Richard Ross: Today is November 23, 2022. It's the day before Thanksgiving, and I'm thankful today to be able to interview a good friend, but a very well-known and respected jurist for the Kansas appellate courts, Justice Carol Beier, who retired a couple of years ago.

We are in the Supreme Court conference room. This gives a great view through the windows across the street to the north of the State Capitol. So the Kansas judiciary location is separated as a separate branch of government from the executive and the legislative branch by location as well as by the Constitution.

This interview is part of an oral history project that Humanities Kansas has authorized, and the purpose of the interviews is, and this particular interview is, in conjunction with a project of interviews with different justices and judges of the Kansas appellate courts as well as court personnel, to compile a history and a discussion of how the judicial branch operates in conjunction with the other two branches of government.

The Kansas Oral History Project is a not-for-profit corporation created to collect interviews of Kansans who are involved in shaping and implementing policy for the State of Kansas. Funding for the project is provided by individual donations, volunteers, as well as the not-for-profit corporation, Humanities Kansas.

The recordings and transcripts of all of these oral histories are available to researchers and educators and the general public by going to the Kansas Historical Society, the Kansas State Library, or you can go online to get to the website, *https://*ksoralhistory.org, and it's available and free to the public.

With that introductory background taken care of, I am pleased to present our esteemed interviewee, Carol Beier.

First, I will give a very quick biography of her journey to become a Kansas Supreme Court Justice. And this is the clinical background. The more nuanced and flavorful background may be found in the proceedings of her two swearings-in, one for the Court of Appeals and one the Supreme Court. I haven't done this before, but your friend [Gaye Tibbets, who introduced you in these proceedings] gave such great comments that I think it's worth noting for people to read. So if you go to Volume 27 of the Kansas Court of Appeals Reports[1] or if you go to Volume 276 of the Kansas Supreme Court Reports[2] you can read the proceedings and get a much better view of who our guest is today.

Justice Beier grew up in Wyandotte County. She attended Benedictine College for about a year before she transferred to Kansas University where she got a degree in journalism. She was also editor of the student newspaper, *The University Daily Kansan*. She spent a few years as a newspaper reporter and then decided to go to law school, again returning to KU where she graduated fifth in her class from the University of Kansas Law School. She received the Order of the Coif, which is the top recognition for students at KU. She also was on the law journal as the Articles Editor of the Kansas Law Review.

Following graduation, Justice Beier worked as a law clerk for Judge James Logan. He was on the 10th Circuit Court of Appeals. During that time, she received a prestigious fellowship from Georgetown University in Washington, D.C., and that allowed her to work at the National Women's Law Center in Washington, D.C., as a law clerk and staff attorney. She then worked for a large law firm in the District of Columbia before she returned to Kansas, to Wichita to work for Foulston Siefkin law firm.

Republican Governor Bill Graves appointed Carol Beier as a judge on the Kansas Court of Appeals, where she served from February of 2000 until she was appointed by Kathleen Sebelius, the Democrat Governor of Kansas, to become a justice on the Kansas Supreme Court. That was in September of 2003. She served on the Supreme Court until her early retirement in 2020.

We've got a number of interesting topics to cover that I want to ask you about, but I first want to give you an opportunity to correct anything I've said or to add to that bio, if you'd like.

CB: I guess the only very minor correction I would make is to say that during journalism school, I did work as a reporter at a couple of papers on internships. But once I left journalism school, I was on the copy desk, I was a copy editor for a couple of years. So that was prior to law school.

I guess the only thing I might add is that, first of all, I never planned to be on the appellate courts of Kansas. I never really planned to be a lawyer. And I like to share that.

RR: That was my first question. So a good segue.

CB: I anticipated you a little bit. I like to say that when I speak to people, because there are many college students who really don't know exactly what direction they want to go with their lives or their educations. I loved the newspaper business, and, when I went to law school, I thought it would be a good graduate education. I was very unsophisticated. When I grew up, as far as I knew, I did not know any lawyers. I did not know any judges. So the law was not something I even considered. And, even as I entered law school, I had very little concrete, realistic idea of what the education would be like or what it would prepare me to do in my later career. I had this vague idea that I would somehow return to the newspaper business as perhaps a General Counsel at a newspaper or write about the courts because even then we were starting to have reporters who had law training. Their stories were so much more nuanced and particular and polished than reporters who didn't have any training in the law. So I thought that might be a career avenue.

Once I got to law school, lots of things changed. I headed into kind of a more traditional legal practice ultimately.

RR: And just a quick follow-up.

CB: Sure.

RR: What do you think of having journalism as a background for the work that you ended up doing?

CB: I thought it was great for the work I ended up doing, but I also thought it was superior training for law school experience. Back then, virtually every course that you took in law school, you had one exam. You went to class. You took notes. You studied. But you had one exam that determined your grade in the course, which meant that they put you in a room for three hours, and at the end of the three hours, you came out, and what was done was done.

And having the experience of fact gathering and analysis—

RR: Organizing.

CB: And writing it up. Organizing. All those things that a journalist has to do, just a workaday journalist would have to do, having all that experience was really helpful in law school, and I think it helped me a great deal later in law practice and then, eventually, on the bench.

RR: When you were in law practice, you did a lot of appellate work. Is that correct?

CB: I did do quite a bit, a fair amount of appellate work.

RR: Is that what made you think gave you the desire perhaps to apply for a position for the Court of Appeals? How did that come about?

CB: It certainly sparked my interest. I had practiced for a few years in Wichita and became interested in the possibility of the bench. My first bench application, however, was for District Court, it was a trial court. I didn't end up getting that position, and I just continued on as a partner at the firm. I was perfectly happy doing that. I had two young children and a very active, busy life, as one does when you have young kids and a law practice.

And then what ended up happening is: because I'd done some appellate work, I got encouragement from people when positions became available. So, at one point in the mid—I'm going to say in the '97-'98 timeframe, maybe slightly before that-- I got a call, for example, from Bob Gernon who ended up being one of my colleagues on the Court of Appeals and eventually on the Supreme Court. He had seen me argue, he and Jerry Elliott and a couple of other folks on the Court of Appeals. Ed Larson was an early supporter and friend. Fred Six also was an advocate for me. Those folks came to me and said, "Hey, maybe you should think about applying."

And in that moment, it just wasn't right for me personally. So I had to say, "I'm sorry. This is not the time for me to consider this," and I did not end up applying to the Court of Appeals at that point.

But a couple of years later, a good friend of mine, Mary Kay Royce, and professional colleague whom I'd known from Wichita days, she had been there as a district judge when I arrived to

practice law. She unfortunately passed at an early age, and when her position became available, I got a few more calls. One from Christel Marquardt, a good friend and later a colleague, and she said, "Now's the time." And I actually looked at Kay's career and my career and thought we have comparable backgrounds, and that made me feel secure in my qualifications for the position. So it was really largely the encouragement of friends and advocates and mentors that led me to apply when I did in '99.

RR: And you were selected under a merit selection process,

CB: That's right.

RR: which has now changed. We'll get into that now a little bit later. I want to talk to you about that whole process.

CB: I love to talk about the merit selection process.

RR: You were selected from a nominating committee of three, and Governor Graves, the Republican, selected you.

CB: That's correct.

RR: And I did think it was interesting that later, three-and-a-half years later, a Democrat Governor [Kathleen Sebelius] selected you from a similar panel of three.

CB: Yes. I'm glad that you mentioned that. I'm proud of that, but not just for me. I'm proud of the system. And I'd love to discuss merit selection.

RR: I think that speaks to it.

CB: Exactly.

RR: We definitely want to get there. Before we do that, you were one of the trailblazers, I would say, of women attorneys and women appellate judges. Can you speak to that a little bit?

CB: I'm happy to talk about my early days in the practice and judging. I was, I think we should be clear, I was a beneficiary as well as a participant in the second wave of feminism in the United States. Women did not attend law school in significant numbers before the seventies at all. They were just absent for the most part from—those very, very early women were the only [women] in their class, one of two or three, etc.

By the time I reached law school, there were larger numbers. It was—the female make-up of the class had a significant percentage of folks who had been out in the work world or possibly even raised a family and then were returning to school. So that was an interesting, I thought, significant kind of demographic design in that class of women who were there with me. We were

still the very small minority of students. That, of course, has changed now. Women make up 50 percent and more of many law school classes.

RR: Significantly changed.

CB: But in the early days, I would say that, although my law school experience was fabulous, as we began to look for work, I would say that it was still very common for many firms to say, "Well"—I mean, you'd show up for the interview. They'd let you interview. You'd show up, and they'd still say, "We've never had a woman." You know? They weren't shy about being very hesitant. And then, once there, once in the firms, I had, like I think all women of my era—you know-- I have a few war stories.

RR: I'm sure you must.

CB: Of things that transpired. We weren't always greeted with open arms. Let's just put it that way.

RR: I know that you have been speaking a lot in the last year around the state, and one of the things that I think would be good to hear—you spoke at our Rotary Club recently, but I think this was a similar speech that you've been giving, but so many people don't really understand the judicial branch, especially on the appellate level. And you have given a great primer for describing that to people who may not understand how it works. Could you briefly do that?

CB: Sure. I'll try to hit the highlights. You probably don't want the entire Rotary speech.

RR: It could be a long time.

CB: I guess, first of all, I would say this--that kind of most basic information. Obviously, we have three branches of government—executive, legislative, and judicial, and the judicial branch is designed to operate differently from the way our executive and legislative branches operate. So how I illustrate this for folks, I talk about how cases get to the court, and there are essentially three different ways that cases reach the Kansas Supreme Court. They either come through progressively higher level appeals from the trial bench through the Court of Appeals and then up on petition for review, which is a discretionary review by the Supreme Court where the court decides to take cases. So that's a big component of our docket.

And then there are cases that reach the Supreme Court directly from the district courts, and that's statutorily provided. There's certain types of criminal cases, certain types of civil cases that reach the court.

Finally, there are original jurisdiction cases. And the example I give for that often is I would put federal cases that come to us on Kansas questions of law in that category. I put attorney discipline and judicial discipline in that category. So that's how the cases get to us.

When they come to us, we have briefs filed by counsel for the party, which is a misnomer. They generally are not brief, as you know, Richard. They have a fifty-page limit, and most of them get to that limit before they're finished telling us about their cases.

RR: Or request.

CB: Or request additional pages, as you know. So we have briefs. We have the record of the case from whatever proceedings have occurred before the case has reached us. Sometimes I'm doing this because sometimes that record is at least this size. Sometimes it's boxes full of transcripts and motions and other proceedings that have occurred in the lower courts. And then, you know, we have oral arguments. During my time on the Kansas Supreme Court, we heard oral arguments on almost all the cases that we took.

So we have these various inputs. But when it comes time, when all of that has happened, when we've studied the briefs, when we've researched the law, when we've reviewed the record with our staff, when we've heard oral arguments, we return to this room, the seven of us, just the seven of us.

And at that point, the only things we consider are the facts of the case as demonstrated by admissible evidence that is in the record, the issues, the legal issues as framed by the parties and their counsel that they have brought to us for resolution. We don't just sit around and look for things to opine about. We get the issues brought to us by the parties and their counsel. And finally we consider the legal arguments. We consider the controlling law, the potentially applicable law, the constitutional or statutory provision or possibly prior cases, common law, that affect those issues and those facts.

Those are the three things—facts as demonstrated by admissible evidence, issues as framed by parties and their counsel, and, finally, the governing law, the rule of law that applies to all of us. We hear a lot about that lately with good reason, the rule of law that applies to all of us and to all of us equally. That's key. That's it.

That's it. We don't Google for extra facts. We don't figure out some other issues that we're just interested in and we think the parties should have raised, and we don't go outside the bounds of what we see in the law requiring. So that's how the judicial branch operates.

Now, when we select a person to be an executive, whether it's a governor at the state level, a president at the federal level, when we select people to serve in the legislative bodies, whether it's our legislature here in Kansas, Congress at the federal level, when we select all of those folks in the two political branches of government, when we select those folks, we certainly expect them—in fact, I think we have a right to demand-- that they consider public opinion, voter preference, constituent needs. Of course, we expect that. That's their job. They're the representative in a representative government, right?

RR: Right, exactly.

CB: So we expect that of them, and we expect them to consider their own value systems, what they've described to us on the campaign trail. Does it jibe with ours? Does it match up? Do they get our vote? We expect that, and we certainly expect in the current environment and really in the political branches generally over the years, we expect them to adhere at least in some form or fashion to the political landscape, to the partisan landscape, to the platform of their party. That's part of what helps us to predict whether they're going to perform in office the way that we want them to perform as voters. We have a right to expect that and demand that, because that's the way those branches work.

None of that has anything to do with judging. It shouldn't have anything to do with judging on any level. It absolutely has nothing to do with appellate judging. Appellate judging is about those three things I talked about a moment ago.

RR: So the independence is key.

CB: Independence is key, impartiality, fairness and impartiality. Everyone treated the same. Every case treated as though it had equal value. I mean, obviously there are big cases. There are loud cases. There are noisy cases. There are the showstoppers. But every party who appears before the court, every counsel who appears before the court deserves the same level of diligence and respect as every other party and counsel.

RR: And I'm sure in this conference room, the word "conference," that's what you're doing, and I know that it's respectful conferencing. I've not been in here, but I know it is. I know many of the judges, but you don't always all agree, obviously.

CB: No. Sometimes it gets a little loud. We used to laugh occasionally and wonder what people passing by in the hallway might think because we get a little noisy. But I think "respectful" is a key word. We all knew that the others at the table had this view of judging and how to do it correctly. We all knew that about one another. We observed it on a daily basis. And knowing that gives you the confidence and the relationship necessary for that mutual respect when you have a disagreement.

Obviously, we're going to have disagreements. I mean, we're paid to argue with one another That's part of what we do. That's what we're here for. But we knew that about one another and trusted in that. So you could have those disagreements without making it personal, without turning it into something that it was not.

RR: And if you disagree with the result of the majority, then you have the opportunity and probably the duty to write a dissent, explaining your argument.

CB: Exactly, which of course, happens. I wrote a bunch of dissents in my time on the two appellate courts, surely.

RR: Okay, back to—let's talk about that merit selection process, which is what's in our Constitution right now.

CB: Yes, right, for the Supreme Court.

RR: Can you explain how that operates? Can you explain how you saw that operation in your own selection?

CB: Sure, I'm happy to. I love to talk about this topic because there's some continuing controversy and has been over the years about whether it's the proper selection method for us to have.

It was the selection method in place for the Court of Appeals also when I was chosen, as you alluded to a moment ago. We had this Supreme Court Nominating Commission. It's called merit selection. It also was referred to in early days as the Missouri Plan. That was the first state to kind of adopt something similar. And this Nominating Commission is made up of nine persons. Four of them are people who are not lawyers. Five of them are lawyers. They arrive at the commission by different routes. The four folks who are not lawyers are selected by the Governor, solely by the Governor in alternating years, depending on Congressional districts. So we have four Congressional districts. So in four succeeding years, the sitting Governor can appoint four members of this Commission. And they serve for four years until the next time that that particular seat comes up.

Four of the lawyers are selected by Congressional district in the same manner as the laypeople on the commission, but the lawyers are elected by those admitted to practice law in those districts. So they're elected by fellow lawyers in those districts.

And then, finally, the chairperson, who is a lawyer, is elected statewide by persons admitted to the bar. And when I say "admitted to the bar," I mean, of course, who have passed the bar exam and are admitted to practice in the state of Kansas.

So we have this nine-person Commission. Folks arrive, there are some people who are appointed by the Governor, which as I mentioned a moment ago is a political branch of the government, a member of a political branch of the government. But these four folks don't all arrive at one time. The Governor doesn't get to get elected and wholly remake the Supreme Court Nominating Commission. That power is mitigated by the staggered appointments.

And then the folks who are elected by the lawyers are not elected on any kind of partisan basis. That goes for the Chair as well. They're generally elected because people respect them and think they're good lawyers and will have a good effect on the commission study of the applicants.

So anyone who's a lawyer of a certain age in Kansas admitted to practice is free to apply for the position. Those submissions run in excess of 100 pages. They're not your average job application. They contain a lot of information about the applicants, but those folks on that Nominating Commission, I know from experience, having been through the process twice, once for the Court of Appeals and once for the Supreme Court, they don't consider themselves confined by the information the applicants choose to share.

So, for example, if you practiced in a particular market, they call other folks who are likely to have known you or seen you in court or experienced your legal skills in some way. So those Nominating Commission members do yeoman's work researching the candidates, vetting the candidates, etc. Our current system provides for them to interview those candidates in public meetings, to discuss those candidates and vote on those candidates in public meetings. So the public has some access to that process that's fairly transparent at this point. That process happens. They select three names, and those three names go to the Governor for selection, for selection of the person who will actually fill the seat.

So that's how the Nominating Commission works, and that's how the Court of Appeals worked when I was a candidate for the Court of Appeals.

A few years ago because the Court of Appeals process is governed by statute, passed by the legislature and signed by the Governor and all that process we learned in grade school because it's statutorily controlled, the Court of Appeals method was changed several years ago by the Legislature. And that process now provides something that I refer to as "the Federal Model Lite" because it's a gubernatorial appointment. The Governor may select the person who's nominated by any method or no method. It's completely their choice. The Governor selects that person on whatever basis the Governor decides is important, and then that person must be confirmed by the State Senate. That process is very similar to what we know from the federal system, right? We've watched on television. That process is simple.

The reason I call it "lite' is that the resemblance ends there. Once the person is appointed to the bench, that person must sit periodically for retention elections rather than have an appointment for life, the way that it works in the federal system.

But the Supreme Court system is provided for in the Constitution, as you said. And, because of that, there's been no constitutional amendment to the [Kansas] Supreme Court system, and it remains the merit selection system that I described.

RR: And there's been talk, and there's been attempts to try to change that.

CB: There has.

RR: Unsuccessfully.

CB: So far.

RR: So, politically that creates a lot of conversation on the selection of the judges. You've described how the attempt is by our Constitution, which was approved by the voters, to try to keep this as nonpartisan of a court as possible versus some of these suggested changes. I know that you were up for retention a number of times.

CB: Right, four times.

RR: And the first couple of times, that was not of great concern because the voters, 80 percent of the voters, voted to retain the judges. The judges are all quite qualified at that point, and so unless there's something that's amiss, which I've not seen in all the time that I've been here, voters would know about that and could choose not to retain somebody.

But it has become, it appears to me, much more political as time has gone on to the present, and you have been a target sometimes.

CB: I have.

RR: In that process. Can you talk about that?

CB: Sure. The first couple of times I was on the retention ballot, we were still in the sleepy retention days. I was up in the Court of Appeals once, and then, when I switched courts, I had to be up again after I had been on the court for a year. So I was up in 2002 and 2004 both. As you described, I don't think I even stayed up late on election night. No one was worried.

By 2010, I believe I was on the ballot with a couple of my colleagues that year, maybe one only, but the landscape had changed some. As is natural, sometimes our appellate courts are going to end up dealing with cases that are especially high visibility, that have a political aspect to them, where people have political positions on how cases should come out. Again, that is not what we consider when we're making the decisions, but we are aware that's out there, of course. We read the paper. We are out in the community.

And by 2010, I had written a couple of opinions for the Court. I wasn't writing them for myself. I was writing them for the majority of the Court. But I had written a couple of opinions that were critical of the behavior of one of our former Attorney Generals. And that behavior had to do with obtaining records of abortions from providers. And because of those two opinions, my retention in 2010 became a bit more contested, shall we say, by some folks who had very strong opinions about that particular issue.

That year they announced early that they wanted—of course, I had the good fortune of having my last name rhyme with "fire," too. That was the slogan. It was "Fire Beier." That was catchy, but as it turned out, not particularly well funded or effective. And so in 2010, there was a little bit of anxiety. I certainly was aware there were folks out there who would like to see me leave my job, but it wasn't a well-funded campaign, and it wasn't orchestrated in a professional political manner.

By 2016, I had been long enough on the Court, as had had several of my colleagues, and there were five of us on the ballot that year-- what [Justice] Lee Johnson, who was not on the ballot, used to describe as "a target-rich environment," so there were five of the seven of us, which obviously could have remade the Court in large part had we all not been retained.

So in 2016, there was a very vocal, well-organized, very well-funded campaign against retention, and that was a hard year. 2016 was a tough year, because, as judges in a merit selection retention

system, we couldn't say very much in our own defense other than kind of the sorts of things we're talking about today, talking about how the system works, what we consider, what we don't, those sorts of things. We were free to talk about that, but we couldn't really talk—we couldn't really speak to political issues, and we were not going to elaborate in any great degree on what our opinions had already said.

My former colleague, Justice Caleb Stegall, likes to say that appellate judges are required to "show their work". That's one of his favorite phrases, and that is what opinions are. That's what written opinions are. At the end of the day, once we've had the arguments, once we've worked out who's in the majority and who's in the dissent and whatever, we deliver written opinions on these cases, and the public is free to look at them and make a judgment about whether our judgment appears to be well supported. But we don't go a great deal beyond that when we speak in public. We try to let the opinions for the most part speak for themselves, which puts, obviously, judges subject to retention elections who are getting well-funded challenges, those folks are at a disadvantage.

RR: A very big disadvantage.

CB: A big disadvantage.

RR: Because you are not allowed to speak out.

CB: No, the judicial ethics code limits the ability to speak out.

So we had to look to people who supported the Court and the system that we have to defend it in 2016, which they did. They rose to the occasion, and everyone ended up being retained. But it was an anxious year for that reason.

RR: Interesting. This year, six of the seven justices were up for retention, and I don't know how many Court of Appeals judges, but a lot—

CB: Half of the Court of Appeals. It was a big year again.

RR: It's kind of an anomaly, isn't it, to have that many?

CB: It is. To have that many is a historical anomaly. We had a period of time in the Court's history, clear back 2002, 2003, where three of the justices were going to age out. The Supreme Court does have an age limit. A lot of people aren't familiar with that, but there is an age limit on the number of years you can practice or we can sit on the bench. And in 2002, 2003, there were three justices who were going to age out. They were retiring kind of in a cascade there in the late part of 2002, and then when their terms ended in 2003. So three members of the Court were replaced then.

Probably only six or eight months after that was when Bob Abbott retired, and what's when I came on. So we had four new members in that year.

But we never, to my knowledge, the Court has never had a situation where we had six of seven Justices on the ballot before this year.

RR: I don't remember that.

CB: I think that's the first time, and it was a function of retirements and newer people who replaced.

RR: You mentioned something when you were talking about the conferencing and the decision writing. I just want to clarify this a little bit because I don't—when you write the majority opinion, and you said this, but I want this in bold letters, it's not your opinion. That's the opinion of the majority of the Court.

CB: Right. People who watch the Court and are familiar with our procedures can see a majority and see if there are any dissents or concurrences, separate opinions written by anyone, and size up who is in the majority and know who it's written for.

But the author of the opinion is not—the author's style may come through. They may have a particular way they like to write a decision. So there may be some individualistic elements of the decision, but the decision itself and the reasoning reaching that decision, which is the direction in which we moved. We moved through those steps in which I mentioned, issues, facts, governing law, to the result. We don't figure out the result and then work our way backwards through those items. But when you see that, that is the opinion of the whole group for whom the author is writing.

RR: Sometimes your opinion changes as you're hearing the arguments.

CB: It absolutely does. Before I was ever on the bench, I used to hear appellate judges say, "Oral argument doesn't really change my mind very often." I did not find that to be the case.

I frequently would go into the courtroom thinking, "This may probably go this way," and have the lawyers present brilliant arguments that really made me rethink the course of the case. And I saw that happen with my colleagues. I saw it happen during conference a lot. Somebody else would think of it a different way, come at it from a different perspective, and it would open my eyes, and I would change my mind.

And that would even happen post-conference sometimes. Once a decision is drafted, and it's circulating among the members of the Court to sign off, someone might have an idea, or think of another direction that we needed to consider. So votes could switch up even after conference sometimes. That was not an uncommon occurrence. It was something that could happen pretty frequently.

RR: What did you like most about your time on the Appellate Courts?

CB: Well, I joked when I retired, I tried to get the reporter who interviewed me to print it, but he didn't. Public service is sort of my "jam". I missed it when I was in private practice. I liked feeling like I was part of public service. That's important to me.

But some of my favorite moments I guess would be some of those oral arguments. I loved oral argument. I looked forward to it every time we'd get to go do it. We were a very hot court. We always asked lots of questions of counsel, and that exchange with counsel who were very knowledgeable about their case and the law that governed was so intellectually intoxicating. I just loved it. And that happened in conference a lot too, where my colleagues would say something so insightful and so groundbreaking. I loved that. I loved school. There are aspects of school in those exchanges perhaps. I just really enjoyed that intellectual exercise of the job.

RR: I could tell in oral arguments. I didn't watch a whole lot of them, but when I watched them, you really were so engaged in whatever the argument. You all were, but you in particular were one of the justices that just fired off those questions until you got to an answer that you were not necessarily expecting. You were just trying to find the answer.

CB: Made sure they answered. Sometimes I think my journalism training really came in handy in oral argument.

RR: I think it very clearly did.

CB: I'm one of those folks that watches the news and goes, "Follow up! Follow up!" So I like to do that during oral arguments. If I didn't think I'd gotten a direct response, I would usually ask again or maybe point that out and invite another response.

RR: I'd just point out here, that also made me think about this. The oral arguments are online.

CB: Yes.

RR: They're live. So the public can follow them.

CB: They stream and are archived. So they can go back and look at something later if someone, for example, during a retention election, says, "Well, I didn't like X, Y, Z about this opinion." Not only can they read the opinion, but they can go watch the argument. And they can look at those justices and get a flavor, get a feel for whether they appear to have arrived with their minds made up, depending on something other than the arguments presented or appear to be, as you say, kind of engaged and having this intellectual exchange and trying to tease out what the right results should be.

RR: Obviously, if all the arguments are available online at the time, the public can always go into the courtroom and watch live the oral arguments. You've never had an argument, have you, that's been closed?

CB: I don't remember ever doing that.

RR: I don't think that ever has occurred.

CB: I don't remember ever doing that. It would take something huge to even contemplate doing that. I can't actually imagine a set of circumstances that would have prompted the Court to attempt that.

RR: I think a lot of people don't realize that even, how open and transparent our court system is.

CB: Right. Right. Anyone can come in.

RR: I hate even to ask the question what you didn't like, but are there things in the current system, what's going on in the courts today, the judiciary, either Kansas or nationally, that you have concerns about?

CB: Certainly. I don't think that anybody who's been awake in 2022 and who's interested in this topic at all, I mean, I understand that most people are living each day, making ends meet, and going about their business and not concentrating on the courts, but anyone who's been paying attention to courts this year has to appreciate that overall public respect and trust in the judiciary is sinking. And I think that this is largely attributable to our federal court, our highest court and doubts that have arisen over some of their recent decisions, and what many people view as casual treatment of precedent, and not only in the *Dobbs* [3] case but in other cases as well.

And this is harmful to all judiciaries. It's harmful to—certainly it's harmful to the federal judiciary--but it's harmful to state judiciaries as well, because there are not a lot of people who differentiate, who really truly appreciate the differences between the systems, and how a state judiciary might be operating along the lines of the description I first talked to you about, judging in what I consider the only correct manner, working through those items to the result. But when they think they see something else happening in the federal judiciary, they may be confused about whether that sort of thing is also happening in their state judiciary.

So that's a concern to me. That's a great concern to me, and part of what I was doing this year, going out and speaking, was attempting to help people make that distinction and understand that their court system here in Kansas is still doing judging the old-fashioned way, what I consider the right way. No matter what's happening anywhere else, without expressing a strong opinion about any of that, just saying, "Some of what you're angry about in other places is not happening here in Topeka."

RR: That's good. You referenced a couple of times, and I did, too, about you're going out across the state—what was that? What was that about? What are you representing when you do this?

CB: Excuse me. Well, we mentioned that we had six people on the ballot on the Supreme Court this year, and we had half of our Court of Appeals also on the ballot. A lot of the population of Kansas is not particularly familiar with these judges and justices. They only hear about them when somebody is mad about some case outcome. So I was attempting to familiarize folks more with their state judiciary and how it works, and how it functions, and the values of judging from

the basics to the result, going that direction, not being a result-oriented jurist, somebody who comes up with the result and then works their way backward, how important those things are here.

People who have that sort of understanding of the job, and who have a healthy respect for preserving the performance of the job in that way, deserve to be retained. So I had no trouble saying that to anybody willing to listen to me this year, that that was my view, and that I knew these people, and I knew how they worked, and I sat across the table from them for years, most of them, and I knew that they had the same understanding I was communicating to that audience.

RR: How do you think your presentations were received? Did people feel like they learned things?

CB: People expressed that they did. And usually I had lots of good questions from the audience. I did some of these presentations with colleagues. I went out with former Chief Justice Nuss on some of these presentations. We usually got lots of good questions, and afterwards, typically people were appreciative.

There were a few times where we got a little bit more hostility from someone, but that's okay. You know, I actually think we get some credit for showing up and letting them ask and having that conversation, and that's fine with me. I don't mind it. A little challenge is healthy, and having that challenge and then weathering it and remaining composed and knowledgeable, transmitting that I think is good, good for people to see.

RR: So how do you see the state of the Judiciary right now in Kansas?

CB: I think it's strong, and I think that we have a great Chief Justice in Marla Luckert. She's made for the job, I think.

RR: She is.

CB: And I think that the justices are strong. I think that they all understand exactly what we've been discussing and pursue their work in that manner, regardless of their backgrounds, regardless of their personal politics or beliefs. I think this is how they understand their job and that's how they perform it. So I feel good about that.

I am concerned about challenges to the selection method. I think that merit selection far exceeds either direct election or the Federal Model Lite. I think it far exceeds that in terms of the potential for limiting politics and partisanship in the judicial branch, which I think is absolutely vital to its function. So I am concerned about that. I hope that folks are getting educated about it and will continue to be educated about it so that they can react if those proposals surface again. So that's concerning to me. But overall I think that the bench is in good hands in Kansas.

RR: Is there anything else you would like to add that we didn't touch on?

CB: May I tell one quick story?

RR: Absolutely.

CB: It's my absolute favorite. And I've told it a few times so it won't be unfamiliar to everyone.

Back in J school, I had a classmate, and this story always moves me, and it's one of the reasons it's my favorite. She was just more sophisticated than the rest of us. I don't know how else to describe her. She was mature at a level we were not yet, and she was cultured. She played the cello in the university orchestra. She was a small-town Kansas kid, but she was chic and cool.

Of course, when we all went and got our jobs in a variety of mostly smaller Kansas papers and what have you, she got a job at Dance Magazine in New York City, which was just impossibly cool, way beyond anything that the rest of us could imagine.

Anyway, off she goes to New York. She goes to New York, and she spends several years there working for the magazine, and in the course of that time, she'd attend a swank function or dinner or whatever, and if the topic of where she had grown up arose, then, inevitably, someone would lean across their large white—

RR: Not Kansas.

CB: Exactly. The same stuff we all hear, right? Lean across their large white plate with this wisp of nutrition in the center of it and say, "What do people *do* in Kansas?" And she admitted years later that she struggled for an answer for a long time. She really didn't know exactly how to answer that question or respond effectively to all of the provincialism that it implied, kind of provincial snobbery of the East Coast.

Anyway, she eventually—you know, life happens. She returned to Kansas, worked at the *Eagle* for many, many years, had a brilliant career, married, had a family, and she said it was a few years after she got back home, got back to Kansas, that she knew the answer to the question.

RR: What was that answer?

CB: The answer was: "Everything important in life."

Now, why do I tell this story when I'm talking about the courts? I tell this story because that's part of what courts are about. I mean, we all know the answer to that question, once we think about it for two seconds, we say, "Of course, the answer is 'everything important in life'."

You know, we start and raise our families. We launch businesses and grow them. We join civic organizations and lead them. We worship in our churches and synagogues and mosques. We do everything important in life in Kansas.

And one of those other important things is we try, even when it's hard, to have good government. We pride ourselves on that in Kansas. We have for decades and decades and decades. Having a

strong judiciary is part of that, supporting a strong judiciary that understands its role and performs it well is part of good government.

So I like that story. It sets up a central point: having a strong, healthy, supported good Judiciary that understands its role and performs it well is part of everything important in life.

RR: Thank you for telling that story. That's a perfect ending to this wonderful discussion.

CB: You're welcome.

RR: And I appreciate you giving me the opportunity to visit with you.

CB: My pleasure.

RR: And I hope that others will enjoy this conversation as well. Thank you.

CB: Thanks, Richard. I appreciate it.

ENDNOTES:

Note 1 *27 Kan.App.2d vi (2000)*

Note 2 *276 Kan.lxiii)2003)*

Note 3 *Dobbs v Jackson Women's Health Organization, 597 U.S.__(2002)*

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