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OPEN NINTH:
CONVERSATIONS BEYOND THE COURTROOM
9 TO 5
EPISODE 27
AUGUST 1, 2017
HOSTED BY: FREDERICK J. LAUTEN

1 (Music.)

2 >> Welcome to another episode of "Open Ninth:
3 Conversations Beyond the Courtroom" in the Ninth Judicial
4 Circuit Court of Florida.

5 And now here's your host, Chief Judge Frederick J.
6 Lauten.

7 >> **CHIEF JUDGE LAUTEN:** We're here today with Chief
8 Judge Jay Paul Cohen, the Chief Judge of the Fifth District
9 Court of Appeal. A minute ago, I said appeals. But I was
10 corrected, as I should be, by the Chief Judge of the District
11 Court of Appeal.

12 >> **CHIEF JUDGE COHEN:** Yes, you were.

13 >> **CHIEF JUDGE LAUTEN:** And, in full disclosure, we have
14 been good friends, former colleagues, we've known each other
15 for 35 years. Because we, at one point in time, worked in
16 the State Attorney's Office in the Ninth Judicial Circuit --

17 >> **CHIEF JUDGE COHEN:** I knew you when you had hair.

18 >> **CHIEF JUDGE LAUTEN:** -- together.

19 Yeah. And I knew you when you had black hair as opposed
20 to salt and pepper hair.

21 >> **CHIEF JUDGE COHEN:** Right. Yes.

22 >> **CHIEF JUDGE LAUTEN:** But it's great to have you here,
23 Judge Cohen, and -- so I know you were born in Chicago.
24 We're both native Chicagoans. But I'm not sure what side of
25 the city you were born on. I think it was South Side.

1 >> CHIEF JUDGE COHEN: I am. I'm a South Side guy. But
2 although I'll root for either team.

3 >> CHIEF JUDGE LAUTEN: The first question was gonna be:
4 Sox or Cubs? But South Side, I would think it's Sox.

5 >> CHIEF JUDGE COHEN: Once you get out of the city --

6 >> CHIEF JUDGE LAUTEN: It doesn't matter.

7 >> CHIEF JUDGE COHEN: -- you can do whatever you want.

8 >> CHIEF JUDGE LAUTEN: Was it a miracle to you the Cubs
9 won last year as it was to me since I'm North Side kid?

10 >> CHIEF JUDGE COHEN: The Cubs won?

11 (Laughter.)

12 >> CHIEF JUDGE LAUTEN: Yeah, the Cubs won.

13 >> CHIEF JUDGE COHEN: That's great news.

14 >> CHIEF JUDGE LAUTEN: So, Judge Cohen, I've disclosed
15 that we worked at the State Attorney's Office together, but
16 you sat as a circuit judge in the Ninth Judicial Circuit. So
17 why don't you tell our listeners, how did you get to your
18 position on the trial court bench here in the Ninth Judicial
19 Circuit? And when did you start working and what area of the
20 court?

21 >> CHIEF JUDGE COHEN: I started in 1990. I was
22 appointed by Bob Martinez, Governor Martinez, to the county
23 court bench. And I started initially in the criminal
24 division and then soon went, after a year, to the civil
25 division, small claims, county civil.

1 And then after three years on the county bench, I was
2 appointed by Governor Chiles to the circuit bench.

3 **>> CHIEF JUDGE LAUTEN:** So you were appointed by a
4 republican to one level of the Court and a democrat by
5 another? That's quite an accomplishment. Congratulations.

6 **>> CHIEF JUDGE COHEN:** Well, thanks.

7 **>> CHIEF JUDGE LAUTEN:** So when you were a county court
8 judge, I don't think there was a mediation program, because
9 as I understand it, I think you started that program.

10 **>> CHIEF JUDGE COHEN:** I did. Tom Kirkland and I.

11 **>> CHIEF JUDGE LAUTEN:** So all the cases came into the
12 Court, and you processed all of them. Whereas today, a lot
13 of them are resolved in the mediation program that you
14 started.

15 Tell us a little bit about that.

16 **>> CHIEF JUDGE COHEN:** The mediation program really was
17 borne out of necessity. There was just too many cases for us
18 to handle. So we developed a program, and we used nonlawyer
19 volunteers as mediators and set up a training program for
20 them. Interestingly, like, three of those people are still
21 working today --

22 **>> CHIEF JUDGE LAUTEN:** That's amazing.

23 **>> CHIEF JUDGE COHEN:** -- as mediators. But there are a
24 tremendous group of people. I give all the credit to them
25 and to Kathy Reuter, who was our initial supervisor of that

1 program. The mediators make the program. They're so
2 invested in it. And they do such a wonderful job. And,
3 really, a lot of county court -- particularly small claims --
4 is giving people an opportunity to tell their side of the
5 story and to let someone neutral listen to it and see whether
6 there are some common grounds that can be reached. And very
7 often there are.

8 >> **CHIEF JUDGE LAUTEN:** Did you purposefully pick
9 nonlawyers as the mediators? Were they easier to find, that
10 group of volunteers? Was that a conscious decision,
11 nonlawyers rather than lawyers?

12 >> **CHIEF JUDGE COHEN:** Part of it was financially
13 driven.

14 >> **CHIEF JUDGE LAUTEN:** Mm-hmm.

15 >> **CHIEF JUDGE COHEN:** It made sense because there
16 simply isn't enough money involved in many of these cases to
17 warrant people coming in and being forced to pay for a
18 mediator's time. So we developed it as volunteers. And the
19 easiest way to get volunteers were mostly retired folks that,
20 you know, had an interest in law.

21 And they really had a great variety of backgrounds. We
22 had people who were former employees of the State Department.
23 We had a former superintendent of schools from Los Angeles.
24 We had just a wide variety of backgrounds and experience.

25 >> **CHIEF JUDGE LAUTEN:** Here's a statistic that might

1 surprise our readers, although you and I know it fairly well.
2 About 98 percent or maybe even slightly higher than 98
3 percent of civil filings are resolved without a trial. At
4 some point in the litigation they settle.

5 So if the mediation program helped that happen earlier,
6 and you resolve well over half your cases, then the remaining
7 cases are a lot of easier to manage. And I'm sure that was a
8 motivating factor --

9 >> **CHIEF JUDGE COHEN:** Absolutely.

10 >> **CHIEF JUDGE LAUTEN:** -- of starting the program.

11 So you had that experience in county court. Tell us,
12 then, when and how you got to the circuit court and your
13 experiences on that bench.

14 >> **CHIEF JUDGE COHEN:** At the circuit court, I did
15 criminal. I did civil. I did domestic. I did injunctions.
16 Really, I did everything except for probate during my time on
17 the civil bench. And I -- I like the variety. I like being
18 in a division for a few years and then rotating out. I think
19 it keeps you fresh as a judge, and I like learning.

20 >> **CHIEF JUDGE LAUTEN:** Did -- in those assignments,
21 looking back on it at least, did you have one division that
22 was, you know, more enjoyable or your favorite as opposed to
23 any other division or were they all equally --

24 >> **CHIEF JUDGE COHEN:** Well, I liked them all, but I
25 would have to say if I had a favorite, probably it would have

1 been civil. I tried a lot of cases when I was in the civil
2 division. I had a lot of medical malpractice cases with some
3 excellent lawyers. I had -- handled the Payne Stewart
4 products liability case, which was a very interesting case.
5 And it was just fascinating to watch good lawyers ply their
6 craft. It's just a pleasure as a judge to sit at the bench
7 and watch good lawyers practice.

8 >> **CHIEF JUDGE LAUTEN:** And then I know while you were a
9 circuit judge -- and it was true while you were a county
10 judge also, but I know it was true when you were a circuit
11 judge. You served as an administrative judge under, I think,
12 Chief Judge Belvin Perry, but maybe it included some of the
13 other Chief Judges.

14 So what divisions were you administrative judge for?

15 >> **CHIEF JUDGE COHEN:** I was the administrative judge of
16 criminal. I was administrative judge of appeals. And I was
17 the administrative judge of civil.

18 >> **CHIEF JUDGE LAUTEN:** So that's a lot of
19 administrative responsibility. We'll come back to that in a
20 minute when we talk about your position now as Chief Judge.

21 So a lot of judges begin and end their career as trial
22 judges. You moved on to the Fifth District Court of Appeals.
23 Were you tired of being a trial judge? What -- did you want
24 to write more? What attracted you to the appellate bench as
25 opposed to a career exclusively on the trial bench?

1 **>> CHIEF JUDGE COHEN:** You mean the Fifth District Court
2 of Appeal?

3 **>> CHIEF JUDGE LAUTEN:** Yeah. Did I say appeals again?
4 The Fifth District Court of Appeal, which is one of the
5 courts of appeals.

6 (Laughter.)

7 **>> CHIEF JUDGE COHEN:** What really attracted me to it
8 was having sat as an associate judge. What happens is that
9 the judges on the court are allowed, once a year, to bring
10 in -- at that time it was just circuit judges. Now it's
11 expanded to both circuit and county court judges. But you're
12 allowed to bring in a visiting judge, which accomplishes a
13 lot of things.

14 It gives the trial court judges an insight into what we
15 do and how we go about reviewing their work. And there are a
16 lot of advantages to that. But I really had never
17 contemplated going on to the appellate court until Justice
18 Alan Lawson -- you knew Justice Lawson -- invited me to come
19 up as an associate judge.

20 I just enjoyed the experience of preparing for the oral
21 arguments, and I enjoyed the oral arguments themselves. I
22 didn't have an opportunity, at that time, to write an
23 opinion. But I was bitten. I got the bug.

24 **>> CHIEF JUDGE LAUTEN:** Mm-hmm. Well, explain to our
25 listeners -- you and I legally know the biggest difference

1 between the trial court and the appellate court. But as an
2 insider, especially, what's your explanation of the biggest
3 difference between sitting as trial judge and sitting as an
4 appellate judge?

5 >> **CHIEF JUDGE COHEN:** Well, as a trial judge, you have
6 to make a decision in 15 seconds, tops.

7 >> **CHIEF JUDGE LAUTEN:** Right.

8 >> **CHIEF JUDGE COHEN:** As an appellate court, I can take
9 my time, and I have the time and resources to think about and
10 research issues that the trial judges often have to decide in
11 seconds.

12 The trial judges are making findings of fact. They're
13 listening to witnesses. They're -- have juries. At the
14 appellate level, we aren't taking testimony. The record
15 comes to us as it is, and we make a decision based upon the
16 record that's before us and the law. We are first and
17 foremost a court of correction of error. So it's a very,
18 very different role.

19 And it isn't the same role in other countries. For
20 instance, if -- those who followed the Knox case in Italy saw
21 that the appellate court there had a de novo review. They
22 looked at the evidence completely anew. We don't do that.
23 We accept the record -- or the lack of a record -- and we go
24 from there.

25 >> **CHIEF JUDGE LAUTEN:** So your explanation, I guess, is

1 that the trial courts have the stress of having to make fast
2 calls. And then the volume of cases.

3 What are the stress points for an appellate judge? I
4 imagine there's some stress associated with your job. What's
5 the difference in the stress points between the two?

6 >> **CHIEF JUDGE COHEN:** Well, the main issues, I would
7 say, of stress points -- I don't know that I would call
8 them -- refer to them as stress points. But the difficulty
9 of the job is in the complexity of the issues. We get some
10 very, very complex cases that we're called upon to decide to
11 take hours and hours of research and thought.

12 Now, on the other hand, we have what we call low-hanging
13 fruit, which are cases that are routine and simple for us.

14 But the preparation for complex cases and the study
15 involved is lengthy. It takes contemplation. And then you
16 have to produce a written product. And we work hard at
17 producing a written product that's concise but yet explains
18 and amplifies the issues that are before us.

19 So I would say that probably is the biggest of the
20 stress points. But there's great flexibility, much more
21 flexibility at the appellate court. I do -- I can work
22 anywhere if I have a computer and I have access to Westlaw
23 and I have access to the record. And we have gone digital on
24 all of those grounds, in all of those areas.

25 I can work at 11:00 at night. I can work on weekends

1 when I need to work weekends. And so it's a greater
2 flexibility at the appellate court than there is at the trial
3 court level.

4 >> **CHIEF JUDGE LAUTEN:** Did it take any period of
5 adjustment when you went from a position where you just made
6 the decision, right or wrong, but you made the call and it
7 was you and you alone? And sometimes that's a lonely
8 feeling. But, also, you don't have to consult with anybody.
9 And you keep moving to a situation where you might see a case
10 one way, and your other colleagues might see it another way.

11 So your single vote doesn't decide how an appeal is
12 resolved. What about that dynamic?

13 >> **CHIEF JUDGE COHEN:** Well, it's sad. I can't go to
14 lunch now without getting a second vote.

15 (Laughter.)

16 >> **CHIEF JUDGE COHEN:** I used to make decisions easily.
17 But, no. And that's part of the collegial process of
18 our court. We have a very collegial court. I work with a
19 terrific group of people. And we discuss and we debate and
20 don't make it personal. So there is that dynamic. You have
21 to be able to convince at least one other person of your
22 position. Or as we facetiously say, two votes beats right
23 every time.

24 (Laughter.)

25 >> **CHIEF JUDGE LAUTEN:** We should tell our listeners,

1 just to make sure they know. So I sit alone in the
2 courtroom. But you sit on most of your cases on a panel.
3 And how many judges are on that panel?

4 >> **CHIEF JUDGE COHEN:** There are three judges on the
5 panel. There are 11 members of the Fifth District Court of
6 Appeal. And we rotate the panels so that we sit relatively
7 equally with each of the other judges on the court. And it
8 takes two votes, obviously, to prevail on a case.

9 >> **CHIEF JUDGE LAUTEN:** Are dissents common or uncommon?
10 In other words, is a 2-1 vote, is that -- is that common or
11 uncommon? Is it a 50/50 split? About how often is it 2-1 as
12 opposed to 3-0?

13 >> **CHIEF JUDGE COHEN:** Relatively uncommon.

14 >> **CHIEF JUDGE LAUTEN:** All right.

15 >> **CHIEF JUDGE COHEN:** Typically, we agree. And so it's
16 a small percentage of cases, probably less than -- ten
17 percent or less of cases are there dissenting views. And en
18 banc cases where the entire court hears the case, perhaps
19 three to four times a year.

20 >> **CHIEF JUDGE LAUTEN:** So en banc would be all 11
21 judges on the -- is it hard to schedule one of those matters
22 or do you have -- have that already built into your schedule?
23 How does that work?

24 >> **CHIEF JUDGE COHEN:** Well, we have those at judges
25 meetings, and so it's not all that difficult. We just need

1 enough time to present the materials and give all the memos
2 that were written on the case, the briefs, and let the other
3 judges have time to research and think about the issues.

4 >> **CHIEF JUDGE LAUTEN:** So going back to -- when you
5 said you need -- you know, you need two people to see it your
6 way. So on a three-judge panel, as long as you get another
7 vote, you're in the majority.

8 Let me ask you this, Judge Cohen. Have you ever
9 experienced where you were sure you were going one way on an
10 appellate case only to find in the end you went the complete
11 opposite direction?

12 >> **CHIEF JUDGE COHEN:** Absolutely.

13 >> **CHIEF JUDGE LAUTEN:** Does that happen often or kind
14 of infrequently?

15 >> **CHIEF JUDGE COHEN:** I would say infrequently. But I
16 can tell you that there have been occasions where I have
17 started writing an opinion on a case, and I'm struggling
18 writing the opinion. It just is not writing well. And when
19 that happens to me, very often it tells me that I'm looking
20 at the case from the wrong side. And I will then switch my
21 view on the case and write an opinion going the other way.
22 And I'll find that it writes easier, and that convinces me
23 that I was -- my initial view of the case was wrong.

24 And I'm always willing to listen to the other judges on
25 a panel and keep an open mind. And all of us do that.

1 **>> CHIEF JUDGE LAUTEN:** So I've heard described that one
2 of the most important skill sets for a judge at any level is
3 the ability to listen.

4 Would you agree with that statement?

5 **>> CHIEF JUDGE COHEN:** Clearly.

6 **>> CHIEF JUDGE LAUTEN:** Your experience as a trial
7 judge --

8 **>> CHIEF JUDGE COHEN:** I'm sorry. What did you say? I
9 wasn't listening.

10 (Laughter.)

11 **>> CHIEF JUDGE LAUTEN:** Your experience as a trial
12 judge, would you say that that was somewhat helpful, very
13 helpful, or would you describe it differently in sitting as
14 an appellate judge?

15 **>> CHIEF JUDGE COHEN:** I think it's helpful to have
16 experience in the shoes of the trial court judge where you
17 have a sense of what's happening in the courtroom. And there
18 are many things that are unspoken going on in a courtroom, in
19 the courtroom dynamics, can influence an appeal.

20 I've been asked whether I think it's essential or
21 critical, and my answer to that is no. I think it's good to
22 have people from different backgrounds on the Court. We
23 don't want to have everybody with the same identical
24 background. I think that diversity of experience is healthy
25 for any court.

1 **>> CHIEF JUDGE LAUTEN:** But is it helpful to have sat in
2 the shoes of the trial court judges that you're reviewing?

3 **>> CHIEF JUDGE COHEN:** Yes, it is.

4 **>> CHIEF JUDGE LAUTEN:** Are most of the judges on the
5 Fifth District Court of Appeal, are most of them former trial
6 judges? What's the mix, if you know?

7 **>> CHIEF JUDGE COHEN:** The --

8 **>> CHIEF JUDGE LAUTEN:** As opposed to practitioners who
9 didn't sit on the bench.

10 **>> CHIEF JUDGE COHEN:** Right. The mix on our court,
11 right now, we have an opening with the elevation of Justice
12 Lawson to the Supreme Court. So there are ten members of the
13 Court. Eight out of the ten were previously trial court
14 judges and two came directly from private practice.

15 **>> CHIEF JUDGE LAUTEN:** So it's not an essential
16 requirement, but it sounds like, in your court, at least, the
17 majority -- more than the majority of the judges had trial
18 court experience before they got to the court of appeal?

19 **>> CHIEF JUDGE COHEN:** Yes. And my -- I haven't looked
20 at it closely, but I would suspect that that's true on every
21 court.

22 **>> CHIEF JUDGE LAUTEN:** How about this: Do you have a
23 favorite kind of case as an appellate judge? I asked you
24 that as the trial judge, and you kind of said I enjoyed being
25 in the civil division. You know, if I could pick my

1 assignment, I would pick civil. Do you have a favorite type
2 of case that you hear on the appellate bench or no?

3 >> **CHIEF JUDGE COHEN:** No. I wouldn't say so. I -- I
4 look for cases that are academically stimulating. And that's
5 what -- that's what excites me, and that's what I like
6 working on.

7 The -- after -- I've been doing this for nine years now,
8 so I've seen a lot of certain types of cases over and over
9 and over again. And on your 50th foreclosure case or your
10 50th post-conviction release case, it's hard to get
11 terribly excited about it. Now, you take every case
12 seriously and you give every case your best effort. But in
13 terms of what really is enjoyable and exciting, it's the --
14 it's the difficult cases where you have to work through the
15 record and you have good briefing and good lawyers arguing
16 the case. Those are the cases that are exciting and really
17 pique your interest.

18 >> **CHIEF JUDGE LAUTEN:** So one interest we address here
19 in the trial courts is that citizens who watch us work
20 usually see us in a courtroom presiding over a case. Yet,
21 you and I know there's work we do outside the courtroom that
22 the public doesn't often see, but we're in our chambers
23 working.

24 So on the appellate bench, there's oral argument where
25 lawyers stand in the well of the Court and argue their

1 position to you. But tell our listeners, sir, what is your
2 stereotypical day or week like as an appellate court judge?
3 Because my sense is that's not really seen by the public,
4 and, yet, I have an idea of what it is. And I would like you
5 to share it with our public so they know.

6 >> **CHIEF JUDGE COHEN:** Well, that's an excellent
7 question. We have two types of cases -- well, a lot more
8 than two. But two -- if we had to categorize cases, we have
9 cases in which there are oral arguments requested and cases
10 in which oral arguments are not requested.

11 The cases where oral argument is not requested far
12 outnumber the cases with oral argument. In fact, it's well
13 over -- considerably over 80 percent of the cases are handled
14 without oral arguments. Meaning, that all you're doing is
15 reading the briefs and the record on appeal. And you do that
16 in your office or in -- whether that office is at a
17 courthouse, whether it's in your home, wherever it might be.
18 Wherever you might be, that becomes your de facto office.

19 And so most of what we do, we do cloistered in a room,
20 in front of a computer. And -- without any human contact.
21 And so there are people who think that that is just
22 incredibly mind numbing and have no interest in doing
23 anything like that. And then there are nerds like me who
24 like it.

25 >> **CHIEF JUDGE LAUTEN:** So it sounds like you're reading

1 almost all the time. I mean, if you're reading both what the
2 lawyers have written in terms of their brief, but then you're
3 also reading a transcript of the trial so you know what the
4 witnesses said, the judges said, the lawyers said, I take it
5 you're reading all the time.

6 >> **CHIEF JUDGE COHEN:** Constantly. I tried to compute
7 it one time, and my best estimate is that we read over 60,000
8 pages a year. Because you're reading case law. You're
9 reading briefs. You're reading the record on appeal. I used
10 to read for pleasure.

11 >> **CHIEF JUDGE LAUTEN:** I was going to move into that.
12 Do you get to do that anymore? Or are you just exhausted?

13 >> **CHIEF JUDGE COHEN:** I almost never read for pleasure
14 anymore, unless I'm on vacation.

15 >> **CHIEF JUDGE LAUTEN:** And so that's a pretty strong
16 statement. Because I know you were an English major as an
17 undergraduate student at the University of Florida.

18 >> **CHIEF JUDGE COHEN:** Right.

19 >> **CHIEF JUDGE LAUTEN:** And when I knew you as a trial
20 judge, you were always reading novels, literature, for
21 pleasure. But I can understand if you're reading all day
22 long, you must just get exhausted from reading.

23 >> **CHIEF JUDGE COHEN:** Well, it just gets to the point
24 where your eyes give out on you.

25 >> **CHIEF JUDGE LAUTEN:** Yeah.

1 >> CHIEF JUDGE COHEN: And so --

2 >> CHIEF JUDGE LAUTEN: Well, then let's talk about the
3 other aspect of your job. So you're reading all day long,
4 and then you have to write. Is writing easy for you or
5 difficult for you? How would you describe -- is -- writing
6 is a task for some people and it comes easier to others.
7 Where are you on that spectrum?

8 >> CHIEF JUDGE COHEN: Well, I write in drafts.

9 >> CHIEF JUDGE LAUTEN: Okay.

10 >> CHIEF JUDGE COHEN: And the first draft of an
11 opinion, I write for myself. Meaning that I will insert
12 humor into it, sarcasm.

13 >> CHIEF JUDGE LAUTEN: I'm shocked.

14 >> CHIEF JUDGE COHEN: Yeah, I know.

15 (Laughter.)

16 >> CHIEF JUDGE COHEN: And then it's my law clerks'
17 jobs --

18 >> CHIEF JUDGE LAUTEN: To edit all that out?

19 >> CHIEF JUDGE COHEN: -- to edit all that out.

20 (Laughter.)

21 >> CHIEF JUDGE COHEN: So it's shocking that very -- my
22 first drafts, if you ever saw the difference between my first
23 draft and the finished product, people would be, you know,
24 really shocked by it. But I like the process. But I write
25 in drafts. Not all judges do that. I think that there are

1 some that put out a product after one draft. It's close to
2 being finished. I don't write that way. And I never have,
3 even when I was undergraduate -- or when I was in law school.

4 But I enjoy the writing process. And I spend a lot of
5 time on grammar, on punctuation, on things that probably no
6 one else cares about or looks at. But I care about it, and I
7 look at it. And so I want a product that is a well-written
8 product -- or as well written as I'm capable of.

9 >> **CHIEF JUDGE LAUTEN:** So in the split of labor between
10 reading and writing, what kind of percentages would you say
11 you spend --

12 >> **CHIEF JUDGE COHEN:** Reading is far and away the
13 bigger task, the bigger percentage of your time.

14 >> **CHIEF JUDGE LAUTEN:** So, like, 80/20, something close
15 to --

16 >> **CHIEF JUDGE COHEN:** At least. At least. If not
17 more.

18 >> **CHIEF JUDGE LAUTEN:** So my sense is that -- well,
19 maybe I shouldn't assume this.

20 When you were a trial judge, did you feel stress
21 associated with that job?

22 >> **CHIEF JUDGE COHEN:** Of course there's stress.

23 >> **CHIEF JUDGE LAUTEN:** And how about as an appellate
24 judge? Different stressors?

25 >> **CHIEF JUDGE COHEN:** Different -- different stressors.

1 **>> CHIEF JUDGE LAUTEN:** Different pressures, maybe is
2 the way to say it.

3 So what do you do to relieve pressure to keep it from
4 taking its toll on you?

5 **>> CHIEF JUDGE COHEN:** Well, I go to a gym. Very often
6 I'll start my day out at a gym. And then I play golf poorly.

7 **>> CHIEF JUDGE LAUTEN:** Well, we both play golf poorly
8 because we've done that together for a number of times.

9 (Laughter.)

10 **>> CHIEF JUDGE LAUTEN:** And does that help? Does that
11 help keep the stress level manageable?

12 **>> CHIEF JUDGE COHEN:** You have to have balance in your
13 life. It doesn't matter what occupation -- whether you're a
14 doctor, a laborer, whatever your occupation is, you have to
15 maintain a balance. And so I try to do that with my home
16 life, with my exercise, with relaxation. I like to travel.

17 But I understand, first and foremost, my job is to try
18 to get it right and to try to do a good job for the citizens
19 of the state of Florida. And we take great pride in what we
20 do. And just as trial court judges don't like to be reversed
21 by us, we don't like to get reversed by the Florida Supreme
22 Court. But we recognize that it happens.

23 **>> CHIEF JUDGE LAUTEN:** Sure.

24 **>> CHIEF JUDGE COHEN:** So we try to produce a product
25 that will withstand scrutiny just as the trial judges make a

1 good-faith effort to do justice before -- for the parties.

2 >> **CHIEF JUDGE LAUTEN:** So somewhat recently you took on
3 a whole new job responsibility, which I think would tend to
4 add to the stress slightly -- or the pressure slightly. And
5 that is that you became the Chief Judge of Fifth District
6 Court of Appeal. And tell the listeners when that happened,
7 and then let's talk a little bit about what that adds to your
8 daily routine.

9 >> **CHIEF JUDGE COHEN:** That happened in January when
10 Justice Lawson was promoted to the Florida Supreme Court. I
11 missed a meeting.

12 (Laughter.)

13 >> **CHIEF JUDGE LAUTEN:** And hence you're the Chief
14 Judge?

15 (Laughter.)

16 >> **CHIEF JUDGE COHEN:** And hence, I'm the Chief Judge.
17 But I work with such a great group of people. And to
18 give you a sense of scale, we have 11 judges. You have --

19 >> **CHIEF JUDGE LAUTEN:** Sixty-five.

20 >> **CHIEF JUDGE COHEN:** Sixty-five. Our employees are
21 just dwarfed by the employees of the Ninth Judicial Circuit.
22 So if we're -- if we're comparing stressors, I'll take my job
23 over yours --

24 >> **CHIEF JUDGE LAUTEN:** Okay.

25 >> **CHIEF JUDGE COHEN:** -- with all due respect.

1 >> CHIEF JUDGE LAUTEN: But it did add to --

2 >> CHIEF JUDGE COHEN: Of course. Of course.

3 >> CHIEF JUDGE LAUTEN: It had to add to your workload
4 when you became the Chief Judge, as opposed to one of the
5 other judges on the Court.

6 >> CHIEF JUDGE COHEN: Right. You have administrative
7 responsibilities. You know, we -- on the other hand, we
8 have -- our clerk works for us, as opposed to you and you
9 have an elected Clerk of the Court. We have a marshal who
10 works for us. You've got the sheriff's office that handles
11 your security. So to that extent, we have some
12 self-control -- we have -- over those types of issues.

13 But certainly, you know, it adds responsibilities. But
14 I work -- all I have to do with this group is keep the ship
15 pointed in the right direction. And if I do that, I'll be
16 successful in my --

17 >> CHIEF JUDGE LAUTEN: Okay.

18 >> CHIEF JUDGE COHEN: -- term as Chief Judge.

19 >> CHIEF JUDGE LAUTEN: I know as a trial judge, you
20 enjoyed teaching at a variety of levels, but certainly to
21 other judges in the state.

22 Are you able to teach? Have you continued to teach as
23 an appellate judge? Has -- are those opportunities there or
24 not?

25 >> CHIEF JUDGE COHEN: No. Most of the teaching I do

1 now, most of the mentoring I do now, is with my law clerks.

2 >> **CHIEF JUDGE LAUTEN:** Right.

3 >> **CHIEF JUDGE COHEN:** I have two law clerks, and they
4 have rotating two-year terms. And so it's an educational
5 (indiscernible). Most of them are right out of law school.
6 And so I'm -- I'm working with them and having discussions
7 about the practice of law, about legal issues. And I have
8 not had the opportunity to teach. Although, I hope, in time,
9 to get back to that.

10 >> **CHIEF JUDGE LAUTEN:** So what I've heard is that the
11 appellate judges and the clerks form a pretty close bond
12 because you're doing what you said, you're teaching them law
13 or consulting with them or talking to them about cases, and
14 that that two-year term, you develop a pretty close bond. Is
15 that what you've found to be true?

16 >> **CHIEF JUDGE COHEN:** Yes, it is. I keep track -- or
17 keep in touch with my former law clerks, who are across the
18 country making far more money than I'm making. So I keep in
19 touch with them. And we do, we build a bond. And I hope
20 that that will be a bond that I continue with throughout my
21 life.

22 >> **CHIEF JUDGE LAUTEN:** Well, let's wrap up with this
23 question, if I might. Is there any misconception that you
24 think the public might have about the job about the court of
25 appeal or any message that you deliver when you get the

1 chance to speak publicly about the court of appeal?

2 >> **CHIEF JUDGE COHEN:** Well, I don't know that there are
3 misconceptions. I suspect that most people don't really have
4 any real feel for what we do because we toil in anonymity.
5 We don't get on TV the way that the trial judges do. We're
6 not on TV with the high-profile trials. And so the fact that
7 there are three of us that are deciding each case also lends
8 to some anonymity. And we understand -- we understand that.
9 Nor do we seek publicity.

10 But the frustration, I think, that people sometimes
11 express is the length of time that it takes for certain
12 appeals. And there are different philosophies about it. The
13 motto of the appellate court system in Florida is, "Soon
14 enough if done right." Meaning, that what you ultimately
15 want is the right result, not a quick result. But we do
16 understand and try to meet time standards and try to deliver
17 opinions in a timely basis.

18 And I know that there's a certain frustration sometimes
19 with the practitioners with the practice of per curiam
20 affirmance or what we call PCAs. But the reality of it is:
21 A, we don't have time to write on every case; and, B, if you
22 develop a philosophy over what cases you should be writing
23 on, it should be cases that advance the law. And that's what
24 we try to do.

25 >> **CHIEF JUDGE LAUTEN:** Sometimes we hear in the

1 community the perception that appellate judges are making up
2 law just out of whole cloth, that they have become the
3 legislators.

4 Do you have a response to that, given the -- now close
5 to decades-long experience that you've had on the appellate
6 bench?

7 >> **CHIEF JUDGE COHEN:** Well, I can speak for our Court
8 and to tell you that that's just not true. We -- we strive
9 mightily to follow the law and to apply the law and to do it
10 in an even-handed fashion. And we don't go into cases with
11 preconceived ideas or an agenda. And that's what people
12 expect from us. And I believe from our Court that's what
13 people get from us.

14 And so I think if you were to examine the body of work
15 from our court, I think that most people would agree that
16 that just isn't true, that we're not legislating from the
17 bench.

18 >> **CHIEF JUDGE LAUTEN:** And, finally, because I probably
19 should have covered this earlier, but why don't you tell our
20 listeners what geographic area you cover. In other words,
21 you get appeals -- and I'm not sure that we covered for our
22 listeners, where do you get the appeals from? So, in
23 essence, what is your jurisdiction in Florida?

24 >> **CHIEF JUDGE COHEN:** Our jurisdiction's really the
25 entire central part of the state. We go from St. Augustine

1 down to Melbourne, all the way across the state, through
2 Marion County. We go all the way over to Brooksville, close
3 to the coast, on the west coast of Florida. And so the whole
4 central part of the state is within our jurisdiction.

5 >> **CHIEF JUDGE LAUTEN:** And there are how many courts of
6 appeal in the state of Florida?

7 >> **CHIEF JUDGE COHEN:** There are five intermediate
8 courts of appeal, and then the Supreme Court.

9 >> **CHIEF JUDGE LAUTEN:** And one thing, Judge Cohen, and
10 I don't know if our listeners know this, most of the trial
11 courts reviewed, most of the cases go to you from the Ninth
12 Judicial Circuit. But some go to the -- straight to the
13 Florida Supreme Court. But you really review, in the first
14 instance, almost all of the trial work that's done in the
15 geographic area you just described; is that right?

16 >> **CHIEF JUDGE COHEN:** That's correct. And very few
17 cases go directly to the Supreme Court. Obviously, death
18 penalty cases do. But outside of bond validations and death
19 penalty cases, almost all cases are going to come to the
20 Fifth District Court of Appeal from within our geographical
21 jurisdiction. And in the overwhelming majority of cases, we
22 are the court of last resort because the -- most of those
23 cases are not going to go up to the Supreme Court.

24 >> **CHIEF JUDGE LAUTEN:** Well, let me say this. I'm --
25 first of all, I'm very grateful that you took time out of

1 your schedule to join us today. And I want to make this
2 observation. Last week -- or maybe it was two weeks ago,
3 now, you and I were honored to speak at Justice Alan Lawson's
4 investiture to the Florida Supreme Court. He was your
5 predecessor as Chief Judge of the Fifth District Court of
6 Appeal. And he was a trial judge here in the Ninth Circuit.
7 Now you're serving as Chief Judge of the Fifth District Court
8 of Appeal.

9 And I know my colleagues agree with me when I say that
10 you and Alan Lawson were two of the smartest, hardest working
11 judges. And we're exceptionally proud of the -- of your work
12 as appellate judges, your service now as Chief Judge of the
13 Fifth District Court of Appeal, and his being seated on the
14 Florida Supreme Court. And I think it represents our circuit
15 well, and we're very grateful to you for your lifelong work.
16 Thank you so much.

17 >> **CHIEF JUDGE COHEN:** Well, thank you. I thought you
18 were gonna ask for more strokes now.

19 (Laughter.)

20 >> **CHIEF JUDGE LAUTEN:** Yes. We'll discuss that off the
21 air.

22 >> **CHIEF JUDGE COHEN:** Okay.

23 >> **CHIEF JUDGE LAUTEN:** All right. Thanks, Judge.

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5 (Music.)

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