

OPEN NINTH:  
CONVERSATIONS BEYOND THE COURTROOM  
2017 STATE OF THE COURTS  
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HOSTED BY: CHIEF JUDGE FREDERICK J. LAUTEN

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

Now, here’s your host, Chief Judge Frederick J. Lauten.

>>**CHIEF JUDGE LAUTEN:** Well, it’s a cold and blustery day in January, 2018. But I’m here with Circuit Judge Julie O’Kane, who is the administrative judge in civil and previously was the administrative judge for the criminal division, and Judge Patricia Doherty, who is the administrative judge for the family law division. And for our listeners, we have other administrative judges: Judge Lisa Munyon, who is the administrative judge in criminal and Judge Danny Dawson who is the administrative judge in juvenile, Judge Jon Morgan who is the administrative judge in Osceola, Judge Nancy Clark who is the county administrative judge for both civil and criminal, Reggie Whitehead, Judge Reggie Whitehead who is the specialty court judge and Judge Don Myers who is the appellate court judge. But we only have room for three of us and so in particular I want to talk about family and civil, so I have invited Judge O’Kane and Judge Doherty to join me and welcome. How are you all doing?

>>**JUDGE O’KANE:** Good.

>>**JUDGE DOHERTY:** Doing good on this cold day.

>>**CHIEF JUDGE LAUTEN:** It’s a cold day. It’s one of the coldest days in Florida. Well, let me give our listeners just a little bit of a background and then we’ll talk about 2017 in review. Probably mentioned this in other podcasts, but in the Ninth Circuit which is Orange and Osceola County, we are the third largest circuit in the third largest state in the United States. So we have 65 judges. Each one of those judges has a judicial assistant. That’s 120 members or employees in the circuit. And then on top of that we have about 230 additional staff members. So we have a staff that totals about 350 employees. Just the number of judges alone in our circuit, when you compare us to 17 other states would make us larger than the entire state judiciary in 17 other states. So we’re a multimillion dollar operation. We have a large staff and so it’s a pretty complex operation and lots of staff support us. And as I mentioned earlier, have divisions with administrative judges in it and so, you know, we’ve got – we’ve got a building here in Orange County. We have seven courthouses, which sometimes surprises listeners. We’re sitting in the Orange County Courthouse, 23 stories, located downtown, a pretty

prominent building. And I'm joined by two good friends and really talented judges, Judge Doherty and Judge O'Kane. And so here's what I want to talk a little bit about. Not necessarily start with numbers yet, but when looking back on 2017, and I appreciate any thoughts you want to add to this, I think about our relationship with the legislature which I want to talk a little bit about. I want to talk about the fact that we experienced last year this emergency, which was a hurricane that had an impact on our courts. That we replaced a circuit judge, who passed away in late 2016, our good friend Judge Scott Polodna, and one of our county judges, Tanya Wilson replaced him, opening up her slot and so we added a new judge, Jamie Grosshans to the county court bench. And that was exciting. We unfortunately, late in the year last year lost two senior judges, Judge Ted Coleman, former Chief Judge of our circuit and Judge Rom Powell who was a respected and beloved jurist. And those are just a few of the things that happened over the course of the year, and of course, everyday we're here in the courthouse executing our prime directive as they say on Star Trek, which is you know, to administer justice to the citizens of Orange County. And in doing that, we're met with a lot of challenges, workload challenges, resource challenges and we're going to talk a little bit about those. But let's talk – let's start first with this. So about a year ago at this point in time we were a little bit apprehensive about what we were hearing from the legislature which was term limiting appellate judges, and what were some of the other issues that the legislature was kind of kicking around?

>>**JUDGE O'KANE:** Aren't there always budget challenges?

>>**CHIEF JUDGE LAUTEN:** There were budget challenges, which we're going to get into in a minute. But there were all kinds of sort of issues where we thought, what kind of legislative session is it going to be visa vie the judiciary, and then at the end in March, when all the dust the settled, there wasn't any term limiting of our positions. There wasn't any real shrinkage of our size, but we didn't have any growth either. And for the first time in 11 years, both judges and staff, really all state employees, got a raise. So that kind of – I know it caught a lot of us off guard. We thought, oh, my God, this could be an awful year. And then it turned out first raise in 11 years. What did you all think about that?

>>**JUDGE O'KANE:** Well, I thought it was a nice surprise, and obviously was very grateful for it since we had not had a salary increase in a very long time.

>>**CHIEF JUDGE LAUTEN:** Right. Right, and do you think it helped moral a little bit for everybody?

>>**JUDGE DOHERTY:** It did. The Ninth Circuit and other circuits, the judges work so hard with the resources they have, putting in weekends, late hours, waiting for juries, writing, researching, preparing. I think they were appreciative that it recognized the time --

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

>>**JUDGE DOHERTY:** -- and effort they put into it.

>>**CHIEF JUDGE LAUTEN:** And Judge Doherty, a lot of those things you mentioned, the public doesn't see which is something that we occasionally talk about when we get the chance in a public forum, so the public sees us when we're in a courtroom, sitting up on the bench, conducting trials or hearings. But as you just mentioned, there's a lot of activity that goes on in chambers or at home, used to be in a law library, but now it's with a computer that the public just doesn't see. So why don't you review a little bit of that one more time for us.

>>**JUDGE DOHERTY:** Well, certainly, the part the public would know either, from their personal experience or watching TV is the judge in the courtroom when they are presiding over trials and hearings. That's really just a small part of what all of us do. In addition to presiding over trials and hearings, we're writing, we're preparing for those hearings, doing extensive legal research to go in understanding the issues and be prepared to listen to the arguments. Then following the hearing, while many times the attorneys, if there are attorneys involved will participate in drafting orders and judgments, and many other times it falls on the judges and they have to do that when they're not in court. Then they're dealing with emergencies that are coming in that people don't see. They're serving on their E-duty weekends which is 24-7 for those weeks. They're responding to, and I'll speak from the domestic division, it's a very high volume of mail. And things that have to be reviewed and signed outside the courtroom, review of the general magistrates' reports, the hearing officers' reports, the emergencies and the items that don't require hearings. So that just gives you a tip of what we're doing in addition to the courtroom time.

>>**CHIEF JUDGE LAUTEN:** And so Judge O'Kane, you are in business court. I had a stretch in business court and I notice when I go into your office there's a pile of three-ring

binders. Now, it's a pile of thumb drives because the three-ring binders have gotten so heavy. But you have to work your way through to be prepared for just an even ordinary hearing in that division.

>>**JUDGE O'KANE:** Right. Right.

>>**CHIEF JUDGE LAUTEN:** So there's a lot of homework I think that the public just doesn't see in every single division.

>>**JUDGE O'KANE:** And it's hard sometimes because they will say, you know, they will look at a calendar and they'll go, oh, well, the judge wasn't in court, let's say, on a, you know, Wednesday morning from 10 until Noon so they just automatically assume that you're not doing anything. But in reality, you're in your office and you're getting ready for your afternoon hearings or for the hearings that you have the next day or two days later. You know, the real challenge is when you're in a long trial, you know, a week, a two week, or a three week trial and you're in a courtroom from 8:30 until 5:30 or 6:00 o'clock every day with a lunch break. That doesn't mean that the work isn't coming into the office, so the work is still coming into the office and you're still having to get prepared and, of course, be prepared for whatever legal issues are coming up during the trial. So you know, maybe an eight hour court day, when you're in the middle of a trial really is a ten or eleven hour work day for the judge who is getting ready beforehand, using lunch time to review legal issues and to be prepared. And then often times, as we all know, we'll get together for lunch when we're in the middle of a trial and we'll bring all of our case law with us and say, okay, this issue has come up in the middle of my trial. This is what I think, you know, can someone maybe share some thoughts with me on how they think this legal issue should be analyzed, so sometimes our work that we're doing is also visited on some of our colleagues who are asking for help.

>>**CHIEF JUDGE LAUTEN:** Right. So I didn't plan this but it just struck me that you two are among that handful of judges, and it's recognizable, you've tried tobacco cases to jury trial. I don't know how many judges in our circuit have done that. I know you both have.

>>**JUDGE O'KANE:** And Judge Egan.

>>**CHIEF JUDGE LAUTEN:** Any others? Judge Egan.

>>**JUDGE DOHERTY:** And Judge Kest.

>>**CHIEF JUDGE LAUTEN:** And Judge Kest. So four of our 65, we have 65 judges.

>>**JUDGE O’KANE:** And I think Judge Blackwell –

>>**CHIEF JUDGE LAUTEN:** She started one.

>>**JUDGE O’KANE:** -- started one.

>>**JUDGE DOHERTY:** It mistried.

>>**CHIEF JUDGE LAUTEN:** That’s almost point – that’s almost five percent.

Because it’s a rare event. So how long, Judge Doherty, did your tobacco trial take?

>>**JUDGE DOHERTY:** Just the trial part –

>>**CHIEF JUDGE LAUTEN:** Just the trial.

>>**JUDGE DOHERTY:** -- which is where you begin by selecting the jury to when the verdict comes back, but then you do a second part, which was there punitive damages, so it’s almost like two parts to it. It took just about three weeks.

>>**CHIEF JUDGE LAUTEN:** Okay. Same thing for you?

>>**JUDGE O’KANE:** Same thing for me. You set aside three weeks for the trial itself.

>>**CHIEF JUDGE LAUTEN:** And if you just – and again, just talking about what the public doesn’t see. So if you just walked in and tried the case, it would be three weeks where you couldn’t do any other work, but what we do know is you can’t walk into one of those kinds of cases and just try it. You’ve got to read like crazy. And I saw the binders that both of you had so what would you estimate the prep time on a case like that?

>>**JUDGE DOHERTY:** Oh, it’s hours; it’s days.

>>**CHIEF JUDGE LAUTEN:** Or weeks, right?

>>**JUDGE DOHERTY:** Yeah, it is.

>>**JUDGE O’KANE:** It is.

>>**JUDGE DOHERTY:** I mean, it's just lengthy hearings on multiple motions and many of the hearings can take a day, just the hearings in preparation.

>>**JUDGE O'KANE:** Typically on one of those cases, the – a lot of time is spent at the motion in limine stage, and the lawyers who represent the plaintiffs and the defendants in those cases are all very good lawyers, and they're well-educated in what the law is, but the law is changing. I mean, every week, every two weeks an appellate court or the Supreme Court is coming out with a new case. The Supreme Court just came out with a new case, I think, it was last week or the week before on a very important issue that there had been a split in the districts on, so just to keep up with the changing law on that is a lot. And if you've never done one before, I mean, you can generally be familiar with the causes of action, you know, negligence causes of action, product liability, intentional torts, but those cases are very unique. And so I suspect that probably getting ready for the first one that I did, I probably spent between hearing time and time on my own, you know, at least 30 days' worth of work spread over a couple of months –

>>**JUDGE DOHERTY:** At least.

>>**JUDGE O'KANE:** -- just to get ready for that. And then --

>>**CHIEF JUDGE LAUTEN:** And unless the media covers these, there's just a little – usually, maybe a newspaper will cover it, but there's not often cameras in these trials like there are in murder trials. So I think the public understands in a complex capital murder case, oh, I understand what the judge is doing because I've seen that judge on TV. And in a tobacco trial, I'm not sure they're seeing – the public at large, broadcast of the judges even though these things are taped and watched by the lawyers who do them.

>>**JUDGE DOHERTY:** Yeah, now, I don't know if they're still doing it or if they were in Judge O'Kane's –

>>**JUDGE O'KANE:** They did.

>>**JUDGE DOHERTY:** -- that it's a live webcast of the tobacco trials.

>>**CHIEF JUDGE LAUTEN:** Right. But isn't that mostly for the lawyers?

>>**JUDGE O'KANE:** It's a subscription service.

>>**JUDGE DOHERTY:** It's a subscription service.

>>**JUDGE O'KANE:** Whoever subscribes to it can watch it.

>>**CHIEF JUDGE LAUTEN:** Well, that's just anecdotal so that the public will understand that no matter what division you're in you might get this docket buster case, as we sometimes call it, which is a case that, you know, can eat up three weeks. And, you know, if it settles, first of all, you backfill in all that time, but if it doesn't, you're trying to arrange all the other matters that have to keep going and be heard. Anyway, I don't want to dwell only on that, so let me –

>>**JUDGE DOHERTY:** If I could say one thing on it that is I think as important is recognizing the amount of judicial time that goes into it, is how appreciative and how much we recognize the time the jurors spend and the time they take out of their lives for these cases. And you couldn't have the trial without them.

>>**CHIEF JUDGE LAUTEN:** Right, and so you're asking jurors in jury selection, can you commit at least three weeks of your time and that is a big ask.

>>**JUDGE DOHERTY:** Three weeks.

>>**CHIEF JUDGE LAUTEN:** So every day we have smaller trials and hearings than that in all of the divisions, and then last year, we had this natural disaster or natural event, which was Hurricane Irma. And as Chief Judge I had to make, you know, a call, which is whether to keep the courthouse open or close it. We generally follow the position of the schoolboards locally, both Orange and Osceola County Schoolboards. But they were wrestling with whether to stay open or stay closed because hurricanes are such fluid events. At one point in time we were sure it was just going to cross south Miami, unfortunately, like Andrew did maybe, and then all of a sudden it turned. And so it was should we open, should we close, and we were – anyway, eventually we closed. And I'm going to start with Judge Doherty because I know a lot of families in family court had events scheduled to be heard that were important events, and those just had to be cancelled because it was too dangerous to keep this building open and have people travel really impassable roads.



>>**JUDGE DOHERTY:** That and they were dealing with their own crises and their own problems at their homes. I think one of the – it impacted every division regardless of whether it's family or civil or criminal, but one thing that's maybe a little more unique to family is we have so many people representing themselves who aren't as familiar with the courthouse or the process. And they had waited and were ready for hearings that were scheduled during Hurricane Irma, and they unfortunately got cancelled and they needed to be cancelled. But what we did is we recognized that they also needed to get back in front of a judge and get their matters heard. And so I don't know if you wanted to talk about that but everybody in the domestic division really pulled together. Judges covered for each other's dockets. The magistrate – general magistrates worked beyond their scheduled hearing time to try and get everything that was cancelled heard by the end of the year, by December. And I'd say with the exception of a couple of cases or people that had the -- were not – didn't have the time problems that some of the families had, they were all heard by the beginning of December so we were able to catch them up.

>>**CHIEF JUDGE LAUTEN:** Right. Well, for the first time maybe in my career here, we cancelled something that we've never cancelled before and that's initial appearances. So for the public, everyone who is arrested sees a judge within 24 hours of his or her arrest at the Booking and Release Center to determine is there probable cause to keep this person in jail, and what's the bond, and here's what your bond amount is so that if you're eligible for bond, you could post it and get out. We do that every day of the year. We do it Christmas Day. We do it New Year's Day. We do it on Thanksgiving Day as we know, but I don't know if the public knows it. Every day we have a judge doing that. In my 23 years on the bench I don't think we've ever had a cancellation of that and I cancelled it this year, as did a lot of other circuits. We have a building where we could hold hearings, the Booking and Release Center has its own generator system. The problem was, and again this is little known to the public, you have to get participants travelling the roads to get there. So you need a state attorney, you need a public defender, you need a clerk, you need a court interpreter often. Even if you had a judge who spent the night in the Booking and Release Center, which we have cots for that, we still had to get all those other people there. And so we cancelled one day of that. That was unheard of because it was so dangerous during the hurricane. And we didn't take it as bad – imagine Monroe County. They closed the court system for days and days, almost weeks. In Marathon,

there basically was no court system so that was a major event for the entire state court system and also for us. And one of the consequences of it – of not that hurricane but of sort of seasons of hurricanes was the hurricane that hit Puerto Rico, just wiped out their power grid and their restructure resulted in our receiving many Puerto Ricans to Central Florida. And the pressure that that's going to put on all kinds of social services, but including the courts, and especially when any residents of Puerto Rico who are American citizens use the court system here, more often than not we have to provide an interpreter. And we're already stretched to the limit with interpreters. And so we have – that's going to happen in Orange County a little bit but it's really going to happen in Osceola County. And you sat down there in the beginning of your career. So I've heard that 55 to 65 percent of households in Osceola County, the first language spoken is Spanish.

>>**JUDGE DOHERTY:** It's a high percentage, yeah.

>>**CHIEF JUDGE LAUTEN:** And so we need to get interpreters into the courthouses to help those people, particularly in any case that's a due process driven case, criminal or a dependency case –

>>**JUDGE DOHERTY:** Injunction cases.

>>**CHIEF JUDGE LAUTEN:** Injunction cases. And we feel bad because we can't provide an interpreter in every single case, including what you do now which is a divorce. They have to bring their own person to interpret for them. But that's a real stress on the system and that's an area where we've asked the legislature for help. Before we leave kind of the legislature, I'm going to move to another topic in a second. Last year under the Supreme Court formula when the legislature was in session, we qualified for three additional circuit court judges out of the total of 4 for the entire state. That was kind of unheard of that one circuit would absorb 75 percent of new circuit judges if the legislature approved them, which I point to as evidence of we're working as hard as any circuit in the state, if not harder, because we need more circuit court help. We didn't get any, even though the legislature was generous to us with salaries, and we're really grateful to them, we, you know, we didn't get any growth in our judges. And this year we're the only circuit court under the same matrix that qualifies for an expansion. That's two circuit judges. No other circuit judges anywhere in the state were asked for, but the two for us and we'll see if we get them. And so let's talk a little bit about the effect

of our workload on what we do day in and day out. And so let's start a little bit with circuit civil. So in circuit civil, if you look at a graph of case filings, and this is not news to us but to our listeners it might be, if you look at a graph over the last ten years, you see this tremendous spike. In 2009, in 2010 and really the spike starts in 2008, 2009, and that as we know, we don't have to rehash this, that's the foreclosure tsunami in crisis. And so in circuit civil, we went from around 11,000 filings in 2006 to 41,000 filings in 2009 at the height. And now we have kind of come out of that tsunami, Judge O'Kane, and we have about 11,375 filings, and how many judges are in the circuit civil division?

>>**JUDGE O'KANE:** So starting January 1, since we had a change from last year, we have six judges who are in the general civil divisions. We have one judge who sits in business court, and then we have one judge who is a trial division judge. We have --

>>**JUDGE LAUTEN:** So, if you divide --

>>**JUDGE O'KANE:** -- eight.

>>**CHIEF JUDGE LAUTEN:** If you divided the last year's filings of 12,000 plus by those eight judges, you get about 1,500 cases filed every single year with the civil -- it doesn't work out neatly that way because Judge Roche, for example, does backup trials which we're going to talk about in a moment. So the number really is probably higher because she doesn't really carry a daily caseload. But just to illustrate to our listeners, so 1,500 filings in 2017 results in -- think about that number of cases for any judge and that is misleading just to state it that way because what we know from our experience is, a case doesn't get filed and closed in civil or most divisions in the same year.

>>**JUDGE O'KANE:** Right. So for example, by the end of November, because this is the last -- I don't have December's filings yet, but end of November just for the general -- six general civil divisions, we had about 13 and a half thousand pending cases.

>>**CHIEF JUDGE LAUTEN:** Thirteen and a half thousand pending cases for the whole division?

>>**JUDGE O'KANE:** For the circuit civil, for just the six divisions. So each judge on average has, you know, around 2,000 or -- 2,000 or more cases each.

>>**CHIEF JUDGE LAUTEN:** And again – you know, once again, I think that kind of comes as a little surprise to the public because most of the time people focus on a single case that interests them. Either they're involved in it or they know their neighbors are involved in it, or they watch it on TV and until you get into the system, sometimes you're not aware of that kind of – and so I tell people who want – lawyers who say, oh, you're a judge, I want to become a judge, what's it like? I say, well, it's fascinating, it's great work, it's intellectually challenging, but what you have to stop and think about a little bit is the speed at which you have to operate just to stay afloat because of the numbers of cases. So we had eight judges – well, we have how many right now?

>>**JUDGE O'KANE:** We have eight now.

>>**CHIEF JUDGE LAUTEN:** Eight now. Did we have nine last year?

>>**JUDGE O'KANE:** We had nine last year.

>>**CHIEF JUDGE LAUTEN:** So we should share with the public that each year the judge's fill out a sheet where they tell the chief judge, here's where I'd like to be assigned next year and we call that rotation. And then towards the end of the year judges are assigned for the calendar year to where they will be. And in connection with that, we, as a group, I, as the chief judge, but really assisted by you all, take a look at workload distribution across all the divisions to say, are we putting our judges where the work is so that they can close cases. We needed three more judges last year and we didn't get them, so obviously, we have to say, well, what do we do with our workload demands and the judges? And we, all of us, I had to ultimately decide it, but you all were very helpful to me, you know, we spent a lot of time thinking about what do we do with the number of judges that we have and the caseload that we have? And we made a hard decision – I did, which was to close one of our two business court divisions. And that was very painful because we started business court in the state of Florida when Judge Perry was chief judge. Started with one and then we expanded it to two because of volume. And we took that judge and we moved him over to the family division. So Judge Doherty, maybe you can tell the listeners a little bit about numbers in family and then we'll talk about why we chose to close down one business court civil division and move it over to family.

>>**JUDGE DOHERTY:** Yeah, recognizing what a big decision it was for you as chief judge, but I know it's something that you – and we've given you information, we've looked at for – hard for a year. And it actually started almost two years ago in Orange County. Up until 2016 there were eight family division judges. Four of those handled what I'll call general domestic and three handled the injunction cases and associated general domestic cases. Recognizing that our division has 22,000 cases –

>>**CHIEF JUDGE LAUTEN:** Pending cases.

>>**JUDGE DOHERTY:** About at that time. About 22,000 pending cases with that number of judges, it ended up anywhere from 4,500 to 6,000 per judge of pending active cases. So you taking a look at it, in 2016 added a half division to give domestic and the people that come into domestic some additional judicial help, and that's where you created the division that was half probate and half domestic. And that was wonderful for domestic to have that additional half judge. And then in 2017 continuing to look at the numbers with – the number of judges and the number of cases assigned to each domestic judge, it was still ranging about on the low side of 4,500 to the high side of 6,000 per judge that you made the decision, which is so wonderful for the people in Florida that are in domestic court to add another judge beginning January 1 of 2018. So we now have eight and a half, five and a half general domestic and three of the domestic violence. That has brought down the case assignments per judge from the 45 to 6 to almost 35 to 4900. We won't see the results right away, but hopefully, throughout this year, getting that new division open, it's going to give the families in Florida more access to the judiciary and getting their cases heard more quickly, and giving them more time in getting the orders out, more time that the judges have to generate as a result of the hearings.

>>**CHIEF JUDGE LAUTEN:** Yeah, so in reaching this decision, we looked at our own numbers first. And I invited input from all of the administrative judges who were amazingly, I think, objective about this as opposed to saying, I'm just going to protect my turf. Let's take a look at what's best for the overall circuit. And then the other thing we did was we looked at other circuits sort of similarly sized and said, did they have more resources, the same resources, or fewer resources than we have? We found maybe we were a little under-resourced in family compared to circuits of a similar size.

>>**JUDGE DOHERTY:** The best information we could get in collecting, so as you pointed out at the beginning of this podcast, that we're the third largest in Florida so that's behind Miami-Dade and Fort Lauderdale. And then the next circuit behind us would be the circuit where Hillsborough County is located, so – but to put it into perspective, our case numbers behind Fort Lauderdale was nominal, it was less than a thousand difference, and yet they had, probably four more – at least four more judges assigned to domestic.

>>**CHIEF JUDGE LAUTEN:** Well, I think this just illustrates that our need last year for three, this year for two circuit judges, it's not illusory and it's not just that we made up some numbers, of course we didn't. We have a documented and demonstrable need to expand the number of judges to handle these cases. And it's not that business court cases aren't important. They're very important to the health of our community, but I think we all concluded, and I certainly concluded that there were families in crisis in family court. And those people entering the family court are often in – well, there almost always in psychological stress, financial stress because of the divorce. And sometimes there's even violence involved and substance abuse, and just in terms of where do we allocate scarce resources, the decision was made we've got to get help there. And hopefully if the legislature gives us what we qualify for this year, two additional judges, first of all, I think maybe Osceola County needs some help in its unified family court. I'm going to take a close look at that. And I'd like to restore business court if I can, but I'm going to have to have at least two judges to do that because I think if we just got one, we'd probably still have to help families first. If we get two, we can maybe reopen that business court division.

It's interesting, Judge O'Kane, because while filings have kind of gone down in civil, you know, in a five to ten year trend, what's increasing are jury trials.

>>**JUDGE O'KANE:** Right.

>>**CHIEF JUDGE LAUTEN:** And I think last – well, in 2016, we had more jury – civil jury trials than we've ever had in a single year in the circuit, and that's a curious statistic in light of fewer filings.

>>**JUDGE O'KANE:** Well, but it's significant because whatever time the judge is spending in the courtroom in trial is not time that he or she can spend in the office dealing with

the work that's coming in or even making him or herself available for hearing time. And so when you look at the numbers, it is pretty astonishing. The numbers that I have, at least through 2016 is we had over 100 jury trials. That's just number of trials that collectively we were in trial over 400 work days. So that's a significant number of work days. And you know, it used to be many, many – many years ago when I first started practicing back in the early 90s, it seemed like the judges were in trial but maybe a handful a year. Judge Doherty, you were trying cases back then too. What was your impression back then?

>>**JUDGE DOHERTY:** Yeah, the volume wasn't there.

>>**JUDGE O'KANE:** Right, the volume wasn't there and the number of trials weren't there, and so – but now, that's certainly not the case. And so when you're trying to meet the needs of the attorneys, and the members of the public who want hearing time, so you've scheduled your hearing days to be in hearings all day long, and then you're in trial every one of your trial days, you know, again, a lot of work is being done at night, over lunch, on the weekends, early in the morning just to keep up with the volume. So the number of trials definitely has affected the workload in the civil division.

>>**CHIEF JUDGE LAUTEN:** So here's something we did last year for the first time. We hadn't done it before. We used to have two judges that we call backup trial judges in criminal because there were a high volume of trials in criminal, although it's a surprise to the public to learn that only 5 percent of the cases that are filed in criminal go to trial. There are so many filed, but that's a lot of trials. You know, ten thousand cases are filed, you know, that's 500 jury trials. So you know most cases resolve, but the volume is high enough that there are a lot of cases in trial. But with the increase in our circuit in civil jury trials, we took one of those trial judges out of criminal and put her, Judge Renee Roche in civil to help get cases so that they were ready to be tried. 98 percent of them settle, but they don't settle very often unless you have a judge saying, I'm ready to try your case. If the litigants think it's not going to get tried, then they'll slow down a little bit. But if they think they have a trial deadline, they'll either resolve it if it can be resolved, and most of them can, or they'll try it. So we experimented with that and we're going to do it again this year.

>>**JUDGE O'KANE:** Right, it worked out great.

>>**CHIEF JUDGE LAUTEN:** The feedback we got from – certainly internally was positive. I think externally too. What are your thoughts on that?

>>**JUDGE O’KANE:** I think it was because people knew when they were going to have a trial, so often times because there were so many trials pending on one docket, you might have case number one and that’s ready to go on the first Monday, and everybody else is just sort of on call, or they’re not getting a time certain which obviously is much more preferable for them and their clients, particularly if they have witnesses or parties coming in from out of state. And so I think the judges in the general civil divisions were able to say to the lawyers, okay, your case is going to Judge Roche. That’s the number one case. I’m only sending her two cases. She’s going to cover for me for three weeks, and then I’m going to take these other cases. So the lawyers and the parties knew that they had a really high probability of going to trial. And so as you know, that forces people to make decisions. Judge Roche was really busy last year. She tried a lot of cases for the judges in the general civil divisions, and they were trying cases at the same time. And so I think that that really worked to help the judges in general civil to have that trial backup. And when Judge Roche had time, what she would do is she would bring the lawyers in ahead of when the trials were scheduled and sort of do a mini case management, if you will, and find out what were the legal issues, what were the factual issues. Tell me about numbers of witnesses and are people coming in from out of town. And so she invested some of her time to handling some of these pretrial matters that helped her with handling the trials as well. So I’m glad that Judge Roche is going to be helping us again next year – this year rather.

>>**CHIEF JUDGE LAUTEN:** This is an anecdote I’ve heard from a lot of our colleagues. I’m curious your reaction to it. A lot of judges are saying, even though numbers might be down, they feel like complexity of the kind of cases filed is up. What’s your response to that?

>>**JUDGE O’KANE:** Well, I agree with that simply because I’m in business court and the cases tend to be much more complex.

>>**CHIEF JUDGE LAUTEN:** But what about even in general civil?

>>**JUDGE O’KANE:** But even in general civil, you know, the cases that are being tried are not cookie-cutter cases where you just review the law ten years ago and it still has



application. I mean, obviously, there are some general themes, but because case law is changing in a rapid pace, you know, it does take everyone a little bit of time to keep up to speed on that.

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

>>**JUDGE O’KANE:** So, yeah –

>>**CHIEF JUDGE LAUTEN:** And so a medical malpractice trial – well, you did those as a lawyer so even though you’re not currently in the civil division, but you were, I’m going to ask you to jump in too. I mean, those cases, you can’t try those in a matter of days, can you? Those take at least a week or more.

>>**JUDGE DOHERTY:** In general, yeah. One, picking a jury, I think, it’s a unique process from other general civils because people have strong feelings and jurors have strong feelings. And then there’s each malpractice case can be so unique and the medical issues that are involved.

>>**CHIEF JUDGE LAUTEN:** So those take a while to try. Automobile accident cases are probably tried a little faster, but you never know.

>>**JUDGE DOHERTY:** You don’t know.

>>**JUDGE O’KANE:** You don’t know.

>>**CHIEF JUDGE LAUTEN:** Contract disputes, those can be straight forward or complicated. Usually if they’re straight forward, they settle in mediation, so it’s the ones what aren’t so straightforward –

>>**JUDGE DOHERTY:** Products liability.

>>**CHIEF JUDGE LAUTEN:** Products liability.

>>**JUDGE DOHERTY:** Nursing home.

>>**CHIEF JUDGE LAUTEN:** Nursing home liability. Accountant liability.

>>**JUDGE DOHERTY:** Eminent domain.

>>**CHIEF JUDGE LAUTEN:** Legal malpractice.

>>**JUDGE DOHERTY:** Yes, it goes on.

>>**CHIEF JUDGE LAUTEN:** Those are hard cases. And then we haven't even touched on criminal which is, you know, a lot of complex – most of the third degree felonies, they tend to get resolved and many misdemeanors get resolved. But what you're trying are the more complicated criminal cases.

>>**JUDGE O'KANE:** Of course, and one of the challenges in a general civil division is that there's so many unique and different legal issues that come up that even if you were a civil practitioner, you know, before you became a judge, I mean, you never would have practiced in an area where you've covered every civil legal issue that you're going to get in the general civil division. So to a certain extent, the judges in general civil are, you know, they're jacks of all trade, if you will, because they have to know about negligence cases. They have to know about contract cases. They have to know about employment cases. They have to know about collection cases. They have to know about mortgage foreclosure cases, and so that's a challenge just to keep up with the law as it's changing in all of those unique and discrete areas.

>>**CHIEF JUDGE LAUTEN:** So I'm reading a biography of Lincoln right now, and you know, he practiced law in his lifetime and he was a generalist. But the phrase I've heard today is the only generalist left in law are judges because practitioners can't be generalists anymore. It's not the nature of the practice; it's too complicated. You have to specialize to survive and so, but the judges are the last generalists because you might be in civil, you might be in family, you might be in criminal and when you're in civil, it's not like you are only trying personal injury cases, if that's what you did. You try everything, so we maybe are the last generalists which is kind of interesting. Well, let me summarize this: So last year we needed three additional judges, this year we need two. I think everybody is working hard. You know, we have a need for magistrates and staff attorneys and interpreters, so it's not just judges. We really need support services to operate as efficiently as we can. And one of the ways that we've survived is that we have leaned heavily on technology to help us be more efficient. So every judge has a Microsoft surface pro, computer that they can take home with them and do legal research on and look electronically at dockets, and take that same computer into the courtroom or into his or her chambers and that's helped. We have tried to push out as much information to our users, the public, through these podcasts and through our website, through Facebook and through

Twitter. And when I became chief judge, honestly I was apprehensive about all of the social media sources and was nervous about should we -- it's not like we didn't have social media, but should we ramp it up into Twitter and Facebook, and we decided let's do it because we could always scale back. And now I think that that's, you know, been a success. Well, we gained a new judge, Jamie Grosshans, and she's in county. And one statistic I like to tell our listeners or tell the public when I get a chance is, in terms of gender balance, we probably have, you know, the best record in the state because we have more women who serve as judges in the Ninth Circuit than men. And so it's just about at 51/49 percent, so in terms of gender balance, we have a lot of diversity. Don't have as many minorities, both African American and Hispanic/Latino as the population reflects, and that's a challenge for us. We can't control that, but it's just out there and it exists. One of the issues last year was racial bias in sentencing, and racial bias in the court system, in the justice system. And we have always, maybe the public doesn't know this, but we have always talked about implicit bias and bias, and every judge I know is committed to their core about I want to be a fair and impartial person. And so we conducted our own internal training without a lot of fanfare, but we brought experts in to talk to us about implicit bias in our conferences, addressed that, and we are going to continue to address that, and I think for years to come. And it's a conversation that we need to continue to have. It's not easy to have sometimes, but it's really important to have and as chief, I'm trying to reach out into the community and talk in the upcoming weeks -- I'm on a diversity panel -- about diversity and justice and racial issues in the justice system. But we worked on that. We're going to continue to work on that. Technology has helped us a little bit to be as efficient as we possibly can and we're going to always constantly be looking at that.

Well, we lost two great colleagues right at the end of the year. It was very difficult. We lost Judge Ted Coleman who was a chief judge in his tenure and sat in almost every division. And we lost Judge Rom Powell. I tried cases in front of Rom Powell and I think both of you appeared in front of him. So I want you to just share a few thoughts about Judge Coleman and Judge Powell. I'll start with Judge Doherty and I'll go to Judge O'Kane.

>>**JUDGE DOHERTY:** Yeah, I had the privilege of appearing when I was a practicing attorney in front of both Judge Powell and Judge Coleman, and both of them were consummate professionals. They took their work seriously. They -- anything I could have asked for from a

judge, they listened, they evaluated. Judge Coleman brought his own sense of humor to it which was entertaining and actually appreciated at times when things would get pretty tense. Judge Powell was as, you know, professional and thoughtful every time I appeared in front of him, and I learned from both of them. And they're going to be missed to the legal community.

>>**JUDGE O'KANE:** And I agree with everything Patty said. I remember when the civil courts were in the Angebilt Hotel and there were these small, little hearing rooms and small courtrooms. And back then Judge Powell had a schedule where ex parte hearings which you know are just sort of, you can go in and have a judge sign an order or have a short contested matter, those started at 8:30. But Judge Powell would start court at 8:00 o'clock in the morning and from 8:00 until 8:30 he would schedule short contested matters because he was an early riser and he was in the building early, and he recognized that that thirty minute window of time could be really, really productive. And so I would frequently see him at 8:00 o'clock in the morning and, you know, he was always very giving with his time. And he definitely would read the materials when you sent them to him in advance. And I was telling someone the other day that as a brand new attorney, I appreciated the fact that when my opposing counsel was a more seasoned attorney or an elder member of the Bar, Judge Powell didn't treat us any differently. And as a young attorney it was refreshing to appear in front of him and know that you were going to get the same fair shake as someone else was getting.

>>**CHIEF JUDGE LAUTEN:** Both men, very smart.

>>**JUDGE O'KANE:** Very smart.

>>**JUDGE DOHERTY:** Very smart.

>>**CHIEF JUDGE LAUTEN:** And if you got to know them, it was hard as a lawyer to get to know them, we got to know them as judges, very warm, but no nonsense in the courtroom.

>>**JUDGE O'KANE:** Right.

>>**JUDGE DOHERTY:** Right.

>>**CHIEF JUDGE LAUTEN:** And I'm -- sometimes, you know, when we're in our courtroom now with younger lawyers and we try to be no nonsense, and they bristle a little bit at it, I think, well you should -- you should have made an appearance in front of Judge Coleman or

Judge Powell, because they wouldn't put up with stuff, that maybe, you know, we shouldn't put up with either. But it's a little bit of a different era, but very smart, very hard working, really generous people, but also no nonsense.

>>**JUDGE DOHERTY:** No nonsense.

>>**CHIEF JUDGE LAUTEN:** We're here to get the work done and they did it well.

>>**JUDGE DOHERTY:** Which was appreciated. It really was; it kept everybody on track and you knew you had to be prepared when you were in front of them.

>>**CHIEF JUDGE LAUTEN:** Right. Yeah, and that's – you know, that is a great theme, coming prepared. Well, let me ask you both this as we sort of wrap up. What do you see that are upcoming challenges in 2018 for your divisions or the circuit in general? You can go in either direction. I'll start with Judge O'Kane and then I'll go to Judge Doherty.

>>**JUDGE O'KANE:** Okay. So I think just really it's a continuing challenge that our circuit has and that is really how do we deliver the best possible service with the limited amount of resources that we have. And so just looking forward into 2018 for the civil division, obviously we're one – we're short one judge with the closure of Judge Myers' business court division. And so as a result of that, some business court cases were transferred to the general civil divisions so the general civil judges are seeing a little bit of an increase in the work that they're going to be doing. Fortunately, Judge Munyon is going to take over the tobacco cases and I know that that's going to keep her busy. But the general civil judges are going to see a little bit of an uptick in the mortgage foreclosure cases and some general civil cases.

>>**CHIEF JUDGE LAUTEN:** Yeah, we raised the jurisdictional limit for business court filings. Before it was \$75,000 to \$500,000.

>>**JUDGE O'KANE:** Right, and so that's I think going to help with managing the cases that are still in business court. And we're still going to see, I anticipate an increase in the number of trials that each of those divisions are going to have, and so fortunately, Judge Roche is there to help us. And so it's just a continuing challenge, how do we deliver the best service possible with limited resources.

>>**CHIEF JUDGE LAUTEN:** And so for our listeners, we're going to certainly monitor that during the year. And next year, when we're at that rotation stage, it's usually August to September, we'll take a look at, do we need to adjust differently. Do we need to do something? Have we gotten out of balance or out of whack somehow? You know, nothing – in that sense, there's nothing that's permanent. I mean, we could always readjust back.

>>**JUDGE O'KANE:** Well, hopefully, the legislature will give us some additional judges and then we can restore the other business court division.

>>**CHIEF JUDGE LAUTEN:** Me too. I hope for that too. What do you see going forward, Judge Doherty?

>>**JUDGE DOHERTY:** So with the closure of the business court, it created a new domestic division so we're cautiously optimistic that that's going to give some relief to the judges, but more importantly to the public. And the – our whole goal that we're constantly looking at is how can we get the services and access to the courts more friendly and more available to people in the domestic area who are going through really stressful times, who have one of the most prized things in their lives, their access to their children can be affected. Their ability to support themselves when a marriage is being dissolved and with the opening of this division, we're hoping it will open hearing time so that they can get in front of a judge more quickly. That it will get shorter waits for trial time, but in a combination with that, which we haven't talked about, Judge Lauten, our colleague, Judge Blackwell, has been working really hard on the unified family court. And that now is up and running with a dedicated case manager and we're really working hard now to promote one family/one judge to decrease the courthouse visits for a family. That takes them away from their jobs, their lives. So that is now being implemented at the next level this year. So we've got the UFC, we've got a new judge and a new division. And we're also now taking the step to look at electronics in the courtroom. What you were saying as far as technology, to try and really encourage and provide a service where people can appear remotely. So maybe again, if they aren't in the close vicinity and can't get to court, we can still make the courthouse available to them by appearing electronically so that's in the process.

>>**CHIEF JUDGE LAUTEN:** For 2018, from my perspective, a couple of issues. One is courthouse security, which is always a concern for us, and we just taped a podcast about the

shooting that we had in the courthouse in the Provenzano case and it's a reminder that you just have to be diligent all the time about security. So what we're trying to balance here in terms of security is I want people to feel welcome to their courthouse because it their courthouse. They're entitled to come here and do business and be welcomed and yet also be a secure facility and so that's – we're pretty fortunate because I'm on a Supreme Court committee and travel around the state, and we have – we have more resources than most. There are a couple of other counties that have equal to or a little more resources, but we're right up there at the top and kind of a model and appreciate Orange County and Osceola County's contribution, the Sheriffs and County Commissioners to making sure that this place is safe because we want it to be safe. Two, we're going to talk about the civil citation program at a summit in February to see are we maximizing that program? Are we using best practices? Three, we want to continue to improve our technology. We're going to add Wayfinding monitors in the building so, again, so that people feel welcome when they come in and it's less confusing. We know it's intimidating and confusing and we want to eliminate as much of that as we can, whatever we can control, and so in technology both for the public and then for our own technology. Then we're going to monitor this workload distribution, see what the legislature does this year. Hopefully, knock on wood, we won't have to close this courthouse for other than already scheduled holidays during the year next year because that's really disruptive and those are – oh, and the other challenge I want to mention is that we have a significant challenge providing language interpretation to our users, both in this courthouse and in Osceola County. So the use of interpreters, remote interpreting, live interpreting, in-person interpreting, that's going to be a challenge for us and it always is and the state. It has become a major issue statewide, so retaining our employees statewide is an issue in getting them salary adjustments that were promised years ago and we got one-half of that but we need some more. Court interpreting, staff attorneys, case managers –

>>**JUDGE DOHERTY:** Magistrates.

>>**CHIEF JUDGE LAUTEN:** Magistrates. All of that is at the statewide level, recognized issues by the Florida Supreme Court. And we have those same issues, plus some of our unique issues. Of course, we mentioned, hopefully and expansion of the number of judges that we have so that we can provide services. Having said all that, you know, as Chief Judge I get to look at other circuits and sometimes get to look at other states and we have our challenges

but we are fortunate, I think, to sit as judges in the Ninth Circuit in Central Florida. And I think the lawyers here, when they travel around the state, feel fortunate to practice in our circuit because by and large, the staff and the judges, I think, are highly dedicated, hard-working, and very competent people. And so I'm optimistic about our circuit. Everyone has challenges in whatever business they have. We have ours but I'm very optimistic about our workforce and I'm very grateful to our workforce for how hard they work and how diligent everyone is, from the judges all way down to all the staff that assist us and assist the public. I want to thank both of you, I know you're very busy, for taking time out for this review of 2017. It was fascinating to me. I'm sure there were things we're going to think, well, we absolutely should have covered this but we didn't, but we are a little time limited. So thank you both for joining me today and best of luck in 2018.

>>**JUDGE O'KANE:** You're welcome. Same to you.

>>**JUDGE DOHERTY:** Thank you for the invitation.

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