

**Illinois Supreme Court Justice David K. Overstreet:
The Supreme Court, Unforgettable Closing Arguments, Tough Decisions, and More**

David K. Overstreet practiced law with Miller, Tracy, Braun & Wilson, Ltd of Monticello, Illinois, beginning in 1991, he later practiced with the Law Office of Peter G. Angelos of Knoxville, Tennessee. Between 1995 and 2007, Overstreet practiced with Mitchell, Neubauer, Shaw & Hanson, P.C., Neubauer, Hanson & Overstreet, P.C., and Neubauer & Overstreet, P.C. of Mt. Vernon, Illinois. He was appointed to the Second Judicial Circuit Court in 2007, which he won election to in 2008, and retained in 2014. He was assigned to the Fifth District Appellate Court in 2017 and won election to that seat in 2018. In 2020, as a candidate from the Fifth Judicial District, Overstreet won election to the Illinois Supreme Court.

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David K. Overstreet: An Oral History

WINNER: Welcome to Eddie Style Channel, where we do everything Eddie Style. Welcome to another Episode of *Interviewing the Law*, where I interview legal experts about their lives and careers, aiming to learn more from their experience and wisdom. Today, I have an extra special guest, an Illinois Supreme Court Justice. Before he was a Justice, he practiced for sixteen years as a litigator, then he joined the bench and served at every level of the Illinois judiciary, from the circuit court to the appellate court, all the way to the Illinois Supreme Court. Perhaps we'll get the answer to a question I've been pondering for quite some time. How does it feel like to make a decision that will influence the entire state of Illinois for hundreds or even thousands of years? Please welcome to the show, the Honorable Justice David Overstreet. Thank you so much for being here today.

OVERSTREET: Thank you, Eddie. I appreciate the invitation and it's great to be able to talk to you today. It's wonderful to be with you, and I've been looking forward to this since you invited me.

WINNER: Well, absolutely. So, we have a little bit of a tradition on the show, every guest gets their favorite drink, and you will get... (vocal drum roll) a hot mocha from Starbucks.

OVERTREET: Thank you, Eddie!

WINNER: Excellent choice, I got myself one as well, as I am a big fan.

OVERSTREET: Very good, I am ready now.

WINNER: Alright, so you just wrapped up the March term. How was this term for you?

OVERSTREET: The term was very, very busy. It was exciting, it was different because we rode the circuit as we're apt to do once a year. Our terms are five times a year, two-week periods, and so for the March term, this year, we heard cases in Springfield for the first week of term, and also had our conferences, and I can talk about that a little bit later. But the second week was special because we conferenced in Springfield on Monday morning, but then the Court drove en masse, separately, but en masse to Mount Vernon, my hometown. On Monday afternoon, I was able to arrange a tour of the Fifth District Appellate Courthouse, which dates back to 1857, and it's the courthouse where Abraham Lincoln argued in front of the Illinois Supreme Court. It's also a courthouse where I served as an appellate justice for four years in the fifth district. We also had a reception that evening at the Cedarhurst Center for the Arts in Mount Vernon, a beautiful venue, and invited attorneys from local bar associations in southern Illinois. One hundred plus attorneys were able to mingle with the Court. And then on Tuesday, we drove down to SIU Carbondale and heard two cases. So, able to show off my hometown and some of its jewels and then argued, or heard arguments, one civil, one criminal case, at SIU Carbondale with over nine-hundred spectators.

WINNER: Nine hundred! This is incredible. The Illinois Supreme Court, in Springfield, how many people can it invite in?

OVERSTREET: So, in our Courthouse in the Supreme Court Building in Springfield, I think it's a max in the actual Courtroom of seventy-five or so. We also have a spillover courtroom, the old Fourth District courtroom, which we call the ceremonial courtroom now, where if we have over seventy-five or so, spectators can sit in the other courtroom with a monitor and observe. Now I've been on the Court four years, we've had some high-profile cases and I'm not sure that we've ever had to use the spillover courtroom. Perhaps we have, once or twice.

WINNER: How is it different?

OVERSTREET: It's exciting, to be honest with you. And many of the people there were students, high school students, college students, law students. And then other members of various communities in Southern Illinois. But it is certainly something that, you know, gets the juices going, every case is important. We're prepared for every case, but there is something a little bit extra exciting about hearing cases and oral arguments in front of that many people, you know, you stay focused on what you're doing, and then that's not a problem, but it's just something special.

WINNER: Why do you go to Carbondale and hear cases in front of students and people of the community? What is the wisdom in that?

OVERSTREET: I think it's important for the community to be able to see their highest Court in the state at work. Most people will never be able to come hear a case in the Illinois Supreme Court Building in Springfield. So, by taking our cases on the road, a couple of cases once a year, we're able to bring the Court to the people, to the people we serve. And I think that's important, so that they understand our work better, that we're more transparent in what we do, so you know, we just had great feedback from...a couple weeks ago when we were in Carbondale and then last year we were at NIU in Dekalb, and a couple years ago we were at Chicago State. So, it's something that I anticipate the court will do once a year.

WINNER: If we go back, for a second, to Mount Vernon, you mentioned that you gave the Supreme Court Justices a tour. Can you tell us a little bit about this courthouse? You advocated there as a litigator, then you were there on the appellate court, and now you're coming back to your hometown, you're showing them the history of Abraham Lincoln, but also you are an active maker of history. Tell us a little bit about that.

OVERSTREET: Well, I grew up in Mount Vernon, so you know, as a kid in junior high, in those days, your seventh-grade class or eighth-grade class would go over to the appellate courthouse, which was just a few blocks away, and take a tour as a kid; it was something that was always present in my life. It's located downtown Mount Vernon, and so on the main drag, you're always passing by it when you're heading west out of downtown. And then to become an attorney, make it back to my hometown, and then I was able to argue maybe four or five cases at the Fifth District Appellate Courthouse, and understanding the history and the history is this... in November of 1859, Abraham Lincoln argued a case on behalf of the Illinois Central Railroad in the Illinois Supreme Court in Mount Vernon. From the 1848 Constitution until about I think about...1897, the Supreme Court sat in Mount Vernon, Springfield, and Ottawa. So, the Supreme Court actually would ride the circuit for various terms. He argued one case there, but it was the last reported case he argued. It was a case dealing with the railroad, but taxation, and would the railroad be taxed in each county which had tracks, that, you know, it had a predecessor case that had been heard a couple of years before, but, think about this, it is the only courthouse that operates as a courthouse on a daily basis that exists where Abraham Lincoln argued a case.

WINNER: Yes, and won a case.

OVERSTREET: And won a case. And it made a huge difference on behalf of his client, the Illinois Central Railroad, you know, they didn't go bankrupt, they based on his argument prevailing. This was just a year before he was elected president. And also, the trial, the Court had original jurisdiction, so I think they actually heard evidence, my understanding, instead of just oral arguments. But, George McClellan was an officer of the Illinois Central Railroad, he was there. It was a two-day trial argument. And so, you know, think about it, a year later, Lincoln is elected president, the Civil War comes, George McClellan is Lincoln's general in the east, you know,

later Lincoln fired him, and then later McClelland, five years after this argument, ran for president against Lincoln in 1864. And so, it's in the same courtroom where this case was argued, and so I was fortunate enough to serve on the Fifth District Appellate Court from 2017 to 2020, so, four years. To be able to have the Court with me to share that history, but the fact that I served there as well. There is a picture of me in the courtroom because there are four Justices who served in the Fifth District Appellate Courthouse, on Fifth District Appellate Court, who later served on the Illinois Supreme Court, and I'm the fourth. So, you know, it's special, it's humbling, but it's a treat for me to see that and to have you know my friends on the Court share that with them.

WINNER: Is it nice to have a picture of you on the wall in the courtroom?

OVERSTREET: Yeah, it's, I never dreamed that would happen. You know, but yes, it is, and I'm... I think back fondly to my time, you know, it's just four years, but on the appellate court there, and the fact that I'm recognized; I'm very grateful.

WINNER: Getting to have your picture at the Fifth District Appellate Courthouse must be incredible. How was growing up in Mount Vernon?

OVERSTREET: So, Mom and Dad had moved to Mount Vernon in 1964. I was born in 1966, so, I was born in Mount Vernon. Two older brothers, I had a great childhood, great loving parents. You know, very great and loving brothers. We had a lot of fun. They're older than me, seven years older and ten years older than me, so I came along later. I just have great memories of going to school there, playing ball, going to church there, and it was a great place to grow up.

WINNER: Now, your parents weren't attorneys, correct?

OVERSTREET: Correct. My dad was in the life insurance business. He was in on the management side and, with Woodmen of the World, and then that's what brought them to Illinois from Tennessee, and then my mom had gone to work as a secretary at the high school, and then she rose later, became treasurer at the high school worked there many years, so I had no attorneys in my family. My dad had thought about going to law school when he was in college, but he was married and, you know, had a child, he had a real interest in business and he went that route. My oldest brother, Jack, had thought about going to law school and had applied, and been accepted to, I think, a couple of schools and...but he was working in the oil business at that time, and he had a passion for that, so he didn't go to law school. But I heard Jack talk about that, and my dad talk about it. I've always been a fan of Abraham Lincoln. I had friends who, in this case, their dads were attorneys, I knew a couple of them, and so I always had an interest. You know, when I graduated from high school, I wasn't exactly sure what I was going to do. I was a business management major in college, but by the time of my junior year I decided I wanted to go to law school.

WINNER: So, you went to school in Tennessee. Why did you choose to go to school in Tennessee?

OVERSTREET: I went to David Lipscomb College, now known as Lipscomb University in Nashville.

My dad had gone there his first year of college, and then he transferred to Tennessee Tech. He was married and had a kid, you know. My oldest brother, Jack, had gone there one year. Well, he had a girlfriend, she was at Eastern Illinois University, so he transferred. It's a Christian liberal arts college that I had heard about, and I don't know, I just went down for a visit my senior year, in the fall, and it was a smaller school, a Christian school with values but a school in Nashville. I had many relatives in Tennessee, and I thought, "No, this seems like the right fit."

So, it was the only school I applied to, and I decided early on, my senior year in high school, I'd go to Lipscomb, I loved it, had a great experience, and was there four years and graduated.

WINNER: How was Nashville?

OVERSTREET: Nashville was a great city. Now, it's exploded since I was there, so I was there '84 to '88, and I'd say sometime in the '90s into the 2000s it exploded into the mecca, the city that people want to go to now. It was a town I could get around in, there were exciting music aspects to it, and so it's a beautiful town with a lot of history, and it was special then and it's just kind of exploded now.

[15:00]

WINNER: I always wanted to visit Nashville and play my guitar there. But then you also went to law school in Tennessee. How was that experience for you?

OVERSTREET: You know, it was a great experience. When I chose, I looked at a number of schools and settled on the University of Tennessee. You know, there were number of factors. I did like being in the state of Tennessee, I had a girlfriend at that time who was at Lipscomb, you know, that didn't work out but that entered into my decision, even though Knoxville is three hours from Nashville. But I chose the University of Tennessee. I do remember this, the dean, Dean Marilyn Yarborough, who I had for torts actually, that first semester, she told the incoming class, "Look, law school, it's different from undergrad, as we all know it is, and some of you are not going to, you know...it's going to fit some of you well and some of you may struggle, all are going to struggle, and some of you when you get to the sixth week point, are going to wonder, what am I doing here?" And that's funny, that actually happened. About six weeks in, I thought, "Nah, am I cut out for this? Is this really what I want to do?" And...

WINNER: Why?

OVERSTREET: Well, you know, thinking back, it was hard work, that was to be expected, but it was just trying to see what the future would hold, just six weeks in, we all have ups, emotional ups and downs, and I think it just hit me. Fortunately, my parents came down for a football game, now that was another thing, my dad was a big University of Tennessee football fan and when I was trying to make up my mind, he said, “Well son, you know it’d be great to be in Knoxville in the fall.” And he was right. But anyway, they came down for a football game and so I got to spend a little time with them that weekend and I told them of my doubts and you know, my parents encouraged me and said, “Well, look, you’re an Overstreet, you’re going to fight through this, you know, for this semester. Then when you’re done with the semester, if you don’t want to go back, then... and go a different route then certainly, you can do that.” I said, “Okay, fair enough.” And so, it’s funny, you know, about a week or so later, things just started clicking for me and emotionally I was happier. And really, from that point on, I really did love law school, and I love the academic challenges. But I made a lot of great friends there too and I enjoyed going to the football games in the fall.

WINNER: So, that was like kind of like a philosophy in your family? Give it a shot!

OVERSTREET: Give it a shot, you know, fulfill your obligations. You know, it’s not like you’re stuck with something forever but at least give it a chance.

WINNER: Which activities did you enjoy to do in law school?

OVERSTREET: The evidence moot court team 2L and 3L years, I tried out and was chosen... we had my coach and my evidence professor was Professor Neil Cohen who grew up in Centralia Illinois, which is just twenty miles away from Mount Vernon... really the Centralia Orphans are the archrivals of the Mount Vernon Rams in high school sports and activities, but he and I hit it off, he was a great professor and he gave me the opportunity to be on the moot court team. We

went to Brooklyn Law School for competition, both years. My memory is out of 3L year, my 3L year, we made it to the semifinals. We did not make it to the finals, but we were in the top three and I think we had a high ranking on the brief so we had some success my second year on the team and had a great experience. The first year, I was on the team, one of these years, I remember Justice Scalia served as one of the Justices in the final round. Now I didn't argue in the final round, but, evenings, we took a river cruise, we got to see the skyline of New York and, but Justice Scalia was on the cruise.

WINNER: On the cruise? Oh wow!

OVERSTREET: Now, I can't say I had any in-depth conversations with him. But he was talking. You know, he's very jovial and engaging and I do remember walking on the boat and he's smoking a pipe with four or five students around him and I kind of bumped into him and we said hello, so that was my brush with Justice Scalia. Although, I have another story about him we can talk about as well.

WINNER: Why didn't you talk with him more?

OVERSTREET: Well, I should have. Maybe you know...this is fifty-nine-year-old David Overstreet, and that was twenty-four/twenty-five-year-old David Overstreet. I guess I was a little bit too nervous to do that. So anyway, that was a great experience being on the moot court and being on the board for the moot court competitions at the university. I talked to some students in the clinic at the University of Illinois College of Law, a couple of years ago, I think it was, I was here, and I told them, "You know, that's my only regret in law school that I didn't take advantage of the clinics we had at the University of Tennessee, then you know, I think we had a civil and a criminal clinic and maybe three or four. But I had friends of mine and classmates who were involved with that. But, to get that real world law experience I think is valuable and...anyway I,

if I could do one thing over in law school, that's what I would do. I would certainly participate in one of the clinics.

WINNER: Now, you said you had another interesting story about Scalia?

OVERSTREET: Yes.

WINNER: Would you mind sharing with us?

OVERSTREET: Sure.

WINNER: I'm intrigued.

OVERSTREET: So, Justice Scalia, he passed away... I want to say, nine or so years ago. He had, a few years prior to that time, while he was on the U.S. Supreme Court, he attended a Federal Society dinner in, I believe, Aspen, Colorado. My oldest brother, Jack, whom I have mentioned earlier, lived in Colorado, he was not a lawyer but he did go to the dinner and apparently he was sitting across the table from Justice Scalia. And, Justice Scalia of course was very engaging with everyone, but Jack was talking to him and he noticed that Justice Scalia was bothered by something on his tie.

WINNER: Okay.

OVERSTREET: And apparently, they were eating soup or something, and maybe something just barely a speck got on his tie. So Jack, being who he is, asked Justice Scalia, "Hey, do you want to trade ties?"

WINNER: No way!

OVERSTREET: And Justice Scalia said, "Sure." So, they trade the ties, Justice Scalia... Jack keeps the tie, never has it cleaned, although you can't really tell there's anything on it. But he kept it. Justice Scalia passes away a few years later. Jack is watching the... Justice Scalia's body lying in state, I think it was in the Capitol, and they had next to the body his official portrait and we're

pretty sure it's the same tie. So, Jack then, of course, he had told me about this, and I went on the appellate court a year or two later, after that. When I was sworn into the appellate court, Jack loaned me Justice Scalia's tie, and I wore it, and then when I was elected to the Supreme Court, and was sworn in, he gave me the tie. So, I wore it for that ceremony and then had it encased, and it sits in my room in Springfield.

WINNER: Wow, that's incredible actually.

OVERSTREET: It really is. And so anyway, whenever people are coming into my room, I always like to show them that.

WINNER: Wow, so now we know the story of the tie in the room in Springfield. Well, and then you finally got your J.D., and you started practicing law. How did you know what type of law you wanted to practice?

OVERSTREET: Well, you know, at the outset, of course, I was very open-minded. I didn't go in thinking I wanted to be a state's attorney, or this, or that. And so, in fact, I thought more civil, but I had an opportunity as I entered my third, well, my last semester of law school, to interview with a law firm in Monticello, Illinois. A school law firm, Miller, Tracy, Braun & Wilson. Tom Miller, the senior partner, was the school attorney for (inaudible) Township High School. My dad was on the school board at that point, my mom was a secretary and administrative assistant, so they knew Mr. Miller. They suggested that I contact him because, you know, I really had a desire to come back to Illinois, but I had a pull to Tennessee as well. But I came, I drove up to Monticello and met with Tom Miller and some of the other lawyers, and they presented me with a great opportunity, and so I took it. And so, I took the Illinois bar exam in July of '91 and started the job in August, got the good word in October that I'd passed, sworn in in November. But I worked for the law firm for a year, and they were great to me, I had a lot of great

experiences going to, you know, advising school boards on issues regarding students and also they did negotiations with teachers who were represented by unions, and attended some of those. And, you know, the idea was that after maybe a couple of years, if I was seasoned enough, that I would open up a branch office in Mount Vernon for the firm.

WINNER: Okay.

OVERSTREET: So, they'd have a, even though they represented school boards in southern Illinois, that they'd have an actual presence. But what happened was my last semester of law school, I started dating a girl and then...so she was still at the University of Tennessee, and after a year, I left and went back to Tennessee, took the Tennessee bar exam, got a job, and then later married the girl I went back for.

WINNER: Yeah, that's lovely.

OVERSTREET: So anyway, it worked out great and it was but, I, you know, I wouldn't recommend usually quitting a job when you don't have another one and taking a bar exam and I mowed lawns for a month or so and then I did obtain a job with a firm that, you know, had a great experience with them as well.

WINNER: How was your time in Tennessee?

OVERSTREET: Tennessee was good. I went back, and I had a couple of classmates who worked for the law offices of Peter Angelos. So, I had reached out to them, or they knew of my situation, they reached out to me, and I interviewed with the firm, it was a plaintiffs' asbestos litigation firm.

WINNER: That's hard.

OVERSTREET: It was. It was a great experience. My job was to work with clients and prepare clients and defend clients in depositions who had been exposed to asbestos. These were tradesmen in East Tennessee. And then, you know, talked to witnesses who had witnessed their exposure to

various products, asbestos products in the various, either steam plants or the Oakridge facilities, and then defend those. And they were, you know, basically, men in those lawsuits. Although, as far as trial experience, I got to be third chair a couple of trials, but mainly did deposition work, did that for about three years.

WINNER: I learned throughout my law school career that depositions are incredibly important. That's the foundation for the actual trial.

OVERSTREET: There was a little bit of a David versus Goliath mentality going on because typically I'd be with my client, and there might be, in the earlier days of my three-year tenure, there might be ten or twelve attorneys on the other side, and each of them could ask questions. You know, usually there were a few leaders on the defense side, but you know, that was, like I said, one attorney against ten; it was a challenge.

WINNER: Did you enjoy that experience overall?

OVERSTREET: I did, overall. I did know that I didn't want to do this forever. Like I said, my wife, Suzanne, she and I got married, she was still... she graduated, but she went to grad school there at the University of Tennessee, and she finished up her graduate school work, and at that point, I knew it was time that if we wanted to go somewhere else, you know, it made sense. I looked at a couple of options but I ended up talking to a firm that I had clerked for one summer when I was in law school back in my hometown of Mount Vernon. At that point, five years previous to that. And they wanted me and I wanted them, and I convinced my wife to move to southern Illinois.

WINNER: After you returned to Mount Vernon, you eventually became a partner and eventually even you were a founding partner of a new law firm. How was that entire experience for you?

OVERSTREET: Well, I worked with some great attorneys in Mount Vernon, and I came back, and at that point, it was in 1995, Mitchell, Neubauer, Shaw, & Hanson, and then as time went on, Shaw left and formed a new firm. We had eight people there when I came, but then that was the largest the firm ever was. People went off in different directions, and then, eventually, whenever Ben Mitchell, the senior partner, decided to go out on his own, I was already a partner in the firm at that point. Then, to my remaining partners, we formed a new firm, and then one of our partners left, and then there were two of us.

[30:00]

But I just worked with some, you know, Ben Mitchell, I mentioned his name, was a senior partner. Tim Neubauer, who really became my mentor, I ended up working very closely with him. He was a great attorney, but especially in the family law area, and he took me under his wings, and that became my bread and butter, was family law. I didn't think I would do that in law school. In fact, I declined to take a domestic relations class because I thought I'd never practice family law. But, it's an area that is very stressful, there's a lot of heartache, but you can be helpful to your clients, to their kids; it was an area I just ended up having a passion for.

WINNER: How hard is it to be a family law attorney?

OVERSTREET: Well, I had a partner tell me in the Monticello firm, and again, I didn't practice family law there, but he'd said you know, though if you practice family law, those are the attorneys, and he did, those are the clients that'll call you on Christmas Eve. And so, kind of a joke, but it's true because things happen when you have kids and kids' visitation or custody exchanges and problems arise, like other areas of law, but family law is true, you know, the worst moments of their lives and you've got to be there to listen, to advise, to hold their hand, to advocate for them and you know, before, during the trial, and afterwards.

WINNER: So, it's 2007, what went into your decision to go and try to be a judge?

OVERSTREET: I did have some people approach me and encourage me to consider applying for a judicial vacancy. It was not a goal of mine to serve in the judiciary when I went to law school, or even when I first started practicing law. I practiced in front of some judges I really respected, and especially, you know, when I got to Southern Illinois, and I was in the courtroom a lot. And my predecessor, Justice Lloyd Karmeier was elected to the Illinois Supreme Court in 2004. He was from Washington County, and I had tried cases in front of him, respected him, thought he was the top of many great circuit judges, so I was very excited for him. And after he was elected, that's when I had some people tell me, "You know what, if there's an opening you know you might have a good chance". At that point, say 2004, I'm thirty-eight years old and been practicing long enough that I thought, well, I know qualities I like in judges, and I think I could do that. I could see myself doing that. A couple of years later, unfortunately, a vacancy occurred in the circuit judge position at-large, in the second circuit, actually, Appellate Justice Terry Hopkins passed away, with a heart attack, and then Justice Jim Wexstten, who was a circuit judge, was appointed to his position, and that created a vacancy in the Wexstten position and that's when I decided to apply. Interestingly, Jim Wexstten was one of the people who encouraged me to go to law school.

WINNER: Really?

OVERSTREET: When he was an attorney in Mount Vernon, he was my church league basketball coach, my junior and senior years. And then he knew I had an interest in law school, and so the summer of my junior year in college he gave me a job, two hours an afternoon, to come to his office and help him with filing. But you know, he was just exposing me to the law office environment and, you know, at that point, like I said, that was my junior year. I was sold. I was going to law

school, and so he was great encouragement to me, and then for his position to become open, I knew I was ready, and I wanted to see if I could serve.

WINNER: You were a circuit judge for ten years, then an appellate court justice for about three years?

OVERSTREET: Right. So, February 2017 to December 2020, just shy of four.

WINNER: And now you serve at the Illinois Supreme Court, how was this journey for you?

OVERSTREET: You know, I've loved it. I really enjoyed being a circuit judge for ten years, and I thought at that point I thought I couldn't have a better job and it was, I enjoyed serving on the bench on a day-to-day basis with the people in front of me with their legal issues and deciding cases, but, as I served for those ten years, I was involved in various committees. I was fortunate enough to be appointed to a couple different Supreme Court committees. So, I had an interest in the judiciary at-large, in the state of Illinois, not just serving in the second circuit. And I was encouraged when there was an opening for appellate court position in 2017. I talked to Justice Karmeier and, well, he called me up, actually, and he said he'd like to assign me to the appellate court. And so, I served initially as a circuit judge serving on assignment, so at that time the Fifth District Appellate Court had six elected judges, one assigned judge. Now we have two. So, I served on assignment, and that's at the pleasure of the Illinois Supreme Court and the Justice in that district. In February 2017, I began my service a few months later, six months later, one of my colleagues, good friend of mine, Justice Rich Goldenhersh announced he was going to retire at the end of his term in 2018. So, I decided to run for that position, and that was thirty-seven counties at that point, in the fifth district, and I began basically campaigning in November until the following November. So, for a year, campaigned in thirty-seven counties.

WINNER: How was it like, was it a little bit of nerve-wracking?

OVERSTREET: So, of course I had the experience of running in 2008 for circuit judge. I was appointed and began serving in May of 2007, but then I had to run to keep that seat, and I was a circuit judge at-large in the second circuit, that's twelve counties. So, I had the experience of campaigning for a year-and-a-half in a twelve-county race. So, I understood you get out, you meet people, you go to events, go to dinners, you go to parades, you talk to the media, you go to forums, you know, in circuit judge race you knock doors; you meet people.

WINNER: And today you do podcast.

OVERSTREET: Right, so you know, this is just a step up, right? So, I was used to campaigning, but that had been ten years prior, and so and this was thirty-seven and not twelve counties, but I was used to getting out. And so, you can only be at one place at a time, and so that's okay. You know, you have a lot of people who help you with the campaign, and they have different roles, but as the candidate you go out and you find events, you meet people...number one, you got to do a good job. And so, focus on, I'm an appellate judge, I'm doing the work, and my office is in Mount Vernon...but then, you know, at the end of the day I find some place to go in the evening or what have you, on the weekends. I think there's a lot to be said about electing judges but a positive is I think it's a good thing to get out and meet the people that you serve. We've got three branches of government, co-equal branches, and people know who the governor is, and they generally know who their legislators are, and so I do think it's good that the people who know who the judges are who are serving them.

WINNER: So, then you ran for the Illinois Supreme Court, how was that process for you?

OVERSTREET: So that process was interesting because of the times, now it followed up, this was in 2020, I ran and was elected in 2018 in the thirty-seven counties, and so in 2020 I was not appointed, I was running from my appellate court seat, and it was the same thirty-seven counties I'd run in the year or two prior, so that was an advantage, and it was a little different for me at first too because I had a primary opponent and I had not had primary opponents in my circuit judge race, my appellate court race, I did have general election opponents and so there was always there was always a contest...

WINNER: Oh suddenly, it was adversarial.

OVERSTREET: Right, and, but this was different, Supreme Court, so within my own party, and I ran, I always ran as a Republican, okay, and you once you're elected the party labels go out the window, but in our system, in Illinois, you run with a party label and so I'm republican and I ran as such, and I had an opponent in the Republican primary in 2020 and one of my colleagues and friend of mine. But that was a lot of going to party events, at that point in the primary. And you know, you don't know who's for you and who's against you. It's a little different from a general election. You kind of figure out things. And so, I worked very hard, was exhausted, but then right before the primary, COVID hits. In fact, it hits, it really comes to a head in Illinois, the Friday before the Tuesday primary. There's some concern whether the governor was going to allow the election to, you know, I'm not saying that he was saying, but there was some scuttlebutt about, are we going to have the primary, and at that point it's like, whatever happens let's have it. You know, and the primary did happen on March 17th, 2020. I did win the primary, but then everything shut down at that point. From a personal standpoint, it was tragic circumstances with COVID, but it certainly was good to take a break, from a personal standpoint. And so, I'm basically at home for the next two or three months and, you know, doing

work, I can go to my office, which no one else is in there, I can do work from my home too. But it wasn't until probably the beginning of July when there started to be some outdoor events, that I was able to go to but it was, you know, nothing like the 2018 campaign when you were in several parades every weekend and all that it just, it was just different.

WINNER: So, you finally got the news that you made it, now you're an Illinois Supreme Court Justice.

How did it feel, and can you take us back to your first day at work?

OVERSTREET: So, what a thrill to be given the honor of serving as an Illinois Supreme Court Justice, so winning the election, knowing it was really going to happen, you know, a week after the election, the Court was in their November term, Justice Karmeier, my predecessor, and the one who encouraged me to run, and encouraged me my whole judicial career, he invited me up and I met my future colleagues. You know, some of them there were of course, Justice Karmeier was going off the bench, and Justice Kilbride was going off, but I met five of my future colleagues and they were very welcoming. But then, three weeks later or so, I was sworn in, very small crowd, because it's COVID, basically, family and a very limited amount of friends. But you had Justice Karmeier swear me in, and then Chief Justice Anne Burke was there, she was the Chief Justice, very graceful, and she was a wonderful colleague, but she was very welcoming. And interestingly enough, our first term was going to be in January of 2021, well we're still in the midst of COVID, and even though the Court had been meeting in a couple prior terms, somebody in the Courthouse had come down with COVID, and so they decided no we're not going to meet live for term, we're going to do it by zoom. The very first term. And so, it's great, we had the tool to do it, but it's not the same sitting in your office doing it as it is being with the Court hearing oral arguments live, and also, even more important, being in the conference room together to talk about issues. So, in March of 2021 was my first term where the Court actually

was in Springfield. The Illinois Supreme Court, my experience, I basically served on two courts because there was a time of transition, year-and-a-half, two years in, with people retiring and elections and so forth, but these are Justices who serve from throughout the state with different backgrounds, but couldn't find a more collegial group, better group to work with and that's true with the Justices I served with initially and then the Justices I've served with the last two years.

WINNER: Something unique about the Illinois system is that you actually live during the term in the Illinois Supreme Court Building, how is like?

OVERSTREET: It is unique. We are the only state where the Justices live in the actual Court building,

WINNER: It's incredible!

OVERSTREET: During term and you know, we can stay there. I live in Mount Vernon, but if I'm in Springfield for something I can stay in my room. But we're all there together during term, and you know, we're able to, you know, each of us has an apartment basically on the third floor. A bedroom, a bathroom, a desk, a study area,

[45:00]

combined with a small living room area, and so I'm able to work in the morning, afternoons, evenings, whatever I need to do right there. Then just go down a floor and I'm in the conference room, or in the Courtroom. We have our meals together, especially lunch and dinner, and certainly we eat breakfast there. Some people eat in their room, or don't eat, and I always go into the dining room for breakfast too. But we're able to visit and we don't talk about cases at the dining room.

WINNER: Is that like an informal rule?

OVERSTREET: Yes. You know, we talk about family, the world, we might talk about what's going on in the political world, or the world at large, and just life in general. So, it's a time where we reserve talk about the cases to when we're in the conference room, basically.

WINNER: I love that because you're not on the clock all the time. I feel like this is very unique. I really love this about Illinois.

OVERSTREET: Yes, and I do think it serves the people of Illinois well because we get along well personally, we like each other, we have very civil but robust discussions in conference rooms, we take different sides on different cases and different issues, we're unanimous a lot, but there are times we part ways and it's okay. We state our position, may try to persuade each other, but at the end of the day we each have our voice, our vote, and we go on.

WINNER: U.S. Supreme Court Justices are appointed for life. I've done my research, and none of the fifty states have adopted this model. In all of the states, Supreme Court Justices, they serve limited terms; now they can get reelected, but there is a term limit. Why do you think none of the fifty states have adopted it?

OVERSTREET: Well, that's a great question. I think the federal idea is that the judiciary, and this idea carries over to the states, you know, we want an independent judiciary that is not beholden to the political clamor or wins. Although you know, we elect judges, I understand that and... but once we're on the bench you know it's part of our judicial code in Illinois, were not going to respond to public clamor, and yeah, in the end, our loyalty is to the constitution, the law, and our obviously, our... you know the federal idea is to completely divorce the judiciary from that, the electoral process that they'd serve for life, so that was the wisdom of the Founding Fathers. I do like the idea in Illinois that...I'm good with terms. People in Illinois, you can be...you're elected, for example, circuit judge six-year terms, appellate judge ten-year, Supreme Court ten-

year, a judge or Justice can seek retention and go back and ask, and then it's without an opponent, it's a yes/no vote in Illinois, "Should Judge Jones be retained as circuit judge in Will County?" You know...

WINNER: And they need to get sixty percent.

OVERSTREET: Sixty percent of the vote of those voting on the question, you know, the voters still get to decide whether a judge is, in their estimation, is qualified or should remain a judge. The bad part about that is there have been limited instances where campaigns have arguably gone off unfairly against a judge because of political issues, but for the most part the retention system keeps that from happening. But if the judge is not qualified, not doing their job, there is a way for the people to take them out of office.

WINNER: You are at the Illinois Supreme Court. It's a lot of stress. Do you think there is a correlation between how much stress one can take and being a successful person?

OVERSTREET: Well, I think everybody deals with stress, and in different areas of life, and certainly through work as judges. In some ways I felt more stress as a lawyer, to be honest with you. I do feel, yes, I feel the gravity of what we decide, how it affects the parties for sure, and I felt that since I was a circuit judge. And you get to the Supreme Court and then it adds the element of how it's going to affect other parties or future parties, and we make policies, and we determine who, you know, someone's going to have their law license suspended or someone's going to be able to sit for the bar, and so you know, these are decisions that affect people's lives individually and then en mass, and so I am...I feel the gravity of that. But at the end of the day, and I think this goes back to when I was a circuit judge, I would do my best in my mind to weigh everything and then ultimately make a decision and then mentally move on. So, that's how I handle it as far as the decisions that we make and that I make.

WINNER: Do you ever lose sleep?

OVERSTREET: Yes, usually before it would be before making a decision. But once a decision is made,

I typically do not. I feel like I've settled my mind, and then I gotta go on.

WINNER: What makes a good advocate?

OVERSTREET: A good advocate is engaged in discussion, summarizes the issues, actually narrows the

issues to the essence of what needs to be decided, and what the law is or should be, based on

legal principles, jurisprudence.

WINNER: Yes.

OVERSTREET: It's an approach that really gets to the heart of the matter and credible, does not, you

know...concedes issues where the advocate should and argues zealously for the points that the

court needs to consider.

WINNER: So, quick to the point, plain and simple, zealously, and confidence.

OVERSTREET: And confidence.

WINNER: And calmness?

OVERSTREET: And preparation. So, as a lawyer, it all goes back as a lawyer the key is being prepared,

and then you get up, you're arguing in front of the Supreme Court, it's the preparation; knowing

the record, knowing the cases, and then being able to convey that in a clear, concise, simple

manner.

WINNER: When a case of a first impression comes across your desk, what's the first step that you take

to start shaping your opinion?

OVERSTREET: Well, looking at, again looking at the cases that have been cited in the briefs, considering what the... typically there would be a division, a split, in the authority from the districts. And then thinking about the rationale behind the opposing positions and then which rationale makes the most sense under the law.

WINNER: Let's talk about that, and let's talk about the case *People vs. Moon*. You decided to reverse and remand, and you authored that opinion. Can you tell us a little bit about this case and what went into your decision to reverse and remand it?

OVERSTREET: The jury pool, they were given an oath at the beginning to answer questions honestly and truthfully as far as during the voir dire (oath) process, but then prior to being seated, you know, once the jurors, the jurors have been selected, there's another oath, you know, listen to the evidence and judge without being partial, being open-minded, and in general that's the idea. Well, in this case, the jury was just given this earlier oath again, which didn't make sense. So, they never were sworn to do their duty, to listen impartially and render a just and fair verdict. And so, you know, there's a concept in the law that if you can have errors in a trial, evidence can come in, and if it's not prejudicial, in other words, if it didn't harm, it didn't change the outcome, then we're going to overlook that and even though it was an error it's not harmful and so the verdict will stand, the decision will stand. But in this case, it was too much. There's an idea of structural error, and our system, of our jury system, it's the greatest in the world, in my opinion, and it goes back, you've got to have the faith that the jurors are doing their duty. They have been instructed properly, and they've sworn to do their duty properly. And without that, doesn't matter what the evidence was in the trial, we don't have the faith and the integrity of the system and of the jury in that particular case, and so it was too much. And so, in the opinion, we say that

was a structural error therefore we're going to have to reverse it, we're going to have to try it again.

WINNER: And that's despite the fact that the attorney of the other side didn't object, and usually if you don't object, you waive the objection. Sorry, you have to object. When the Supreme Court makes a new precedent, when should it attach to the parties at hand and when should it be attached to the parties going forward?

OVERSTREET: Well, it's an issue, it's a hard issue, and it's an issue of fairness. That's a hard question, and judges come down different ways on that.

WINNER: Now you've had a really long career. What are some of the most memorable memories you have from your long journey?

OVERSTREET: It's been a wonderful career. As far as stories I can tell...so the most memorable jury trial I presided on, over, as a circuit judge, was my first. And I presided over thirty jury trials, twenty-five civil, five criminal. Ten-year period, basically an eight-and-a-half-year period in my last eight-and-a-half years on the circuit bench. So, the very first jury trial I'm presiding over, the plaintiff is actually a hospital group, not a defendant but a hospital group, and there was an electronic medical records system that they alleged was defective and various parties knew it was defective yet they still paid for it and, they had damages, so various defendants settled and it got down to this was in Franklin County where I tried the case, presided over, got down to the financier, the bank, of this allegedly defective medical records system that the hospital group was using. Well, the trial went on for a week-and-a-half, I believe, and at the end of the trial the plaintiff asked for... let's see.... compensatory damages of \$4.5 million, damages they believe they had proved.

WINNER: A lot of money.

OVERSTREET: Yes, and then they also asked for punitive damages, and here's how they made the argument...so, closing argument, the attorney gets up and said, "You know, if you think punitive damages are warranted in this case, and I believe you will find that, and the defendant had a hundred dollars, don't you think they should pay five dollars?" He gets up on the blackboard and writes "55,000,000" and said, "There's your five dollars." So, the defendant had a net worth of \$1.1 billion, so fifty-five million, five percent, and that's what the jury went with. So, it's a \$59.9 million verdict, and this is my first, by the way, and I think it's still the largest verdict in the second circuit. Defendant asked for a remitter, and I tell you what, that was one where I did a lot of research and thinking about looking at the cases.

WINNER: Absolutely.

OVERSTREET: But in the end, I found that the jury was within their province to do that and it was not a violation of the defendant's constitutional rights that they found that much. So, that case went up on appeal, and then the parties settled before the appellate argument.

WINNER: Wow.

OVERSTREET: Most memorable closing argument I ever saw, so.

WINNER: Really? So, really, that is fascinating. Wow. You are at the pinnacle of the judiciary branch.

In my position, I am always chasing. I'm a law student. I am chasing an assignment, I am chasing an internship, then you become an attorney, you know, you chase the ranks. You're at the pinnacle. Is it relaxing, or is it somehow anxiety-provoking?

OVERSTREET: I wouldn't say it's anxiety-provoking. I enjoy it. But I do stay very active with...obviously, when we're in term, you know, we're there for parts of two weeks and it's very busy and very involved and very taxing. But I also stay involved with getting ready for term,

working on the cases and going to other administrative type events. I enjoy it, so it doesn't make me anxious, I mean, it's just what I enjoy doing.

WINNER: You're very active in the community. You served as the president of the Illinois Judges Association. Why did you decide to do that?

OVERSTREET: Go back to Jim Wexstyn, the appellate judge. When he was... part of that circuit judge, he was the president of the Illinois Judges Association.

WINNER: Okay.

OVERSTREET: And I knew that before I became a judge. And there was a reception in Mount Vernon at his house, and he was so enthused about it that I knew if I ever became a judge, or you know, once I started thinking about it, that I would join that organization, and actually he inspired me.

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It was a goal of mine once I became a judge and became involved with the Illinois Judges Association to—if I had an opportunity to become, you know, serve as an officer and become president, the Illinois Judges Association, I think obviously, it supports judges in Illinois, and that type of thing. But we have a lot of community outreach, going to schools, giving programs, “Seven Reasons to Leave the Party” is one I used to give to junior highs or high schools about, you know, make good decisions because if you make some bad decisions it could affect your jobs in the future, schooling, military, and you know, your life. And then other programs just talking about our constitution and constitutional rights. So, a lot of work going into the schools and also various places giving back to the community, and just a good organization where we put on programs and everything. And that I enjoyed and fortunately I became treasurer, six, seven years ago and I rose to the ranks, and I was president last year.

WINNER: Awesome! Are you a competitive person?

OVERSTREET: I am competitive, yes. So, you know, I grew up playing and enjoying sports and being involved in speech competitions, by the time I was in junior high and high school. And so, I don't believe in win at all costs, but it 's more fun to win (both laugh).

WINNER: Yeah, now, you mentioned that you talk to people at school, and you tell them to make good decisions because bad decisions have consequences sometimes, and it reminded me of a question that one of our students asked you. Andrew Gray, one of the best advocates in school, in my opinion, just won the best advocate in California in a trial competition. So, shout out, he asked you about reputation, and you told him, "Reputation is everything." And then Justice Vaughn added and said, "You only have one chance to ruin your reputation." Talking about justice in a slightly different angle, do you think it's just to have one opportunity to ruin one's reputation?

OVERSTREET: Yeah, that's a hard truth. And I believe in redemption, and we all need that, and most of us get it in some form or another. You just hope that the mistakes you make don't haunt you permanently. So, do I believe that's just? Well, maybe not necessarily. But sometimes, it's hard to live down some things.

WINNER: And that's just, as you said, the hard truth. Are you ready for our 'rapid fire round'?

OVERSTREET: Yeah, bring it on.

WINNER: Ding, ding, ding—sorry for the sound effects, low budget here. After a long day at work, what helps you decompress?

OVERSTREET: I enjoy reading the newspaper, watching the news, perhaps watching a show or a movie, warm weather, pulling out and playing golf.

WINNER: Is the perfect vacation a relaxing one, an active one, or a little bit of both?

OVERSTREET: A little bit of both.

WINNER: Yeah, I'm in that boat as well.

OVERSTREET: Yeah, I like to stay on the move, but it's good to relax too. You need that.

WINNER: You mentioned you like watching shows or movies. Which show/movie or book have you come back to more than once?

OVERSTREET: Well, that's a, you know, movies, anytime I see *My Cousin Vinnie* on I watch that. I do like historical movies and dramas. I like the movie *The Verdict*, I haven't seen that in a while, but with Paul Newman, and you know, that's another legal movie. You know, books, I typically don't read a book twice, but I like Michener, his historical novels. I do like to read books about Abraham Lincoln. I'm reading, currently, really the first time I've ever read one of his books, Stephen King.

WINNER: Stephen King? Okay.

OVERSTREET: *Holly* is the name of it, and you know, he's a great writer.

WINNER: Oh yeah, I read his *Pet Sematary* when I was like fourteen, and that was scary.

OVERSTREET: Right. You know, last several nights at home, my wife and I have been watching a series on, I don't know, if it's on Netflix or Amazon, but *House of David*, about, you know, David in the Bible, and that is very interesting. *The Chosen*, about Jesus. I am just a big movie buff. I mean, a lot of different genres.

WINNER: You have an interesting journey. Have you ever thought about writing a book, maybe about your life?

OVERSTREET: Well, I have thought about writing a book. You know, maybe I'd better start sooner rather than later. But I have thought about writing a book before, not necessarily about me, maybe some area of history or politics that interests me.

WINNER: Now, this is a real one. Since you spend a lot of time in Springfield. I've been there and I tried their horseshoe dish. Do you like it?

OVERSTREET: Horseshoe, it's very rich, a lot on it. So, I tried a horseshoe once in 2017 when I was in Springfield with my family. This was before I was on the Supreme Court, we just went up there for the weekend and so I had to try it. But I've never had another one.

WINNER: Okay, same. I have the same experience as you. Do you ever miss your time as an advocate?

OVERSTREET: I enjoyed being an advocate. Now there's never been a day when I thought "Gee, I wish was practicing law, instead of being able to serve in the judiciary". But I really did enjoy being an advocate and I guess I have one example where I know that I still like it. I went to New Judge (Seminar), they had a session in Springfield, and I dropped by. They'll have a couple of different sessions. I mean, one in Springfield, one in Chicago, a year. And I stuck around, and they broke the judges up into groups where they would have a judge being a judge in a mock situation, but they would also have a judge serving as an attorney and making arguments, and since I was around, they asked me if I would participate. I said, "Sure," and so, I got to make an argument, and I really enjoyed that, so I guess maybe I do miss it a little bit.

WINNER: But that was your closure.

OVERSTREET: That was my closure. I needed that.

WINNER: If you could give a TED Talk about anything in the world, besides law, what would it be about?

OVERSTREET: You know, maybe Abraham Lincoln?

WINNER: Okay, okay.

OVERSTREET: You know, I am also a big Ronald Reagan fan. And so, you know, I've read a lot about him over the years. You know, I'm involved in my church, so maybe something biblically

related. I could, you know, probably talk about it. And also, you know, maybe St. Louis Cardinals baseball or University of Tennessee football.

WINNER: Yeah, are you still a fan of Tennessee football?

OVERSTREET: I am, yes. And I'm a fan of their basketball team, and their baseball team, and I'm a Tennessee Volunteers number one.

WINNER: Is there a small-town habit or something you've learned that will follow you for the rest of your life?

OVERSTREET: Being good neighbors.

WINNER: Like State Farm (Insurance)?

OVERSTREET: Yeah, kind of like State... you know being friendly, being courteous and um, you do that in a big city too. But you know, small maybe you know, you think you tend to know more people in town, and I enjoy that and the connections we have, but the best of small-town values are helping your neighbor, helping each other out.

WINNER: Before I let you go, I have to ask you one final question. How does it feel like to make a decision that will influence the entire state of Illinois for hundreds or potentially, even thousands of years?

OVERSTREET: Well, I'm completely aware of the gravity of that type of responsibility but I try not to put too much pressure on myself. You know, just like when I was circuit judge, I would hear both sides, I would gather all of the arguments in my mind and then in this case, looking at the law, what it is, first impression, what it should be and just doing my best and that's all I can do.

WINNER: Justice Overstreet, it was a true pleasure to host you on Eddie's show.

OVERSTREET: Hey, thank you so much I really enjoyed our conversation. Thank you.

WINNER: Thank you so much.