

**OPEN NINTH:
CONVERSATIONS BEYOND THE COURTROOM
COURT'S ADJOURNED
EPISODE 63
DECEMBER 10, 2018
HOSTED BY: FREDERICK J. LAUTEN**

(Music)

>> 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:** Hello, and welcome to Open Ninth. I’m Chief Judge Fred Lauten, and I’m joined today by three of my favorite colleagues who, combined, have over 50 years of experience on the bench in the Ninth Judicial Circuit, and they are each retiring from service to the citizens of this region at the end of this year, December 31st, 2018. And so I wanted to take this opportunity to talk to them about the lessons that they have learned and the experiences that they’ve had while serving as judges in our circuit, and thank them for their service to the citizens of Orange County.

And I’m looking forward to this conversation, although I have to say I have very mixed feelings about the end of the year where we will no longer, on a daily basis, meet Judge Sally Kest and meet and see Judge Marc Lubet and work with Judge Jose Rodriguez here in the building. So I’m a little melancholy about that thought, but I’m very grateful to have served with them and thank them for their service.

So let me start with Judge Kest; Sally Kest. Why don’t you tell our listeners a little bit about what you’ve done here in the Ninth Circuit and your experience that led you to the bench?

>> **JUDGE KEST:** All right. Well, coming to the bench, I was -- practiced in Juvenile when I first got out of law school, after a year at the Appellate Court in the Fourth District. And then I was a prosecutor in the Juvenile system back when the State Attorney did DCF and Delinquency -- did Dependency and Delinquency, and did that for three years. And then I went

into private practice and did juvenile defense and ultimately morphed into doing Family full time for over 30 years. And I'm board certified in Marital and Family law.

And at some point, I had thought that -- after I'd been in my career long enough, that I felt like I had had the experience and hopefully the judgement to be on the bench. I put my name in for Circuit judge, and here I am.

>> **CHIEF JUDGE LAUTEN:** So, Sally, you are a trailblazer in a couple of ways. How many women were in your law school class at FSU when you attended law school?

>> **JUDGE KEST:** Well, in my class, there were five. In the school, there were seven.

>> **CHIEF JUDGE LAUTEN:** And how many graduated with you, the year you graduated?

>> **JUDGE KEST:** Four.

>> **CHIEF JUDGE LAUTEN:** So you were one of four women to graduate from FSU Law School. Go Seminoles. What year was that?

>> **JUDGE KEST:** That was 19 -- goodness -- 70 -- 72 -- no, it would have been '72; undergraduate was '70, so '72.

>> **CHIEF JUDGE LAUTEN:** And then I understand you also blazed a trail by being one of the first five women in the Central Florida Association of Women Lawyers. Is that information accurate or not?

>> **JUDGE KEST:** I was not as involved in them when they first got started, because at that time, I had three kids by then. That was about ten years into practice, and I had three children and a going practice, and I was peripherally involved but not heavily involved in it at that time. But it's a wonderful group and I've always stayed involved with them, but not so much in a leadership role.

>> **CHIEF JUDGE LAUTEN:** And then one other area where I think you blazed a trail, but tell me if I'm wrong, I believe that you and your husband, John Kest, may be the first -- we've since had another couple -- but the first couple who were married and both sitting on the bench in the Ninth Circuit.

>> **JUDGE KEST:** Yes.

>> **CHIEF JUDGE LAUTEN:** Has anybody preceded you in that, that you know of?

>> **JUDGE KEST:** No. No, nobody has. And, in fact, the Sentinel did an article when we -- when I took the bench, because then that meant both of us were there.

>> **CHIEF JUDGE LAUTEN:** And so you -- all of this Juvenile experience as a practicing attorney, Family experience as a lawyer. But tell the listeners where it is that you sit right now. I think it's fitting where you're serving in your last year on the bench.

>> **JUDGE KEST:** Yes. I'm -- yes. I'm in Delinquency again, where I started out in my practice after the year in appeals. I was in Delinquency for three years. I was the Division Chief out at the Juvenile Court. And then I did -- when -- I went into private practice, the Family. And when I came on the bench, I ended up doing the same thing down in Osceola County; did Family -- did the Unified Family there. And then when I came to -- back to Orange County from Osceola, stayed in basically the Family or Juvenile Division the whole time.

>> **CHIEF JUDGE LAUTEN:** Great. Great. Well, again, thank you. Thank you so much for your service.

Let me turn to Judge Lubet. So, Judge Lubet, you were a trailblazer in a different area of the law, which was criminal defense.

>> **JUDGE LUBET:** Right.

>> **CHIEF JUDGE LAUTEN:** And if my information is right, I think maybe you were the first defense attorney in the region or the state to successfully argue spouse abuse syndrome as a defense to a case.

>> **JUDGE LUBET:** Yes.

>> **CHIEF JUDGE LAUTEN:** So why don't tell our listeners about that experience, and also about what you did before you came to the bench.

>> **JUDGE LUBET:** Well, before I came to the bench, I was a criminal defense lawyer. I did about 75 percent criminal defense work, and I did that not only in Florida but all over the United States. I had murder trials mainly throughout the United States in seven or eight, nine different states. And then I did about 25 percent Domestic.

And back in 1981, before a case came out called *Hawthorne v. State*, which finally recognized a spouse abuse defense, I tried a case where a woman had actually killed her husband while he was sleeping. And -- but she had been severely abused before that. And I argued the spouse abuse defense argument, even though it wasn't an accepted defense in Florida at the time.

>> **CHIEF JUDGE LAUTEN:** That didn't stop you.

>> **JUDGE LUBET:** No, of course not. You know me well enough to know that wouldn't have.

>> **CHIEF JUDGE LAUTEN:** Exactly right.

>> **JUDGE LUBET:** I argued that before a jury, and the jury acquitted her and found her not guilty.

And then the following year, during the time between that trial and the next year, the case of *State v. Hawthorne* came out, I think out of the First DCA, and they said that there is a spouse abuse defense in Florida. And I got another case of virtually the same issue; he was sitting in a

chair and she shot him. And -- but she had suffered severe abuse, so we went to trial on that and she was acquitted.

And those are the first cases that I was aware of, anyway, where a woman who was not being attacked at the time she killed her husband were [sic] acquitted. Before that, most women had been convicted of either manslaughter or second-degree murder. And that kind of skyrocketed my career. It got me a lot of national publicity.

And from that point on, I was in partnership with several other people, one who is Mark Blechman, one of our Circuit Judges now --

>> **CHIEF JUDGE LAUTEN:** Right. That's right.

>> **JUDGE LUBET:** -- for many years, and John Woodard, who's a County Court Judge up in Seminole County. And we tried cases all over the place.

And finally I got to a point where I decided that, after 32 years of practicing law, I wanted to do -- I didn't want to get out of the law, but I didn't want to practice anymore.

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

>> **JUDGE LUBET:** So I ran for judge, and here I am.

>> **CHIEF JUDGE LAUTEN:** So how long have you been serving on the bench?

>> **JUDGE LUBET:** I've served on the bench for 12 years now and --

>> **CHIEF JUDGE LAUTEN:** Right. Mostly in Criminal? One stint in --

>> **JUDGE LUBET:** Eleven years in Criminal -- well, fifteen months in Domestic Violence.

>> **CHIEF JUDGE LAUTEN:** You weren't counting, but --

>> **JUDGE LUBET:** I'm not -- I try and forget that part. The 15 months in Domestic Violence, and the rest of it on the Criminal Circuit Felony bench.

>> **CHIEF JUDGE LAUTEN:** Well, but in all honesty for our listeners, your skillset is so refined that you won an award from a local advocacy group for the time that you spent on the bench in Domestic Violence.

>> **JUDGE LUBET:** I did. The 15 months I was on the bench in Domestic Violence, during that time I was awarded the Justice of the Year award by the Central Florida Domestic Violence Council, which was interesting to me, but --

>> **CHIEF JUDGE LAUTEN:** Surprising?

>> **JUDGE LUBET:** Shocking to me, actually. Yeah. But they awarded that to me in a rather large ceremony out at Lake Baldwin Park.

>> **CHIEF JUDGE LAUTEN:** Congratulations.

>> **JUDGE LUBET:** And they had a lot of people out there.

>> **CHIEF JUDGE LAUTEN:** Yeah, that's great.

>> **JUDGE LUBET:** And that was a very nice award.

>> **CHIEF JUDGE LAUTEN:** We're going to come back in a minute to some of your experiences as a judge.

I do want to share with our listeners that I was a prosecutor, you were a defense attorney, we had a few cases together, and every single one of them you schooled me, which is a nice way to say you pretty much beat me whenever we went up against each other.

>> **JUDGE LUBET:** Not so true.

>> **CHIEF JUDGE LAUTEN:** And we had some fascinating cases together.

>> **JUDGE LUBET:** Well, you had a curse put on you.

>> **CHIEF JUDGE LAUTEN:** One of his clients put a --

>> **JUDGE LUBET:** Santeria curse.

>> **CHIEF JUDGE LAUTEN:** -- Santeria curse on me that took hold. I stopped getting notices to come to court, and judges were talking about holding me in contempt.

>> **JUDGE LUBET:** Yes, that did happen.

>> **CHIEF JUDGE LAUTEN:** And then apparently about chicken bones and blood, and a picture of me.

>> **JUDGE LUBET:** And a picture of you, yes.

>> **CHIEF JUDGE LAUTEN:** We'll come back to some more of those stories in a moment.

>> **JUDGE LUBET:** Thank you.

>> **CHIEF JUDGE LAUTEN:** So let me turn to the Judge with the most tenure here on the bench, Judge Jose Rodriguez, and -- who practiced as an appellate attorney and was in-house counsel for one of the larger companies locally, Tupperware, and was also a pioneer in our Circuit because -- as I'll have Judge Rodriguez elaborate, but Judge Rodriguez started Drug Courts here in Central Florida when Drug Courts were very new to the state and the nation. So there weren't many of them, and maybe the first to the fourth -- somewhere in that one, two, three or four category, and really Drug Courts took off here and everywhere as a result of that.

So why don't you tell our listeners about your experience in private practice and then Drug Court.

>> **JUDGE RODRIGUEZ:** Well, I worked as an associate for Akerman Senterfitt back in the '70s. I -- after going to work for Akerman, I wound up at Tupperware in corporate headquarters down in Osceola County. I started in Orange -- actually in Osceola County in the Ninth Judicial Circuit back in 1978 as a prosecutor, and I also was schooled by Judge Lubet, back then a defense attorney, in one of those gun-and-light cases in Osceola County.

So I had some appellate practice, I did trial work, and six years at Tupperware, which I think prepared me more than anything for the work that I do now in the Civil Division this time, as well as the first time, because I've rotated through almost every division. The one that I haven't had the pleasure and privilege of serving is Domestic Relations, because my wife practices in that area. And now my daughter also practices in that area.

>> **CHIEF JUDGE LAUTEN:** A pretty active practice, where you might have had to get out of a number of cases.

>> **JUDGE RODRIGUEZ:** Very much so. Exactly. Every case that has a child support order.

>> **CHIEF JUDGE LAUTEN:** But you started as a County judge.

>> **JUDGE RODRIGUEZ:** I did.

>> **CHIEF JUDGE LAUTEN:** What year did you start on the --

>> **JUDGE RODRIGUEZ:** 1987.

>> **CHIEF JUDGE LAUTEN:** And were you elected or appointed?

>> **JUDGE RODRIGUEZ:** I was appointed by Republican Governor Bob Martinez.

And then in '93, I was appointed by -- to the Circuit bench by Democrat Lawton Chiles.

>> **CHIEF JUDGE LAUTEN:** Fascinating.

>> **JUDGE RODRIGUEZ:** So I -- both sides of the aisle.

>> **CHIEF JUDGE LAUTEN:** I was appointed to the County bench by a Democratic governor, and the Circuit bench by a Republican governor, which is --

>> **JUDGE RODRIGUEZ:** There you go.

>> **CHIEF JUDGE LAUTEN:** I think we probably both take a little pride in that, in that we're really apolitical as judges.

>> **JUDGE RODRIGUEZ:** Absolutely.

>> **CHIEF JUDGE LAUTEN:** So you started on the County bench. I think you served in every division in County. Then in Circuit, you've served in every division but Domestic. Did you have a favorite, or not?

>> **JUDGE RODRIGUEZ:** Well, yes. Most recently, the Probate, Guardianship and Mental Health Division. The range that you -- of folks that you deal with, and the fact that you get a sense of not just accomplishment but of assisting others, and those folks that are vulnerable and that need someone to sit and to have the patience and the time to spend and to value who they are.

To me, it came at a point in my life, Judge Lauten, where I had a father-in-law that was 98 years old, my mother-in-law, 97. So to me, serving in that Probate, Guardianship Division was kind of like Charles Dickens' *Ghost of Christmas Future*, because I had the privilege of seeing what would happen if I didn't prepare, as well as it helped with the passing of my father-in-law, who just passed this past May, and seeing what was available -- the services that were available, understanding hospice and when hospice comes in. So in a way, it was a great gift that I served at the time that I did in that division.

>> **CHIEF JUDGE LAUTEN:** Great. Great.

>> **JUDGE RODRIGUEZ:** And it has helped me in creating a course now at one of the local law schools in Guardianship, which had never been taught there before.

>> **CHIEF JUDGE LAUTEN:** Tell our listeners a little bit about starting Drug Court.

>> **JUDGE RODRIGUEZ:** Well, it was back in -- actually, it was August 1st of 1997, that we started the first fully-operational Drug Court. It was very difficult because, well, nobody wanted to do it. And I had someone come to me and say, you know, Judge Rodriguez, we think

you have the personality to deal with these kids. And it's like, really. I was in the Juvenile Division, so I was working with juvies. And I will tell you that it was a single most in-depth experience in learning about child behavior, about family dynamics.

My kids were growing up at that time, so I got to see the good kids and the not so good kids, and how easy it was to turn. I learned that kids and drugs, they are difficult for them to deal with. But not confronting them and not having them be treated -- in other words, just giving them probation alone, isn't enough.

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

>> **JUDGE RODRIGUEZ:** The treatment and the constant supervision that the Drug Court program provided, that pulled a lot of kids out of the trouble that they were in, and in the path of addiction. Unfortunately, it didn't work for all of them. I know of one who wound up eventually on death row because -- his situation, which was so difficult.

But we started with the Juvenile Delinquency Drug Court. Then we moved to a Dependency Drug Court which we created for the parents who were addicted and had lost their children through abandonment, abuse and neglect. And then finally we did what I thought was the crowning jewel, which was the Reentry Drug Court. Because some Drug Courts -- folks like to do the easy, and that is dealing with folks that are at an entry level in drugs, and they're easy to basically move out of the system. But the reentry kids were those that were more like adults than kids, so you had to do different -- use different stratagem to get at them.

>> **CHIEF JUDGE LAUTEN:** Now, what -- do you know, was it the first, the fourth? How many Drug Courts in Florida existed before you started ours?

>> **JUDGE RODRIGUEZ:** The Dependency, I think there was only one, maybe there were two; one in Lauderdale, and the other one in Miami.

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

>> **JUDGE RODRIGUEZ:** I know --

>> **CHIEF JUDGE LAUTEN:** And now, in Florida, I know there's over 100 separate Drug Courts throughout the state.

>> **JUDGE RODRIGUEZ:** Oh, gosh.

>> **CHIEF JUDGE LAUTEN:** It's a therapeutic model and it's had all kinds of success.

>> **JUDGE RODRIGUEZ:** And it's even enshrined now in Statute.

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

>> **JUDGE RODRIGUEZ:** But I know for a fact that our Reentry Drug Court was the only one in the state, and maybe one of three in the United States, that took the hardcore kids coming out of the commitment programs, the juvenile prisons, and then -- and attacked their addiction.

I know that there were a number -- we eventually became a model Drug Court in the juvenile sense, where folks would come to visit to see how it was done. But there were very, very few. The Juvenile Drug Courts, I guess we were left alone because they were kids and they were out on Michigan, so we were able to really, really benefit the kids.

>> **CHIEF JUDGE LAUTEN:** Great. That's great.

Well, let me ask this, Judge Kest. How have you seen the practice of law change in your career both as a judge and attorney? Is there a description that you would give to how law has changed in its practice since you started?

>> **JUDGE KEST:** Well, the law hasn't so much changed, as people -- particularly in Family what we're seeing is people representing themselves. And I saw that in my practice in

that I would have people come to me after they had done their pro se divorce and had realized, after the fact, certain consequences of things they had done in their divorce and they wanted them fixed. And the problem with that is, once you have a final judgement, there are many things you can't change. And we have now, really, more people pursuing divorces pro se than with attorneys.

>> **CHIEF JUDGE LAUTEN:** Yeah, and we have court services that help those people.

>> **JUDGE KEST:** Yes.

>> **CHIEF JUDGE LAUTEN:** But is that a resource issue? It's just too expensive to hire lawyers, or people don't know they need a lawyer? What's your take?

>> **JUDGE KEST:** Some people have the resources. I mean, the ones who would come to me later had the resources. They didn't understand the ramifications of what they were doing and, you know, there's this thing, well, lawyers are just going to make us fight. And the reality is, with few exceptions, and I acknowledge that, most lawyers that I dealt with in the Family Law practice didn't want to fight. They wanted to reach a resolution that helped the family move forward and were doing things to actually ratchet down the anger, the --

>> **CHIEF JUDGE LAUTEN:** Gotcha. Gotcha.

How have you seen the practice of law change since you started? Is there a description you could give to that?

>> **JUDGE LUBET:** Yeah. I think when I started -- I started in '74, and the criminal lawyers in this town back in the '70s and '80s, and even into the '90s, were, in my opinion, really good lawyers. They were really good lawyers. They followed the rules of law, they

followed the Canons of Ethics, generally. And they generally were totally respectful to the courts. And I think --

>> **CHIEF JUDGE LAUTEN:** You feel that's broken down?

>> **JUDGE LUBET:** I think it has broken down, yes.

>> **CHIEF JUDGE LAUTEN:** Is that what -- all of that, their skillset, or their approach to the court or respect to the court?

>> **JUDGE LUBET:** I think both.

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

>> **JUDGE LUBET:** Yeah. We're turning out so many lawyers now in Florida; so many more members. When we joined the Orange County Bar there were maybe 500 or 600 lawyers in the whole Orange County Bar. Now there's, what, like almost 4,000 or something?

>> **CHIEF JUDGE LAUTEN:** Yeah. When you and I joined the Bar, you joined a little earlier than I did, but not --

>> **JUDGE LUBET:** Yeah. Right. Right.

>> **CHIEF JUDGE LAUTEN:** There were 30,000 lawyers in Florida.

>> **JUDGE LUBET:** Right. Now there's --

>> **CHIEF JUDGE LAUTEN:** Now there's 106,000 lawyers in Florida.

>> **JUDGE LUBET:** That's right.

>> **CHIEF JUDGE LAUTEN:** So that's a 250 percent increase just in our professional lives. That's astounding.

>> **JUDGE LUBET:** It is. And what's happened is --

>> **CHIEF JUDGE LAUTEN:** And how many law schools when you started practicing?

>> **JUDGE LUBET:** When I started practicing, there was, what, Stetson, Florida, Florida State and Miami.

>> **CHIEF JUDGE LAUTEN:** And now there's 12.

>> **JUDGE LUBET:** Right.

>> **CHIEF JUDGE LAUTEN:** Four when you started.

>> **JUDGE LUBET:** That's about right.

>> **CHIEF JUDGE LAUTEN:** So that growth, you think, has had an impact on the profession.

>> **JUDGE LUBET:** Absolutely. What's happened is they're turning out so many lawyers, and a lot of lawyers think that if they get into either Domestic or Criminal, especially, they're going to pick up a real quick fee of an amount of money.

>> **CHIEF JUDGE LAUTEN:** I see.

>> **JUDGE LUBET:** And they're, many times, not equipped to handle the cases they're taking. And it's very noticeable in the courtrooms.

>> **CHIEF JUDGE LAUTEN:** So one of the ways -- I know one of the ways that you've addressed this issue is, you are known in our Circuit for internships with law students who --

>> **JUDGE LUBET:** Right.

>> **CHIEF JUDGE LAUTEN:** Most often, more than one; two, sometimes three law students spend a semester with you.

>> **JUDGE LUBET:** Every semester.

>> **CHIEF JUDGE LAUTEN:** And spend time in court, spend time in your chambers. You're known for that. Is that in part because of this concern you have about producing

talented --

>> **JUDGE LUBET:** Absolutely. I wanted to help the -- and during the summers, I get lawyers from all over the country. I've had lawyers from University of Chicago, from -- I've had lawyers from Michigan, I've had lawyers from George Washington in D.C. And -- or they're all law students, they're not lawyers. But they're all law students.

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

>> **JUDGE LUBET:** And -- but during the fall and the winter, all of my interns are from Barry and A&M. And they're -- I mean, their eyes just get so opened by what they see, because I let my interns sit on the bench with me every day.

>> **CHIEF JUDGE LAUTEN:** Right next to you.

>> **JUDGE LUBET:** Right next to me. And they're doing research.

>> **CHIEF JUDGE LAUTEN:** What an experience. Yeah.

>> **JUDGE LUBET:** And every day they --

>> **CHIEF JUDGE LAUTEN:** So how many of those interns are practicing attorneys now?

>> **JUDGE LUBET:** All of them I know of, except for, I think, two.

>> **CHIEF JUDGE LAUTEN:** You swear them into the Bar?

>> **JUDGE LUBET:** I swore a number of them in. Yes, I swore --

>> **CHIEF JUDGE LAUTEN:** That had to be pretty -- that had to feel pretty good.

>> **JUDGE LUBET:** A lot of them were PDs, some of them were State Attorneys, but a lot of them are in private practice.

>> **CHIEF JUDGE LAUTEN:** So have any of them appeared in front of you?

>> **JUDGE LUBET:** Oh, yes.

>> **CHIEF JUDGE LAUTEN:** Any of them argue, Judge, you're the one who told me to do it this way; why are you sustaining that objection. Just teasing.

>> **JUDGE LUBET:** Because I told you wrong, that's why.

>> **CHIEF JUDGE LAUTEN:** Okay. Judge Rodriguez, very briefly, practice of law change in your career. Would you -- what would you describe as an evident change, if there is any?

>> **JUDGE RODRIGUEZ:** Well, where I really noticed it was in Probate. And there are those who -- because they don't know what they want to do, they figure they're going to dabble in Probate. And oh, my goodness.

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

>> **JUDGE RODRIGUEZ:** Without a mentor or without any type of classroom experience, it's awful.

>> **CHIEF JUDGE LAUTEN:** Well, nobody -- I'm surprised nobody mentioned technology. And one thing that's changed radically since we --

>> **JUDGE KEST:** You know that we don't do technology, Marc and I.

>> **CHIEF JUDGE LAUTEN:** Maybe that's it. You do have a computer, don't you?

>> **JUDGE LUBET:** I do, and my JA turns it on for me every day and shows me how to use it.

>> **JUDGE RODRIGUEZ:** I have to fight the lawyers to come by video to do the things -- notebooks. I refuse. I tell them, look, I do my weight-lifting at the Y; I'm not going to lift weight -- give me the USB.

>> **CHIEF JUDGE LAUTEN:** Right. So you fully adopted technology.

>> **JUDGE RODRIGUEZ:** Absolutely.

>> **CHIEF JUDGE LAUTEN:** But that's been a big change.

>> **JUDGE LUBET:** Well, when the three of us graduated -- you know, these young people today who are graduating from law school don't get it.

>> **CHIEF JUDGE LAUTEN:** You sound old when you say --

>> **JUDGE LUBET:** I am old. But -- and even, I think, when you were in law school, which was a few years after me --

>> **CHIEF JUDGE LAUTEN:** Not many.

>> **JUDGE LUBET:** -- we didn't have computers in law school.

>> **JUDGE RODRIGUEZ:** We didn't have Westlaw.

>> **JUDGE LUBET:** We didn't have Westlaw. We had to go to the library and research.

>> **CHIEF JUDGE LAUTEN:** I know. I'll tell you when it started. So in my law school, in this back room in the law library, there was this FIRSt LexisNexis machine under lock and key.

>> **JUDGE RODRIGUEZ:** Yeah.

>> **CHIEF JUDGE LAUTEN:** You had to get permission to go back there. When -- I argued a National Moot Court argument, and they said, you can have one hour on LexisNexis because it's costing us so much money to use it.

>> **JUDGE RODRIGUEZ:** Yes.

>> **JUDGE LUBET:** Yes.

>> **JUDGE KEST:** Yes.

>> **CHIEF JUDGE LAUTEN:** And you have to have a faculty advisor with you when you go. Now, today, we just carry it around. We can access it on our phones, we can access it on our laptop, so --

>> **JUDGE RODRIGUEZ:** Yep. Even the Internet.

>> **CHIEF JUDGE LAUTEN:** But I'm surprised nobody sort of mentioned technology.

>> **JUDGE KEST:** I have two sons that live that way.

>> **CHIEF JUDGE LAUTEN:** You do, right.

>> **JUDGE KEST:** They never carry paper around. I want everything in paper.

>> **JUDGE LUBET:** And I still, though -- I have lawyers coming into my courtroom for motion hearings or even for trials and not bring a computer with them.

>> **CHIEF JUDGE LAUTEN:** Oh, well, that's --

>> **JUDGE LUBET:** So they can't even research during the trial or the hearing.

>> **CHIEF JUDGE LAUTEN:** Yeah, that's a little surprising.

>> **JUDGE LUBET:** It's terrible.

>> **CHIEF JUDGE LAUTEN:** Well, let me switch gears a little bit. I'm going to go a little rapid fire here with you, if you'll let me. So here's the question; I'll give you 20 seconds to think about it, and then we're going go through your answers. What one case has had the most profound impact upon you as a judge? Think about it for a second.

Judge Lubet?

>> **JUDGE LUBET:** Probably the case that had the most profound impact on me as a judge was the Lisa Nowak case.

>> **CHIEF JUDGE LAUTEN:** Tell our listeners a little bit about it.

>> **JUDGE LUBET:** That was the case of the astronaut who drove from Houston to Orlando to confront her boyfriend's new girlfriend. And that case got such national attention, I had a camera in my face literally eight hours a day when I was in court doing a -- I think we did four or five, six-day suppression hearing, and cameras in court continually. Newspapers calling my JA; every day, 15, 20 newspapers calling. Papers from Russia, papers from China.

>> **CHIEF JUDGE LAUTEN:** So this was before Casey Anthony?

>> **JUDGE LUBET:** This -- oh, yeah. This was just before Casey Anthony.

>> **CHIEF JUDGE LAUTEN:** At that time, maybe the most media-intense profile case until Casey Anthony.

>> **JUDGE LUBET:** It was the highest-profile case until Casey Anthony.

>> **CHIEF JUDGE LAUTEN:** And what the outcome of that case?

>> **JUDGE LUBET:** The outcome of that case was the State dropped all the serious charges they had filed against Lisa Nowak. She finally pled to burglary to a car because she stuck her hand through the window. And she pled to battery because she sprayed some mace at the victim. And she ended up in my courtroom. I treated her just like I treat any other first offender on charges like that; I put her on probation.

The Navy, on the other hand, they discharged her with a less than honorable discharge and demoted her in rank and so forth.

>> **CHIEF JUDGE LAUTEN:** I see. Right. All right.

Most profound case?

>> **JUDGE RODRIGUEZ:** It was profound from the point of view of allowing me to see how others saw me. And this was -- and I guess garnering more patience than I knew that I had. And it was a case where Court TV was involved, five days in court, camera in your face.

And it dealt with two women who were fighting at Disney over who was going to butt in line at the teacups. And while it --

>> **CHIEF JUDGE LAUTEN:** You're kidding me.

>> **JUDGE RODRIGUEZ:** No, I'm not. And while it seems to be --

>> **CHIEF JUDGE LAUTEN:** And what were the -- was it a criminal charge?

>> **JUDGE RODRIGUEZ:** It was a criminal charge. She was charged with aggravated battery, because apparently they --

>> **CHIEF JUDGE LAUTEN:** Oh, so they got in a fight.

>> **JUDGE RODRIGUEZ:** Oh, they got in a fight, and one of them grabbed the lanyard around their neck trying to strangle her.

>> **CHIEF JUDGE LAUTEN:** Oh, okay. So that -- I didn't realize that was -- it went that far. So -- okay.

>> **JUDGE RODRIGUEZ:** Yeah. Oh, yeah, yeah. And what wound up happening was that as the case was developing in court and people were watching it, one of the two individuals -- the actual -- the person that was being -- that was the victim, was well known locally. And every -- there were a number of people volunteering to testify against that person; not about anything in the case, but just basically offer character evidence. And I --

>> **CHIEF JUDGE LAUTEN:** Favorable or unfavorable?

>> **JUDGE RODRIGUEZ:** Unfavorable.

>> **CHIEF JUDGE LAUTEN:** Oh, I see. Right.

>> **JUDGE RODRIGUEZ:** Everybody wanted to torch her -- to torch the alleged victim. So what I wound up having to do was I had to wind up working with the jury without letting them know what was going on, but to make sure that they were out; taking testimony for

half a day of all of these folks that wanted to -- obviously, I didn't want to be reversed because I didn't hear them. So we wound up doing a proffer. The proffer wound up showing that all they wanted to testify was bad character, nasty human being herself. And we didn't -- we didn't -- I kept it out.

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

>> **JUDGE RODRIGUEZ:** But it took an immense amount of work to get that done and to get the facts in so that any reviewing court could see what was being offered.

>> **CHIEF JUDGE LAUTEN:** Gotcha.

>> **JUDGE RODRIGUEZ:** At the end, she was found guilty of a lesser-included offense, a misdemeanor, and she had already served about 30 days in the county jail.

>> **CHIEF JUDGE LAUTEN:** Judge Kest, what -- most profound case; you got one?

>> **JUDGE KEST:** Probably the most profound one was the Winter Park case of the young man who was killed in Winter Park. And --

>> **CHIEF JUDGE LAUTEN:** Was that the beating in the park, or --

>> **JUDGE KEST:** Yes, the beating in the park. Yes.

>> **CHIEF JUDGE LAUTEN:** Because I also know there were -- some Winter Park children were burned to death and murdered --

>> **JUDGE KEST:** No. This was the one of the young man who was beaten to death in the park. And the most profound thing about that is that there were four young men, the three who were charged and the young man who died, and all of their lives were damaged, destroyed.

Because the two young men were in Juvenile for a long time, and we even did a Stand Your Ground hearing that I handled on them. And then they -- the State had expected, I guess, for them to plead and had said they gave them a plea offer and if they didn't plead they would be

filing direct. And there was still remaining time, and they did. And so these young men then became -- their records are now public, they were convicted by a jury. And although they're getting juvenile treatment, they have that conviction -- that felony conviction that will not go away. That will affect their lives forever and --

>> **CHIEF JUDGE LAUTEN:** So you had that on this side of the equation. On the other side, you had a dead young person.

>> **JUDGE KEST:** The dead child. And the facts of the case -- and I didn't hear the final trial but had to hear a lot of it with the Stand Your Ground and motion hearings that came up during it, and they were really sad in that, you know, young people doing very foolish things but also very cruel, and they were to get -- you know, it was almost like mob mentality. It was, you know, this was a fun thing that was happening rather than showing how serious it was.

You know, later, of course, I'm sure, once they got to trial, they were much more remorseful. But there were -- you know, in this day of videos everywhere, they were seen on videos in the park, in a parking area and the other -- talking about the event and in a very awful, disrespectful way since they were pretty sure it had involved a death.

>> **CHIEF JUDGE LAUTEN:** I'm going to switch gears a little bit. So all three of you practiced law. What was the biggest surprise about serving as a judge that you didn't know when you practiced? Because you practiced in court, in front of judges. What came as the biggest shock to you about being a judge that you hadn't anticipated from your practice?

>> **JUDGE LUBET:** Probably, since I've done so much time as a Criminal court judge, 11 years --

>> **JUDGE RODRIGUEZ:** Done time.

>> **JUDGE LUBET:** Done time.

>> **JUDGE KEST:** Done time.

>> **JUDGE LUBET:** Probably the thought and consideration to sentencing that a judge has to do before he just blurts out a sentence for somebody. And thought and consideration about the victims, thought and consideration about the defendant, the defendant's family, the effect on the defendant's family, the effect on the victim's family. These are all things -- and you don't have hours and hours to think about these things. Many times you think about them in two or three or four minutes.

But still, all these things go through your mind, which, as a lawyer, when I would try cases and a client got convicted, all I thought about was, my poor client's going to jail. Sometimes he deserved it, sometimes he didn't. But he was going to jail and his family was going to be without their chief means of support, usually.

And now I think to myself, you know, I'm sorry he's going to jail and I'm sorry the family is going to suffer, but I didn't put him in this position. And you've got to consider all these things before you sentence somebody.

>> **CHIEF JUDGE LAUTEN:** Yeah. When I was a prosecutor I thought, this looks so easy, judge, why are you wrestling over this thing. And then until you --

>> **JUDGE LUBET:** It's not, as you well know.

>> **CHIEF JUDGE LAUTEN:** Yeah. And then we had to make the decisions, and all of sudden --

>> **JUDGE LUBET:** Exactly.

>> **CHIEF JUDGE LAUTEN:** I don't know, the cases must have just gotten harder all of a sudden.

>> **JUDGE LUBET:** Yeah.

>> **CHIEF JUDGE LAUTEN:** Okay. What about you; biggest surprise from practice to sitting?

>> **JUDGE RODRIGUEZ:** Well, when I -- I came not too long after I had left corporate -- the corporate world, and I realized that everybody thinks that judges have all this power. That they can do -- they can move mountains, if need be.

Cindy Schmidt, a local lawyer, told me that I taught her that judges were human, because out of my frustration, I said something that was rather impolite and out of character, particularly in public, and that she heard me. And when she heard me voice my frustration because I could not get a file -- when -- where I was in Tupperware, if I said jump, folks would say, how high, because it was all about the health of the company and everybody was pushing the cart in the same direction.

But my biggest surprise was that not everybody saw the world the way that I did, and what I needed was not necessarily going to be provided as quickly as I thought. And I think maybe that was because we were dealing with files and I don't have -- I did not have the facility that I have now of just pulling my computer and going online and getting the files.

>> **CHIEF JUDGE LAUTEN:** Judge Kest, what about you?

>> **JUDGE KEST:** Well, one of the biggest things -- and I will tell you the thing -- my husband told me that I had -- when -- first day you go on the bench, be sure and sit down right away, because you understand nobody else can sit down. And after being a trial lawyer, and Marc will relate to this probably, is that you always were standing; and when the judge sat, and then you knew you could sit down.

Well, if you walk in and it's your first day on the bench, you're still kind of in lawyer mode and so you're waiting for someone to say you can sit down. So that was one thing, and that was just a humorous one.

But one of the things, the view -- and I've often tried to get attorneys who practice in front of me to come for an hour, a day, a half-day, however long they had, and sit on the other side of the bench and watch what was going on, because it's very, very different in how you see things. And you see -- you know, somebody's testifying, and the other person's over there making faces and doing things. And it's -- you know, there's -- and the attorneys often don't see how they're appearing.

And sometimes they're -- it's so obvious when you're sitting back there that they have crossed that line from professionalism to, I'm personally involved in this case, I'm personally, you know, somehow invested in this case. And they also lose some perspective and they argue from emotion. And it makes it hard on the judge because they aren't giving you what you need to make the decision. They are arguing what their client wants; and, you know, my client is the victim in this.

And particularly in Family law. I've even had family members divorce, and I've told them, it is not all one person; both people have -- you know, the marriage was two people, the divorce is two people; there were things each of you could have done, could have said to make this different, and you didn't, and so now here we are.

And there's very few cases -- and after practicing since, let's see, 1975 until now, I've seen very few cases, in fact, I can't even name one, where one person was all in the right and the other one was all in the wrong, in a divorce. However, they all come in thinking that and -- particularly in divorce cases.

But also I've seen it when I've been in the Domestic Violence cases and the Delinquency and Dependency. Too often people get so hung up in their own emotions, they're not giving the court what you need -- the judge needs to make the decision. And you're listening desperately to hear something that fills in one of the blocks that you have to -- you know, blanks that you have to fill in in order to give a resolution, and nobody's telling you; they're just pointing fingers at each other.

And that's very -- that was shocking to me, because I had -- in my practice, I had dealt with a lot of attorneys and had not had that happen as much from my perspective, because we -- the truth is, when I was an attorney, I settled probably 95 percent of the cases. In fact, it was tough to get enough trials to get board certified, because the better resolution for the family is a settlement.

>> **JUDGE LUBET:** You know, Fred, one of the problems -- and I agree with both of my colleagues. And one of the biggest problems is -- we all grew up in the law, including you, when there was expected professionalism and expected respect for your opposing counsel. And I see that -- I don't want to say slowly dwindling away, because it's more than slowly dwindling away. It's becoming more and more rapid. Just a lack of respect toward other attorneys --

>> **JUDGE KEST:** And the litigants.

>> **JUDGE LUBET:** -- and the litigants. It's just --

>> **CHIEF JUDGE LAUTEN:** So you think that's part and parcel of the coarsening of our conversation in society with talking heads on TV and texting and lack of interpersonal connection?

>> **JUDGE LUBET:** And it's also part of this desire by every lawyer out there -- not every, let me take that back. There are still a lot of lawyers who have that professionalism. But a number of them who come in front of me who have one desire, and that is to win at any cost.

>> **JUDGE RODRIGUEZ:** Right.

>> **JUDGE LUBET:** It's become almost --

>> **JUDGE RODRIGUEZ:** It's personal.

>> **JUDGE LUBET:** Yeah. It's become so cutthroat. And it's the judge's job in the courtroom to make sure that that kind of attitude does not continue in the courtroom. And sometimes it's very difficult and you have to call lawyers down for it.

>> **CHIEF JUDGE LAUTEN:** If I gave each one of you a magic wand -- now not about lawyers, but about the public -- I gave you a magic wand, you can wave it and answer this question. What aspect of the judiciary, or of your job, do you wish the public better understood; what would that be for you? Wave this wand, and then they understand that.

>> **JUDGE LUBET:** And I will tell you, and I think Judge Rodriguez has already hit on it, the public thinks that we have this incredible, unlimited power. It happened this morning in my courtroom. The defendants think and the litigant -- the victims think that we have this -- especially in the Criminal court where I am, is where I'm talking about. They think I have unlimited power to do anything I want to do, and help them or hurt them in any way I want to. And they just don't understand that there are statutes and ethics which bind our hands to things; that we cannot do many, many things.

And I can guarantee you my two colleagues agree with this, that there are many times in the courtroom where we wish we could do something, and because of the statutes and because of the canons of ethics, we can't do it. And, that, I wish the public would understand.

>> **CHIEF JUDGE LAUTEN:** Fair enough.

Would you -- anything different than that?

>> **JUDGE RODRIGUEZ:** Absolutely. I would just say that some folks think that we can fix it for them, and we're not in the fix it department.

>> **JUDGE KEST:** Yeah. Same thing. People really expect you to correct things for them, to -- you know, parents will come in, and the child's been committing crimes and -- well, he just needs to be in a -- he needs some counseling, he needs to be in one of these -- you know, he needs a mental health program. And I go, that may be, but this is not Mental Health court, this is Juvenile Delinquency court, and I have no ability to order him to get mental health treatment.

>> **JUDGE LUBET:** Exactly.

>> **JUDGE RODRIGUEZ:** And how many times in a juvenile constraint or in a Juvenile court have we gotten a parent that says, Judge, I'm done with him; he's yours. And it's like, I can't fix in 45 minutes what took you 12 years.

>> **CHIEF JUDGE LAUTEN:** We don't have enough bedrooms at home to take --

>> **JUDGE KEST:** Yeah. By the way, you had him for 18 -- 16, 14, 18 -- whatever the age is.

>> **JUDGE RODRIGUEZ:** I can't fix that in 45 minutes.

>> **JUDGE KEST:** But today --

>> **CHIEF JUDGE LAUTEN:** All right. I'm going to switch this wand around now, and you have it still in your hand but you get to change one thing about the court system. What would you change?

>> **JUDGE LUBET:** Me, personally, I would change -- I personally really liked, enjoyed and thought it was the more proper way for judges -- and I'm speaking once again about Criminal court -- to have more flexibility in sentencing.

>> **CHIEF JUDGE LAUTEN:** All right. So more discretion.

>> **JUDGE LUBET:** More discretion.

>> **CHIEF JUDGE LAUTEN:** All right. Very good.

>> **JUDGE LUBET:** So much has been taken away from us.

>> **CHIEF JUDGE LAUTEN:** Judge Rodriguez?

>> **JUDGE RODRIGUEZ:** I would like to stop having felt like Lucy and Ethel in the chocolate factory, with more and more and more cases being shoved at us. I would have -- I would love to have gone ahead and had the legislature understood -- sat with us and see what we are going under -- or what we're -- what's happening in terms of the ballooning caseload which, by the way, is one of the reasons that I decided not to run again. This is a stressful job, and it's sometimes a very thankless job.

>> **CHIEF JUDGE LAUTEN:** So when you wave this wand, is the legislature going to appear next to you, or is it more than that? You want them to give us more resources?

>> **JUDGE RODRIGUEZ:** No. I want them to create additional judges so that we can have a better and more --

>> **CHIEF JUDGE LAUTEN:** Very good. Thank you. I was hoping you might say that.

>> **JUDGE RODRIGUEZ:** Absolutely.

>> **CHIEF JUDGE LAUTEN:** I didn't want to stick words in your mouth.

>> **JUDGE RODRIGUEZ:** Oh, no, no, no.

>> **JUDGE LUBET:** Which we keep getting certified for.

>> **CHIEF JUDGE LAUTEN:** All right. How about you?

>> **JUDGE KEST:** Well, pretty much things that both of them have said, in that -- more options. Particularly in Family, there's -- there are very few options. If you've got people who are in Domestic Violence, you set up visitation. We have the visitation centers, and those are great, but we can't provide free counseling for these people and many of them need that. People going through divorce have all kinds of needs that we can't meet. And there's fewer options.

It's like you can't do -- there's limitations on how you can divide property, and it has to be done at the time, and you have to make the decision based on what's there. And you can't anticipate -- you've got, you know, a two-year-old and you're setting up a visitation plan, but everybody knows this child will start school. And if these parents don't live in close enough proximity, that that isn't going to work. But the law prohibits you from anticipating and making a visitation plan that's automatically corrected for some of these things that we know are going to happen.

>> **CHIEF JUDGE LAUTEN:** All right. Final question. What will you miss the most about your job?

>> **JUDGE LUBET:** I think -- I've thought a lot about this. Not for this particular venue, but just thought a lot about it.

>> **CHIEF JUDGE LAUTEN:** Sure. I imagine you have.

>> **JUDGE LUBET:** And this is going to be the first time in 44 years that I will be unemployed. And, well, I mean, it's a different attitude, but --

>> **CHIEF JUDGE LAUTEN:** Thirty years ago it sounded like a great idea. Right?

>> **JUDGE LUBET:** It did.

>> **CHIEF JUDGE LAUTEN:** Now as you get a little closer, it's a little scary. Right?

>> **JUDGE LUBET:** Yeah, it's very scary. And -- but I -- what I'm going to miss the most about my job, to be honest with you, is every day that I go into that courtroom, I see 15, 20, 25, 30 cases, every day. And on at least one or two or three of those cases, I can do something. I can use what discretion I have to protect society from defendants and protect defendants from the government. And I'm going miss being able to do that.

>> **CHIEF JUDGE LAUTEN:** Very well said.

Judge Kest, what are you going to miss?

>> **JUDGE KEST:** Well, I'm going to miss the challenges. I mean, every day when you'd get up and you go into the courtroom, you never know exactly what you're going to hear and what you're going to have to decide. And it's an intellectual challenge, and I will miss that part of it. So I'm going to have to find something to kind of fill in that kind of a challenge. But -- and I will miss very much the people I work with, and in particular my Judicial Assistant Gay Aaron who has been a godsend. She has protected me, taught me, and she is just wonderful. And she's not leaving the Ninth Circuit with me.

>> **CHIEF JUDGE LAUTEN:** That's a blessing for us.

>> **JUDGE KEST:** She's not retiring. But she is just a real servant of the people, and she looks at her job as serving people. And when people call, she answers the phone, she talks with them, she tries to guide them to where they need to go. She can't give legal advice, and she's regularly telling people that. But that she guides them, tries to answer their questions and point them in a direction where they can get the assistance they need, and is always available to me, to the lawyers, and to the public when they call in.

>> **CHIEF JUDGE LAUTEN:** Judge Rodriguez? You get the last word.

>> **JUDGE RODRIGUEZ:** Well, that was my answer from the Central Florida Women's Lawyers question that was asked; it was the same. And I will still say that it's my judicial assistant that I will miss most. I'm not going to miss the job because, while I am going to be retiring from this job, I'm still going to be engaged in the law because I'm going to be teaching at one of the law schools. I'm also going to wind up working pro bono to make sure that the elderly are -- particularly the poor elder -- and elderly are protected. That their guardianship rights are still recognized.

But I will miss my judicial assistant. I've had my judicial assistant for 18 years. I performed her wedding ceremony to her husband. She is like my daughter. She is my right hand, she has my back, has had it for that many years. And before that, she was my trial clerk out in Juvenile. So I've known her since, what, 1995. And she grew up in Niceville. And you know what? It's incredible. You can sense that she is from Niceville because of how absolutely nice and wonderful she is. She is a beacon of gentleness.

I remember one time in -- when I was in the Juvenile Division, where she came to the back of the courtroom, and one of the deputies told me, your JA is back there and she's crying. And I go, okay, the world is falling apart. I go back there and I say, what happened, what happened. And she says, I hung up on somebody; they were yelling at me. And I said, well, you know what; the next time somebody yells at you, you let them know that you are not paid to be yelled at; and instead of letting them do that, go ahead and hang up; it's okay if they yell at you; you don't have to put up with that. That's the sweetness of this human being, of this individual.

And I am so glad that she is going to be working with the judge that is taking over the group that I would have been elected to. I hope that he values her contribution -- I know he will.

Because, again, she has been through a number of divisions, she is helpful to other judges as well as to other JAs, and I think they'll -- that she'll be fine.

>> **CHIEF JUDGE LAUTEN:** Great. Great.

>> **JUDGE RODRIGUEZ:** I think she'll be -- but I will miss her.

>> **CHIEF JUDGE LAUTEN:** Great.

>> **JUDGE LUBET:** Fred, I can't let this go by, because I'm going to get in trouble.

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

>> **JUDGE LUBET:** My JA has been with me for 15 years; 3 years before I came on the bench and 12 years on the bench. And I'm going to be just very -- it's short and sweet. I don't think I could have done this job without her.

>> **JUDGE RODRIGUEZ:** Oh, we know you couldn't have.

>> **JUDGE LUBET:** I couldn't have.

>> **JUDGE RODRIGUEZ:** I couldn't have done it without Vikki.

>> **JUDGE LUBET:** That's it.

>> **CHIEF JUDGE LAUTEN:** Well, that's great that you all have informed our listeners that it's not just us; that behind the scenes there's the judicial assistant that kind of keeps us on track and operating. And I applaud and echo what you said about your assistants, and my assistant, and really I think all the judges feel that same way. But that's a fine tribute.

On behalf of not just the 65 judges in the Ninth Judicial Circuit and the 300 in staff that we have that work behind the scenes, but all the citizens of our region in Central Florida, I want to thank each one of you for your years of service on the bench, for the sacrifices and the struggles that you've endured as a judge, for the pressure that you have felt on the bench, for the

work that you take home to be prepared every day so that you represent us in court in such an excellent manner. And you've all been beacons of excellence, and I'm so grateful to you.

So on behalf of all the judges, the staff and the citizens, thank you for your service and best of luck in your future endeavors.

>> **JUDGE LUBET:** Thank you.

>> **JUDGE RODRIGUEZ:** Thank you, Judge Lauten.

>> **JUDGE KEST:** Thank you.

>> **JUDGE RODRIGUEZ:** And we will all miss you.

>> **CHIEF JUDGE LAUTEN:** Thank you.

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