signed it, and a major Kansas newspaper called this

“political payback” for the *Gannon* decision and some other decisions that we had rendered on [the] death penalty, etc.

In addition to that, there was another bill that became law [around this time]. It was House Bill 2446 in which the legislature said, “Courts in Kansas now will have deadlines that we are imposing on you. You have to get your decisions made and released by these deadlines, and if you don’t, then the attorneys are authorized to contact you and see what the problem is and take it from there.”

RR: That was directly pointed at the Supreme Court. Is that right?

LN: Yes, primarily the Supreme Court. So that’s kind of how things ended in 2014. In January 2015, once again, Governor Brownback gave his State of the State speech to the legislature. Once again, the third year in a row, he called for changing the Supreme Court selection methods.

So I did another op-ed piece for the newspapers, saying we should keep our retention system,<sup>6</sup> our selection system, and I even quoted the Texas Supreme Court Chief Justice who was a product of electing justices.<sup>7</sup> He had retired, and he wrote an op-ed for the Dallas Morning News, and he said, “No, electing justices on the Supreme Court is not a good way to go. What you need to do is do what about twenty-two other states do, including Kansas, and that is the merit selection system, the Nominating Commission,” etc. I said, “What more evidence do you want? A Texas Chief Justice who’s a product of that system doesn’t like it. He likes the Kansas system.”

Well, that same month [February 2015], one of our chief judges, Larry Solomon, filed a lawsuit. He was arguing that this House bill, HB 2338, was unconstitutional because the provision that said local judges, you get to pick your own chief judge, violated the Constitution’s separation of powers doctrine. In other words, the legislature cannot take away the judiciary’s power that’s been granted to it directly by the people in that 1972 constitutional amendment.

It gets real interesting now because shortly after he filed his lawsuit, the legislature passed House Bill 2005. The good news is that it provided two years of funding

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<sup>6</sup> After 12 months on the Kansas Supreme Court, the new justice’s name is placed on the ballot at the next general election and, if retained by the voters statewide, six years thereafter per Article 3, §5 of the Kansas Constitution.

<sup>7</sup> The article, “OP-ED Justice Selection” (Nuss) is appended to this website and may be downloaded.



for the judicial branch, about \$270 million in total. But it had what they call a “nonseverability provision,” and it said, “If any part of this bill is found to be unconstitutional, then the entire bill fails.” So you’re losing the \$270 million. It also said that last year’s bill, HB 2338, will also be subject to that [nonseverability, i.e.], if any part of it is found unconstitutional, then you lose that funding [of \$270 million].

So what happened is, as an example, if a judge says the chief judge provision in House Bill 2338 is found unconstitutional, then the judicial branch loses \$278 million. Well, that was quite a surprise to us, and a major newspaper at that time wrote, quote, “You can’t threaten to shut down the judiciary if courts don’t rule the way you like. That’s what we expect from a Third World dictator.”

What had happened in the prior year, [HB] 2338 also had a nonseverability provision, but it only applied to that bill. So if the chief judge provision was declared unconstitutional, you lost that \$8 million. But with this bill in [HB]2005, they put the whole thing together, and it’s not just a loss of \$8 million but \$278 million.

While Judge Solomon’s lawsuit is pending, [in July 2015] the Supreme Court issued an order<sup>8</sup> after appropriate briefing, and we said this House Bill 2446 in which you’re requiring the Supreme Court to file its opinions by your imposed deadlines, that’s unconstitutional. That is not within your purview as a legislature to tell the judicial branch what to do. And it was an order I signed, and I cited a number of cases from around the country, and I’d say almost all of them said when that issue came before them, “This is a judicial branch function. You need to stay out of it.” So whether that further inflamed some things, I don’t know.

RR: I also know that at that time, courts throughout the country and legislatures throughout the country, they were really focused on Kansas and where this was going. It was not an isolated thing. It was a nationwide focus.

LN: It was, and to pick up on that point, Richard, as I said when I went to our annual Conference of Chief Justices meetings, I had fellow Chief Justices from around the country saying, “Lawton, I just heard X, Y, and Z is going on in Kansas. That can’t be right.” And I’d say, “Yes, it is.”

And the president of the National Center for State Courts had talked to me in 2013. She said, “You know what? I’m going to set up some of your fellow Chief Justices to visit with you when you come to conference. They’ve been through some battles

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<sup>8</sup> *State v. Buser*, Order filed July 1, 2015, 2032 Kan.1.

with legislatures and governors in the past. You can use their experience.”

So I met with three or four of them—the Chief Judge of the New York Court of Appeals, which is their highest court; a former Chief Justice of Oregon; and then the new Chief Justice of Oregon. There was one other Chief. I can’t remember. They would explain to me what happened in their states and how they handled it. I explained what was going on in Kansas, and they basically said, “Good luck. We don’t have any answers for you. We’ve never faced anything like that.” As I said, other Chiefs had come up and said, “I just heard such and such. That can’t be right,” and I said, “Yes, it is.”

But the good side is, the Chief Justice of one of our largest states approached me at a conference, and she said, “I really want to thank you for standing up for our judicial system and the rule of law because if you don’t stop it in Kansas, it’s going to spread to my state and other states.” I had people from Southern states, from the East Coast, from the West Coast, from the Northern states, I’d say about five or six chiefs all together. They basically said that same thing. They were really keeping their eye on Kansas.

As a consequence, I was invited to the American Bar Association to come speak to them in 2014 in Boston about this experience. I later was invited by the American Bar Association to go to San Francisco in 2019 to talk about what had gone on in Kansas—on a panel of judges.<sup>9</sup> I won’t go into the details, but a lot of people were watching what was going on in Kansas on this very issue. So they were very happy that we were standing strong.<sup>10</sup>

I say “we.” I don’t want to take all the credit. I’ll take credit where credit may be due, but a lot of people supported us in that endeavor, certainly all of my colleagues, many, many of the judges around the state, lots of employees, etc. So that was a good thing.

RR: So where did *Gannon* end up?

LN: *Gannon* went back and forth seven times. I was going to say if I could go back to an earlier point—I’ll come back and pick up *Gannon*. I left off by saying that we had

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<sup>9</sup> “Judges Say ‘We’ve Had it’ With Attacks”, appended to this website and may be downloaded.

<sup>10</sup> I also accepted my national peers’ invitation to present my views at the Conference of Chief Justices’ 2019 meeting. The topic they requested? “The Chief Justice’s Leadership and Policy Role.”

released this order saying, “Legislature, you cannot tell us under the Constitution when we have to release our decisions.”

That was in July [2015]. Then in December, we released the Chief Judge Solomon case<sup>11</sup> in which we said, “Chief Judge Solomon is right. Legislature, you cannot do what you did. You don’t have any authority to tell us we no longer get to choose the Chief Judge, and that the local judges get to do that.”

As a result, that law [HB 2338] was null and void. And, of course, what that means is it’s as though the law never happened. And when it’s void, since it carried that \$8 million from [HB] 2338 and the \$270 million from [HB] 2005, there was now \$278 million potentially being lost for the Kansas judicial branch.

That’s a very serious matter because that was our entire budget for two years. I had written a little note to myself here, if I may read it, “In effect, the *Solomon* case answered the question, ‘Should the judicial branch have to give away some of its power granted directly by the people in their Constitution in order to get funding from the legislature—funding the courts need for staying open so they can provide justice to the people of Kansas?’ And I think *Solomon* said, “You’re not allowed to do this.”

Well, where does that leave us, Richard? We now have a decision that says this provision is unconstitutional. It was in a bill [HB 2338] that had a nonseverability provision in it. So that means that \$8 million is gone, and because of the later statute [HB 2005] that was passed and signed into law for \$270 million—that was also dependent on the constitutionality of “choose your own chief judge”—there’s now no funding for the Kansas judicial branch.

So giving credit to the legislature, within a few weeks when they first came back to Topeka [January 2016], they fixed the problem. They said, “We’re going to take out the nonseverability provisions. We’re going to put in severability. So if something in that law is declared unconstitutional, the funding is still there.”

That was quite an experience when you’re looking at “How do we keep our courts open to provide justice to Kansans? How do we pay our employees?” You have to send them home because there’s no money. The judges, you have to send home because you can’t pay them either. There’s just nothing for the judicial branch to do. This is one of the three branches of government that’s just been told, “You’re

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<sup>11</sup> *Solomon v. State*, 303 Kan.512 (2015) is appended to this website and may be downloaded.

not going to do anything.”

So it's not surprising that this, as you pointed out, reached some national attention, in particular, and the New Yorker magazine shortly after the legislature acted wrote an article. It was called "[The Political War Against the Kansas Supreme Court.](#)" And it concluded that these specific bills that we were just talking about had been passed in response to *Gannon 1*, in other words, to punish the Kansas Supreme Court. And it also [said] now that there's been a legislative fix, "the legislature blinked."

I happened to bring that article with me. I framed it. I kept it in my chambers when I was Chief Justice. People are free to read it on their own, but I concluded basically what it stands for.

RR: What was the date of that article?

LN: This article is February 5, 2016. So it's about a week or so after the legislature fixed the funding problem.

RR: I just want to interject something here and keep your train of thought.

LN: Sure.

RR: We're talking about all of this going on with this particular issue, which is very difficult, and the state was just embroiled, but you also and the court, you also were doing the work that you were supposed to do. You were still hearing other cases. You were still writing opinions. So your work didn't stop there, but this was that add-on difficulty that you had to persevere through.

LN: It was add-on. I mentioned this sort of action required me to draft op-ed pieces and put them in the newspapers and say, "I like our selection system for Supreme Court justices. Please look at the Kansas Constitution, and when it says the Supreme Court has general administrative authority over all courts, now the legislature is basically saying we no longer have the authority to choose the chief judges for the thirty-one judicial districts. We no longer have the ability to control the budget because the legislature in one statute says I submit one budget for the entire judicial branch, but now they're saying each individual chief judge, and that's thirty-one districts, has that control.

We, the Supreme Court, had a number of conferences in which we were discussing, "Well, okay, what's our worst case scenario? If we don't get funding, what are we going to do? Do we close all the courts? Do we try to keep a court or two open for

some reason as we had done in 2010 and 2012? Or are we just completely out of luck?”

I think we concluded, “We’re just out of luck. There’s no money. It’s not available. You cannot ask people to come to work and not pay them.” That violates the Fair Labor Standards Act. So there was just a host of interconnected issues there.

RR: Luckily, it got funded.

LN: Luckily, it got funded. In the midst of all this, about a week after this article from the New Yorker, we released our *Gannon 2* decision.<sup>12</sup> That was February of 2016, and we held that the State had still failed to cure the inequities that we had identified two years earlier in the *Gannon 1* decision in March of 2014.<sup>13</sup> We gave the legislature until June 30 to fix the problems. We noted that if your public education funding system is declared unconstitutional, that in effect says it is null and void, and it is as though it never existed. So if you don’t have a funding system, how are you going to operate the schools? You can’t appropriate money for them. You can’t distribute the money to them. They can’t spend that money because your whole system—well, there is no system. We relied upon some decisions from other states. I think Arkansas was one of them. You can’t operate under something that’s unconstitutional. It just doesn’t exist.

RR: And you kept jurisdiction of that case.

LN: We kept jurisdiction.

RR: Which means what?

LN: Keeping jurisdiction means that we sent our decision out to the world and in particular the legislature and said, “Here are the problems. You’ve solved some of them but not all of them, and you need to fix these, and we’re giving you until June 30 to do that.”

And as I said, we retained jurisdiction. So we basically were saying, “This case is not

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<sup>12</sup> *Gannon v. State*, 303 Kan. 682, 368 P.3d 1024, 329 L.Ed.2d (2016)

<sup>13</sup> In short, within seven months, the Kansas Supreme Court had ruled that three different laws passed by the legislature were unconstitutional: (1) the law mandating court opinion deadlines (*State v. Buser* Order concerning HB 2446 in July 2015); (2) the law requiring local selection of chief judges (*Solomon v. State* decision concerning HB 2338 in December 2015); and (3) the latest law regarding school finance (*Gannon 2* decision in February 2016).

dismissed, and we're going to have to see some action from you by June 30 to fix these problems. If not, we'll have to do something else."

So this went back and forth until [June] 2019. As I said, we have seven different decisions involving *Gannon*. Sometimes they would fix the inequitable problems but leave the inadequacy of funding problems alone or they were not completely adequate. Sometimes it was a mixture. They came up with a number of different solutions, but it was not until 2019 that we said, "Okay. You've completed this." That's where we are on *Gannon*.

So you take *Gannon* seven decisions and *Montoy*, the other school finance case. I think we had three or four decisions there. The Supreme Court during my tenure spent a lot of time on school finance.

RR: Yes. That's a very unusual situation, but it is not unprecedented to have a case come back a number of times before final resolution seems to take place. New issues come up with every decision.

LN: Right. If I may, Richard, I wanted to follow up with that New Yorker magazine article, when we were talking about that.

RR: Sure.

LN: The New York Times also got involved about a month or six weeks after we released our *Gannon 2* decision. This is that article. It's dated April 2, 2016. I don't know if you can see that or not. You might get some glare off of the camera. This was a front page article in the New York Times, and it says, "[Outraged by Kansas Justices' Rulings, Republicans Seek to Reshape Court.](#)" As I had mentioned, this first article, the New Yorker called it "[The Political War Against the Kansas Supreme Court.](#)" And then kind of a variation on that theme was the New York Times, emphasizing that Republicans were trying to reshape the Court.<sup>14</sup> And the article goes on to talk about all of the "outrage" as they described it by Governor

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<sup>14</sup> Clearly the people of Kansas have a right to amend their Constitution in a statewide election. But as the Times headline recognized, one can find a correlation between the Kansas Supreme Court decisions and the legislature's proposed changes "to Reshape Court." And in case the legislature would be unsuccessful in changing the method of selecting justices, it made other attempts in 2016 to change the court makeup. Some examples include bills: (1) as passed by the Senate—to impeach justices for, among other things, "attempting to subvert fundamental laws and introduce arbitrary powers;" (2) requiring justices to receive more than 67% of the vote in order to be retained instead of the current "majority;" and (3) lowering the mandatory retirement age for justices from 75 to 65.

Brownback and conservative legislators over *Gannon* decisions, some death penalty decisions we had reached, and some abortion-related decisions. And as a result, Governor Brownback and these legislators had reacted with a renewed desire to change the way Supreme Court justices are selected. I think it's important that the Times also observed, "The legislature threatened to suspend all funding for the courts."

So they were quite aware of what had been going on with these bills, and that emphasizes what you and I had been talking about a few minutes ago. There were a lot of eyes nationally watching what was going on in Kansas.<sup>15</sup> So I didn't mean to interrupt. You were, I think, going to guide us in another direction, but that kind of takes care of the chronology of events. As I say, I apologize for having to write some of this out. There was a lot going on, and it was important to get the timing of these events right instead of my trying to go off my memory.

RR: Sure, thank you for that discussion.

LN: Thank you.

RR: I think the public learned a lot, maybe about the Constitution and what it says and what the Court, the authority that the Court has, a reminder that when they passed the Constitutional amendment, that that's the authority they gave the Court, and that the Judiciary did not back down. Maybe the legislature learned from that also. It's a difficult time, but things like that happen, and they're happening today. There's a lot of pushback, but with our system, we have ways that can deal with that. It just takes time and energy and a lot of sleepless nights.

LN: A lot of sleepless nights.

RR: A lot of editorials.

LN: A lot of editorials [op-eds]. One thing I would emphasize is, and you were pointing this out, our founders—federally—in the 1780s came up with the three branches of government. The Kansas Constitutional Convention in 1859 did the same thing.

We've had three branches in Kansas ever since. And, yes, sometimes there is tension among the three. Sometimes, in Kansas, there is tension, two of them on

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<sup>15</sup> This includes closely watching the November 2016 election in which all five justices on the ballot, despite an aggressive campaign against them, were eventually retained.

one side, the judicial branch on the other. But as far as the judicial branch is concerned, and I speak only for it, we believe in the Constitution and the rule of law.

As you well know, we don't make decisions because they're politically popular. We make some that are politically unpopular. But that's not our function to do what the people want on a daily basis. We follow what the people want in their Constitution, and then when they change the Constitution, that binds us as well.

That was one of the reasons why I kept my Oath of Office framed on the wall of Chambers. It was above my light switch, so every morning when I came in, when I turned on the light, I could see my oath, be reminded that I swore an oath to support the Constitutions of the United States and the State of Kansas, and I would be reminded of that when I left at night when I turned the light off.

We make decisions frequently that are not politically popular or that we want to make, and privately we say, "Gosh, as an individual, I don't like having to do this, but this is what the law requires," and you have run across some of those, I think, in your work, to take a defendant who was convicted of committing sex crimes against a minor, and then we determine that the defendant did not get a fair trial, and now we reluctantly have to send it back—we reverse that conviction, remand it to the trial court to see if they want to do this over, if the prosecutor wants to continue prosecuting. And we know very well we're putting that child victim through an ordeal of having to testify again. We're putting his or her family through an ordeal, the community through an ordeal, but that's what the law requires, and everybody's entitled to a fair trial, including the people who are guilty. They're entitled to a fair trial. So that's what we try to keep in mind when we have been doing the work up here.

RR: Probably the most difficult thing for the public to understand is that you are doing the work and following the Constitution, no matter where it leads. I remember once with the *Carr* murder cases, a horrible crime in Wichita, and a very difficult case for the Court. I think there were forty-some issues brought before the court in that case, and you're ruling on the case where you upheld the convictions but you reversed on the punishment, again following the Constitution and what you believed it said and the outrage by people that you would—you never released these two murderers, but it was just an outrage by people that didn't understand the difficulty of what a judge has to do to make things right.

That's one, I didn't write an editorial, but I wrote a letter to the editor. I had retired. So I felt I could do that. I pointed that out. I said in all my time with the Court, I knew



how anguished you were to have to make some of those decisions because morally you sided with the people and the reaction, but legally you had to rule the way you did because that's how the law operates. I think that's a really good point that you made, a significant point for people to remember how—not that it's difficult to be a judge, but that's how you have to rule, following the law, following the Constitution, not following the politics.

LN: Exactly. In that particular case, as you were mentioning, we decided that having both defendants in the same sentencing hearing when basically at times they were pointing the finger against each other, that that was not the proper way to handle a sentencing hearing. They should have a new sentencing hearing, one separate for each of them so that finger pointing did not occur. So the convictions for all these crimes were affirmed, and it's not that we didn't believe in the death penalty, it was that they needed to have a new sentencing, and that apparently has now occurred.

RR: They each got sentenced to that. That was fine. You were just trying to split them apart.

LN: Right.

RR: The US Supreme Court did reverse, I think it was 5-4, the decision, wasn't it, on that case?

LN: They did reverse. They basically said having this done the way it was done at the trial [level] did not make any difference because the evidence was so overwhelming of their guilt, and that carried over into the sentencing hearing. Basically Justice Scalia said, as I recall, it made no difference having the sentencing because the people doing the sentencing, whether they were separate or whether they were together, every person who ever looked at this as a sentencing entity would say, "You're getting the death penalty."

RR: But it was 5-4?<sup>16</sup>

LN: I don't remember what the [exact vote of the] holding was.

RR: Okay, we're about towards the end of our interview. I'd like to switch off of all of the prior discussion there and just ask you some personal questions. In your

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<sup>16</sup> On January 20, 2016, the United States Supreme Court reversed the Kansas Supreme Court on the sentencing issue by a vote of 8-1.

seventeen-plus years on the bench, what are some things or one thing that you are most proud of?

LN: Well, I touched on it a few minutes ago, and that is, during this time that we went through this narrative, I was so proud of how the people in the judicial branch stuck together. I know when that question has been posed to me over the years usually by news reporters, they think I'm going to tell them, "What I'm proudest of, well, it's an opinion I wrote for the Court" or "I wrote a dissent on a death penalty decision in *Marsh* for the Court around 2004, 2005. I was in the dissent. I said our death penalty is constitutional. It went to the US Supreme Court, and they basically, without mentioning my name, said, "Yes, we agree with that analysis. It is constitutional," citing the same cases that I had cited.<sup>17</sup>

But I say I'm proudest of how we stuck together, the people in this building, other judges throughout the state, other employees throughout the state. It would have been so easy to have said, "Oh, this is too hard" or "We don't like this. We're going to go someplace else." But we did our best to abide by what the Constitution requires, the rule of law, and our employees understood that as did the judges.

A judge years ago when I was Chief said, "A good strategy for the other branches of government against the judicial branch is to divide and conquer. They want to cut you into little pieces and divide and then conquer each piece individually until you've lost." So I say that didn't happen with the judicial branch, especially when I was Chief Justice. We stuck together. We had some individual differences of opinion, the justices, but we stuck together on the big issues.

RR: Of course. Very good. Is there anything you regret, not decision-wise, I mean opinion-wise, but any regrets, something you would have done differently? Is that a fair question?

LN: I can't think of any right offhand. Perhaps when I'm driving away from this interview, I'll think of something.<sup>18</sup>

RR: Did you like your service?

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<sup>17</sup> As evidenced in this interview, however, the Kansas Supreme Court case of which I am the proudest is *Gannon*—all seven of our decisions.

<sup>18</sup> I regret that despite our continual efforts, my fellow justices and I were unable to obtain (1) pay raises that would bring our underpaid employees much closer to market levels, and (2) significant pay raises for our judges whose salaries ranked near the bottom nationally.

LN: I did. I really liked my service. When I was sworn in on October 17, 2002, I quoted one of my favorite baseball players, Lou Gehrig, who had famously said that he considered himself the luckiest man on the face of the earth, and I said, "That's me today. I can't believe I'm here." I never planned on applying for the Supreme Court, but I was, I don't want to say "urged," but I was requested to by these judges in Salina. I was very lucky throughout this process, and that carried through with me every day.

Now I acknowledge, not every day was perfect. There were some days I'd say, "Oh, my gosh. I've got to go do this today?" or "I've got to do these other tasks?" But I always stopped to look at the Oath of Office on my chambers wall. I would say, "How many people in the State of Kansas would give a lot of money to be in your shoes?" because there's only one Chief Justice of the Supreme Court of Kansas, and there are only fifty-six Chief Justices in the state systems throughout the country.

That includes the fifty states, Washington DC, and our five territories. And then there is a Chief Justice on the US Supreme Court, but I think he's the only Chief Justice in the federal system. Everyone else is a chief judge.

So to look back on where I came from basically as a boy in Salina, Kansas, and then to wind up where I was, I just thought fortune was smiling on me or God is looking out for me, however you look at it. I just was so fortunate.

RR: That's wonderful. What is life like now after retirement? I know you're a busy person, just a little glimpse of what you're doing.

LN: Well, I had retired with three years left on my term on the Supreme Court. So I served three of the six-year term, but I left early because of several reasons. My wife had given up her career when we came to Topeka seventeen years earlier, and I thought she had sacrificed so much for me. I'll spend some time with her, and we decided to work on some issues together. [And] in the space of eighteen months, I lost my only sibling, my sister. I lost my only granddaughter and lost my mother. I thought, "Life is awfully short. So do what you want to do."

My wife and I decided that we would work on an issue together. What that has been is Veterans' Treatment Courts. I'm on a board of directors for the Veterans Defense Project in Minneapolis, Minnesota, and I'm the chairman of the Veterans Court Coalition, which includes some people from Florida. The goal of both organizations is to increase the number of Veterans Treatment Courts across the nation and to enhance those that already are in existence. Right now, we're working with the

Navajo Nation in Arizona. I've Zoomed with them several times, trying to encourage them to follow through and form one. We have a Zoom with them in August. Their tribal council is going to be on the Zoom. We're working with the Kansas tribal nations as well. I've been in contact with Governor Kelly's Native American liaison about that, and we're also dealing with some other tribal nations.

I won't go into detail right now, but we're looking at places where they don't have them and perhaps have never heard of them before. I sent a message out to a lot of different organizations about federal funding that was available to people, but they had to apply. The deadline was last May. I was astounded by how many organizations didn't know the funding was available. It goes back to what I was saying about the Supreme Court justice selection process in Kansas. Give people an equal opportunity to do something. Tell them, "Here is an opportunity. Whether you want to come do that or not, that's your choice, but at least you know about it."

So a lot of people, a lot of organizations said, "What are you talking about? There's funding available?" "Yes, there is." "Why didn't we know that?" Well, I happened to do some digging and found out about it. I worked with Senator Jerry Moran's office about a year or so ago to get started on the federal funding issue. He's been very helpful.

RR: That's very good. You continue to make your mark on history and helping people. This concludes our interview. I want to thank you for your service to the state, your service to the nation, and I wish you well. Thank you very much for this interview. It's been a great honor for me to sit here with you and to renew our friendship. We haven't seen each other for a while. So thank you very much.

LN: Thank you, Richard. As I said at the outset, it's been my pleasure, and I really appreciate this project's existence, recording for posterity what certain leaders in Kansas have to say about their experiences. Hopefully, people who watch this can learn from our mistakes or our experience if you will.

The main thing for me today was just to preserve for future generations what exactly went on in Kansas for about a four- or five-year period between the executive branch and the legislative branch versus the judicial branch. So thank you for that opportunity.

RR: Very good. Thank you.

[End of File]