

OPEN NINTH:

CONVERSATIONS BEYOND THE COURTROOM

JUSTICE FOR ALL

ADDRESSING RACIAL INEQUITY IN THE COURTS

EPISODE 117

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HOSTED BY: DONALD A. MYERS, JR.

(Music)

NARRATOR: Welcome to another episode of “Open Ninth: Conversations Beyond the Courtroom” in the Ninth Judicial Circuit Court of Florida.

And now here’s your host, Chief Judge Don Myers.

CHIEF JUDGE MYERS: Hello, and welcome to Open Ninth. I’m here today with Edwin Bell, the Director of Racial Justice, Equity and Inclusion for the National Center for State Courts. The center recently created this position to address implicit and explicit racial prejudices within the justice system and to examine what systemic changes need to be made to ensure equality under the law. Edwin brings 15 years of court experience to the position, giving him an insight into the challenges inherent in addressing these issues. Thanks so much for joining me, Edwin. It’s great to have you here.

MR. BELL: Thank you very much. Thank you for having me.

CHIEF JUDGE MYERS: Well, we’re excited about this conversation. I look forward to it. It’s such a timely and important one and I imagine that’s a part of the reason that you have a new position to be working within as well.

MR. BELL: Absolutely. You know, it’s one of those things that I couldn’t have planned for, you know, the President and CEO of the National Center for State Courts, Mary McQueen can be very persuasive.

CHIEF JUDGE MYERS: That is -- that is the understatement of the year. For our listeners who don’t know Mary, my predecessor, Judge Lauten did a podcast with Mary McQueen. You need to listen to it to appreciate how persuasive and how powerful Mary is.

MR. BELL: Absolutely. I was glad to have gotten the call, you know, the inquiry from her to sort of gauge my interest in this newly created role, which was, in part, driven by the desires of the Conference of Chief Justices and the Conference of State Court Administrators to seek out ways to improve the justice system that we all work in, specifically the judicial branch portion of the justice system, and identify where we have issues with respect to race, justice and any number of ways. Whether that's with court cases specifically, whether that's with processes and procedures that are typical in many courthouses around this country or in the hiring ranks, whether it has something to do with the capacity of black and brown and other people of color having the ability to work within this particular system as a career choice. And so there are a number of different things that I'm going to be working on while I'm in this particular role and we'll see how things manifest over the coming years.

CHIEF JUDGE MYERS: Well, let's talk a little bit about your path to get where you are. Tell us just in a nutshell a little bit about your education and then we'll kind of move from there into your experience in the court system itself.

MR. BELL: Okay. Well, I have an undergraduate bachelor's degree from Georgia State University in Atlanta, Georgia. Got a master's in business because in addition to my passion for the justice system as it is, I also have a businessman's mentality. In fact, we had a former governor who is now Secretary of Agriculture, Sonny Perdue and he had talked about government operating more like a business. And so I said, huh, that's an interesting spin because government is not like business however government is big business with respect to the lives of the people that we impact. And so I went, instead of most of my friends getting law degrees or getting public administration degrees or criminology degrees, I went and got an MBA, which was extremely challenging for me but it helped me to put some things into perspective with

respect to my work and in my career in the justice system. And then some time later, I became a fellow of the Institute for Court Management, which is a part of the National Center for State Courts.

CHIEF JUDGE MYERS: And how does that happen? How did you discern that that was your interest and decide to pursue that opportunity?

MR. BELL: Well, it was sort of something that occurred over time, you know, as a person in a developing career, I spent probably my first 14 years in state government in a number of different capacities. And when I landed at the administrative office of the courts, and understanding both the nuances and the differences of the judicial branch side of the house where previously I had been in the executive branch, I figured that I needed to grow and learn more in order to be effective, especially if my path was going to be to the local trial court level which it ultimately took me there. So I began you know, when opportunities presented themselves for course work, taking court management courses, obviously trainings, conferences, all of that, I took it all in. I mean, it was hook-line and sinker. I was very, very interested, and went further and further, and deeper and deeper as many courses as I could take until ultimately the time came for me to make a personal decision as to whether or not I would pursue the fellowship which I did. And here I am today.

CHIEF JUDGE MYERS: So you served in the role as a deputy court administrator in the Stone Mountain Judicial Circuit.

MR. BELL: Yes.

CHIEF JUDGE MYERS: Tell us just in a nutshell again a little bit about what that work involves.

MR. BELL: Okay. So the Stone Mountain Judicial Circuit is one of the largest judicial circuits in the state of Georgia next to the Atlanta judicial circuit. As a matter of fact, part of the eastern half of the city of Atlanta is in the Stone Mountain circuit so it's an urban circuit that has some suburban areas within that particular jurisdiction. And as deputy court administrator, in my role I support the court administrator for the circuit and as well as the superior court judges and the lower court judges where necessary in overseeing all aspects of court administration, whether that's finance, IT, HR, facilities management, procurement, jury, everything you could think of, alternative dispute resolution, our problem solving courts of all types, drug courts and such. And so it's just a wide-ranging – wide range of responsibilities being the deputy court administrator in that support role.

CHIEF JUDGE MYERS: So really the full panoply of services that supports a judge getting on the bench and making decisions?

MR. BELL: Absolutely. Everything. I mean, and our philosophy was court administration exists to serve the public and to ensure that our judges can do what they need to do in their official capacities as smoothly as possible. It's not our part to get into the judges' way, but to make their jobs as easy as possible while serving the public at the same time.

CHIEF JUDGE MYERS: Well, and let me tell you as a judge here in the Ninth Circuit who enjoys the support of an entire court administration, including our own trial court administrator, I know how valuable those services are. Really, I know it looks simple what we do, to show up on the bench and make decisions, but there's an awful lot of work that goes in the background to making that come together and to operate smoothly and well so that a judge is well positioned to be able to make those decisions. That's great work. So you walked away from that though for the opportunity that you find yourself in.

MR. BELL: I did. And it was tough. My – the circuit court administrator who was my boss was retiring – is retiring December 31. The judges had already gone through our processes and had unanimously selected me to take over January 1, '21 as the new court administrator. So it was a tough decision to make. It was tough on the judges. It still has been tough. I haven't been gone that long so I remain in contact with them just closing out some things that I was primarily responsible for that, you know, they really need my insight on wrapping that up before the current court administrator leaves and the new one who they've since interviewed and selected comes on board. But it was tough, but this particular role was such that I felt that I could have a major impact on our court systems and on the lives of people who both are parties to cases, are visitors, are court users and the judges and staff within the various courthouses around America. And so I took a leap of faith, decided to leave behind the trial court and to push forward with this particular role with the National Center.

CHIEF JUDGE MYERS: So in your role as the Director of Racial Justice, Equity and Inclusion, let's spend just a minute here sort of defining the territory, mapping out racial injustice and inequities. What do those mean? Help us define those things.

MR. BELL: Sure. So it means a lot of different things depending on where you are because I recognize, depending on where you are in this country, depending on the state and then depending on the jurisdiction within the states, your – your concerns are going to be different, right. So with respect to racial justice, racial justice in a nutshell is ensuring that justice is delivered in as race-neutral posture as possible. And that means that we have to look at those things that are under the control of the judiciary. Certainly, you don't turn a blind eye to those things that are statutory in nature that may need to be adjusted as well, but we look at the things that judges and court staff can control. When I say – when we say racial justice, obviously some

states have for example on the criminal side of things sentencing guidelines. Some states do not. Whereby if they don't, obviously a judge, it's at his or her discretion. We're encouraging our judges to, when it comes to sentencing, take a race-neutral approach to that. When we're dealing with internal operations in the courthouse, when I say internal operations, we're talking about people who are able to get hired for positions as they become available. And I'll give you an example. If I am a judge and if I attended, and I'm just making up schools here. If I attended the University of Florida law school, maybe because I love my alma mater so much, I only hire law clerks who attended the University of Florida law school. Well, that's noble and that's honorable for that judge who cares a lot about his or her alma mater. The problem with that is that law school may only have single digits with respect to black or brown or other persons of color within its student body. And so when you look at percentages, then that means that, well, may – that judge may never select a law clerk, whether that's a full time job or a clerkship for a particular semester or externship, or what have you, that judge may never select a person of color if that's the benchmark that they choose to use. So while it may appear to be innocuous, it's race-neutral, I'm just going by the alma mater of the school that that person attended. By virtue of adopting that particular standard, that judge may have completely x'd out other persons who may not look like him or her from having an opportunity to land that type of job, land that type of clerkship, land that type of internship. The same goes for court administration. If you have a court administrator who, for example, due to the demographics of a particular jurisdiction and they are hard and fast on only selecting people to work within court administration who are bilingual, well, that may be necessary. Obviously, we live in a multicultural society, especially, depending on where you are in this county, and having staff on board who are bilingual may be very beneficial, but it also may mean that if that's the position you take on who you are going to

hire, that you're just x-ing out an entire populations of people who would never get consideration in working. We also talk about – and this goes to equity. Our judges who have – I'm big on using example of calendar calls or cattle calls, you know, in many jurisdictions that's gone away but in some jurisdictions it has not, given the coronavirus and the pandemic.

CHIEF JUDGE MYERS: Well, that's a great example because we find ourselves in the middle of the pandemic, cattle calls have gone away throughout the state of Florida because we just simply can't bring that many folks into a courtroom at one time as a practical matter. And I know that has nothing to do with this issue of inequality but it has been a functional problem for us.

MR. BELL: Sure, absolutely. Absolutely.

CHIEF JUDGE MYERS: But go on, tell us about that.

MR. BELL: Well, just using that as an example, and this goes to an equity piece and how equitable, as you know, equitable does not always mean equal. You know, and I'm reminded of that especially if you think of our family law cases, our divorce and things like that. Equitable doesn't always mean equal. But if you have these calendars of people and if a judge due to his or her own rational, whether it's to be – run an efficient courtroom, and you say, look, you know what, we're going to take those – those parties that have lawyers first, right, and then if you don't have a lawyer, you're going to kind of have just hang outside in a hallway or what have you. Well, the problem with that is, a judge may have inadvertently immediately shown favoritism to people who can afford legal counsel. And so the people who cannot afford legal counsel, or who chose to be pro se, are now here at the courthouse. Their day is going by. Next thing you know it's 3:00 or 4:00 o'clock and a member of the judge's staff or clerk says, hey,

I'm sorry, we're not going to be able to get to your case today, we're going to need to reschedule you for another day. And so, generally what we're looking at are people who either cannot afford, or who have personally chosen not to be represented by counsel, these are also many of the people who unlike me and many of our court staff have vacation – have a job that allows them some sort of paid time off or vacation time, you know. These are generally going to be people who are hourly-waged people and so that's – that's an inequity, you know, because they're not being treated the same way as someone who can afford a lawyer. And so those are things we have to look at.

CHIEF JUDGE MYERS: And so when we look at those types of examples and those larger categories, those things that are within the control of the judiciary –

MR. BELL: Yes.

CHIEF JUDGE MYERS: -- it begs the question, how did we get here? You know, how is it that we find ourselves making these decisions and it seems to me as I listen to you, Edwin, that I'm hearing some things that may be driven by an innocuous purpose, efficiency, for example.

MR. BELL: Sure. Yeah, exactly.

CHIEF JUDGE MYERS: Whereas others might have some other motivation that may not even be recognized by some, and I imagine we've been doing this long enough that some of it is, well, that's just the way we've always done things but –

MR. BELL: Right.

CHIEF JUDGE MYERS: Yeah, so talk to us a little bit about how did we get here.

MR. BELL: How we get here. Well, and there's a number of different ways. I mean, I'm going to start with the blunt part where race, depending on who – the systems that are in place, whether it's the judicial branch systems, or other systems, were put together by people many, many years ago, right, who made decisions for whatever the reason they made the decisions, whether it's -- efficiency is one. Importance is another. Yeah, obviously, there are certain matters that are deemed to be more important than others, and so what happens over time, and this goes to sort of, if you're using efficiency as your explanation, right? Is that, for example, the example I gave with respect to the large calendars or the cattle calls. And you know, a response, an understandable response to that is, well, it's more efficient to move those cases that have lawyers. They know what happens; we can kind of hit those first and be done with them and send – send them on their merry way. Whereas pro se litigants may not really understand the law. They may not understand certain nuances that they're going to be required – that they should understand in order to get their case processed and moved through. And so sure, to be efficient is an example that's often cited by judges, I do this because it's more efficient. Then other things with respect to the selection of personnel, it may not be efficiency, it may be a matter of preference and those preferences again, like I mentioned, an alma mater, you know. There's nothing on the surface wrong with selecting candidates because they – as long as they're qualified, that they are particular – come from a particular school, but what you have to look at system – systemically is, are the processes that are in place, although well meaning, this is how we get here. Once you do it year in and year out for years upon years and decades upon decades, you have to, with a different lens or a different perspective, look at who is gaining, right? And gaining is just the opportunity. I'm not saying anybody is being enriched by working in the judicial branch or being enriched by having their cases heard more timely. But who is benefiting

or gaining from the systems, the processes, the procedures, and traditions of the court. And then look at who is not. Who frequently seems to be – who frequently seems to be the ones that do not have lawyers when they show up to court? It may be racial, it may be – it may not be racial. It may be equity. Maybe it poor. Maybe you're in a particular area of the state or country where it may not be racial, but it certainly may be economics, where particular counties and such where certain large groups of people just may not have the monies available to them that others may. And so it's a building of years and years of things happening and then you have to look at the outcome. Who's disparately impacted in a negative way by existing practices, processes, traditions of the court? Not being efficient or being – having an allegiance to a particular college or university, you know, with respect to your hiring, what is that doing after years and years and years? Who's not getting a feed at the table? Who's not being able to participate in the judicial processes and you have to figure out how to balance that. And there are ways to do it.

CHIEF JUDGE MYERS: Edwin was there – was there a time when racism was more overt and that practices developed within the court system that were directed as a part of that racist attitude and that now have carried over. And we may not appreciate or recognize the origins of those – of those processes.

MR. BELL: Sure. Well, I mean there certainly were. I mean, I can't just point out well, this started for racial reasons. I mean, you know, if you look at your old historic courthouses that still have balconies. You know, in Georgia we certainly a good number of those. And so if you're – you are of a particular race, black, generally and you had to sit up in the balcony yet the bailiff as they call cases, did it in the hallway on the lower level, your case – you might get missed, and you have to reschedule your case. They knew your case was going to have to be rescheduled because there was no way if you were forced to sit in the balcony, that you would

ever hear your case called because they weren't calling them in the courtroom. They would call them out in the hallway. There are a number of different things that may have started race reasons. I don't know necessarily with respect to court processing and case processing that that's the case now. I think that the issue now is that you just look at the outcomes. That's the issue, what's – who's being impacted in a negative way and what can we do to make adjustments to that. You know, my big thing about the big calendar, it's not that difficult in any case management system in America to see if there's an entry of appearance for a lawyer for a particular case. And before summonses are sent out or notices are sent out, there is a way to separate out the ones who have an entry of appearance where a lawyer is representing a party, schedule those cases on one day and schedule the cases for pro se litigants on another. There are going to be some people who had no lawyer. Maybe they didn't pay their lawyer and the lawyer didn't show up for court or has a conflict. And certainly, there will be some cases on the other calendar where within the system there was no entry of appearance. They grabbed a lawyer in the parking lot, in the hallway, agreed, came to terms and that lawyer shows up. But some of these adjustments can be made and the parties never know. And that's what I'm hoping happens from year to year to year is over time things become such that people don't even realize that ten years ago I might have sat in the courthouse all day long and never actually had my case heard.

CHIEF JUDGE MYERS: God it.

MR. BELL: You know, they won't even realize that was a thing.

CHIEF JUDGE MYERS: So it seems then that – that one approach to addressing these types of issues is to focus – look at the outcome and see, does the outcome have an impact in some disparate fashion --

MR. BELL: Sure.

CHIEF JUDGE MYERS: -- on people of color or people of wealth or lack of wealth, and evaluate then, having seen that outcome and recognizing the unfairness of outcome, adjust the process or a procedure that's within the court's control to try to address those things.

MR. BELL: Correct, and that's exactly what I would -- that's always my suggestion. You have to look and see -- if you don't look, then you don't know. You have to look and see where are the issues. And it's one of the reasons why at the National Center one of my priorities is creating a tool, sort of a self-assessment tool that courts can use to gauge where they are. And it's a tool that where you're gauging the -- you're gauging sort of the temperature of both your court customers, you know, the parties, litigants, lawyers and visitors to the courthouse as well as gauging the temperature of the judges and the court staff, and so hopefully this tool will help serve as a guide. The outcomes that come out of an assessment will provide a guide to local courts so that they can determine where they may need to focus some adjustment efforts because if you don't assess you don't know and you may take steps anecdotally to make corrections and such, but it may not necessarily be -- that those corrections you choose to make may not necessarily be driven by any particular data, but may just be driven by the observations of certain judicial branch leadership who feel as those this is the direction that they need to go in. And that may be honorable and a noble approach, but it may not be the best approach.

CHIEF JUDGE MYERS: Sure. And I think we often overlook because of that anecdotal approach systemic issues that we may not identify.

MR. BELL: Yeah, absolutely. I think the systemic nature of things is just that. They're systemic. You know, they're sort of -- they're baked in. It's how you do business. It's how

you've done business. I talked to – I've talked to judges and lawyers over the years, you know, if I'm a – if I'm a lawyer and if one day I hope to land on the bench whether I'm elected or appointed, then I have my own observations and my own feelings as to how a courtroom should operate. You know, so once I get that robe, now I'm going to run my courtroom the way I want to run it based upon however much flexibility the law allows me, you know, within the construct of what court administration, you know, allows for and all those different things. But you're right, some of these things are just baked in and until you know where to look, it's easy to take the anecdotal route because it's well meaning. You know, I think it's well meaning when you take the anecdotal route but I think you have to have some empirical basis to making substantive adjustments to your system.

CHIEF JUDGE MYERS: And so you're working on that sort of assessment tool now?

MR. BELL: Yes, that is something we've just recently engaged in internal meetings. The National Center has a nationally recognized research division who is also involved so that we can get this moving. I mean, that's one of my top priorities coming into 2021.

CHIEF JUDGE MYERS: What other types of resources does the National Center for State Courts have to help local courts assess and have conversation around and ultimately make some decisions about potential changes that may be required in order to address racial justice, equity and inclusion issues?

MR. BELL: Well, certainly. The National Center has the full gambit of both practical tools and technical assistance advisors to help courts and guiding the direction they want to go in and addressing some of these issues. Internally, certainly we have CourTools, which has been in existence for a long time. And CourTools is a tool by which a trial court can use it to ask

questions in various areas, whether it's access to justice, whether it's jury operations. We're now working on a tool that should be completed very soon for our problem solving courts, drug courts, DUI courts, DWI courts. And so we have a suite of tools that courts right now can access for free and use them to assist in guiding their efforts in different areas and aspects of the court. Additionally, the National Center for State Courts has its court consulting arm who use real people, both National Center staff and contractors. And I'll tell you, the contractors from the National Center are true court professionals. Whether it's judges, court administrators, clerks of court, who are taking time away from their – I'll say their real job, somewhere in this country, to descend upon your courthouse in an effort to assist in serving as technical assistance advisors to figure out what's really going on, sort of the boots on the ground approach, and to assist the judicial branch leadership with figuring out what they should do. And we do that for every – I mean, things as simple as selecting candidates for high level positions that you may have, that you would like to interview for. You know, you have a trial court administrator position or you have a director level position or what have you, and you'd prefer for the National Center to sort of serve as a unbiased third party neutral to review the applicants and make some decisions for you, and particular steps for that process, we'll do that. Again, you want some empirical data tools to help you figure out what's going on with jury, what's going on in your problem solving courts, we have that, we do that. And there's very, very little, if any area of a court's need where the National Center would not have some resource internally to help you.

CHIEF JUDGE MYERS: That's great. Well, I'm excited about the work that you're doing and it really is timely in the environment we find ourselves in now with the power of the black lives matter movement, the focus I think of national media on these issues. The conversation around it in the midst of a presidential election. I think there's been so much focus

and emphasis brought to these types of issues and the work that you're going to be able to do with the National Center for State Courts, I'm just very optimistic about it. Let me ask you to just look out into the future. We're 25 years down the road. It's a long time and I don't know if you've seen this mime but I think it's a great one. Every person that interviewed five years ago got it wrong because not a one of them predicted we'd be in the middle of a pandemic today. So you get some grace and forgiveness for the quality of your predictions but let's picture yourself 25 years out into the future. What do you hope to be the legacy of the work that you bring to the National Center? What do you hope to be the impact of your work in the trial courts throughout the country?

MR. BELL: Well, for one, 25 years from now my hope is that while race is not a factor in decision-making, I still would like for people to recognize race, you know. There are good things about recognizing the differences and embracing the differences of people as opposed to just developing systems and processes that in many regards we like to say are race-neutral, but it's very difficult to create race-neutral processes and then at some junction years down the road don't find ourselves right back here having to correct or adjust some of those processes. On the one hand, I want to make sure that race is not a factor in decision-making. Twenty-five years from now, no one's necessarily thinking about race when a judge sentences or when a person applies for an internship, or a job. It's just a person. Obviously, that's going to take some attitude changes and my hope is that that's not political. It shouldn't be political. Who cares? And as far as my legacy, I hope that my legacy on the trial courts in America is that every single time we have judicial branch leadership to take office, whether that's elected office or appointed office for those who are trial court administrators, our state court administrators, that they are operating with a lens and a perspective on improving the lives of people irrespective of where the

people come from within their state or within their jurisdiction. That it's the norm to want to ensure that your processes, your practices, your procedures and your traditions are in that sense race-neutral. That it doesn't matter. That people don't think twice with respect to whether or not it's impacting a certain group or subgroup of people because of the color of their skin. I want it to be normalized that – I want the people who are in leadership 25 years from now or who come into leadership posts, whether it's judges or administrators 25 years from now, to look back 25 years and be in awe that it was ever a thing that there could have ever been a process or a procedure that impacted one racial group of people over another, or that impacted one group of people who had a certain level of economic superiority over another. You know, I want it to be baked in, you know, these systemic changes to be baked in and again in 25 years from now, it's not even thought of. It would be almost like you're reading an old history book like some of the things we read now or that our children – I still have school-aged children, read now and they just can't believe that some of the things that had occurred in years passed were actually real. You know, you want to be worked out of a job. Some of us say that. Some don't really believe it, but I'd love to be worked out of a job to where you know it's no longer necessary for me to be around and to crisscross the country and talk to good people like you all in Florida, that you know, people just can't fathom that there was ever a need.

CHIEF JUDGE MYERS: Well, I hope that you are right. I hope that your view looking back 25 years from now is exactly that, and when you've accomplished that, I've got some work for you here in Florida.

MR. BELL: Well, Florida is a great place. I love Florida. So call me any time.

CHIEF JUDGE MYERS: Well, it's a great place to be. Edwin, thank you so much for taking some time out today to engage in what I hope is the beginning of some significant

conversations for trial courts all over the country as we seek to make progress, as we seek to see change, as we seek to make this our norm. These are just critical issues and I'm excited to watch you and see the work that gets accomplished throughout the country over the next year. We appreciate your time. Thanks for being here.

MR. BELL: Thank you for having me. Take care.

NARRATOR: You've been listening to "Open Ninth: Conversations Beyond the Courtroom" brought to you by Chief Judge Donald A. Myers, Jr. and the Ninth Judicial Circuit Court of Florida. For more information about the Ninth Judicial Circuit Court, follow us on Twitter, Facebook, Instagram and LinkedIn.

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